UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENTESAR OSMAN KASHEF, *et al.*,

Plaintiffs,

v.

BNP PARIBAS S.A., BNP PARIBAS S.A. NEW YORK BRANCH, and BNP PARIBAS US WHOLESALE HOLDINGS, CORP. (f/k/a BNP PARIBAS NORTH AMERICA, INC.),

Defendants.

No. 1:16-cv-03228-AJN

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS BNP PARIBAS S.A. AND BNP PARIBAS US WHOLESALE HOLDINGS, CORP.'S MOTION TO DISMISS FOR *FORUM NON CONVENIENS*

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INTRODUCTION

Nearly six years into this litigation, after losing at the Second Circuit,[1] losing its motion to dismiss,[2] and nine months of discovery, Defendants—French bank BNP Paribas SA ("BNPP France") and its New York branch (BNPP NY) and U.S. subsidiary (BNPP North America) (collectively, "BNPP")—want out. BNPP claims it has suddenly "crystallized" that New York is too inconvenient for the world's seventh largest bank.[3] But BNPP is no stranger to New York. For a decade, it conspired with Sudan's dictatorship to launder billions through New York, in violation of U.S. sanctions designed to prevent genocide in Sudan. It was convicted in New York after years of investigation by New York and U.S. agencies, represented by counsel in New York. In 2016, it was sued in New York by U.S. Plaintiffs, on behalf of a proposed class of more than 15,000 Sudanese-Americans, found by the Second Circuit to be victims of BNPP's criminal conspiracy.[4]

Convenience is not BNPP's true concern. BNPP has vast resources and is an experienced litigant in U.S. courts. What drives this motion is BNPP's refusal to name the employees who participated in its crimes and its Sudanese co-conspirators. BNPP makes the implausible claim that only BNP Paribas (Suisse) SA ("BNPP Suisse") knows those identities—even though BNPP France pleaded guilty to these crimes, and BNPP Suisse did not, and even though BNPP's U.S. counsel conducted a $200 million internal investigation that resulted in the termination of employees whose names BNPP will not reveal. Asserting this particular evidence must be sought only in Switzerland, BNPP concludes the entire case must be re-filed there, forcing thousands of U.S. plaintiffs to begin anew in a country where no party is based and no discovery is sought.

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[1] *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 55 (2d Cir. 2019) ("*Kashef I*") (reversing dismissal).
[2] The Court's March 2020 opinion held that Swiss law applied. *Kashef v. BNP Paribas S.A.*, 442 F. Supp. 3d 809, 824 (S.D.N.Y. 2020) ("*Kashef II*"). The Court's later denied BNPP's motion to dismiss, holding that Plaintiffs stated claims for relief under Swiss law. *Kashef v. BNP Paribas S.A.*, 2021 WL 603290, at *9 (S.D.N.Y. Feb. 16, 2021) ("*Kashef III*"), reconsideration denied, 2021 WL 1614406 (S.D.N.Y. Apr. 26, 2021) ("*Kashef IV*").
[3] S & P Global Market Intelligence, "The world's 100 largest banks, 2021," https://tinyurl.com/4e5jrnxc.
[4] *Kashef I*, 925 F.3d at 55.

"Plaintiffs should not [be] deprived of their choice of forum except upon defendants' clear showing that a trial in the United States would be so oppressive and vexatious to them as to be out of all proportion to plaintiffs' convenience." *DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21, 30 (2d Cir. 2002). BNPP fails to make that showing.

First, the U.S. Plaintiffs' decision to sue in a U.S. court—their home forum—is entitled to great deference. Eight words into its brief, BNPP uses Plaintiffs' African origins to diminish that deference, labeling them "former Sudanese citizens"—astonishingly implying that their national origin matters. The suggestion that Plaintiffs are due less deference in their choice of forum than "real" Americans because they are African-American is offensive and unconstitutional.[5]

BNPP attacks why Plaintiffs chose this forum. But the Second Circuit explained: "Plaintiffs' causes of action arise out of the same occurrence as the criminal prosecution" in New York. *Kashef I*, 925 F.3d at 62. BNPP France directed its sanctions-evasion conspiracy at New York, using BNPP North America for supposed "compliance." BNPP claims Plaintiffs should have sued BNPP Suisse, but BNPP Suisse did not plead guilty and is not present in the United States.

Second, BNPP fails to "guarantee" that Switzerland is a presently available forum. *CF 135 Flat LLC v. Triadou SPY S.A.*, 2016 WL 5945933, at *3 (S.D.N.Y. June 21, 2016). Defendants, none of which is Swiss, claim that Switzerland has jurisdiction based on their conditional consent. But as professor and Swiss appellate judge Ramon Mabillard demonstrates, consent only guarantees jurisdiction if Swiss law applies. Decl. of Prof. Dr. Ramon Mabillard ¶ 4 ("Mabillard Decl."). Under Swiss choice-of-law rules—which BNPP and its expert fail to cite—Sudanese, not Swiss, law would apply, making a Swiss court free to decline jurisdiction. Prof. Mabillard shows why it would: no Swiss court would assume the burden of thousands of individual claims by U.S.

[5] *Cf. Hernandez v. State of Tex.*, 347 U.S. 475, 482 (1954) (holding people of Mexican descent are protected class in jury exclusion).

plaintiffs requiring legal aid, against foreign defendants, under foreign law, involving foreign evidence collection, when there is already an available forum in New York. Jurisdictional hearings and appeals alone would take years and vast resources, inconveniencing all parties and courts.

Third, BNPP fails to demonstrate that the private interest factors weigh in favor of Switzerland. It claims that the "majority" of witnesses are "likely" in Switzerland but fails to name a single one. In fact, out of the 94 potential witnesses revealed in discovery, only 2 are believed to be in Switzerland, while 60 are in the U.S., along with 19 Plaintiffs and thousands of class members. BNPP claims that "many" documents are in Switzerland, but those at the core of the criminal case are in the U.S. and are already being produced. In fact, of those produced to date, 46% originated with BNPP NY; only 26% originated in Switzerland. BNPP claims that Swiss banking and privacy law prohibits them—French and U.S. banks—from disclosing information in their custody, but their expert states only that *BNPP Suisse* is subject to these laws. BNPP omits entirely the exorbitant financial risks and burdens that litigating in Switzerland would impose on first-generation Americans, who do not speak French, German, or Italian, have severely limited resources, and would lose access to their U.S. counsel. The end result would be the loss of claims that have been held valid by this Court and the Second Circuit.

Finally, BNPP fails to demonstrate that re-litigating this case in Switzerland is in the public interest. It claims that voluntary joinder in Switzerland is an efficient alternative, but this would mean saddling a single Swiss judge with applying Sudanese law to the conduct of U.S. and French entities and adjudicating thousands of U.S. claimants' individual cases with no complex litigation case-management mechanisms. BNPP also seeks a do-over on the Swiss law issues already resolved by the Court in Plaintiffs' favor. But BNPP points to no error or change in law warranting reconsideration. Instead it proffers the testimony of Professor Isabelle Romy, who believes holding

a bank liable for BNPP's conduct is "controversial."[6] Prof. Romy, a former member of the Board of Directors of Swiss bank UBS, fails to disclose that under her tenure UBS violated U.S. sanctions and paid a $1.7 million settlement with OFAC—the very type of conduct at the heart of this case.[7] In sum, the balance of FNC factors weigh overwhelmingly in favor of Plaintiffs' chosen forum. BNPP cannot carry its burden. Its untimely motion should be denied.

BACKGROUND

Defendant BNPP France is the parent company of the BNP Paribas Group. From 1997 to 2007, BNPP France conspired with the Sudanese dictatorship to break a U.S. embargo designed to prevent the regime from committing atrocities against its own population.[8] In 2014, BNPP France pleaded guilty to this conspiracy. *See Kashef I*, 925 F.3d at 56. The details of this conspiracy are in large part contained in BNPP's plea documents and in documents produced to U.S. authorities and now to Plaintiffs (the "Government Production"). *See* Stipulated Statement of Facts, Third Am. Compl. ("TAC"), Ex. C, ECF 241-3 ("SSOF"); Decl. of Brent W. Landau ("Landau Decl.") ¶ 5. The BNPP Group's General Management oversaw a global scheme in which illicit Sudanese money transfers and letters of credit were stripped of information linking them to Sudan. *See* SSOF ¶¶ 18, 32-33. They were then laundered through a series of correspondent banks globally, in the Middle East, North Africa, Switzerland, and the European Union, and then directed into New York accounts, which BNPP used to clear transactions in U.S. dollars. *See* SSOF ¶ 16. This global scheme had three key nodes. The first was BNPP headquarters in Paris, [redacted]. Ex. 9.[9] The

[6] Declaration of Prof. Isabelle Romy ("Romy Decl.").
[7] Professor Romy served on the UBS board from 2012 to 2020. Romy Ex. A. In 2015, UBS entered into a settlement agreement with OFAC for 222 violations of U.S. sanctions committed from 2008 to 2013. https://home.treasury.gov/system/files/126/20150827_ubs.pdf
[8] The facts of the case are set forth in *Kashef I*, Kashef *II*, and *Kashef III*.
[9] Unless otherwise specified, all exhibit references are exhibits to the Landau Declaration.

second was BNPP Suisse in Geneva, [redacted]. Ex. 10. The third was New York, where the laundered transactions were cleared through BNPP's NY Branch and [redacted]. Ex. 11. Of these, New York was critical because [redacted][10]

On May 2, 2016, "Plaintiffs, who now reside lawfully in the United States, sued BNPP in the Southern District of New York on behalf of a putative class of victims of the genocide in Sudan" also residing in the United States. *Kashef I,* 925 F.3d at 57. Plaintiffs allege that "BNPP circumvented U.S. sanctions and provided Sudan with financial resources knowing that Sudan was committing atrocities, knowing that the purpose of the sanctions was to prevent Sudan from acquiring funds with which to carry out those atrocities, and knowing that Sudan's likely purpose in using the U.S. financial markets for illegal oil sales was to acquire billions of U.S. dollars to purchase the weapons and materials used by militia forces." *Id.*

The class comprises an estimated 15,000 Sudanese-Americans. TAC ¶ 220; Decl. of Kathryn Lee Boyd ("Boyd Decl.") ¶ 11. Plaintiffs and large numbers of the refugee population "arrived in the United States after living for years in refugee camps where violence, abject poverty, sickness, disease, and lack of education affected them and their families." Boyd Decl. ¶ 4. Many "arrived in the United States with no more than their meager clothes and the extremely modest stipend provided by resettlement agencies." *Id.* Based on interim class counsel's investigations among Sudanese-American communities in New York, California, and other states, "Plaintiffs, other putative class members, and their Sudanese communities in the United States" are severely disadvantaged and suffer from "crushing poverty, high unemployment, . . . lack of access to

[10] Ex. 12, at BNPP-KASHEF-00000528.

healthcare and childcare, . . . trauma and mental health problems . . . and physical ailments, including HIV/AIDS." Boyd Decl. ¶¶ 3-5.

In 2019, the Second Circuit reversed this Court's initial dismissal of this case, holding Plaintiffs' claims timely and the genocide in which BNPP was allegedly complicit to not be an act of state compelling dismissal. 925 F.3d at 61-63. On remand, this Court held that under New York choice-of-law principles Swiss law applied to Plaintiffs' claims. *Kashef II*, 442 F. Supp. 3d at 824. In February 2021, following months of expert discovery, depositions, supplemental briefing, document translations, and oral argument, this Court held that Plaintiffs "stated a claim for relief" under Article 50.1 of the Swiss Code of Obligations ("CO"), which provides for tortious accomplice liability. *Kashef III*, 2021 WL 603290, at *9. The Court denied in large part BNPP's motion to dismiss. Specifically, the Court rejected BNPP's argument that Article 50.1 should be construed to include heightened mental state and causation requirements as "unsupported by, and at times inconsistent" with "Swiss case law." *Id.* at *4.[11]

Discovery commenced on May 6, 2021. The Parties have engaged in extensive discovery in the nearly nine months since. Landau Decl. ¶ 2. Defendants are nearing completion of their review and production of documents from their Government Productions. *Id.* ¶ 2.e. Counsel have traveled to multiple states to collect documents and ESI from Plaintiffs. *Id.* ¶ 2.f. Plaintiffs have also sought discovery from Defendants and from U.S.-based third parties JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and the U.S. Department of the Treasury. *Id.* ¶ 8. Plaintiffs have not sought any discovery from non-party BNPP Suisse. *Id.* ¶ 3.[12]

[11] BNPP North America subsequently sought reconsideration on the grounds that it was not involved in the alleged wrongful conduct. ECF 198. The Court denied this motion. *Kashef IV*, 2021 WL 1614406, at *3 ("[T]he complaint alleges that BNPP N.A. knew or should have known of its contribution to the Sudanese regime's illicit act.").

[12] BNPP grossly mischaracterizes the nature of the discovery that has occurred to date and misstates the location of documents, witnesses, and information sought by Plaintiffs. *See* Landau Decl. ¶¶ 3-25.

ARGUMENT

The doctrine of *forum non conveniens* applies only "in rare instances." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 100 (2d Cir. 2000). The analysis has three steps. *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 71-75 (2d Cir. 2001) (en banc). At step one, the court must determine the "degree of deference . . . owed a plaintiff's choice of forum." *Triadou*, 2016 WL 5945933, at *3. At step two, the "defendant bears the burden of establishing that a presently available and adequate alternative forum exists." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009). At step three, the "defendant bears the burden of establishing . . . that the balance of private and public interest factors tilts heavily in favor of the alternative forum." *Id*. Defendants fail to meet this burden.

I. The American Plaintiffs' choice of their home forum—where BNPP pleaded guilty and where Defendants are amenable to process—is entitled to great deference.

The Second Circuit has "unambiguously established that courts should offer greater deference to the selection of a U.S. forum by U.S. resident plaintiffs when evaluating a motion to dismiss for *forum non conveniens*." *Wiwa*, 226 F.3d at 102 (reversing a district court that failed to give sufficient weight to the U.S. residency of victims of atrocities in Nigeria). The "home forum" for a U.S.-resident plaintiff is "any federal district in the United States, not the particular district where the plaintiff lives." *Guidi v. Inter-Cont'l Hotels Corp.*, 224 F.3d 142, 147 n.4 (2d Cir. 2000) (internal quotation marks omitted). "[T]he greater the plaintiff's or the lawsuit's bona fide connection to the United States and to the forum of choice and the more it appears that considerations of convenience favor the conduct of the lawsuit in the United States," the more deference will be accorded plaintiff's choice of a U.S. forum, and "the more difficult it will be for the defendant to gain dismissal for *forum non conveniens*." *Iragorri*, 274 F.3d at 72.

All 19 named Plaintiffs and all of the over 15,000 putative class members are U.S. residents. *See* TAC ¶ 23; Boyd Decl. ¶ 11. BNPP claims these U.S. citizens and permanent residents lack a bona fide connection to the United States, labeling them "former Sudanese citizens." Br. at 1. Using Plaintiffs' African origins to dispute their American bona fides is offensive and incompatible with the law. In *Wiwa*, the Second Circuit reversed an FNC dismissal for "failing to count in favor of retention that two of the plaintiffs" who had endured human rights abuses in Nigeria "were residents of the United States." 226 F.3d at 106. Here, Plaintiffs have even stronger U.S. ties: they and the entire class are U.S. residents. BNPP's bid to delegitimize some Plaintiffs as "California residents" is also at odds with *Wiwa*, *id.*, and *Guidi*, 224 F.3d at 146, under which any federal district is a U.S. plaintiff's home forum. Plaintiffs' reasons to sue these Defendants in this forum are bona fide. BNPP France pleaded guilty in New York to federal charges of conspiring to violate U.S. sanctions designed to prevent genocide. *See Kashef I*, 925 F.3d at 56. BNPP's guilty plea names BNPP New York Branch as the entity through which BNPP France laundered billions in illicit transactions for its co-conspirator Sudan. SSOF ¶ 16. The New York Department of Financial Services ordered BNPP to terminate BNPP North America's compliance chief, Stephen Strombelline, as one of the BNPP Group employees responsible for the sanctions-evasion scheme. TAC, Ex. J at 1, ECF 241-10. That termination is at odds with the claim that BNPP North America played no conspiracy role.[13]

BNPP Suisse is not a defendant in this case. BNPP's claim that this was driven by forum shopping makes little sense. BNPP Paris, which pleaded guilty, now believes Plaintiffs should have instead sued its Swiss subsidiary that did not plead guilty, has no physical presence in New York, and might be not amenable to service of process in New York. And BNPP believes Plaintiffs

[13] As noted above, the Court already rejected BNPP North America's claim that its involvement was insufficiently alleged. *Kashef IV*, 2021 WL 1614406, at *3.

should have sued the French and U.S. defendants in Switzerland. But Defendants did not consent to Swiss jurisdiction six years ago. Nor did they consent to jurisdiction in California or other U.S. states, where they are not domiciled and where none of the events occurred. Plaintiffs' choice of their home forum is "motivated by legitimate reasons, including . . . the ability of a U.S. resident plaintiff to obtain jurisdiction over the defendant." *Iragorri*, 274 F.3d at 73.[14]

Plaintiffs' choice also rests on considerations of convenience. *First*, the massive disparity in wealth between the parties must be weighed. *See In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000*, 230 F. Supp. 2d 376, 389 (S.D.N.Y. 2002). BNPP France, "the parent company to a multinational conglomerate, has vast resources and can therefore easily transport witnesses and evidence to" New York, whereas Plaintiffs emigrated to the U.S. with "only modest means and would suffer hardship if forced to litigate in" Switzerland. *Id*.

Second, sources of proof on key issues are available in the U.S. BNPP pleaded guilty to federal and state crimes in New York. The Second Circuit held those cases are linked to this civil action as a matter of law: "the Plaintiffs' causes of action arise out of the same occurrence as the criminal prosecution: BNPP's conspiracy with Sudan to violate U.S. sanctions." *Kashef I*, 925 F.3d at 62-63. As in *Li v. Certain Underwriters at Lloyd's, London*, 183 F. Supp. 3d 348, 360 (E.D.N.Y. 2016), the forum of a related criminal action is convenient because fact issues resolved in the criminal case eliminate the need for civil re-litigation: "[i]nevitably, it will be far more efficient and convenient for both parties for this Court to apply Swiss law, than for a Swiss court to relitigate factual issues already resolved in this Court." *Id.* at 362.

[14] Because Plaintiffs are U.S. residents, this case is unlike *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64 (2d Cir. 2003), cited by BNPP, in which the plaintiffs were "Liberian corporations that serve as personal investment vehicles for wealthy Greek individuals." *Id.* at 67.

BNPP Suisse did contribute to the scheme from Geneva, but BNPP is mistaken that the key issues are "the financial services provided to Sudanese entities by BNPP Suisse." Br. at 7. BNPP has already stipulated to those facts and the documentary proof—volumes of BNPP Suisse records—has already been produced here in New York. *See* Landau Decl. ¶¶ 5-6.

The central issue to establish conscious cooperation and causation under Swiss Art. 50.1 is the French and U.S. BNPP Defendants' knowledge of the laundering scheme and the foreseeability of Sudan's atrocities. *See Kashef III*, 2021 WL 603290, at *4. That evidence is outside of Switzerland, including BNPP and BNPP Suisse's core tranche of documents (the subject of pending discovery motions). BNPP's U.S. compliance teams—BNPP's front-line on U.S. sanctions compliance—are here. *See* Ex. 13; Ex. 14.

Key operative facts of *these* defendants' complicity are also here. New York was an indispensable node in the transnational laundering scheme that BNPP oversaw from Paris [redacted] Ex. 12. [redacted] . Ex. 11. [redacted] Ex. 15. [redacted] . SSOF ¶ 30; Ex. 5; ECF 271. And BNPP France's executives can and will be deposed as part of U.S. litigation on what they knew and when they knew it.

BNPP misrepresents the focus of discovery, falsely claiming it centers on Switzerland. Plaintiffs are not pursuing any discovery from BNPP Suisse. Landau Decl. ¶¶ 3-4, 22-25. To the extent there are gaps in the evidence that need filling, it is because BNPP France is defying its

discovery obligations, refusing to search its own records and employees' knowledge, and taking the absurd position that BNPP France and its counsel do not know the identities of BNPP's own executives. *Id.* ¶¶ 10-14. BNPP claims this even though its counsel signed a declaration to that effect, *see* Decl. of Karen P. Seymour, ECF 263 ("Seymour Decl.") ¶ 6, and previously represented to this Court that BNPP "spent more than $200 million" on an internal investigation, "conducting an extensive transaction review to identify potential violations," and "interviewing dozens of current and former employees in the United States and Europe." Landau Decl. ¶ 20; Ex. 6. There is no need to find this information in Switzerland; it is already here.

BNPP is using its own refusal to comply with discovery obligations to manufacture grounds for dismissal in favor of Switzerland. The fact that BNPP waited nearly six years to do this, and only after losing on its motion to dismiss and facing obligations to provide information in discovery, has more than a whiff of reverse forum-shopping: "Courts should be mindful that . . . defendants also may move for dismissal under the doctrine of *forum non conveniens* not because of genuine concern with convenience but because of similar forum-shopping reasons." *Iragorri*, 274 F.3d at 75.

Focusing on the actual defendants and issues in this case make clear that Plaintiffs' choice of their home forum is legitimate and entitled to great deference. Like the Holocaust victims in *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.*, 228 F. Supp. 2d 348, 351-52 (S.D.N.Y. 2002) (hereinafter "*Holocaust Insurance*"), "every single named plaintiff is a U.S. resident, and litigation abroad would likely raise costs and necessitate the retention of foreign counsel." In that case, the fact that the Holocaust occurred in Europe had little bearing on the convenience of litigating in New York. Nor did the fact that the defendant was a Swiss entity whose processing of insurance claims occurred in Switzerland, because, like BNPP, it did business in New York. *See*

id. at 352.[15] Nor did "the fact that plaintiffs are acting in a representative capacity," because the entire class was also U.S. residents. *Id.* So too here.

Moreover, as in *Guidi*, Plaintiffs "are ordinary American citizens for whom litigating" overseas "presents an obvious and significant inconvenience." 224 F.3d at 147. "This is not a case where the plaintiff is a corporation doing business abroad and can expect to litigate in foreign courts." *Id.* Plaintiffs' case is not *LaSala v. TSB Bank, PLC*, where the plaintiffs were trustees of a trust "specifically authorize[d][for] litigation abroad" who had "already litigated in several foreign countries." 514 F. Supp. 2d 447, 457 (S.D.N.Y. 2007).[16] That court afforded the plaintiffs little deference because they "more closely resemble a corporation with substantial resources than ordinary citizens of comparatively modest means." *Id.* Plaintiffs here—genocide victims—are just the opposite, indigent and inexperienced in European litigation, *see* Boyd Decl. ¶¶ 6-7—and their choice is entitled to deference. *See Carey v. Bayerische Hypo-Und Vereinsbank AG*, 370 F.3d 234, 238 (2d Cir. 2004) (in the case of an "individual of modest means," this "individual's choice of the home forum may receive greater deference than the similar choice made by a large organization which can easily handle the difficulties of engaging in litigation abroad"). The distinguishing facts in *Carey* underscore the legitimacy of Plaintiffs' choice of forum. There, the Second Circuit affirmed FNC dismissal because the suit arose from a contractual relationship, "which plaintiff voluntarily entered into . . . in Germany." *Id.* The court distinguished that case from *Wiwa*, where

[15] BNPP "employs nearly 14,000 people in the United States." Davide Barbuscia and Mehnaz Yasmin, *BNP Paribas, Citigroup Set Feb 7 Return-to-Office Date for U.S. Staff*, Reuters (Jan. 21, 2022), https://www.reuters.com/business/finance/frances-bnp-paribas-postpones-return-office-us-staff-2022-01-21/.

[16] Likewise, in *RIGroup LLC v. Trefonisco Mgmt. Ltd.*, 949 F. Supp. 2d 546 (S.D.N.Y. 2013), *aff'd*, 559 F. App'x 58 (2d Cir. 2014), cited by BNPP, the plaintiff was a "shell corporation" formed for its shareholder's "international business ventures." *Id.* at 552. Similarly, in *CCS Int'l, Ltd. v. ECI Telesystems, Ltd.*, 1998 WL 512951 (S.D.N.Y. Aug. 18, 1998), the plaintiff was an "international distributor of high technology" with "offices in several countries around the world" that had already agreed to arbitrate disputes overseas. *Id.* at *7. And in *Erausquin v. Notz, Stucki Mgmt. (Bermuda) Ltd.*, 806 F. Supp. 2d 712 (S.D.N.Y. 2011), the plaintiffs were "foreign citizens and have no connection to the United States." *Id.* at 725.

the Nigerian-American human rights victims, like Plaintiffs here, "asserted torts involving the infliction of physical injury." *Id.* Plaintiffs did not seek out a relationship with BNPP or with Switzerland, nor did the victims in *Wiwa* "[seek] out the relationship that resulted in the suit." *Id.*

Wiwa, *Guidi,* and *Carey* all weigh in favor of Plaintiffs' choice of forum. BNPP's remaining authorities do not overcome this precedent. Plaintiffs' evidence and the core of Defendants' documents are in the U.S., whereas in *Schertenleib v. Traum*, 589 F.2d 1156, 1164 (2d Cir. 1978), "none of the sources of proof" was in the U.S. Unlike here, in *Owens v. Turkiye Halk Bankasi A.S.*, 2021 WL 638975, at *4 (S.D.N.Y. Feb. 16, 2021), the majority of the plaintiffs were foreign, "almost all of the relevant evidence" was outside the United States, and it was "unclear [that the foreign defendant] is even amenable to suit in the United States, as it has contested jurisdiction." Judge Cote dismissed a related case for identical reasons. *Wamai v. Indus. Bank of Korea*, 2021 WL 3038402, at *4 (S.D.N.Y. July 14, 2021). In neither case was the foreign bank amenable to process in the U.S.—as BNPP is—nor had the defendant already given the plaintiffs the critical documents produced to the U.S. government, as BNPP has. Plaintiffs' choice of forum merits great deference.

II. Swiss courts provide no available alternative forum.

BNPP "bears the burden of establishing that a presently available and adequate alternative forum exists." *Abdullahi*, 562 F.3d at 189 (reversing FNC dismissal that required plaintiffs to prove forum was inadequate). If BNPP cannot "guarantee" that Plaintiffs' claims "could proceed in Switzerland," it has not "met its burden of demonstrating that Switzerland is an adequate available forum." *Triadou*, 2016 WL 5945933, at *5.

Defendants cannot guarantee jurisdiction despite their "offer" to consent to Swiss jurisdiction. Br. at 10. Under Swiss law, a defendant's consent does not guarantee jurisdiction if

(i) neither party is domiciled in Switzerland and (ii) a foreign plaintiff's claim is governed by foreign law. *See* Mabillard Decl. ¶¶ 24-47; Mabillard Ex. 1 at 2. The Swiss Federal Supreme Court has held that "both requirements must be met." Mabillard Ex. 3, c. 3. Neither requirement is met here. No party is domiciled in Switzerland. And, as Professor Mabillard demonstrates, a Swiss court would apply Sudanese law, not Swiss law. Mabillard Decl. ¶¶ 38-47, n.32. This is because Swiss choice-of-law rules look to the place of injury, not conduct, *id.*, unlike New York choice of law, which as the Court observed "looks to the place of *conduct*, not injury." *Kashef II*, 442 F. Supp. 3d at 822.[17] A Swiss court can dismiss a case on this basis alone, disfavoring disputes brought by foreign parties involving foreign law. *See* Mabillard Decl. ¶¶ 24, 44-46.[18]

BNPP does not argue there is any other basis for Swiss jurisdiction. Professor Romy appears to conclude that the Swiss courts would have jurisdiction over the separate corporate entities named as defendants by virtue of the Swiss courts' having jurisdiction over BNPP Suisse. Romy Decl. ¶ 30. But such an exercise of jurisdiction is prohibited in Swiss law, in conformity with the European Court of Justice. Mabillard Decl. ¶¶ 35-37; Mabillard Ex. 8.

BNPP does not even cite the Swiss choice-of-law rules that control jurisdiction by consent.[19] It makes no showing that Swiss law would apply, nor a showing why a Swiss judge would volunteer to take jurisdiction over a case where as many as 15,000 Sudanese-Americans—

[17] Swiss choice-of-law rules are set out in Art. 133.2 PILA, which states: "if the result occurred in another state, the law of that state applies if the tortfeasor should have foreseen that the result would occur there." Mabillard Ex. 1 at 5. This Court has already held—based on BNPP's own admissions—that BNPP could foresee that its scheme to break the U.S. embargo, designed to prevent atrocities in Sudan, would result in further atrocities in Sudan. *Kashef III*, 2021 WL 603290, at *8. Therefore, Sudanese law would govern claims brought in Switzerland.

[18] For example, in SCD 119 II 167, the Swiss Federal Supreme Court affirmed the jurisdictional dismissal of a marital dispute between French domiciled parties involving French law, despite the parties' consent to jurisdiction and despite the fact that the parties had been married in Switzerland. Mabillard Ex. 3, c. 3. There is even less of a Swiss nexus here, because the plaintiffs have no Swiss ties.

[19] BNPP's expert Professor Romy states that a "Swiss court may not decline its jurisdiction if Swiss law applies to the matter in dispute"—but she fails to demonstrate that Swiss law would apply, nor does she even cite PILA Art. 133.2. Romy Decl. ¶ 31.

many, if not all, requiring court-appointed counsel and taxpayer-funded legal aid—sue French and U.S. defendants under Sudanese law. In contrast, Professor Mabillard presents numerous common-sense grounds for why a Swiss judge would refuse jurisdiction:

> [T]he Swiss court will decline jurisdiction because it would be a Herculean task to coordinate and adjudicate the claims of 15,000 U.S. plaintiffs against French and U.S. defendants, under Sudanese law, without the efficiencies of the U.S. class action or U.S. complex litigation case-management mechanisms (which are unavailable in Switzerland), and requiring thousands of Hague Evidence Convention requests directed at the United States . . . .

Mabillard Decl. ¶ 45. Defendants suggest that voluntary joinder is an efficient alternative under Swiss law, Br. at 11 n.5, but that would compound the problem, saddling a single judge with an enormous number of individual claims. "[T]he fact that there is not a functional equivalent . . . of class-based judicial review strengthens plaintiffs' claim that" Switzerland "is not an adequate alternative forum." *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 132 (E.D.N.Y. 2000).

Even if the Swiss judge only faced claims from the 19 named plaintiffs, "a Swiss judge would be well aware that accepting jurisdiction over the claims of these 19 plaintiffs would open the door to thousands of other Sudanese-American plaintiffs." Mabillard Decl. ¶ 46. *Id.* Faced with this burden, the Swiss court would likely decline jurisdiction. *Cf. Wiwa*, 226 F.3d at 106 (reversing FNC dismissal and noting risk of foreign court viewing a foreign state's torture of U.S. resident plaintiffs as "not our business"). Even if the Swiss court accepted jurisdiction, the resulting administrative difficulties and congestion would produce a decade of delay in a case already pending for nearly six years. That delay alone makes Switzerland inadequate. *Abdullahi*, 562 F.3d at 189 (forum is inadequate "if it does not permit the reasonably prompt adjudication of a dispute"). Because BNPP cannot "guarantee" that Plaintiffs' and the class' claims "could proceed in Switzerland," *Triadou*, 2016 WL 5945933, at *5, it fails to establish a "presently available" forum in Switzerland. *Id.*

III. BNPP cannot show that trial in New York would be oppressive or vexatious: the balance of hardships favors the U.S. Plaintiffs' home forum.

A. BNPP's nearly six-year delay belies any assertion of inconvenience.

BNPP must prove that the "relevant private and public interest factors weigh heavily in favor of trial in the alternative forum," *R. Maganlal & Co. v. M.G. Chem. Co.*, 942 F.2d 164, 167 (2d Cir. 1991). But its prolonged delay weighs against dismissal. *See SerVaas Inc. v. Republic of Iraq*, 540 F. App'x 38, 41-42 (2d Cir. 2013). In *SerVaas*, the Second Circuit made clear that a long-delayed FNC motion, filed at a "late stage of the litigation" with "costs already incurred by the parties," can be denied as "meritless." *Id.* (affirming denial of leave to file an FNC motion when the defendant waited "more than two-and-a-half years.").[20] Even a one-year delay cuts against dismissal. *See Bank of Crete, S.A. v. Koskotas*, 1991 WL 280714, at *4 (S.D.N.Y. Dec. 20, 1991) (finding delayed filing "one year after the case commenced" weighs "against dismissing").[21]

BNPP delayed for almost six years, draining the Court's and the parties' resources. It does not cite a single case where a court tolerated such delay: the longest was a successful FNC motion filed 2.5 years after foreign plaintiffs filed suit. *Golden Horn Shipping Co. v. Volans Shipping Co.*, 2017 WL 3535002, at *5 (S.D.N.Y. Aug. 16, 2017). BNPP claims its inconvenience only recently "crystallized"—apparently after BNPP's motion to dismiss was denied and BNPP's documents began surfacing. *See Kashef III*, 2021 WL 603290, at *10. What changed was not, as BNPP claims, the "extensive costs" of "translating Swiss law decisions and obtaining expert reports," nor Swiss secrecy objections. Br. at 15 n.8, 16. Swiss law discovery and translations were done ***1.5 years***

[20] BNPP's suggestion that nothing has happened in this case besides "motions practice and an appeal," Br. at 17, ignores the extensive work during the nearly nine months that discovery has been ongoing, Landau Decl. ¶ 2.a-j, as well as extensive Swiss law expert discovery. Indeed, BNPP's production of documents from their Government Productions is nearly complete. *Id.* ¶ 2.e.

[21] *See also In re Hellas Telecomms. (Luxembourg) II SCA*, 535 B.R. 543, 592 (Bankr. S.D.N.Y. 2015) (finding defendants' one-year delay after motions to dismiss had been "briefed, argued, and decided, and discovery had been overwhelmingly completed . . . belies their assertion that [the] Court is not a convenient forum").

ago. *See Kashef III*, 2021 WL 603290, at *2. BNPP's Swiss law objections were raised ***8 years ago*** in the criminal case. *See* Seymour Decl. ¶ 6. The "timing of this motion and the discovery that has taken place would render it inappropriate to grant" FNC dismissal "even if, *arguendo*, the private and public interests . . . weighed heavily in favor." *Bank of Crete*, 1991 WL 280714, at *2.

B. The private interest factors weigh against dismissal.

The private interest factors include "(1) the private interest of the litigant; (2) the relative ease [of access] to sources of proof; (3) the availability of compulsory process for attendance of unwilling witnesses; (4) the cost of obtaining attendance of willing witnesses; (5) possibility of viewing the premises . . .; and (6) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Ski Train*, 230 F. Supp. 2d at 388.

1. Forcing these U.S. Plaintiffs to relitigate in Switzerland would impose prohibitive financial burdens.

The disparity in wealth between the parties weighs against dismissal. BNPP objects to litigating in New York, where it does business, and insists that U.S. residents should be forced to start again from scratch in Switzerland, without their chosen counsel, and at great expense. BNPP "has vast resources and can therefore easily transport witnesses and evidence to this forum." *Ski Train*, 230 F. Supp. 2d at 389. In contrast, "[t]his is not a case where the plaintiff is a corporation doing business abroad and can expect to litigate in foreign courts." *Guidi*, 224 F.3d at 147.

The Plaintiffs and class members came here as refugees with "only modest means and would suffer hardship if forced to litigate" in Switzerland. *Ski Train*, 230 F. Supp. 2d at 389. Plaintiffs would be subject to complex pretrial legal aid applications requiring them to locate and retain Swiss counsel. *See* Mabillard Decl. ¶¶ 10-11; 64-71. Even if Plaintiffs were granted legal aid, substantial costs would not be covered and they would remain liable to reimburse the Swiss canton. *Id.* If legal aid were denied, the 19 Plaintiffs could be required to pay cumulative costs

exceeding CHF 631,400 ($688,000) with the prospect of joint and several liability. *Id.* ¶¶ 72-78. Cumulative costs for 15,000 class members could range from CHF 1.2 million to CHF 75.5 million ($1.3 to $82.3 million). *Id.*[22] Cost advancement by counsel and contingency fees are prohibited. *Id.* ¶¶ 80-82. And thousands of plaintiffs and witnesses would have to pay for travel to Switzerland or request that Swiss judges hold thousands of Hague Evidence Convention proceedings in the U.S. There is simply no way that genocide survivors with limited means could bear these burdens, nor would they try. *See* Boyd Decl. ¶ 7. Transfer would be, effectively, dismissal.

In contrast, BNPP proffers no showing that it would be genuinely prejudiced and no evidence that trial in New York would impose financial hardship on its current or former executives. "It is almost a perversion of the [FNC] doctrine to remit a plaintiff, in the name of expediency, to a forum in which, realistically, it will be unable to bring suit when the defendant would not be genuinely prejudiced . . . in the plaintiff's chosen forum." *Manu Int'l, S.A. v. Avon Prod., Inc.*, 641 F.2d 62, 67 (2d Cir. 1981) (reversing dismissal).

2. The actual issues in dispute turn on evidence outside of Switzerland.

The FNC analysis turns on the availability of proof central to resolving disputed issues: focusing on evidence bearing on secondary issues is reversible error. *See DiRienzo*, 294 F.3d at 33; *R. Maganlal & Co.*, 942 F.2d at 168 (finding abuse of discretion where misidentification of the "fundamental issue in the case" affected entire FNC analysis).

[22] Professor Mabillard estimates costs based on a hypothetical individual victims' claim valued at CHF 1 million, based on comparable individual human rights cases in the United States. *See, e.g.*, *Chowdhury v. WorldTel Bangladesh Holding, Ltd.*, 746 F.3d 42, 45 (2d Cir. 2014) (affirming $1.5 million jury verdict against company complicit in plaintiff's torture by paramilitaries). For 19 named plaintiffs the cumulative costs would be approximately CHF 631,400. For 15,000 individual claims, the costs would rise to approximately CHF 75.5 million. Professor Mabillard also analyzes a third scenario, in which the 15,000 claims have a claim value of approximately CHF 150 million, based on settlements in comparable U.S. human rights cases. *See, e.g.*, *Hilao v. Estate of Marcos*, 393 F.3d 987, 989 (9th Cir. 2004) (describing $150 million settlement reached following an approximately $2 billion judgment).

BNPP invites the Court to make this error, claiming that the central issue "will be the financial services provided to Sudanese entities by BNPP Suisse," Br. at 7, and that evidence and witnesses are sought from Switzerland. Neither is true. BNPP stipulated in its guilty plea that the BNPP Group provided sanctions-evasion services to Sudan. SSOF ¶ 14. And BNPP's documents, produced in the U.S., [redacted]. *See*, *e.g.,* Ex. 13; Ex. 14.

Witnesses. "[T]he location of witnesses" is "always a key factor in forum non conveniens cases." *Manu Int'l*, 641 F.2d at 66. Out of the 94 potential witnesses identified so far in discovery, 60 (64%) are in the U.S.; only 2 are in Switzerland. Landau Decl. ¶ 21; Ex. 7. In addition, the 19 named Plaintiffs and the 15,000 class members are in the U.S. Landau Decl. ¶ 9; Boyd Decl. ¶¶ 3-4, 7, 11. BNPP's U.S. compliance team is based in the New York area, [redacted]. *See* Landau Decl. ¶ 21; Ex. 7; Ex. 13. Their materiality is obvious: [redacted], *see id.*, and their head, Stephen Strombelline, was ordered fired by New York regulators due to his role. TAC, Ex. J at 1.

In contrast, BNPP does not name a single witness currently located in Switzerland. Br. at 16. "The moving party must clearly specify the material witnesses to be called and provide the court with a description of their general testimony . . ." *Virgin Enters. Ltd. v. Am. Longevity*, 2001 WL 34142402, at *9 (S.D.N.Y. Mar. 1, 2001). Yet BNPP points to only six pseudonyms, whom it does not identify as current or former employees, and asks the Court to assume they "presumably currently reside" in Switzerland. Br. at 15. A moving party is not entitled to such a presumption, and there is good cause to doubt it. For example, [redacted]. Landau Decl. ¶ 17; Ex. 7.

To be sure, there are BNPP executives in France and elsewhere who may be witnesses, even if BNPP pretends not to know who they are. *See* Seymour Decl. ¶ 6. BNPP's officers will likely be deposed on what they knew and when they knew it. If they are current BNPP officers, they "are under defendant's control and can testify in New York, if defendant desires." *Schmidt v. Am. Flyers Airline Corp.*, 260 F. Supp. 813, 814 (S.D.N.Y. 1966). Indeed, BNPP would not "suffer any oppressive or unusual expense or inconvenience in transporting its own employees to New York, where it does business." *Id.* If they are no longer employed by BNPP, and are unwilling to testify, "the Hague Convention on the Taking of Evidence Abroad […] is an adequate means to compel documents and witness testimony from abroad in this country and elsewhere." *Holocaust Insurance*, 228 F. Supp. 2d at 362. A Swiss court must also use the Hague Convention to compel testimony from French witnesses, so Switzerland offers no advantages. *See* Mabillard Decl. ¶ 89.

Finally, BNPP has not pointed to "a single potential witness who would be unable or unwilling to appear in New York, a showing that is generally required for a *forum non conveniens* dismissal." *Triadou*, 2016 WL 5945933, at *6 (internal quotations omitted). Even if there were such witnesses, it would be far more efficient to direct a handful of Hague Convention requests to Switzerland than for a Swiss judge to direct thousands of requests to the United States for genocide survivor Plaintiffs and witnesses unable to travel to Geneva without hardship. *See* Mabillard Decl. ¶¶ 85-91; Boyd Decl. ¶ 7. The balance of access to witnesses therefore favors the U.S.

Documentary Evidence. *First*, Plaintiffs' documents are in the United States. Plaintiffs' counsel have spent significant time with Plaintiffs in their homes in the United States, collecting both physical evidence and ESI. *See* Landau Decl. ¶ 2.f. Medical records relevant to Plaintiffs' injuries would likely be in the United States, as are immigration records relevant to their forced displacement from Sudan. *Id.* The same is true for class members.

Second, BNPP's documents—the heart of the U.S. government's criminal case—are now being produced to Plaintiffs. Out of the 615 documents (totaling 5,963 pages) produced to date, the largest portion *originated in New York*: 46% came from BNPP NY, while only 26% came from BNPP Suisse. Landau Decl. ¶ 6. BNPP cannot even cite translation as an inconvenience: its documents have already been translated into English. *See id.* ¶ 7.[23] To be clear, Plaintiffs have also requested additional documents in the custody and control of BNPP France. But regardless of where BNPP stores its electronic copies, BNPP is a party before the Court with obligations under the Federal Rules. It is little burden for BNPP to transfer these documents electronically.

Third, documents from third parties are also in the United States. Plaintiffs have sought discovery from JPMorgan Chase Bank, N.A. and JPMorgan Chase & Co.—[redacted]—and the Treasury Department, which investigated the case. Landau Decl. ¶ 8. Thus, the bulk of documents in this case are in the United States.

Plaintiffs are not seeking discovery from BNPP Suisse. The highly incriminating Government Production, coupled with BNPP's admissions, leave no dispute that BNPP consciously cooperated with the Sudanese regime.[24] BNPP has redacted the names of most of its officers and co-conspirators, but those gaps can be filled by U.S. and French BNPP employees who have the information necessary to fill in and respond to Plaintiffs' Local Civil Rule 33.3(a) interrogatory. *See* Landau Decl. ¶ 11. BNPP has simply refused to ask its employees for this information. *Id.* These gaps could also be filled by BNPP's producing the unredacted originals of

[23] While these are uncertified translations "subject to further revision by either party," Landau Decl. ¶ 7, there would be no need to start from scratch for the subset of documents requiring certified translations into English. In contrast, in *Cortec Corp. v. Erste Bank Ber Oesterreichischen Sparkassen AG*, 535 F. Supp. 2d 403 (S.D.N.Y. 2008), cited by BNPP, "every relevant piece of evidence" was written in Croatian or German, and "[n]o evidence [was] likely to be found in New York or written in English." *Id.* at 412. Here, the majority of documents produced by BNPP to date originated in the U.S., Landau Decl. ¶ 6, and are written in English (as are those originating in London), and the Plaintiffs' own documents are in English and Arabic, *id.* ¶ 2.f.

[24] *See, e.g.*, Ex. 9.

documents that are clearly in its possession outside Switzerland, *e.g.*, emails and memoranda sent from Geneva to Paris. *See id.* ¶¶ 15-16. Aside from that, Plaintiffs do not contest BNPP's assertion that BNPP Suisse documents are not in Defendants' possession, custody, or control. *Id.* ¶ 22. And Plaintiffs have not sought such documents.

Because Plaintiffs have not requested documents from BNPP Suisse, whether "Bank records from BNPP Suisse" would be "subject to Switzerland's bank secrecy laws" is irrelevant. Br. at 14. Defendants make no showing that they—French and U.S. banks—are bound by these laws. *See* Romy Decl. ¶ 14 (stating only that *BNPP Suisse* is bound). BNPP fails to mention that the Swiss Supreme Court has explicitly held that foreign affiliates of Swiss banks are not subject to Swiss bank secrecy laws. Mabillard Decl. ¶ 96; Mabillard Ex. 18, c. 3.2.[25] Thus, BNPP fails to demonstrate that transfer to Switzerland would facilitate access to key evidence.

C. The public interest factors weigh heavily against dismissal.

Public interest factors are: "(a) administrative difficulties relating to court congestion; (b) imposing jury duty on citizens of the forum; (c) having local disputes settled locally; and (d) avoiding problems associated with the application of foreign law." *Triadou*, 2016 WL 5945933, at *7. These factors weigh heavily against dismissal.

1. Dismissal would impose delay and administrative difficulties on Swiss courts that lack class action or complex litigation mechanisms.

This District "has a good deal of experience adjudicating complex cases" and this case, "involving a large number of plaintiffs and defendants from many jurisdictions, can be efficiently heard in the federal court in New York." *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, 446 F. Supp. 2d 163, 178 (S.D.N.Y. 2006). The same is not true in

[25] BNPP's internal documents reflect [redacted] Landau Decl. ¶ 23; Ex. 8.

Switzerland. "Swiss courts do not have class action or complex litigation case-management mechanisms that would permit the efficient adjudication of an estimated 15,000 individual claims," explains Professor Mabillard. Mabillard Decl. ¶ 48. "There is no precedent or model in Swiss law for this procedural situation." *Id.* "If the U.S. plaintiffs' claims are voluntarily joined, as proposed by Professor Romy, this Herculean task would fall upon one Swiss judge, who would almost certainly order the claims severed and reassigned to multiple judges." *Id.* ¶ 12. This would "create risks of inconsistent rulings, compounded by potential pre-trial appeals, with no procedural mechanism to harmonize rulings on common issues." *Id.* Evidence collection would be burdensome: few if any plaintiffs or willing witnesses could afford travel to Switzerland (without the possibility of attorney cost-advancement), so "Swiss courts would be forced to resort to thousands of Hague Evidence Convention proceedings in order to obtain evidence in the United States" and "obtain compulsory process over unwilling witnesses, including BNPP's former U.S. employees." *Id.* This would require consular officials or U.S. court-appointed commissioners, "adding a drain on U.S. public resources." *Id.* For the 19 named plaintiffs, alone the burdens of Hague Convention requests, legal aid hearings, and Sudanese law would be significant. *See id.*

Professor Mabillard concludes that "transferring this case, after nearly six years of litigation in the United States, would likely impose a further decade of undue administrative burdens, congestion, and delay on Swiss courts." *Id.* ¶ 62.[26] This is precisely why a Swiss court would decline jurisdiction. *See infra*. § II. As in *Cromer Finance Ltd. v. Berger*, this Court has "already digested a lengthy and complicated record" and issued "extensive opinion[s] on motions to dismiss." 158 F. Supp. 2d 347, 355 (S.D.N.Y. 2001). Even a delay of "two years" would

[26] Swiss courts suffer from congestion as well. *See Triadou*, 2016 WL 5945933, at *7.

constitute a "material delay." *Id.* at 356. In Switzerland, even assuming a court found jurisdiction, the victims would face another decade of delay and expenditure of limited resources.

2. This Court is more than equipped to ascertain and apply Swiss law and has correctly rejected BNPP's discredited Swiss law theories.

This Court has already resolved the central Swiss law issue in this case: the scope and application of accomplice liability under Art. 50.1. *Kashef III*, 2021 WL 603290, at *3-8.[27] The Court adopted the views of Professor Franz Werro, one of Switzerland's foremost experts on Art. 50, who "has been cited by the Swiss Supreme Court on this precise provision." *Id.* The Court discredited BNPP's interpretation of Art. 50 as "unsupported by, and at times inconsistent with" Swiss case law. *Id.* at 4. Recognizing that BNPP had not presented Swiss law objectively as it is applied by the Swiss Federal Supreme Court, but rather its expert's theory of how "he believes it *should* be applied," the Court declined to adopt BNPP's novel interpretation of Art. 50. *Id.*

BNPP now claims that the Court's resolution of this issue is "controversial" and that "Swiss legal scholars are closely following this litigation." Br. at 19. As proof, BNPP's expert Prof. Romy cites Offtinger and Stark, eminent Swiss scholars who died in 1977 and 2006, respectively, and are not "closely following this litigation." Romy Decl. ¶ 41 n.5; Declaration of Franz Werro ("Werro Decl.") ¶ 11. Aside from the Swiss scholars retained as experts, only one commentator has published a case note examining this case. Werro Decl. ¶ 12. Professor Werro confirms that the Court's opinion is correct, and that there is no new Swiss precedent or change in the law that would warrant reconsideration. *Id.* ¶ 5. Prof. Romy cites no Swiss cases in her declaration and has no prior publications on Art. 50 CO. *Id.* ¶¶ 6-7. There is no controversy under Swiss law.

[27] As the Court held, Plaintiffs state claims for complicity liability under Art. 50 CO. Primary and agency liability, referenced by BNPP in its brief, are not at issue in this case. Br. at 18.

Finally, dismissal would not avoid conflicts of law. As BNPP and Prof. Romy fail to disclose, a Swiss court would be required to apply Sudanese law as the law of the place of injury. *See* Mabillard Decl. ¶¶ 41-42. All of the Swiss law discovery and briefing done to date would be wasted and a Swiss court would need to start anew ascertaining Sudanese and Sharia law.

3. Facilitating genocide in Darfur through money laundering in New York is not a localized Swiss matter.

BNPP fails to show that this case is a "local dispute[]" to be "settled locally" in Switzerland. *Triadou*, 2016 WL 5945933, at *7. BNPP claims that Switzerland has a "strong interest in policing conduct by its corporations and officers." Br. at 19. But Defendants are not Swiss corporations and are not regulated by Swiss authorities. *See* Mabillard Decl. ¶ 96. Moreover, BNPP shows no evidence of Swiss public interest in the Darfur genocide or its U.S. resident victims.[28] In contrast, the U.S. public responded with outcry: "Darfur has mobilised activists and generated support like no other conflict or humanitarian crisis, particularly in the US."[29] In 2010 alone, the U.S. government provided "well over $100 million" in refugee assistance and it "resettled more than 30,000 Sudanese refugees" between 1990 and 2010.[30]

CONCLUSION

For the foregoing reasons, BNPP's *forum non conveniens* motion should be denied.

[28] BNPP claims that Plaintiffs "were not victims of BNPP's crime." Br. at 20 n.9. But in BNPP's sentencing hearing in this Court, prosecutors acknowledged the importance of compensating the "numerous individuals . . . who suffered grievous harm at the direction of the regime[] in Sudan . . . that this defendant willfully processed billions of transactions for." ECF 55 at 9-11, *United States v. BNP Paribas S.A.*, 14-cr-460 (S.D.N.Y. May 1, 2015). They specifically sought information from those harmed "during the course of BNPP's conspiracy." *Id*. at 12. And they stated that "it is important to set up a process that will ultimately lead to the compensation of individuals who have suffered harm at the hands of these regimes that benefited from BNPP's conduct in this case." *Id.* at 15.

[29] https://www.theguardian.com/world/2007/may/19/film.usa

[30] Refugees and IDPs in Sudan: The Crisis Continues, Hrg. Before the Tom Lantos Human Rights Comm'n., H. Rep. 111th Cong. 2d Sept. 30, 1020 at 4, https://tinyurl.com/2p85hrh5.

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