

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ENTESAR OSMAN KASHEF, *et al.*,

*Plaintiffs,*

-against-

BNP PARIBAS S.A., BNP PARIBAS S.A.  
NEW YORK BRANCH, and BNP PARIBAS  
US WHOLESALE HOLDINGS, CORP.,

*Defendants.*

No. 1:16-cv-03228-AKH-JW

Hon. Alvin K. Hellerstein

**Status conference requested**

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE DEFENDANTS'  
GUILTY PLEA AGREEMENTS AND UNSEAL JUDICIAL DOCUMENTS**

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## TABLE OF EXHIBITS

### Exhibit A:

David Bensoussan, *BNP Paribas encore rattrapée par ses affaires avec le Soudan* [“*BNP Paribas Continues to be Dragged Down by its Dealings with Sudan*”], Challenges, Apr. 22, 2023, [https://www.challenges.fr/monde/bnp-paribas-encore-rattrapee-par-ses-affaires-avec-le-soudan\\_853045](https://www.challenges.fr/monde/bnp-paribas-encore-rattrapee-par-ses-affaires-avec-le-soudan_853045) (certified translation)

## INTRODUCTION

Words have meaning and agreements matter. BNPP expressly pledged it could not contradict “in whole or in part” the facts it admitted in its criminal conviction in any civil proceedings brought by private parties in U.S. courts such as this one. And it promised it would not assert any defenses “inconsistent” with those pleas and admissions.<sup>1</sup> BNPP does not contest these obligations, but instead seeks to circumvent them.

Rather than address the issues raised, BNPP claims Plaintiffs have no right to put this issue before the Court, when it was BNPP’s insistence that its crimes were not crimes that brought the parties to an impasse on unsealing. BNPP deflects by asserting Plaintiffs lack standing to bind BNPP to its plea admissions, when in fact the Second Circuit held precisely that in *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 43 (2d Cir. 1986). This Court—which also happens to be the sentencing court—has the power to deploy a variety of measures to enforce BNPP’s pleas.

In its continued effort to repudiate the facts underlying its guilt, BNPP insists that the transactional evidence of its criminal relationship with terrorist regimes should remain redacted or sealed. *See* Defs’ Opp. to Pls.’ Mot. to Enforce Defs.’ Guilty Plea Agreements and Unseal Jud. Docs, ECF No. 497 (“Opp’n”) at 8-14. *First*, BNPP asserts that its transactions with “third parties”—*i.e.*, Cuba and Iran, other designated State Sponsors of Terrorism—are purportedly legal. To the contrary, transactions with these countries were not innocent, but criminal, as set forth in BNPP’s guilty pleas incorporated into the operative Third Amended Complaint (“Complaint”) in this action. *Second*, BNPP argues that its internal investigations into its illicit transactions with

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<sup>1</sup> Pls.’ Mot. to Enforce Defs.’ Guilty Plea Agreements and Unseal Jud. Docs, ECF No. 490 (“Mot.”) at 8 (citing Ex. 3, DANY Plea Agreement at ¶¶ 7, 22-23; Ex. 2, DOJ Plea Agreement at 8).

Sudan, provided in response to U.S. government investigations which culminated in *public* guilty pleas, are confidential. Both positions fail as a matter of fact and law.

BNPP twists the plain language of its criminal admissions at every turn. And it doubles down by over-designating as “confidential” documents it prepared that directly detail its criminal complicity with state sponsors of terrorism—to walk back or otherwise duck and dodge incontrovertible facts of its admitted conduct. Plaintiffs’ motion addresses BNPP’s pervasive attempt to decouple the facts underlying its conviction from the harm to its victims *expressly* underlined in the U.S. sanctions it violated,<sup>2</sup> *expressly* confessed<sup>3</sup> in the guilty pleas,<sup>4</sup> and *expressly* confirmed in this action.<sup>5</sup>

Enforcement of BNPP’s agreement to the words in its guilty pleas is not an assault on Swiss law, as is contended by BNPP. BNPP’s knowing contribution to its accomplice’s massacre of the Black African Sudanese population is not just a fact issue: it is an *indisputable* fact, because it is

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<sup>2</sup> Exec. Order No. 13067, 62 Fed. Reg. 59989 (Nov. 3, 1997), reprinted in 31 C.F.R. 538 (62 Fed. Reg. 59989, Nov. 5, 1997) (“the policies and actions of the Government of Sudan, including continued support for international terrorism . . . the prevalence of human rights violations, including slavery and the denial of religious freedom, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.”)

<sup>3</sup> BNPP admitted, under oath in open court, to “all of the facts contained in the statement of facts that is attached [] to the plea agreement, and [] further admit[ed] to all of the allegations in the information.” Statement of Georges Dirani, Corporate Representative of BNP Paribas *in* Ex. 6, *United States v. BNP Paribas*, Hearing Tr. (July 9, 2014), Doc. No. 66, 14-cr-00460-LGS, at 5:14-15, 21:21-24. The contradictions now asserted by BNPP raise serious questions as to the truthfulness of its sworn representation. *See id.* at 10:5 (“THE COURT: [...] I will ask you questions about the offense, and if you knowingly give untruthful or misleading answers to those questions under oath on the record and in the presence of counsel, the answers may later be used against you in a separate prosecution for perjury or for making false statements.”).

<sup>4</sup> Ex. 4, SSOF at ¶¶ 3-4, 17, 20 (BNPP admitted the Government of Sudan was “supporting international terrorism and committing human rights abuses,” and that BNPP’s employees “recognized” it was doing so).

<sup>5</sup> Deposition of Danny Cozine, ECF No. 422-49 (“Cozine Dep.”) at 123:11-15 (“what we did, what we pled guilty to, *there is no dispute in its supporting the Sudanese government, which was using funds to support terrorism and committing human rights abuses.*”) (emphasis added).

an *admitted* fact. The admission is not found in the Swiss civil code. It is found in BNPP's plea. The enforcement of that plea overrides the fiction BNPP brazenly attempts to perpetuate by rewriting the facts of its participation in what the U.S. government recognized as genocide.

BNPP's duplicity is underscored by other events BNPP has failed to disclose. Plaintiffs recently learned from French news reports that Swiss police raided BNPP's offices in Geneva "as part of a criminal investigation into BNP Paribas for complicity in crimes against humanity" in Sudan.<sup>6</sup> French prosecutors issued preliminary findings that "BNP Paribas operated in Sudan in the 2000s 'in full knowledge' it was breaking *international* [not just U.S.] sanctions[.]"<sup>7</sup>

Accordingly, the Court should order the disputed exhibits be unredacted or unsealed as described in Plaintiffs' motion; prohibit BNPP from further contradictions of the facts in its pleas; and strike all inconsistent representations from the record, at the appropriate stage.

## ARGUMENT

### **I. BNPP Fails to Demonstrate That Evidence Underlying BNPP's Public Guilty Pleas Should Be Sealed.**

From the beginning of this case, BNPP has peddled a falsehood: that its criminal convictions are untethered from the anticipated victims expressly referenced in the very U.S. sanctions BNPP violated when it transacted business with the state sponsors of terrorism and gross human rights abuses, Iran, Cuba and Sudan. But BNPP's criminal conduct was no mere "financial transactions." Its guilty pleas, incorporated into the Complaint in this action, as well as its own

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<sup>6</sup> Ex. A, David Bensoussan, *BNP Paribas encore rattrapée par ses affaires avec le Soudan* ["*BNP Paribas Continues to be Dragged Down by its Dealings with Sudan*"], Challenges, Apr. 22, 2023, [https://www.challenges.fr/monde/bnp-paribas-encore-rattrapee-par-ses-affaires-avec-le-soudan\\_853045](https://www.challenges.fr/monde/bnp-paribas-encore-rattrapee-par-ses-affaires-avec-le-soudan_853045) (certified translation).

<sup>7</sup> Agence France Presse (AFP), *BNP 'Knew' It Was Breaking Sudan Sanctions In 2000s: French Probe*, Barron's, Mar. 11, 2024, <https://www.barrons.com/news/bnp-knew-it-was-breaking-sudan-sanctions-in-2000s-french-probe-8decea99> (emphasis added).

admissions in this case, acknowledge the direct nexus between BNPP's financial transactions and victims of terrorism and genocide.

**A. *Modus Operandi* Transactions with Cuba and Iran (Appendix B).**

**BNPP cannot overcome the strong presumption of public access.** BNPP fails to address and therefore concedes Plaintiffs' position that BNPP's transactions with Cuba and Iran "show identity through common *modus operandi*." Mot. at 5 (quoting *United States v. Carlton*, 534 F.3d 97, 101 (2d Cir. 2008)). Instead, BNPP improperly shifts the burden to Plaintiffs to show "sufficient public interest" in the unsealing of transaction entries in Appendix B. However, there is great public interest in documents that reflect criminal conduct whose victims were referenced not only in the sanctions but also at the time of sentencing. *See, e.g., Goodman v. Genworth Fin. Wealth Mgmt.*, 881 F. Supp. 2d 347, 355 (E.D.N.Y. 2012).

BNPP speciously analogizes Iran and Cuba to protected "third parties" whose transactions are "not at issue in this litigation." Opp'n at 12. By citing to cases where the court found the "privacy interests of *innocent* third parties" outweighed the "presumption of access," BNPP defends the interests of entities operating out of rogue countries long-sanctioned by the United States. *City of Providence v. BATS Glob. Markets, Inc.*, No. 14-CV-2811 (JMF), 2022 WL 539438, at \*2 (S.D.N.Y. Feb. 23, 2022) (emphasis added); *see also In re Search Warrant Dated Nov. 5, 2021*, No. 21 MISC 813 ATSLC, 2021 WL 5830728, at \*6 (S.D.N.Y. Dec. 7, 2021) (same).

**Judicial documents.** Obviously desiring to detract from the ultimate harms resulting from its criminal complicity with state sponsors of terrorism, BNPP focuses on parsing the Appendix B transaction reports' contents. *First*, BNPP argues that the transaction reports were not cited by Plaintiffs specifically for references to Iran and Cuba in Plaintiffs' summary judgment and class certification filing, so these transactions do not qualify as judicial documents. Opp'n at 9-10. But

parsing individual line items from a single document is outside the proper standards for sealing. Nothing in BNPP's sole citation, *Brown v. Maxwell*, 929 F.3d 41, 49 (2d Cir. 2019), suggests otherwise. Under *Maxwell*, as under *Lugosch* and this Court's individual rules, Appendix B consists of judicial *documents* and is evidence supporting not only the Complaint, but Plaintiffs' opposition to BNPP's motion for summary judgment.<sup>8</sup> The Second Circuit has expressly rejected any proposition that "different types of documents might receive different weights of presumption based on the extent to which they were relied upon in resolving [a] motion for [summary judgment]." *Maxwell*, 929 F.3d at 48 (quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 123 (2d Cir. 2006)).

*Second*, BNPP's characterization that its Iran and Cuba transaction material is "irrelevant" also falls short of the standard for sealing. Opp'n at 2, 9, 10.<sup>9</sup> Magistrate Judge Willis certainly did not rubber stamp line-item relevancy redactions of the sort BNPP now seeks for Iran and Cuba.<sup>10</sup> The Appendix B documents reflect relevant transactions that demonstrate BNPP's common *modus operandi*; BNPP itself has put the identity of the conspiracy's ringleader into issue by insisting it was not responsible for the criminal conduct in this case, thereby contradicting its guilty pleas.<sup>11</sup>

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<sup>8</sup> See Pls' Opp'n to Defs.' Mot. Summ. J., ECF No. 482, at 25; TAC, ECF No. 241, at ¶¶ 1, 17, 193-95.

<sup>9</sup> In support, BNPP cites to a portion of the *Maxwell* decision where the Court offered certain methods to address motions to unseal "court files [that] might be used to 'promote scandal arising out of unproven potentially libelous statements,'" 929 F.3d at 51, which is the opposite of this case where the documents in issue are BNPP's documents and they underlie its own public guilty pleas and convictions.

<sup>10</sup> Instead, with regards to production of documents, after counsel for BNPP suggested, *inter alia*, "if you have a document that is *completely* about . . . Iran, you don't produce it," Magistrate Willis simply found that approach "reasonable." Tr. of May 26, 2022 Status Conference, at 22:5-23:1, 24:6-7 (emphasis added).

<sup>11</sup> As provided in Plaintiffs' Motion, redactions to these documents should only be applied to transactions that do not involve BNPP's sanctioned clients and accomplices. Mot. at 6.

**B. Investigations Culminating in BNPP’s Public Guilty Plea (Appendix C).**

BNPP does not refute (1) that its *internal* transaction reviews at issue reflect illicit activity with Sudan related to Plaintiffs’ claims, or (2) that as to BNPP’s interests, *Lugosch*’s “strong presumption of access attaches” to these judicial documents. Rather, BNPP deflects by asserting purported interests of the *U.S. government*—a non-party and non-intervenor.

However, the U.S. government has *not* “asserted interest[] in keeping these materials confidential” in this case. Opp’n at 13. BNPP’s argument teeters on the importation of statements from a FOIA attorney in a separate FOIA action purportedly regarding risks of revealing law enforcement techniques and dissuading candor from investigative targets. *Id.* at 13-14. This tact is repetitious of arguments previously dismissed in this case by the magistrate judge. BNPP urged the court to heed the statements from the FOIA/FOIL actions when it endeavored to shield itself from producing to Plaintiffs any documents that it had previously produced to adverse government authorities as part of the criminal investigations. Order, ECF No. 343 at 11-14. Magistrate Judge Willis found that the government had not submitted “declarations, affidavits or testimony . . . directly to the Court in *this* case” and correctly recognized that interests at issue in the separate FOIL/FOIA cases “would not necessarily suffice to resolve the issue before the Court in *this* action.” *Id.* at 13-14 (emphasis added). Simply put, neither Magistrate Judge Willis nor Plaintiffs are “ignor[ing]” the government’s interests as none have been tendered *in this case*.

BNPP’s guilty plea agreements that incorporate recitations of facts underlying its complicity with U.S.-designated state sponsors of terrorism were made public a decade ago in 2014 and were incorporated into the Complaint here. The pleas contain specific admissions by BNPP directly related to its illicit transactions with Cuba, Iran, and Sudan.<sup>12</sup> Accordingly, *Lugosch*

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<sup>12</sup> See Ex. 4, SSOF at ¶¶ 8-10, 42-48.



applies to Appendix C. BNPP's so-called "internal work product" was not found privileged by Magistrate Judge Willis<sup>13</sup> and reflects criminal conduct publicly admitted to and made public by the government and BNPP.

Furthermore, the transactions substantiate a critical element of Plaintiffs' case: BNPP's knowledge and intent to provide multi-billion dollar support to genocidal and terrorist regimes in violation of sanctions whose express purpose was to protect victims such as Plaintiffs. Such information is central to the public's ultimate understanding of the indisputable facts upon which Plaintiffs' claims are to be adjudicated.

## **II. BNPP Fails to Rebut Its Contradictions of Factual Admissions In Its Guilty Pleas.**

BNPP concedes that it cannot "contradict in any proceeding, the facts contained in the [guilty plea] Factual Statement" or raise defenses inconsistent with its factual admissions. Ex. 3, DANY Plea Agreement at ¶¶ 7, 22-23; *in accord* with Ex. 2, DOJ Plea Agreement at 8. BNPP also concedes that these obligations extend to BNPP, "its present or future attorneys, partners, agents, or employees," including its hired experts in this litigation. *Id.*<sup>14</sup> Nonetheless, BNPP *repeatedly* contradicts those factual admissions, *see* Mot. at 8-11; Ex. 1 (collecting contradictions and inconsistencies), and avoids the issue by raising meritless procedural objections, such as claiming that Plaintiffs have no "standing" before this Court to stop a convicted criminal from contradicting undeniable facts established in criminal proceedings.

### **A. BNPP Pleaded Guilty to Facts Linking its Conduct to Sudan's Atrocities.**

BNPP attempts to claim that there is no link between its provision of financial services to the Government of Sudan, in violation of U.S. sanctions, and the undermining of these U.S.

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<sup>13</sup> Order, ECF No. 343 at 14.

<sup>14</sup> As such, it does not matter whether a contradictory statement was made by an expert and "that the BNPP Defendants did not even cite [it] in their papers." *See* Opp'n at 17.

sanctions that were expressly designed to address the regime’s genocidal and human rights atrocities. Fundamentally, BNPP seeks to rewrite its involvement in Sudan’s crimes, in direct contradiction with its factual admissions in its pleas, the sworn testimony of its own corporate designated representative, and the conclusions of two prior courts. *See, e.g.*, Cozine Dep. at 123:11-15 (“what we did, what we pled guilty to, ***there is no dispute in its supporting the Sudanese government, which was using funds to support terrorism and committing human rights abuses***”) (emphasis added).

Knowing it cannot disavow the plain words of its criminal pleas, BNPP resorts to dismissing, seemingly in its entirety, the testimony of its’ own Rule 30(b)(6) representative as “outside the scope” of his designation. Opp’n at 18. To the contrary, BNPP’s designee candidly testified he had read the plea agreements<sup>15</sup> and proceeded under oath to confirm that BNPP’s processing of financial transactions for Sudan<sup>16</sup> was aiding the Sudanese government’s human rights abuses<sup>17</sup>—both topics covered by the scope of his designation and the essence of the facts essential to BNPP’s guilty pleas. BNPP seeks to walk back this sworn testimony with a cavalier response that “the witness [] himself [was] a non-lawyer with no personal knowledge of the facts underlying the plea agreements,” Opp’n at 18, yet, as the designee, BNPP necessarily concedes

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<sup>15</sup> Cozine Dep. at 83:11-13.

<sup>16</sup> Compare Topic 7 of the Rule 30(b)(6) Notice (“BNPP’s approval, provision, or processing of Sudan Payments and Sudan Financing, and Your knowledge of such approval, provision, or processing during the Relevant Time Period.”) with Cozine Dep. at 116:16-18 (“The structures that BNP Paribas provided allowed access to U.S. dollars to Sudanese counterparties”). Quotes from this deposition are not redacted herein, consistent with Defendants’ position in their Letter Response. *See* ECF No. 495 at 2 (Defendants “do not object to this material being filed on the public docket”).

<sup>17</sup> Compare Topic 14 of the Rule 30(b)(6) Notice (“Your knowledge of Human Rights Abuses in Sudan . . .”) with Cozine Dep. at 123:13-15 (“the Sudanese government . . . was using funds to support terrorism and commit[] human rights abuses”); *id.* at 119:17-19 (“The U.S.’s view was that those funds were then being used by the Sudanese government to repress their people”).

that he has “testif[ied] about information known or reasonably available to the organization” regarding these topics, Fed. R Civ. P. 30(b)(6).

BNPP also seeks to circumvent these confessed facts by claiming that neither this sentencing Court nor the Second Circuit made “finding[s]” as to BNPP’s conduct *with regards to Swiss law*. See Opp’n at 17. By doing so, it is insinuating that its obligations under the plea agreement to take no inconsistent factual positions were dependent on the choice of law applied to this follow-on civil case. No such exception exists. Although BNPP may argue the law, it cannot and is prohibited from altering the facts to which it binds itself as the full and complete truth. BNPP cannot defy Judge Schofield’s factual finding that BNPP’s “actions not only flouted U.S. foreign policy but also *provided support* to governments that threaten both our regional and national security and, *in the case of Sudan, a government that has committed flagrant human rights abuses and has known links to terrorism.*” Ex. 6, *United States v. BNP Paribas*, Hr’g Tr. at 34:4-9 (emphasis added). Nor can BNPP ignore the Second Circuit’s explicit statement in its opinion that “BNPP [] conceded that it had knowledge of the atrocities being committed in Sudan and of the consequences of providing Sudan access to U.S. financial markets.” *Compare Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 56-57 (2d Cir. 2019) (full recitation of the Circuits’ record of BNPP’s conduct as admitted in the pleas) *with* Opp’n at 17 (BNPP’s disingenuous representation in its opposition claiming that the “Second Circuit . . . did not state . . . [this] for purposes of Swiss tort law[.]”).

**B. BNPP’s Repeated Revisionisms of Incontrovertible Facts Are Impermissible.**

BNPP does not and cannot deny its contradictions and inconsistencies to the facts to which it pleaded guilty. *First*, in its opposition, BNPP fails to address, let alone acknowledge, the vast majority of the contradictions raised by Plaintiffs in their motion and accompanying Exhibit 1. For example, BNPP does not explain how it now denies that it took full responsibility for its own

criminal conduct and that of its wholly owned Swiss subsidiary. *See* Ex. 1 at 1 (listing three denials of uncontestable facts from BNPP’s expert reports and Summary Judgment motion). Likewise, BNPP offers no explanation as to how it can contradict its admission that it knew of Sudan’s atrocities or that the U.S. laws it was violating were expressly intended to protect Sudan’s victims of its oppression.<sup>18</sup> *See* Opp’n at 16-17.

*Second*, regarding the cherry-picked contradictions and inconsistencies BNPP does choose to address, it resorts to gross mischaracterizations. For example, BNPP pleaded guilty to “knowingly, intentionally, and willfully” violating U.S. sanctions, Mot. at 10 (quoting plea), yet now it denies that criminal intent. Now, however, it seeks to attribute its conduct to an unwitting mistake on its reliance “on [an incorrect] 2004 legal opinion” in conducting sanctioned transactions. Opp’n at 17. BNPP was not relying on legal advice when violating the U.S. sanctions; rather, it was relying on a willful attempt to design a plan to allow BNPP to do covertly what it knew it could not do openly. BNPP always knew that accomplishing the prohibited transactions invoked accountability under U.S. sanctions, regardless of whether they were achieved by circumvention or committed directly. *See* Ex. 4, SSOF at ¶ 30. BNPP also fails to mention that the incorrect legal opinion, which was provided at the height of when the Darfur Genocide was condemned by Secretary Colin Powell, was provided by “Law Firm 1,” a participant referenced in BNPP’s guilty plea which also happens to be defense counsel in this action, Cleary Gottlieb. *See id.* at ¶ 30.<sup>19</sup>

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<sup>18</sup> Exec. Order No. 13067, 62 Fed. Reg. 59989 (Nov. 3, 1997), reprinted in 31 C.F.R. 538 (62 Fed. Reg. 59989, Nov. 5, 1997).

<sup>19</sup> BNPP further fabricates a temporal limitation to its contradictory statements denying its intentional violation of U.S. sanctions. *See* Opp’n at 17 (this was “a statement taken out of context from an expert [report] discussing the *inception* of one of BNPP’s predecessor’s commercial relationships”) (emphasis in original). Not only does the statement, even temporally limited, still

BNPP also resorts to characterizing its contradictory and inconsistent factual statements as legal “arguments.” One of the most blatant examples of such distortion is their newly minted characterization of Sudan’s crimes as nothing more than “public acts of a foreign sovereign[.]” *See* Mot. at 16; Opp’n at 16. This borders on delusion. The Second Circuit clearly held that “[t]he atrocities taking place in Sudan are widely known and have been condemned by both the United States and the international community as genocide” and that genocide and other human rights abuses committed by the Government of Sudan are not a “valid” “official act.” *Kashef*, 925 F.3d at 55, 60-62.

Finally, BNPP admitted that without its complicity the Government of Sudan would not have had access to U.S. financial markets and the U.S. dollars it required to commit mass atrocities on a mass scale over a decade-long period. *See* Mot. at 10. Now, however, BNPP claims that this admission is not a relevant fact. *See* Opp’n at 17. To the contrary, these facts speak directly to the causal link between BNPP and Sudan’s terrorism against its own citizens. *See* Mot. at 8.

**C. The Court Can Deploy a Variety of Equitable Measures to Enforce BNPP’s Pleas.**

BNPP insists Plaintiffs have no “standing” to “enforce” BNPP’s pleas as “third parties.” Opp’n at 15. Not only do the plea agreements themselves expressly contemplate “civil proceedings” like this one,<sup>20</sup> BNPP admitted, under oath in open court, “to all of the facts contained in the statement of facts that is attached . . . to the plea agreement[.]” Statement of Georges Dirani, Corporate Representative of BNP Paribas *in* Ex. 6, *BNP Paribas*, Hr’g Tr. at 5:14-15, 21:21-24.

Thus, the Court, which sentenced BNPP may, *sua sponte*, deploy a variety of equitable measures in its discretionary authority to enforce plea agreements. The Court may find BNPP in

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contradict BNPP’s plea agreements, such a temporal limitation is simply not supported by the expert report itself, as evidenced by the fact that BNPP does not quote any language.

<sup>20</sup> *See* Ex. 2, DOJ Plea Agreement at 8.

contempt, as held in the very case BNPP cites in its opposition. *See, e.g., Sec. & Exch. Comm'n v. Rajaratnam*, No. 13-CV-01894 (JGK), 2018 WL 562940, at \*1 (S.D.N.Y. Jan. 24, 2018) (“the Court does retain inherent authority to issue a finding of contempt sua sponte,” “for bad faith conduct,” regardless of whether the movant is “a party to the Final Judgement” or not) (emphasis in original) (internal citation omitted)). The Court may also bar BNPP from making contradictory statements. *See, e.g., Digilytic Int’l FZE v. Alchemy Fin., Inc.*, No. 20-CV-4650 (ER), 2023 WL 4288154, at \*2, 7 (S.D.N.Y. June 30, 2023) (defendant collaterally estopped from denying an admission he pleaded guilty to); *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 43 (2d Cir. 1986) (“a party other than the Government may assert collateral estoppel based on a criminal conviction.”).

### III. BNPP’s Assertions of Procedural Deficiencies Fail.

Unable to escape the substance of Plaintiffs’ motion, BNPP posits that it is “procedurally deficient.” Opp’n at 5; *see generally id.* at 3-8, 14-15 (rebuking Plaintiffs for filing a “new” sealing motion and attempting to characterize Plaintiffs’ motion as either a “sur-reply” or a “*de facto* motion *in limine*”).<sup>21</sup> To the contrary, the Court directed a new round of negotiations on unsealing in which BNPP raised new arguments, repudiating their plea agreement, which now require judicial resolution. BNPP’s baseless procedural argument, spanning over one third of its opposition, is another distraction from BNPP’s far more serious denials, remonstrations, walk-backs, and semantic acrobatics that constitute impermissible denials of its felony conviction, which BNPP asserts even now as a basis for confidentiality of decades-old criminal transactions.

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<sup>21</sup> To the contrary, the only party that has committed a procedural violation here is BNPP itself, by filing not one but *two* submissions in opposition to Plaintiffs’ motion. *See* Ltr Resp. to Mot. addressed to J. Alvin K. Hellerstein from Karen Patton Seymour,” dated March 28, 2024, ECF No. 495 and Defs’ Opp. to Pls.’ Mot. to Enforce Defs.’ Guilty Plea Agreements and Unseal Jud. Docs, dated April 8, 2024, ECF No. 497. BNPP should not be allowed to benefit from improper cumulative opposition briefs; argument from its April 8, 2024 opposition should be disregarded. *See D’Cunha v. Northwell Health Sys.*, Bo. 1:22-CV-0988 (MKV), 2023 WL 2266520, at \*2 (S.D.N.Y. Feb. 28, 2023), *aff’d*, 2023 WL 7986441 (2d Cir. Nov. 17, 2023).

As required under the protective order, ECF No. 245, both parties filed several motions to seal documents, expert reports, and deposition transcripts attached as exhibits to their summary judgment and class certification motions. *See* Opp’n at 3-4. These sealing motions were rendered largely moot, because, as BNPP admits, the majority of the parties’ prior sealing disputes were resolved following productive negotiations. *See* Opp’n at 1, 3-4. Following continued negotiations on eleven documents that remained in dispute, the parties reached impasse, Opp’n at 7 (BNPP conceding as such), making this motion ripe.<sup>22</sup>

Importantly, the parties deferred negotiations on the unsealing of expert reports and deposition transcripts until after reaching agreement on underlying documents, including these eleven documents in dispute. *See* Opp’n 3-4. The expert reports and deposition transcripts—judicial documents that are central to the parties’ class certification and summary judgment motions—*discuss, opine, and cite from these eleven documents at issue*. It is entirely proper for Plaintiffs to seek judicial intervention on positions taken by BNPP which are directly relevant to and impact the unsealing of expert reports and deposition transcripts, which BNPP has also over-designated as confidential, continuing to attempt to rehabilitate and sanitize crimes for which it clearly has no remorse. BNPP fails to identify any procedural failing.

### CONCLUSION

Accordingly, the Court should order that the disputed exhibits be filed on the public docket, without redacting evidence of BNPP’s dealings with sanctioned State Sponsors of Terrorism, and

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<sup>22</sup> Further, it is BNPP’s *own* arguments in negotiations on sealing that gave rise to the instant motion—namely, BNPP’s insistence that its crimes are not crimes and that documents can be withheld from the public on that basis. *See* Mot. at 5. BNPP cannot now attempt to frame Plaintiffs’ response to BNPP’s arguments as, alternatively, an improper “sur-reply” or a “*de facto motion in limine*.” Opp’n at 7-8, 14-15.

bar BNPP from asserting any statements or representations that contradict or are inconsistent with its guilty pleas and underlying Factual Statements.

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