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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 TOMAS MAYNAS CARIJANO;
18 ROXANA GARCIA DAHUA, a minor,
by her guardian ROSARIO DAHUA
19 HUALINGA; ROSARIO DAHUA
HUALINGA, personally and on behalf of
her minor child ROXANA GARCIA
20 DAHUA pursuant to Cal. Code Civ. Proc.
§ 376; NILDA GARCIA SANDI, a minor,
21 by her guardian ROSALBINA
HUALINGA SANDI; ROSALBINA
HUALINGA SANDI, personally and on
22 behalf of her minor child NILDA
GARCIA SANDI pursuant to Cal. Code
23 Civ. Proc. § 376; ELENA MAYNAS
MOZAMBITE, a minor, by her guardian
24 GERARDO MAYNAS HUALINGA;
GERARDO MAYNAS HUALINGA,
25 personally and on behalf of his minor
child ELENA MAYNAS MOZAMBITE
26 pursuant to Cal. Code Civ. Proc. § 376;
ALAN CARIAJANO SANDI, a minor, by
27 his guardian PEDRO SANDI
WASHINGTON; PEDRO SANDI
28 WASHINGTON, personally and on behalf

**CASE NO. CV 07-5068 PSG
(PJWx)**

**Before: The Hon. Philip S.
Gutierrez**

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF,
RESTITUTION AND
DISGORGEMENT OF PROFITS**

1. NEGLIGENCE

2. STRICT LIABILITY

3. BATTERY

4. MEDICAL MONITORING

**5. INJUNCTIVE RELIEF OR
DAMAGES IN LIEU OF
INJUNCTION**

1 of his minor child ALAN CARIAJANO
 2 SANDI pursuant to Cal. Code Civ. Proc. §
 3 376; ELISA HUALINGA MAYNAS, a
 4 minor, by her guardians DANIEL
 5 HUALINGA SANDI and ANDREA
 6 MAYNAS CARIAJANO; DANIEL
 7 HUALINGA SANDI, personally and on
 8 behalf of his minor child ELISA
 9 HUALINGA MAYNAS pursuant to Cal.
 10 Code Civ. Proc. § 376; ANDREA
 11 MAYNAS CARIAJANO, personally and
 12 on behalf of her minor child ELISA
 13 HUALINGA MAYNAS pursuant to Cal.
 14 Code Civ. Proc. § 376; CERILO
 15 HUALINGA HUALINGA, a minor, by
 16 his guardians ROMAN HUALINGA
 17 SANDI and ROSA HUALINGA;
 18 ROMAN HUALINGA SANDI,
 19 personally and on behalf of his minor
 20 child CERILO HUALINGA HUALINGA
 21 pursuant to Cal. Code Civ. Proc. § 376;
 22 ROSA HUALINGA, personally and on
 23 behalf of her minor child CERILO
 24 HUALINGA HUALINGA pursuant to
 25 Cal. Code Civ. Proc. § 376; RODOLFO
 26 MAYNAS SUAREZ, a minor, by his
 27 guardians HORACIO MAYNAS
 CARIAJANO and DELMENCIA
 SUAREZ DIAZ; HORACIO MAYNAS
 CARIAJANO, personally and on behalf of
 his minor child RODOLFO MAYNAS
 SUAREZ pursuant to Cal. Code Civ. Proc.
 § 376; DELMENCIA SUAREZ DIAZ,
 personally and on behalf of her minor
 child RODOLFO MAYNAS SUAREZ
 pursuant to Cal. Code Civ. Proc. § 376;
 KATIA HUALINGA SALAS, a minor, by
 her guardians ALEJANDRO HUALINGA
 CHUJE and LINDA SALAS PISONGO;
 ALEJANDRO HUALINGA CHUJE,
 personally and on behalf of his minor
 child KATIA HUALINGA SALAS
 pursuant to Cal. Code Civ. Proc. § 376;
 LINDA SALAS PISONGO, personally
 and on behalf of her minor child KATIA
 HUALINGA SALAS pursuant to Cal.
 Code Civ. Proc. § 376; FRANCISCO
 PANAIFO PAIMA, a minor, by his
 guardians MILTON PANAIFO DIAZ and
 ANITA PAIMA CARIAJANO; MILTON
 PANAIFO DIAZ, personally and on
 behalf of his minor child FRANCISCO
 PANAIGO PAIMA pursuant to Cal. Code

6. WRONGFUL DEATH

7. FRAUD AND
MISREPRESENTATION

8. PUBLIC NUISANCE

9. PRIVATE NUISANCE

10. TRESPASS

11. VIOLATION OF BUS. &
PROFS. CODE §§ 17200 et. seq.

12. INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS

1 Civ. Proc. § 376; ANITA PAIMA
2 CARIAJANO, personally and on behalf of
3 her minor child FRANCISCO PANAIGO
4 PAIMA pursuant to Cal. Code Civ. Proc.
5 § 376; ADOLFINA GARCIA SANDI,
6 personally and on behalf of her deceased
7 minor child OLIVIO SALAS GARCIA
8 pursuant to Cal. Code Civ. Proc. § 376;
9 individually and on behalf of all others
10 similarly situated;

11 AMAZON WATCH, INC., a Montana
12 corporation,

13 Plaintiffs,

14 vs.

15 OCCIDENTAL PETROLEUM
16 CORPORATION, a Delaware
17 corporation; OCCIDENTAL PERUANA,
18 INC., a California corporation; MOE 1
19 through MOE 10,

20 Defendants.

21 Counsel for plaintiffs (continued from first page):

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1 Plaintiffs, by their guardians and by their attorneys, bring this action on
2 behalf of themselves and all other persons similarly situated. On information and
3 belief, Plaintiffs allege as follows:

4 **INTRODUCTION**

5 1. This case arises out of the irresponsible and illegal practices of
6 Occidental Petroleum Corporation and Occidental Peruana, Inc. (together, "Oxy",
7 the "Company", or "defendants"), in the Peruvian Amazon over the course of three
8 decades. In its unchecked effort to profit from Amazonian oil, Oxy engaged in
9 irresponsible, reckless, immoral and illegal practices in and around the ancestral
10 and current territory of the Achuar indigenous people. These practices were below
11 accepted industry standards, prohibited by law, and Oxy knew they would result in
12 the severe contamination of water and land.

13 2. Oxy knew that the contamination, which continues today, would
14 cause and has caused severe health problems and other injuries to the Achuar
15 indigenous communities, including death, epidemic lead and cadmium poisoning,
16 exposure to carcinogens and mutagens, substantial harm to their livelihoods,
17 contamination to their streams and fields, severe emotional distress, and continuing
18 trespass on their lands.

19 **PARTIES**

20 3. Plaintiff TOMAS MAYNAS CARIJANO is a citizen of Peru, a
21 resident of the community of Nueva Jerusalen, and a member of the Achuar
22 indigenous group. Tomas Maynas is the Apu, or traditional spiritual leader, of
23 Nueva Jerusalen. He brings this action on his own behalf and on behalf of others
24 similarly situated.

25 4. Plaintiff ROXANA GARCIA DAHUA is a citizen of Peru, a resident
26 of the community of Pampa Hermosa, and a member of the Achuar indigenous
27 group. She is a minor, and brings this action through her guardian, ROSARIO

1 DAHUA HUALINGA, who is her mother. She brings this action on her own
2 behalf and on behalf of others similarly situated.

3 5. Plaintiff ROSARIO DAHUA HUALINGA is a citizen of Peru, a
4 resident of the community of Pampa Hermosa, and a member of the Achuar
5 indigenous group. She brings this action on her own behalf, on behalf of her
6 unmarried minor child ROSARIO DAHUA HUALINGA pursuant to California
7 Code of Civil Procedure § 376, and on behalf of others similarly situated.

8 6. Plaintiff NILDA GARCIA SANDI is a citizen of Peru, a resident of
9 the community of Pampa Hermosa, and a member of the Achuar indigenous group.
10 She is a minor, and brings this action through her guardian, ROSALBINA
11 HUALINGA SANDI, who is her mother. She brings this action on her own behalf
12 and on behalf of others similarly situated.

13 7. Plaintiff ROSALBINA HUALINGA SANDI is a citizen of Peru, a
14 resident of the community of Pampa Hermosa, and a member of the Achuar
15 indigenous group. She brings this action on her own behalf, on behalf of her
16 unmarried minor child NILDA GARCIA SANDI pursuant to California Code of
17 Civil Procedure § 376, and on behalf of others similarly situated.

18 8. Plaintiff ELENA MAYNAS MOZAMBITE is a citizen of Peru, a
19 resident of the community of Pampa Hermosa, and a member of the Achuar
20 indigenous group. She is a minor, and brings this action through her guardian,
21 GERARDO MAYNAS HUALINGA, who is her father. She brings this action on
22 her own behalf and on behalf of others similarly situated.

23 9. Plaintiff GERARDO MAYNAS HUALINGA is a citizen of Peru, a
24 resident of the community of Pampa Hermosa, and a member of the Achuar
25 indigenous group. He brings this action on his own behalf, on behalf of his
26 unmarried minor child ELENA MAYNAS MOZAMBITE pursuant to California
27 Code of Civil Procedure § 376, and on behalf of others similarly situated.

10. Plaintiff ALAN CARIAJANO SANDI is a citizen of Peru, a resident of the community of Sauki, and a member of the Achuar indigenous group. He is a minor, and brings this action through his guardian, PEDRO SANDI WASHINGTON, who is his father. He brings this action on his own behalf and on behalf of others similarly situated.

11. Plaintiff PEDRO SANDI WASHINGTON is a citizen of Peru, a resident of the community of Saukí, and a member of the Achuar indigenous group. He brings this action on his own behalf, on behalf of his unmarried minor child ALAN CARIAJANO SANDI pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

12. Plaintiff ELISA HUALINGA MAYNAS is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. She is a minor, and brings this action through her guardians, DANIEL HUALINGA SANDI and ANDREA MAYNAS CARIAJANO, who are her parents. She brings this action on her own behalf and on behalf of others similarly situated.

13. Plaintiff DANIEL HUALINGA SANDI is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. He brings this action on his own behalf, on behalf of his unmarried minor child ELISA HUALINGA MAYNAS pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

14. Plaintiff ANDREA MAYNAS CARIAJANO is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. She brings this action on her own behalf, on behalf of her unmarried minor child ELISA HUALINGA MAYNAS pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

15. Plaintiff CERILO HUALINGA HUALINGA is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. He is a minor, and brings this action through his guardians, ROMAN HUALINGA SANDI and ROSA HUALINGA, who are his parents. He brings this action on his own behalf and on behalf of others similarly situated.

16. Plaintiff ROMAN HUALINGA SANDI is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. He brings this action on his own behalf, on behalf of his unmarried minor child CERILO HUALINGA HUALINGA pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

17. Plaintiff ROSA HUALINGA is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. She brings this action on her own behalf, on behalf of her unmarried minor child CERILO HUALINGA HUALINGA pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

18. Plaintiff RODOLFO MAYNAS SUAREZ is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. He is a minor, and brings this action through his guardians, HORACIO MAYNAS CARIAJANO and DELMENCIA SUAREZ DIAZ, who are his parents. He brings this action on his own behalf and on behalf of others similarly situated.

19. Plaintiff HORACIO MAYNAS CARIAJANO is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group. He brings this action on his own behalf, on behalf of his unmarried minor child RODOLFO MAYNAS SUAREZ pursuant to California Code of Civil Procedure § 376, and on behalf of others similarly situated.

20. Plaintiff DELMENCIA SUAREZ DIAZ is a citizen of Peru, a resident of the community of Antioquia, and a member of the Achuar indigenous group.

1 She brings this action on her own behalf, on behalf of her unmarried minor child
2 RODOLFO MAYNAS SUAREZ pursuant to California Code of Civil Procedure §
3 376, and on behalf of others similarly situated.

4 21. Plaintiff KATIA HUALINGA SALAS is a citizen of Peru, a resident
5 of the community of José Olaya, and a member of the Achuar indigenous group.
6 She is a minor, and brings this action through her guardians, ALEJANDRO
7 HUALINGA CHUJE and LINDA SALAS PISONGO, who are her parents. She
8 brings this action on her own behalf and on behalf of others similarly situated.

9 22. Plaintiff ALEJANDRO HUALINGA CHUJE is a citizen of Peru, a
10 resident of the community of José Olaya, and a member of the Achuar indigenous
11 group. He brings this action on his own behalf, on behalf of his unmarried minor
12 child KATIA HUALINGA SALAS pursuant to California Code of Civil Procedure
13 § 376, and on behalf of others similarly situated.

14 23. Plaintiff LINDA SALAS PISONGO is a citizen of Peru, a resident of
15 the community of José Olaya, and a member of the Achuar indigenous group. She
16 brings this action on her own behalf, on behalf of her unmarried minor child
17 KATIA HUALINGA SALAS pursuant to California Code of Civil Procedure §
18 376, and on behalf of others similarly situated.

19 24. Plaintiff FRANCISCO PANAIFO PAIMA is a citizen of Peru, a
20 resident of the community of Nueva Jerusalem, and a member of the Achuar
21 indigenous group. He is a minor, and brings this action through his guardians,
22 MILTON PANAIFO DIAZ and ANITA PAIMA CARIAJANO, who are his
23 parents. He brings this action on his own behalf and on behalf of others similarly
24 situated.

25 25. Plaintiff MILTON PANAIFO DIAZ is a citizen of Peru, a resident of
26 the community of Nueva Jerusalem, and a member of the Achuar indigenous group.
27 He brings this action on his own behalf, on behalf of his unmarried minor child

1 FRANCISCO PANAIPO PAIMA pursuant to California Code of Civil Procedure
2 § 376, and on behalf of others similarly situated.

3 26. Plaintiff ANITA PAIMA CARIJANO is a citizen of Peru, a resident
4 of the community of Nueva Jerusalem, and a member of the Achuar indigenous
5 group. She brings this action on her own behalf, on behalf of her unmarried minor
6 child FRANCISCO PANAIPO PAIMA pursuant to California Code of Civil
7 Procedure § 376, and on behalf of others similarly situated.

8 27. Plaintiff ADOLFINA GARCIA SANDI is a citizen of Peru, a resident
9 of the community of José Olaya, and a member of the Achuar indigenous group.
10 She brings this action individually and on behalf of her deceased son OLIVIO
11 SALAS GARCIA, whose claims have survived his death, pursuant to California
12 Code of Civil Procedure § 376, and on behalf of others similarly situated.

13 28. Plaintiffs TOMAS MAYNAS CARIJANO, ROXANA GARCIA
14 DAHUA, ROSARIO DAHUA HUALINGA, NILDA GARCIA SANDI,
15 ROSALBINA HUALINGA SANDI, ELENA MAYNAS MOZAMBITE,
16 GERARDO MAYNAS HUALINGA, ALAN CARIJANO SANDI, PEDRO
17 SANDI WASHINGTON, ELISA HUALINGA MAYNAS, DANIEL HUALINGA
18 SANDI, ANDREA MAYNAS CARIJANO, CERILO HUALINGA
19 HUALINGA, ROMAN HUALINGA SANDI, ROSA HUALINGA, RODOLFO
20 MAYNAS SUAREZ, HORACIO MAYNAS CARIJANO, DELMENCIA
21 SUAREZ DIAZ, KATIA HUALINGA SALAS, ALEJANDRO HUALINGA
22 CHUJE, LINDA SALAS PISONGO, FRANCISCO PANAIPO PAIMA, MILTON
23 PANAIPO DIAZ, ANITA PAIMA CARIJANO, and ADOLFINA GARCIA
24 SANDI are referred to herein as the "Achuar Plaintiffs."

25 29. Plaintiffs ROXANA GARCIA DAHUA, NILDA GARCIA SANDI,
26 ELENA MAYNAS MOZAMBITE, ALAN CARIJANO SANDI, ELISA
27 HUALINGA MAYNAS, CERILO HUALINGA HUALINGA, RODOLFO

1 MAYNAS SUAREZ, KATIA HUALINGA SALAS, and FRANCISCO PANAIFO
2 PAIMA, or alternatively their parents proceeding on their behalf pursuant to
3 California Code of Civil Procedure § 376, are referred to herein as the “Achuar
4 Children Plaintiffs.”

5 30. Plaintiff AMAZON WATCH, INC., (“Amazon Watch”) is a Montana
6 non-profit corporation with its principal place of business in San Francisco,
7 California. Amazon Watch works to defend the environment and rights of the
8 indigenous peoples of the Amazon basin. As part of this mission, for the past
9 several years, Amazon Watch, which owns shares of stock in Oxy, has been
10 working on behalf of the Achuar people, including Plaintiff Class Members, to
11 monitor the actions of Oxy and to attempt to prevent Oxy from further
12 contaminating the Achuar lands. In addition, Amazon Watch has lobbied Oxy to
13 take corrective actions to clean up the pollution it has caused and to compensate
14 the Achuar for the damage that Oxy has caused them. In particular, Amazon
15 Watch has organized meetings with Oxy representatives in California and has
16 undertaken efforts throughout the United States, and in particular in Los Angeles,
17 which were directed towards Oxy, including attending shareholder meetings in Los
18 Angeles and setting up meetings between Oxy officials and representatives of the
19 Achuar.

20 31. On information and belief, defendant OCCIDENTAL PETROLEUM
21 CORPORATION is a Delaware corporation headquartered in Los Angeles,
22 California.

23 32. On information and belief, Defendant OCCIDENTAL PERUANA,
24 INC., is a California corporation which conducts business in and is headquartered
25 in Los Angeles, California. On information and belief, at all relevant times,
26 defendant Occidental Peruana, Inc., has been a wholly-owned subsidiary of
27 defendant Occidental Petroleum Corporation.

33. Plaintiffs are ignorant of the true names and capacities of the Defendants who are sued herein as MOES 1–10, and Plaintiffs sue these Defendants by such fictitious names and capacities. These fictitiously-named defendants include, but are not limited to, direct and indirect subsidiaries of defendant Occidental Petroleum Corp., affiliates and related corporations, and past and current officers and employees of defendant Occidental Petroleum Corp., its direct and indirect subsidiaries, and affiliates and related corporations. Plaintiffs will amend this Complaint to allege the Moes’ true names and capacities when ascertained. Plaintiffs are informed and believe, and on that basis allege, that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and that the injuries to Plaintiffs herein alleged were proximately caused by the conduct of such defendants.

34. At all times herein material, with respect to the events at issue, defendants Occidental Petroleum Corp., Occidental Peruana, Inc., and Moes 1–10, conspired with each other, and/or acted in concert, and/or aided or abetted each others' actions, and/or were in an agency or alter ego or joint venture relationship, and were acting within the course and scope of such conspiracy, concerted activity, aiding and abetting, and/or agency or alter ego or joint venture relationship. As described herein, "agency" includes agency by ratification. Whenever reference is made in this complaint to any conduct by a defendant, such allegations and references shall be construed to mean the conduct of each of the defendants, and all of them, acting individually, jointly and severally.

JURISDICTION AND VENUE

35. This case was originally filed in California Superior Court, which had jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI § 10, because this case is a cause not given by statute to other trial courts. This action is brought by Plaintiffs pursuant to, *inter alia*, the

1 California Business and Professions Code §§ 17200 et seq. Plaintiffs and
2 defendants are “persons” within the meaning of California Business and
3 Professions Code § 17201.

4 36. Defendants removed this action to this Court, asserting federal
5 jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

6 37. This Court has jurisdiction over Occidental Petroleum Corp. because
7 it conducts business in and has its corporate headquarters in Los Angeles,
8 California. This Court has jurisdiction of Occidental Peruana, Inc., because it is a
9 California corporation and a citizen of California. Defendants have engaged, and
10 continue to engage, in substantial and continuous business practices in the State of
11 California, including the City and County of Los Angeles.

12 38. Venue is proper in this Court because a substantial portion of the
13 events that give rise to Plaintiffs’ complaint occurred in Los Angeles County.

14 **GENERAL FACTS AND ALLEGATIONS**

15 39. The Achuar indigenous people have resided in what is now northern
16 Peru for centuries, if not millenia. The Achuar live along systems of rivers in the
17 Amazon basin. One group of Achuar has traditionally resided, and continues to
18 reside, in communities along the Corrientes River and its tributary the Macusari
19 River, in the Upper Corrientes Basin.

20 40. Prior to Oxy’s involvement in the area, the Upper Corrientes Basin
21 was largely pristine rainforest with no industrial activities. To date, the oil
22 production facilities built by Oxy are still the only industrial facilities in the area.

23 41. The Upper Corrientes Basin remains quite remote and relatively
24 inaccessible. It is not reachable by road, and the only access by air is by chartered
25 small planes or helicopters landing at oil company facilities. General access to the
26 communities is only by river. The Achuar communities are at least 24 hours’
27 journey by river from the nearest major airport, in the city of Iquitos, which is itself

1 not accessible by road from any other major city. While relatively large boats can
2 reach some of the Achuar communities, the uppermost communities, such as
3 Nueva Jerusalen on the Macusari River, are only accessible by small canoes during
4 much of the year.

5 6 7 **Oxy's History in Lot 1AB**

8 42. The Peruvian government signed its first operating contract with Oxy
9 in June of 1971, which granted Oxy a concession known as Lot 1A. Oxy was later
10 granted an additional concession known as Lot 1B; these two lots were later
11 combined into a concession now known as Lot 1AB. Lot 1AB includes the upper
12 portion of the Corrientes River and almost the entire Macusari River.

13 43. Oil was first discovered in the area in 1972, soon after Oxy's first
14 concession was granted; this discovery sparked intense exploration and extraction
15 activities.

16 44. Oxy developed Lot 1AB into the largest oil operation in Peru,
17 producing up to 42% of Peru's oil at one time. Oxy's accumulated production in
18 Lot 1AB from 1972 to 2000 totaled 68% of total historical oil production in the
19 Peruvian Amazon and 26% of total historical oil production in Peru. By 2000, Lot
20 1AB was still producing 17% of Peru's total oil production.

21 45. These intensive oil operations required the early construction of wells,
22 separation batteries (in which oil is separated from water and other compounds),
23 roads, heliports, and camps; pipelines and refineries were later constructed in the
24 area. By 2000, Oxy was operating 110 active oil wells, in addition to 75 inactive
25 wells and 29 abandoned wells.

1 46. Oxy transported its oil by pipelines throughout Lot 1AB and to other
2 parts of Peru. The networks of pipelines in Lot 1AB are more than 530 kilometers
3 long.

4 47. Lot 1AB covers parts of the basins of the Corrientes River, the
5 Pastaza River, and the Tigre River, all tributaries of the Amazon River. Of the
6 approximately 19 major oil installations in Lot 1AB, three are located on the
7 Macusari River and its tributary streams and five are located on the Corrientes
8 River and its tributary streams.

10 **Oxy's Contaminating Practices**

11 48. Oxy's oil operations in Lot 1AB contaminated Achuar land, and the
12 waterways on which the Achuar people depend, with pollutants such as heavy
13 metals, hydrocarbons, and other products of the oil industry. The Peruvian
14 government itself, through its National Office of Evaluation of Natural Resources
15 (ONERN), has classified Lot 1AB as "one of the most critical environmental zones
16 most damaged in the country." The Ministry of Energy and Mines' Bureau of
17 Environmental Affairs called the area one of Peru's most environmentally critical.

18 49. Oxy separated crude oil at several separation batteries located along
19 tributaries of the Corrientes River and the Macusari River, discharging millions of
20 gallons of toxic produced waters into local waterways in the process. The
21 produced waters contained harmful compounds including heavy metals such as
22 lead, cadmium, chromium, mercury, and arsenic, organic compounds such as
23 aromatic hydrocarbons, radioactive compounds, and cyanide, and were extremely
24 saline. Oxy contaminated the local waterways with their release of these
25 compounds.

26 50. Despite the fact that the industry standard in the oil industry was to
27 reinject produced waters back into the well from which the oil is drawn, that

1 reinjection was specifically required by law in the United States, and that Peruvian
2 law prohibited water pollution, Oxy never reinjected any produced waters in its
3 operations in Lot 1AB.

4 51. Gases were also produced as part of the oil production and separation
5 process, which Oxy burned through a flaring process. These flares release carbon
6 dioxide, nitrogen oxide, and sulfur dioxide, which pollutes the air, contributes to
7 climate change, and then returns to the soil and water sources in the form of acid
8 rain.

9 52. Oxy also stored chemical wastes and other toxic products in unlined
10 earthen pits and pools and using other methods that failed to provide adequate
11 protection against leaching and contaminating the environment. These toxic
12 compounds also included heavy metals and organic compounds, many of which
13 found their way into the local waterways.

14 53. During this period, the industry standard in the oil industry for
15 harmful wastes at oil production sites was to store such products in tanks or in
16 storage areas with impermeable barriers to prevent release into the environment.

17 54. Oxy also released oil and other compounds into the environment
18 through frequent spills and ruptures of pipelines, which often sent crude oil directly
19 into the Corrientes or Macusari River.

20 55. On information and belief, Oxy failed to exercise reasonable care in
21 all of the above practices, and knew or should have known that they would cause
22 harm to the environment and human health.

23 **The Harmful Effects of and Injuries Due to the Contamination**

24 56. Oxy's contaminating practices have caused or contributed to a range
25 of problems.

26 57. The Achuar Plaintiffs are indigenous Achuar people and reside in the
27 communities of Pampa Hermosa, Saukí, José Olaya, Antioquia, and Nueva

1 Jerusalem. These communities are located on the Corrientes and Macusari Rivers,
2 located in or immediately downstream from Oxy's operations in Lot 1AB.

3 58. The Achuar people depend on the Corrientes and Macusari Rivers and
4 their tributaries for drinking, bathing, washing, fishing, and other services. The
5 Achuar come into contact with harmful compounds released by Oxy through their
6 contact with the water and by other means. All Achuar Plaintiffs have been
7 exposed to Oxy's contamination.

8 59. Contact with these compounds, directly and indirectly, has led to
9 health problems among the Achuar people, including the Achuar Plaintiffs, such as
10 skin rashes, aches and pains, gastrointestinal problems including vomiting blood,
11 harm to the kidneys, and deaths. The exposure to contaminants has also caused
12 cancer and increased the risk of cancer. Lead poisoning, which is known to cause
13 harmful developmental effects, is widespread among the Achuar children, and
14 cadmium poisoning, which can cause a range of negative health impacts, is
15 widespread among the entire population.

16 60. Contact with these compounds, directly and indirectly, has also led to
17 the Achuar Plaintiffs' severe emotional distress in the forms of fear, worry,
18 anxiety, grief, hopelessness, despair, depression, pain and mental suffering.

19 61. Olivio Salas García, the deceased son of plaintiff Adolfinia García
20 Sandi, died as a direct result of exposure to Oxy's contaminants. Olivio's family
21 originally lived in the traditional Achuar manner, dispersed in the rainforest.
22 When he was six years old, he and his family moved to the community of José
23 Olaya, on the Corrientes River.

24 62. Olivio's family was used to drinking uncontaminated stream water
25 and did not know that the river water could be contaminated, and had not been
26 warned of potential contamination by Oxy. Olivio drank the water from the river.

63. Olivio had previously been healthy. Shortly after drinking the contaminated river water, Olivio developed fever, stomach pains, and started vomiting and passing blood. Adolfina took him to see a doctor who worked for Oxy, who told her to take Olivio home to die.

64. Two days after becoming sick, Olivio died.

65. The Achuar Children Plaintiffs have all been tested for lead in their blood. All have tested at levels higher than 10 ug/dL at least once in the past year, and are therefore suffering or at risk of suffering developmental and other harms from lead poisoning.

66. Epidemiological studies in José Olaya and Nueva Jerusalén have shown that approximately 99% of the individuals tested show higher than 0.1 ug/dL of cadmium in their blood, the established value for safeguarding human health. On information and belief, all Achuar Plaintiffs have greater than 0.1 ug/dL, and are therefore suffering or at risk of suffering injuries such as cancer and liver and kidney damage.

67. All Achuar Plaintiffs have been exposed to known carcinogens such as polycyclic aromatic hydrocarbons and other byproducts of petroleum production, and are therefore suffering or at risk of suffering cancer.

68. Oxy's contamination of the waterways used by the Achuar, including the Achuar Plaintiffs, has led to decreasing yields of edible fish, one of the primary staples of the Achuar diet. Contaminated lands and water have also harmed the wild game on which the Achuar depend. Some areas are so highly contaminated that all fish and aquatic life have disappeared; those that remain are either laden with high concentrations of toxins and carcinogens or are genetically deformed. Birds and animals that feed on fish or drink the contaminated waters often die or become diseased. Oil spills and acid rain have in some areas caused the complete eradication of all vegetation or aquatic life in the area of the break, while the

1 release of wastes has decimated entire swaths of forest, including plant and animal
2 life.

3 69. All Achuar Plaintiffs have had their ability to fish, hunt game, and
4 gather food harmed by Oxy's contamination as described above.

5 70. Oxy's contamination of the water has also harmed the crops grown by
6 the Achuar. In some cases, when the rivers flood they inundate the Achuars'
7 fields, contaminating the land and leaving behind oil and other chemicals when
8 they drain. Soils are left contaminated and unable to produce crops, such as
9 plantain and cassava. The loss of flora and fauna has also had significant health
10 impacts related to poor nutrition, as the communities in the region do not have
11 alternative sources of food and are unable to purchase food from elsewhere due to
12 lack of resources and extreme isolation.

13 71. All Achuar Plaintiffs have had their ability to grow and consume
14 crops damaged by Oxy's contamination as described above.

15 72. Oxy's practices have also caused toxic compounds to enter the lands
16 of the Achuar people, either directly or indirectly, and have resulted in a
17 diminution of the value of those lands. The Achuar residents of the communities
18 affected by the pollution are the legal owners of their properties, including
19 agricultural lands, homes, cultivations, trees as sources of building materials and
20 firewood, as well as other assets. These properties have been devastated by oil
21 production and its resulting contamination and in many cases are utterly unfit for
22 human habitation or the growth of flora and fauna.

23 73. Due to Oxy's contamination of the region, agricultural production has
24 decreased significantly; in some areas, production has been rendered impossible.
25 Therefore, Oxy's contamination has taken the primary use of the property from the
26 affected individuals, which affects their ability to provide sustenance and shelter
27 for themselves and their families and derive earnings from their land.

74. All Achuar Plaintiffs have had the use and enjoyment of their property and property which they have the right to use injured by Oxy's contamination as described above.

75. Upon information and belief, Oxy was the only industry present in the area of residence of the Achuar Plaintiffs and the class during its thirty years of operation in the region. Oxy was the sole source of the contamination in the area in question during the time of its operations.

76. Oxy's unlawful, negligent, fraudulent, and reckless acts, omissions, and practices, conducted over a span of thirty years, are the direct cause of the injuries suffered to people and property in the region. The duration of the contamination and its magnitude caused it to compound over time and develop into one of the most massive environmental catastrophes in Peru's history.

77. The extraction, waste disposal, treatment, and transport technologies and systems used by Oxy were then transferred directly to the current operator of Lot 1AB, Pluspetrol, which has allowed the unlawful decisions and practices created by Oxy to continue as a toxic legacy left by the Company for years to come.

Oxy's Response to Contamination

78. Oxy knowingly increased the Achuar Plaintiffs' chances of becoming ill by failing to warn them of the dangers of drinking the water or eating contaminated food, or of being exposed to contaminants through other means.

79. Although Oxy maintained its own health personnel in Lot 1AB and occasionally allowed the Achuar to be treated by them, the Achuar were never told that their health problems might be due to exposure to toxic contaminants. Patients were often simply given aspirin to treat serious conditions, and Oxy told patients who became ill after bathing in and drinking contaminated water not to reveal the cause of their sickness to anyone else.

1 80. Oxy itself stated in 1997 that the majority of the health problems
2 treated by its clinicians were respiratory illnesses, gastrointestinal problems, and
3 dermatological infections. Despite this awareness of the disease and damage that
4 existed in the region, Oxy continued its negligent, fraudulent and unlawful
5 practices of contamination and deception, actively promoted the concealment of its
6 contribution to the damages seen in the area, passed down its practices and systems
7 to the subsequent operator of the lot, and thus allowed health and environmental
8 problems to develop and burgeon over time.

9 **Continuing contamination**

10 81. Oxy has sold its stake in Lot 1AB to Pluspetrol, an Argentine oil
11 company.

12 82. When Oxy transferred its ownership to Pluspetrol, Oxy had not
13 adequately cleaned up toxic wastes present in Lot 1AB in earthen pits and other
14 areas susceptible to leaching and contaminating the environment. Remediation of
15 numerous sites remains inadequate today.

16 83. Pluspetrol continues to operate the same wells, separation batteries,
17 pipelines, and other facilities designed and built by Oxy. In particular, Pluspetrol
18 continues to discharge produced water in the same manner as Oxy, continues to
19 store toxic chemicals and wastes improperly, and continues to spill crude oil and
20 other contaminants.

21 **Allegations of discovery, equitable tolling and/or fraudulent concealment**

22 84. The personal injuries of the Achuar Plaintiffs and the class occurred
23 as a result of exposure to hazardous materials and toxic substances. Due to lack of
24 adequate medical care and precautionary information during the entire period of
25 Oxy's operations through the present time, the Achuar Plaintiffs and the class had
26 not become aware of nor should they reasonably have become aware of their
27 injuries or the specific physical cause of those injuries, and they did not have

1 sufficient facts to put a reasonable person on inquiry notice that the injuries were
2 caused by the wrongful act of defendants before having been told so by a
3 physician.

4 85. The Achuar Plaintiffs and the class were ignorant of limitations
5 periods and of their causes of action due to extreme geographical isolation and lack
6 of legal and medical resources, which are circumstances beyond their control and
7 are not due to neglect.

8 86. Oxy knew that its operations were harmful to human health and real
9 property and intentionally and fraudulently concealed facts regarding the
10 hazardous nature of the wastes emitted and materials and technologies used.

11 87. Oxy deliberately concealed its wrongful conduct and the effects that
12 such conduct was having on the Achuar Plaintiffs and thereby induced some
13 plaintiffs and class members not to reveal the circumstances surrounding their
14 illnesses and provided inappropriate and inadequate solutions for the magnitude of
15 the problems suffered, causing plaintiffs and the class to remain ignorant of the
16 complete truth regarding the effects of Oxy's activities and suffer harm, and even
17 death, as a result.

18 88. As a result of Oxy's harmful operations and fraudulent concealment
19 of their impacts, Amazon Watch has expended financial resources and staff time to
20 investigate and expose Oxy's activities. These expenditures include, but are not
21 limited to, travel to Achuar territory and to Oxy's annual meetings, staff time spent
22 on investigating Oxy's conduct, and the costs of producing reports and other
23 materials demonstrating Oxy's contamination.

24 **Amazon Watch's activities towards Oxy**

25 89. In 2001, Amazon Watch was invited by the Achuar to visit their
26 territory and the communities affected by Occidental Petroleum. In or about
27 November and December 2001, representatives of Amazon Watch attended an

1 assembly of the Achuar to hear community concerns about the impacts of Oxy on
2 the Achuar territory. During this trip, Amazon Watch team gathered video footage
3 of Lot 1AB, specifically from pits near the Nuevo Andoas area. In May 2002, the
4 Achuar requested that Amazon Watch support video documentation of the affected
5 communities.

6 90. In 2003, Amazon Watch secured funds and coordinated a trip to the
7 Corrientes region for filmmaker Adam Goldstein to produce a short documentary
8 titled "Death in Zion." The video visually documented the contamination Oxy had
9 left in the Corrientes region of Peru in the area known as Lot 1AB. One of the
10 purposes in making the film was to educate the public, including the American
11 public and Oxy shareholders, about the damage that Oxy had done to the Achuar
12 people with the aim of having Oxy take responsibility for its actions and
13 preventing Oxy from doing further damage to the Achuar and the Amazon Basin.

14 91. On or about April 30 2004, Atossa Soltani, the Executive Director of
15 Amazon Watch, spoke at Oxy's annual meeting in Los Angeles and publicly raised
16 concerns about Oxy's practices in Peru, specifically contamination in Corrientes
17 and the Company's attempts to enter Achuar territory in the Pastaza region. She
18 delivered a copy of the video "Death in Zion" to Oxy representatives with the
19 understanding that the video be provided to the Oxy's Chief Executive Officer
20 ("CEO") and Board of Directors. Oxy's CEO Ray Irani publicly responded saying
21 he was sure Amazon Watch was misinforming shareholders and that the Company
22 always respected the environment and human rights. Shortly thereafter, Amazon
23 Watch also briefed institutional shareholders of Oxy, including the Interfaith
24 Council on Corporate Responsibility, who were engaged in dialogue with the
25 Company over its human rights practices.

26 92. In March 2005, Atossa Soltani of Amazon Watch and Dr. Lily La
27 Torre López, of the Peruvian organization Racimos Ungurahui, met with Oxy Vice
28

1 President Larry Meriage in Los Angeles and again conveyed Amazon Watch's
2 concerns about the grave health situation in Corrientes as well as the Company's
3 divide and conquer strategy in block 64. In this meeting, Mr. Meriage responded
4 said that Oxy transferred liability to Pluspetrol and in block 64 it agreed not to
5 enter without the Achuar's consent.

6 93. On or about May 6, 2005, at Oxy's shareholders' meeting in Los
7 Angeles, Atossa Soltani and Matt Finer at Save America's Forests, again publicly
8 questioned the Company's operations in Peru and held up the Death in Zion Video.
9 The CEO again dismissed Amazon Watch's assertion in front of the shareholders.
10 Copies of the video were given to Oxy's vice president of public relations and one
11 of the board members.

12 94. Several days later on May 9, 2005 in a subsequent meeting with Oxy
13 representatives in Los Angeles, Atossa Soltani again raised the concerns over the
14 Rio Corrientes region.

15 95. Several days after the meeting, on May 11, 2005, Mr. Meriage called
16 and requested Amazon Watch to please refrain from publicly denouncing Oxy
17 regarding Corrientes without giving the Company a chance to first respond.
18 Amazon Watch mailed Oxy a copy of Dr. Lily La Torre López's book "We only
19 want to live in Peace" which is an account of Occidental Petroleum's polluting
20 practices in Peru.

21 96. In or about June 2005, Amazon Watch sent Oxy officials declarations
22 from Achuar in the Corrientes region regarding the health and environmental
23 contamination found in the communities in Block 1 AB.

24 97. In addition, Amazon Watch began reaching out to American
25 journalists and media, including the Los Angeles Times and KABC Channel 7 in
26 Los Angeles, to interest them in traveling to Peru as part of a Peruvian
27 Congressional delegation to investigate the issue of Oxy's pollution. Amazon

1 Watch also developed fact sheets and informational materials and started planning
2 a speaking tour where the Achuar could come to the U.S. to counter Oxy's denials
3 of the problems it had created in Corrientes.

4 98. In August 2005, Amazon Watch organized a U.S. tour of the Achuar
5 to Los Angeles, San Francisco, New York, and Washington DC to publicly counter
6 Oxy's misinformation campaign that it had no responsibility for the destruction in
7 Peru and had operated in a responsible manner.

8 99. Amazon Watch organized a series of briefings for Oxy shareholders
9 nationwide including those who had been engaging Oxy in dialogue about its
10 social responsibility policies. Amazon Watch distributed the video "Death in
11 Zion" and urged shareholders to question Oxy management about its conduct in
12 Peru.

13 100. As a result of Amazon's Watch's actions, on or about August 2, 2005,
14 Achuar leaders met with Oxy officials for about 4.5 hours to discuss several topics,
15 including the problems in the Corrientes region. Again, Oxy responded that it
16 bears no responsibility for damage or clean up. The Achuar delivered letters
17 addressed to the Company.

18 101. Amazon Watch began an intensive phase of research to factually
19 document the problems in Corrientes and to publicize them to the American public,
20 Oxy shareholders and Oxy officials. In May 2006, Amazon Watch participated in
21 a fact-finding mission to the Rio Corrientes area to gather evidence from Achuar
22 communities affected by Oxy.

23 102. In July 2006, Amazon Watch led a second trip to the Corrientes
24 region accompanied by actress Q'orianka Kilcher. Following this trip, Amazon
25 Watch organized a media campaign in Peru and Los Angeles to counter the
26 Company's misinformation campaign. Ms. Kilcher sent Oxy a letter deploring the
27

1 Company for its irresponsible practices. Amazon Watch produced a short video
2 report about the trip and distributed it to the media and online.

3 103. In November 2006, Amazon Watch again invited Achuar leaders from
4 the Corrientes region to visit the U.S. cities of New York, Washington DC, San
5 Francisco, and Los Angeles in an attempt to expose the Company's practices in
6 Peru. Amazon Watch organized speaking events and briefings for shareholders,
7 the media, the public, and other environmental and human rights organizations.

8 104. In November 2006, in response to a request by Amazon Watch and
9 the Achuar for a meeting, Oxy Vice-President Larry Meriage emailed Atossa
10 Soltani of Amazon Watch to say Oxy could not meet and that "the company had
11 informed the government of Peru of our intention to cease all activities in Peru and
12 exit the country."

13 105. Amazon Watch and the Achuar held a press conference in Los
14 Angeles on or about December 6, 2006 welcoming the news that Oxy was leaving
15 blocks 64 and 101 on Achuar territory in Peru and demanding that Oxy assume
16 responsibility for clean up the Rio Corrientes and demanding that Government of
17 Peru conduct a social and environmental audit of former Oxy operations to assess
18 liabilities before the Company pulled out of Peru.

19 106. In February 2007, Peruvian and U.S. media reported that Oxy was in
20 fact not leaving Peru and was interested in new exploration blocks. Again,
21 Amazon Watch wrote to the Company to inquire why it had misinformed the
22 Achuar about its intentions in Peru.

23 107. In a meeting held on or about May 1, 2007 in Los Angeles, Oxy Vice
24 President of Public Affairs Richard Kline retracted Mr. Meriage's earlier statement
25 and denied the Company had announced it was leaving Peru.

26 **General allegations**

1 108. In doing the things herein alleged, Oxy acted willfully, recklessly,
2 and/or negligently, and in conscious disregard of the Achuar Plaintiffs' health,
3 safety, property, and rights.

4 109. As a direct and proximate result of Oxy's unlawful and tortious
5 conduct as alleged herein, the Achuar Plaintiffs have suffered and will continue to
6 suffer harm, including property damage, pain and suffering, personal injuries, and
7 extreme and severe mental anguish and emotional distress as well as harm to their
8 livelihoods.

9 110. Plaintiff AmazonWatch has lost money or property, and will continue
10 to lose money or property, due to the frustration of its mission, loss of financial
11 resources, and diversion of its staff time to investigate and expose Defendants'
12 unlawful and unfair practices, hindering Amazon Watch's ability to carry out its
13 mission of protecting the indigenous peoples of the Amazon.

14 111. Oxy's conduct as alleged herein violates California law and Peruvian
15 law, including laws protecting health and safety, water quality, and regulating the
16 oil industry.

17 112. This case could not be adequately litigated in the Peruvian court
18 system. The Peruvian judicial system is known to be corrupt, and thousands of
19 bribes to judges and other government officials have been documented. For
20 example, the Peruvian Supreme Court was bribed in 1998 to rule in favor of an
21 American mining company. In September 2006, a Peruvian Supreme Court justice
22 was arrested on bribery charges in connection with another case. On information
23 and belief, Oxy has participated in bribing government officials in Peru.

24 113. In December of 2006, Oxy announced that it was withdrawing from
25 Peru. On information and belief, Oxy no longer has any producing operations in
26 Peru and is not subject to service there.

27 **CLASS ACTION ALLEGATIONS**

Lead poisoning class

114. The Achuar Children Plaintiffs bring these claims on behalf of themselves and a class of all children and young adults, or alternatively of the parents of these children for their injuries, in the communities of Pampa Hermosa, Sauki, Antioquia, José Olaya, and Nueva Jerusalen who have suffered or will suffer harmful health and developmental impacts from exposure to lead. Epidemiological studies have shown that up to two-thirds of the children in these communities currently show blood-lead levels higher than 10 ug/dL, the level at which developmental harm is known to occur. There are no other plausible sources for exposure to lead other than Oxy's contamination. Additionally, all children in these communities are at risk of developing lead poisoning due to Oxy's contamination.

115. The number of individuals in the proposed class is estimated to be approximately 1,000, and is so numerous that joinder is impracticable.

Cadmium poisoning and contaminant exposure class

116. The Achuar Plaintiffs bring these claims on behalf of themselves and a class of all residents of Pampa Hermosa, Sauki, Antioquia, José Olaya, and Nueva Jerusalen who have suffered or will suffer harmful health impacts from exposure to cadmium, and whose risk of developing cancer has been increased by exposure to contamination. Epidemiological studies show that virtually every resident of these communities is affected by cadmium poisoning. Approximately 99% of the residents show higher than 0.1 ug/dL of cadmium in their blood, the established value for safeguarding human health, and approximately 98% show higher than 0.2 ug/dL of cadmium, the average value expected among smokers. Over half the population shows very high cadmium levels, over 0.5 ug/dL, which is known to cause a range of detrimental health effects. Those residents not currently affected by cadmium poisoning are at risk of developing it due to Oxy's

1 contamination. All residents are also subjected to greater risk of developing cancer
2 from their exposure to cadmium and other carcinogens, including polycyclic
3 aromatic hydrocarbons and other organic chemicals, and of developing other
4 conditions such as genetic defects.

5 117. The number of individuals in the proposed class is estimated to be
6 approximately 1,500, and is so numerous that joinder is impracticable.

7 **Allegations common to both classes**

8 118. The claims of the Achuar Plaintiffs in the above classes are typical of
9 the claims of each class. The Achuar Plaintiffs and class members sustained the
10 same type of injuries and damages arising out of defendants' conduct in violation
11 of California and Peruvian law. The injuries and damages of each class member
12 were caused directly by defendants' wrongful conduct in violation of law as
13 alleged herein.

14 119. The Achuar Plaintiffs are able to, and will, fairly and adequately
15 protect the interests of each class because it is in their best interest to prosecute the
16 claims alleged herein to obtain full compensation due to them for the illegal
17 conduct of which they complain. The Achuar Plaintiffs have no interests that
18 conflict with or are contrary to the interests of the class members.

19 120. Plaintiffs' attorneys are experienced litigators and will fairly and
20 adequately represent the interests of each class.

21 121. Members of these classes present a common set of facts and
22 circumstances and common questions of law, including but not limited to:
23 whether Oxy willfully, recklessly, or negligently released harmful pollutants into
24 the environment in its operations in Lot 1AB;

- 25 (a) whether Oxy willfully, recklessly, or negligently designed and
26 built systems that would continue to release harmful pollutants
27 into the environment in Lot 1AB;

- 1 (b) whether Oxy's release of harmful pollutants has led to
2 increased blood lead levels, blood cadmium levels, and
3 exposure to carcinogens among the residents of Pampa
4 Hermosa, Saukí, Antioquia, José Olaya, and Nueva Jerusalen;
5 (c) whether the increased blood lead levels, blood cadmium levels,
6 and exposure to carcinogens of the residents of these
7 communities is likely to cause detrimental impacts to their
8 health;
9 (d) whether Oxy fraudulently sought to conceal pollution and its
10 effects on people and the environment;
11 (e) whether Occidental Peruana or any other subsidiary or affiliate
12 of Occidental Petroleum Corp. is the agent, alter ego, or co-
13 conspirator of, or acted in concert with, or is otherwise a joint
14 tortfeasor with, Occidental Petroleum Corp.

15 122. This action is properly maintained as a class action because (a) the
16 prosecution of separate actions by individual class members would create a risk of
17 adjudications that would as a practical matter be dispositive of the interests of the
18 other members or would substantially impair or impede their ability to protect their
19 interests, and/or (b) Oxy has acted and continues to act on grounds generally
20 applicable to the class, making final injunctive and declaratory relief appropriate.

21
22
23 **FIRST CAUSE OF ACTION**

24 BY ALL ACHUAR PLAINTIFFS AND CLASSES
25 AGAINST ALL DEFENDANTS
26

27 (Negligence)

1 123. Plaintiffs repeat, reallege, and incorporate by reference each and every
2 allegation set forth in the foregoing paragraphs as if fully set forth herein.

3 124. Defendants owed a duty to the Achuar Plaintiffs and the putative
4 classes to exercise reasonable care in designing, building, operating and
5 maintaining their operations in Lot 1AB, as well as in disposing of any toxic or
6 carcinogenic wastes and byproducts and in transporting any toxic or harmful
7 products, such as oil.

8 125. Defendants breached this duty of care by engaging in the negligent
9 design and construction of their facilities in Lot 1AB, including but not limited to
10 separation batteries that release produced waters directly into the environment,
11 waste storage not adequately protected against leaching and other release of toxic
12 compounds, and transportation infrastructure that was not adequately designed or
13 maintained to prevent spills; by releasing toxic and carcinogenic chemicals into the
14 environment, exposing the Achuar Plaintiffs and their communities to these
15 chemicals despite known health risks, and harming the environment, such as
16 aquatic life and game, on which these communities depend for their subsistence;
17 and by failing to clean up their contaminated operations when they were sold to
18 PlusPetrol, leaving them to continue polluting the environment and harming the
19 Achuar Plaintiffs and their communities.

20 126. Defendants were negligent in one, some and/or all of the following
21 respects: in using technology inadequate for the adequate control of toxic wastes
22 from oil operations and below the oil industry standards, including the standards
23 followed by Oxy in its own operations in the United States; in failing to utilize
24 proper technology and disposal mechanisms to prevent the contamination of the
25 environment surrounding its operations in Lot 1AB with toxic and carcinogenic
26 compounds; in failing to exercise due care in the drilling, separation, and
27 transportation of oil and disposal of chemical wastes and byproducts; in failing to

1 prevent spills, discharges and other leaks of oil, heavy metals, organic compounds,
2 and other toxins and carcinogens; in failing to warn the Achuar Plaintiffs and their
3 communities of the toxicity and carcinogenicity of the compounds released from
4 their oil operations in Lot 1AB, and in denying the dangers of exposure to such
5 compounds.

6 127. Defendants' breach of duty was wanton, outrageous, reckless and
7 intentional. They consciously decided, for their own economic gain, to dump
8 chemical by-products and toxic effluents into the environment, and thereby to
9 expose the Achuar Plaintiffs, the putative classes, and their property to toxic
10 chemicals including, but not limited to, oil, heavy metals including lead and
11 cadmium, organic chemicals including polycyclic aromatic hydrocarbons, and
12 other toxins and carcinogens, knowing that such substances were dangerous to
13 humans and the environment.

14 128. As a direct and proximate result of defendants' breach of duty, the
15 Achuar Plaintiffs and the putative classes have suffered injuries to their health,
16 livelihoods, and property. The Achuar Plaintiffs and the putative classes are
17 entitled to recover compensatory and punitive damages in amounts to be
18 ascertained at trial.

19 **SECOND CAUSE OF ACTION**

20 **BY ALL ACHUAR PLAINTIFFS AND CLASSES**

21 **AGAINST ALL DEFENDANTS**

22 **(Strict Liability)**

23 129. Plaintiffs repeat, reallege, and incorporate by reference each and every
24 allegation set forth in the foregoing paragraphs as if fully set forth herein.

25 130. The facilities and systems used in Lot 1AB to produce and transport
26 oil were designed, built, and used by defendants to maximize their profits. These
27 facilities and systems were and are defective, inadequate, unproven and

1 unreasonably dangerous to the Achuar Plaintiffs' health, property, and the
2 environment.

3 131. These facilities and systems led to the contamination of soils, surface
4 waters and/or subsurface waters with toxic and carcinogenic chemicals and
5 compounds without providing adequate warning to the Achuar Plaintiffs and the
6 putative classes of the health hazards and other harmful effects of exposure to such
7 chemicals and compounds resulting from Oxy's defective and unreasonably
8 dangerous facilities and practices.

9 132. These facilities and systems were defectively designed and
10 unreasonably dangerous in that, at all times, alternative pollution control
11 technology existed that would allow oil production without discharge of toxic
12 chemicals, oil, and byproducts of petroleum production into the environment and
13 without creating unreasonable health and property hazards to the Achuar Plaintiffs
14 and the putative classes. Such alternatives include the use of reinjection wells,
15 proper storage of chemicals and wastes in impermeable tanks, and proper design
16 and maintenance of transport facilities to minimize spills. This technology was
17 reasonably available and, on information and belief, was used by Oxy in its
18 operations in other locations.

19 133. The contamination caused by Oxy's defective and unreasonably
20 dangerous activities in Lot 1AB is the direct cause of the health, property, and
21 other injuries sustained by the Achuar Plaintiffs and the putative classes.

22 134. The Achuar Plaintiffs and the putative classes were wholly unaware of
23 the dangerous propensities of the toxic and carcinogenic chemicals and compounds
24 which rendered them unsafe if spilled or discharged into the environment. The
25 property of the Achuar Plaintiffs was exposed to toxic and carcinogenic chemicals
26 and compounds in a manner that was reasonably anticipated by defendants.
27 Defendants intentionally exposed the property of the Achuar Plaintiffs to toxic

1 chemicals and by-products by deliberately discarding toxic and carcinogenic
2 chemicals and compounds into the environment, and intentionally injured the
3 health of the Achuar Plaintiffs and the putative classes.

4 135. The Achuar Plaintiffs and the putative classes are entitled to recover
5 compensatory and punitive damages in amounts to be ascertained at trial.

6 **THIRD CAUSE OF ACTION**

7 **BY ALL ACHUAR PLAINTIFFS AND CLASSES**

8 **AGAINST ALL DEFENDANTS**

9 **(Battery)**

10 136. Plaintiffs repeat, reallege, and incorporate by reference each and every
11 allegation set forth in the foregoing paragraphs as if fully set forth herein.

12 137. Defendants' intentional and deliberate acts and omissions have
13 resulted in the discharge and spilling of toxic and carcinogenic chemicals and
14 compounds, including heavy metals such as lead and cadmium, into the water and
15 onto the lands used by the Achuar Plaintiffs and the putative classes. The Achuar
16 Plaintiffs and members of the putative class have ingested and otherwise come into
17 physical contact with such chemicals and compounds.

18 138. At all relevant times, defendants knew or could reasonably foresee
19 that their conduct would result in contamination of the water and lands used by the
20 Achuar Plaintiffs and the putative class, and that such persons would be injured
21 thereby.

22 139. Such acts and omissions constitute an unwanted physical contact and
23 battery upon the physical persons of the Achuar Plaintiffs and members of the
24 putative classes.

25 140. The Achuar Plaintiffs and the putative classes are entitled to recover
26 compensatory and punitive damages as a result of defendants' conduct in amounts
27 to be ascertained at trial.

1 **FOURTH CAUSE OF ACTION**

2 BY ALL ACHUAR PLAINTIFFS AND CLASSES

3 AGAINST ALL DEFENDANTS

4 (Medical Monitoring)

5 141. Plaintiffs repeat, reallege, and incorporate by reference each and every
6 allegation set forth in the foregoing paragraphs as if fully set forth herein.

7 142. As a result of defendants' intentional, reckless and/or negligent
8 conduct, the Achuar Plaintiffs and the putative classes have been exposed to
9 known hazardous substances, including lead, cadmium, and carcinogens.

10 143. As a result of such exposure, the Achuar Plaintiffs and the putative
11 classes are at an increased risk of contracting latent diseases, including
12 developmental delays, cancers, chromosomal and genetic defects, and liver and
13 kidney damage.

14 144. Early detection and treatment of these diseases is medically necessary
15 and advisable. Defendants have never admitted that their practices in Lot 1AB
16 have contributed to health risks among the Achuar population.

17 145. Medical monitoring is sought for all children in the lead poisoning
18 class and all individuals in the cadmium poisoning and contaminant exposure class
19 who continue to reside in the communities of Pampa Hermosa, Saukí, José Olaya,
20 Antioquia, and Nueva Jerusalen.

21 146. The Achuar Plaintiffs and the putative classes are entitled to a court-
22 ordered medical monitoring program for the early detection and treatment of
23 various illnesses which they may develop as a result of exposure to the
24 contaminants and pollutants to which they have been exposed as a consequence of
25 defendants' conduct.

26 **FIFTH CAUSE OF ACTION**

27 BY ALL ACHUAR PLAINTIFFS AND CLASSES

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1 otherwise becoming exposed to toxic chemical and compounds released by
2 defendants.

3 154. As a result of the death of Olivio Salas García, Adolfinia García Sandi
4 has suffered pecuniary loss resulting from loss of society, comfort, attention,
5 services, and support.

6 155. Plaintiff Adolfinia García Sandi is entitled to recover compensatory
7 and punitive damages as a result of defendants' conduct in amounts to be
8 ascertained at trial.

9 **SEVENTH CAUSE OF ACTION**

10 BY **ALL ACHUAR PLAINTIFFS** AND CLASSES AGAINST ALL
11 DEFENDANTS

12 (Fraud and Misrepresentation)

13 156. Plaintiffs repeat, reallege, and incorporate by reference each and every
14 allegation set forth in the foregoing paragraphs as if fully set forth herein.

15 157. Defendants made numerous misrepresentations to the Achuar
16 Plaintiffs regarding the cause of their illnesses, the severity of their health
17 problems, and the manner in which such illnesses could be treated.

18 158. Defendants intentionally misled the Achuar Plaintiffs by actively
19 concealing that their practices have endangered, and continue to endanger, the
20 Achuar Plaintiffs' health, lives and livelihoods. When specifically asked,
21 defendants and their agents denied that the Achuar Plaintiffs and their communities
22 were in any danger from the contamination.

23 159. Defendants directed ill patients not to inform others and to actively
24 conceal the cause of their illness.

25 160. Defendants made such misrepresentations with full knowledge that
26 such statements were, and are, fraudulent, misrepresentative, false and/or
27 deceptive.

1 161. In addition to the affirmative misrepresentation and willful deception
2 described above, defendants have intentionally deceived the Achuar Plaintiffs in
3 order to profit from oil resources in the Peruvian Amazon.

4 162. These aforementioned misrepresentations or fraudulent, deceptive, or
5 false statements and omissions concerned material facts that led to the Achuar
6 Plaintiffs' injuries.

7 163. The Achuar Plaintiffs would have acted differently had they not been
8 misled by Defendants fraudulent statements, misrepresentations and/or omissions.

9 164. Defendants had a duty to inform the Achuar Plaintiffs of the
10 contamination in the region and to warn them that the contamination would lead to
11 property damage, ill health and death.

12 165. By and through their fraudulent statements, misrepresentations and/or
13 omissions, defendants intended to induce the Achuar Plaintiffs into activity that
14 caused their injury.

15 166. The Achuar Plaintiffs justifiably relied on defendants
16 misrepresentations and, as such, were damaged by defendants.

17 167. As a direct and proximate result of defendants' misrepresentations, the
18 Achuar Plaintiffs and the putative classes have suffered injuries to their health,
19 livelihoods, and property. The Achuar Plaintiffs and the putative classes are
20 entitled to recover compensatory and punitive damages in amounts to be
21 ascertained at trial.

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25 **EIGHTH CAUSE OF ACTION**

26 BY ALL ACHUAR PLAINTIFFS AGAINST ALL DEFENDANTS

(Public Nuisance)

168. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

169. Defendants' conduct and the resulting contamination of the environment in and around its operations in Lot 1AB has created a public nuisance which endangers and will continue for many years in the future to endanger the safety, health, livelihoods, and comfort of a large number of persons.

170. The Achuar Plaintiffs have suffered a special and peculiar harm of a kind different from that suffered by others living in areas affected by Lot 1AB because they have also suffered or are at risk of suffering severe health impacts from the contamination, because the water they use for fishing, bathing, washing, and sometimes drinking continues to be contaminated, and because they have rights under Peruvian law to use resources, such as water, fish, and game, that have been damaged by defendants' conduct.

171. Defendants' conduct was unreasonable, wanton, outrageous, reckless and intentional, and the Achuar Plaintiffs are entitled to recover compensatory and punitive damages in amounts to be ascertained at trial.

NINTH CAUSE OF ACTION

BY ALL ACHUAR PLAINTIFFS AGAINST ALL DEFENDANTS

(Private Nuisance)

172. Plaintiffs repeat, reallege, and incorporate by reference each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

173. Defendants' conduct has caused non-trespassory (as well as trespassory) invasions of the Achuar Plaintiffs' private use and enjoyment of their land that have resulted in damage to their property, including but not limited to contamination of waters running within or adjacent to their property, and contamination of their property with toxins when these waters flood.

1 174. Defendants' conduct has been unreasonable in that it has caused
2 severe annoyance, harm, inconvenience and damage to the property of the Achuar
3 Plaintiffs.

4 175. Defendants' conduct was unreasonable, wanton, outrageous, reckless
5 and intentional, and the Achuar Plaintiffs are entitled to recover compensatory and
6 punitive damages in amounts to be ascertained at trial.

7 **TENTH CAUSE OF ACTION**

8 BY ALL ACHUAR PLAINTIFFS AGAINST ALL DEFENDANTS

9 (Trespass)

10 176. Plaintiffs repeat, reallege, and incorporate by reference each and every
11 allegation set forth in the foregoing paragraphs as if fully set forth herein.

12 177. Defendants' intentional and reckless acts and omission have resulted
13 in the discharge of chemicals and other pollutants onto the real property in which
14 the Achuar Plaintiffs hold a beneficial interest.

15 178. Such acts and omissions constitute a trespass upon the Achuar
16 Plaintiffs' property interest.

17 179. The Achuar Plaintiffs are entitled to recover compensatory and
18 punitive damages as a result of Defendants' trespass in amounts to be ascertained
19 at trial.

20 **ELEVENTH CAUSE OF ACTION**

21 BY ALL PLAINTIFFS AND CLASSES AGAINST ALL DEFENDANTS

22 (Violation of Business & Professions Code §§ 17200 et. seq.)

23 180. Plaintiffs repeat, reallege, and incorporate by reference each and every
24 allegation set forth in the foregoing paragraphs as if fully set forth herein.

25 181. The Achuar Plaintiffs and members of the putative classes have lost
26 money or property, or will lose money or property, due to defendants' actions as
27 described above, in that their ability to fish and conduct other livelihood activities

1 (such as hunting game, gathering food, and growing crops) has been damaged by
2 the contamination of the lands and waters they use.

3 182. Amazon Watch has lost money or property, and will continue to lose
4 money or property, due to the frustration of its mission, loss of financial resources,
5 and diversion of its staff time to investigate and expose defendants' unlawful and
6 unfair practices, hindering Amazon Watch's ability to carry out its mission of
7 protecting the indigenous peoples of the Amazon.

8 183. The conduct of defendants as alleged herein has been and continues to
9 be deleterious to plaintiffs and the general public, and plaintiffs are seeking to
10 enforce important rights affecting the public interest within the meaning of Code of
11 Civil Procedure § 1021.5.

12 184. Defendants' practices as alleged herein constitute ongoing and
13 continuous illegal and unfair business practices within the meaning of Business
14 and Professions Code § 17200. Such practices include, but are not limited to the
15 discharge of pollutants in violation of Peruvian law, the unfair use of lower
16 pollution control standards in operations in Peru than in the United States, and the
17 concealment of their unfair and unlawful activities in Achuar territory.

18 185. The abuses alleged herein constitute violations of California and
19 Peruvian law and are otherwise unfair and unjust. The use of such unfair, illegal,
20 and destructive practices creates an unfair business advantage over competitors and
21 harms consumers within the State of California and the United States.

22 186. On information and belief, the abuses alleged herein originated with
23 conduct in the State of California, including, without limitation, approval by Oxy
24 of the use of substandard technology and polluting practices in Lot 1AB and other
25 actions directed towards fostering and/or concealing Oxy's unfair and illegal
26 practices towards the Achuar people.

1 187. The acts described herein constitute unfair business practices in
2 violation of the State of California Business and Professions Code § 17200 *et seq.*

3 188. Plaintiffs seek injunctive and declaratory relief, disgorgement of all
4 profits resulting from these unfair business practices, restitution and other
5 appropriate relief on behalf of themselves and members of the general public as
6 provided in Business and Professions Code § 17203.

7 **TWELFTH CAUSE OF ACTION**

8 BY ALL ACHUAR PLAINTIFFS AND CLASSES AGAINST ALL
9 DEFENDANTS

10 (Intentional Infliction of Emotional Distress)

11 189. Plaintiffs repeat, reallege, and incorporate by reference each and every
12 allegation set forth in the foregoing paragraphs as if fully set forth herein.

13 190. Defendants owed a duty to the Achuar Plaintiffs and the putative
14 classes to exercise reasonable care in designing, building, operating and
15 maintaining their operations in Lot 1AB, as well as in disposing of any toxic or
16 carcinogenic wastes and byproducts and in transporting any toxic or harmful
17 products, such as oil.

18 191. Defendants' intentional, reckless and deliberate acts and omissions
19 have resulted in the extreme and outrageous discharge and spilling of toxic and
20 carcinogenic chemicals and compounds, including heavy metals such as lead and
21 cadmium, into the water and onto the lands used by the Achuar Plaintiffs and the
22 putative classes. The Achuar Plaintiffs and members of the putative class have
23 ingested and otherwise come into physical contact with such chemicals and
24 compounds.

25 192. Defendants had the intention or reckless disregard of the probability
26 that polluting the Achuar Plaintiffs' water and land would result in the Achuar
27 Plaintiffs' severe emotional distress.

1 193. Due to defendant's extreme and outrageous conduct, the Achuar
2 Plaintiffs have suffered severe emotional distress in the forms of fear, worry,
3 anxiety, grief, hopelessness, despair, depression, pain and mental suffering.

4 194. Defendants' extreme and outrageous intentional, reckless and
5 deliberate acts and omissions are the actual and proximate cause of the Achuar
6 Plaintiffs' severe emotional distress.

7 195. The Achuar Plaintiffs are entitled to recover compensatory and
8 punitive damages in amounts to be ascertained at trial.

9 WHEREFORE, plaintiffs and the putative classes pray for judgment as
10 hereinafter set forth

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14 **PRAYER FOR RELIEF**

15 WHEREFORE, each plaintiff and the putative classes prays for judgment against
16 each defendant as follows:

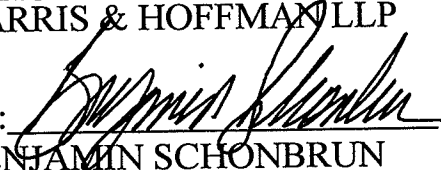
- 17 (a) for certification of this case as a class action against defendants;
18 (b) for judgment that defendants are legally liable for the claims asserted
19 above;
20 (c) for compensatory damages, including general and special damages, in
21 an amount as proven at trial;
22 (d) for punitive damages;
23 (e) for injunctive and declaratory relief as this Court deems appropriate
24 against all defendants;
25 (f) for damages in lieu of injunction where appropriate;
26 (g) for equitable relief in the form of medical monitoring as sought by
27 plaintiffs in whole or in part;

- 1 (h) for disgorgement of profits;
2 (i) for restitution;
3 (j) for costs of suit, attorneys fees and
4 (k) for such other relief as the Court deems just and proper, against all
5 defendants.

6 Dated: September 10, 2007

Respectfully submitted,

SCHONBRUN DESIMONE SEPLOW
HARRIS & HOFFMAN LLP

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9 By: 
10 BENJAMIN SCHONBRUN
11 Attorneys for Plaintiffs
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JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: September 10, 2007

Respectfully submitted,

SCHONBRUN DESIMONE SEPLOW
HARRIS & HOFFMAN LLP

By: 
BENJAMIN SCHONBRUN
Attorneys for Plaintiffs

PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

2 I am a resident of the aforesaid county, State of California; I am over the age of 18 years
3 and not a party to the within action; my business address is 723 Ocean Front Walk, Venice,
4 California 90291.

5 On September 10, 2007, I served the foregoing document described as:

6 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, INJUNCTIVE AND**
7 **DECLARATORY RELIEF, RESTITUTION AND DISGORGEMENT OF PROFITS**

8 on all interested parties in this action by placing ___ an original or X a true copy thereof
9 enclosed in sealed envelopes addressed as follows:

10 John B. Quinn
11 QUINN EMANUEL URQUHART
12 OLIVER & HEDGES, LLP
13 865 S. Figueroa St., 10th Floor
14 Los Angeles, CA 90017

Ernest J. Getto
LATHAM & WATKINS LLP
633 W. Fifth St., Suite 4000
Los Angeles, CA 90071

13 Daniel P. Collins
14 MUNGER, TOLLES & OLSON LLP
15 355 s. Grand Ave., 35th Floor
16 Los Angeles, CA 90071

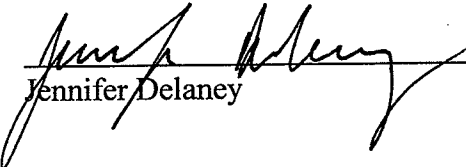
17 X [BY MAIL] I caused such envelope to be deposited in the mail at Venice,
18 California. The envelope was mailed with postage thereon fully prepaid.

19 ___ [BY FEDERAL EXPRESS] I caused such envelope to be delivered via
20 federal express at Venice, California.

21 ___ [BY PERSONAL DELIVERY] I caused the foregoing document to be
22 personally served on the interested party.

23 ___ [BY FAX] I transmitted the above document via the above facsimile.

24 X [STATE] I declare under penalty of perjury under the laws of the State of
25 California that the foregoing is true and correct.

26 
27 Jennifer Delaney
28