UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of CHEVRON CORPORATION for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings, Petitioner.	:	Case No.: 14-MC-392 (LAK)

MOTION TO VACATE AND
INCORPORATED MEMORANDUM OF LAW

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

MOTION TO VACATE AND
INCORPORATED MEMORANDUM OF LAW

MCSquared PR, Inc. ("MCSquared"), specially appearing to challenge this Court's jurisdiction, and through its undersigned counsel, moves, pursuant to 28 U.S.C. § 1782, Federal Rule of Civil Procedure 60(b), and any applicable local rules, for entry of an order vacating this Court's November 25, 2014 Order [ECF No. 8] granting Chevron Corporation's ("Chevron") Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings (the "Application") [ECF No. 2].

PROCEDURAL HISTORY

On November 24, 2014, Chevron filed the Application requesting judicial assistance pursuant to 28 U.S.C. § 1782 [ECF No. 2]. The Application was supported by a Memorandum of Law [ECF No. 3] and by the Declaration of Anne Champion [ECF No. 4] which attached 210 exhibits. On November 25, 2014, the same day MCSquared was served with the Application, the Court entered an order granting the Application (the "1782 Order") [ECF No. 8]. The 1782 Order allowed Chevron to seek wide-ranging discovery MCSquared, a Brooklyn-based public relations firm that has no connection to the underlying global litigation between Chevron and the Lago Agrio Plaintiffs' ("LAPs") efforts to enforce a judgment they obtained in Ecuador against Chevron (the "Enforcement Proceedings") stemming from Texaco's (Chevron's predecessor)

contamination of the Ecuadorian Amazon rainforest. Moreover, as set out in detail below, MCSquared has no connection with the litigation pending before the courts of Gibraltar filed by Chevron against individuals and corporate vehicles involved in the funding of the LAPs litigation (the "Gibraltar Proceedings").

FACTUAL BACKGROUND – THE DIRTY HAND OF CHEVRON

Texaco, which merged with Chevron in 2001, discovered oil in the Ecuadorian Amazon rainforest in 1964. The government of Ecuador entrusted Texaco with employing modern oil-production practices and technology in the country's newly discovered oil fields. Texaco drilled oil in the Ecuadorian rainforest form 1964 to 1990. During its operations, Texaco knowingly used environmental practices that did not meet industry standards. Such practices were illegal in Ecuador and the United States at the relevant time.

Texaco deliberately dumped more than 18 billion gallons of toxic wastewater from the oil production, spilled approximately 17 million gallons of crude oil, and left hazardous waste in approximately 1,000 open unlined pits on the forest floor. Since the 1930s, the United States laws has required that such pits to have impermeable liners. As an American company, Texaco was well aware of the consequences of leaving unlined pits exposed. Yet for 28 years, Texaco made an informed decision not to line its pits in order to increase its profits. Through practices like this one, Texaco saved about

$3 per barrel of oil produced by handling its toxic waste in Ecuador in ways that were illegal in the U.S. oil-producing states such as Louisiana, Texas, and California.

Texaco's irresponsible approach to oil exploitation in Ecuador resulted in one of the worst environmental disasters on the planet that experts have dubbed the "Rainforest Chernobyl". In a rainforest area roughly three times the size of Manhattan, Texaco carved out 350 oil wells, and upon leaving the country in 1992, left behind some 1,000 open toxic waste pits. As a result, contamination of soil, groundwater, rivers and streams has caused local indigenous people and farmers to suffer skin, mouth, stomach and uterine cancer, birth defects, and spontaneous miscarriages. Texaco conducted a clean up of less than 1% of the affected areas in 1995, but in most cases it merely covered open pits with dirt or burned off the crude by-products. Chevron has never cleaned up the mess it inherited from Texaco, and its oil waste continues to poison the rainforest ecosystem today. To illustrate the magnitude of this environmental tragedy it is important to note that the Rainforest Chernobyl is 85 times larger than the *Deepwater Horizon* oil spill in the Gulf of Mexico and 18 times larger than the *Exxon Valdez* oil spill off the coast of Alaska.

The "Dirty Hand of Chevron" catchphrase applies not only apply to the Rainforest Chernobyl, but also to the litigation tactics employed by Chevron and its attorneys in this proceeding. As set out below, the Application and supporting documentation contain multiple factual misrepresentations, conceal factual information

which discredits some of the allegations asserted by Chevron against MCSquared, and more troublesome, includes several documents that Chevron appears to have been obtained by Chevron in violation of the laws of the United States and Ecuador.

For example, in support of the Application, Chevron submitted Exhibit 190 to the Declaration of Anne Champion [ECF No. 4-188] which contains an e-mail string between high level members of the Ecuadorian government and employees of MCSquared, including Maria del Carmen Garay and Jean Paul Borja. This e-mail string appears to have been obtained unlawfully through an act of hacking or wiretapping. MCSquared did not consensually turn it over to Chevron, nor have, the government officials interviewed by undersigned counsel have also not shared this particular e-mail string with third parties. If, in fact, the e-mail string was obtained from one of the recipients after it was delivered, unauthorized access to the contents of the communication is governed by the Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701, *et seq.* (Title II of the Electronic Communications Privacy Act). The SCA is intended to prevent third parties from "obtaining, altering, or destroying certain stored electronic communications" and imposes criminal and civil penalties when a person "accesses an electronic communication service, or obtains an electronic communication while it is still in storage, without authorization." *See Pure Power Boot Camp v. Warrior Fitness Boot Camp*, 587 F. Supp. 2d 548, 555 (S.D.N.Y. 2008). Additionally, under the Wiretap Act (Title I of the Electronic Communications Privacy Act), civil and criminal

penalties can be imposed on any person who "intentionally intercepts . . . any wire, oral, or electronic communication." 18 U.S.C. § 2511(1)(a). Courts that have applied this provision of the Wiretap Act to e-mails to hold that the clandestine interception of e-mails of an individual, occurring contemporaneously with delivery, constitutes an illegal wiretap. *See United States v. Councilman*, 418 F.3d 67, 80 (1st Cir. 2005). In short, MCSquared is very concerned about the circumstances surrounding Chevron's acquisition of the e-mail string appearing at ECF No. 4-188 and it reserves its rights to pursue all claims available to it under the SCA, the Wiretap Act, and any other applicable law.

In addition, Chevron's filing of Exhibits 147 [ECF No. 4-146], 155 [ECF No. 4-154], 195 (which does not appear to be in the Court's docket) and 198 [ECF No. 4-198] to the Declaration of Anne Champion are equally or even more troublesome. Exhibits 147 [ECF No. 4-146] and 155 [ECF No. 4-154] contain the Ecuadorian employment history (the "Labor Records") of Danilo Roggiero ("Mr. Roggiero") and Cynthia Zapata ("Ms. Zapata") respectively. Mr. Roggiero is the husband of Maria del Carmen Garay, the sole shareholder and Executive Director of MCSquared. Ms. Zapata is a former employee of MCSquared.

The Labor Records basically include detailed and private information about Mr. Roggiero's and Ms. Zapata's employment history, salary, schedule, pay stub dates, national identification number, address, and telephone number. The Labor Records

appear to have been obtained by an individual with access to the computers of the Ecuadorian Institute of Social Security ("IESS"), the Ecuadorian counterpart to the U.S. Social Security Administration. The information in the Spanish originals of the Labor Records suggests that the information was obtained by taking screenshots of the internal data management software employed by the IEES. According to Article 6 of the Ecuadorian Law of the National Registry System of Public Data, the Labor Records are confidential and they could only be accessed with the express authorization of the account holder (i.e., the employee), pursuant to applicable law or by court order. Chevron appears to have conspired third parties to obtain the Labor Records, in violation of Ecuadorian law and the privacy rights of Mr. Roggiero and Ms. Zapata. MCSquared reserves all rights regarding the unlawful acquisition of the Labor Records.

On the other hand, Exhibits 195 (unavailable in the Court's docket) and 198 [ECF. 4-198] contain copies of the certificates of entry and exit from Ms. Zapata and Mr. Roggiero respectively (the "Immigration Records"). The Immigration Records reveal Ms. Zapata's and Mr. Roggiero's travel history including dates of travel, country of origin/destination, method of transportation, place of embarkment and disembarkment, travel document number, visa type, and authorized stay periods. Unlike the Labor Records, the Immigration Records bear all of the stamps from the Ministry of the Interior, Border Authority. The Immigration Records are also confidential pursuant to Article 6 of the Ecuadorian Law of the National Registry System of Public Data.

However, Chevron obtained the Immigration Records by committing a fraud on the Fifth Court for Violations of Pichincha ("Pichincha Court"), Case No. 0487-2014 JQCP-ZC-A-B. The "Pichincha Court" issued a court order directing the Ministry of Interior to release the Immigration Records of Ms. Zapata, Mr. Roggiero, Maria Garay (MCSquared's shareholder and Executive Director), Jean Paul Borja (employee of MCSquared), and Richard Stalin. The Pichincha Court issued the court order authorizing the release of the Immigration Records upon the petition filed by Chevron's attorney, Dimas Guzman Barragan, who **falsely represented to that court** that the Immigration Records in order to proceed with "**a civil action for environmental torts**".[1] *See* **Exhibit A**, copy of the Pichincha Court's Order and Chevron's Petition (an English translation will be filed later this week). Chevron obtained the Immigration Records under false pretenses by commiting a fraud on the Pichincha Court. MCSquared reserves all rights regarding the potential unlawful and/or fraudulent acquisition of the Immigration Records.

In short, Chevron has marshaled significant resources to bring the Application which, as set forth in more detail below, is nothing more than an effort to intimidate and harass MCSquared for its work on behalf of the Republic of Ecuador to bring awareness and inform the general public about the Rainforest Chernobyl and Chevron's failure to remediate one of the worst environmental disasters on the planet. Chevron

[1] The undersigned, a native Spanish speaker, translater the quoted passage.

knows, or it reasonably should have known that MCSquared's work on behalf of the Republic of Ecuador had nothing to do with the Lago Agrio litigation saga other than the fact the LAPs, like many other Ecuadorians, were affected by the Rainforest Chernobyl.

ARGUMENT

MCSquared moves for entry of an order vacating the 1782 Order because: (1) the Application upon which the 1782 Order was based failed to meet the statutory and discretionary requirements pursuant of 28 U.S.C. § 1782; and (2) the Application did not contain complete and accurate information. As set out below, the discovery sought by Chevron through the Application attempts to compel the production of documents and seeks the deposition of MCSquared on matters that are wholly irrelevant to any legitimate purpose in the underlying Enforcement Proceedings and/or the Gibraltar Proceedings. The subpoena ("Subpoena") served on MCSquared seeks the production of confidential documents which may be protected under the deliberative process privilege, the Foreign Sovereign Immunities Act ("FSIA"), the Act of State Doctrine, as well as information that may be withheld from production under the laws of the Republic of Ecuador ("Ecuador" or "ROE"). All of these potential privileges belong to Ecuador.

Chevron would have this Court continue to permit it to use (and abuse) § 1782 to trawl for information that it will falsely try to argue supports its hereby disproven

theory that MCSquared is somehow intertwined with the LAPs' efforts to enforce the judgment or with the alleged complicit participation on a fraud by the LAPs' litigation funders. This is an inappropriate use of § 1782, and now, presented with information from more than just one side, the Court should vacate the 1782 Order.

MCSquared has filed concurently with this motion, a separate Motion to Quash or Modify the Subpoena and Incorporated Memorandum of Law ("Motion to Quash"). The Motion to Quash sets forth in substantial detail the basis for challenging the Subpoena. In the interests of brevity and judicial economy, the arguments set-forth therein are expressly incorporated by reference here. This instant motion is being submitted to provide the Court with legal support for the argument that the 1782 Order should be vacated.

MEMORANDUM OF LAW

I. Chevron Did Not Meet its Burden to Establish the Statutory and Discretionary Requirements under 28 U.S.C. § 1782

Section 1782 provides a district court with broad discretion to deny or allow discovery for use in a foreign proceeding, provided that certain statutory elements are met. In particular, the statute requires that: "(1) the person from whom discovery is sought resides or is found in the district court to which the application is made, (2) the discovery is for use in a proceeding before a foreign tribunal, and (3) the application is made by a foreign or international tribunal or any interested person." *Schmitz v.*

Bernstein Liebhard & Lifshitz, LLP, 376 F.3d 79, 83-84 (2d Cir. 2004) (internal quotation marks omitted); *see also* 28 U.S.C. § 1782. But a court's inquiry does not end there. Even if these three statutory requirements are satisfied, the court must analyze a series of factors outlined by the U.S. Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.* to determine whether the requested discovery should be had, and if so, to what extent. 542 U.S. at 241, 264 (2004). Importantly, the case law is clear that a district court is under **no** obligation to grant a request for discovery pursuant to § 1782. *See id. (*"As earlier emphasized, a district court is not required to grant a § 1782(a) discovery application simply because it has the authority to do so.") (internal citations omitted); *In re Babcock Borsig AG*, 583 F. Supp. 2d 233, 240 (D. Mass. 2008) (same).

Under the first *Intel* factor, a court should consider whether the entity from which discovery is sought is a participant in the underlying foreign action. *Intel*, 542 at 264. Second, a court should "take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance." *Id.* Stated differently, a district court should consider evidence of the foreign court's receptivity "as embodied in a forum country's judicial, executive or legislative declarations that specifically address the use of evidence gathered under foreign procedures." *In re Imanagement Servs., Ltd.*, No. Misc. 05-89(FB), 2005 WL 1959702, at *3 (E.D.N.Y. Aug. 15, 2005) (emphasis omitted). Third, a court should evaluate whether

the discovery application "conceals an attempt to circumvent foreign proof-gathering restrictions or other policies" of the foreign country. *Intel*, 542 at 264-65. And fourth, a court should examine the breadth of the discovery requests themselves, as "unduly intrusive or burdensome requests may be rejected or trimmed." *Id.* at 265.

In addition to outlining these four factors, the *Intel* Court explained that there may be other considerations relevant to the § 1782 analysis. For instance, the Court expressed concern that parity among the litigants may be compromised with one-sided American discovery. *Id.* at 262. To help alleviate this possibility, the Court suggested tha a "district court could condition relief upon [the petitioner's] reciprocal exchange of information." *Id.* Additionally, the Court noted that the potential disclosure of confidential information obtained under § 1782 may also be a reason to deny discovery. *Id.* at 266.

As set forth in detail below, Chevron failed to meet the statutory and *Intel* factors. Therefore, this Court should vacate the 1782 Order.

A. MCSquared neither "resides" nor is "found" in the Southern District of New York

Section 1782 requires that the discovery target "resides" or is "found" in the district in which the § 1782 application is made. 28 U.S.C. § 1782(a).[2] The statute

[2] 28 U.S.C. § 1782(a) provides: "The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal."

provides the sole basis for jurisdictional over an application. The § 1782 applicant bears the burden of proof as to the statutory elements. *See In re Kolomoisky*, No. M19-116, 2006 WL 2404332, at *3 (S.D.N.Y. 2006). In its Memorandum of Law, Chevron argues that MCSquared "resides or is found" in this District "because it is incorporated in New York and has an office in Manhattan (at 121 Varick Street)" [ECF No. 3 at 26]. MCSquared has no such office.

A person should be regarded as residing in the district not only when it is domiciled there, but also when it is a resident there in the sense of residing in the district for some not-insignificant period of time. Hans Smit, *American Assistance to Litigation in Foreign and International Tribunals: Section 1782 of Title 28 of the U.S.C. Revisited*, 25 Syracuse J. Int'l L. & Com. 1, 9-10 (1998). The statute itself does not define the term "resides" and MCSquared, nor other courts searching for a definition, could not find any cases construing the term in the context of Section 1782. *See In re Kolomoisky*, No. M19-116, 2006 WL 2404332, at *2 (S.D.N.Y. Aug. 18, 2006). The Second Circuit has observed that "'resides' can mean either 'residence' or 'domicile. . ." *United States v. Venturella*, 391 F.3d 120, 125 (2d Cir. 2004). Further, "despite the general distinct meanings of 'residence' and 'domicile,' those terms 'may have an identical or a variable meaning depending upon the nature of the subject-matter of the statute as well as the context in which the words are used.'" *Id.* at 125 n.6 (internal citations omitted).

As set forth below, MCSquared is not "residing" in the Southern District of New York under any definition of the word.

On the other hand, a party may be "found" in the district for the purposes of 28 U.S.C. § 1782(a) if the discovery target is served with a subpoena while physically present in the district of the court that issued the discovery order. *See In re Edelman*, 295 F.3d 171, 180 (2d Cir. 2002). Unsupported allegations that a discovery target has "systematic and continuous contacts" with the district in which the § 1782 application is made, absent any explanation as to what such "systematic and continuous contacts" might have been is not sufficient to exercise *in personam* jurisdiction over the discovery target. *See In re Application of Thai-Lao Lignite (Thailand) Co., Ltd.*, 821 F. Supp. 2d 289, 293-94 (D.D.C. 2011).

Chevron supported its allegation that MCSquared "resides" or is "found" in this district because MCSquared has an office in Manhattan by reference to MCSquared's Registration Statement Pursuant to the Foreign Agents Registration Act of 1983, as amended (the "FARA Registration Statement") [ECF No. 4-58]. The FARA Registration Statement was filed by MCSquared on July 3, 2014. MCSquared's attorneys in charge of preparing the FARA Registration Statement incorrectly listed a branch office of MCSquared located at 121 Varick Street, New York, NY (the "Varick Address"). *See* **Exhibit B**, Affidavit of Amanda Emerson ("*Emerson Aff.*").

MCSquared's counsel conducted a general inquiry of "MCSquared" in public directories and came up with the Varick Address, which corresponds to an entity named MC Squared NYC, Inc. ("MC Squared NYC"), which is neither related to nor affiliated with MCSquared. *Id.* at ¶ 3. Maria del Carmen Garay, MCSquared's sole shareholder and Executive Director, did not notice this mistake when she reviewed the FARA Registration Statement. *See* **Exhibit C**, Affidavit of Maria Garay (*"Garay Aff."*) at ¶ 3. MCSquared does not have, and never had, a branch office at the Varick Address. *Id.* MCSquared also does not have, and never had, a physical presence in the Southern District of New York. *Id.*

MC Squared NYC is a New York corporation that has its principal place of business at the Varick Address. *See* **Exhibit D**, printout from the New York Department of State, Division of Corporations, State Records & UCC. MC Squared NYC runs a printing shop.[3] MCSquared does not have a beneficial interest in MC Squared NYC nor an agency relationship of any kind with MC Squared NYC. *Garay Aff.* ¶ 4. MCSquared does not use, and has never used, the services of MC Squared NYC. *Id.*

Based on its extensive investigation of MCSquared, Chevron knew or should have known before filing the Application that MC Squared NYC has no connection with MCSquared. In fact, the initial 3 volumes of exhibits appended to the Declaration of Anne Champion in support of the Application all bear the caption of the United

[3] *See* http://www.mcsquarednyc.com/

States District Court for the ***Eastern*** District of New York, the federal district in which this Application should have been filed. *See* **Exhibit E,** copies of cover sheets for the 3 volumes of exhibits initially delivered by Chevron on MCSquared. Therefore, it appears that Chevron, in bad faith, engaged in forum shopping notwithstanding the publicly available evidence that MCSquared neither "resides" nor is "found" in the Southern District of New York.

On November 25, 2014, MCSquared filed a second amendment to initial FARA Registration Statement (the "Second FARA Amendment"). *See* **Exhibit B** to *Garay Aff.* for a copy of the Second FARA Amendment to FARA Registration Statement. In the Second FARA Amendment, MCSquared cured the mistake in its initial FARA Registration Statement and in the first amendment to the same, by removing any reference to having a branch office at the Varick Address. *Garay Aff.* ¶ 5.

Furthermore, Chevron's allegations that MCSquared has continuous and systematic contacts with the Southern District of New York was based solely on the inaccurate allegation that MCSquared has contacts with Manhattan through the maintenance of an office there [ECF No. 3:20]. In fact, as set forth in the *Garay Aff.*, MCSquared does not have continuous and systematic contacts with the Southern District of New York because it: (a) does not (and never did) maintain an office in Manhattan (or anywhere else in the Southern District of New York); (b) does not employ any individuals that work out of the Southern District of New York; (c) does not

have an agency relationship with an individual or entity operating out of the Southern District of New York; and (d) does not own any property in the Southern District of New York. *Garay Aff.* ¶ 6.

Similarly, Chevron's allegation that MCSquared has availed itself of the protections of New York law by choosing it to govern MCSquared's contract with Ecuador [ECF. No. 3:20] is the quintessential example of a half-truth statement. The contract in question also designated the Supreme Court for the State of New York, Kings County, as the sole forum to adjudicate any disputes regarding the contract entered into by MCSquared and Ecuador [ECF No. 4-65:17]. Kings County is within the jurisdiction of the federal Eastern District of New York (not the Southern District).

Moreover, the fact that New York law governed the contract between MCSquared and Ecuador has no bearing whatsoever on whether MCSquared "resides or is found" in the Southern District of New York (as opposed to the Eastern, Northern, and Western Districts of New York) for purposes of 28 U.S.C. § 1782. Chevron cited no legal authority to the contrary. Rather, as set forth above and evidence by the first set of papers delivered to MCSquared's Brooklyn office, *see* **Exhibit E**, Chevron's counsel knew that they had to file this Application in the Eastern District of New York. They chose instead to engage in forum shopping.

Lastly, MCSquared was not "found" in this district at the time the Subpoena was served because Chevron served the Subpoena on MCSquared outside this district by

effecting personal service through the New York Department of State in the city of Albany, New York [ECF No. 16].

In short, MCSquared neither "resides" nor is "found" in the Southern District of New York. As a result, this Court should vacate the 1782 Order solely on that basis.

B. The Discovery Sought by Chevron is not for Use in a Foreign *Tribunal*

Chevron claims that the discovery sought from MCSquared is for use in proceedings before foreign tribunals, namely the Enforcement Proceedings which the LAPs have filed and plan to file as well as the Gibraltar Proceedings [ECF No. 3:26 and ECF No. 18:5]. As set forth in the *Garay Aff.*, MCSquared did not plan, perform, or attempt to perform any services on behalf of the "Lago Agrio Plaintiff Related Parties" as that term is defined in the subpoena [ECF No. 4-1:10-11]. *Garay Aff.* ¶ 16. The Lago Agrio Plaintiff Related Parties definition includes the plaintiffs in the Ecuadorian litigation against Chevron (who are now engaged in the Enforcement Proceedings) as well as their litigation funders (the defendants in the Gibraltar Proceedings).

MCSquared's work for the Republic of Ecuador is wholly unrelated to the Lago Agrio litigation commenced by the LAPs 10 years **before** MCSquared was engaged by the Republic of Ecuador. If anything, MCSquared was hired to bring awareness to the environmental disaster that lays in the background of the Lago Agrio litigation saga and which had received minium coverage by international media outlets before

MCSquared was retained. The Lago Agrio litigation resulted in a judgment being entered against Chevron and in favor of the LAPs on February 14, 2011 (the "Judgment"). The Judgment was then affirmed as to liability and damages by an intermediate Ecuadorian appellate court on January 3, 2012. Lastly, the Judgment was affirmed as to liability, but reduced as to damages by the Ecuadorian Supreme Court on November 12, 2013. However, the appeal before the Ecuadorian Supreme Court was fully briefed in November 2012, approximately five-and-half months **before** MCSquared started to act on behalf of Ecuador.

Stated simply, MCSquared's work for Ecuador took place after all the material aspects of the Lago Agrio litigation had come to an end, and after the Enforcement Proceedings were commenced by the LAPs were well underway. Therefore any allegations that MCSquared aided and abetted the LAPs or Ecuador's support of the LAPs' efforts to enforce the Judgment are without merit. Moreover, the legal analysis of courts in Argentina and Brazil (as well as in Canada) as to whether the Judgment should be enforced in their jurisdictions will touch upon issues, including but not limited to comity, fraud and jurisdiction. Those proceedings will not address the alleged efforts of a non-party (Ecuador) to promote the enforcement of the Judgment through a purported public relations campaign because "promotion" of the enforcement of the Judgment by a non-party is not a legal ground to refuse enforcement of the Judgment by any civilized nation including Argentina, Brazil, and Canada.

Chevron also alleges that the discovery sought from MCSquared is relevant to whether Ecuador is tampering with witnesses [ECF No. 3:35]. Chevron finds putative support for its allegation on the naked accusation[4] that MCSquared played a role in the creating the so-called website "The Nation's Traitors" or "Los Vende Patria". However, MCSquared did not play a role in registering, designing or maintaining any of the websites, Twitter, and Facebook accounts Chevron references, including Apoya al Ecuador (Support Ecuador), Chevroff, Toxic Effect, La Mano Sucia (The Dirty Hand), and Los Vende Patria (The Nation's Traitors). *Garay Aff.* ¶ 10. Therefore, MCSquared does not have any discoverable evidence likely to be relevant to the Enforcement Proceedings.

Similarly, MCSquared did not, directly or indirectly, provide financial support to the Lago Agrio Plaintiff Related Parties, either on its own behalf or on behalf of the Republic of Ecuador or any other third party. *Garay Aff.* ¶ 17. The reason why the entire $6.4 million reflected in MCSquared's contract with the Republic of Ecuador was not fully accounted for in its FARA filings is because the vast majority of those funds were used to influence the public opinion in other countries other than the United States about the environmental damage caused by Chevron's predecessor and the lack of remediation thereof. *Id.* The Republic of Ecuador's General Comptroller's Office has

[4] Chevron asserts that there is "circumstantial evidence [that] indicates that [the Nation's Traitors website] was created by MCSquared" but conspicuously fails to cite to any of its 210 exhibits for such evidence.

performed a full and extensive audit of MCSquared's contract with the Republic of Ecuador and MCSquared has not ben notified of any irregularities in regards to the disbursement of funds by MCSquared per the contract with the Government of Ecuador. *Id.* The General Comptroller's Office is expected to release a report concerning its investigation which should be publicly available in the next few days. *Id.* Once the report is publicly available, MCSquared will file a copy of it with the Court. Therefore, MCSquared does not have any discoverable evidence likely to be relevant to the Gibraltar Proceedings.

In short, the discovery Chevron seeks from MCSquared through the Application is not likely to be relevant (in fact, it is certainly not relevant at all) to either the Enforcement Proceedings or the Gibraltar Proceedings. In fact, it appears that Chevron is camouflaging its Application's presumptively true intent; obtaining discovery from MCSquared for use in its ongoing international arbitration against the ROE before the Permanent Court of Arbitration pursuant to a bilateral investment treaty entered into by the United States and Ecuador (the "BIT Arbitration").

But a BIT arbitration does not constitute a foreign "tribunal" for purposes of § 1782. Accordingly, as the Second and Fifth Circuits have held, § 1782 discovery ist not available in aid of an international arbitration.[5] Chevron has argued the same position

[5] *See National Broadcasting Co. v. Bear Stearns & Co.*, 165 F.3d 184, 191 (2d Cir. 1999); (pre-*Intel*) *Republic of Kazakhstan v. Biederman Int'l*, 168 F.3d 880 (5th Cir. 1999) (pre-*Intel*); and *El Paso*

forcefully argued by Chevron in other United States district courts. *See* **Exhibit F**, Chevron's and John Connor's Opposition to the Republic of Ecuador and Dr. Diego Garcia Carrion's Application for Issuance of a Subpoena under 28 U.S.C. § 1782 filed in the U.S. District Court for the Southern District of Texas (the "Chevron Opposition"). While MCSquared acknowledges that this Court in *In re Application of Chevron Corp.*, 709 F. Supp. 2d 283, 291 (S.D.N.Y. 2010), found the BIT Arbitration to be a proper predicate for discovery under § 1782, this ruling is not binding and can –and– shoud be revisited. No federal appellate court has held that BIT arbitrations constitute a "tribunal" for purposes of § 1782.

The Eleventh Circuit is the only federal appellate court that at one point in time endorsed the granting of § 1782 applications in aid of international arbitrations. *See In re Consorcio Ecuatoriano de Telecomunicaciones v. JAS Forwarding (USA)*, 685 F.3d 987 (11th Cir. 2012). However, earlier this year, the Eleventh Circuit *sua sponte* issued a new decision vacating and superseding its prior 2012 opinion in which it the court decided to affirm the granting of the 1782 application in question on the grounds that it was supported by reasonably contemplated judicial proceedings and that it did not need to reach the issue whether discovery pursuant to 28 U.S.C. § 1782 is available in aid of

---

Corp. v. La Comision Ejecutiva Hidroelectrica Del Rio Lempa, 341 F.App'x 31 (5th Cir. 2009) (post-*Intel*) (finding that the Supreme Court's *Intel* opinion did not unequivocally overruled prior binding precedent holding that discovery pursuant to 28 U.S.C. § 1782 is unavailable in aid of international arbitrations).

international arbitrations. *See Application of Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1270 (11th Cir. 2014).

Moreover, courts outside this Circuit have held that § 1782 discovery is unavailable in aid of investment treaty arbitrations virtually identical to the BIT Arbitration. *See In re Caratube Int'l Oil Co., LLP*, 730 F. Supp. 2d 101, 106 (D.D.C. 2010) (rejecting § 1782 discovery for arbitration under U.S.-Kazakhstan BIT because "[t]his Court is reluctant, then, to interfere with the parties' bargained-for expectations concerning the arbitration process") (cited in the Chevron Opposition at pgs. 23-24). Further, as Chevron also correctly pointed out, under the U.S.-Ecuador Bilateral Investment Treaty, the Permanent Court of Arbitration is not acting as a "first-instance decision maker" because its arbitral awards rendered pursuant to the treaty are final and binding on the parties to the dispute. *See* **Exhibit F** at pg. 17.

In *Intel*, the Supreme Court held that the Commission of European Communities qualified as a "tribunal" for purposes of § 1782. *Intel*, 542 at 258-259. The question whether an international arbitration tribunal also qualifies as a "tribunal" under § 1782 **was not** before the Court. The only mention of arbitration in the *Intel* opinion is in an *in dictum* quote in a parenthetical from a law review article by Hans Smit. The quote at issue states that "the term 'tribunal' . . . includes investigating magistrates, administrative and arbitral tribunals, and quasi-judicial agencies, as well as conventional civil, commercial, criminal, and administrative courts." *Id.* at 258.

As the Fifth Circuit held in *El Paso Corp.*, nothing in the context of that quote suggests that the Court was adopting Smit's definition of "tribunal" in whole. *El Paso Corp.*, 341 F. App'x at 34. Nor did the *Intel* decision did not overrule the Second Circuit's holding in *National Broadcasting Co. v. Bear Stearns & Co.*, 165 F.3d 184, 191 (2d Cir. 1999) finding that arbitral tribunals are not "tribunals" for purposes of § 1782. Although the Second Circuit in *National Broadcasting* mentioned *in dictum* that intergovernmental arbitration tribunals may be "tribunals" for purposes § 1782, the court identified as a examples intergovernmental arbitration tribunals adjudicating claims between two countries such as the arbitration proceedings between the United States and Canada concerning the sinking of the "I'm Alone" vessel and the arbitration proceedings before the United States-Germany Mixed Claims Commission. *National Broadcasting*, 165 F.3d at 189. The BIT Arbitration between Chevron and Ecuador is not an intergovernmental arbitration tribunal that qualifies as a "tribunal" for purposes of § 1782.

In short, to the extent that Chevron seeks to obtain discovery in this Application in aid of the BIT Arbitration, the Application cannot succeed because the BIT Arbitration is not a "tribunal" definition under § 1782. Moreover, to the extent that Court finds that Chevron is entitled to obtain discovery from MCSquared in aid of the BIT Arbitration, Chevron should seek the discovery directly from Ecuador through the party-to-party discovery procedures available to it in the BIT Arbitration.

C. The Discovery Sought by Chevron from MCSquared is available from the Republic of Ecuador, a party to the BIT Arbitration.

As set forth above, under the first *Intel* factor requires a court to consider whether the entity from which discovery is sought is a participant in the underlying foreign action. *Intel*, 542 U.S. at 264. MCSquared does not dispute that it is not a participant to either the Enforcement Proceedings or the Gibraltar Proceedings. However, again, Chevron appears to be engaged in an effort to obtain discovery from MCSquared in aid of the BIT Arbitration. The work product produced by MCSquared under its contract with Ecuador is property of Ecuador pursuant to the contract's plain terms. Thus, Chevron can and should request it directly from Ecuador, a party to the BIT Arbitration. *See In re Microsoft Corp.*, 428 F. Supp. 2d 188, 193 (S.D.N.Y. 2006) (denying § 1782 discovery where foreign tribunal had jurisdiction over documents at issue); *see also In re Fischer Advanced Composite Components AG*, No. C08-1512RSM, 2008 WL 5210839, at *1 (W.D. Wash. Dec. 11, 2008) (denying § 1782 application and noting that discovery should properly be sought in foreign proceeding).

D. The Foreign Tribunals may not be receptive to this Court's discovery assistance, especially when the information sought has no relevance to the proceedings before them

As set forth above and in the *Garay Aff.*, MCSquared has no information that it is relevant as to whether Ecuador: (a) has promoted the enforcement of the Judgment; (b) provided financial support to the Lago Agrio Plaintiff Related Parties; and/or (c) is

tampering with witnesses. Moreover, as also set forth above, MCSquared's contractual relationship with Ecuador began on May 1, 2013, after all of the foreign proceedings were commenced, and in the case of the main Lago Agrio litigation, after the parties had no additional chance to submit evidence or legal arguments before the Ecuadorian Supreme Court. Furthermore, assuming *arguendo* that Ecuador has promoted the enforcement of the Judgment (which MCSquared is not aware of), such purported "promotion" does not constitute a legally cognizable ground under which the courts of Argentina or Brazil or any other civilized nation can use to refuse enforcement of the Judgment. Additionally, MCSquared never financed, on its own behalf, or on behalf of Ecuador or any other third party the activities of the Lago Agrio Plaintiff Related Parties.

Moreover, to the extent Chevron seeks discovery from MCSquared in connection with the BIT Arbitration, and further assuming *arguendo* that this Court would agree that such discovery is permissible under 28 U.S.C. § 1782, Chevron can and should seek the discovery directly from Ecuador.

E. Chevron's discovery demand is impermissibly overbroad and seeks highly confidential and privileged materials

As set forth above, under *Intel*, a court should examine the breadth of the discovery requests themselves, as "unduly intrusive or burdensome requests may be rejected or trimmed." *Intel*, 542 U.S. at 265. Here, there are two other dispositive

problems with the discovery Chevron seeks. First, the requests are vastly overbroad, seek information that is neither relevant nor likely to lead to discoverable information, are vague, and would require MCSquared to expend an immense amount of resources, in both money and employee time, searching for, reviewing, and then potentially producing responsive materials. MCSquared's Motion to Quash filed concurrently herewith and incoporated by reference herein, provides specific examples of Chevron's overbroad and irrelevant discovery requests.

Second, all of the documents Chevron seeks contain highly confidential information that belongs to Ecuador and that MCSquared is contractually bound to keep confidential [ECF No. 4-65:16] under the Ownership and Confidentiality provision of the contract between MCSquared and Ecuador.[6] Moreover, the requested discovery sought by Chevron may implicate privileges that belong to Ecuador including the Act of State Doctrine, the deliberative process privilege, and foreign sovereign immunity.

* * *

[6] The Ownership and Confidentiality provision provides: "THE GOVERNMENT OF THE REPUBLIC OF ECUADOR, keeps all necessary rights to own, use, and in particular utilizations, under the manner and the procedures it deems appropriate, regarding the reports and services, and **THE CONTRACTED expressly waives in that sense any right in favor of the Government of the Republic of Ecuador, for that, all work and related services provided, any, will be sole property of the GOVERNMENT OF THE REPUBLIC OF ECUADOR. THE CONTRACTED agrees to keep confidentiality and not to disclose or divulge those, just as all the information obtained in the same and related documents produced related to the execution of their work in the services provided to th Government, without the express acceptance and authorization of the latter in forever**. [ECF No. 4-65:16] (emphasis added).

In sum, Chevron failed to meet the statutory requirements of 28 U.S.C. § 1782, and each of the *Intel* factors weighs against the fishing expedition that Chevron seeks this Court to authorize. Accordingly, the Court should vacate 1782 Order.

II. The 1782 Order Should Also Be Vacated Pursuant to Fed. R. Civ. P. 60(b)

As detailed above, in the companion Motion to Quash, and the *Garay Aff.*, the 1782 Order was based on an Application that contained substantial factual misstatements and no interested parties had any meaningful opportunity to challenge the Application before it was granted. The Application and supporting materials including 210 exhibits were filed on November 24, 2014, just before the Thanksgiving holiday, and this Court granted it the very next day on November 25, 2014.

Under Federal Rule of Civil Procedure 60(b)(1), (3), and (6) this Court may relieve MCSquared from the 1782 Order granting the Application, because the 1782 Order constituted a surprise, was granted based on incomplete and inaccurate factual information, and requires the disclosure of highly confidential and potentially privileged information.

As Chevron well knows, MCSquared began to work for Ecuador 10 years after the Lago Agrio litigation commenced, and in fact, several months after that matter was fully briefed before the Ecuadorian Supreme Court. Moreover, the LAPs had already initiated legal proceedings in Argentina, Brazil and Canada to enforce the Judgment before MCSquared began providing public relations services to Ecuador on May 1,

2013. Notwithstanding the foregoing, Chevron insists on using (and abusing) the U.S. discovery process to seek basically every single document related to MCSquared's work on behalf of Ecuador, including private and confidential business and financial information, purportedly on the theory that Ecuador used MCSquared as a vehicle by Ecuador to: (a) promote the enforcement of the Judgment; (b) finance the Lago Agrio Plaintiff Related Parties; and (c) intimidate or tamper with witnesses.

As set forth in detail above, MCSquared does not, and cannot, have any evidence that likely to be relevant to any of these three proffered predicates for discovery. In fact, it is not hard to see Chevron's real agenda: to intimidate MCSquared from engaging in public relation campaigns to inform the public opinion about the tremendous environmental damage caused by Chevron's predecessor in the Ecuadorian Amazon rainforest and its continued failure, to date, to remediate this environmental disaster.

III. The Proper Procedural Method to Challenge the 1782 Order Granting the Application is a Motion to Vacate Pursuant to FED. R. CIV. P. 60(B)

As numerous courts have noted, an order granting an application under 28 U.S.C. § 1782 is a final, dispositive order. *In re Comm'rs Subpoenas*, 325 F.3d 1287, 1292 (11th Cir. 2003) ("This Court's appellate jurisdiction arises from 28 U.S.C. § 1291."); *U.S. v. Sealed 1, Letter of Request for Legal Assistance from the Deputy Prosecutor Gen. of the Russian Fed'n*, 235 F.3d 1200, 1203 (9th Cir. 2000) (citing *In re Letters Rogatory from the Tokyo Dist. Prosecutor's Office, Tokyo, Japan (Okubo)*, 16 F.3d 1016, 1018 n. 1 (9th Cir. 1994),

and finding "'[t]he district court's orders made pursuant to § 1782 are final, and thus appealable under 28 U.S.C. § 1291'"); *Kestrel Coal Pty. Ltd. v. Joy Global Inc.*, 362 F.3d 401, 403 (7th Cir. 2004) (finding order appealable because it "dispose[s] of all issues in the proceeding"); *Republic of Kazakhstan v. Biederman Int'l*, 168 F.3d 880, 881 n.1 (5th Cir. 1999) (order granting application under 28 U.S.C. § 1782 is a final, dispositive order subject to appeal under 28 U.S.C. § 1291).

The 1782 Order thus is appropriately challenged by a motion for reconsideration under Fed. R. Civ. P. 60(b). *See In re Clerici*, 481 F.3d 1324, 1330 (11th Cir. 2007) (considering appeal from an order permitting discovery pursuant to 28 U.S.C. § 1782 entered by the District Court and noting that the District Court construed objections to the order as a "motion to vacate"); *In re Operadora DB Mexico S.A. De C.V.*, No. 6:09-cv-383-Orl-22GJK, 2009 WL 2423138, at *2 (M.D. Fla. Aug. 4, 2009) (granting motion for reconsideration and vacating the prior order granting the application for judicial assistance under 28 U.S.C. § 1782; *Chevron Corp. v. Stratus Consulting, Inc.*, No. 10-cv-00047-MSK-MEH, 2010 WL 1488010, at *3 (D. Colo. April 13, 2010) ("The Republic's [Motion to Quash Subpoenas Ordering Discovery Pursuant to 28 U.S.C. § 1782] is in essence, a motion for reconsideration of Judge Kane's determination.").

IV. The Application Did Not Contain Accurate and Complete Factual Information

Pursuant to Fed. R. Civ. P. 60 (b)(1), (3), and (6) this Court should relieve MCSquared from the 1782 Order granting the Application because the 1782 Order constituted a surprise, was granted based on incomplete and inaccurate factual information, and requires the disclosure of confidential and privileged information.

Relief from judgment entered in the moving party's absence is generally warranted where the judgment results in "extreme and unexpected hardship" to the moving party. *Beavers v. A.O. Smith Elec. Prods. Co.*, 265 Fed. Appx. 772, 779 (11th Cir. 2008). The moving party must demonstrate a meritorious defense and that relief would not prejudice the non-moving party. *Orix Fin. Servs., Inc. v. Thunder Ridge Energy, Inc.*, 579 F. Supp. 2d 498, 509 (S.D.N.Y. 2008). A delay in resolving the issues on the merits without more, is insufficient to establish prejudice to the non-moving party. *See FDIC v. Francisco Inv. Corp.*, 873 F.2d 474, 479 (1st Cir. 1989).

A. The 1782 Order Constituted an Unfair Surprise

The 1782 Order should be vacated because Chevron sought and obtained it in a manner that constituted an unexpected and unfair surprise to MCSquared. Chevron served MCSquared with the Application a day after it was filed on November 25, 2014, just one day after it was filed, but the same day the Court entered the 1782 Order granting it [ECF No. 8]. The speed with which the Application was granted was by its

very nature a surprise to MCSquared. More importantly, because the Application was based on factual misrepresentations, MCSquared's lack of an opportunity to object and correct the record, and the resultant wide-ranging discovery the Subpoena authorizes, subjects MCSquared to "extreme and unexpected hardship." Therefore, the 1782 Order should be vacated.

B. The 1782 Order was a Entered on an Incomplete & Inaccurate Factual Information

Further, Fed. R. Civ. P. 60(b)(3) should be liberally construed and applied to set aside judgments obtained through factual misrepresentations. *See Johnson v. Law Offices of Marshall C. Watson, PA*, 348 Fed. Appx. 447, 448 (11th Cir. 2009) (citing *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338-39 (5th Cir. 1978)). Relief from a judgment under these circumstances is warranted where the incomplete submission of information to the Court is part of an "unconscionable plan" or scheme and prevents the movant from fully and fairly presenting its case or defense. *Id.*

In this case, Chevron alleged that the Application was warranted due to MCSquared's involvement with certain websites, social media sites, and organized protests in which protesters were allegedly compensated. In addition, the Application was filed in this Court under the inaccurate factual assertion that MCSquared "resides or is found" in the Southern District of New York. Furthermore, as set out above,

MCSquared was not hired by Ecuador to promote the enforcement of the Judgment or to denounce Chevron for its failure to pay the same.

As stated above and in the *Garay Aff.*, MCSquared was hired to conduct public relation campaigns to bring awareness and inform the public about the substantial environmental damage caused to the Ecuadorian Amazon rainforest by Chevron's predecessor and the failure, to date, to properly remediate such environmental damage. MCSquared's work was wholly unrelated to the execution of the Judgment. Moreover, MCSquared, through the filing of the instant motion and the *Garay Aff.*, has affirmatively demonstrated that it does not have relevant information concerning the three areas that Chevron asserted to justify the filing of the Application (*i.e.*, information about Ecuador's: [a] promotion of the enforcement of the Judgment; [b] financing of the Lago Agrio Related Parties; or [c] tampering with witnesses).

As detailed herein and in the Motion to Quash, the Application is part of an improper effort to conduct a "fishing expedition" concerning MCSquared's work for Ecuador on public relation matters that are not related at all (other than the indisputable environmental damage caused by Chevron's predecessor and the lack of remediation thereof) to the civil litigation between the Lago Agrio Plaintiff Related Parties and Chevron. Therefore, because the 1782 Order would not have been entered in the absence of Chevron's failure to submit complete and accurate factual information to the Court, the 1782 Order should be vacated.

C. The 1782 Order Requires the Disclosure of Privileged and Confidential Information.

Additionally, Fed. R. Civ. P. 60(b)(6), the catch-all provision, applies when there is "any other reason justifying relief from the operation of the judgment." An order should be vacated when there are "extraordinary circumstances" and the movant can show "both injury and circumstances beyond his control that prevented him from proceeding [in the action]." *See Community Dental Servs. v. Tani*, 282 F.3d 1164, 1167 (9th Cir. 2002).

In this case, the 1782 Order was the result of "extraordinary circumstances" in that it was entered based on factual misrepresentations and conjectures without MCSquared being given an opportunity to assert is objections to the Application. Conformance with the 1782 Order and the resulting Subpoena would result in the disclosure of MCSquared's client confidential and potentially privileged information in conflict with both U.S. and Ecuadorian laws. Therefore, the 1782 Order should be vacated.

WHEREFORE, based on the arguments and authorities cited herein and in the Motion to Quash filed concurrently herewith, MCSquared PR, Inc. respectfully requests that the Court enter an order vacating its November 25, 2014 Order granting Chevron Corp.'s Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery

from MCSquared PR, Inc. for Use in Foreign Proceedings, and grant such further relief as the Court deems just and proper.

Dated: Miami, Florida
December 15, 2014

Respectfully submitted,

LAW OFFICES OF RODRIGO S. DA SILVA, P.A.
1001 Brickell Bay Drive, 9th Floor
Miami, Florida 33131
E-mail: rodrigo@rdasilvalaw.com
Telephone: (305) 615-1434
Facsimile: (305) 615-1435

By: /s/ *Rodrigo S. Da Silva*
Rodrigo S. Da Silva, Esq.
Counsel for MCSquared PR, Inc.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that a true and correct copy of the foregoing MOTION TO VACATE AND INCORPORATED MEMORANDUM OF LAW was served on December 15, 2014 upon all counsel of record by filing it on that day by means of the U.S. District Court for the Southern District of New York's Case Management/Electronic Case Filing (CM/ECF) system.

Dated: Miami, Florida
December 15, 2014

By: /s/ *Rodrigo S. Da Silva*
Rodrigo S. Da Silva, Esq.

EXHIBIT A

República del Ecuador

Ministerio del Interior

MINISTERIO DEL INTERIOR

MIGRACIÓN

Oficio No 2014-3201-MDI-PFIUCM-SAMP
Quito, 24 de septiembre de 2014

Dr.
Rafael Acosta Usca
SECRETARIO DEL JUZGADO QUINTO DE CONTRAVENCIONES DE PICHINCHA. ZONA – CARAPUNGO.
De mi consideración

En atención a su oficio No.0487-2014/JQCP-ZC-A.B., de fecha 22 de septiembre del 2014, dentro de la Causa No. 2014-00857G, remito a Ud. el Certificado de Movimiento Migratorio: **CYNTHIA ELSA ZAPATA SOLIS** en Especie Valorada No.0705557, **MARÌA DEL CARMEN GINETTE GARAY CALERO** en Especie Valorada No.0705558, **JEAN PAUL BORJA JÀCOME** en Especie Valorada No.0705559, **DANILO ENRIQUE ROGGIERO CEVALLOS** en Especie Valorada No.0705560 **RICHARD STALIN CABRERA VEGA** en Especie Valorada No.0705563, solicitados.

Atentamente,

MIGRACIÓN
FIRMA:

Marina González Merino
COORDINADORA UNIDAD DE SERVICIOS DE APOYO MIGRATORIO DE PICHINCHA
Elaborado por: E.P
Original: Destino
Copia: Archivo

JUZGADO DE CONTRAVENCIONES
FUNCION JUDICIAL
ZONA CARAPUNGO
RECIBIDO POR: Ana Barahona
FECHA: 25/09/2014 HORA: 13:40

JUZGADO QUINTO DE CONTRAVENCIONES DE PICHINCHA
ZONA CALDERÓN

JRA

Dirección: Av. Giovanni Calles s/n y Nápoles, sector Sierra Hermosa (Vía a Marianitas) Telf.: 3814850

Oficio No.0487-2014/JQCP-ZC-A.B.
Quito, 22 de Septiembre del 2014

Señor
Presente.-
GERENTE DEL PROYECTO DE FORTALECIMIENTO INSTITUCIONAL DE LAS UNIDADES DE CONTROL MIGRATORIO
De mis consideraciones:

Dr. Dimas Guzmán Barragán, ha comparecido a esta Judicatura y en calidad de Diligencia Previa, signada con el No. 2014-0857G, ha presentado una petición, cuya copia acompaño, en la cual solicita lo siguiente:

"Oficiese, al Gerente del Proyecto de Fortalecimiento Institucional de las Unidades de Control Migratorio, a fin de que me conceda una certificación en especies valoradas en el que conste todos los movimientos migratorios hasta la fecha de las personas que detallo a continuación: CYNTHIA ELSA ZAPATA SOLIS No.de cédula 092032898-6, MARIA DEL CARMEN GINETTE GARAY CALERO No. de cédula 091025470-5, JEAN PAUL BORJA JÁCOME No. De cédula 170648407-6, DANILO ENRIQUE ROGGIERO CEVALLOS No. De cédula 090865809-9, RICHARD STALIN CABRERA VEGA No. de cédula 170383325-9".

Además se ha dictado el auto, el que textualmente dice:

JUZGADO QUINTO DE CONTRAVENCIONES DE PICHINCHA. Quito, lunes 22 de septiembre del 2014, las 14h48.- VISTOS.- Avoco conocimiento de la presente causa en mi calidad de Juez Titular del Juzgado Quinto de Contravenciones de Pichincha Zona Carapungo, mediante Acción de Personal No. 7577-DNP, de 17 de mayo del 2013 del Consejo de la Judicatura de Pichincha.- La Diligencia Previa reúne los requisitos legales y a lo dispuesto en el numeral cuarto del Art. 231 del Código Orgánico de la Función Judicial, en concordancia con lo previsto en el Art. 66 numeral 23 y Art. 18 numeral 2 de la Constitución de la República del Ecuador y Art. 1,2,4 y 19 de la Ley de Trasparencia y Acceso a la Información Pública, en concordancia con lo dispuesto en el Art. 64 y 65 , 67 del Código de Procedimiento Civil. En consecuencia ofíciese, al Gerente del Proyecto de Fortalecimiento Institucional de las Unidades de Control Migratorio, a fin de que me conceda una certificación en especies valoradas en el que conste todos los movimientos migratorios hasta la fecha de las personas que detallo a continuación: CYNTHIA ELSA ZAPATA SOLIS No.de cédula 092032898-6, MARIA DEL CARMEN GINETTE GARAY CALERO No. de cédula 091025470-5, JEAN PAUL BORJA JÁCOME No. De cédula 170648407-6, DANILO ENRIQUE ROGGIERO CEVALLOS No. De cédula 090865809-9, RICHARD STALIN CABRERA VEGA No.de cédula 170383325-9.-La cosa, cantidad y hecho, que se exige es como lo tengo solicitado en el numeral anterior, para proceder con la Acción Civil de Indemnización de Daños y Perjuicios Ambientales.Se notificará al Gerente del Proyecto de Fortalecimiento Institucional de las Unidades de Control Migratorio en la avenida Amazonas y Avenida República de esta ciudad de Quito. Una vez realizada la diligencia se dispone el desglose de los originales de los certificados, dejando copias certificadas en autos, a costa del peticionario y el archivo del mismo. Tómese en cuenta la casilla judicial No.1035 del Palacio de Justicia de Quito, o el correo electrónico

MIGRACIÓN
RECIBIDO POR
FECHA 23/09/2014 16:17

CONSEJO DE LA JUDICATURA

JUZGADO QUINTO DE CONTRAVENCIONES DE PICHINCHA
ZONA CALDERÓN

Dirección: Av. Giovanni Calles s/n y Nápoles, sector Sierra Hermosa (Vía a Marianitas) Telf.: 3814850

dimas.guzman@hotmail.es, del doctor Dimas Guzmán Barragán".-f) Dr. Franklin Ponce Montoya.-Lo que comunico a Usted para los fines de ley.- Cúmplase y Notifíquese.-
Atentamente:

DR. RAFAEL EDUARDO ACOSTA USCA
SECRETARIO
JUZGADO QUINTO DE CONTRAVENCIONES DE PICHINCHA - ZONA CARAPUNGO

CONSEJO DE LA JUDICATURA PROVINCIAL DEL CONSEJO DE LA JUDICATURA - JUZGADO QUINTO DE CONTRAVENCIONES - ZONA CALDERÓN - SECRETARÍA - Quito - Ecuador

DR. DIMAS RENE GUZMAN BARRAGAN
& ABOGADO LUIS VITE

Edf. Ponce Larrea, Ofc.406, Piso 4 Oficina 022683194
Av. Juan Montalvo OE4-95 y 6 Diciembre Celular 0999022010

SEÑOR JUEZ DE QUINTO DE CONTRAVENCIONES DE PICHINCHA
DE CARAPUNGO

Dr. Dimas Guzmán Barragán, abogado en libre ejercicio profesional, con matricula número 17-1987-37-CJP, domiciliado en el sector de Marianitas de la Parroquia Calderón de éste cantón Quito, atentamente comparezco ante usted señor Juez, con la presente petición de derecho, como diligencia previa en los siguientes términos, la misma que se encuentra elaborada de conformidad con lo previsto en el Art. 67 del Código de Procedimiento Civil.

1.- La designación del Juez ante quien propone esta demanda es el señor Juez Quinto de Contravenciones de Pichincha (Carapungo).

2.- Los nombres y apellidos del peticionario es como dejo indicado, de profesión abogado, estado civil casado, de 61 años de edad y domiciliado en esta ciudad de Quito.

3.- Los fundamentos de hecho y de derecho expuestos con claridad y precisión es como sigue:

Con fundamento en lo previsto, en el numeral cuarto del Art. 231 del Código Orgánico de la Función Judicial, Art. 66 numeral 23 y Art. 18 numeral 2 de la Constitución de la República del Ecuador y Artículos 1,2,4 y 19 de la Ley de Transparencia y Acceso a la Información Pública, en concordancia con lo dispuesto en el Art. 64 y 65 del Código de Procedimiento Civil, solicito a usted señor Juez, se digne oficiar al señor Gerente del Proyecto de Fortalecimiento Institucional de las Unidades de Control Migratorio, a fin de que se me conceda una certificación en especies valoradas en la que conste todos los movimientos migratorios hasta la presente fecha de las personas que detallo a continuación:

Nombres y Apellidos	**No. De Cédula**
Cynthia Elsa Zapata Solis	**092032898-6**
María del Carmen Ginette Garay Calero	**091025470-5**
Jean Paul Borja Jácome	**170648407-6**
Danilo Enrique Roggiero Cevallos	**090865809-9**
Richard Stalin Cabrera Vega	**170383325-9**

4.- La cosa, cantidad y hecho, que exige es como lo tengo solicitado en el numeral anterior, pedido que me permito solicitarle con base a lo dispuesto en el numeral cuarto del Art. 231 del Código Orgánico de la Función Judicial, Art. 66 numeral 23 y Art. 18 numeral 2 de la Constitución de la República del Ecuador y Artículos 1,2,4 y 19 de la Ley de Transparencia y Acceso a la información Pública, para proceder a la Acción Civil de Indemnización de Daños y Perjuicios Ambientales.

5.- La determinación de la cuantía por su naturaleza es indeterminada.

6.- El trámite que se debe dar a la presente causa es especial.

7.- Practicadas que sean estas diligencias, ruego se me devuelva los originales, dejando copias certificadas en autos para los fines pertinentes.

8.- Al señor Gerente del Proyecto de Fortalecimiento Institucional de las Unidades de Control Migratorio, se le notificara en la Av. Amazonas y Av. Republica de esta ciudad de Quito.

En caso de ser necesarias las notificaciones que me correspondan las recibiré en mi casillero Judicial No. 1035 del Palacio de Justicia de esta ciudad de Quito, o en mi email dimasguzman@hotmail.es que me corresponde.

Atentamente,

Dr. Dimas Guzmán Barragán.
Mat. # 17-1987-37 CJP
Celular 0999022010.

494C7575-588C-4DFE-B0C7-DC0865A170C2

CORTE PROVINCIAL DE JUSTICIA DE PICHINCHA
JUZGADO QUINTO DE CONTRAVENCIONES

Ingresado por: BARAHONAA

Recibida el día de hoy, lunes veinte y dos de septiembre del dos mil catorce, a las catorce horas y once minutos, el expediente seguido por: GUZMÁN BARRAGÁN DIMAS RENE en contra de GERENTE DEL PROYECTO DE FORTALECIMIENTO INSTITUCIONAL DE LA UNIDAD DE CONTROL MIGRATORIO, en: 0 foja(s), adjunta Escrito solicitando diligencia previa al Gerente del Proyecto de Fortalecimiento Institucional de la Unidad de Control Migratorio, solicitando movimientos migratorios., adjunta copai del acredencial de abogado. Correspondió al número: 17556-2014-0857G.

Quito, Lunes 22 de Septiembre del 2014.

DR. RAFAEL EDUARDO ACOSTA USCA
SECRETARIO TITULAR

EL ECUADOR
JICATURA
OGADOS

AN DIMAS RENE

7-1987-37
0200400984
pción: 14/03/2012
.erior: 2890
Sangre: O+

Firma

[redacted]

ADVERTENCIA

Este documento es único, exclusivo de su titul
PERSONAL e INTRANSFERIBLE
El Consejo de la Judicatura solicita a las Aut
Públicas y Privadas, reconocer al titular de esta
los derechos que le confieren de acuerdo
Constitución y las Leyes de la Repúbli

Dr. Guillermo Fabian Falconi Aguirre
Secretario General

EXHIBIT B

STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

AFFIDAVIT

I, Amanda Emerson, attorney duly admitted to practice law in the State of New York, being duly sworn depose the following:

1. Our law firm assisted McSquared PR, Inc., a New York corporation, in the preparation of a Registration Statement to be filed with the Department of Justice pursuant to the Foreign Agents Registration Act of 1938, as amended ("FARA").

2. By inadvertent mistake, the Registration Statement form filed before the Department of Justice's FARA Division on July 3, 2014, incorrectly stated in item I(5)(e) that the applicant, McSquared PR, Inc., had a branch office located at "121 Varick St. New York, NY" when said item should have been left blank or marked as N/A as the applicant did not have any branches or additional office space at the time of the filing of the Registration Statement.

3. In an attempt to expedite the process of helping our client, McSquared PR, Inc., in complying with FARA registration requirements, I did a general inquiry of the word "MCSquared" in public directories. The address included in item I(5)(e)of the Registration Statement corresponds to an entity named McSquared NYC, Inc., which is not related nor affiliated with the applicant McSquared PR, Inc., and was included by mistake in the form.

4. Prior to filing the Registration Statement, the draft form was sent to our client McSquared PR, Inc. for review and approval. The mistake was unfortunately not detected by the client on the final draft of the form filed on July 3, 2014 to comply with FARA requirements.

5. Our law firm was unable to correct the mistake by filing an amended Registration Statement as the client has changed attorneys to complete the FARA registration process.

Dated: December 5, 2014

Amanda M. Emerson
AMANDA EMERSON

SWORN TO BEFORE ME ON
THIS 5TH OF DECEMBER, 2014

NOTARY PUBLIC

CHRISTIE M. DELBREY
NOTARY PUBLIC-STATE OF NEW YORK
No. 02DE6266722
Qualified in Westchester County
My Commission Expires August 06, 2016

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of CHEVRON CORPORATION for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings, Petitioner.	:	Case No.: 14-MC-392 (LAK)

AFFIDAVIT OF MARIA GARAY IN SUPPORT OF (1) MOTION TO VACATE AND INCORPORATED MEMORANDUM OF LAW, (2) MOTION TO STAY COMPLIANCE WITH SUBPOENA, AND (3) MOTION TO QUASH OR MODIFY SUBPOENA

STATE OF NEW YORK)
) s.s.
COUNTY OF KINGS)

MARIA GARAY, being duly sworn, deposes and says:

1. I am the founding and sole shareholder of MCSquared PR, Inc. ("MCSquared"). MCSquared is a boutique public relations firm with a single office located at 649 Morgan Avenue, Suite 1S, Brooklyn, New York 11222.

2. I have held the position of Executive Director since MCSquared was established on October 31, 2011 through present, and in such capacity, I am fully familiar with the facts and circumstances set forth herein. I affirm under penalty of perjury under the laws of the United States and the State of New York that the content of this Affidavit is true and correct to the best of my knowledge, information, and belief. I make this Affidavit in support of MCSquared's: (i) Motion to Vacate and Incorporated

Memorandum of Law ("Motion to Vacate"), (ii) Motion to Stay Compliance with Subpoena, and (iii) Motion to Quash or Modify Subpoena.

3. MCSquared does not have, and never had, a branch office at 121 Varick Street, New York, New York 10013 (the "Varick Address"). MCSquared also does not have, and never had, a physical presence in the Southern District of New York. As a result of an inadvertent clerical error of its legal representatives, MCSquared filed a Registration Statement Pursuant to the Foreign Agents Registration Act of 1983, as amended (the "FARA Registration Statement") on July 3, 2014 in which the Varick Address was listed as the location of branch office of MCSquared. I reviewed the FARA Registration Statement before executing it, but I failed to detect the inadvertent mistake relating to the Varick Address.

4. Upon information and belief, MC Squared NYC, Inc. ("MC Squared NYC"), is a New York corporation that has its principal place at the Varick Address. Upon further information and belief, MC Squared NYC runs a printing shop.[1] MCSquared does not have a beneficial interest in MC Squared NYC or an agency relationship of any kind with MC Squared NYC. MCSquared does not use, and has never used, the services of MC Squared NYC.

5. The FARA Registration Statement was amended twice on September 10, 2014 (the "First Amendment") and November 25, 2014 (the "Second Amendment"). In

[1] *See* http://www.mcsquarednyc.com/

the Second Amendment, MCSquared cured the mistake in its initial FARA Registration Statement, and in the First Amendment, by removing any reference to having a branch office at the Varick Address. A true and correct copy of the Second Amendment is attached hereto as **Exhibit A**.

6. MCSquared does not have continuous and systematic contacts with the Southern District of New York. MCSquared does not (and never did) maintain an office in the Southern District of New York. MCSquared does not employ any individuals that work out of the Southern District of New York. MCSquared, in its furtherance of its business, does not have an agency relationship with an individual or entity operating out of the Southern District of New York. MCSquared does not own any property in the Southern District of New York.

7. MCSquared was retained by the Government of Ecuador ("Ecuador") from May 1, 2013 through April 30, 2014 to design and implement a public relations strategy to bring awareness to the environmental damage caused by Chevron Corp.'s ("Chevron") predecessor, Texaco, Inc. ("Texaco") in Northeast Amazon region of Ecuador and the lack of remediation of such damage by Chevron.

8. In addition, MCSquared rendered services to Ecuador to counter Chevron's public relations strategy to denigrate Ecuador in furtherance of its litigation strategy. Chevron's public relations campaign to denigrate Ecuador has been evidenced, for example, in the memorandum dated October 14, 2008 authored by Sam

Singer addressed to Kent Robertson, a spokesperson for Chevron entitled "Ecuador Communications Strategy" (the "Singer Memorandum"). Sam Singer is the principal of Singer Associates, Inc. ("Singer Associates"), a public relations firm based out of San Francisco, California. Singer Associates is one of the public relation firms that has been hired by Chevron.[2] A true and correct copy of the Singer Memorandum is attached hereto as **Exhibit B**.

9. MCSquared was never directed by the Government of Ecuador to launch a public relations campaign in support of the Lago Agrio Plaintiffs' ("LAPs") efforts to enforce the $9.5 billion judgment that the LAPs obtained in Ecuador against Chevron nor to denounce Chevron for failing to pay such judgment. MCSquared never rendered services to any of the defendants (or to any of their agents) sued by the Chevron in the civil action filed in this Court in a matter styled *Chevron Corporation v. Steven Donziger, et. al.*, Case No. 11-CIV-0691 (LAK) or to any of the LAGO AGRIO PLAINTIFF RELATED PARTIES.[3]

10. MCSquared did not play a role in registering, designing and/or maintaining the websites www.thedirtyhand.com or www.lamanosucia.com or the Twitter account *@LaManoSucia*. MCSquared also did not play a role in registering, designing or maintaining the websites, Twitter, and Facebook accounts Apoya al

[2] Singer Associates acknowledges that it represents Chevron as set forth in its website at http://singersf.com/clients/.

[3] For the purposes of this Affidavit, the term LAGO AGRIO PLAINTIFF RELATED PARTIES has the same meaning set forth in the subpoena served by Chevron on MCSquared.

Ecuador (Support Ecuador), Chevroff, Toxic Effect, La Mano Sucia (The Dirty Hand), and Los Vende Patria (The Nation's Traitors).

11. MCSquared helped in the promotion of the "Rally for Justice in Ecuador", but it did not organize it by itself since this event was organized and coordinated by many different groups including, but not limited to, Occupy Wall Street, Amazon Watch, 360.org, etc.

12. MCSquared does not work, and has never worked, in its rendering of services for the Government of Ecuador (or for any other client of MCSquared) along with DFLA Films. Upon information and belief, DFLA Films is a California corporation organized in 2008 with its principal place of business in Los Angeles. Julieta Gilbert, an executive producer of DFLA Films openly admitted to Paul M. Barret, a journalist for Bloomberg BusinessWeek, that it (and not MCSquared) organized and paid the protesters that showed up at Chevron's annual shareholder meeting in Midland, Texas in May 2014. A true copy of the news article published on June 3, 2014 by Paul M. Barret is attached hereto as **Exhibit C**.

13. After MCSquared's contract with the Government of Ecuador expired on April 30, 2014, I and other representatives of MCSquared did *pro bono* accompanied Humberto Piaguaje and Robinson Yumbo to Midland, Texas to get the word out about the environmental situation in the Ecuadorian Amazon rainforest and to reach out to the local media in an effort to get coverage of their story. The trip to Midland, Texas

15. MCSquared did not spend $200,000 on the Twitter hashtag #AskChevron nor did it play a role in its acquisition nor in the contents that were published through that hashtag. MCSquared did not play a role in organizing the May 21, 2014 Union Square's protest (and the parallel protests around the world) as part of the "International Anti-Chevron Day". MCSquared did not pay directly or indirectly any individuals or entities that participated in the International Anti-Chevron Day. Upon information and belief, Amazon Watch organized this particular protest. MCSquared did not create nor did it play a role in the creation and content generation published in the Twitter accounts @Apoya al Ecuador and @Chevroff.

16. MCSquared did not plan, perform, or attempted to perform any services on behalf of the LAGO AGRIO PLAINTIFF RELATED PARTIES. The LAGO AGRIO PLAINTIFF RELATED PARTIES were not involved in any way in the work that MCSquared performed on behalf of the Republic of Ecuador. The LAGO AGRIO PLAINTIFF RELATED PARTIES did not have any input in decisions related to the work performed by MCSquared on behalf of the Republic of Ecuador.

17. MCSquared did not, directly or indirectly, provide financial support to the LAGO AGRIO PLAINTIFF RELATED PARTIES, either on its own behalf or on the behalf the Republic of Ecuador or any other third party. The reason why the entire $6.4 million was not fully accounted in the FARA filings has to do with the fact that the vast majority of those funds were used to influence the public opinion in other countries

other than the United States about the environmental damage caused by Chevron's predecessor and the lack of remediation thereof. The Republic of Ecuador's General Comptroller's Office has performed a full and extensive audit of MCSquared's contract with the Republic of Ecuador and MCSquared has not been notified of any irregularities in regards to the disbursement of funds by MCSquared per the contract with the Government of Ecuador. The General Comptroller's Office is expected to release a report concerning its investigation which should be publicly available in the next few days.

MARIA GARAY

Subscribed and sworn before me this 15 day of December, 2014 in Brooklyn, New York.

NOTARY PUBLIC

SHOFIUR RAZZAQUE
Notary Public - State of New York
NO. 01RA6110024
Qualified in Queens County
My Commission Expires 05/24/15

EXHIBIT A

OMB No. 1124-0003; Expires April 30, 2017

U.S. Department of Justice
Washington, DC 20530

Amendment to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. File this amendment form for any changes to a registration. Compliance is accomplished by filing an electronic amendment to registration statement and uploading any supporting documents at http://www.fara.gov.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: http://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: http://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration No.
MCSquared PR Inc.	6231

3. This amendment is filed to accomplish the following indicated purpose or purposes:

- ☐ To give a 10-day notice of change in information as required by Section 2(b) of the Act.
- ☒ To correct a deficiency in
  - ☒ Initial Statement
  - ☐ Supplemental Statement for the period ending _____
  - ☐ Other purpose *(specify)* _____
- ☐ To give notice of change in an exhibit previously filed.

4. If this amendment requires the filing of a document or documents, please list:
N/A

5. Each item checked above must be explained below in full detail together with, where appropriate, specific reference to and identity of the item in the registration statement to which it pertains. *(If space is insufficient, a full insert page must be used.)*

Line 5(e) of the initial registration statement should be amended to read "N/A". The registrant does not have any branch or local offices.

Pursuant to the registrant's contract with the Government of the Republic of Ecuador, the registrant terminated its representation of the foreign principal on April 30, 2014. Accordingly, its registration on behalf of the Republic of Ecuador should be terminated.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)	(Print or type name under each signature or provide electronic signature[1])	
November 25, 2014	/s/ Maria Garay	eSigned

[1] This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

EXHIBIT B

14 October 2008

To: Kent Robertson

From: Sam Singer

Re: Ecuador Communications Strategy

Overview

I have reviewed all the recommendations from each of the team members and analyzed the various approaches and have selected what I believe are the best and essential strategies from each of the parties. In this document I synthesize the recommendations and present them in the categories below as well as recommended actions for each. This document should serve as a punch-list for you.

Lastly, we make a suggestion on how to distribute the workload so that each of us is helping Chevron to the maximum ability possible while reducing redundancies and overlaps.

Communications Objectives

The communication objectives of each of the teams all is to get improved and balanced media coverage of the Ecuador issue; to preserve the reputation of Chevron; to have the media, public and government officials to challenge the accusations made by the plaintiffs, and most importantly, to achieve an improved outcome for the Company in any litigation.

Messages

Chevron's messaging must be simplified. Our website and media materials are too dense. A simple storyline that is concise, engaging and compact is essential to our success. If we don't have messages that are compelling – and right now we don't – it makes it very hard for us to sell our story to the media and public.

The recommendation is to re-draft the media materials on the website and create new ones that take a complex legal, environmental, health, and business and make it more easily understandable.

Target Audiences

News Media: Latin American media; American news media with an emphasis on foreign correspondents, political environmental, health, and legal reporters and some editorial boards; internet and bloggers.

Elected/Regulatory leaders: as appropriate, seek out elected leaders and regulatory agencies at the national level to educate about our story.

Business organizations/Think Tanks: Seek support and news stories in the publications and webpages and blogs.

Latin America: New opportunities are presenting themselves as Ecuador becomes increasingly authoritarian, anti-business/socialist and aligns itself with China, Russia and Iran.

Message Themes

1. Regional stories that focus on Ecuador's government and economic threats

--Government by Extortion in Ecuador (broaden the scope and generate stories on Cemex, Odebrecht, Agip, Brazilian businesses, banking issues, and debt repayment.

--Freedom of speech is threatened in Ecuador by government takeover of TV, press censorship

--Is the strongman of Ecuador, Correa, leading the country down a socialist path?

--Ecuador: the next major threat to America? Alliances by the Ecuadorian government with China for arms and military issues, Iran for energy, and possible alliances with Russia leads one to wonder if Ecuador is the next Cuban missile crisis in the making.

2. Counter attacks against the plaintiffs focusing on their motives, funding and campaign of misinformation

-- Dr. Jeckyll & Mr. Cabrera: Who is Richard Cabrera and what is his background and association with the plaintiffs?

--The Secret Laboratories of Ecuador and why even judges can't know their secrets

--Steven Donziger: the most powerful man in Ecuador? How one American attorney is pulling the strings of an emerging banana republic in Ecuador?

Kohn Swift & Graf (or Con, Swindle and Graft?): the money behind the Ecuadorian lawsuit against Chevron. How much money does the law firm have riding on Steven Donziger and Pablo Fajardo and what's their take?

--The real story of Texaco (and Chevron) in Ecuador: how the case was thrown out in America for fakery and deceit.

--Is the case against Chevron really a novel written by John Grisham? What appears to be real is in fact a front for something else.

3. Ecuadorian Justice: No Justica for all?

--Collusion between the government and the plaintiffs, as well as judges who are dependent upon Correa for their livelihoods and lives, makes justice thin as the air in Andes.

-- The history of the indictments that finally came to be on Chevron attorneys: how the case was initially 'dismissed' and came back to life like Frankenstein when the plaintiff's and the Ecuadorian government needed cover for their case against Chevron.

4. PetroEcuador: the real culprit

--The history of PetroEcuador and how it caused Ecuador's environmental problems—and how the country and its state-owned oil monopoly could be saved from cleaning up their own mess by Donziger, Kohn Swift and Graf, and other plaintiff attorneys.

--Seizing the opportunity to criticize PetroEcuador on current problems the state-owned company faces in its own country.

--The real health threat: dirty water not formation waters.

Materials

Media Kit: we need to produce a straightforward media kit with essential information about the issue. This information kit can be used with all target audiences.

Webpage: Chevron needs to revamp and re-organize its webpage with more use of photos and video and make the site more compelling.

Videos: This is a complex story, but it can be made more understandable visually. More videos of various lengths are needed for the Chevron website, but also for posting to other websites, Youtube, etc.

Pictures: We need to organized and get a library available of pictures that tell our side of the story along with the captions that explain them.

Activities

News releases: Produce more written materials that can be issued via Chevron or its website(s). Our opponents are controlling valuable internet 'real estate' because they *and* their various support groups issue news releases constantly—and this leads not only to news coverage, but to a higher SEO for them on the web. These releases must be placed on BusinessWire/PRwire.

Roadshow/deskside visits: Devote time to meet and develop relationships with news reporters/editors, supportive business groups, trade associations, think tanks, elected and regulatory officials and present our side of the Ecuador story.

Blogs: Relentlessly use the blogosphere: an unofficial blog site has been created for Chevron that can be put to significant use. Additionally, Chevron needs to add a blog to its webpage so that it can increase its SEO.

Op/eds: Develop opinion pieces aimed at larger issues than solely Ecuador, but rather focus on the socialist government of Correa, its nationalization of some industries, its abuse of the media, human rights abuses, Farc, and bigger picture issues that disparage the Corra government and cast doubt on

Wikipedia/Googl's Knol: Aggressively write Chevron's side of the story—as well as starting entries for Amazon Watch, Donziger and others on these online encyclopedias. Why should we let them write history when we can write it ourselves?

Support Group: Provide funding to the US Chamber of Commerce or another think tank/organization to create an organization solely devoted to addressing the issues of Ecuador and actively attacking its position on business, the media, international loans, and Socialist policies, and alignments with China, Iran and Russia. Assist them in starting their own website to promote this new organization and news stories that are important to it as well as a lobbying effort.

Advertisements: Place online ads that direct people to stories or websites that we like with teaser ads that induce viewers to click on them.

Conclusion

There are a variety of excellent recommendations by each of the teams which I hope I have captured here in a punch-list format

To get the maximum from each of the teams, it is advisable to assign specific assignments. For example, H&K naturally is knowledge at national and international media located in NYC; CRC excels at Washington D C. media and political connections, James Craig is your man in Quito, and we are solid online internet and California/west consultants. The teams work very well together and are thoroughly professional in carrying out Chevron's best interests. Occasionally, there are some minor overlaps, but perhaps physically assigning certain tasks to each team may lead to even increased productivity on your behalf. Then, to get the best brain power from all of us, ask the rest to comment or make suggestions to the group you have charged with a specific task in their arena.

Collectively we must move with alacrity in attempting to get ahead of the curve and produce materials and strategies in advance of upcoming, known news events that impact as so that we can get Chevron approval on materials and issue them in a timely manner.

Please let me know how else we can be of assistance to you and Chevron. Thanks.

EXHIBIT C

Bloomberg Businessweek

Companies & Industries

http://www.businessweek.com/articles/2014-06-03/the-real-waste-behind-the-phony-anti-chevron-protesters

The Real Waste Behind the Phony Anti-Chevron Protesters

By Paul M. Barrett June 03, 2014

The mystery of the fake anti-Chevron (CVX) protest continues to thicken. As I reported last week, the oil company's May 28 annual shareholder meeting in Midland, Tex., drew an environmental demonstration populated by phony participants who were paid $85 each to wave signs and shout slogans.

"It seemed very staged," Maria Garay told me Monday. A Brooklyn (N.Y.)-based public relations executive, Garay helped promote the event but said she had nothing to do with the fake demonstrators. She doesn't know who they were or who paid them. "There was a tall guy with platinum blond hair who was telling them what to chant and where to stand," Garay said.

Normally, the identity of the platinum blond guy—and, for that matter, this entire bizarre episode—might seem like a minor embarrassment to serious opponents of pollution. It's more important, though, because it's emblematic of the dishonesty that has come to permeate a two-decade-long activist campaign focused on oil contamination in Ecuador.

Now the mini-fiasco in Midland has Garay and other self-styled advocates for the poor and oppressed in the Ecuadorian rain forest pointing fingers at each other. The sideshow distracts from real ecological damage done over the years—by both U.S. oil drillers and their Ecuadorian counterparts. A brief recap from my previous dispatch about the antics at Chevron's annual meeting:

> Several dozen demonstrators gathered outside the Permian Basin Petroleum Museum in Midland to condemn Chevron, which held its annual meeting on Wednesday at the historic site in the west Texas oil patch. …To fill out the ranks of the demonstration, a Los Angeles-based production company offered local residents $85 apiece to serve as what the firm described in a recruiting e-mail as "extras/background people." Julieta Gilbert, executive producer of DFLA Films, said in the e-mail that the company "need[s] to get a group of people to help us document this event. … We will pay each one of them $85. They will be there for a couple of hours (8am to 12 pm). We need ethically [sic] diverse people."

When I called Gilbert in Los Angeles, she didn't dispute the authenticity of the recruiting e-mail and she confirmed she had been in Midland filming the action. She denied that she had organized the demonstration, wouldn't say on whose behalf she'd done the filming, and professed ignorance as to who'd paid the "extras." Gilbert hasn't returned follow-up calls or e-mail.

Karen Hinton, the public relations person for Steven Donziger, the lead plaintiffs' lawyer in a massive lawsuit against Chevron, said their legal team hadn't paid the demonstrators. Donziger won a $19 billion judgment against Chevron in Ecuador in 2011. But in March, U.S. District Judge Lewis Kaplan ruled in New York that Donziger's victory was based on fabricated evidence, bribery, and extortion—findings that Donziger has denied and appealed. Hinton suggested I contact MCSquared, a Brooklyn, N.Y.-based public relations firm that had promoted the Midland protest and has done work for the Republic of Ecuador, which backs the lawsuit against Chevron.

MCSquared is Maria Garay's firm. She and a colleague, Jean Paul Borja, were also in Midland for the protest and pumped out multiple press releases about it. They said their role was limited to assisting two indigenous tribe members who traveled from Ecuador to Midland. The tribe members weren't paid, Garay said. One of them, Humberto Piaguaje, is heavily involved in the Donziger lawsuit, but Garay said she's never met Donziger or Hinton. Amazon Watch, a San Francisco-based group that has organized other anti-Chevron protests in cooperation with Donziger and Hinton, likewise said via e-mail it didn't have anything to do with the Midland caper.

Garay directed me to an interesting post by Lindsay Abrams, an assistant editor at *Salon* who writes about sustainability. Abrams interviewed some of the Midland protesters who would provide only their first names and who identified themselves with yet another group, Toxic Effect, whose members she said "mostly hail from South American nations." According to Abrams, Toxic Effect ran a paid "brandjacking" campaign on Twitter (TWTR) to coincide with the Chevron annual meeting.

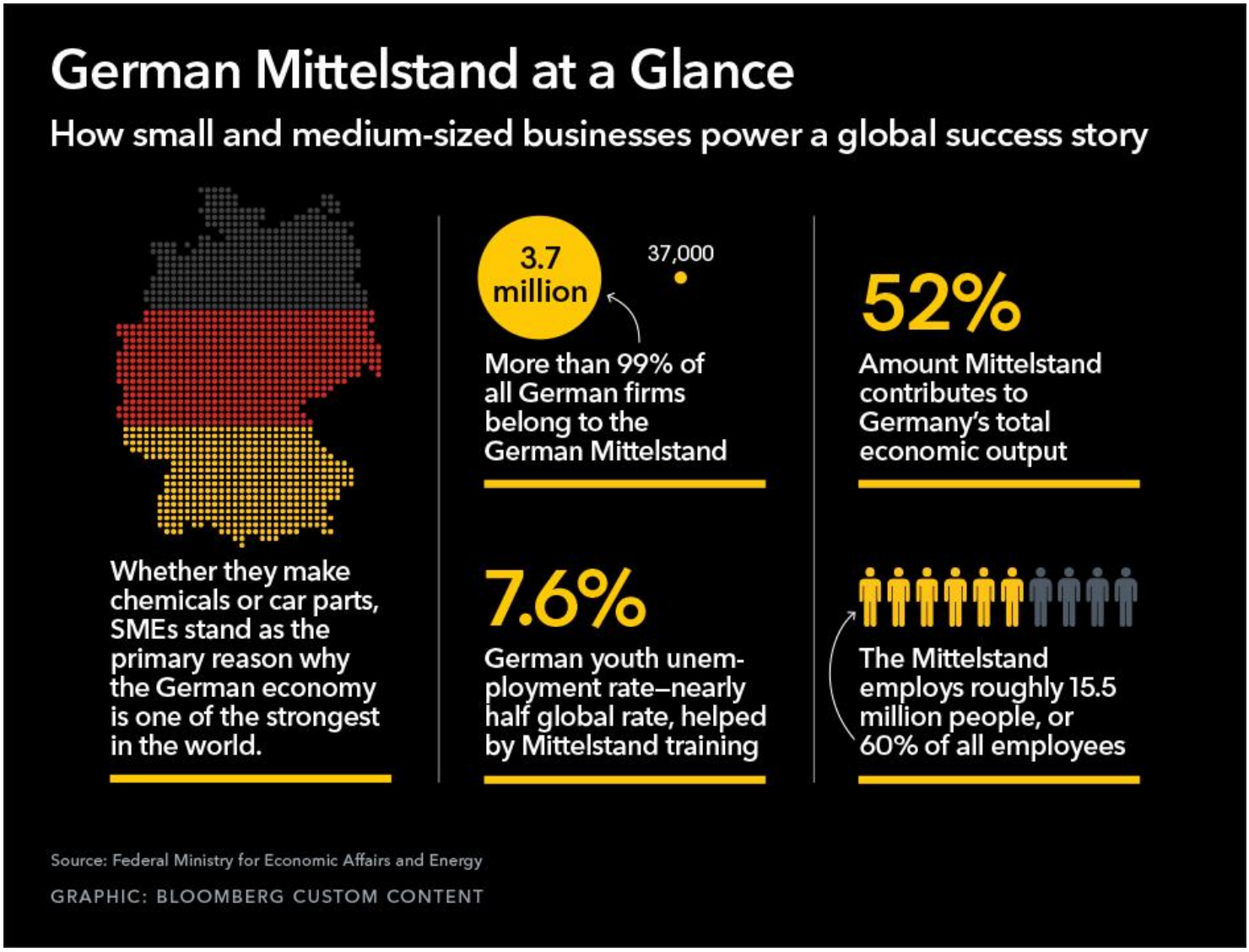
On its own website, Toxic Effect confirmed that it created the hashtag #AskChevron in hopes that Twitter users would assume that the company itself sponsored the campaign (which it did not). The elaborate psy-ops gambit apparently worked. Many Twitter users replied to #AskChevron with venomous condemnations of the company. #AskChevron was tweeted more than 9,000 times.

There's a further connection between the Midland rent-a-protesters and #AskChevron. DFLA Films urged potential hires to visit the Facebook (FB) page for "Chevroff." (get it? Instead of Chev*ron*.) The Chevroff page prominently features links to #AskChevron, including an image of Michelle Obama manipulated to make it look as if the First Lady is holding a sign that says, "#AskChevron about environmental disaster." The photo—like #AskChevron and the Midland protest—is a trick.

I don't know the identity of the platinum blond guy, whether he paid the extras, or which of these groups he's with, if any. In the end, that doesn't matter very much. What does matter is that an awful lot of people are investing time, energy, and money in empty theatrics that aren't getting even a puddle of rogue oil cleaned up. By playing deceitful games—in court, on the street, and online—supposed activists are undercutting the credibility of the cause they profess to represent.

Barrett is an assistant managing editor and senior writer at *Bloomberg Businessweek*. His new book, *Law of the Jungle*, tells the story of the Chevron oil pollution case in Ecuador.

- SPONSOR CONTENT



The Secret Behind German Economic Strength

©2014 Bloomberg L.P. All Rights Reserved. Made in NYC

EXHIBIT D

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through December 12, 2014.

Selected Entity Name: MC SQUARED NYC INC.

Selected Entity Status Information

Current Entity Name:	MC SQUARED NYC INC.
DOS ID #:	4068603
Initial DOS Filing Date:	MARCH 16, 2011
County:	NEW YORK
Jurisdiction:	NEW YORK
Entity Type:	DOMESTIC BUSINESS CORPORATION
Current Entity Status:	ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

ROBERT N. COPJEC
121 VARICK ST.
12TH FLOOR
NEW YORK, NEW YORK, 10013

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of

incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 16, 2011	Actual	MC SQUARED NYC INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

Search Results New Search

Services/Programs | Privacy Policy | Accessibility Policy | Disclaimer | Return to DOS Homepage | Contact Us

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re Application of CHEVRON CORPORATION for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings, Petitioner.	No. 14-MC-392

DECLARATION OF ANNE CHAMPION IN SUPPORT OF CHEVRON CORPORATION'S PETITION AND APPLICATION FOR AN ORDER UNDER 28 U.S.C. § 1782 TO CONDUCT DISCOVERY FROM MCSQUARED PR, INC. FOR USE IN FOREIGN PROCEEDINGS

VOLUME I OF III

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re Application of CHEVRON CORPORATION for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings, Petitioner.	No. 14-MC-392

DECLARATION OF ANNE CHAMPION IN SUPPORT OF CHEVRON CORPORATION'S PETITION AND APPLICATION FOR AN ORDER UNDER 28 U.S.C. § 1782 TO CONDUCT DISCOVERY FROM MCSQUARED PR, INC. FOR USE IN FOREIGN PROCEEDINGS

VOLUME II OF III

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re Application of CHEVRON CORPORATION for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery from MCSquared PR, Inc. for Use in Foreign Proceedings, Petitioner.	No. 14-MC-392

DECLARATION OF ANNE CHAMPION IN SUPPORT OF CHEVRON CORPORATION'S PETITION AND APPLICATION FOR AN ORDER UNDER 28 U.S.C. § 1782 TO CONDUCT DISCOVERY FROM MCSQUARED PR, INC. FOR USE IN FOREIGN PROCEEDINGS

VOLUME III OF III

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re Application of: THE REPUBLIC OF ECUADOR, and DR. DIEGO GARCIA CARRION, the Attorney General of the Republic of Ecuador, Applicants, For the Issuance of a Subpoena Under 28 U.S.C. § 1782(a) for the Taking of a Deposition of and the Production of Documents by JOHN A. CONNOR for Use in a Foreign Proceeding, Respondent. CHEVRON CORPORATION, Intervenor.	Case No. 4:11-mc-00516

CHEVRON CORPORATION AND JOHN A. CONNOR'S OPPOSITION TO THE REPUBLIC OF ECUADOR AND DR. DIEGO GARCIA CARRION'S APPLICATION FOR ISSUANCE OF A SUBPOENA UNDER 28 U.S.C. § 1782(a)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES

Page

Statutes

TABLE OF AUTHORITIES

Page

Other Authorities

Chevron Corporation ("Chevron") and Dr. John A. Connor respectfully submit this Opposition to the Republic of Ecuador's and Dr. García Carrión's (collectively, "Ecuador") application for an order pursuant to 28 U.S.C. § 1782 for issuance of a subpoena to John A. Connor, to take discovery for use in an international arbitration (the "Arbitration").

I. INTRODUCTION

Ecuador's application seeks § 1782 discovery for use in foreign arbitration proceedings. Under binding Fifth Circuit precedent § 1782 discovery is not available for use in international arbitrations. *See Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 881-83 (5th Cir. 1999) (denying a § 1782 application because international arbitration does not qualify as a "foreign or international tribunal"). This Court recently confirmed that *Biedermann* remains binding precedent, holding that "under the controlling authority of this Circuit, the discretion to order discovery on behalf of 'foreign and international tribunals' under 28 U.S.C. § 1782 does not extend to *arbitral* tribunals." *La Comision Ejecutiva Hidroelectrica Del Rio Lempa v. El Paso Corp.*, 617 F. Supp. 2d 481, 483 (S.D. Tex. 2008), *aff'd by* 341 Fed. Appx. 31 (5th Cir. 2009). For this reason alone, Ecuador's application should be denied.

There is an additional reason why the application must be denied. This Court "is not required to grant a § 1782(a) discovery application simply because it has the authority to do so." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004). In fact, where discovery is sought from someone appearing before the foreign tribunal, the Supreme Court has cautioned district courts to deny § 1782 applications, observing that "[a] foreign tribunal has jurisdiction over those appearing before it, and can itself order them to produce evidence." *Id.* Here, Ecuador, a party to the Arbitration, seeks discovery from Dr. Connor, a witness testifying for Chevron before the Arbitration tribunal. Rather than seek this discovery from the Arbitration

tribunal, as is permitted and would be proper, Ecuador is attempting to circumvent the tribunal and the discovery procedures of the Arbitration by seeking discovery from this Court under § 1782. This effort is patently improper. As the District Court held in *In re Microsoft Corp.*, 428 F. Supp. 2d 188, 194 (S.D.N.Y. 2006), "[t]he relevant inquiry is whether the evidence is available to the foreign tribunal. In this case, it is. Thus, § 1782 aid is both unnecessary and improper." *See also Ecuadorian Plaintiffs v. Chevron Corp.*, 619 F.3d 373, 376-77 (5th Cir. 2010). Because Ecuador can obtain this evidence from the Arbitration tribunal, applying for the discovery via § 1782 is an improper attempt to circumvent the procedures of the Arbitration.

Finally, the proposed subpoena submitted by Ecuador is overbroad, and seeks far more than the documents underlying Dr. Connor's expert testimony in the Arbitration. Although Ecuador claims to seek discovery only "for use in" the Arbitration, its subpoena seeks documents related to all the work Dr. Connor has done for Chevron in testifying and consulting roles in ongoing litigation in Ecuador ("the Lago Agrio Litigation"), subsequent RICO proceedings Chevron filed against the Lago Agrio plaintiffs ("LAPs"), and in discovery actions against the LAPs' consultants and representatives. Indeed, Ecuador's definition of "LITIGATION" in the proposed subpoena is focused entirely on the Lago Agrio Litigation, and only includes the Arbitration in a parenthetical catch-all provision: "The term 'LITIGATION' shall mean and refer to the LAGO AGRIO LITIGATION and any other litigation (including arbitrations or other dispute resolution mechanisms) involving Chevron's actual or potential liability for health or environmental damage in Ecuador . . . ." Dkt. 1 at 19. Ecuador's overbroad subpoena cannot be justified under the guise of discovery "for use in" the Arbitration.

Chevron and Dr. Connor respectfully request that this Court deny Ecuador's application under § 1782 as precluded by *Biedermann* and *El Paso*. In the alternative, Chevron and Dr.

Connor request that this Court exercise its discretion under *Intel* and in accordance with *In re Microsoft Corp.*, to deny § 1782 discovery from Dr. Connor, who is a witness testifying before, and thus within the jurisdiction of, the Arbitration tribunal. In addition, the Court should, at a minimum, limit discovery to the expert report prepared by Dr. Connor for the Arbitration tribunal, and limited by Federal Rule of Civil Procedure 26.

II. FACTUAL BACKGROUND

The "facts" asserted in Ecuador's application are primarily about the Lago Agrio Litigation, and not about the Arbitration upon which the application is ostensibly based. And those "facts" gloss over the $18 billion fraud perpetrated by the LAPs' lawyers and consultants in the United States and Ecuador against Chevron, with the active participation of Ecuadorian judges and other government officials. Chevron addresses below the most egregious of Ecuador's misstatements and omissions in order to provide the Court with the context necessary to judge the overbreadth of Ecuador's subpoena.

A. The Lago Agrio Litigation

In 2003, a group of American and Ecuadorian lawyers filed suit against Chevron in Lago Agrio, Ecuador, claiming that Texaco Petroleum Company's ("TexPet's") participation in an oil consortium between 1964 and 1990 harmed the environment. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 600 (S.D.N.Y. 2011).[1] As now has been found by numerous federal district

[1] The LAPs did not sue the government of Ecuador despite the fact that Ecuador, "either directly or through the state-owned corporation PetroEcuador, regulated the Consortium from the outset, acquired a minority stake in 1974, acquired full operational control in 1990, and acquired exclusive ownership in 1992," and despite "the uncontested role of the Government of Ecuador in authorizing, directing, funding, and profiting from these [oil production] activities." *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534, 537, 551 (S.D.N.Y. 2001). The LAPs also did not sue Petroecuador, despite the fact that Ecuador's President Correa publicly declared that Petroecuador has "dreadful environmental management practices," Ex. 3, and

[Footnote continued on next page]

courts, the Lago Agrio Litigation has been irreparably tainted by the LAPs' fraud and malfeasance. For example, courts around the United States have found evidence that the LAPs and their attorneys and representatives engaged in serious misconduct, including: "corruption of the judicial process, fraud, attorney collusion with the Special Master, inappropriate *ex parte* communications with the court, and fabrication of reports and evidence." Ex. 1 (*In re Applic. of Chevron Corp.*, No. 1:10-mc-00021-JCH-LFG (D.N.M. Sept. 2, 2010), at 3). The Southern District of New York has found: "There is substantial evidence that [counsel for the LAPs] have improperly . . . pressured, intimidated, and influenced Ecuadorian courts . . . ." *In re Chevron Corp.*, 749 F. Supp. 2d 141, 162 (S.D.N.Y. 2010) (corrected opinion). And the Western District of North Carolina concluded that "what has blatantly occurred in this matter would in fact be considered fraud by any court." Ex. 2 (*Chevron Corp. v. Camp*, No. 1:10-mc-00027-GCM-DLH, 2010 WL 3418394, at *6 (W.D.N.C. Aug. 30, 2010)). Despite the irrefutable evidence of fraud, the Ecuadorian court issued a judgment in February of 2011 finding Chevron liable for more than $18 billion dollars in damages. That judgment, currently on appeal in Ecuador, was ghostwritten using the LAPs' internal documents.

B. The Arbitration

In September 2009, Chevron and TexPet commenced the Arbitration to seek relief from Ecuador's denials of due process, fair treatment, and international-law rights in the Lago Agrio Litigation. Chevron and TexPet alleged in their notice of arbitration that "[i]n breach of the 1995

[Footnote continued from previous page]

the LAPs' counsel admitted that "Petro[ecuador] has inflicted more damage and many more disasters than Texaco itself . . . [b]ut since it's a state-owned company, since it's the same people involved in the laws and all, no one says a thing." Ex. 4 at 77 (citing the LAPs' counsel Pablo Fajardo)). "Ex." refers to exhibits to the Declaration of Leanne K. Maxwell, filed herewith.

and 1998 agreements[2] and the [U.S.-Ecuador Bilateral Investment] Treaty, Ecuador today is colluding with a group of Ecuadorian plaintiffs and U.S. contingency-fee lawyers" in the Lago Agrio Litigation and that "Ecuador improperly seeks to shift to Chevron the responsibility for impact caused by Petroecuador's own oil operations since 1992." Ex. 5 at 2. Ecuador's unlawful actions "involve[] Ecuador's various organs of State," and "Ecuador's judicial branch has conducted the Lago Agrio Litigation in total disregard of Ecuadorian law, international standards of fairness, and Chevron's basic due process and natural justice rights, and in apparent coordination with the executive branch and the Lago Agrio plaintiffs." *Id*.

Chevron filed a request for interim relief before the Arbitration tribunal ("the Tribunal") in April 2010, and after hearings and the presentation of extensive evidence supporting Chevron's claims for interim relief, including evidence regarding litigation fraud and collusion between the LAPs and Ecuador, the Tribunal issued an interim order requiring Ecuador "to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against [Chevron] in the Lago Agrio Case" pending further order of the Tribunal. Ex. 6 at 3.

While Chevron's request for interim measures was pending, it submitted to the Tribunal a "Memorial on the Merits" ("Memorial"), in which Chevron described in detail the basis for and evidence supporting its arbitration claim, along with the written reports of several experts

[2] In 1995, TexPet, Ecuador, and Petroecuador entered into a settlement under which TexPet agreed to remediate a portion of the former consortium sites proportionate to its minority ownership interest, and Petroecuador took responsibility for remediating all remaining sites. Ex. 7. In 1998, after TexPet completed its remediation, which was conducted under the supervision of Ecuador and independent auditors, Petroecuador and Ecuador "releas[ed], absolv[ed], and discharg[ed]" TexPet from any environmental liability arising from the consortium's activities. Ex. 8.

designated as witnesses for Chevron, including Dr. Connor. Ex. 9. That submission was made on September 6, 2010—more than a year ago. Since Chevron's Memorial and expert reports were submitted, Ecuador has not made any attempt to seek discovery of any kind through the Tribunal.

In fact, since November of 2010, the Tribunal has been considering Ecuador's arguments about whether it has jurisdiction to hear the Arbitration, and Ecuador has repeatedly resisted any attempt to proceed to the merits of Chevron's Arbitration claims. Ecuador has argued to the Tribunal that document exchanges or discovery requests should not yet begin in the Arbitration, and that it would be a waste of "its precious public resources" to entertain the merits of Chevron's claims while the Tribunal was still considering arguments about jurisdiction. Ecuador asserted that it would "not incur the expense of instructing its lawyers to proceed to the merits of this case unless and until it is obliged to do so," and "[t]hat obligation w[ould] arise only upon receipt of an award from the Tribunal to the effect that it has upheld jurisdiction." Ex. 10 at 5. In other words, Ecuador repeatedly has objected in the Arbitration to any discovery or document exchange, while outside the Arbitration it now urges this Court to order Arbitration discovery from Dr. Connor on an expedited basis.

Although Ecuador claims to be concerned that it will not have adequate time to conduct discovery in the Arbitration, the Tribunal recently addressed that concern, ordering that, "if and to the extent that the Tribunal were to assume jurisdiction to decide the merits of the Parties' dispute, it would be the Tribunal's intention, subject to hearing from the Parties further at that time . . . to establish a procedural schedule and (inter alia) to ensure that the Parties should have sufficient time both to make and to respond to requests for document production (as then determined by the Tribunal)." Ex. 11 at 2. Given the Tribunal's confirmation that the parties

will have adequate time to conduct discovery, Ecuador's asserted need for urgent discovery here is unsupported.

C. Ecuador's § 1782 Application For Discovery From Dr. Connor

Ecuador filed the instant § 1782 application on November 28, 2011, more than 14 months after Dr. Connor submitted his expert testimony to the Tribunal. Although Ecuador claims its application is "for use in" the Arbitration, very little of the application focuses on Dr. Connor's Arbitration testimony. Most of the application, instead, discusses Dr. Connor's role in the Lago Agrio Litigation, and in particular, pre-inspections conducted by Chevron. Dkt. 1 at 4-6.

In a dishonest effort to convince this Court to grant its discovery request, Ecuador deliberately mischaracterizes Chevron's pre-inspections of the former oil production sites as "eschewing the principle of 'random sampling,'" Dkt. 1 at 5, in a "unilateral" effort to "skew" sampling data. Dkt. 2 at 5. Because it has made this baseless allegation before, Ecuador knows that pre-inspections and party-driven sampling were authorized and public facets of the Ecuadorian court's proceedings, in which both Chevron and the LAPs openly participated. Ex. 12 at 127045; Ex. 13 at 127042; Ex. 14 at 127043; Ex. 15 at 13219. Despite the fact that it has been informed of the true facts repeatedly, Ecuador asserts that Chevron "'cherry-picked' specific, 'cleaner' site locations for further supposedly 'random' testing as part of the Judicial Inspections." Dkt. 2 at 6. As Ecuador is aware, the judicial inspection process was an open, adversarial process, presided over by the Ecuadorian court at various oil field sites, and the sampling conducted was not intended to be "random." *See, e.g.*, Ex. 12 at 127045.[3] The parties

[3] Ecuador's accusation about the failure to conduct random sampling is itself nonsensical, because "random sampling is not appropriate for the objectives of determining the source and extent of contamination." Ex. 19 (*Abrams v. Ciba Specialty Chems. Corp.*, No. 08-cv-00068-

[Footnote continued on next page]

each recommended sampling locations to the judge in order to establish facts about the judicial inspection sites and their environmental condition, and did so based on their respective pre-inspection sampling. *E.g.* Ex. 16 (lead counsel for the LAPs describing the LAPs' use of their "field lab" for "pre-inspection analysis to determine where to take samples during the inspections."). The Ecuadorian court was well-aware that this pre-inspection sampling was taking place, and the pre-inspection sampling is described in various pleadings in the Ecuadorian court record. *E.g.* Ex. 17 at 8726 (LAPs describing to the court why there were cement plugs in the ground at the judicial inspection sites: "we have collected soil samples, but not covertly, which is why there are cement markers that are intended to serve a dual purpose: to mark the site where the samples were collected and to cover the hole caused by the drilling.").

Moreover, the "delineation borings" that Ecuador decries as an effort to "yield a 'clean' sample result," Dkt. 2 at 6-7, are standard procedure during environmental site characterizations, and are conducted to identify the outer bounds of contamination at each site. *See, e.g.,* Ex. 18 (U.S. EPA, Superfund Lead-Contaminated Residential Sites Handbook 18-19 (2003)) ("Delineating the zone of contamination generally amounts to distinguishing soil with 'background' lead concentration from soil that has been impacted by site-related activities."). Using samples to establish a "clean perimeter" showing that petroleum compounds were not migrating from oil field pits, and to "[d]emonstrate no wide-spread impacts to surface water bodies," Dkt. 2 at 8, were Chevron's stated objectives—not secret plans—during the judicial inspections. *See, e.g.,* Ex. 20 at 97531 (Chevron attorney Diego Larrea describing to the

---

[Footnote continued from previous page]

WS-B, 2010 WL 779273, at *6, n.16 (S.D. Ala. Mar. 2, 2010) (quoting *Emhart Industries, Inc. v. Duracell Int'l Inc.*, 665 F. Supp. 549, 559-60 (M.D. Tenn. 1987))).

Ecuadorian judge the need for delineation sampling during a judicial inspection: "Conversely, Your Honor, we are proceeding from an inspection of the site where the pits might be located or sites where there might be contamination, and then requesting that the perimeter be sampled, precisely to refute *a priori* allegations of that the contamination has supposedly migrated. Only in this manner will it be possible to demonstrate whether or not there has been any migration.").

Ecuador's assertion that broad discovery of Dr. Connor's work in the Lago Agrio Litigation is required "for use in" the Arbitration, based on a wholesale and deliberate mischaracterization of the judicial inspection process conducted by Ecuador's own court, is duplicitous and unsupportable.

III. ARGUMENT

A. Binding Fifth Circuit Precedent Precludes the Use of § 1782 for Discovery in Support of the Arbitration

The Fifth Circuit consistently has rejected the use of § 1782 discovery in support of proceedings before arbitral tribunals, noting that "not every conceivable fact-finding or adjudicative body is covered [by § 1782] . . . ." *Biedermann*, 168 F.3d at 881-83 (holding that a Swiss tribunal conducting private international arbitration did not qualify as a "foreign or international tribunal" and denying the Republic of Kazakhstan's application for § 1782 discovery). *See also El Paso*, 617 F. Supp. 2d at 485-86.

Ecuador's arguments that, despite this Circuit's binding precedent, the Arbitration tribunal is a "foreign or international tribunal" are unavailing. First, Ecuador claims that the Supreme Court's decision in *Intel* embraced the use of § 1782 discovery in support of "arbitral tribunals." Dkt. 2 at 18. But Ecuador relies exclusively on out-of-circuit cases to support its argument. *See* Dkt. 2 at 18-22. While that position represents the majority view, and Chevron has relied on that jurisprudence in those circuits in pursuit of discovery for the Arbitration, it

would mark a departure from binding precedent here. The Fifth Circuit and this Court have squarely rejected the argument that *Intel* indicates that an international arbitration constitutes a "tribunal" subject to § 1782 discovery. *El Paso*, 617 F. Supp. 2d at 485-86 ("The Supreme Court in *Intel* shed no light on the issue. In fact, the Supreme Court has not addressed the application of § 1782 to arbitral tribunals, not even in dicta. . . . On the other hand, in *Biedermann Int'l*, the Fifth Circuit has spoken precisely on this issue and resolved that ambiguity against use of § 1782 for arbitral tribunals. Thus, the course charted for this court is clear.").

Ecuador next tries to distinguish *Biedermann* by asserting that Ecuador's involvement as a sovereign in this dispute transforms the Arbitration tribunal into a "foreign or international tribunal" as defined by Fifth Circuit precedent. Dkt. 2 at 20. But Ecuador ignores the fact that *Biedermann* itself declined to permit § 1782 discovery requested by a sovereign, the Republic of Kazakhstan. *See* 168 F.3d 880. Ecuador further argues that the use of UNCITRAL rules in the Arbitration tribunal here indicates that the tribunal is a "foreign or international tribunal" for purposes of § 1782 discovery. But the dispute in *El Paso* also involved arbitration conducted under UNCITRAL rules, yet this Court and the Fifth Circuit rejected the argument that the arbitral tribunal was a "foreign or international tribunal" for the purposes of § 1782. *See El Paso*, 341 Fed. Appx. at 34, 2009 WL 2407189, at *2.

Ecuador also argues that the Arbitration is "public" rather than "private" because "it touches on non-confidential and *published* rights and obligations (governed by a Treaty executed by the United States and Ecuador)" and "[a]s a demonstration of its public nature, this dispute has also generated substantial media attention throughout the world." Dkt. 2 at 20-21. But Ecuador provides no support for its argument that Congress intended the scope of § 1782 to be governed by the amount of publicity an arbitration garners, and even courts outside this Circuit

have rejected § 1782 applications "for use in" virtually identical investment treaty arbitrations. *See In re Caratube Int'l Oil Co., LLP*, 730 F. Supp. 2d 101, 106 (D.D.C. 2010) (rejecting § 1782 discovery for arbitration under U.S.-Kazakhstan Bilateral Investment Treaty because "[t]his Court is reluctant, then, to interfere with the parties' bargained-for expectations concerning the arbitration process." (citing *Biedermann*)).

Finally, Ecuador asserts that the Arbitration is within the scope of § 1782 because "the non-prevailing party may seek to challenge the arbitral decision in the courts of the home State of the arbitration." Dkt. 2 at 21 and n.52 (citing a convention on recognition and enforcement of foreign arbitral awards). This assertion is misleading and the citation to the 1958 recognition convention is inapposite. There is no plenary or "appellate" judicial review of the merits of the Arbitration Tribunal's decision.[4] Rather, under the U.S.-Ecuador Bilateral Investment Treaty, "[a]ny arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute." Ex. 21 (Bilateral Investment Treaty art. VI(6), U.S.-Ecuador, Aug. 27, 1993, S. Treaty Doc. No. 103-15. The Arbitration Tribunal is not acting as a "first-instance decisionmaker," but rather "exists as a parallel source of decision-making to, and is entirely separate from, the judiciary." *El Paso*, 617 F. Supp. 2d at 485-86.

Although Chevron and Ecuador have both obtained § 1782 discovery in support of the Arbitration proceedings in other jurisdictions, Chevron has declined to seek such discovery within the Fifth Circuit in acknowledgment of the court's holding in *Biedermann*. Indeed,

[4] An arbitration conducted in The Hague may be "challenge[d]" under Dutch Code of Civil Procedure – Book Four: Arbitration (DCCP) Article 1065(1)(Dec. 1986), which allows an arbitral decision to be set aside on limited process grounds like the "absence of a valid arbitration agreement" or if "the award is not signed." Ex. 22 (DCCP Art. 1065(1)(a), (d)). The DCCP does not provide for substantive review of the merits of an arbitral decision.

Chevron has consistently recognized the circuit split with respect to this issue. *See, e.g.*, Ex. 23 (Brief of Petitioner-Appellee at 59, n.12, *Chevron Corp. v. Berlinger*, 629 F.3d 297 (2d Cir. 2011)(No. 10-cv-01918). Within the Fifth Circuit, Chevron has only sought § 1782 discovery in support of the pending Lago Agrio Litigation in Ecuador, and has not sought discovery for use in the Arbitration. *See* Ex. 24 (Ex Parte Application for Order Under 28 U.S.C. § 1782 at 1, *In re Applic. of Chevron Corp.*, No. 4:10-mc-00134 (S.D. Tex. Mar. 29, 2010)(seeking discovery "for use in a civil proceeding currently pending before a foreign tribunal: *Maria Aguinda y Otros v. Chevron Corporation*, a suit filed in 2003 against Chevron in the Superior Court of Nueva Loja, Ecuador (the 'Lago Agrio Litigation')")). Ecuador's argument that Chevron is somehow "judicially estopped" from arguing for the application of this Circuit's binding precedent, Dkt. 2 at 20 (citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)), is unsupportable, particularly where Chevron's prior § 1782 action in this Circuit was specifically conducted in a manner consistent with that precedent.

Biedermann remains binding precedent in this Circuit, as this Court correctly concluded in *El Paso*. None of Ecuador's arguments distinguishes this application from the § 1782 applications previously rejected by this Court and this Circuit. Based on that precedent, this Court should deny Ecuador's § 1782 application.

B. Section 1782 Discovery Is Improper Where the Foreign Proceeding Provides a Vehicle for the Discovery Requested

Even if this Court decides that, contrary to binding precedent, § 1782 discovery is available for use in the Arbitration proceedings here, it still should deny Ecuador's application. The Supreme Court in *Intel* set out the statutory and discretionary factors for courts to consider in determining whether to order discovery pursuant to 28 U.S.C. § 1782. Among those factors are "[w]hether the documents or testimony sought are within the foreign tribunal's jurisdictional

reach, and thus accessible absent § 1782 aid" and "[w]hether the § 1782 request conceals an attempt to circumvent foreign proof-gathering restrictions." *In re Microsoft Corp*., 428 F. Supp. 2d at 192-93. Where the discovery sought is within the foreign tribunal's jurisdictional reach, § 1782 discovery "is both unnecessary and improper."[5]

Not only is Ecuador's attempted use of § 1782 here for party witness discovery improper, Ecuador has affirmatively taken the position in other § 1782 proceedings that it is improper. When Ecuador filed a § 1782 application seeking discovery from Diego Borja, a third-party witness, Chevron asked for reciprocal discovery under § 1782 from Ecuador. Ecuador successfully opposed on the ground that the Arbitration tribunal would be able to order the discovery sought: "[A]s the Supreme Court underscored in *Intel v. AMD*, participants in a foreign proceeding are subject to that foreign tribunal's jurisdiction to order discovery, and, as a consequence, there is no need for U.S. court-ordered discovery of a party to that foreign dispute." Ex. 25 (Supplemental Opposition to Motion for Reconsideration at 1-2, *In re Applic. of Ecuador*, No. 10-mc-80225 CRB (EMC) (N.D. Cal. Jan. 26, 2011) (citing *Intel*, 542 U.S. at 264)). Ecuador made it clear that only the Tribunal, and not the United States courts, is in a position to order fair, reciprocal discovery from parties in the Arbitration: "[I]t is the arbitral tribunal, not a court of the United States, that should decide whether the Republic or Chevron

[5] *Id*. at 194; *see also Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F. 3d 79, 85 (2d Cir. 2004) (affirming denial of discovery, "because DT is a participant in the German litigation subject to German court jurisdiction, petitioner's need for § 1782 help 'is not as apparent as it ordinarily is when evidence is sought from a nonparticipant in the matter arising abroad.'"); Ex. 26 (*Advanced Micro Devices v. Intel Corp*., No 01-cv-07033, 2004 WL 2282320, at *2 (N.D. Cal. Oct. 4, 2004) (denying discovery after remand, because "the Supreme Court has already determined that Intel is a participant in the EC proceedings, and that participant-status is significant because the EC has jurisdiction over Intel, and therefore could simply ask Intel to produce any or all of the discovery AMD now seeks.")).

should engage in discovery because Chevron chose to bring the dispute in that forum." Ex. 27 (Reply in Support of Motion to Compel at 6, *In re Applic. of Ecuador*, No. 10-mc-80225 CRB (EMC) (N.D. Cal. Jan. 24, 2011)). The District Court agreed with Ecuador, holding that "it is not clear that the material sought [by Chevron] is not already within the jurisdictional reach of the foreign tribunal. There also appears to be a risk that such discovery against parties to a foreign proceeding could circumvent foreign proof-gathering restrictions." Ex. 28 (Order at 15, *In re Applic. of Ecuador*, No. 10-mc-80225 CRB (EMC) (N.D. Cal. Feb. 22, 2011)).

In this proceeding however, Ecuador is attempting to use § 1782 to do exactly what it decried—take discovery of Dr. Connor, who is appearing before the Arbitration tribunal. Ecuador has not argued, nor could it argue, that it will be unable to pursue or secure discovery from Dr. Connor in the Arbitration. Pursuant to Article 24.3 of the 1976 UNCITRAL Arbitration Rules, which apply to the Arbitration (see Ex. 29), "[a]t any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine." Ex. 30, art. 24.3. Similarly, International Bar Association ("IBA") Rules grant arbitral tribunals the power to order production of evidence that the tribunals find to be "relevant to the case and material to its outcome." Ex. 31, art. 6.3.[6] In particular, the IBA Rules provide authority for production of documents from "party-appointed experts" like Dr. Connor. *See* Ex. 31 art. 5.2(e) ("Documents on which the Party-Appointed Expert relies that have not already been submitted shall be

[6] In Section 5.1 of its Procedural Order 5 dated July 7, 2010, Ex. 32, the Tribunal adopted as a general guideline the 2010 Edition of the IBA Rules on the Taking of Evidence in International Arbitration (the "IBA Rules"). Ex. 31.

provided."). Ecuador simply has chosen, absent explanation, to ignore the discovery procedures available to it in the Arbitration in favor of petitioning for § 1782 discovery from this Court.

Further, Ecuador's repeated references in its application to the discovery Chevron has previously been granted under § 1782 are entirely inapposite. *E.g.*, Dkt. 2 at 3 ("Over the last two years, Chevron has filed Section 1782 Applications of 19 experts from four consulting firms who had provided assistance to the indigenous plaintiffs in the underlying environmental action. Each of Chevron's Applications was granted."). The discovery Chevron has received via § 1782 for use in the ongoing Lago Agrio Litigation and in the Arbitration has been of U.S. residents affiliated with the LAPs, including the LAPs' lawyers, consultants, and representatives. Neither the LAPs nor their affiliates are parties to the Arbitration. Moreover, courts granting Chevron § 1782 discovery for use in the Lago Agrio Litigation concluded that discovery was appropriate not only because of the evidence of fraud in the Ecuadorian court, but precisely because the Ecuadorian court was unable to secure the requested testimony or documents. *See, e.g.,* Ex. 2 (*Camp*, 2010 WL 3418394, at *5 ("Clearly, without the assistance of this court, the court in Ecuador would be unable to reach Mr. Champ and compel him to share his knowledge of what purportedly occurred.")); Ex. 33 (Order at 9, *In re Applic. of Chevron Corp.*, No. 1:10-cv-00076-TWT (N.D. Ga. Mar. 2, 2010) ("Indeed, the Lago Agrio court ordered Dr. Calmbacher at least twice to respond to questions concerning his sampling and reports, but was ineffective in securing any responses.")); Ex. 34 (Order at 4, *In re Applic. of Chevron Corp.*, No. 4:10-mc-00134 (S.D. Tex., May 20, 2010) ("Under the circumstances, it seems unlikely the Ecuadorian court would have much success in ordering Cabrera to divulge the 3TM report.")). Chevron's prior § 1782 discovery in no way justifies or excuses Ecuador's attempt to circumvent the discovery procedures of the Tribunal.

Because Dr. Connor is a party-affiliated expert providing testimony to the Arbitration tribunal, Ecuador can seek Dr. Connor's testimony and documents by directly petitioning the Tribunal. Ecuador has failed to do so. Its effort to circumvent the Arbitration tribunal and pursue discovery of Dr. Connor from this Court via § 1782 is improper. *Intel*, 542 U.S. at 264-65; *In re Microsoft Corp.*, 428 F. Supp. 2d at 193-95.

C. The Discovery Ecuador Seeks Is Overbroad

Ecuador's § 1782 application should also be denied because it is "unduly intrusive or burdensome." *Intel*, 542 U.S. at 265. Courts regularly reject § 1782 applications seeking overbroad discovery. *See, e.g., Lazaridis v. Int'l Ctr. for Missing & Exploited Children*, 760 F. Supp. 2d 109, 115 (D.D.C. 2011) (holding that the nature of the discovery request rendered denial of § 1782 application appropriate, noting that the "wide-ranging request suggests that [the applicant was] seeking information more for his general use than for use by the [foreign] tribunals," and that "[t]he Respondents reasonably contend[ed] that [the applicant's] requests would impose an undue burden on them"); Ex. 35 (*In re Marano*, No. 4:09-mc-80020-DLJ, 2009 WL 482649, at *3 (N.D. Cal. Feb. 25, 2009) (denying § 1782 application because "the document requests . . . are overly broad and unduly burdensome")).

Ecuador fundamentally mischaracterizes the Arbitration proceeding in its effort to convince this Court to permit the expansive discovery it requests, claiming that—regardless of any findings of fraud or collusion in violation of Chevron's due process rights—the arbitral tribunal will have to reevaluate all of the scientific evidence submitted in the Lago Agrio Litigation. Dkt. 2 at 15-16. That claim is false as a matter of governing international law. If Chevron proves that its rights were violated and the bilateral investment treaty was breached, then it will have established that the Ecuadorian judgment is not legitimate or consistent with international law. There is no need to prove that Chevron would have prevailed absent the

violation. Ecuador's baseless suggestion that Chevron may have lost the Lago Agrio Litigation even absent fraud, collusion, and violation of Chevron's due process rights is no defense to a finding that the applicable investment treaty or international law has been violated. *See, e.g.,* Ex. 36 (Award at ¶174, *Amco Asia Corp. v. Republic of Indonesia*, ICSID Case No. ARB/81/1 (May 31, 1990) ("The Tribunal cannot pronounce upon what a 'fair BKPM [the government regulator]' would have done. This is both speculative, and not the issue before it. Rather, it is required to characterize the acts that BKPM did engage in and to see if those acts, if unlawful, caused damage to Amco. It is not required to see if, had [BKPM] acted fairly, harm might then have rather been attributed to Amco's own fault.").

If the Court does allow Ecuador to pursue discovery for use in the Arbitration under § 1782, any discovery authorized should be appropriately limited in scope to Dr. Connor's expert testimony in the Arbitration. Ecuador's proposed subpoena, as currently written, amounts to a "fishing expedition" seeking information about reports Dr. Connor filed in the Lago Agrio Litigation, his consulting work for Chevron in discovery actions, and other information far beyond that related to Dr. Connor's Arbitration report. *See*, *e.g.*, Dkt. 1 at 23 (Request 15).

Ecuador's proposed subpoena also seeks materials that are protected from discovery under Rule 26(b)(3)(A). Fed. R. Civ. P. 26(b)(3)(A) ("a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent)."). First, most of the requests go well beyond Dr. Connor's testimony in the Arbitration, seeking discovery into Dr. Connor's role in "the Lago Agrio litigation and any other litigation (including arbitrations or other dispute resolution mechanisms)," Dkt. 1 at 19 (definition of "LITIGATION"), based on the assertion by Ecuador that Chevron put Dr. Connor's prior work

"at issue" in the Arbitration. Dkt. 2 at 25. But that is untrue, and in any event, it would not eliminate work product protection under Rule 26. *Frontier Refining, Inc. v. Gorman-Rupp Co., Inc.*, 136 F.3d 695, 702 (10th Cir. 1998) (concluding that the district court abused its discretion when it "failed to extend work product protection [to] relevant materials [that] were prepared in anticipation of other, albeit related litigation . . . on the grounds that the filing of this lawsuit placed the materials at issue").

Moreover, several of the requests conflict with specific protections provided in the Rules. For example, Rule 26(b)(4)(C)(i) only permits discovery of communications that "relate to compensation for the expert's study or testimony," but Ecuador's subpoena seeks "[a]ll documents relating to [Dr. Connor's] actual or prospective engagement or employment by Chevron [or any company 'retained by, contracted with, or in any way affiliated with Chevron'] relating to the Litigation." Dkt. 1 at 22 (Request 1, Request 2). These requests go far beyond the material made discoverable by Rule 26(b)(4)(C)(i) and intrude upon trial preparation material protected by Rule 26(b)(3)(A). Similarly, Rule 26(b)(4)(B) specifically provides that "Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded," yet Ecuador's subpoena specifically requests "[a]ll drafts of any report, affidavit, or other document submitted in the Lago Agrio Litigation that [Dr. Connor] authored in whole or in part." Dkt. 1 at 22 (Request 6); *see also* Dkt. 1 at 23 (Request 9) (seeking "any actual or proposed expert opinions or reports relating" to site inspections and sampling).

These, and several other requests for production in the subpoena, simply disregard the broad protection afforded to the trial preparation documents of experts under Rule 26. Accordingly, if the Court decides to grant discovery of Dr. Connor, the Court should modify

Ecuador's subpoena so that it seeks only those documents discoverable from testifying experts under Rule 26, and narrow the scope of the subpoena to Dr. Connor's expert testimony in the Arbitration.

IV. CONCLUSION

Ecuador's application is contrary to binding Fifth Circuit precedent, and a blatant attempt by Ecuador to obtain discovery from an Arbitration witness by circumventing the jurisdiction of the international tribunal. Chevron and Dr. Connor request that the § 1782 application be denied. In addition, the Court should, at a minimum, limit discovery to matters strictly relevant to the Arbitration and made discoverable under Rule 26 of the Federal Rules of Civil Procedure.

Dated: December 19th, 2011

Respectfully submitted,

/s/ *James C. Ho*
James C. Ho, SBN 24052766
jho@gibsondunn.com
Leanne K. Maxwell, SBN 24065695
lmaxwell@gibsondunn.com

2100 McKinney Avenue
Suite 1100
Dallas, TX 75201-6912
Telephone: 214.698.3100
Fax: 214.571.2900

Peter E. Seley (motion for admission *pro hac vice* pending)
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., N.W.
Washington, DC 20036
Tel: 202.955.8500
Fax: 202.955.9594
Email: PSeley@gibsondunn.com

Attorneys for CHEVRON CORPORATION and JOHN A. CONNOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's CM/ECF system on this, the 19th day of December, 2011.

/s/ James C. Ho___________________
James C. Ho