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7 COMPANY, AND CHEVRON CORPORATION

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 DOE, ET AL.,  
12 Plaintiffs,  
13 vs.  
14 TEXACO INC., TEXACO PETROLEUM  
15 COMPANY, INC., CHEVRON  
16 CORPORATION,  
17 Defendants.

**CASE NO. C 06-02820 WHA**  
**DEFENDANTS' MOTION TO DISMISS**  
**COMPLAINT OR, IN THE ALTERNATIVE,**  
**TO STAY**

Date: July 6, 2006  
Time: 8:00 a.m.  
Courtroom: 9, 19th Floor  
Judge: Hon. William H. Alsup

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on July 6, 2006, at 8:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 9 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, 19th Floor, San Francisco, California, defendants will move, and hereby move, this Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), for an Order dismissing the complaint on the ground that the complaint fails to state a claim on which relief may be granted or, alternatively, if plaintiffs could allege a valid claim, the case should be stayed pending resolution of related litigation in Ecuador and in the Southern District of New York.

The Motion is based on this Notice of Motion and Motion, the following Memorandum, the pleadings and papers filed in this case, and any oral arguments this Court permits.

**REQUESTED RELIEF**

Defendants request that the complaint be dismissed. In the alternative, should the Court decide that dismissal is not warranted at this time, defendants request that the matter be stayed pending resolution of ongoing related matters in other jurisdictions.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COMPLAINT**

This complaint, a purported class action by nine anonymous Ecuadorians, attacks Texaco’s drilling methods in Ecuador from 1971 to 1992, and the environmental impact of those methods. The same methods and impact were the subject of a purported class action in the Southern District of New York which was brought in 1993 and dismissed on grounds of *forum non conveniens* in 2002. *See Aguinda v. Texaco, Inc.*, 303 F.3d 470, 473 (2d Cir. 2002). These same methods and impact are now the subject of an ongoing, elaborate litigation in Ecuador, which was filed May 7, 2003, and which includes technical oil field inspections and open hearings at numerous purportedly impacted sites in Ecuador. *See Aguinda v. ChevronTexaco Corp.*, filed in the Superior Court of Nueva Loja, Lago Agrio, Province of Sucumbios, Ecuador, May 7, 2003, Section I (“Lago Agrio Complaint”) (Ex. 1).<sup>1</sup>

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<sup>1</sup> Exhibits referenced herein are attached to the Mittelstaedt Declaration filed herewith.

1           Against this background, this complaint—to the extent there are any actual clients behind  
2 it—constitutes an improper collateral attack on the New York dismissal, and an attempt to  
3 preempt the progress of the Ecuadorian proceeding. Because a principal lawyer on this complaint  
4 was, until recently, a principal lawyer in those other actions, the inference of gamesmanship of a  
5 particularly objectionable sort naturally arises.

6           The claims themselves do no more to commend this case to the Court’s attention. Count  
7 One alleges that defendants were “unjustly enriched” at plaintiffs’ expense, but does not purport  
8 to identify or trace any asset of plaintiffs in defendants’ possession, or any other benefit conferred  
9 by plaintiffs on defendants. Count Two alleges that Chevron publicly denied liability and made  
10 other statements about the Ecuadorian litigation designed to induce Californians to buy Chevron  
11 gasoline and stock, but does not contend that plaintiffs were among those so induced. As we  
12 show, neither count alleges facts sufficient to state a valid cause of action or give plaintiffs  
13 standing.

14           As a threshold procedural matter, counsel should be required to identify the anonymous  
15 plaintiffs. Identifying them will reveal whether this is simply an action in search of plaintiffs in  
16 reaction to counsel having been discharged by his clients in the Ecuadorian case on behalf of the  
17 same alleged class. Identifying plaintiffs will also shed light on whether these same plaintiffs are  
18 pursuing their remedies in Ecuador, and facilitate application of *res judicata* if this action is  
19 dismissed. And it is relevant to whether plaintiffs have consented to the conflict of interest faced  
20 by at least one of their lawyers who until recently represented a potentially adverse party, the  
21 Government of Ecuador, in a related matter. As the Court’s May 8, 2006 Order stated, plaintiffs  
22 are permitted to remain anonymous only in very limited special circumstances, and plaintiffs have  
23 made no factual showing that any of them apply here.

24           If counsel identifies any actual plaintiffs and if they were able to allege any valid claim,  
25 they would be splitting their cause of action at issue in their pending lawsuit in Ecuador, which  
26 rests on the same set of operative facts and was filed by the same counsel as here. A factually  
27 related indemnification proceeding between defendants and the Republic of Ecuador is also  
28 pending before the Southern District of New York. *See Republic of Ecuador v. ChevronTexaco*

1 *Corp.*, 376 F.Supp. 2d 334 (S.D.N.Y. 2005). Accordingly, any case in this Court seeking  
2 different relief based on the same facts, if it survived a motion to dismiss, should be stayed  
3 pending resolution of those pending proceedings.

## 4 **FACTUAL BACKGROUND**

### 5 **A. Background of the Litigation**

6 The various iterations of this litigation all arise out of Texaco Petroleum Company's  
7 (TexPet's) oil production activities in the Oriente region of Ecuador between 1964 and 1992. *See*  
8 Compl. ¶¶ 3, 23, 55-66; *Aguinda*, 303 F.3d at 472-73; Lago Agrio Complaint, Section I (Ex. 1).

9 As part of a consortium with Gulf Oil Company, and later with Ecuador's state-owned oil  
10 company, Petroecuador, TexPet explored for and produced oil under a concession originally  
11 granted by the Republic of Ecuador in 1964. Compl. ¶¶ 2, 55-57, 65-66; *Republic of Ecuador v.*  
12 *ChevronTexaco Corp.*, 376 F. Supp. 2d at 338-39. As the "operator," TexPet conducted the  
13 physical exploration and production activities in exchange for capital contributions and a promise  
14 of indemnification from the other consortium members. *Republic of Ecuador*,  
15 376 F. Supp. 2d at 339-40. When the concession term expired in 1992, TexPet ceased to hold any  
16 rights or interests, and Petroecuador took exclusive possession of the concession oilfields, which  
17 it continues to operate today. *Id.* at 340.

18 After the concession ended, TexPet and the Government of Ecuador entered into a series  
19 of agreements concerning the scope of environmental remediation to be performed by TexPet  
20 and, in exchange, discharging TexPet from all potential environmental liability. *Id.* at 341-42.  
21 TexPet conducted remediation at numerous sites and areas in the Oriente consistent with its  
22 ownership share of the concession, with the agreement that Petroecuador would be responsible  
23 for all remaining environmental remediation. *Id.* A Settlement Agreement executed in 1995, and  
24 a Final Release executed in 1998, discharged TexPet and all related entities, forever, from any  
25 liability for environmental impact. *Id.*

### 26 **B. The Original Southern District of New York Litigation**

27 The first lawsuit regarding the alleged environmental impact in the concession area was  
28 brought in 1993 in New York on behalf of the same purported class of 30,000 residents of the

1 Oriente region. *See Aguinda*, 303 F.3d at 472-73. A similar case was filed in New York a year  
2 later and was ultimately consolidated with *Aguinda*. *Id.* at 473. Because these consolidated cases  
3 had “everything to do with Ecuador and nothing to do with the United States,” and based on a  
4 finding that Ecuador at that time provided an adequate forum, the court dismissed the cases on  
5 grounds of *forum non conveniens*, with the condition that TexPet agree to litigate them in  
6 Ecuador. *See Jota v. Texaco, Inc.*, 157 F.3d 153, 155-56 (2d Cir. 1998); *Aguinda*, 303 F.3d at  
7 472-73. The Second Circuit affirmed the dismissals. *Id.* at 473. Another similar complaint filed  
8 in Texas in 1993 was dismissed on *forum non conveniens* grounds as well in 1994. *See Sequihua*  
9 *v. Texaco*, 847 F. Supp. 61, 64-65 (S.D. Tex. 1994).

### 10 C. The Lago Agrio Litigation

11 Because of the *forum non conveniens* dismissals in the United States, in 2003 the *Aguinda*  
12 lawyers sued in Lago Agrio, Ecuador, on behalf of the same Oriente residents. The underlying  
13 allegations in that case are the same as in the New York and the present actions, except plaintiffs  
14 in the Lago Agrio case seek broad environmental remediation of the allegedly affected areas  
15 instead of damages as in the New York case or “restitution” in the present action. *See Lago Agrio*  
16 *Complaint*, Section I (Ex. 1).<sup>2</sup> The Lago Agrio case is in the evidence-gathering phase, with the  
17 court conducting physical and scientific inspections of more than 120 sites in the Oriente, a  
18 process that is expected to continue more than another year.

### 19 D. Arbitration and Litigation Between the Chevron/Texaco Parties and the 20 Government of Ecuador and Petroecuador

21 In 2004, Chevron and TexPet initiated arbitration against Petroecuador after it refused to  
22 indemnify TexPet in connection with the Lago Agrio litigation. *Republic of Ecuador*,  
23 376 F. Supp. 2d at 338-40. Petroecuador and the Republic of Ecuador sued to enjoin the  
24 arbitration. Chevron and TexPet countersued for breach of the Settlement and Release and for  
25

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26 <sup>2</sup> In September 2003 another case was filed against Chevron and TexPet in Tena, Ecuador,  
27 based on the same allegations described herein. This case seeks monetary damages. *See*  
28 *Enomenga Mantohue v. Chevron Corporation & Texaco Petroleum Company*, Superior Court of  
Tena, Ecuador, Sept. 18, 2003. It is defendants’ understanding that this complaint has not been  
served, as it only recently was remanded by the Ecuador Supreme Court back to the trial court.

1 any potential liability and costs associated with the Lago Agrio case. *Id.* at 338-39. That action,  
2 and the arbitration, are still pending.

3 **E. This Complaint**

4 Not by coincidence, plaintiffs' core allegations here are nearly identical to those of the  
5 *Aguinda* and Lago Agrio matters. Here, plaintiffs (assuming, again, that any plaintiffs exist and  
6 have authorized this complaint) and their putative class of 30,000 Oriente residents challenge the  
7 same alleged conduct of TexPet at issue in the other cases—*e.g.*, dumping “produced water” into  
8 the rainforest environment, instead of reinjecting it. Compl. ¶¶ 3, 5, 29-54. They allege that  
9 toxins from the produced water have caused them and others to contract cancer or an increased  
10 risk of contracting cancer and other diseases. *Id.* at ¶ 4. These are the same allegations that  
11 formed the basis of the consolidated *Aguinda* case in New York and that are being litigated in the  
12 Lago Agrio case. *See Jota*, 157 F.3d at 155-56; Lago Agrio Complaint, Sections II-III.

13 Unlike the prior cases, plaintiffs here do not seek damages or environmental remediation  
14 for their alleged cancer or purported increased risk of cancer. Instead, based on the same  
15 allegations, plaintiffs now assert causes of action for “unjust enrichment” and for purported  
16 violations of California Business and Professions Code §§ 17200, *et seq.* (“Unfair Competition  
17 Law” or “UCL”). Compl. ¶¶ 93-111. For the “unjust enrichment” claim, plaintiffs claim that  
18 defendants profited financially at plaintiffs' expense by dumping produced water. *Id.* at  
19 ¶¶ 98-100. Despite their ongoing litigation against Chevron in Lago Agrio, plaintiffs assert that  
20 they have no adequate remedy at law. *Id.* Plaintiffs allege further that Chevron's public  
21 statements regarding TexPet's conduct and about the ongoing Lago Agrio litigation constitute an  
22 unfair business practice designed to induce Californians to buy Chevron products and stock. *Id.*  
23 at ¶ 108.

24 Plaintiffs seek an accounting and “disgorgement” of the profits by which TexPet allegedly  
25 was unjustly enriched, as well as those profits that Chevron allegedly obtained from its public  
26 statements. Plaintiffs seek to have the disgorged funds applied to build medical facilities in the  
27 Oriente. Compl., Prayer for Relief.

**ARGUMENT**

**I. THIS CASE SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM**

**A. Plaintiffs' Claim for Unjust Enrichment Fails Because Plaintiffs Have Conferred No Benefit on Defendants**

The unjust enrichment claim fails because plaintiffs do not and cannot allege that they have conferred on defendants any benefit for which restitution might be provided. A claim of unjust enrichment is no different from, and thus must satisfy the elements of, a claim for restitution. *See, e.g., Lauriedale Assocs., Ltd. v. Wilson*, 7 Cal. App. 4th 1439, 1448 (1992); *Brown v. Sandimo Materials*, 250 F.3d 120, 126 (2d Cir. 2001).<sup>3</sup> To prevail, a plaintiff must demonstrate that (1) he transferred property or provided some other benefit to the defendant, and (2) he is equitably entitled to return of the property or, in the alternative, legally entitled to compensation equaling the value of the benefit conferred. *See Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212-14 (2002). Absent the plaintiff's conferral of a benefit on the defendant, a claim for restitution/unjust enrichment should be dismissed. *See, e.g., Cruz v. United States*, 219 F. Supp. 2d 1027, 1041 (N.D. Cal. 2002) (Breyer, J.); *Farash v. Sykes Datatronics, Inc.*, 452 N.E.2d 1245, 1247 (N.Y. 1983) (“[A]n injured party who has not conferred a benefit may not obtain restitution.” (internal quotation marks omitted)).

In *Cruz*, for example, the plaintiffs alleged that the United States had deposited funds with Wells Fargo Bank, but the bank failed to direct those funds to the proper accounts, which ultimately were for the plaintiffs' benefit. 219 F. Supp. 2d at 1038. Judge Breyer dismissed the plaintiffs' unjust enrichment claim, explaining: “It is black letter law that a person unjustly enriched can be required to pay restitution under the law. However, unjust enrichment involves a benefit conferred on defendant by plaintiff.” *Id.* at 1041. Because “plaintiffs conferred no benefit upon Wells Fargo,” their unjust enrichment claim failed as a matter of law. *Id.*

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<sup>3</sup> Plaintiffs' reference to New York law (Compl. ¶ 89) does not aid their claim, because the applicable standard governing restitution/unjust enrichment claims is substantially the same under California law and New York law. *See, e.g., Bazak Int'l Corp. v. Tarrant Apparel Group*, 347 F. Supp. 2d 1, 4 n.1 (S.D.N.Y. 2004). And plaintiffs do not even suggest that their allegations, if true, entitle them to recovery under any principle of Ecuador law.

1 Similarly, in *Granite Partners, L.P. v. Bear, Stearns & Co.*, 17 F. Supp. 2d 275 (S.D.N.Y.  
 2 1998), plaintiffs alleged that their purchases of securities were “deal drivers” that enabled the  
 3 defendant brokers to make and profit from other sales of similar securities. *Id.* at 312. Plaintiffs’  
 4 theory was that their purchases thereby “enriched” the brokers, and this “enrichment” was “at the  
 5 [plaintiffs’] expense” because the plaintiffs lost money on the securities they purchased. *Id.* at  
 6 313. The Court dismissed “for failure to adequately allege enrichment at [plaintiffs’] expense,”  
 7 explaining that “[a] defendant is enriched at the expense of a plaintiff when the defendant  
 8 receives a benefit of money or property belonging to the plaintiff.” *Id.* at 313. Because the  
 9 plaintiffs “had no right to the Brokers’ profits from sales of [the securities] to other customers,”  
 10 those profits were not a benefit conferred by the plaintiffs on the defendant brokers, and no unjust  
 11 enrichment claim could be stated.

12 Here, plaintiffs’ allegations do not remotely resemble the elements of a cognizable  
 13 restitution/unjust enrichment claim. Plaintiffs allege only that defendants “directly profited from  
 14 dumping produced water in the Oriente” and that their “profits from dumping produced water in  
 15 the Oriente came at the direct expense of Plaintiffs and the class.” Compl. ¶¶ 94, 98. But  
 16 plaintiffs do not allege that they conferred any benefit on defendants, much less that they  
 17 transferred any identifiable property to defendants. Where, as here, a complaint merely alleges  
 18 that the defendants “‘have been unjustly enriched by virtue of their actions . . . at Plaintiff’s  
 19 expense,’” a claim for restitution is “defective” and should be dismissed. *Fed. Treasury Enter.*  
 20 *Sojuzplodoimport v. Spirits Int’l N.V.*, No. 04 CV 8510 (GBD), \_\_\_ F. Supp. 2d \_\_\_, 2006 WL  
 21 851724, at \*13-14 (S.D.N.Y. Mar. 31, 2006) (quoting complaint).

22 **B. Plaintiffs Lack Standing to Assert the Alleged Violation of California’s Unfair**  
 23 **Competition Law**

24 Plaintiffs—residents of the Ecuadorian rainforest who have not purchased Chevron  
 25 product or stock—have no standing to claim under the UCL that Chevron has unlawfully  
 26 deceived consumers and investors about the situation in Ecuador. Pursuant to Proposition 64,  
 27 claims under the UCL are limited to plaintiffs who can show that they “ha[ve] lost money or  
 28

1 property as a result of [the alleged] unfair competition.” Cal. Bus. & Prof. Code § 17204 (2006).  
2 Here, plaintiffs fail to allege any such loss. That ends their case.

3 Plaintiffs claim only that they were injured by Texaco’s environmental practices and that  
4 Chevron did not pay them for their injuries. That is what they mean in alleging that Chevron  
5 failed to “take steps to provide restitution . . .” Compl. ¶ 108. But a claim of non-payment of  
6 damages is not a loss of money or property and does not confer standing under the UCL.  
7 Otherwise, any denial or defense of a personal injury claim could be boot-strapped into a separate  
8 claim under the UCL.

9 Moreover, the UCL requires that the plaintiff satisfy the same elements that are necessary  
10 for standing under Article III of the U.S. Constitution. *See* 2004 Cal. Legis. Serv. Prop. 64, § 1(e)  
11 (explaining that Prop. 64 is intended to preclude actions by persons who lack Article III standing).  
12 Those elements include “invasion of a legally protected interest” and “that the injury will be  
13 redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).  
14 Here, plaintiffs do not allege that the statements at issue invaded any interest of theirs, *i.e.*, that  
15 they were deceived by them or that they took any action based on them.

16 Nor is the injury alleged—defendants’ non-payment of money of them or what they term  
17 “restitution” (Compl. ¶ 108)—redressable under the UCL. The only monetary relief available  
18 under the UCL is the restoration to plaintiffs of monies that they paid to defendants. *See, e.g.*,  
19 *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149 (2003) (“[A]n order for  
20 restitution is one compelling a UCL defendant to return money obtained through an unfair  
21 business practice to those persons in interest from whom the property was taken.”) (internal  
22 quotation marks omitted); *Madrid v. Perot Sys. Corp.*, 130 Cal. App. 4th 440, 455 (2005)  
23 (“plaintiff’s assertion that defendants received ill-gotten gain does not make a viable UCL claim  
24 unless the gain was money in which plaintiff had a vested interest”); *Alch v. Sup. Ct.*, 122 Cal.  
25 App. 4th 339, 404 (2004) (“The courts have not . . . expressly permitted any form of monetary  
26 relief [under the UCL] that is not restitutionary in nature.”). Here, as noted, plaintiffs do not  
27 allege that they gave any money to defendants and thus there would be nothing to restore to them.  
28

1 In *Korea Supply*, for example, the defendant allegedly engaged in bribery to secure a  
2 government contract that otherwise would have been awarded to a competitor whose agent, the  
3 plaintiff, lost a \$30 million commission. 29 Cal. 4th at 1142. The court held that the requested  
4 disgorgement of the defendants' profits could not be ordered "because plaintiff does not have an  
5 ownership interest in the money it seeks to recover." *Id.* at 1149. The same is true of plaintiffs  
6 here.

7 In short, plaintiffs do not satisfy either the statutory or constitutional standing  
8 requirements.

9 **II. IF PLAINTIFFS HAD ANY BASIS TO SUE HERE, THEIR CLAIMS SHOULD BE**  
10 **STAYED PENDING COMPLETION OF PRIOR-FILED PROCEEDINGS**

11 Because the two counts of this complaint are meritless on their face, the proper remedy is  
12 dismissal with prejudice, not a stay. Nothing that occurs in the Ecuador or New York litigation  
13 could breathe life into these claims. Assuming only for the sake of argument that plaintiffs could  
14 state a valid claim, plaintiffs would be splitting their cause of action and shopping for a different  
15 forum, in contravention of the dismissal of their original cases in the Southern District of New  
16 York on *forum non conveniens* ground. A remedy, or at least a partial remedy, at that point  
17 would be to stay the case pending resolution of the related claims pending in the other courts.  
18 *See, e.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (Cardozo, J.) (inherent power to stay);  
19 *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1371 (9th Cir. 1990) ("[T]his Circuit has held  
20 that forum shopping weighs in favor of a stay when a party opposing the stay seeks to avoid  
21 adverse rulings . . . or to gain a tactical advantage from the application of federal court rules.");  
22 *Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996) ("[R]easons of judicial  
23 economy counsel against splitting causes of action."); *Clements v. Airport Auth.*, 69 F.3d 321,  
24 328 (9th Cir. 1995) ("A main purpose behind the rule preventing claim splitting is to protect the  
25 defendant from being harassed by repetitive actions based on the same claim.") (internal  
26 quotation marks and citation omitted)); *Supermicro Computer, Inc. v. Digitechnic, S.A.*,  
27 145 F. Supp. 2d 1147, 1149 (N.D. Cal. 2001) (stay in favor of foreign proceedings).  
28

1 With respect to Count One, plaintiffs are forum-shopping through claim-splitting,  
2 pursuing one type of relief in Ecuador (remediation) and seeking to pursue another type of relief  
3 in this Court (construction of a medical facility) based on the same underlying allegations.<sup>4</sup> This  
4 claim-splitting and forum-shopping, moreover, is in circumvention of the *forum non conveniens*  
5 dismissal of the original New York actions.

6 With respect to Count Two, plaintiffs are essentially asking this Court, under the UCL, to  
7 determine the same issues that underlie the Ecuadorian litigation, *i.e.*, whether there is any  
8 credible scientific evidence that TexPet's environmental practices caused plaintiffs to contract  
9 cancer or other diseases. If they had standing in this Court, plaintiffs would not be entitled to  
10 have two courts address that issue at the same time. And, because the Ecuador court already has  
11 heard testimony and overseen extensive environmental sampling at dozens of (what will  
12 ultimately be more than 120) judicial site inspections in the rainforest, any allowance of  
13 duplicative litigation in this Court would be especially inefficient, and would raise particularly  
14 serious international comity concerns.<sup>5</sup>

15 The foregoing points are underscored by the unwillingness of plaintiffs' lawyers to reveal  
16 the identities of their purported clients. One of the lawyers who filed this case, Cristóbal Bonifaz,  
17 has served as lead counsel for the Ecuadorian plaintiffs since at least 1993, representing them in  
18 both their New York and Lago Agrio cases. *See Aguinda*, 303 F.3d at 472; *Aff. of Cristóbal*  
19 *Bonifaz*, dated October 13, 2004 (Ex. 3). It is defendants' understanding, however, that Mr.  
20 Bonifaz was recently dismissed as counsel in the Lago Agrio case by the plaintiffs and co-

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22 <sup>4</sup> According to a press report, plaintiffs' attorney admitted that he filed this case "out of  
23 frustration at the progress of the case in Ecuador." Carla Bass, *Ecuador Amazon residents file US*  
*lawsuit against Chevron*, Platts Commodity News, Apr. 25, 2006 (Ex. 2).

24 <sup>5</sup> The prior-filed cases in Ecuador and New York also involve the issues whether the  
25 Republic of Ecuador and Petroecuador have settled all such claims, and whether Petroecuador  
26 also has further responsibility for such claims under the oil consortium's joint operating  
27 agreement. If plaintiffs' claims here had any merit, those issues would be relevant here as well,  
28 because favorable rulings for Chevron well might warrant dismissal of the case or, alternatively,  
joinder (voluntary or involuntary) of the Republic and Petroecuador. Efficiency and comity  
weigh against duplicative litigation of these issues too, further supporting a stay of these  
proceedings.

1 counsel. The authority of Mr. Bonifaz and plaintiffs' other lawyer here, Terry Collingsworth, to  
2 represent Oriente residents is further called into question by the attorneys' recent representation  
3 of the Republic and Petroecuador, which are ultimately liable for the residents' claims and thus  
4 have an interest in limiting their recovery. *See Republic of Ecuador*, 376 F. Supp. 2d at 337;  
5 Letter to Honorable Leonard B. Sand, District Judge, Southern District of New York, from  
6 Cristóbal Bonifaz, dated Jan. 26, 2006 (Ex. 4). In these circumstances, counsel's refusal to  
7 identify their purported clients might be nothing more than an effort to prevent a determination  
8 whether this is simply an action in search of plaintiffs or, at the very least, an action by plaintiffs  
9 seeking to split their claims between jurisdictions. This concealment makes it all the more  
10 inappropriate for plaintiffs to seek expenditure of the Court's and defendants' resources litigating  
11 issues that are being decided in New York and Ecuador.

12 **CONCLUSION**

13 For the foregoing reasons, the motion should be granted.

14  
15 Dated: May 25, 2006

16 Respectfully submitted,

17  
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