



CHEVRON CORP. AND TEXACO PETROLEUM CO.

v.

THE REPUBLIC OF ECUADOR

**SUPPLEMENTAL EXPERT REPORT OF J. CHRISTOPHER RACICH**

November 7, 2014

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**I. PREVIOUS REPORT**

1. This report supplements my report of December 16, 2013, in which I reviewed and offered comment on the October 7, 2013 report submitted by Mr. Lynch and the forensic images of devices used by Mr. Guerra addressed therein.<sup>1</sup>

**II. MATERIALS CONSIDERED**

2. In preparation for rendering this report, in addition to the materials I reviewed for my December 16, 2013 report, I reviewed and analyzed the following materials:

- (a) The Expert Report of Spencer Lynch, dated August 15, 2014, in the above captioned case (the "Lynch Zambrano Report") and all exhibits to the Lynch Zambrano Report;
- (b) The forensic image of a computer identified in the Lynch Zambrano Report as the "New Computer" used by Judge Zambrano;
- (c) The forensic image of a computer identified in the Lynch Zambrano Report as the "Old Computer" used by Judge Zambrano;
- (d) An expert report prepared by Robert A. Leonard, dated May 24, 2013 (the "Leonard Report");
- (e) Native versions of two "Index Summary" files referred to in the Leonard Report;
- (f) Exhibit 21 to the report of Adam Torres, dated May 24, 2013, containing shipping records from TAME, an Ecuadorian shipping company and Airline;
- (g) Transcripts of the deposition and trial testimony of Mr. Nicolas Zambrano in a case brought by Chevron against Steven Donziger in the United States (11 Civ. 0691 (LAK)) (the "US RICO Case"), identified as C-1979 and C-1980;
- (h) The Witness Statements of Mr. Alberto Guerra submitted in the US RICO Case (the "Guerra Witness Statements"), identified as C-2358 and C-2386;
- (i) Inventories of the office equipment from Mr. Zambrano's office (the "Office Inventories"), attached as Exhibit 1 to Lynch Zambrano Report;
- (j) Business records from HP relating to the manufacture and shipment of computers (the "HP Records"), attached as Exhibit 2 to Lynch Zambrano Report and identified as C-2354, C-2355, C-2356, C- 2357;

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<sup>1</sup> My December 16, 2013 report (hereinafter "Racich 2013") described my education, experience, compensation arrangement and other background information. That information remains the same, except that I have testified three more times since then. A current Curriculum Vitae is attached hereto as Exhibit 1.

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- (k) A letter from the Ecuadorian Judicial Council reflecting the purchase of a computer, attached as Exhibit 3 to Lynch Zambrano Report;
- (l) The "Autos Para Sentencias" Order issued by Mr. Zambrano on December 17, 2010 in the Lago Agrio Litigation, attached as Exhibit 4 to Lynch Zambrano Report and identified as C-894;
- (m) The Ecuadorian Judgment issued by Mr. Zambrano on February 14, 2011 in the Lago Agrio Litigation, attached as Exhibit 5 to Lynch Zambrano Report and identified as C-931;
- (n) The Expansion and Clarification Order issued by Mr. Zambrano on March 4, 2011 in the Lago Agrio Litigation, attached as Exhibit 6 to Lynch Zambrano Report and identified as C-1367;
- (o) The Personnel Action reflecting Mr. Zambrano's appointment as a Judge, attached as Exhibit 7 to Lynch Zambrano Report;
- (p) The February 29, 2012 Order dismissing Mr. Zambrano as a Judge, attached as Exhibit 8 to Lynch Zambrano Report and identified as C-1829;
- (q) An Order dated February 21, 2011, issued by Mr. Zambrano in the Lago Agrio Litigation, attached as Exhibit 9 to Lynch Zambrano Report;
- (r) A personnel action reflecting Mr. Guerra's removal as a Judge, dated June 17, 2008, identified to me as Claimant's Exhibit C-1801;
- (s) Document bearing Bates numbers CVX-RICO-5003222 through CVX-RICO-503224 with USB analysis of USB Devices associated with Steven Donziger; and
- (t) The Post-Submission Insert to Claimants' Supplemental Memorial on Track 2 – Examination of Zambrano Computer Hard Drives.

**III. SCOPE OF ANALYSIS**

3. On May 20-21, 2014, Kevin Cantwell from my office traveled to Ecuador with counsel for the Republic and the Tribunal-appointed expert, Kathryn Owen. Ms. Owen made forensic images of two computers identified by Ecuadorian authorities as those of Mr. Zambrano and provided identical copies of those images to Kevin Cantwell of Vestigant and to experts from Claimants.

4. Counsel for the Republic Ecuador asked me to analyze these hard drive images and to review, analyze, and comment on (a) the opinions that Mr. Lynch provided in the Lynch Zambrano Report regarding these images and (b) any conclusions Claimants made based on the Lynch Zambrano Report.

5. I reserve the right to supplement my report or opinions should additional information become known to me.

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**IV. SUMMARY OF CONCLUSIONS**

6. I have reviewed the Lynch Zambrano Report and disagree with a number of Mr. Lynch's conclusions. The analysis of the New Computer and Old Computer is consistent with those computers being used to write the Lago Agrio Judgment. For example, increasing amounts of Lago Agrio Judgment text was added to documents on Mr. Zambrano's computers between October 2010 and February 2011, and these documents were edited and saved hundreds of times during this period.

7. There is also no evidence—either presented by Mr. Lynch or uncovered during Vestigant's independent analysis—that any document was copied from a USB device to either the New Computer or the Old Computer and used to create any part of the Lago Agrio Judgment between October 2010 and February 2011. Nor has Mr. Lynch presented any evidence (and I have found none) suggesting that any part of the Lago Agrio Judgment was received by email or by any other means.

8. Finally, Mr. Lynch concludes that in several respects the forensic evidence is inconsistent with Mr. Zambrano's testimony in the US RICO Case. For reasons explained further below, however, this conclusion stretches the available evidence far beyond what it actually demonstrates.

**V. ANALYSIS**

**A. The hard drive images support the conclusion that the Lago Agrio Judgment was written on Mr. Zambrano's computers**

9. I have reviewed the hard drive images obtained from Judge Zambrano's computers. Claimants' assertion that "the forensic analysis shows that neither Zambrano nor the author of the Lago Agrio Judgment drafted the Judgment on either of Zambrano's computers"<sup>2</sup> is incorrect. Both my own analysis and the forensic evidence relied on by Mr. Lynch are consistent with Mr. Zambrano and his assistant using the two computers in his office over multiple months to write and edit the document that became the Lago Agrio Judgment.<sup>3</sup> In my professional opinion, the evidence is more consistent with Mr. Zambrano and his assistant writing the Judgment than it is with a third party writing the Judgment and giving it to Mr. Zambrano for issuance at the beginning of February 2011. The following sections explain my analysis and the evidence that supports my conclusion.

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<sup>2</sup> Post Submission Insert to Claimants' Supplemental Memorial on Track 2 – Examination of Zambrano Computer Hard Drives ¶ 6.

<sup>3</sup> Throughout this Report, "the Lago Agrio Judgment" or "the Judgment" refers to the first-instance Ecuadorian court decision identified in the arbitral Record as C-931.

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- (i) **The existence of several successive versions of the *Providencias* document—which eventually issued as the Lago Agrio Judgment—is consistent with that document being edited over time on Mr. Zambrano’s computers**

10. The forensic evidence demonstrates that a document on Judge Zambrano’s computer that eventually became the Lago Agrio Judgment (named *Providencias.docx*) was created on October 11, 2010, and was saved on Mr. Zambrano’s computers at least 439 times between then and March 4, 2011 (i.e., an average of multiple saves per day). Over that time period, the *Providencias* document contained increasing amounts of Judgment text. And there is no evidence to suggest any version of that document was provided to Mr. Zambrano by a third party. I explain each of these points in more detail below.

11. Mr. Lynch identifies seven documents on both the New Computer and the Old Computer<sup>4</sup> that match text from the Lago Agrio Judgment.<sup>5</sup> Based upon Vestigant’s analysis of both the New Computer and Old Computer, these files do appear to contain text from the Lago Agrio Judgment.

12. The text and metadata of these seven documents on the New Computer and Old Computer are consistent with the users of these computers writing the Lago Agrio Judgment. Specifically, the forensic activity shows that these computers were used to create a document, add text to it, edit text within it, and save the document repeatedly over a four-month period of time.

13. Mr. Lynch identifies the first version of the *Providencias* document as created on October 11, 2010 on the Old Computer, and last saved on December 21, 2010, also on the Old Computer (the Author and Last Saved By names are set to CPJS, the author name registered to Microsoft Word on that computer). According to Mr. Lynch, *Providencias* as saved on December 21, 2010 contained 42% of the text of the Lago Agrio Judgment. This means that over the 71 days between October 11, 2010 and December 21, 2010, approximately 78 pages of the 188-page Judgment were created on Mr. Zambrano’s computers. This is approximately 1 page per day if the work were evenly spaced. Further, over these 71 days, the document was saved at least 286 times.<sup>6</sup> This is based upon the fact that every time a document is saved, Microsoft Word increments the document’s “revision count.”

14. The forensic evidence shows that the next recoverable version of the *Providencias* document was saved on December 28, 2010, on the Old Computer.<sup>7</sup> Over the week from the

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<sup>4</sup> For ease of comparison between our reports I have adopted Mr. Lynch’s naming conventions where those names are appropriate.

<sup>5</sup> Lynch Zambrano Report at 28–31.

<sup>6</sup> Lynch Zambrano Report, Table 8, Document 11.

<sup>7</sup> This file was copied to the New Computer on July 7, 2011, most likely during a backup of the Old Computer’s files onto the New Computer.

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earlier version's Last Saved date of December 21, 2010, to this version's save on December 28, 2010, the document was saved at least 29 additional times.<sup>8</sup>

15. According to Mr. Lynch, the version of the *Providencias* document saved on December 28, 2010 contained 68% of the text of the Lago Agrio Judgment. This means that between December 21 and 28, 2010, approximately 45 pages of the 188-page Judgment were added—approximately 7 pages per day. As I discuss below in Paragraph 26, it is likely that part of this additional text originated in another document on Mr. Zambrano's computer, and that the user copied that text into the *Providencias* document.

16. The forensic evidence shows that the next recoverable version of the *Providencias* document appears to have been saved as a new document—meaning the user selected “Save As” rather than “Save”—on January 21, 2011, on the Old Computer. Between January 21 and March 4, 2011, this new document (PROVIDENCIAS.docx) was saved at least 124 times.<sup>9</sup>

17. As Mr. Lynch acknowledges, there is insufficient evidence to determine how many edits were made to the *Providencias* document between December 28 and January 21 or for how long it was edited because a user's deployment of the “Save As” function automatically resets the revision count and edit time on the new file.<sup>10</sup> Because there is no way to know how many times a user uses “Save As” instead of “Save,” the revision count and edit times are at best the minimum edit time and number of revisions for that file.

18. In my expert experience, increasing text and multiple saved versions over time are consistent with the users of Mr. Zambrano's computers writing the Judgment over the period between October 11, 2010 and February 14, 2011.

19. The metadata of the files recovered by Mr. Lynch are also consistent with the Judgment having been written and saved on Mr. Zambrano's computers over a period of time. The Author information for all versions of the *Providencias* document identified by Mr. Lynch is CPJS, which is the registered Author for the Microsoft Office user of the Old Computer.<sup>11</sup> Similarly, all but one instance of the Last Saved By fields for the *Providencias* documents is CPJS. In that one instance the Last Saved By field is HP, which is the registered Author name for the Microsoft Office user of the New Computer.

20. Moreover, there is no evidence in the metadata that the versions of *Providencias* found on Mr. Zambrano's computers were provided in any way by Mr. Guerra, Pablo Fajardo, or anyone else. When a Microsoft Word document is created, Microsoft Word assigns the Author name field based on that computer's registered Author name. The Author name field remains the same in that document and does not change over the life of the document. When a person saves

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<sup>8</sup> Lynch Zambrano Report, Table 8, Documents 12 and 13.

<sup>9</sup> Lynch Zambrano Report, Table 8, Documents 14, 15 and 16.

<sup>10</sup> Lynch Zambrano Report at 26.

<sup>11</sup> Lynch Zambrano Report, Table 8.



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that document, Microsoft Word sets the Last Saved By field to the registered Author name on the computer performing the save.

21. If a person creates a document and saves it on the same computer, then both the "Author" name and the "Last Saved By" name will be the same. If a document is created on one computer but later saved on a computer with a different Author name, the Author name and Last Saved By name will be different. As a result, if Mr. Guerra, Mr. Fajardo, or anyone else had created any of the *Providencias* documents recovered from Mr. Zambrano's computers, that document would reflect the Author name from his or her computer, not Mr. Zambrano's, and the different authors would be identified.

22. In my December 2013 report, I analyzed Mr. Guerra's hard drive and found that the Author name on his computer was either "Estacion" or "." (i.e., a period).<sup>12</sup> If Mr. Guerra had provided a new document to Mr. Zambrano, that new document would have retained Mr. Guerra's computer's Author name, because the Author name is not overwritten by subsequent editing. Similarly, if Mr. Guerra had saved a document on his computer that he later provided to Mr. Zambrano, then that document would have a Last Saved By name of "Estacion" or "." There are no documents on Mr. Zambrano's computer with the Author name or Last Saved By set as "Estacion" or "." from October 2010 to March 2011.

23. Winston & Strawn LLP provided me electronic copies of five documents that were produced by Chevron from the Lago Agrio Plaintiffs and appear to have been created and edited by Mr. Pablo Fajardo.<sup>13</sup> Each document contains either text of a court submission to be submitted over Mr. Fajardo's signature or a letter intended for his signature. The Author and Last Saved By fields on all of these documents are set to PABLO. It is thus likely that the Author name in Microsoft Word on Mr. Fajardo's computer was set to PABLO during the relevant time. Based on this information, I searched Mr. Zambrano's hard drives and found that no documents contained any metadata indicating they had any Author information or Last Saved by metadata with the name PABLO. Specifically, none of the versions of the Lago Agrio Judgment has any metadata set to PABLO.

24. Additionally, the edit times recorded in the metadata for the seven versions of *Providencias* recovered by Mr. Lynch, in conjunction with the other metadata, are consistent with users of Mr. Zambrano's computers creating, writing, and editing what became the Judgment over the relevant time period. Between October 11, 2010 and December 28, 2010, the person(s) working on the Judgment had this document alone open for 52.5 hours.<sup>14</sup> From December 28, 2010 until March 18, 2011, this file was edited for at least an additional 58 hours. This does not include time spent writing or editing in other documents such as "Caso Texaco.doc"<sup>15</sup> (described below in more detail) or other files not analyzed. Nor, of course, would this include time spent working on the Judgment while not on the computer, such as by

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<sup>12</sup> Racich 2013 at 11-12.

<sup>13</sup> These documents are attached as Exhibit 2.

<sup>14</sup> Lynch Zambrano Report, Table 8.

<sup>15</sup> Lynch Zambrano Report, Table 16.

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handwritten notes. And as discussed above, this is the minimum time each document was edited as any use of "Save As" would reset this edit time.

- (ii) **Another document on Mr. Zambrano's computers, *Caso Texaco*, also contains text of the Judgment and is consistent with the Judgment having been drafted on those computers**

25. "Caso Texaco.doc" is a Microsoft Word file with versions found on both the Old Computer and the New Computer that contained a portion of the text that eventually made up the Lago Agrio Judgment. Mr. Lynch identifies 18 versions of this file.<sup>16</sup>

26. Mr. Lynch states that "a single instance of 'Caso Texaco' contained text from the Ecuadorian Judgment. In the immediately subsequent instance, that text was missing from the document, indicating that it had been deleted."<sup>17</sup> The instance of "CASO TEXACO.doc" that Mr. Lynch refers to (~WRL0001.tmp) is a Microsoft Office temporary file<sup>18</sup> that, based upon the Last Written Date metadata, was created on January 19, 2011. This document does appear to contain the text of the *Caso Texaco* document and a portion of the text of the Judgment. This forensic evidence is consistent with Mr. Zambrano copying text from *Caso Texaco* and pasting it into the draft of the Judgment some time before January 19, 2011.

27. Table 16 of the Lynch Zambrano Report, extracted below, also shows that *Caso Texaco* was opened and edited on both the New Computer and the Old Computer. For example, between Document 28 and Document 36, the file has an increasing number of revisions and edit times, and is saved by the user of the New Computer for Documents 28 through 32 and then by the user of the Old Computer for Documents 33 through 35. This metadata shows (1) a consistent writing of a document over time and (2) that the author(s) used both the New Computer and the Old Computer to edit and save the same document.

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<sup>16</sup> Lynch Zambrano Report, Table 16.

<sup>17</sup> Lynch Zambrano Report at 33.

<sup>18</sup> Depending on the settings on a computer, Microsoft Office creates temporary files when a document is created or being edited. This is done to help a user recover from an application or system crash by saving the progress of the document in the temporary file. For Microsoft Word, these files typically have a naming convention beginning with the '~' character.

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Embedded Metadata

Document #	Name	Last Saved By	Author	# of Revisions	Total Edit Time (Minutes)	File Created	Last Saved	Time Last Printed
Document 20	[CARVED]000022.doc	DR. CARLOS LEON	DR. CARLOS LEON	82	1189	10/20/2009 16:02	11/23/2009 17:18	10/21/2009 16:08
Document 21	~WRL3054.tmp	DR. CARLOS LEON	DR. CARLOS LEON	158	1582	10/20/2009 16:02	12/07/2009 12:44	11/30/2009 17:45
Document 22	~WRL3054.tmp	DR. CARLOS LEON	DR. CARLOS LEON	158	1582	10/20/2009 16:02	12/07/2009 12:44	11/30/2009 17:45
Document 23	~WRL1570.tmp	DR. CARLOS LEON	DR. CARLOS LEON	159	1593	10/20/2009 16:02	12/07/2009 14:13	11/30/2009 17:45
Document 24	~WRL1570.tmp	DR. CARLOS LEON	DR. CARLOS LEON	159	1593	10/20/2009 16:02	12/07/2009 14:13	11/30/2009 17:45
Document 25	[CARVED]000065.doc	DR. CARLOS LEON	DR. CARLOS LEON	162	1689	10/20/2009 16:02	12/07/2009 19:14	11/30/2009 17:45
Document 26	[CARVED]000122.doc	DR. CARLOS LEON	DR. CARLOS LEON	674	3145	10/20/2009 16:02	01/19/2010 19:20	01/19/2010 19:19
Document 27	CASO TEXACO.doc	DR. CARLOS LEON	DR. CARLOS LEON	895	3627	10/20/2009 16:02	02/16/2010 17:57	02/16/2010 17:56
Document 28	[CARVED]003375.doc	HP	DR. CARLOS LEON	1715	7052	10/20/2009 16:02	12/16/2010 09:50	02/16/2010 17:56
Document 29	~WRL0788.tmp	HP	DR. CARLOS LEON	1724	7264	10/20/2009 16:02	12/16/2010 13:15	02/16/2010 17:56
Document 30	Guardado con Autorrecuperación de CASO TEXACO.asd	HP	DR. CARLOS LEON	1724	7284	10/20/2009 16:02	12/16/2010 13:15	02/16/2010 17:56
Document 31	DBC8445.doc	HP	DR. CARLOS LEON	1725	7397	10/20/2009 16:02	12/16/2010 18:55	02/16/2010 17:56
Document 32	[CARVED]003406.doc	HP	DR. CARLOS LEON	1727	7605	10/20/2009 16:02	12/17/2010 12:21	02/16/2010 17:56
Document 33	[CARVED]003489.doc	CPJS	DR. CARLOS LEON	1748	7895	10/20/2009 16:02	01/05/2011 18:00	02/16/2010 17:56
Document 34	~WRL0001.tmp	CPJS	DR. CARLOS LEON	1764	8581	10/20/2009 16:02	01/19/2011 12:02	02/16/2010 17:56
Document 35	~WRL0001.tmp	CPJS	DR. CARLOS LEON	1764	8581	10/20/2009 16:02	01/19/2011 12:02	02/16/2010 17:56
Document 36	CASO TEXACO.doc	CPJS	DR. CARLOS LEON	1781	8684	10/20/2009 16:02	03/18/2011 16:05	02/16/2010 17:56
Document 37	CASO TEXACO.doc	HP	DR. CARLOS LEON	1782	8690	10/20/2009 16:02	10/24/2011 18:02	02/16/2010 17:56

New Computer

Old Computer

New Computer

28. Mr. Lynch also identifies a number of files named CASO TEXACO.doc that were opened on the New Computer in December 2010.<sup>19</sup> He admits that these documents no longer exist in the identified paths as of the time of the forensic imaging of the New Computer, and there is no way to determine whether these files contained more, less or different text from the other instances of *Caso Texaco*. Based on the increasing revisions and edit times for the recovered versions of *Caso Texaco*, it is likely that these unrecoverable versions, if available, could reveal still additional editing—quite possibly on the New Computer.

(iii) **The Internet History recovered from Mr. Zambrano’s computers further demonstrates that the users of those computers repeatedly accessed both the *Providencias* and *Caso Texaco* documents between December 2010 and February 2011**

29. As Mr. Lynch states, “when a computer user visits a website on the Internet, the computer generally records the ‘Internet History,’ among other things, the website visited, the time of the visit, and how many times the website had previously been visited.”<sup>20</sup> This logging occurs not only for websites, but documents that are opened using Windows Explorer, including the field showing how many times the document had been visited (i.e., opened). When using Windows Explorer to open Microsoft Word documents (and certain other file types not relevant here), Microsoft Windows records that activity in the Internet History.

30. Each time a document is opened the Internet History “log” records the date and time that the document was opened, as well as the “hits,” i.e., a running total of the number of times that document has been opened from that particular location. Additionally, the Internet History is resident on and specific to each computer and only registers documents that are

<sup>19</sup> Lynch Zambrano Report at 35.

<sup>20</sup> Lynch Zambrano Report at 23.

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opened on that particular computer, not cumulatively between Mr. Zambrano's two computers or any other computer. Through normal computer usage, these log entries may be lost as new entries are added, as the entries reach a size limit, or simply over time.

31. As described above, the number of "hits" is recorded and thus indicates the running total of the number of times a document has been opened at particular moments in time. This count is not reset as documents are opened. As a result, even though individual log entries may be lost over time, if the log contains an entry from when a document or website was opened, that entry will typically include the running count or "hit" count from previous times that document or website was opened.

32. I extracted the Internet History of the Old and New Computers and searched the extracted Internet History for any evidence that either computer was used to open documents named "Providencias.docx." I found four entries in the Internet History between December 2010 and February 2011 showing that a document named PROVIDENCIAS.docx had been opened.<sup>21</sup> Those four entries demonstrate that the PROVIDENCIAS.docx document was opened hundreds of times on both the New Computer and the Old Computer.

33. A PROVIDENCIAS.docx file was opened on the Old Computer on December 23, 2010, at which point the log shows the document had been opened 434 times. The log also shows that same document was again opened on the Old Computer on January 3, 2011, at which point it had been opened 497 times. Finally, the log shows that the PROVIDENCIAS.docx file stored on the Old Computer was opened using the New Computer (i.e., it was opened across the network (described below)) on February 11, 2011. At that point the New Computer had been used to open the Providencias.docx file stored on the Old Computer at least 40 times.

34. I also searched the extracted Internet History of the Old and New Computers for any evidence that either computer was used to open documents named "Caso Texaco.doc." I found three entries indicating that a document named "CASO TEXACO.doc" was opened on the Old Computer.<sup>22</sup> The evidence from those three entries indicates that the "CASO TEXACO.doc" document was accessed hundreds of times from before December 2010 through January 12, 2011.

- (iv) **The installation of Microsoft Office 2007 on Mr. Zambrano's computers prevents an exhaustive forensic analysis of Microsoft Office documents on his hard drives, rendering Mr. Lynch's conclusions necessarily limited and incomplete**

35. Mr. Lynch identifies the process he used to extract versions of the Lago Agrio Judgment from both the Old Computer and New Computer. Using this process he was able to recover six unique versions of the Judgment. This does not mean that there were only six versions of the Judgment on Mr. Zambrano's computers; there may have been more.

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<sup>21</sup> A list of the entries for "PROVIDENCIAS.docx" in those months is attached as Exhibit 3.

<sup>22</sup> A list of the entries for "CASO TEXACO.doc" in those months is attached as Exhibit 4.

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36. To further understand why neither Mr. Lynch nor I can conclude that no other versions of the Lago Agrio Judgment (or other files) exist on either computer, a basic understanding of Microsoft Office is required. Microsoft Office version 2007 was installed on the Old Computer on July 14, 2010, and on the New Computer on November 25, 2010. This version of Microsoft Office saves files in a “docx” format by default. In the past, Microsoft Word used the “doc” format, which stored the text of the document in plain text. As a result, fragments of “doc” files could often be found even after the document was deleted by searching the hard drive for keywords. This is generally no longer possible with the “docx” format, which is a compressed format that encodes the contents such that the text of a document is not stored in plain text. Consequently, the “docx” format makes it unlikely that searching for the content of deleted documents will be successful absent recovery of the entire document. This is evident here from the fact that the vast majority of deleted documents found by Mr. Lynch are in the original “doc” format and therefore more easily found. By contrast, and unsurprisingly, he found few deleted “docx” formatted documents.<sup>23</sup>

37. It is possible to recover Microsoft Office documents in the “docx” format by searching for the compressed file header found in these documents (as Mr. Lynch was able to do with two of the recovered versions of what became the Lago Agrio Judgment). Because of the compressed format, however, it is almost impossible to find any partially overwritten deleted documents that may contain the appropriate text. In my experience, because of Microsoft’s change in document format, it is not unusual to find only a limited number of versions of “docx” documents using text searching. In other words, if the header for the deleted document is overwritten, keyword searches for deleted documents would not be able to recover that data. This means that there may be many more versions of the Providencias.docx file (and other files) on Mr. Zambrano’s hard drives that forensic analysis will never be able to find.

**B. The forensic evidence does not support Claimants’ contention that Mr. Zambrano testified untruthfully in the US RICO Case**

**(i) Because the Old Computer’s hard drive was “mapped” on the New Computer, Mr. Zambrano would not have known where his documents were physically being saved**

38. Mr. Lynch states that Mr. Zambrano’s RICO testimony regarding the creation of the Lago Agrio Judgment is inconsistent with the forensic evidence.<sup>24</sup> According to Mr. Lynch, the “Author” and “Last Saved By” fields of the respective versions of the Judgment are both set as the Author name from the Old Computer. In his view, this fact is inconsistent with Mr. Zambrano and/or Ms. Calva typing the Judgment on the New Computer. This blanket conclusion is unsupported.

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<sup>23</sup> Compare Lynch Zambrano Report, Table 8, with *id.* Tables 15 and 16.

<sup>24</sup> Lynch Zambrano Report at 25.

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39. As Mr. Lynch mentions but does not explain the significance of, the Old Computer's hard drive was "mapped" on the New Computer.<sup>25</sup> When one computer is mapped on another computer, a user on the first computer can access and edit files saved on the second computer while working on the first computer, and similarly a user on the second computer can access and edit files saved on the first computer while working on the second computer. In my experience, non-technical users of a computer that have access to files on a remote computer through a mapped drive like this often believe that the files are being saved on their local computer, not the remote computer. In this case, a user of the New Computer could open files stored on the Old Computer and work on them while sitting at the New Computer. If that user was not technical, the user would likely simply presume that the files he is accessing are being saved on the New Computer (where he is physically sitting and performing the work), even though the files in actuality are saved to the Old Computer.

40. As discussed above, which computer is used to save the first and last version of a document can be determined by looking at the Author and Last Saved By fields. The first version corresponds to the Author field; the last version corresponds to the Last Saved By field. This information is limited, however, because no information is stored about which computer saved the file for any intermediate versions. Therefore, a user of the New Computer could save a document multiple times, yet only the Old Computer's information would be recorded if the document were last saved there.

41. It should be noted that during the October 2010 to March 2011 time period only the Old Computer had a printer attached to it.<sup>26</sup> Therefore, it is unsurprising that the Providencias.docx file was last saved on the Old Computer a majority of times.

**(ii) A broader review of Internet activity on Mr. Zambrano's computers is consistent with his testimony regarding Internet usage (including legal research and translation services) during the Judgment-drafting period**

42. Mr. Lynch analyzed Internet activity on both the Old and New Computers between October 2010 and March 2011, and claims to have been unable to find any evidence of legal research during this period.<sup>27</sup> While Mr. Lynch does not say so, the implication is that because one can recover Internet History, and since he found no Internet History in the October 2010 to March 2011 timeframe that identified legal research websites or translation services, no legal research or internet translations occurred during this time. That is an unsupportable conclusion for two primary reasons.

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<sup>25</sup> This is indicated by the Registry Key HKEY\_CURRENT\_USER\Network\Z\RemotePath, which identifies which network devices are "Mapped" on the New Computer and their network locations, and in particular, that the Volume "\\CPJS1\Mis documentos" was mapped to the New Computer as drive letter Z:.

<sup>26</sup> An excerpt of the Registry files indicating when printers were first installed on both the New Computer and Old Computer is attached as Exhibit 5.

<sup>27</sup> Lynch Zambrano Report at 23.

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43. First, Mr. Lynch acknowledges that Internet History is deleted over time through normal computer use and that deleted history may sometimes be recovered. But he fails to recognize that sometimes deleted Internet History is unrecoverable.

44. Through normal computer use, Internet History is deleted over time under a variety of circumstances. Once the Internet History is deleted, the space where that Internet History was stored is available for the receipt of new data. If new data subsequently occupies that space, the Internet History that existed there will not be recoverable. In my expert experience this is common with normal computer use. As a result, it is commonplace for Internet History to be only partially recoverable after years of normal computer use. Its absence now does not mean that it never existed.<sup>28</sup>

45. Second, using the forensic tool Internet Evidence Finder, I extracted all active and recoverable Internet History from both the Old and New Computers. I then reviewed all available Internet History that existed on both computers.

46. It is evident to me that the recovered Internet History is incomplete because some of the Internet History was recoverable only from unallocated space (indicating that it had been deleted) and because the limited recorded usage would have necessarily been accompanied by many more Internet History log entries.

47. When a person visits certain Internet sites the website places a small file called a “cookie” on the person’s computer. When a person subsequently returns to that website the website accesses that cookie to retrieve the information stored there. That access is recorded in the Internet History just like access to the website’s actual pages. This distinction is relevant because when as part of its normal operations the web browser deletes old Internet History, it often does not delete old cookies even while it deletes entries related to accessing the website’s files. As a result it is not uncommon—and is the case here—that forensic analysis can recover cookies from websites even while all other history of the person visiting the website has been lost. This incomplete Internet History demonstrates the point above that some but not all of the Internet History from the relevant time period is recoverable. Based on this evidence and my expert experience, it is very likely that there was more Internet History for the relevant time period that has been lost due to normal computer use.

48. This is more than an academic disagreement between Mr. Lynch and me. There is evidence that legal research was performed on the Old Computer between October 2010 and March 2011 using the site [www.fielweb.com](http://www.fielweb.com), which (based upon my review) is a website that enables legal research. As stated above, this is likely an incomplete accounting of Internet usage during this time period and there may well have been other sites that the users of Mr. Zambrano’s computers visited and used.

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<sup>28</sup> Based upon my examination, the Old Computer was in use until September 26, 2012, over one and one half years after the writing of the Judgment. It is easily conceivable that if any Internet legal research was performed using the Old Computer, this Internet History was deleted and overwritten through normal use of the computer. The same is true for the New Computer, which, based upon my examination, was in use until November 8, 2012.

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49. On the New Computer, during the October 2010 to March 2011 time period, the record of pages visited is minimal but many cookies are still available. As I discussed above, it is normal that old history is deleted while cookies remain. At least as early as January 11, 2012, someone visited the [www.lexisweb.com](http://www.lexisweb.com) website, a common legal research tool in Ecuador. On that date a cookie was accessed that tracks the user's usage of the website. On May 31, 2012, a cookie was accessed for [lexisnexus.com](http://lexisnexus.com), another site for legal research in Ecuador. Either of these cookies may have overwritten a previous cookie or may have been new. There are also numerous undated Internet History entries for the sites [www.lexis.com.ec](http://www.lexis.com.ec) (legal research), [www.cervantesvirtual.com](http://www.cervantesvirtual.com) (a virtual library), [books.google.com](http://books.google.com) (a virtual library), and [www.apuntesjuridicos.com.ec](http://www.apuntesjuridicos.com.ec) (legal research), which may also reflect Internet legal research during this time period.

50. As early as June 2009, a user of the Old Computer visited the translation website [www.traducegratis.com](http://www.traducegratis.com). The Internet History from this time period included only 7 entries for this site. But those 7 entries indicate that the site had been visited at least 69 times by September 2009. The numbers are illustrative of the larger point discussed earlier that much of the Internet History is no longer available. For this website, [traducegratis.com](http://traducegratis.com), 62 of the 69 entries are not available from the Internet History I was able to recover. Moreover, on the New Computer there is evidence that on January 4, 2011, the person using the computer accessed the website [www.windowslivetranslator.com](http://www.windowslivetranslator.com), a site that uses Microsoft's translation service to allow users to translate entered text or entire websites between two languages.

51. Furthermore, as Mr. Lynch references in his report, the available Internet History shows that Ms. Calva's Facebook account was accessed from both computers. The Internet History log entries also indicate that Ms. Calva's Facebook account was accessed many times between October 2010 and March 2011 from the both the New and Old Computers. This access to Ms. Calva's Facebook account, presumably by Ms. Calva, demonstrates that Ms. Calva was using Mr. Zambrano's computers and specifically that she was using both the Old and New Computers during the relevant time period.<sup>29</sup>

52. I also reviewed the Internet History for all usage between March 2010 and April 2011 on both computers. By looking at the average number of objects downloaded on particular days, it appears that there is a gap in the recovered Internet History on the Old Computer between July 14, 2010 and December 14, 2010. In my experience, this could be caused either by a lack of Internet usage during this time frame or could be because the Internet History was deleted and overwritten subsequent to this time frame. Due to the fact that there is some Internet History between July 2010 and December 2010 that is most typically accompanied by other log entries, it is more likely that the gap is due to Internet History having been deleted and overwritten through normal computer use. On the New Computer there is little detailed Internet History from December 7, 2010, when Mr. Zambrano received the computer, until late in 2012 when the computer seems to have been given to Mr. Encarnacion (whom I understand is another judge at the court). In my experience, this could be caused by lack of Internet usage during this time frame or that the Internet History was deleted and overwritten subsequent to this time

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<sup>29</sup> A list of the available Internet History entries evidencing that access history is attached as Exhibit 6.



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frame. But because there is some Internet History, including website cookies during this time period, it is more likely that the lack of Internet History is due to previous Internet History being deleted and overwritten.

**C. Neither Mr. Lynch’s nor Vestigant’s analysis of USB Devices revealed any evidence that a Lago Agrio Litigation-related document was transferred to Mr. Zambrano’s computers while he was drafting the Judgment**

53. Mr. Lynch indicates that nine USB storage devices (also commonly known as “flash drives”) were attached to the Guerra Computer and the New and/or Old Computers. He extracted this information from log and system files on both the Old and New Computers that maintain such data.<sup>30</sup>

54. Table 1 of the Lynch Zambrano Report, extracted below, demonstrates that while evidence shows that certain USB devices were first attached to the Guerra Computer and subsequently attached to either the New Computer or Old Computer, the same evidence also shows that those USB devices were then later re-attached to the Guerra Computer. This means that for each of the USB devices in Table 1,<sup>31</sup> the devices were in the control of a user of the Guerra Computer both before *and* after they were attached to either of Mr. Zambrano’s computers. At a minimum, this would appear to exclude the possibility that any of the USB devices contained the Judgment, since there is no evidence that any version of the Judgment was ever on or connected to the Guerra Computer.

55. Mr. Lynch does not provide any forensic evidence as to who actually attached these devices to any of the computers. As a result, it is just as likely that Mr. Guerra plugged the USB storage devices into both his computer and Mr. Zambrano’s. Based on the usage history of these USB devices, it is just as likely that Mr. Guerra maintained possession of the USB devices throughout and was the person who plugged those devices into both his computer and Mr. Zambrano’s computer.

Vendor	Product	Serial No	Volume Name	Old Computer		New Computer		Guerra Computer	
				Earliest Connected	Most Recently Connected	Earliest Connected	Most Recently Connected	Earliest Connected	Most Recently Connected
USB 2.0	USB Flash Drive	YUN670CETAV6NGHE		02/21/2011	02/21/2011	12/28/2010	12/28/2010	12/25/2010	03/16/2011
Kingston	DT 101 II	001CC0EC2F1CF050C6B6086D	KINGSTON	04/04/2011	04/04/2011	12/22/2010	11/21/2011	12/01/2010	03/08/2012
Kingston	DT 101 G2	001372902955EAC12517D048	KINGSTON	04/04/2011	04/04/2011	07/18/2011	08/09/2011	02/02/2011	09/18/2011
hp	v125w	AA12012D00000180	HP v125w	05/25/2011	05/25/2011	08/09/2011	11/21/2011	02/28/2011	08/14/2011
Kingston	DT 101 G2	0016FC03EF31C09155897519	KINGSTON	07/06/2011	07/06/2011	01/06/2011	03/02/2012	12/23/2010	08/20/2011
Kingston	DT 101 G2	001CC0EC345AE480C5EE01C9	KINGSTON	07/07/2011	07/07/2011	12/16/2010	11/21/2011	06/01/2011	10/16/2011
Kingston	DataTraveler 108	00187D1174B1EB3030005C6E	KINGSTON	N/A	N/A	10/03/2011	02/29/2012	08/03/2011	02/28/2012
Kingston	DT 101 II	001D0F0C73C35C9901110904	KINGSTON	N/A	N/A	08/09/2011	08/09/2011	07/04/2011	07/12/2012
Mass	Storage Device	125C20100726	JEANKARLOS	N/A	N/A	05/09/2012	01/21/2012	08/01/2011	08/01/2011

56. Another conclusion to be drawn from the USB device analysis is that no forensic evidence shows that USB devices were inserted into either of Mr. Zambrano’s computers

<sup>30</sup> Lynch Zambrano Report at 14.

<sup>31</sup> Except for the last entry with the serial number 125C20100726.

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between February 1, 2011 and February 20, 2011. On January 28, 2011 and January 31, 2011, it appears that a USB drive with the Volume Name EVELYN was plugged into the New Computer and then the Old Computer. As Mr. Lynch indicates in Table 24, none of the files that were accessed on the EVELYN USB device appears to be related to the Lago Agrio Litigation. Additionally, there is no evidence that any of the USB devices that were produced by Mr. Guerra were inserted into either of Mr. Zambrano's computers between January 6, 2011 and March 2011.

57. Next, Mr. Lynch states that Stroz Friedberg performed an analysis of the forensic images of five USB devices that were used by Mr. Guerra on his computer and that Mr. Lynch contends were also used by someone on the Old Computer or New Computer.<sup>32</sup> However, Mr. Lynch provides no forensic evidence that links the USB devices used on Mr. Guerra and Mr. Zambrano's respective computers with the five USB device images obtained from Mr. Guerra. Stroz Friedberg did not provide the necessary serial numbers to show that the images taken from Mr. Guerra are in fact the same devices that were attached to Mr. Zambrano's computers. Because the serial numbers were not recorded by Claimants' forensic examiners from Mr. Guerra's original USB devices (a standard and fundamental step during imaging of any computer equipment), no forensic examiner can conclude with a degree of scientific certainty that the images currently in our possession are of the USB devices that were attached to Mr. Zambrano's computers.

58. In a forensic case involving the acquisition of electronic data, it is highly unusual that these serial numbers were not recorded—Stroz Friedberg recorded them for all other devices they imaged from Mr. Guerra and Ms. Owen recorded them for the Zambrano Hard Drives when she took those images on behalf of the Tribunal in May 2014. Without this information, Mr. Lynch is merely speculating that the USB images taken from Mr. Guerra's USB devices that we have both examined are in fact the same USB devices that were attached to Mr. Zambrano's computers.

59. Vestigant also performed an independent analysis of all evidence of files opened from USB devices on either the Old or New Computers between October 2010 and March 2011. This analysis showed that up to 56 documents were opened from USB devices between October 1, 2010 and March 1, 2011.<sup>33</sup> A review of the file names and types shows that these files are predominantly picture and Microsoft PowerPoint files, along with a small number of Microsoft Word files.

60. Of the 56 documents opened from the USB devices, there are two documents—two copies of the same document—that appear to be related to the Lago Agrio Litigation. Both files have the same name (PROVIDENCIA CHEVRON TEXACO DE FECHA 15 DE JUNIO DEL 2010.docx) and almost identical metadata. They appear to be a Word version of an order issued in June 2010 when Mr. Zambrano was not on the bench. This document appears to have been copied to the New Computer on December 7, 2010 via a thumb drive with the volume name "MARIELA." In sum, there is forensic evidence of only a single document (two copies of the

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<sup>32</sup> Lynch Zambrano Report at 15.

<sup>33</sup> A full list of these files is attached as Exhibit 7.

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same document) among all of those contained on all of the USB devices opened during the relevant time frame that had any relevance at all to the Lago Agrio Litigation. I have been informed that the one document was a copy of an historical document, an order, that preceded Mr. Zambrano's second tenure as judge. Moreover, that document's source—a thumb drive named MARIELA—makes it quite likely that the document came from Mariela Salazar, who I understand was a secretary at the Lago Agrio Court during the relevant time frame. In my experience historic files like this are often used as templates for future files so that formatting and boilerplate language remains the same.

61. The vast majority of the documents and folders identified by Mr. Lynch that were opened (30 out of 43) appear to have been opened from a USB device with the volume name "Evelyn" and includes photos and documents that appear by their names to be non-court related and most likely Evelyn Calva's personal documents. Four of the 43 appear to have been opened from a USB device named "Mariela," presumably indicating they are from the Court's secretary. Three of the 43 appear to have been opened from a USB device named "My disc" and based on their date of access and the files accessed, appear to be related to the IT Department's setup of Microsoft Office on Mr. Zambrano's New Computer.

62. The only other instances of documents being opened from removable drives between November 2010 and February 2011 on USB devices other than "EVELYN," "MARIELA," or "My Disc" are the four documents and one folder with the names in Exhibit 7. Mr. Lynch has provided no evidence these documents have any bearing on the Lago Agrio Litigation.

63. Vestigant compared all of the files found on the forensic images of Mr. Guerra's USB devices to determine whether any file had been opened on either of Mr. Zambrano's computers from Mr. Guerra's USB devices between October 2010 and March 2011. Based upon my review, there is no indication that any files were opened from the Guerra USB devices on either the New Computer or Old Computer during the time that the Lago Agrio Judgment was being written.

64. I also searched for any evidence that the nine alleged draft orders from the Lago Agrio Litigation discussed in Mr. Lynch's October 2013 Report were ever opened on either of Mr. Zambrano's computers. There was no evidence that any of those nine documents were opened on Mr. Zambrano's computers from USB devices or copied to the Old Computer or New Computer from USB devices.

**D. The forensic evidence does not support, and indeed is inconsistent with, allegations of attempted data destruction on the Old and New Computers**

65. Mr. Lynch concludes that evidence of data copied in bulk to both the Old Computer and the New Computer reveals some deliberate attempt to overwrite deleted data on these computers.<sup>34</sup> This theory is not supported by the forensic evidence or Mr. Lynch's analysis.

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<sup>34</sup> Lynch Zambrano Report at 11.

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66. Although it is possible that previously deleted files were overwritten when new files were copied to the computer, the forensic evidence does not point to data destruction as a likely motive.

67. In my experience, when a user is trying deliberately to overwrite data in unallocated space (i.e., trying to erase all evidence of deleted files), he or she typically copies large amounts of data, usually in large files like movies, to his or her hard drive. To destroy all evidence of previously created files, a user must fill his or her entire hard drive (i.e., fill 100% of unallocated space) as it is impossible for the user to know where the previously deleted files were stored. Because a user has no ability to determine what parts of unallocated space will be overwritten by new data, users who engage in data destruction in this manner typically attempt to fill up as much unallocated space as possible.

68. In my opinion the evidence of data copied onto Mr. Zambrano's computers is almost definitely associated with normal computer use, and not data destruction. On September 26, 2012, 734 MB of files was copied into a folder on the Old Computer named "RESPALDO PC PENTIUM 4," or "Pentium 4 PC Backup." The files consisted primarily of Microsoft Office documents. Also, at only 734 MB, the files copied were less than 1% of the total space on the drive and less than 4% of the unallocated space. Given the name of the destination folder, the types of documents, and the total volume of the files copied, this was most likely a normal backup of files and not an attempt to destroy deleted data.

69. Mr. Lynch identifies one other instance, July 9, 2012, when a quantity of files was copied onto the New Computer. This is the same day that a new user, Juan Encarnacion, was created on the New Computer. The majority of the files copied were copied into Juan Encarnacion's profile and consisted predominantly of Microsoft Office documents. These files totaled approximately 4.7GB of data, less than 1.5% of the total space on the hard drive of the New Computer, and approximately 7% of the unallocated space. Based upon the facts that a new profile was created on July 9, 2012, the types of files copied, and the total volume of data copied, the most likely explanation for this data copying was that the computer was being given to a new user and being setup for his use, not the deliberate destruction of data.

70. Mr. Lynch recognizes that these two instances of data copying are most likely related to normal computer maintenance.<sup>35</sup> He states that the installation of a profile (i.e., copying a user's files to the computer after the user's account is created on that computer) is not likely part of an attempt to destroy data. Mr. Lynch acknowledges further that, "[b]ased on [his] experience, the evidence of files and folders from a previous installation of Windows and the bulk copying of data to the computer shortly after the July 14, 2010 installation of Windows is consistent with the re-installation of the operating system, an operation sometimes performed as part of computer troubleshooting or maintenance."<sup>36</sup> This is in principle what occurred on all instances of alleged data destruction on Mr. Zambrano's computers.

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<sup>35</sup> Lynch Zambrano Report at 11.

<sup>36</sup> Lynch Zambrano Report at 11.

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71. In my experience, the creation of a new user on July 9, 2012 and the copying of files into a backup folder are consistent with computer troubleshooting or maintenance of a computer. Mr. Lynch's analysis provides nothing to show that this creation of a profile and data backup were associated with anything but standard computer troubleshooting or maintenance.

**E. Mr. Lynch provides no scientific evidence that the Microsoft Office OSession logs are a reliable basis of his conclusions**

72. Although Mr. Lynch discusses Microsoft Office Session ("OSession") logs with regards to the use of Microsoft Office products on both the New and Old Computer,<sup>37</sup> he does not describe the analysis he performed or any of the documentation upon which he relied to support his conclusions. Mr. Lynch gives no explanation or documentation as to why he believes that a Microsoft OSession log entry is created every time a Microsoft Office product is opened. Nor does Mr. Lynch offer any evidence or documentation as to whether the logs accurately record Microsoft Office usage. He also does not offer any evidence or documentation as to what the logs actually track. Without any of this information, the conclusions that Mr. Lynch has provided are speculation and without scientific merit.

73. I am aware of no documentation on the Microsoft Office Session log from Microsoft that describes its functionality. Thus, there is no accepted explanation of how the log feature works, or whether it is a reliable indicator of anything. In my experience the log entries have been inconsistent (if they are created at all) on various computers I have analyzed.

**F. The forensic evidence demonstrates that the most likely explanation for formatting or font differences between documents with Judgment text is copying and pasting from another document on Mr. Zambrano's own computers**

74. Mr. Lynch states that versions of documents on Mr. Zambrano's computers with Judgment text have formatting changes within them indicating that some text in these documents may have been copied from other, pre-existing documents. In my experience, this formatting change is consistent with a person copying text from other documents. For example, if a user has two documents that each uses a different font, when the user copies text from one document to another, the copied text may retain the original font. Given the evidence here that the *Providencias.docx* file contains two different fonts, Times New Roman and Bookman Old Style, and that Bookman Old Style is not a default font in Microsoft Word, I looked for other documents on Mr. Zambrano's computers that use Bookman Old Style.

75. I found that the temporary file ~WRL0001.tmp, a version of *Caso Texaco.doc* last saved on January 19, 2011 on the Old Computer and a known source of some of the Judgment's text, was written using Bookman Old Style. In my expert opinion this fact indicates that it is at least as likely that the font changes Mr. Lynch observed are a result of copying text from *Caso Texaco.doc* into *Providencias.docx* than that the text was copied from some other document not identified by Mr. Lynch.

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<sup>37</sup> Lynch Zambrano Report at 22, 38.

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76. Furthermore, Mr. Lynch's conclusion that the font differences imply that Mr. Zambrano was not the author of this copied data<sup>38</sup> is not supported by the forensic evidence. Nothing in the forensic evidence or Mr. Lynch's analysis indicates that text copied from one document to another was authored by someone other than Mr. Zambrano.

**G. There is no evidence on either the Old or New Computer of the existence of, or communications with, email addresses of various individuals connected to the Lago Agrio Litigation**

77. Winston & Strawn LLP provided me with a list of email addresses<sup>39</sup> associated with, among others, Steven Donziger, Juan Pablo Saenz, Pablo Fajardo, Luis Yanza, Julio Prieto, and Alberto Guerra. I was asked to search both the Old Computer and the New Computer for the existence of any of those email addresses or communications dealing with those email addresses.

78. Using X-Ways forensic software, I searched both the Old Computer and New Computer for any text containing the email addresses in Exhibit 8. This search was performed over all active and deleted data on both computers. No instances of these email addresses were located on either the Old Computer or the New Computer.

## VI. CONCLUSIONS

79. The review of both the Old Computer and the New Computer formerly used by Mr. Zambrano shows that documents were created in October 2010 that were edited and saved many times until March 2011. These documents contain text that would eventually be issued as the Lago Agrio Judgment and the March 3 Clarification Order. This includes evidence of versions of both the *Providencias.docx* and the *Caso Texaco.doc* files being opened and edited hundreds of times between October 2010 and March 2011. This evidence is consistent with a user of these two computers editing and adding data to the *Providencias.docx* and *Caso Texaco.doc* files over time, and is not consistent with a user saving or copying a finished document that was prepared on another computer into these versions.

80. There is also evidence that the *Providencias.docx* files that existed on the Old Computer were accessed from both the Old Computer and the New Computer—using a mapped network drive, so that a non-technical person accessing the files would not know from which computer the files were being accessed.

81. There were no hits in either the Old or New Computers showing that any data was sent or received connected with the email addresses provided to me by Winston & Strawn LLP, including, among others, those connected to Steven Donziger, Juan Pablo Saenz, Pablo Fajardo, Luis Yanza, Julio Prieto, and Alberto Guerra.

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<sup>38</sup> Lynch Zambrano Report at 27-31.

<sup>39</sup> A full list of the searched-for email addresses is attached as Exhibit 8.

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82. Mr. Lynch's analysis of both the Old and New Computers using the Microsoft Office Sessions logs is not supported by any industry documentation or analysis and therefore is conjecture.

83. The forensic evidence and the USB drive analysis performed by Mr. Lynch show that no USB devices were attached to Mr. Zambrano's computers between February 1, 2011 and February 23, 2011. The evidence also shows that there was only one device attached to Mr. Zambrano's computers between January 20, 2011 and February 23, 2011. Based upon the files accessed and the Volume Name (EVELYN) of the USB device, this appears to be a personal USB device. There is no evidence that any documents related to the Lago Agrio proceeding were accessed from this device.

84. Neither the forensic evidence nor Mr. Lynch's analysis show that any new documents related to the Lago Agrio litigation were opened on Mr. Zambrano's computers from USB devices between October 2010 and March 2011—just two copies of the same June 2010 document that appear to have been provided to Mr. Zambrano by the Lago Agrio Court secretary. There is no evidence indicating that a user opened any other files related to the Lago Agrio litigation from any USB device and copied data from those files to documents on either the Old Computer or the New Computer.

85. Mr. Lynch's description of the copying of data to both the Old and New Computers is not consistent with deliberate data destruction. The examples that Mr. Lynch provides are consistent with normal maintenance of the computer, i.e., data backup and the creation of a new user on a computer. The statements in the Claimants' brief that there is forensic evidence that deliberate data destruction occurred is incorrect. The overwriting that Mr. Lynch references in his report is more consistent with the setup of a new user and consequent typical transfer of data.

86. The analysis of the Internet History shows that there are numerous days from October 2010 to February 2011 on which Ms. Calva's Facebook account was accessed. This is consistent with Mr. Zambrano's testimony in the US RICO Case that Ms. Calva used both the Old Computer and the New Computer during this time frame.

87. The analysis of the Internet History shows that websites that could be used for legal research and language translation were accessed from October 2010 to February 2011. This, too, is consistent with Mr. Zambrano's testimony in the US RICO Case.

  
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J. Christopher Racich  
President, Vestigant, LLC