

**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

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

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INTRODUCTION

BNP Paribas SA (“BNPP”) pleaded guilty to conspiring with Sudan’s military-Islamist regime (the “Regime”) to break a U.S. economic embargo “aimed at halting the genocide.” *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 60 (2d Cir. 2019) (“*Kashef II*”).¹ After being convicted of the largest banking crime in U.S. history, it now claims that, as a matter of law, it is not responsible for the victims of the 21st Century’s first genocide, perpetrated by its co-conspirator in the name of oil and Arab supremacy. That genocide killed and displaced millions of ethnically targeted Black Africans and it was entirely funded by BNPP. Plaintiffs, civilians of the ethnic populations targeted by the Regime, are survivors who fled to the United States and have become Americans. They are the victims of BNPP’s crimes, as the Second Circuit held, *Kashef II*, 925 F.3d at 62-6, and as reams of fact and expert evidence will show.

Beginning in 1997, BNPP’s decade-long conspiracy funneled over \$22.2 billion in illicit oil revenue to the Regime, via a money-laundering scheme that “served no legitimate business purpose.”² BNPP’s crime proceeds funded Sudan’s entire military budget, exceeding it by more

¹ The term “BNPP” refers to BNP Paribas S.A. and all branches, business lines, and subsidiaries of the BNPP Group, through which Defendant BNP Paribas SA violated the U.S. sanctions on Sudan as “directed from high levels of the Bank’s group management.” Ex. 1, Consent Order Under N.Y. Banking Law § 44; *In re BNP Paribas, S.A. New York Branch*, New York State Department of Financial Services, June 29, 2014 (“DFS Consent Order”) at ¶ 3; Ex. 3, Settlement Agreement between the U.S. Dep’t of Treasury’s Office of Foreign Assets Control and BNP Paribas S.A. (“OFAC Settlement”), COMPL-2013-193659, at ¶ 3; Ex. 1 to Lee Decl., ECF No. 435-1, Stipulated Statement of Facts, *United States v. BNP Paribas, S.A.*, 14 Cr. 460 (LGS) (June 30, 2014) (“SSOF”) at ¶ 17. These BNP Paribas Group branches and subsidiaries included, but are not limited to, its Head Office in Paris (“BNPP France”), its wholly-owned subsidiary in Switzerland, BNP Paribas (Suisse) S.A. (“BNPP Suisse”), United European Bank (“UEB”); BNP Paribas SA New York Branch, and BNP Paribas US Wholesale Holdings, Corp. (formerly BNP Paribas North America, Inc.) (“BNPP Wholesale”). See Plaintiffs’ Statement of Additional Material Facts pursuant to Local Civil Rule 56.1 at ¶ 3 (“SAMF”). Certain referenced exhibits were previously attached as exhibits to the Declaration of Charity E. Lee (“Lee Decl.”), dated July 21, 2023 (ECF No. 435). As indicated, such exhibits are referenced by their ECF No. All other exhibits are attached to the Declaration of Scott A. Gilmore, dated August 18, 2023, and are referenced by their Exhibit number.

² ECF No. 435-1, SSOF at ¶ 16.b.

than 46%, leading to a 3,000% increase in military spending,³ and resulting in the Regime's atrocities intensifying to a magnitude "condemned by both the United States and the international community as genocide." *Kashef II*, 925 F.3d at 55.

Summary judgment should be denied. *First*, the Court should reject BNPP's bid to change the rules of decision with its substitute experts, sneaked in years after Swiss law discovery and after full merits discovery has closed. As this Court already held, Article 50 of the Swiss Code of Obligations—the operative law in this case—provides for tort accomplice liability.⁴ It does not require that the accomplice commit the unlawful act. In 2019, the Swiss Supreme Court expressly determined "that the person who contributes to the infringement as an accomplice, ***but does not himself fulfill any statutory infringement requirement***, is jointly and severally liable for the tort pursuant to Art. 50 para. 1 CO." Ex. 112, *Swisscom Case*, SSC 145 III 72 (2019) at § 2.2.1, p. 74 (emphasis added).

"This case has been ongoing for [seven] years, with Defendants making every effort to avoid actually litigating and resolving the dispute" as this Court noted over a year ago. *Kashef VI*, ECF No. 338 at 9. Despite the prohibition on multiplying proceedings, BNPP has proffered nine expert reports on Article 50.1, through four proposed experts (including its eleventh-hour untimely substitutes), applying a constellation of more than 14 purported "requirements"⁵ that the Court

³ SAMF ¶¶ 179-180.

⁴ *Kashef v. BNP Paribas SA*, No. 16-CV-3228 (AJN), 2021 WL 603290, at *2 (S.D.N.Y. Feb. 16, 2021) ("Kashef IV"), *reconsideration denied*, No. 16-CV-03228 (AJN), 2021 WL 1614406 (S.D.N.Y. Apr. 26, 2021) ("Kashef V"). The key prior decisions in this case are identified in sequence: ECF No. 101, Op. granting mot. to dismiss (Mar. 30, 2018) ("Kashef I"), rev'd by 925 F.3d 53, 60 (2d Cir. 2019) ("Kashef II"); ECF No. 151, Op. on choice of law (Mar. 3, 2020) ("Kashef III"); ECF No. 193, Op. denying in part Mot. to dismiss (Feb. 16, 2021) ("Kashef IV"); ECF No. 338, Op. denying forum non conveniens dismissal (May 3, 2022) ("Kashef VI").

⁵ As of August 2020, BNPP had requested the Court to impose the following requirements on Article 50: (1) "willful," ECF No. 172. Defs' Suppl. Br. at 8; (2) "substantial," *id.*; (3) "immediate," *id.*; (4) "in the injurious course of conduct," *id.*; (5) "in the relevant course of conduct," *id.* at 9; (6) "committing . . . violations together," *id.* at 10; (7) "encouraged or directed," *id.*; (8) "closely manage or control," *id.* at 11, (9) commit "analogous" "primary" violations, *id.*; (10) "close proximity," *id.*; (11) "directly interacted," *id.*; (12) "for the purpose and with the intent to aid," *id.*; (13) not "through a separate course of conduct," *id.* at 13; and, if we count compounds, (14) "intentional, deliberate cooperation in a particular injurious course of conduct," *id.* at 15. The list has grown since then.

previously determined “are not elements articulated by the Swiss courts.” *Kashef IV*, 2021 WL 603290 at *4. The only thing consistent about BNPP’s “requirements” is that they have been contrary to the text of Article 50 (somehow a statute that applies to a “perpetrator or accomplice” does not apply to accomplices).⁶ They have been logically impossible (somehow complicity can be negligent but must be intentional) and “demonstrably incompatible” with Swiss case law.⁷ And they have been inconsistent with the prior publications of BNPP’s experts,⁸ and with the shifting positions taken by BNPP at different stages of this case.

In its Motion, BNPP insists it did nothing unlawful. It attempts repeatedly to deny the admitted facts from its criminal plea (in violation of its obligations to the U.S. government). It signals that it intends to deplete the Court’s time attempting to change the rules, re-argue and relitigate numerous decided issues. It paints its victims as interlopers, rather than Americans who have every right to seek remedies in their own courts. And it attempts to scapegoat BNPP (Suisse) and deny that it took full responsibility for the criminal conduct of its wholly owned subsidiary, when it pleaded guilty to conspiring with the Regime and its “satellite bank” money-launderers “*through* its Swiss-based subsidiary, BNPP Geneva.”⁹

BNPP goes so far as to deny that Plaintiffs and class members are victims at all, disregarding the Second Circuit’s explicit recognition that the Plaintiffs are victims of BNPP’s crime of conviction. *Kashef II*, 925 F.3d at 62-63. Instead, BNPP misleadingly de-contextualizes one statement of an Assistant U.S. Attorney at its sentencing hearing. ECF No. 442, Defs.’ Mot.

⁶ Ex. 104 to Lee Decl., ECF No. 435-104, Declaration of Franz Werro, March 2, 2023 (“Werro Decl. IV”). Plaintiffs’ Swiss law expert, Franz Werro, has submitted five declarations in response to Defendants’ nine. ECF No. 81, Declaration of Franz Werro, May 22, 2017 (“Werro Decl. I”); Ex. 105 to Lee Decl., ECF No. 435-105, Declaration of Franz Werro, Aug. 31, 2020 (“Werro Decl. II”); ECF No. 280, Declaration of Franz Werro, Feb. 2, 2022 (“Werro Decl. III”); ECF No. 435-104, Werro Decl. IV; Ex. 247, Declaration of Franz Werro, Aug. 16, 2023 (“Werro Decl. V”).

⁷ *Kashef IV*, 2021 WL 603290 at *4.

⁸ See ECF No. 435-104, Werro Decl. IV at ¶¶ 53, 112.

⁹ ECF No. 435-1, SSOF at ¶ 17 (emphasis added); Ex. 126, Deposition of Dan Cozine (“Cozine Dep.”) at 97:14-22.

for Sum. Judg. (“MSJ”) at 20. But at the sentencing hearing, 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.”¹⁰ The DOJ specifically sought information from those harmed “during the course of BNPP’s conspiracy.”¹¹ The AUSA further stated: “in light of the unprecedented nature of the BNPP’s criminal conspiracy and the resulting forfeiture, the government believes it is 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.”¹²

Second, under the commonsense Swiss-law causation standard previously adopted by this Court, and operative in this case, the evidence shows that BNPP in fact funded *all* of the atrocities against Plaintiffs and the proposed class of over 25,000 U.S. residents. Indeed, the Court has already held that Plaintiffs can satisfy natural (but-for) causation by establishing “that the revenue generated for the Sudanese government by BNPP’s assistance exceeded its entire military budget, leading to a massive increase in military expenditures . . .” *Kashef IV*, 2021 WL 603290 at *6. The Court held that this level of pervasive support would suffice to establish that “the funds accessed by Sudan through the BNPP Defendants’ financial services were actually used for the attacks that injured plaintiffs.” *Id.* This is precisely what Plaintiffs’ evidence shows. And this is far more than what the Swiss causation standard requires. As BNPP’s latest proposed Swiss law expert Christoph Müller admitted—when he was not being paid by BNPP— “[i]t is not necessary that each tortfeasor has directly contributed to the occurrence of the injury.”¹³ He conceded that even moral support suffices. *Id.* Here, it is undisputed that immediately after the U.S. embargo was put in place

¹⁰ Ex. 2 to Lee Decl., ECF No. 435-2, Sentencing Hearing Tr., *United States v. BNP Paribas SA*, at 9.

¹¹ *Id.* at 12.

¹² *Id.* at 15. And in fact, it did so with a website, usvbnpp.com. However, no compensation was ever paid to the victims.

¹³ Ex. 107, Christoph Müller, *Extracontractual Civil Liability* at 265.

in 1997, BNPP began giving not only moral but extensive financial support to the Regime, while genocide raged.

No matter how many times it sounds the empty refrain “plaintiffs have no evidence,” BNPP cannot escape from uncontested facts, the prior holdings of this Court, and basic math. The \$22.2 billion that BNPP laundered to the Regime is 12,000 times greater than the \$1.7 million in financial complicity deemed sufficient to survive summary judgment in *Carrizosa v. Chiquita Brands Int’l, Inc.*, 47 F.4th 1278, 1295 (11th Cir. 2022) (involving payments to Colombian paramilitaries who committed human rights abuses).

Third, the Court can and should dispose of three-quarters of BNPP’s motion under the law of the case doctrine. The Swiss law standards set by the Court should continue to govern. Further, under the “mandate rule,” the Court must follow the Second Circuit’s holdings that Plaintiffs’ claims are timely and that this Court is prohibited from deeming genocide a valid official act of state. Yet BNPP now attempts a do-over on both decisions.

Plaintiffs will prove their case with an enormous body of documentary, eyewitness, and expert evidence.

Putting aside the do-overs, the only actual disputed issue is causation under Swiss law: the Sudanese Regime’s genocide was unlawful, and BNPP does not dispute there is sufficient evidence the Regime injured Plaintiffs. As for “collective fault” under Article 50, BNPP has already pleaded guilty to conspiring with the Regime to violate the U.S. embargo on Sudan, knowing the embargo was designed to prevent the very atrocities from which Plaintiffs fled.

The jury will hear how BNPP, through its clandestine conspiracy, sustained a regime engaged in genocide for over a decade with the after-effects still unfolding. This required the “mobilization of the whole State apparatus, including the armed forces, the intelligence services,

the diplomatic and public information bureaucracies, and the justice system.”¹⁴ This required vast resources: a replenished arsenal; new and more lethal weapons; attack helicopters and Antonov bombers for razing civilian villages; salaries for military, police, security officials and for the deadly Arab militias given orders to kill, rape, pillage; patronage to maintain a vast network of state-security institutions including “ghost houses” were the Regime’s perceived enemies—including Plaintiffs—were tortured, starved, and raped. For this, the Regime needed hard currency: the Sudanese pound was worthless, and the U.S. dollar was the standard and trusted currency not only for oil, but also for the illicit arms trade. To get dollars, the Regime needed a bank willing to break the U.S. embargo and launder Sudan’s oil revenue through New York. That bank was BNPP. Discovery has revealed that the true scale of the financial complicity to which BNPP pleaded guilty exceeded even the staggering amount contained in BNPP’s guilty plea. A jury should now decide whether BNPP must compensate its victims.

The jury will hear expert testimony on how the billions in BNPP-laundered oil revenue fueled an escalation in military spending and repression that kept the Regime in power from (1) a renowned scholar on Sudan’s political economy at Columbia University and (2) the former Director for African Affairs at the U.S. National Security Council during the genocide, who also led the U.S. Holocaust Memorial Museum’s Center for the Prevention of Genocide. The jury will learn how BNPP enabled the rise of the Regime’s oil revenues from (3) an eminent analyst of Sudan’s oil industry from the Oxford Institute for Energy Studies. The jury will learn from (4) Sudan’s foremost human rights investigator who has documented for decades how oil became the cause and objective of the Regime’s escalating assault on ethnic and religious minorities, and how it used statutory authorities to mobilize militias in a divide-and-conquer strategy.

¹⁴ Seventh Report of the Office of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005) ¶ 98, available at <https://bit.ly/2QG3b0M>.

In addition, the jury will hear from a (5) leading South Sudanese cultural anthropologist and Syracuse University professor on how, based on his ethnographic studies of victim populations, the Plaintiffs' ordeals are consistent with the patterns and modus operandi of the Regime's mass atrocities. (6) A leading UN arms trafficking expert will retrace the paper trail of BNPP's falsified and redacted bank records and show how the Regime financed airbases and armored vehicles, facilitated Sudan's arms procurement network, and supported its domestic arms industry. (7) The former Senior Vice President in charge of Central Bank and International Account Services for the Federal Reserve Bank of New York will analyze the bank documents and data and testify that the Regime's BNPP-enabled crime proceeds dwarfed military expenditures by 46% on average and that BNPP laundered "*all* of the funds that were necessary to carry out *all* of the Bashir Regime's attacks on civilians in the relevant time period."¹⁵; (8) the former Chief Counsel for Global AML Compliance at J.P. Morgan Chase will analyze the means and methods of "catastrophically bad decisions that BNPP supported in its continued financing of well-documented genocide without taking more effective steps to address the legal and reputational risks."¹⁶ Finally, (9) NYU Grossman Medical School professor and founder of the Bellevue Hospital/New York University School of Medicine Program for Survivors of Torture, a leading expert on assessment of torture and war-related trauma, will testify on the unique physical injuries and mental disorders attributable to the Regime's pattern of abuses, violence, and torture experience by Plaintiffs.

Causation will turn primarily on the testimony of experts and for that reason alone cannot be decided on summary judgment. *See In re Joint E. & S. Dist. Asbestos Litig.*, 52 F.3d 1124, 1135 (2d Cir. 1995). A jury must decide whose experts are more credible. Plaintiffs have leading

¹⁵ ECF No. 435-64, Reply Report of Timothy Fogarty at ¶ 130 ("Fogarty Reply").

¹⁶ ECF No. 435-83, Expert Report of Barry Koch at ¶ 284 ("Koch Report").

authorities on Sudan, while BNPP apparently could not hire a single Sudanese person willing to adopt BNPP's genocide-denialist version of events. Instead, the best BNPP could come up with are (i) an economist who cannot find Sudan on a map;¹⁷ (ii) an accountant fired in connection with document shredding in the Enron scandal;¹⁸ and (iii) a Swiss UN consultant who copied and pasted his definition of the "Janjaweed" militia from Wikipedia, repeatedly confused the name of the Sudanese Armed Forces in his report, cited a paid Sudanese lobbyist famous for wearing a "Hang Mandela" t-shirt, and wrote that the founders of the Save Darfur campaign—the U.S. Holocaust Memorial Museum, American Jewish World Service, and Nobel Peace Prize laureate Elie Wiesel—are "shrill" advocates whose "propaganda narratives" help "to raise even more money."¹⁹

Most importantly, the jury will hear from the survivors themselves. Plaintiffs paid the price for the military Islamist Regime's increased capacity for ethnic cleansing that BNPP enabled. No other bank came close to propping up the pariah state with such massive resources. And none gave it access to what it needed most to fund its racist campaign of violence: U.S. petrodollars. Even BNPP's own compliance expert testified that extending credit to a government accused of genocide "would not be within [her] risk tolerance."²⁰

The Plaintiffs were tortured by state security forces in "ghost houses" named for the condition in which their survivors emerged—if they emerged. Their villages were razed by military and militia raids backed by helicopter gunships. Their loved ones were burned alive before their eyes by aerial bombing, others simply disappeared. All were terrorized and forcibly displaced from their homes: Black African mothers taunted as "slaves" and raped in front of their children and

¹⁷ Ex. 254, Deposition of John Llewellyn ("Llewellyn Dep.") at 236:3-9.

¹⁸ Ex. 156, Deposition of Gary Goolsby, dated Apr. 14, 2023, at 154:8-163:8 ("Goolsby Dep.").

¹⁹ Ex. 153, Deposition of Enrico Carisch ("Carisch Dep.") at 334:3-350:17; 352: 21-358:9; ECF No. 435-55, Expert Reply Report of Dr. Suliman Baldo ("Baldo Reply") at ¶110.

²⁰ Deposition of Teresa Pesce ("Pesce Dep."), dated Mar. 23, 2023, at 139:14-24.

husbands by the government’s brutal Arab tribal militia, the “Janjaweed” who were ordered by the Regime to rape as a weapon of ethnic cleansing; a mother and wife raped by military intelligence officers to retaliate against her husband, a judge and human rights lawyer. *See* Annex A (overview of 19 Plaintiffs’ testimonies and supporting evidence). Despite their trauma, these survivors withstood grueling cross-examination by BNPP’s counsel and clearly testified in excruciating detail about their perpetrators: the Government of Sudan, its soldiers, its police, its vehicles, its attack helicopters, its Antonov planes dropping bombs on villages, its detention centers, its feared Arab militias, and its vast security-state network of repression.

The evidence makes clear there are triable issues of fact on all three elements of accomplice liability under Article 50. After seven years, Plaintiffs should have their day in court with no further delay.

SUMMARY OF THE ARGUMENT

Despite BNPP’s denials, do-overs, and other bad faith tactics, the Court’s legal standards which have governed the case since the Motion to Dismiss continue to govern Summary Judgment. *Kashef IV*, 2021 WL 603290 at *2 (holding “the Court adopts Plaintiffs’ expert’s descriptions of the applicable Swiss law and determines that the Second Amended Complaint sufficiently states a claim for relief”).

To prevail under Article 50.1, Plaintiffs must—and do—establish that:

- (1) the Sudanese Regime committed an “illicit act,” *id.* at *3;
- (2) “BNPP consciously cooperated with the Sudanese regime, [and] either knew or should have known that its assistance was contributing to the Regime's human rights abuses,” *id.* at *4; and
- (3) that this assistance was a natural and adequate cause of Plaintiffs’ injuries—

- a) because the human rights abuses would “not have occurred at the same time or in the same way or magnitude” without BNPP’s cooperation, *id.* at *6; and
- b) because “each link” in the causal chain “was the natural and foreseeable result of the former,” making it “reasonable to hold BNPP responsible,” *id.* at *8.

Article 50, Element One: “A main perpetrator committed an illicit act” (Section II.A)

As set forth below, BNPP concedes Plaintiffs have sufficient proof that each was injured by the Sudanese Regime. It does not seek summary judgment on that factual issue. Instead, BNPP argues that what the Regime did to Plaintiffs—tearing out fingernails, mass rape, bombing and razing villages—is not unlawful under a strained reading of Swiss law which was not adopted by this Court. Indeed, under Swiss law, an act is “illicit” if it violates an “absolute right”—including life, bodily and mental integrity, privacy, property, and family.

First, BNPP claims that Plaintiffs cannot seek damages for being forcibly displaced from their homeland by ethnic cleansing or the fear of persecution. But BNPP fails to cite any authority for the proposition that Switzerland does not recognize the rights to property or family life. To the contrary, these are well-established absolute rights, and their violation causes compensable emotional suffering and injury to dignity.

Second, for purposes of Article 50, genocide and war crimes are unlawful acts in Switzerland, regardless of whether a perpetrator is a state or private actor. BNPP (in an attempt to re-package the act of state doctrine argument it lost at the Second Circuit) argues that Plaintiffs claims are non-justiciable because these atrocities are official, public acts of state. But under Swiss law, absolute rights have the same definition and same protection under both private and public law. Genocide is unlawful under any body of law. Moreover, BNPP does not have a single authority for the claim that foreign states are supposedly exempt from Article 50, and by extension their

accomplices too. And to the extent BNPP claims Plaintiffs' claims are non-justiciable because Sudan is immune from Swiss jurisdiction, that is immaterial: Article 50 permits the victim to sue one, some, or all tortfeasors—it does not require joinder.

Finally, Article 50 expressly provides secondary liability for accomplices and instigators. BNPP's theory that accomplices can only be liable under Article 50 if they fulfill all the requirements of *primary* tort liability under Article 41 is, as noted above, contradicted by the very case it cites, *Swisscom*.

Article 50, Element Two: Conscious assistance to the Regime's illicit acts. (Section II.B)

As the Second Circuit found, 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.” *Kashef II*, 925 F.3d at 56. Its criminal conviction and plea admission suffice to establish that BNPP knew or should have known it was contributing to the Regime's atrocities. In any case, BNPP has conceded it is not entitled to summary judgment on the second element. *First*, it fails to apply the Court's legal standard. *Second*, it fails to dispute there is ample evidence that BNPP knew it was contributing to Sudan's genocide. *Third*, it asserts that it did not collaborate in the “injurious course of conduct,” but this was one of the fabricated “requirements” that this Court has already rejected as “not elements articulated by the Swiss courts.” *Kashef IV*, 2021 WL 603290 at *4. *Finally*, BNPP's claim that it did not breach any duty owed to Plaintiffs is yet another strawman. Plaintiffs are not bringing a primary liability claim under Article 41 for BNPP negligently breaching its own duty. BNPP is being held secondarily liable for consciously assisting the Regime, knowing it would further the atrocities. In this, BNPP was far more than negligent. It knew but did not care that its conspiracy was underwriting the atrocities. Soon after Secretary of State Powell testified to Congress that a genocide was occurring, BNPP advised a Sudanese official on how to further

protect its petrodollars from U.S. authorities.²¹ BNPP did not care that oil was paying for the slaughter, because the slaughter furthered BNPP's profitable relationship by keeping the Regime in power and in good accounts: BNPP persisted "since the beginning in a delicate humanitarian environment," and could stomach "media flare-ups from time to time" because there was "a booming financial situation."²² BNPP would not let these flare-ups stop the macabre feedback loop.

Article 50, Element Three: Natural and Adequate Causation (Sections II.C-D)

There is more than sufficient evidence for a reasonable juror to conclude that the mass atrocities suffered by the Plaintiffs were a natural and foreseeable result of BNPP's decade-long embargo-breaking conspiracy. The evidence shows BNPP (i) laundered to a genocidal Regime over \$22.2 billion in illicit oil revenue—more than its entire military budget, (ii) "support[ed] the Regime's financial stability"²³ as its "sole correspondent bank,"²⁴ handling over \$80 billion in U.S. dollar transactions (iii) directly financed the Regime's airbases and armored vehicles used to attack civilians, (iv) provided a money-laundering structure for the Ministry of Defense to surreptitiously wire payments to military attachés in the international arms trade, and (v) profited from the atrocities that kept BNPP's co-conspirator in control of the oil regions and at the helm of the government, banking, and oil sectors.

The evidence shows that the enormity of illicit revenues that BNPP put into the hands of the Regime so far outstripped what the Regime actually used to increase its campaign of mass atrocities, that indeed, BNPP supplied or freed up every dollar spent on *every* atrocity perpetrated by the Regime against Plaintiffs and the proposed class of over 25,000 U.S. residents. Thus, as set

²¹ SAMF ¶ 365.

²² Ex. 74, BNPP-KASHEF-00014655.

²³ Ex. 1, DFS Consent Order at ¶ 26.

²⁴ ECF No. 435-1, SSOF at ¶ 19.

forth in Plaintiffs’ Statement of Additional Material Facts and response to BNPP’s Rule 56.1 Statement, record evidence shows that BNPP “knew or should have known not just that the profits it was helping generate would go towards genocide, but that it was able to generate those profits for the Regime (taking a cut for itself) in part because of genocide.” *Kashef IV*, 2021 WL 603290 at *8.

Throughout this case, BNPP has argued some variation of the bad faith themes in its Motion: “If we hadn’t paid for this genocide, someone else would have. . . .” or “These victims were going to get killed anyway, so there’s no harm in us paying for it.” The government tortured people in “ghost houses” in the 1980s, so in BNPP’s view, there was no harm in subsidizing the widespread use of ghost houses in the 1990s and 2000s. MSJ at 40. The Sudanese army had guns before 1997, so there was no harm in laundering more than their military budget. *Id.* But the Court has already rejected the defense that the Plaintiffs would have been raped or tortured anyway, *Kashef IV*, 2021 WL 603290 at *6, and as Professor Werro explains, this defense is incompatible with Swiss law’s restrictive view on “hypothetical causation.”²⁵

Natural Causation (Section II.C). The atrocities that the Regime inflicted on millions, including the Plaintiffs and the Class, “would not have occurred at the same time or in the same way or magnitude” without BNPP’s embargo-breaking conspiracy and its systemic role as “the Sudanese government’s de facto central bank.” *Kashef IV*, 2021 WL 603290 at *6. By insisting that the genocide was done on the cheap, BNPP concedes it laundered enough money for the

²⁵ ECF No. 435-104, Werro Decl. IV at ¶¶ 121-128. BNPP also argues that the Regime could have sold its oil in a currency other than U.S. dollars, albeit at a discount. MSJ at 54. But the reality is that Sudan had specific need of U.S. dollars, not just any currency. The U.S. dollar was the “historical currency of account” in Sudan, according to BNPP. SAMF ¶ 118. And it was the currency used by arms traffickers that Sudan relied upon to circumvent the UN arms embargo. Ex. 153, Carisch Dep. at 58:8-59:16; *see also* Ex. 68 to Lee Decl., ECF No. 435-68, Expert Report of Cameron Hudson (“Hudson Report”) at ¶¶ 45-46.

Regime to pay for every single abuse inflicted on Plaintiffs and the entire proposed class during its conspiracy and its slow-walked withdrawal from Sudan under U.S. government pressure.

Instead, BNPP doubles down on its protest that there is no evidence that its financial services were actually used in an attack that injured the Plaintiffs. But its proposed standard of causation—namely that Plaintiffs are required to produce receipts from BNPP’s Sudan accounts and then (even though money is fungible) show those exact revenues show those exact revenues were used by Sudan to purchase the exact weapon from Belarus or China that was used bomb Plaintiff Abdalla’s village—is not the standard set by this Court (or any U.S. court), or by Swiss law. This “requirement” apparently came from BNPP’s expert, Enrico Carisch. And even Carisch admitted that the “direct receipts” standard he applies in his expert report and at the UN is higher than criminal law’s beyond-a-reasonable-doubt standard. It even excludes consideration of all circumstantial evidence.²⁶ This made-up legal standard that BNPP asserts Plaintiffs must meet is not only incredulous, but incompatible with the Swiss law rules of decision established for this case.

As described below, BNPP’s embargo-breaking scheme provided revenue that the Regime used to entrench itself and purchase the loyalty of the military, security services, and militias such as the Janjaweed, all of which committed atrocities against the targeted civilian populations and Plaintiffs. Plaintiffs clearly identify their abusers as part of the military-security state apparatus funded by BNPP—and BNPP concedes it is not entitled to summary judgment on the issue of attribution, thereby waiving the issue. There is a triable issue of fact on natural causation.

²⁶ Ex. 153, Carisch Dep. at 204: 12-205:13; Enrico Carisch, “Iran Missiles to Yemen: Is There Room for Circumstantial Evidence in UN Sanctions?”, PassBlue, Jan. 16, 2018, <https://www.passblue.com/2018/01/16/iran-missiles-to-yemen-is-there-room-for-circumstantial-evidence-in-un-sanctions/>.

Adequate Causation (Section II.D). BNPP’s conspiracy was an adequate cause of the mass atrocities that harmed Plaintiffs because “each link” in the causal chain “was the natural and foreseeable result of the former,” making it “reasonable to hold BNPP responsible.” *Kashef IV*, 2021 WL 603290 at *8. *First*, BNPP has waived the issue of foreseeability by failing to raise it in its opening brief or even acknowledge it as the legal standard. Summary judgment on this element should be denied for this reason. The Court previously found that each alleged link in BNPP’s “oil-genocide nexus” was foreseeable, and now there is record evidence for each link:

the more BNPP helped the Regime access U.S. dollars, the more money the Regime made from its oil industry, the more it could fund its military, the more oil it could produce by using armed forces to seize and develop oil rich lands, the more it needed access to U.S. dollars to sell the oil, the more money the Regime and BNPP made, the more BNPP helped the Regime access U.S. dollars.

Kashef IV, 2021 WL 603290 at *8.

BNPP does not deny its role in the oil-genocide nexus. Instead, it argues Plaintiffs do not count because they did not live on top of oil wells, essentially conceding that it encouraged the Regime to slaughter some people, just not *these* people. But the record evidence shows that the Regime committed its mass atrocities in furtherance of a policy aimed at keeping the Regime in control of Sudan’s economy and at the helm of its banking and oil industries.²⁷ Any perceived threats to that goal—especially the Indigenous non-Arab African communities—were to be eliminated.²⁸

BNPP complains that it would be unreasonable to hold it liable for providing services it claims are “lawful” and argues it cannot be liable for everything its clients do. But BNPP is not being sued for operating ATM machines in Sudan. BNPP’s conspiracy was not a regular, much

²⁷ See SAMF ¶ 223; Ex. 153, Carisch Dep. at 310:4-9; *Id.* at 307:9-312:1; Ex. 149, Enrico Carisch, UN Sanctions, Peace and the Private Sector, 6 JOURNAL OF INT’L PEACE OPERATIONS 17-18 (2010).

²⁸ SAMF ¶ 149.

less lawful, bank service. And the Regime was not a regular, much less lawful, client. BNPP violated the laws of every jurisdiction where it operated on behalf of its client, the Bashir Regime. It was subjected to criminal or regulatory enforcement actions in France, the United States, and Switzerland. More importantly, complicity in genocide, war crimes, and crimes against humanity are serious crimes in France and Switzerland.²⁹ BNPP should know: in 2020, French prosecutors opened a criminal inquiry into BNPP's complicity in crimes against humanity, genocide, and torture in Sudan. What BNPP and the Regime did to Plaintiffs was indeed unlawful and it is more than reasonable to hold it responsible for the injuries of its victims.

“Defective by design”: Sufficient evidence of BNPP Wholesale’s liability (Section III)

The compliance function for BNPP's North American operations was housed at BNPP Wholesale. Its responsibility was to comply with the U.S. sanctions and to screen out transactions involving Sudan and other sanctioned entities. These were not dry technicalities. They were safety measures, designed to block funds from being used on terrorism and genocide. BNPP concedes that Art. 50 makes accomplices liable for failing to take “proper safety measures.” MSJ at 36. BNPP Wholesale failed to take the safety measures it was required to take, and it allowed billions of illicit Sudanese transactions to be cleared through New York. As Plaintiffs’ expert Barry Koch opined, “BNPP’s compliance program was defective by design.”³⁰ In particular, BNPP “rendered

²⁹ For example, on August 16, 2023, Swiss authorities unsealed an arrest warrant issued by the Federal Criminal Court against the uncle of Syrian president Bashar al-Assad in connection with war crimes committed in Syria. *Swiss issue international warrant for Assad uncle over 1980s war crimes*, The Times of Israel, Aug. 16, 2023, https://www.timesofisrael.com/liveblog_entry/swiss-issue-international-warrant-for-assad-uncle-over-1980s-war-crimes/. In 2021, France’s Supreme Court held that a French corporation can be held criminally liable for complicity in crimes against humanity, based on its financial support of perpetrators. And in May 2022, a French appellate court upheld the indictment of the Lafarge-Holcim cement conglomerate for funding ISIS atrocities in Syria. *See* French court upholds Syria ‘complicity in crimes against humanity’ charge against Lafarge, France 24, May 18, 2022, <https://www.france24.com/en/live-news/20220518-paris-court-upholds-charges-of-complicity-in-crimes-against-humanity-linked-to-lafarge-s-cement-plant-in-syria> (noting that Lafarge “financed, via its subsidiaries, Islamic State operations with several millions of euros in full awareness of its activities.”).

³⁰ ECF No. 435-83, Koch Report at ¶ 246.

its compliance program ineffective by putting unqualified, uninformed employees in compliance management roles, where they were not competent to address the bank's compliance risks.”³¹ This included Mr. Stephen Strombelline, whom Mr. Koch describes as [REDACTED]

[REDACTED]³² As Mr. Koch recounts, “Mr. Strombelline

[REDACTED]³³

The New York Department of Financial Services (“DFS”) directed that BNPP Wholesale’s head of compliance, Mr. Strombelline, be terminated for a reason, because he and BNPP Wholesale furthered BNPP’s criminal conspiracy with the Sudanese Regime. Nothing more is required for a reasonable juror to find BNPP Wholesale jointly and severally liable under Article 50.

All claims are timely (Section IV).

In 2019, the Second Circuit held that “Plaintiffs’ claims are timely under New York C.P.L.R. § 215(8)(a).” That holding is law of the case and the mandate rule precludes this Court from holding otherwise. *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002). If BNPP wants the Court to resolve a dispute between competing schools of Shariah law, it should have argued that to the Second Circuit five years ago.

³¹ *Id.* at ¶ 247.

³² *Id.* at ¶ 182.

³³ *Id.* For example: “Q. As head of compliance for the U.S. and then head of compliance to North America, was it part of your job to know who had ultimate responsibility for ensuring compliance? A. I don’t recall that being in my job description. Q. In your role, would you try to personally keep up to date on what the sanction rules were? A. Not that I recall. Q. Are you aware of anyone at the Bank whose job it was to ensure compliance? A. I don’t recall. Q. Given that there were sanctions related to Sudan, did you consider it part of your job to be informed about world events as they related to Sudan? A. Not that I recall. Q. Have you ever read any of the actual Executive Orders regarding sanctions on any country? A. Not that I recall.” *Id.* (quoting Ex. 129, Deposition of Stephen Strombelline (“Strombelline Dep.”), dated June 17, 2022, at 52:20-53:1, 54:2-5, 53:12-14, 57:9-13, 60:20-23); *see also id.* at ¶ 182 (testimony that “I’m not totally familiar with the whole banking operation process” and “[a]ny specific controls would be beyond my expertise”) (quoting Ex. 129, Strombelline Dep. at 95:5-13, 113:20-25).

Damages (Section V)

At the outset, compensatory damages for property loss, disgorgement, and punitive damages are not “claim[s] and thus summary judgment is an ill-suited procedural vehicle” for BNPP’s arguments on these issues. *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 517 F.Supp.2d 662, 666 (S.D.N.Y. 2007) (“Punitive damages are not a ‘claim’ and thus summary judgment is an ill-suited procedural vehicle.”)

Testimony is sufficient to establish property loss. BNPP faults the Plaintiffs for not gathering title deeds and invoices when they fled genocide as refugees. BNPP is wrong that Plaintiffs are required to prove property loss through documentary evidence. Plaintiffs’ testimony is evidence of ownership and loss, so they have complied with their Rule 26(a) disclosure obligations. In any event, Rule 56 permits summary judgment as to claims not *measures* of damage. *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 517 F.Supp.2d 662, 666 (S.D.N.Y. 2007) (“[T]he very concept of defendants’ proposal—partial summary judgment as to a particular remedy—is outside the contemplation of the Federal Rules.”)

Punitive Damages. Finally, applying New York law on punitive damages is warranted under New York choice of law rules. New York has distinct interests in deterring its financial market being abused to facilitate genocide. When Governor Cuomo announced BNPP’s guilty plea in 2014, he stated: “New York State will not allow companies to break the law, especially when they put our national security at risk This enforcement action should serve as a warning to any company that provides financial support to global terrorism and enables human rights atrocities”³⁴ New York’s interest in not being a hub for genocide financing can be vindicated

³⁴ Ex. 186, N.Y. Dep’t Fin. Servs., Press Release, “Cuomo Administration Announces BNP Paribas To Pay \$8.9 Billion, Including \$2.24 Billion To NYDFS, Terminate Senior Executives, Restrict U.S. Dollar Clearing Operations For Violations Of Law,” Jun. 30, 2014.

by imposing punitive damages on BNPP. Although punitive damages are not available under Swiss law, they are under New York law. New York applies “dépeçage,” where a particular issue can receive a different choice of law.

Here, BNPP stubbornly maintains it did nothing unlawful and back-pedals on its guilty plea admissions. These are words of recidivism, not remorse. Because the \$8.9 billion BNPP paid in criminal fines was apparently not enough of a deterrent, applying New York punitive damages is now warranted.³⁵

BNPP ignores the law of the case and rules of decision set by this Court (Section I)

In a one-two combination, BNPP argued that Swiss tort law should apply, teeing up its argument that the case should be dismissed under *forum non conveniens* and sent to Switzerland. Although the Court adopted Swiss law, the Court denied dismissal six years into the case, rejecting the bank’s claim that because Plaintiffs came to the U.S. as refugees, they are somehow less American and unentitled to their own court system.³⁶ Now BNPP faces a New York jury and is subject to Swiss law’s robust form of accomplice liability under Article 50.1 of the Swiss Code of Obligations (“Article 50.1”).

Despite its dismissive stance toward its victims, BNPP clearly understands that Plaintiffs’ damning evidence more than meets Rule 56. BNPP’s only recourse now is to set aside the legal standards set by this Court and the Second Circuit, dump its previously deposed and impeached Swiss law expert—who was discredited by this Court—and proffer new expert reports, years after the close of Swiss law discovery.

³⁵ Indeed, the Wall Street Journal Editorial Board wrote that BNPP “got off easy in its plea deal with U.S. authorities.” *BNP Got Off Easy*, Wall St. J., July 3, 2014, <https://www.wsj.com/articles/bnp-got-off-easy-1404255262>.

³⁶ “Defendants also endeavor to undermine Plaintiffs’ connections to New York and the United States by characterizing them as Sudanese refugees, seemingly to suggest that I should treat them differently based on their national origin.” *Kashef VI*, ECF No. 338 at 5.

Despite the fact that BNPP previously conceded that the Court’s 2021 opinion on Swiss law sets forth the correct three-element framework for accomplice liability. It now pivots to assert a new rule of decision arguing that a statute that expressly applies to “accomplices” only applies to principals. BNPP’s pivot is too little too late. For two years, the parties conducted fact and expert discovery in reliance on these standards. But discovery did not go as BNPP hoped. First, it lost its *forum non conveniens* motion and its escape route to Switzerland (where it likely anticipated that indigent, refugee Plaintiffs would not, as a practical matter, be able to pursue claims). *See Kashef VI*, ECF No. 338 at 338 (“Defendants appear to be seeking to avoid the jurisdiction of this Court, perhaps in favor of another more favorable forum.”). Then, the Magistrate Judge ordered BNPP to produce transaction reviews and other materials it had provided to the Department of Justice (“DOJ”) without a confidentiality agreement but tried to shield as privileged. Order, ECF No. 343 at 13. The record evidence now reveals that BNPP laundered more than Sudan’s entire military budget—a benchmark recognized by this Court as satisfying natural (but-for) causation under Swiss law. *Kashef IV*, 2021 WL 603290 at *6. BNPP’s last grasp for dismissal is to re-write the Swiss law standards—for the second time—and hope the Court will not notice.

In sum, BNPP’s former Head of Global Compliance put it best: “I always think that anyone has to pay for its mistakes.”³⁷ But in its motion for summary judgment, despite its admitted unlawful conduct, BNPP seeks to avoid paying any compensation to its victims. Ultimately, that is for a jury to decide. The Court should deny BNPP’s motion.

³⁷ Ex. 122, Deposition of Patrice de Saint André (“De Saint André Dep”) at 59:12-60:17.

STATEMENT OF FACTS

I. The United States imposes an economic embargo aimed at halting the atrocities of Sudan's Bashir Regime.

BNPP entered into its conspiracy with eyes wide open to its partner's brutality. In 1989, Sudan's former dictator, Omar al-Bashir, seized power in a coup, installing a kleptocratic, military-Islamist regime.³⁸ The Regime launched a brutal campaign of human rights abuses, using rape, torture, murder, and ethnic cleansing to hold power.³⁹ The Regime sought to impose Arab supremacy over indigenous Black Africans, whose ancestral lands in the south and in parts of Darfur contained Sudan's most prized resource: oil.⁴⁰

Beginning in 1993, the United States took a series of steps to halt the abuses, designating Sudan a state sponsor of terrorism and levying economic sanctions.⁴¹ On November 3, 1997, President Clinton issued Executive Order 13067, imposing a comprehensive trade embargo intended "to deny the Bashir Regime access to the U.S. financial system and deprive it of U.S. dollars as a means to defund its support for terrorism and human rights violations."⁴²

The embargo threatened the Regime's survival. Sudan was already an isolated pariah state, its economy in a tailspin.⁴³ The Regime was saddled with the cost of a civil war against separatist rebels in the south opposed to the Regime (the Sudan People's Liberation Army ("SPLA")) that

³⁸ Ex. 93 to Lee Decl., ECF No. 435-93, Expert Report of Dr. Harry Verhoeven ("Verhoeven Report") at 8; ECF No. 435-68, Report at ¶ 34. Bashir's party was the National Islamic Front, later called the National Congress Party.

³⁹ Ex. 54 to Lee Decl., ECF No. 435-54, Expert Report of Dr. Suliman Baldo ("Baldo Report") at ¶¶ 7, 11-13, 183, 186-211; ECF No. 435-93, Verhoeven Report at 19-21; Ex. 5, Expert Report of Dr. Jok Madut Jok ("Jok Report") at ¶¶ 3-11.

⁴⁰ ECF No. 435-54, Baldo Report at ¶ 165; ECF No. 435-93, Verhoeven Report at 19-21; Ex. 5, Jok Report at ¶¶ 3-11; Ex. 88 to Lee Decl., ECF No. 435-88, Expert Report of Dr. Luke Patey ("Patey Report") at 8-9.

⁴¹ Exec. Order No. 13,067, 62 Fed. Reg. 59989 (Nov. 3, 1997); Ex. 83 to Lee Decl., ECF No. 435-83, Expert Report of Barry Koch ("Koch Report") at ¶ 56; ECF No. 435-68, Hudson Report at ¶ 37.

⁴² ECF No. 435-68, Hudson Report at ¶ 55.

⁴³ ECF No. 435-68, Hudson Report at ¶ 43; ECF No. 435-93, Verhoeven Report at 13-14.

“absorb[ed] the country’s foreign currency reserves.”⁴⁴ To survive, the Regime needed to replenish its dilapidated arsenal and purchase the loyalty of the security forces and militias that kept Bashir in power through a widespread patronage system that blurred the lines between civil and military institutions.⁴⁵ But external debt grew to \$15 billion and the Sudanese pound was virtually worthless.⁴⁶ As Dr. Harry Verhoeven of Columbia University, Plaintiffs’ expert on Sudan’s political economy explains, “the bill was coming due,” but the Regime could not pay.⁴⁷ The Regime needed hard currency to sustain its capacity for war and repression, and only U.S. dollars would do: one dollar was worth more than 1,000 Sudanese pounds.⁴⁸ The U.S. dollar was the “historical currency of account” in Sudan, according to BNPP.⁴⁹ And it was the currency used to traffic arms into Sudan, according to Enrico Carisch, BNPP’s own UN Sanctions expert.⁵⁰

To obtain the dollars it needed, the Regime had to export its most precious natural resource: oil.⁵¹ But since oil was discovered in Sudan in the 1980s, Sudan had been unable to extract it.⁵² The Regime’s reputation and instability scared off foreign investors needed to bring Sudanese crude to market.⁵³ In 1997, however, the Regime finally entered into a consortium with Chinese, Malaysian, and other oil companies willing to work with a terrorist state – coincidentally, at the very same time it entered into a criminal conspiracy with BNPP to evade U.S. sanctions and gain

⁴⁴ Ex. 71, BNPP-KASHEF-000014451, at 14451; ECF No. 435-68, Hudson Report at ¶ 43; ECF No. 435-93, Verhoeven Report at 37. Where the original document produced by BNPP (“BNPP-KASHEF” document) contains foreign language, Plaintiffs are citing to, or referencing, the certified translation of the foreign language, indicated on the face of the exhibit by the addition of “_EN” after the full “BNPP-KASHEF” bates number.

⁴⁵ Ex. 53 to Lee Decl., ECF No. 435-53, Expert Reply Report of Kathi Austin (“Austin Reply”) at ¶ 113; ECF No. 435-93, Verhoeven Report at 2, 13; ECF No. 435-68, Hudson Report at ¶¶ 84-86.

⁴⁶ ECF No. 435-68, Hudson Report at ¶ 43.

⁴⁷ ECF No. 435-93, Verhoeven Report at 2.

⁴⁸ ECF No. 435-68, Hudson Report at ¶¶ 43, 51.

⁴⁹ Ex. 22, BNPP-KASHEF-00000177 at 179.

⁵⁰ Ex. 153, Deposition of Enrico Carisch (“Carisch Dep.”) at 58:8-59:16; *see also* ECF No. 435-68, Hudson Report at ¶¶ 45-46.

⁵¹ *See* ECF No. 435-68, Hudson Report at ¶¶ 84, 153.

⁵² ECF No. 435-88, Patey Report at 3-4; ECF No. 435-68, Hudson Report at ¶ 43.

⁵³ ECF No. 435-88, Patey Report at 3-4; ECF No. 435-68, Hudson Report at ¶ 43.

access to U.S. dollars.⁵⁴ The Greater Nile Petroleum Operating Company was born and began building a pipeline to the Red Sea.⁵⁵

For the Regime, vast fortunes were just over the horizon, and with it an expanded arsenal and military to subjugate the population.⁵⁶ The Regime announced its plans to use oil proceeds to ramp up its campaign of atrocities against Plaintiffs' targeted populations. As Congress found in the Sudan Peace Act of 2002: "The Government of Sudan has repeatedly stated that it intends to use the expected proceeds from future oil sales to increase the tempo and lethality of the war against the areas outside of its control."⁵⁷ The only thing stopping it was the U.S. embargo.

The embargo was a death sentence for the Regime's ambitions. In the oil trade, the "petrodollar" is king: stable, convertible, and highly desired by oil-producing states as a foreign reserve currency.⁵⁸ The U.S. dollar was and remains the standard currency for oil sales.⁵⁹ This geopolitical reality made the U.S. the gatekeeper. All foreign exchange in U.S. dollars must at some point be "cleared" through a U.S. financial institution.⁶⁰ To amass petrodollars, the Regime needed to circumvent U.S. sanctions.⁶¹ And for that it needed a global bank to support a Regime that harbored Osama bin Laden and openly massacred its own people. BNPP stepped in.

⁵⁴ ECF No. 435-88, Patey Report at 4-6.

⁵⁵ ECF No. 435-88, Patey Report at 6-7.

⁵⁶ See ECF No. 435-88, Patey Report at 8.

⁵⁷ Sudan Peace Act of 2002, Pub. L. 107-245, 116 Stat. 1505.

⁵⁸ Ex. 89 to Lee Decl., ECF No. 435-89, Expert Reply Report of Dr. Luke Patey ("Patey Reply") at 6-7.

⁵⁹ Plaintiffs' international banking expert, Timothy Fogarty, who previously ran Central Bank and International Account Services at the Federal Reserve Bank of New York, explains that the U.S. dollar has been the currency of reference in the oil trade since World War II. Ex. 63 to Lee Decl., ECF No. 435-63, Expert Report of Timothy Fogarty ("Fogarty Report") at ¶ 129; ECF No. 435-89, Patey Reply at 6-7. BNPP executives recognized the importance of petrodollars. See Ex. 125, Deposition of Jacques d'Estais ("d'Estais Dep.") at 91:13-18; Ex. 123, Deposition of Louis Bazire ("Bazire Dep.") at 14:25-15:13.

⁶⁰ See ECF No. 435-68, Hudson Report at ¶ 52; ECF No. 435-83, Koch Report at ¶ 106; Ex. 48, BNPP-KASHEF-00006845 at 6848.

⁶¹ See ECF No. 435-63, Fogarty Report at ¶ 130 ("By providing access to U.S. dollar accounts to Sudan, BNP Paribas provided the fundamental means for the Bashir regime to gain revenues from oil exports."); ECF No. 435-93, Verhoeven Report at 39.

II. BNPP conspires with the Regime to evade the U.S. embargo through money laundering structures and falsified documents.

Within mere days of the U.S. embargo being imposed in November 1997, BNPP, through its predecessors, launched its conspiracy with Sudan to evade the sanctions.⁶² According to its guilty plea, BNPP had a “privileged and historical relationship” with Sudan, forged by BNPP’s predecessor banks.⁶³ Formed in May 2000 by the merger of Banque Nationale de Paris and Bank Paribas,⁶⁴ BNPP is now the largest bank in France, with a reported €2.666 trillion in assets as of April 2023.⁶⁵ BNPP’s Head Office is located in Paris (“BNPP France”), with affiliates around the world, including a New York branch (“BNPP NY”) and a “99.9%” owned Swiss subsidiary based in Geneva, BNP Paribas (Suisse) S.A. (“BNPP Suisse”).⁶⁶

BNPP’s relationship with Sudan was principally managed by a business line “called Energy Commodities Export Project (‘ECEP’) that focuse[d] on, among other things, providing financing related to oil, petroleum gas and other commodities.”⁶⁷ The Global Head of ECEP was Dominique Remy at BNPP’s Head Office in Paris.⁶⁸ From Paris, Remy managed a team of bankers at BNPP Suisse in Geneva that had a specialized desk for Sudan, called GC8.⁶⁹ This Sudan desk was originally part of BNPP’s predecessor bank, Banque Nationale de Paris and its joint venture in

⁶² See ECF No. 435-1, SSOF at ¶ 19; ECF No. 435-93, Verhoeven Report at 31-32; ECF No. 435-83, Koch Report at ¶¶ 135-36, 142; Ex. 68, BNPP-KASHEF-00014129; Ex. 69, BNPP-KASHEF-00014196.

⁶³ ECF No. 435-1, SSOF at ¶ 31.

⁶⁴ 23 May 2000: *The BNP Paribas Group is Born (Episode 2) 2000*, <https://histoire.bnpparibas/en/23-may-2000-the-bnp-paribas-group-is-born-episode-2-2000/>.

⁶⁵ *Europe’s 50 largest banks by assets, 2023*, S&P Global Markey Intelligence, <https://www.spglobal.com/marketintelligence/en/news-insights/research/europes-50-largest-banks-by-assets-2023> (April 26, 2023).

⁶⁶ ECF No. 435-1, SSOF at ¶ 1; Ex. 126, Cozine Dep. at 72:21-25.

⁶⁷ ECF No. 435-1, SSOF at ¶ 1.

⁶⁸ See *BNP PARIBAS: A worldwide leader in Energy, Commodities, Export & Project Finance*, <https://invest.bnpparibas/document/diapositives-de-la-presentation-98>; see also ECF No. 435-83, Koch Report at ¶¶ 137-38, 148.

⁶⁹ ECF No. 435-83, Koch Report at ¶¶ 135-36; Ex. 101, BNPP-KASHEF-00046435.

Switzerland, United Overseas Bank.⁷⁰ After the merger, BNPP France maintained GC8, ratified its agreements with the Regime, and perpetuated its predecessors' conspiracies with Sudan, Iran, and Cuba without interruption, using its branch in New York to launder billions.⁷¹

In 2014, following federal and state investigations, BNPP France pleaded guilty to conspiring with the Sudanese government and other entities to violate U.S. sanctions on Sudan, Iran, and Cuba, and to falsifying business records under New York law.⁷² As the Second Circuit noted, "BNPP was required to pay almost nine billion dollars in forfeitures and fines, the largest financial penalty ever imposed in a criminal case." *Kashef II*, 925 F.3d at 56.

BNPP admitted that while genocide raged in Sudan it intentionally used deceptive, illicit means to help Sudan evade the embargo. *First*, it used "wire-stripping" to clear U.S. dollar wire payments for sanctioned Sudanese entities through BNPP NY by "deliberately modifying and omitting references to Sudan in the payment messages accompanying these transactions."⁷³ *Second*, it used a "classic money-laundering technique," as explained by Plaintiffs' banking compliance expert Barry Koch (former Chief Compliance Officer at Western Union).⁷⁴ BNPP

⁷⁰ ECF No. 435-83, Koch Report at ¶¶ 135-36; Ex. 101, BNPP-KASHEF-00046435. BNPP Suisse is the "successor in interest" to United Overseas Bank, also known as United European Bank. Ex. 150, BNPP Defendants' Responses and Objections to Plaintiffs' Request for Admissions ("RFAs"), No. 10, at 18-19.

⁷¹ ECF No. 435-1, SSOF at ¶ 17-19; ECF No. 435-83, Koch Report at ¶¶ 134-36; *see also* Ex.126, Cozine Dep. 112:11-17; 126:3-12; 222:9- 223:2.

⁷² BNPP also entered into a settlement agreement with the Treasury Department's Office of Foreign Assets Control and a consent order with the New York Department of Financial Services. Ex. 4, Letter from Preet Bharara, United States Attorney for the Southern District of New York, Leslie Caldwell, Assistant Attorney General, Criminal Division, Department of Justice, and Jaikumar Ramaswamy, Chief, Asset Forfeiture and Money Laundering Section, Department of Justice, to Karen Patton Seymour, Esq., Sullivan & Cromwell LLP, *United States v. BNP Paribas, S.A.*, June 27, 2014; Ex. 2, Plea Agreement Between BNP Paribas SA and the District Attorney of the County of New York, June 30, 2014; Ex. 3, OFAC Settlement at ¶ 3; Ex. 1, DFS Consent Order. BNPP admitted that it delayed and frustrated the U.S. investigation. ECF No. 435-1, SSOF at ¶ 72 (BNPP admits it "failed to provide the [U.S.] Government with meaningful materials from BNPP Geneva until May 2013, and the materials were heavily redacted due to bank secrecy laws in Switzerland" and that its "delay in producing these materials significantly impacted the [U.S.] Government's ability to bring charges against responsible individuals, Sudanese Sanctioned Entities, and the satellite banks.").

⁷³ ECF No. 435-1, SSOF at ¶¶ 18, 22.

⁷⁴ ECF No. 435-83, Koch Report at ¶¶ 183-196; ECF No. 435-68, Hudson Report at ¶ 60.

admitted that it opened accounts for so-called “Satellite Banks”—nine unaffiliated banks in Africa, Europe, and the Middle East—to serve as front accounts for illicit Sudanese transactions.⁷⁵

The Satellite Bank scheme used book-to-book transfers, an accounting method where BNPP would move funds within the same bank branch by debiting the sending client’s account and then crediting the receiving client’s account.⁷⁶ To exchange the foreign currency for U.S. dollars, BNPP would perform the dollar clearing through a secondary transaction, in its own name, disguising the presence of the Sudanese government or other sanctioned entity.⁷⁷ BNPP admitted that these schemes had “no legitimate business purpose” and were intended “to conceal the involvement of Sanctioned Entities in order to prevent the illicit transactions from being blocked when transmitted through the United States.”⁷⁸

BNPP France directed the scheme. BNPP admitted this was a “systematic practice, as directed from high levels of the Bank's group management” in Paris,⁷⁹ “spanning many years and involving multiple BNPP branches and business lines.”⁸⁰ BNPP admitted that its Head Office not only authorized this practice but required it. Until at least 2003, “BNPP’s internally published policy for processing US. dollar payments involving Sudan stated: ‘Do not under any circumstances list the name of Sudanese entities on messages sent to US banks or to foreign banks established in the United States.’”⁸¹ The instructions came from Paris: “CIB [Corporate Investment Banking] General Management encouraged us to proceed with this system . . .”⁸²

⁷⁵ ECF No. 435-1, SSOF at ¶¶ 18, 23-26.

⁷⁶ ECF No. 435-83, Koch Report at ¶¶ 197-201.

⁷⁷ ECF No. 435-93, Verhoeven Report at 40; ECF No. 435-83, Koch Report at ¶¶ 115-19.

⁷⁸ ECF No. 435-1, SSOF at ¶ 16 (emphasis added).

⁷⁹ Ex. 1, DFS Consent Order at ¶ 3.

⁸⁰ Ex. 3, OFAC Settlement at ¶ 3.

⁸¹ ECF No. 435-1, SSOF at ¶ 22; Ex. 20, BNPP-KASHEF-0000160 at 160.

⁸² Ex. 13, BNPP-KASHEF-00000034.

As BNPP admitted in its Consent Order with the New York Department of Financial Services: “As a result of BNPP’s conduct, the Government of Sudan and numerous banks connected to the Government of Sudan, including SDNs,⁸³ were able to access the U.S. financial system and engage in billions of dollars’ worth of U.S. dollar-based financial transactions, significantly undermining the U.S. embargo.”⁸⁴ BNPP conceded that it “continued to process transactions involving Sudanese Sanctioned Entities—despite being well aware that its conduct violated U.S. law—because the business was “profitable” and BNPP “did not want to risk its longstanding relationship with Sudanese clients.”⁸⁵

III. The “oil bank”: BNPP uses its scheme to launder billions in illicit oil proceeds and funnel all state proceeds from foreign trade to the Regime’s Central Bank.

BNPP admits that immediately after the U.S. embargo was imposed in 1997, the Central Bank of Sudan “designated our bank, due to long-standing business relations, as its sole correspondent bank in Europe.”⁸⁶ The Central Bank “then directed all major commercial banks located in Sudan to use BNPP Geneva as their primary correspondent bank in Europe. As a result, “all or nearly all major Sudanese banks had U.S. dollar accounts with BNPP Geneva.”⁸⁷ “Under this agreement,” Plaintiffs’ banking compliance expert (former Chief Counsel for Global AML Compliance at J.P. Morgan Chase) Barry Koch explains, “the Government of Sudan would place the majority of its foreign currency reserves and a bulk of Sudan’s foreign trade in the hands of

⁸³ According to BNPP’s counsel, “SDNs [Specially Designated Nationals] are individuals and entities that are owned or controlled by the governments of sanctioned countries, or are so closely associated with a sanctioned country that OFAC considers them to be ‘acting for or on behalf of’ that sanctioned country.” Ex. 118, BNPP-KASHEF-00031347 at 31360.

⁸⁴ Ex. 1, DFS Consent Order at ¶ 25.

⁸⁵ ECF No. 435-1, SSOF at ¶ 24.

⁸⁶ Ex. 13, BNPP-KASHEF-00000034 at 34.

⁸⁷ ECF No. 435-1, SSOF at ¶ 19.

BNPP.”⁸⁸ BNPP Geneva was not acting alone: annually, it sought and received approval from BNPP General Management in Paris.⁸⁹

BNPP’s “exclusive” role as financier allowed the Regime to profit from the foreign trade the embargo was designed to block.⁹⁰ BNPP (1) provided letters of credit to finance exports and imports,⁹¹ (2) transferred international payments in and out of Sudan,⁹² (3) issued credit facilities to finance the Regime’s imports and projects,⁹³ and (4) managed accounts to receive payments and hold the Regime’s foreign currency reserves.⁹⁴

BNPP was the Regime’s exclusive “oil bank,” as a Sudanese official put it.⁹⁵ Before oil exports came online in 1999, Sudan “was importing all its energy needs.”⁹⁶ But it could count on its co-conspirator, BNPP, which financed the oil imports that fueled the Regime’s military operations against the civilian population in the 1997-1999 period.⁹⁷ Then in 1999, with its pipeline complete, Sudan began to export oil.⁹⁸ Under its oil concession agreements, the Regime took a 60-80% share of the crude, which it sold on the international market as pure government revenue.⁹⁹ Those oil trades relied on letters of credit—a guarantee from a bank that a seller will be paid upon receipt of goods—issued by BNPP.¹⁰⁰

⁸⁸ ECF No. 435-83, Koch Report at ¶ 142.

⁸⁹ *See, e.g.*, Ex. 126, Cozine Dep. at 223: 9-14; 226: 1-9 (“[T]his was not the decision taken in Geneva. It was the decision taken in Paris.”)

⁹⁰ Ex. 24, BNPP-KASHEF-00000201 at 202; ECF No. 435-68, Hudson Report at ¶¶ 25, 232, 239; ECF No. 435-93, Verhoeven Report at 38-40 (explaining that BNPP’s trade financing was “especially” important for a poor nation with a bad reputation such as Sudan).

⁹¹ ECF No. 435-83, Koch Report at ¶¶ 120-133.

⁹² ECF No. 435-83, Koch Report at ¶¶ 103-114.

⁹³ *See, e.g.*, Ex. 97, BNPP-KASHEF-00038899 at 38901 (\$150 million credit facility for oil infrastructure and equipment).

⁹⁴ *See, e.g.*, Ex. 62, BNPP-KASHEF-00013603.

⁹⁵ Ex. 85, BNPP-KASHEF-00028707 at 28708.

⁹⁶ ECF No. 435-68, Hudson Report at ¶ 45-46.

⁹⁷ *See* ECF No. 435-88, Patey Report at 4-5; ECF No. 435-83, Koch Report at ¶ 139; Ex. 101, BNPP-KASHEF-00046435.

⁹⁸ ECF No. 435-88, Patey Report at 7.

⁹⁹ ECF No. 435-63, Fogarty Report at ¶ 255.

¹⁰⁰ *See* ECF No. 435-83, Koch Report at ¶¶ 120-24.

“From the first barrel exported,” all of the Bashir Regime’s oil exports were financed by letters of credit handled by BNPP.¹⁰¹ And “all the proceeds coming from the marketing of the Sudanese crude oil portion along with the Oil Products exports are paid to their account in our books” through the Central Bank of Sudan and Sudapet.¹⁰² Roughly 90% were in U.S. dollars laundered through BNPP’s sanctions-evasion scheme.¹⁰³ Even the small fraction priced in British pounds was handled by BNPP.¹⁰⁴ Oil was the most lucrative single source of income for the Regime, according to BNPP’s own expert Enrico Carisch.¹⁰⁵

The oil revenue generated by the Regime through its conspiracy with BNPP totaled **\$22.2 billion** between 1999 and 2009, based on IMF data—all funneled to the Regime through BNPP.¹⁰⁶ The U.S. Embassy in Khartoum confirmed BNPP’s central role. In a 2007 diplomatic cable, authenticated by Plaintiffs’ expert, former U.S. National Security Council member Cameron

¹⁰¹ E.g., Ex. 97, BNPP-KASHEF-00038899 at 38905 (“From the first barrel exported, we have provided support in setting up oil L/Cs [letters of credit] and have benefited from housing the government’s oil account on our books, and, as a result, all related L/Cs. . . . all L/Cs linked to crude oil exports from the country are opened by BNP Paribas and are also housed on our books.” (emphasis added); Ex. 71, BNPP-KASHEF-00014451.

¹⁰² Ex. 62, BNPP-KASHEF-00013603 at 13605 (emphasis added); see Ex. 64 to Lee Decl., ECF No. 435-64, Expert Reply Report of Timothy Fogarty (“Fogarty Reply”) ¶ 107-112 (containing a table of BNPP documents admitting that the bank handled all of the Regime’s oil revenue); ECF No. 435-88, Patey Report at 7; see also Ex. 26, BNPP-KASHEF-00000210 at 210 (describing the “centralization of oil revenue at BNPP Geneva”).

¹⁰³ See Ex. 22, BNPP-KASHEF-00000177 at 178; ECF No. 435-63, Fogarty Report at ¶¶ 260-63; ECF No. 435-64, Fogarty Reply at ¶ 128; ECF No. 435-88, Patey Report at 26.

¹⁰⁴ See e.g., ECF No. 435-63, Fogarty Report at ¶ 263.

¹⁰⁵ Rep. of the Panel of Experts est. pursuant to resolution 1591 (2005) concerning the Sudan, U.N. Doc. S/2008/647 (Nov. 11, 2008), at ¶ 283, <https://shorturl.at/dtyES>.

¹⁰⁶ ECF No. 435-64, Fogarty Reply at ¶¶ 112, 119, 128. Defendants try to dispute this, proffering as an expert Gary Goolsby, an accountant fired from Arthur Anderson in connection with shredding documents in the Enron scandal. Ex. 156, Goolsby Dep. at 154:8-163:8. But Mr. Goolsby’s claim that BNPP did not handle *all* Regime oil proceeds—merely a staggering \$6 billion—is belied by BNPP documents admitting it handled all proceeds. ECF No. 435-64, Fogarty Reply at ¶¶ 112. What’s more, Mr. Goolsby’s claim is clearly erroneous and “based on partial and self-serving information provided by BNPP to the U.S. government,” as explained by Plaintiffs’ expert Timothy Fogarty. ECF No. 435-64, Fogarty Reply at ¶¶ 103-19. Mr. Goolsby was not even honest with the Court about his own “standard hourly billing rate.” Ex. 156, Goolsby Dep. at 61:7-71:19 (admitting that his standard rate is \$1100 per hour, not \$990 as stated in his report, and testifying that “I can’t give you an opinion on what the judge would or wouldn’t think” about that); see also *Cannonball Fund, Ltd. v. Dutchess Capital Mgmt., LLC*, 33 Mass. L. Rptr. 623, at *4 n.5 (Mass. Super. Ct. 2016) (finding that Mr. Goolsby’s “theories also appear untethered to the facts”); Ex. 156, Goolsby Dep. At 99:21-22 (testifying, when asked about the *Cannonball* opinion, that “I don’t know if the judge did or didn’t understand the issues”); *id.* at 101:16-22 (dismissing the SEC’s allegation that the “bulk” of Mr. Goolsby’s opinion in another case “consisted of a one-sided factual narrative based on [his] selective review of a limited set of discovery responses” by claiming that “attorneys can write anything in a Daubert motion that may not be accurate”).

Hudson, a State Department economic officer gleaned the following information from a Sudanese Ministry of Finance official who served on the Sudanese government’s “Oil Revenue Technical Committee ... under the National Petroleum Commission”:

Econ officer asked how the money from petroleum sales is received by the government. El Hassan said that money from the sales of oil are [sic] first deposited at the Central Bank of Sudan account at Bank Paribas in Geneva. From there, the money is transferred to the Bank headquarters in Khartoum, . . .¹⁰⁷

This “oil godsend” saved the Regime.¹⁰⁸ As the Governor of the Central Bank of Sudan (1998-2013)—BNPP’s co-conspirator—told Dr. Verhoeven, “oil saved Sudan.”¹⁰⁹

But there is more. According to BNPP memoranda, virtually all of the Regime’s foreign trade earnings—from oil, oil products, gold, agricultural exports, telephone fees and, after 2001, aircraft overflight fees—were managed by BNPP in accounts maintained for the Central Bank of Sudan, all during the time the GOS was escalating its campaign of violence against the civilian population in the south and in Darfur.¹¹⁰ BNPP documents confirm that “all of the principal sources of non-tax revenue for the Government of Sudan flowed through BNPP’s books[,]” as explained by Plaintiffs’ expert Timothy Fogarty (former Senior Vice President in charge of Central Bank and International Account Services for the Federal Reserve Bank of New York).¹¹¹ BNPP also helped the Regime generate indirect tax revenue from trade in the form of tariffs and duties—which

¹⁰⁷ ECF No. 435-54, Baldo Report at ¶ 85 (quoting Diplomatic Cable from U.S. Embassy, Sudan to Intergovernmental Authority on Development and U.S. Secretary of State, Oil Revenue: 2007 GNU Budget Based on Questionable Assumptions, (Feb. 9, 2007), section 5., https://wikileaks.org/plusd/cables/07KHARTOUM194_a.html (published by Wikileaks)); No. 435-69, Hudson Reply ¶ 13 (confirming authenticity of Wikileaks cables).

¹⁰⁸ Ex. 30, BNPP-KASHEF-00000885 at 889.

¹⁰⁹ ECF No. 435-93, Verhoeven Report at 19.

¹¹⁰ Ex. 62, BNPP-KASHEF-00013603.

¹¹¹ ECF No. 435-64, Fogarty Reply at ¶ 127 (emphasis added); *see, e.g.*, Ex. 105, BNPP-KASHEF-00048093 at 48099 (“Centralization of [Civil Aviation Authority] flying fees on our books in 2001 completed the already existing domiciliation for the country’s principal foreign exchange earnings, namely oil, oil products, telephone fees, gold revenues and agricultural products.”); and *id.* at 48105 (“We are the main banker of the country, with Sudanese revenues from oil, petroleum products, telephone fees, gold and agricultural products on our books.”); Ex. 22, BNPP-KASHEF-00000177 at 178 (“In practice, these L/C are, as far as we can tell in Switzerland, entirely held in the accounts of BNPP Geneva, which means it centralizes a crucial proportion of Sudan’s foreign currency earnings.”).

BNPP's expert Mr. Carisch concedes related to oil.¹¹² The bank admitted that in 2006 alone, BNPP financed a quarter of all exports and a fifth of all imports—for the entire country, not just for the Regime.¹¹³

BNPP has never disclosed the total amount of Sudanese transactions it processed between 1997 and 2009, not to the U.S. government and not to Plaintiffs. But what BNPP has disclosed—redacted and without identifying the goods bought or sold—are U.S.-dollar transactions in excess of \$90 billion, including \$81.1 billion through BNPP Geneva alone.¹¹⁴ The conspiracy was enormously profitable for the Regime, which used its profits to ramp up its institutional capacity to pay, arm, and mobilize its military, security, and militia forces to wipe out millions of its perceived civilian 'enemies.' The scheme was also profitable for BNPP.¹¹⁵

Because BNPP lost or destroyed pre-2002 records of Sudanese transactions—and shielded others behind Swiss bank secrecy laws—the world will never know just how many billions of dollars the bank funneled to the Regime at the height of its massacres.¹¹⁶ Yet, what evidence survives shows that BNPP came to hold more than 70% of the Regime's foreign currency reserves.¹¹⁷ The United States described BNPP's support for the Regime as so pervasive that BNPP was “a de facto central bank for the government of Sudan.”¹¹⁸

¹¹² Ex. 153, Carisch Dep. at 275:17-276:13.

¹¹³ ECF No. 435-1, SSOF at ¶ 19; Ex. 26, BNPP-KASHEF-00000210.

¹¹⁴ ECF No. 435-64, Fogarty Reply at ¶¶ 62, 72; ECF No. 435-63, Fogarty Report at ¶¶ 103, 249, and Ex. 1. After reviewing a BNPP internal investigation of transactions limited to 2002-2009, Plaintiffs' international banking expert Timothy Fogarty (formerly of the Federal Reserve Bank of New York) explains that “the total amount of transactions executed by BNPP Geneva involving Sudanese U.S. dollar vostro accounts was over \$81 billion[.]” ECF No. 435-64, Fogarty Reply at ¶ 72. Of those, BNPP admitted that “\$10.35 billion . . . violated U.S. sanctions” while “\$57.37 billion, equivalent to approximately 70%, were not sufficiently explained by BNPP.” *Id.* at ¶ 73.

¹¹⁵ Ex. 6, Koch Reply ¶ 115, n. 187; Ex. 62, BNPP-KASHEF-00013603 at 13607 (“The profitability of our Sudanese operations is extremely high.”); Ex. 97, BNPP-KASHEF-00038899 at 38905 (the Sudanese business was “[a] strategic, diverse and highly profitable business”).

¹¹⁶ See Ex. 126, Cozine Dep. at 67:8-25; 68:1-12; Ex. 156, Goolsby Dep. at 168:13-18; ECF No. 435-1, SSOF at ¶ 72.

¹¹⁷ Ex. 22, BNPP-KASHEF-00000177.

¹¹⁸ ECF No. 435-83, Koch Report at ¶ 36; ECF No. 435-68, Hudson Report at ¶ 208.

IV. The oil-genocide nexus: BNPP fully funds all Regime atrocities in Sudan between 1997 and 2011.

A. Barrels and bullets: The \$22.2 billion in BNPP-funneled oil revenue exceeds Sudan's entire defense budget—fueling a 3000% increase in spending on atrocities.

BNPP-laundered petrodollars generated “*all* of the funds that were necessary to carry out *all* of the Bashir Regime’s attacks on civilians in the relevant time period.”¹¹⁹ Between 1999 and 2009, the \$22.2 billion in oil revenue generated by the Regime with BNPP’s support exceeded the Regime’s entire military expenditures of \$15.1 billion by 46% on average.¹²⁰ Even BNPP’s own UN sanctions expert Enrico Carisch has confirmed that the Regime’s BNPP-funneled oil proceeds exceeded its military expenditures.¹²¹ BNPP’s conspiracy with the Regime funded a 3000% increase in military spending—from \$97.7 million in 1997, the year the U.S. embargo began, to over \$3.1 billion in 2009.¹²²

Sudan’s civilian victims paid the price. U.S. State Department documents confirm that revenues channeled by BNPP to the Central Bank of Sudan were used for military spending for the perpetrators of mass atrocities. As the State Department reported to Congress in 2003, the “Government of Sudan states that oil revenues are placed in the central bank and pooled with other revenue sources, and used for general government expenditures.”¹²³ Those expenditures were “dominated by spending” on the military, national security services, and militias—the institutions used nationwide to commit the Regime’s genocidal campaign.¹²⁴ In 2007, the U.S. embassy in

¹¹⁹ ECF No. 435-64, Fogarty Reply at ¶ 130.

¹²⁰ ECF No. 435-63, Fogarty Report at ¶ 260; ECF No. 435-64, Fogarty Reply at ¶ 128; ECF No. 435-88, Patey Report at 18; ECF No. 435-53, Austin Reply at ¶ 80.

¹²¹ Carisch reported to the UN Security Council that in 2007 Sudan’s military budget was “about 3 percent” of gross domestic product, estimated at \$80 billion, *i.e.*, \$2.4 billion. Ex. 153, Carisch Dep. at 257:14-258:8; Ex. 175, Ex. 175, 2008 POE Report. A BNPP internal document reports that in 2006, BNPP handled the “USD equivalent of \$2.5 billion” in “oil receipts,” enough to fully fund the Regime’s military budget for 2007. Ex. 22, BNPP-KASHEF-00000177 at 178.

¹²² ECF No. 435-53, Austin Reply at ¶ 96.

¹²³ U.S. Dept of State, *Sudan Peace Act Report*, April 21, 2003, <https://2001-2009.state.gov/p/af/rls/rpt/2003/19790.htm>.

¹²⁴ ECF No. 435-54, Baldo Report at ¶ 86.

Khartoum reported to Washington that Sudan's "budget allocate[d] substantial revenue to military and security expenditures, leaving relatively small amounts available for development, health and education."¹²⁵ According to BNPP's Mr. Carisch: "[t]he arsenal of weaponry used by Government forces in their premeditated and deliberate attacks includes both air and ground military assets and continues to expand as the purchase of new technologies continues unabated year upon year."¹²⁶

Even before Sudan began exporting oil in 1999, it was borrowing against future oil proceeds to finance weapons purchases.¹²⁷ The arms deals expanded dramatically after 1999, as BNPP-laundered petrodollars flowed to Khartoum. From 1997 to 2011, the Regime imported more than \$100 million in small arms, light weapons, and ammunition.¹²⁸ BNPP's petrodollars were critical to this expansion. The Regime bought weapons from arms traders "in cash," deals "often involving millions of U.S. dollars."¹²⁹ It was "exactly" "like in a movie," according to BNPP's expert Mr. Carisch, with Regime operatives carrying "suitcases of USD."¹³⁰

BNPP's scheme gave the Regime the U.S. dollars it needed to fill those suitcases. As a BNPP memorandum explains, the "oil godsend" laundered by BNPP "led to an increase in foreign currency liquidity (e.g., funds deposited by [the Central Bank] on our books of USD 1.5 billion on average)."¹³¹ The Regime imported dozens of attack helicopters and combat aircraft; dozens of

¹²⁵ ECF No. 435-54, Baldo Report at ¶ 86 n.60 (quoting Diplomatic Cable from U.S. Embassy, Sudan to Intergovernmental Authority on Development and U.S. Secretary of State, Oil Revenue: 2007 GNU Budget Based on Questionable Assumptions, (Feb. 9, 2007), Section 5., https://wikileaks.org/plusd/cables/07KHARTOUM194_a.html (published by Wikileaks)).

¹²⁶ Ex. 175, Ex. 175, 2008 POE Report.

¹²⁷ See ECF No. 435-88, Patey Report at 8 ("Now able to use future oil production as collateral for international loans, GoS bought heavy military weapons and aircraft from Iran, China, Russia, and elsewhere in order to wage war and depopulate oil regions."); ECF No. 435-68, Hudson Report at ¶¶ 79-81, *citing* Pub. L. 107-245 §§ 2(8), 6(b)(2)(C); *Sudan Peace Act*, Statement of Representative Bachus, 107 Cong. Rec. H7102 (Daily ed. Oct. 7, 2002) at H7108; Statement of Representative Smith, 107 Cong. Rec. H7102 (Daily ed. Oct. 7, 2002) at H7105 (emphasis added); Statement of Representative Johnson, 107 Cong. Rec. H7102 (Daily ed. Oct. 7, 2002) at H7109, <https://www.congress.gov/107/crec/2002/10/07/CREC-2002-10-07-pt1-PgH7102-2.pdf>.

¹²⁸ ECF No. 435-53, Austin Reply at ¶ 99.

¹²⁹ See Ex. 153, Carisch Dep. at 58:8-59:16.

¹³⁰ *Id.*

¹³¹ Ex. 30, BNPP-KASHEF-00000885 at 889.

tanks and armored-personnel carriers; hundreds of military trucks; fleets of Land Rovers and Land Cruisers used for desert combat; and Antonov cargo planes used to drop barrel bombs on villages, hospitals, schools, and other civilian areas.¹³²

In addition, beginning in the late 1990s, the Regime used future oil proceeds—enabled by its conspiracy with BNPP—to finance the launch of a domestic arms industry. For example, in April 1999, Hassan al-Turabi, ideological head of Bashir’s ruling party, announced: “We are currently building several factories to produce our needs in weapons, and we plan to manufacture tanks and missiles to defend ourselves against conspirators.”¹³³ Enriched by BNPP, the Regime carried out that promise. According to a 2006 report from BNPP’s expert Carisch’s UN Panel, “[o]ver the last decade, Sudan has significantly increased its ability to produce its own light weapons and ammunition[.]”¹³⁴ The deadly consequences for Sudan’s civilians were made clear by BNPP expert Victor Menaldo, who wrote that “military size . . . is a valid and reliable metric of the institutionalized coercive force used by dictators to consolidate their authority.”¹³⁵ Under that metric, BNPP’s conspiracy expanded the Regime’s deadly coercive force by 3000%.

B. Airfields, armored vehicles & military attaches: BNPP finances Regime military operations, equipment, and procurement networks used against civilians.

BNPP directly aided and conspired with institutions committing the mass atrocities in Sudan. Even its putatively civilian clients were part of the Regime’s military-industrial complex,

¹³² See e.g., ECF No. 435-53, Austin Reply at ¶¶ 99-102, 114-117, 121; ECF No. 435-93, Verhoeven Report at 26; ECF No. 435-63, Fogarty Report at ¶ 110; ECF No. 435-68, Hudson Report at ¶¶ 87-88.

¹³³ Ex. 94 to Lee Decl., ECF No. 435-94, Expert Reply Report of Dr. Harry Verhoeven (“Verhoeven Reply”) at 29, n. 68 (quoting Agence France Presse, *Sudan to Manufacture Tanks, Missiles: Assembly Speaker*, Khartoum, April 30, 1999).

¹³⁴ ECF No. 435-53, Austin Reply at ¶ 190.

¹³⁵ Ex. 155, Deposition of Victor Menaldo (“Menaldo Dep.”) at 18:16-20; Michael Albertus and Victor Menaldo, *Coercive Capacity and the Prospects for Democracy*, 154 (Jan. 2012), <https://faculty.washington.edu/vmenaldo/Articles%20in%20Journals/CP%20Article.pdf>.

as BNPP admitted internally.¹³⁶ BNPP's Mr. Carisch admits that members of the Sudanese National Intelligence and Security Services ("NISS"), Sudan's secret police, took the "helm of all major Sudanese companies."¹³⁷ The Central Bank of Sudan, which managed the Regime's war chest, was dominated by stalwarts of the military-Islamist Regime.¹³⁸ Moreover, according to Mr. Carisch, Sudan's banking and oil sectors were "affiliated with NISS" or Bashir's ruling party, including: "the Sudan National Petroleum Corporation, which controls the state's entire oil and gas industry" and "most of the major national banks."¹³⁹

BNPP directly financed one of the Regime's main instruments of terror: the airbases used by Sudan's Air Force for command headquarters, bombing raids, troop transports, and arms transfers—enabling widespread killing and displacement of disfavored populations.¹⁴⁰ As confirmed by Mr. Carisch and Plaintiffs' expert Dr. Suliman Baldo (one of Sudan's preeminent human rights and anti-corruption researchers), Sudan's Air Force operated out of the airports maintained by BNPP's client, the Civil Aviation Authority ("CAA"), under the command of Sudan's Ministry of Defense.¹⁴¹ Beginning in 2001, the CAA was fully funded by overflight fees collected and transferred by BNPP, despite being sanctioned by the U.S. government.¹⁴² In addition, in 2005 and 2006, BNPP France and BNPP Suisse jointly gave the CAA a \$25 million credit facility for the purchase of aviation equipment and infrastructure as well as working

¹³⁶ Ex. 126, Cozine Dep. at 243:24-244:2 ("there was a lack of true distinction between something that may be considered civilian and something that may be considered military.").

¹³⁷ Ex. 153, Carisch Dep. at 310:4-9; Ex. 149, Enrico Carisch, *UN Sanctions, Peace and the Private Sector*, 6 JOURNAL OF INT'L PEACE OPERATIONS 18 (2010).

¹³⁸ ECF No. 435-88, Patey Report at 5.

¹³⁹ Ex. 153, Carisch Dep. at 312:2-19; Ex. 149 at 17.

¹⁴⁰ ECF No. 435-53, Austin Reply at ¶¶ 160-163.

¹⁴¹ See Ex. 153, Carisch Dep. at 225:21-226:10; ECF No. 435-54, Baldo Report at ¶¶ 55-56.

¹⁴² See Ex. 105, BNPP-KASHEF-00048093 at 48098; Ex. 153, Carisch Dep. at 236:11-21 ("Q: Did you look into how the Government of Sudan was financing its use of the civilian airports and aircraft to transport its military? A: No. That didn't really require any deep investigation since it was very clear. Sudan is a very large country. And many, many civilian airplanes need to fly over it. And that generates a considerable amount of revenues.").

capital.¹⁴³ Equipment may sound innocuous, but a UN Panel (after Mr. Carisch's departure) reported that at civilian airports army "personnel sometimes convey aircraft bombs to SAF Antonov aircraft . . . using ordinary airport luggage trolleys."¹⁴⁴ BNPP knew or should have known the airports it funded were used by the military—ECEP bankers visiting Khartoum would have arrived at Khartoum International Airport—the principal base of Sudan's air force.¹⁴⁵

BNPP directly financed another of the Regime's instruments of terror: armored vehicles. At the height of the Darfur genocide, from 2004 until at least December 2008, BNPP financed the import of armored truck components to Sudan's state-owned manufacturer of armored vehicles: the GIAD conglomerate.¹⁴⁶ Called the "crown jewel of the Defense Industries System" by U.S. Senator Chris Coons,¹⁴⁷ GIAD was at the time controlled by the Sudanese military and sanctioned by the U.S. government.¹⁴⁸ BNPP France extended millions in U.S.-dollar, revolving lines of credit to the French company Renault Trucks (also known as "Renault VI"), and other unidentified clients, to facilitate transactions with GIAD: \$16 million USD for Renault and \$9 million USD for

¹⁴³ Ex. 105, BNPP-KASHEF-00048093 at 48098. In its brief, BNPP blatantly misrepresents the facts about this credit facility, falsely stating that the credit was extended by BNPP Suisse alone. MSJ at 56. This is not the first time BNPP has provided false information about the same document: it previously represented that the credit facility was in Swiss francs rather than U.S. Dollars, "a telling omission in light of the U.S. sanctions." ECF No. 435-53, Austin Reply at ¶ 162 n.279; Ex. 127, Cozine Dep. Ex. 253 at 2.

¹⁴⁴ Ex. 250, UNSC Panel of Experts Report (2011) at ¶¶ 165-67. As an expert for the UN, Mr. Carisch also witnessed the military operations being conducted in the civil airports where he and his UN Panel of Experts flew in and out of. Ex. 153, Carisch Dep. at 71:23-72:12, 171:7-23, 224:14-226:20.

¹⁴⁵ ECF No. 435-54, Baldo Report at ¶ 55; Ex. 58 to Lee Decl., ECF No. 435-58, Expert Report of Enrico Carisch ("Carisch Report") at ¶ 99.

¹⁴⁶ ECF No. 435-53, Austin Reply at ¶¶ 136-148; ECF No. 435-54, Baldo Report at ¶ 87; Ex. 69 to Lee Decl., ECF No. 435-69, Expert Reply Report of Cameron Hudson ("Hudson Reply") ¶¶ 113-114; ECF No. 435-93, Verhoeven Report at 53. In its brief, BNPP blatantly misrepresents how it financed GIAD's imports, falsely stating it was merely "insurance." MSJ at 55. But as BNPP executive Philippe Maillard testified, BNPP's credit was a promise that Renault and other exporters would be paid for the vehicles sold to GIAD, and GIAD and the Sudanese government directly benefited by having BNPP's guarantee. Ex. 124, Maillard Dep. at 149:10-20. BNPP also claims the record does not reveal the purpose of the transactions. MSJ at 56. But these are BNPP's loans: if it does not have records showing the purpose, then clearly BNPP did not screen the transactions to determine whether the Ministry of Defense's armored vehicle supplier was importing armored vehicles from a French manufacturer of armored vehicles.

¹⁴⁷ Chris Coons, et al., *Targeted Sanctions Can Help Restore Democracy in Sudan*, Foreign Policy, Feb. 28, 2022, <https://foreignpolicy.com/2022/02/28/sudan-targeted-sanctions-can-help-restore-democracy/>.

¹⁴⁸ See ECF No. 435-53, Austin Reply at ¶ 138; U.S. Dept. of the Treasury, *Treasury Designation Targets Sudanese Government, Rebel Leader*, May 29, 2007, <https://home.treasury.gov/news/press-releases/hp426>.

“various” entities that BNPP refuses to identify.¹⁴⁹ These lines of credit ensured that Renault would be paid for its products.¹⁵⁰ Those products were armored vehicle kits—including Renault Midlum 4x4s—imported and assembled by GIAD, fitted with heavy weapons, and used by military and militia forces in ground assaults on the targeted civilian populations.¹⁵¹

Journalist Nima Elbagir—now CNN’s Chief International Investigative Correspondent—filmed one of GIAD’s weaponized Renault trucks in action in a UK Channel 4 documentary called *Meet the Janjaweed* (a colloquial term for the Regime’s notorious Arab tribal militias in Darfur). Elbagir met with the *Janjaweed* commander called Hemeti, whose soldiers showed off their GIAD-branded models of Renault Midlum 4x4s fitted with artillery.¹⁵²



GIAD Truck with anti-aircraft gun (Darfur, Sudan) (Channel 4)



GIAD Truck with anti-aircraft gun (Darfur, Sudan) (Channel 4)

Screenshots from the documentary Meet the Janjaweed

¹⁴⁹ BNPP’s Responses and Objections to Plaintiffs’ Requests for Admissions admit to extending lines of credit to Renault during this time period that exceeded \$2.6 million USD. Ex. 150, RFA No. 222, at 180-81. Ex. 84, BNPP-KASHEF-00027592 and Ex. 35, BNPP-KASHEF-00003882 indicate some \$9 million USD in additional credit to unidentified beneficiaries with GIAD as the counterparty.

¹⁵⁰ ECF No. 435-53, Austin Reply at ¶ 139; *see, e.g.*, Ex. 81, BNPP-KASHEF-00024439 at 24439-40; Ex. 124, Deposition of Philippe Maillard (“Maillard Dep.”) at 149:10-20 (“Q. And that commitment of more than \$10 million was to facilitate the transaction between GIAD and Renault Trucks? A. This commitment was probably a guarantee issued in favor of Renault Trucks to insure that Renault Trucks would be paid. Q. For? A. Most likely for selling the product or supplying GIAD with products.”).

¹⁵¹ Ex. 175, 2008 POE Report; Ex. 174, 2009 POE Report; Ex. 52 to Lee Decl., ECF No. 435-52, Expert Report of Kathi Austin (“Austin Report”) ¶ 130; *see also* ECF No. 435-93, Verhoeven Report at 53 (“GIAD manufactured Sudan’s first domestic tank – the Bashir – and plenty of other lethal kit.”).

¹⁵² Ex. 59 to Lee Decl., ECF No. 435-59, Declaration of Nima Elbagir at ¶¶ 31-33 (“Elbagir Decl.”).

On camera, Hemeti informed Ms. Elbagir that his weapons and vehicles had been supplied by the Bashir Regime—admitting to a violation of the UN arms embargo that could have subjected him to targeted sanctions by the UN Security Council:

[Commander Hemeti] said that in fact, the government had recruited him personally to fight against the Darfuri rebels in 2003 and made his men part of the regular armed forces as “Border Intelligence.” If we wanted proof, he said we should look around at his men’s weapons. He said, “Does it seem logical to you that we magic these weapons and these brand new cars out of air? Of course, the government gave them to us.”¹⁵³

How was BNPP to know that GIAD was a military entity? Simple. The most cursory Know Your Customer review—a Google search—would have sufficed. A publicly available 2001 report by Christian Aid, *The Scorched Earth: Oil and War in Sudan*, reported that GIAD was “inaugurated by President Omar al-Bashir . . . 12 months after oil began flowing through the pipeline” at a cost of “\$450 million.”¹⁵⁴ At its opening ceremony, President al-Bashir “said the complex was already producing rocket-propelled grenades, machine-guns and mortars - and was still expanding. 'We will produce mortars and tanks,' he said. 'Then we will go on to warplanes and rockets.’”¹⁵⁵ Even if BNPP missed Bashir’s speech, GIAD’s 2005 Annual Report disclosed that it was partly owned by the “Military Industrial Corporation,” and in March 2005, Jane’s Defence Weekly—a popular trade journal—reported that GIAD was assembling imported trucks for Sudan’s Ministry of Defense for military purposes.¹⁵⁶ In May 2007, the U.S. Treasury Department added GIAD to the

¹⁵³ ECF No. 438-59, Elbagir Decl. at ¶ 57; ECF No. 435-58, Carisch Report at ¶ 19 n.96 (discussing UN targeted sanctions imposed on other Janjaweed militia leaders). Today, Hemeti is one of two feuding generals who have plunged Sudan into a new civil war, demonstrating the enduring impact of BNPP’s complicity with Sudan’s war criminals and its horrific consequences for civilians. See Declan Walsh, “Who is General Hamdan, the leader of the Rapid Support Forces?”, N.Y. Times, April 15, 2023, <https://www.nytimes.com/2023/04/15/world/africa/hamdan-hemeti-sudan-rsf.html>.

¹⁵⁴ Christian Aid, *The Scorched Earth: Oil and War in Sudan*, Mar. 14, 2001, <https://reliefweb.int/report/sudan/scorched-earth-oil-and-war-sudan>.

¹⁵⁵ *Id.*

¹⁵⁶ See ECF No. 435-53, Austin Reply at ¶ 147.

SDN list, announcing that it had “supplied armored vehicles to the Sudanese government for military operations in Darfur.”¹⁵⁷

In short, BNPP’s sanctions-evasion conspiracy was inextricably linked to Sudan’s military and security forces.¹⁵⁸ BNPP generated enough Regime revenue to fund *all* atrocities committed between 1997 and 2011, including those inflicted on Plaintiffs and the Class.

C. The “Macabre feedback loop”: Backed by BNPP, the Regime escalates its campaign of mass atrocities to hold power, secure oil resources, and impose Arab supremacy over Black Africans—generating more profits for BNPP.

The Regime had abused human rights and engaged in terrorism since the 1989 coup—this was why the U.S. imposed sanctions in the first place. But after BNPP neutralized the U.S. embargo in 1997 and started channeling funds to the Regime, its atrocities escalated to genocidal proportions. The Congressional Sudan Peace Act of 2002 recalled that the Regime had “repeatedly” stated its

¹⁵⁷ U.S. Dept of the Treasury, *Treasury Designation Targets Sudanese Government, Rebel Leader*, May 29, 2007, <https://home.treasury.gov/news/press-releases/hp426>. Even before May 2007, GIAD was covered by the Sudan country sanctions that had been in effect since 1997. BNPP had that announcement on file—but no evidence in the record shows that BNPP cut off the credit line before it expired in December 2008. Even during discovery, BNPP refused to come clean about financing GIAD—at his deposition, BNPP’s 30(b)(6) witness was provided a “memory aid” prepared by BNPP’s counsel that misrepresented GIAD as merely the “counterparty to insurance policies issued to Renault VI, Renault Trucks[.]” Ex. 126, Cozine Dep. at 266: 1-7; Ex. 127, Cozine Dep. Ex. 253 at 5.

¹⁵⁸ BNPP claims it had a policy of screening out transactions involving military or dual-use goods. Ex. 66 to Lee Decl., ECF No. 435-66, Expert Report of Antoine Gaudemet (“Gaudemet Report”) at ¶¶ 22, 116, 162. But even if this was so (and BNPP has produced no documentation of any such policy before at least July 2006, when a compliance officer wrote that the bank had to “tighten our grip” on military transactions) there is no record evidence that BNPP actually complied with that policy. *See, e.g.*, Ex. 6, Koch Reply at ¶¶ 66-70. To the contrary, contemporaneous bank documents admit that its purported screening procedures were “too often purely formal or not really done” at all. Ex. 22, BNPP-KASHEF-00000177. In fact, BNPP’s 30(b)(6) witness was unable to describe any details of that screening process, or any employees who had the requisite screening skills, or identify any relevant documentation. Ex. 126, Cozine Dep. at 161:5-162:7, 258:9-259:18. Moreover, BNPP’s claim that it did not do business with Sudan’s military is belied by the fact that it extended loans to Sudan’s Ministry of Defense and transferred “non-commercial” payments from the Ministry to military attachés—the main purchase agents in the illicit arms trade—stationed in China, Egypt, Pakistan, and Russia—Sudan’s main arms-suppliers. ECF No. 435-53, Austin Reply at ¶ 177. BNPP is unwilling or unable to disclose how much money it lent to the Defense Ministry during its genocidal campaign. Ex. 150, RFA No. 204, at 168. In its brief, BNPP claims that its own lawyer-supervised transaction review “did not identify any admissible evidence that any BNPP entity processed transactions for a military purpose.” MSJ at 21 (citing Ex. 126, Cozine Dep. at 258:3-259:15 & Ex. 127, Cozine Dep. Ex. 253; Ex. 61 to Lee Decl., ECF No. 435-61, Expert Report of Gary Goolsby at ¶¶ 88-89). But Mr. Cozine’s cited testimony does not support this statement: in that passage, he does not mention the transaction review at all and indeed was unable to cite *any* documents on the subject. As for Mr. Goolsby, at his deposition he was unable to point to any source (including the one he cited in his report) stating that the KPMG personnel working on the review at BNPP’s counsel’s direction were even *looking* for military transactions. Ex. 156, Goolsby Dep. at 325:22-333:12; *see also* ECF No. 435-53, Austin Reply at ¶¶ 172-74.

intention “to use the expected proceeds from future oil sales to increase the tempo and lethality of the war.”¹⁵⁹ And it did just that.

Between 1997 and 2011, the Regime waged a campaign of mass atrocities to crush opposition, control oil and other resources, and impose a “racist and extreme religious ideology” of Arab supremacy over Black African, Christian, and moderate Muslim populations.¹⁶⁰ To achieve this, the Regime pursued a counter-insurgency strategy of “draining the sea to catch the fish”—eliminating opposition movements by terrorizing the civilian populations they sought to liberate.¹⁶¹ This strategy was infused with racist animus: President Bashir himself “suggested that non-Arabs should feel honored to be raped by his followers.”¹⁶² The Regime’s campaign of persecution targeted disfavored racial groups (indigenous African populations including the Dinka, Nuer, Nuba, Fur, Masalit, and Zaghawa), religious groups (Christians and moderate Muslim), and social groups (civil society professionals) perceived by the Regime as enemies of the ruling Arab, Islamist elite in Khartoum.¹⁶³ Plaintiffs are members of these targeted groups.

The campaign of atrocities was executed by the Sudanese Armed Forces (“SAF”), the state-security force the National Intelligence and Security Service (“NISS”), and an array of paramilitary and militia forces mobilized by the government under a constitutional and statutory framework.¹⁶⁴

¹⁵⁹ *Sudan Peace Act*, Pub. L. No. 107-245, 116 Stat. 1503 (2002), <https://www.govinfo.gov/content/pkg/PLAW-107publ245/pdf/PLAW-107publ245.pdf>.

¹⁶⁰ Ex. 5, Jok Report at ¶ 26; *see also id.* ¶¶ 8, 29, 43, 97; ECF No. 435-54, Baldo Report at ¶¶ 108, 117-121, 130, 133, 136, 144, 160-63, 190-93; Ex. 55 to Lee Decl., ECF No. 435-55, Expert Reply Report of Dr. Suliman Baldo (“Baldo Reply”) ¶¶ 54-60, 127-32; ECF No. 435-68, Hudson Report at ¶¶ 11, 24; ECF No. 435-93, Verhoeven Report at 17-18. Specifically, indigenous African tribes including the Nuer, Dinka, Nuba, Fur, Zaghawa, and Masalit came within the Regime’s cross-hairs.

¹⁶¹ ECF No. 435-54, Baldo Report at ¶ 160.

¹⁶² Ex. 5, Jok Report at ¶ 9 (citing media reports on a speech given by al-Bashir).

¹⁶³ Ex. 5, Jok Report at ¶ 26; *see also id.* ¶¶ 8, 29, 43, 97; ECF No. 435-54, Baldo Report at ¶¶ 108, 117-121, 130, 133, 136, 144, 160-63, 190-93; ECF No. 435-55, Baldo Reply at ¶¶ 54-60, 127-32; ECF No. 435-68, Hudson Report at ¶¶ 11, 24; ECF No. 435-93, Verhoeven Report at 17-18.

¹⁶⁴ *See* ECF No. 435-54, Baldo Report at ¶¶ 7, 41-78 (referencing, *inter alia*, the Constitution of the Republic of Sudan, the National Security Force Act of 1999, the Popular Police Force Act of 1992, and the Popular Defense Forces Act of 1989); ECF No. 435-93, Verhoeven Report at 9-11. The Bashir Regime promulgated the Popular Defense Forces

These forces operated through a chain of command, supply train, and payroll linking tribal horseman in Darfur, paramilitaries and rebel defectors in the south, brutal interrogators in police stations, and SAF generals in Khartoum to the commander in chief, President Bashir, and the Central Bank of Sudan which channeled funds from BNPP into the Regime's war chest.¹⁶⁵

1997 was the tipping point. Once the Regime partnered with BNPP and the Greater Nile Petroleum Operating Company, “[o]il became the cause of, and main objective of, an intensification in the Bashir Regime's assault on civilians.”¹⁶⁶ To control the oil reserves in Abyei, Unity State, South Kordofan, and Darfur, the Regime needed to control these strategic states—the homelands of the Plaintiffs.¹⁶⁷ The Regime pursued a strategy of depopulating these regions of Black African populations by mobilizing Arab tribal militia and SPLA splinter groups backed by SAF ground and air forces.¹⁶⁸ In May 1999, Sudan's Energy and Mining Minister Dr. Awad al-Jaz—one of BNPP's personal collaborators in the Regime¹⁶⁹—“oversaw the deployment” of the paramilitary “‘Protectors of the Oil Brigade’ to the oil fields.”¹⁷⁰

Plaintiffs' expert Dr. Baldo describes how the Regime “launched a strategy of ‘coordinated attacks on civilian settlements in which aerial bombardment and raids by helicopter gunships are followed by ground attacks from Government backed militias and Government troops.’”¹⁷¹ The intensity and frequency of these attacks against civilians “dramatically increased after 1997” as

Act in November 1989, providing the legal framework for mobilizing, arming, and funding militias as auxiliaries to the SAF, the formal military. *See* ECF No. 435-54, Baldo Report at ¶¶ 69-70; ECF No. 435-55, Baldo Reply at ¶¶ 40-41, 65. The Regime's paramilitary and militia forces included the Central Reserve Force; Popular Defense Forces; Border Intelligence; and the Arab tribal militias commonly called the Janjaweed, Murahalin, Mujahidin, and Baggara, which were institutionalized by the Regime. *See* ECF No. 435-54, Baldo Report at ¶¶ 44-78; 165-68.

¹⁶⁵ ECF No. 435-54, Baldo Report at 10-21.

¹⁶⁶ ECF No. 435-54, Baldo Report at ¶ 174.

¹⁶⁷ ECF No. 435-88, Patey Report at 8-9.

¹⁶⁸ ECF No. 435-54, Baldo Report at ¶¶ 161, 175-79.

¹⁶⁹ *See* BNPP-KASHEF-00005435 at 38 (recounting meeting with Minister of Energy in Khartoum).

¹⁷⁰ ECF No. 435-54, Baldo Report at ¶ 175.

¹⁷¹ ECF No. 435-54, Baldo Report at ¶ 179.

the Regime sought to “exploit[] the oil wells” and “to exert full control over the oil areas.”¹⁷² In the late 1990s, “the prospect of oil flowing to the central government of Khartoum” led to an “urgency to clear these areas” and a resulting increase in “the indiscriminate targeting of civilians” in these regions.¹⁷³ Attacks escalated throughout the ethnic African regions as Sudan continued to develop its oil infrastructure.¹⁷⁴ By 2002, an estimated 174,200 people had been displaced from the oil-rich states in Abyei and South Sudan.¹⁷⁵ Internally displaced persons filled “pockets of shanty camps” near Khartoum—a vulnerable, non-Arab population preyed upon by NISS security forces.¹⁷⁶

In response, President Bush signed the Sudan Peace Act in October 2002. As Plaintiffs’ expert Cameron Hudson explains, the Act “explicitly recognized that Sudan’s oil revenue was fueling a vicious cycle in which the Regime waged a ‘war on civilians’ in order to secure oil revenue to finance further atrocities.”¹⁷⁷ The Act directed the President to “take all necessary and appropriate steps . . . to deny the Government of Sudan access to oil revenues to ensure that the Government of Sudan neither directly nor indirectly utilizes any oil revenues to purchase or acquire military equipment or to finance any military activities.”¹⁷⁸ The congressional debate described a macabre feedback loop—the Regime used oil proceeds to commit atrocities to secure

¹⁷² Ex. 151, Deposition of Dr. Suliman Baldo (“Baldo Dep.”) at 198:23-199:5.

¹⁷³ *Id.* at 207:1-209:14.

¹⁷⁴ *See, e.g.*, ECF No. 435-68, Hudson Report at ¶ 63 (citing the United States 1998 US Annual Human Rights report, which notes that the Sudanese “government or government-associated forces” destroying villages and driving out inhabitants in oil-producing regions); *id.* ¶¶ 64-69 (summarizing reports from non-government organizations concerning human rights abuses related to oil development in Sudan); ECF No. 435-54, Baldo Report at ¶ 166-68 (describing the Regime’s “divide and conquer strategy” stoking violence in oil-producing regions), ¶ 183 (describing “waves of well-documented campaigns” designed “to depopulate the oil blocks”); *see also id.* ¶¶ 171-185 (setting forth an overview of these oil-fueled campaigns).

¹⁷⁵ ECF No. 435-54, Baldo Report at ¶ 183.

¹⁷⁶ *Id.*

¹⁷⁷ ECF No. 435-68, Hudson Report at ¶ 79.

¹⁷⁸ *Sudan Peace Act*, Pub. L. No. 107-245 § 6(b)(2)(C), 116 Stat. 1503 (2002), <https://www.govinfo.gov/content/pkg/PLAW-107publ245/pdf/PLAW-107publ245.pdf>.

more oil: “for the first time, there will be a link made officially between the genocide and the slaughter in Sudan and oil money.”¹⁷⁹

As the Regime’s “oil bank,” BNPP was central to this macabre feedback loop. Its conspiracy enabled the flow of billions in petrodollars, which funded the atrocities, which secured oil regions, which “generated a major source of revenue” for BNPP.¹⁸⁰ In 2002, the Regime expanded the slaughter into new territory: Darfur in western Sudan.

After two opposition rebel movements—the SLA and JEM—rose up, the Regime used the same scorched-earth tactics mastered in the South to exterminate and displace the Black African communities of Darfur—the Fur, Masalit, and Zaghawa—seen as the support base for the rebels.¹⁸¹ The Regime began terrorizing these populations in 2002.¹⁸² Then it ramped up its campaign after May 2003, when the Regime’s National Security Council “‘issued an emergency plan that formed the basis for the [Regime] to launch its counterinsurgency campaign’” calling for the use of “‘Arab tribes to target members of the non-Arab tribes that were accused of supporting the rebellion, as well as residential areas where rebels were believed to be hiding.’”¹⁸³ This plan institutionalized the Regime’s arming, funding, and deployment of Arab militias called *Janjaweed* by their non-Arab victims—“evil spirits on horseback.”¹⁸⁴

¹⁷⁹ *Sudan Peace Act*, Statement of Representative Bachus, 107 Cong. Rec. H7102 at H7108 (Daily ed. Oct. 7, 2002) at H7108, <https://www.congress.gov/107/crec/2002/10/07/CREC-2002-10-07-pt1-PgH7102-2.pdf>; see also *Kashef III*, 442 F. Supp. 3d at 815 (“BNPP Geneva’s financial chicanery created “a macabre feedback loop.” (internal citation omitted).

¹⁸⁰ Ex. 22, BNPP-KASHEF-00000177.

¹⁸¹ ECF No. 438-59, Elbagir Decl. at ¶ 20; see also ECF No. 435-54, Baldo Report at ¶¶ 12, 71; ECF No. 438-59, Elbagir Decl. at ¶¶ 15, 18-25.

¹⁸² See ECF No. 438-59, Elbagir Decl. at ¶¶ 15, 18-25.

¹⁸³ ECF No. 435-55, Baldo Reply at ¶ 57 (quoting *Prosecutor v. Ali Kushayb*, Prosecutor’s Trial Brief of 4 February 2022, Case No. 02/05-01/20, ICC Trial Chamber I, ¶ 57, <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1801f86f5.pdf>).

¹⁸⁴ ECF No. 435-55, Baldo Reply at ¶ 57; ECF No. 438-59, ECF No. 438-59, Elbagir Decl. at ¶ 20.

The U.S. government launched an investigation. According to ex-NSC Director for African Affairs Cameron Hudson, interviews with over 1,000 refugees, “provided confirmation that the mass killing and displacement was not the product of random acts of banditry, as the Government of Sudan portrayed them in communications with U.S. officials.”¹⁸⁵ Rather, the atrocities were committed by Regime forces and were “widespread and systematic, following patterns indicating that they were organized by design and reflecting a racially motivated intent to destroy and displace.”¹⁸⁶

The Regime’s atrocities grew in frequency and scale, reaching 10,000 killings a month in Darfur, according to Mr. Hudson, a “tempo of violence that exceeded the tempo of violence that we saw over a longer period of time in South Sudan.”¹⁸⁷ Hundreds of villages were destroyed—and hundreds of thousands killed—by government forces using the same *modus operandi* they had employed in the south. In a typical attack in Darfur, Janjaweed mounted on horseback or Toyota land-cruisers fitted with machine guns would raid Fur, Masalit, or Zaghawa villages, often supported by SAF infantry in armored vehicles and military trucks—including GIAD trucks financed by BNPP—or helicopters. They would torch homes, kill and rape the inhabitants including children and elderly, and destroy or pillage property and livestock.

In July 2003, Plaintiff Abbo Abakar fled from his home when Janjaweed militia backed by a helicopter raided and set fire to his village of Buwada in West Darfur.¹⁸⁸ In December 2003, Plaintiff Hawa Omar fled from her home when the Janjaweed arrived on horseback and set fire to the ground while military planes circled overhead and bombs went off; her home was burned,

¹⁸⁵ ECF No. 435-68, Hudson Report at ¶ 113.

¹⁸⁶ ECF No. 435-68, Hudson Report at ¶ 113.

¹⁸⁷ Ex. 152, Deposition of Cameron Hudson (“Hudson Dep.”) at 163:6-25.

¹⁸⁸ Ex. 130, Deposition of Abbo Abakar at 95:10-25.

crops destroyed and she could hear the women being raped.¹⁸⁹ In February 2003, Plaintiff Hamdan Abakar’s village was burned down in a coordinated attack where the Janjaweed arrived on horses and camels and the Sudanese army in Land Cruisers; the Janjaweed shot Hamdan in the leg and stole his livestock, and government forces shot his grandfather in the head.¹⁹⁰ In November 2003 during morning prayers, Plaintiff Jane Doe witnessed SAF soldiers and Janjaweed raided Marla, setting fire to the neighborhood, opening fire and screaming “Kill the slaves!” in Arabic; an attacker beat her daughter and son, and raped Jane Doe and her mother.¹⁹¹ A matching pattern of coordinated attacks had occurred throughout southern Sudan in the 1997-2003 period. While in Juba, Plaintiff Halima Khalifa witnessed many bombings from aircraft, and that the army was free to shoot civilians on the streets, and “[t]here is nobody” who shot back at the SAF.¹⁹²

Using airfields funded by BNPP, SAF would use gunship helicopters to strafe civilians and would drop bombs from Antonov cargo planes, literally rolling barrels packed with explosives onto Black African villages below. The Regime conducted more than 1,800 documented aerial bombing attacks on civilian targets between 1999 and 2012.¹⁹³ In 2004, Plaintiff Nyanriak Tingloth’s village was hit by barrel bombs dropped from Antonovs that killed people as they ran; her grandmother’s house was destroyed and Nyanriak saw her grandmother on fire and later die.¹⁹⁴ In September 2003 in Habila, Plaintiff Hamdan Abakar witnessed an Antonov plane drop bombs in the residential area where he lived; he witnessed four women ripped apart by bombs and his

¹⁸⁹ Ex. 143, Deposition of Hawa Omar (“Omar Dep.”), dated June 8, 2022 at 74:13-18, 79:10-15, 80:8-9, 81:10-24, 90:17-18.

¹⁹⁰ Ex. 132, Deposition of Hamdan Abakar (“Hamdan Abakar Dep.”), dated June 3, 2022 at 58:24–60:8, 62:1-23, 66:5-21, 67:1-25.

¹⁹¹ Ex. 135, Deposition of Jane Doe (“Jane Doe Dep.”), dated June 6 and June 10, 2022 at 87:4–88:5, 88:22–90:12, 92:22–93:3, 95:8-11.

¹⁹² Ex. 141, Deposition of Halima Khalifa (“Khalifa Dep.”), dated June 2, 2022 at 132:7–133:6.

¹⁹³ ECF No. 435-54, Baldo Report at ¶¶ 179-180.

¹⁹⁴ Ex. 146, Deposition of Nyanriak Tingloth (“Tingloth Dep.”), dated July 13, 2022 at 118:11–121:23, 120:15-19, 120:4–121:23; ECF No. 435-97, Keller Report, Appendix C15, Nyanriak Appendix at 3.

father, who was nearby, was killed.¹⁹⁵ In 1999, Plaintiff Abulgasim Abdalla watched the SAF, PDF, and Janjaweed attack his home in Doweit; the Janjaweed were on horseback, the government forces had Toyotas, and they were supported by helicopter delivering supplies and an airplane dropping bombs on people fleeing the village.¹⁹⁶

Civilians were rounded up and detained with many routinely subjected to rape and torture. Targeted members of the ethnic population such as would be taken by security forces for further interrogation and torture in NISS “ghost houses” and detention centers where unimaginable torture and sexual assault occurred. In 2003, Plaintiff Abulgasim Abdalla tried to flee from Murnay to Nyala in a lorry but was stopped by Janjaweed looking for people belonging to “one of the four tribes”—Abulgasim was Masalit—and they took him to a nearby forest and beat him unconscious with the butts of Kalashnikov and Jim 3 rifles.¹⁹⁷ In 2008, as a member of the Zaghawa tribe, Plaintiff Entesar Kashef was caught up in the dragnet of arrests of Darfuris by security forces and detained for as long as three months where she was interrogated under torture, raped multiple times a day, struck with rifle butts, and burned with cigarettes.¹⁹⁸

Rape was routinely used by Regime forces as a weapon of torture against female and male civilians. In November 1999, Plaintiff Judy Roe was beaten and raped at her home in Khartoum by five men in military uniform and infected with HIV while her young son was hid in the closet.¹⁹⁹ In January 2003, at a detention center in Khartoum, Plaintiff Jane Roe was “repeatedly” raped by Sudanese security forces, became infected with HIV as a result, and experienced a miscarriage

¹⁹⁵ Ex. 132, Deposition of Hamdan Abakar (“Hamdan Abakar Dep.”), dated June 3, 2022 at 84:7–89:6, 87:22–88:4; ECF No. 435-97, Keller Report, Appendix C3, Hamdan Appendix at 3.

¹⁹⁶ Ex. 133, Deposition of Abulgasim Abdalla (“Abdalla Dep.”), dated June 9, 2022 at 75:19–81:13, 82:9–84:25, 86:3–87:25.

¹⁹⁷ Ex. 133, Deposition of Abulgasim Abdalla (“Abdalla Dep.”), dated June 9, 2022 at 59:6–60:15, 101:13–104:4, 105:1–106:8; ECF No. 435-97, Keller Report, Appendix C4, Abulgasim Appendix at 2-3.

¹⁹⁸ Ex. 140, Deposition of Entesar Kashef (“Kashef Dep.”), dated June 7, 2022 at 60:6-13, 93:6-11, 95:5-12, 109:2-21, 110:1-5, ECF No. 435-97, Keller Report, Appendix C12, Entesar Appendix at 3-4.

¹⁹⁹ Ex. 139, Deposition of Judy Roe (“Judy Roe Dep.”), dated July 11, 2022 at 61:3-21, 66:1-13, 67:9–69:14.

while she was in ghost house custody.²⁰⁰ Plaintiff Halima Khalifa and her mother were raped multiple times in front of Halima's son at their home in Khartoum.²⁰¹

In Darfur, in August 2003, Plaintiff Entesar Kashef's home in Kutum was subjected to three coordinated attacks involving SAF aerial bombing and Janjaweed on horseback and in pick-up trucks; her grandmother's house was destroyed.²⁰² In 2008, men in military uniforms came to her home, killed her grandmother, father and uncle, and struck and shot her sister. Later, Entesar was arrested and detained by security forces for three months, during which she was tortured and raped every day, multiple times per day. They burned letters – their initials – into her back, thighs, and hands using hot metal.²⁰³

BNPP had unique insight that the Regime's need for oil was a motive for its atrocities in Darfur. Louis Bazire, former Head of Territory for BNPP in Switzerland, testified:

From what I remember, the intensity of communication about Darfur was higher in the years 2006, 2007. There were demonstrations in the street, et cetera. I don't remember the reasons why, at this time, this conflict was more intense. **Probably part of this was coming from the fact that some important reserves of oil were discovered in the desert.** This is more or less what I remember.

Ex. 123, Bazire Dep. at 87:24-88:12 (emphasis added).²⁰⁴ Yet BNPP continued to fund—and profit from—Sudan's macabre feedback loop through at least 2010.²⁰⁵ Mortality estimates by U.S.

²⁰⁰ Ex. 148, Deposition of Jane Roe ("Jane Roe Dep."), dated June 4, 2022 at 80:15-18, 81:5-82:21, 84:7-15, 86:11-18, 87:8-21, 88:2-11, 105:15-25.

²⁰¹ Ex. 141, Deposition of Halima Khalifa ("Khalifa Dep."), dated June 2, 2022 at 75:15-76:14.

²⁰² Ex. 140, Deposition of Entesar Kashef ("Kashef Dep."), dated June 7, 2022 at 66:1-12, 68:2-12, 73:6-21, 71:14-73:5.

²⁰³ See Annex A at ¶¶ 199-200.

²⁰⁴ Indeed, according to Dr. Patey, "[i]n 2006 and 2007, Darfuri rebel groups attacked oil fields located on the border between Southern Kordofan and South Darfur of Block 6 in an effort to stop the tide of petrodollar financing the Sudanese government's violence." ECF No. 435-88, Patey Report at 13. "Our goal is for oil revenues to go back to the Sudanese people and that is a strategic plan of our movement," a rebel commander told the Associated Press. *Id.*

²⁰⁵ ECF No. 435-64, Fogarty Reply at ¶¶ 99-102; ECF No. 435-63, Fogarty Report at ¶ 250, and Ex. 6.

government agencies and contractors ranged from 98,000 to 400,000 killed, in addition to 1.8 million internally displaced persons and 200,000 refugees.²⁰⁶

D. “Save Darfur”: The U.S. declares the atrocities a genocide.

Previously in this case, the Second Circuit took judicial notice that the “atrocities . . . in Sudan are widely known and have been condemned by both the United States and the international community as genocide.” *Kashef II*, 925 F.3d at 55 (citing H.R. Con. Res. 467, 108th Cong. (2004) (enacted); S. Con. Res. 133, 108th Cong. (2004) (enacted)). Indeed, in the Sudan Peace Act of 2002, Congress determined that the Regime’s campaign of atrocities in southern Sudan “constitute[d] genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide,”²⁰⁷ Calls for humanitarian action grew with the outbreak of Regime atrocities in Darfur in 2002 and 2003.

In July 2004, the Save Darfur campaign was launched by Holocaust survivor and Nobel Laureate Elie Wiesel, the U.S. Holocaust Memorial Museum, and American Jewish World Service.²⁰⁸ BNPP’s proposed expert Carisch accused these advocates of being “shrill” and using “public relations firms . . . to raise even more money.”²⁰⁹ But by 2010, more than 3,300 articles about the Darfur genocide had been published in eight western countries.²¹⁰ BNPP’s executives read the news.²¹¹ In Paris, *Le Monde* covered the Regime’s “scorched earth policy.”²¹²

On September 9, 2004, Secretary of State Colin Powell formally designated the atrocities in Darfur a genocide under Article VIII of the Genocide Convention: “genocide has been

²⁰⁶ ECF No. 435-68, Hudson Report at ¶¶ 103, 116.

²⁰⁷ Ex. 252, Pub. L. No. 107-245, 116 Stat. 1503 (Oct. 21, 2002) at § 2(10).

²⁰⁸ See Ex. 153, Carisch Dep. at 341:22-342:9.

²⁰⁹ Ex. 153, Carisch Dep. at 334:5-350:15.

²¹⁰ ECF No. 435-68, Hudson Report at ¶ 198.

²¹¹ See, e.g., Ex. 122, De Saint André Dep. at 79:20-80:5, 85:11-20, 89:21-90:6, 104 :7-17, 107:12-21; Ex. 123, Bazire Dep. at 192:2-11, 204:7-20; Ex. 124, Maillard Dep. at 74:9-75:17; Ex. 125, d’Estais Dep. at 62:7-21.

²¹² ECF No. 435-68, Hudson Report at ¶ 200.

committed in Darfur and . . . the Government of Sudan and the Jingaweit bear responsibility.”²¹³ Later, in 2010, the Appellate and Pre-Trial Chambers of the International Criminal Court would reach the same determination, issuing an arrest warrant for President Omar al-Bashir on charges of genocide, crimes against humanity, and war crimes.²¹⁴

V. Aware of the atrocities, BNPP persists in “feeding the Sudanese government.”

A. “The dirty little secret”: Advised by Cleary Gottlieb, BNPP finds new ways to evade U.S. sanctions.

In the fall of 2004, BNPP was not concerned with saving Darfur. It was preoccupied with how to conceal from the U.S. government the billions in Sudanese oil sales it laundered. On October 1—just three weeks after the U.S. determination of genocide in Sudan—BNPP met with a Central Bank of Sudan official in Washington to discuss “exploiting new opportunities” and the “US sanctions.”²¹⁵ “Business development” was “very positive and promising,” noted BNPP’s chief Sudan relationship manager, [REDACTED] who attended the meeting. But it was “currently taking place in a difficult political environment.”²¹⁶

So, BNPP and Sudan’s Central Bank decided to take additional steps to evade detection. They “agreed” to “make more use of ‘in house’ correspondent accounts to make book-to-book transfers” and “avoid USD transfers outside the internal circuit” as “the correspondents . . . receive their USD in their account with [BNPP] and may dispose thereof as they wish.”²¹⁷ For “[p]ayments for oil letters of credit,” “purchasers which are BNPP clients” would be handled through “in-house

²¹³ U.S. Department of State, *The Crisis in Darfur Testimony Before the Senate Foreign Relations Committee by Secretary Colin L. Powell*, Sept. 9, 2004, <https://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm>

²¹⁴ Prosecutor v. Omar Al-Bashir, Appeals Chamber Judgment, ICC-02/05-01/09-73, Feb. 3, 2010, ¶¶ 38-39, <https://www.icc-cpi.int/court-record/icc-02/05-01/09-73>; Second Decision on the Prosecution’s Application for a Warrant of Arrest, ICC-02/05-01/09-94, ICC Pre-Trial Chamber I, July 12, 2010, ¶ 43; https://www.icccpiint/sites/default/files/CourtRecords/CR2010_04825.PDF.

²¹⁵ Ex. 64, BNPP-KASHEF-00013941 at 13941.

²¹⁶ *Id.*

²¹⁷ *Id.*

book-to-book (without fund movements)”, while “purchasers which are not BNPP clients” would make “payment in GBP (no USD).”²¹⁸

██████ left Washington with Darfur on his mind. Four days later, using BNPP’s typical euphemisms, he describes Sudan’s “political environment” as “dominated by the Darfur crisis” in an email chain about BNPP’s internal designation of Sudan as a “sensitive country.”²¹⁹ Attached to the chain is a document listing Sudanese banks targeted by U.S. sanctions, with a handwritten note in English: “LIST OF BAD GUY SINCE 12/2002.”²²⁰ On that list are the Central Bank of Sudan, Bank of Khartoum, and El Nilein Industrial Bank—all BNPP clients.

That same month, Cleary Gottlieb—BNPP’s counsel in this case—provided BNPP a legal memorandum giving its imprimatur to another sanctions-evasion technique.²²¹ In September 2004, “two senior BNPP Paris executives and BNPP Geneva executives” had decided that Sudanese dollar-clearing transactions should be routed through a non-BNPP bank—JP Morgan Chase—rather than BNPP-NY, hoping to avoid “problems BNP NY encountered with U.S. authorities.”²²² Cleary Gottlieb’s October 2004 memorandum gave comfort to that decision, “suggest[ing] that BNPP may have been able to protect itself from being penalized by U.S. authorities if it conducted these prohibited transactions through another U.S. bank.”²²³ Cleary was wrong. In 2005, the Dutch bank ABN Amro was fined \$80 million by OFAC for engaging in wire-stripping to evade sanctions—the same technique employed by BNPP since 1997.²²⁴ In reaction, Stephen

²¹⁸ *Id.*

²¹⁹ Ex. 12, BNPP-KASHEF-00000023 at 23.

²²⁰ Ex. 12, BNPP-KASHEF-00000023 at 25.

²²¹ *Id.*; ECF No. 435-1, SSOF at ¶ 30; ECF No. 435-83, Koch Report at ¶ 217; Ex. 6, Koch Reply at ¶ 50.

²²² ECF No. 435-1, SSOF at ¶ 30.

²²³ ECF No. 435-1, SSOF at ¶ 30.

²²⁴ *See* ECF No. 435-83, Koch Report at ¶ 219.

Strombelline, BNPP's Head of Ethics and Compliance for North America, wrote another compliance employee: "The dirty little secret isn't so secret anymore, oui?"²²⁵

B. "Take no notes": BNPP Head Office in Paris overrides compliance warnings.

Meanwhile, in Paris, BNPP's Head Office was approving loans to the Sudanese government. Every year, the Credit Committee of the General Management (the "CCDG" in French) approved BNPP Geneva's Sudan business and authorized credit lines for Sudan.²²⁶ On November 9, 2004, the Credit Committee approved a credit limit of \$42 million for Sudan's "State Entities"—essentially a \$42 million credit card for a Regime accused of genocide.²²⁷ BNPP's Global Ethics department had a "[f]avorable opinion . . . regarding these relationships."²²⁸

Congress had a less favorable opinion: the Comprehensive Peace in Sudan Act of 2004 directed the Secretary of State to submit a report on "the ability of the Government of Sudan to finance the war with the proceeds of the oil exploration."²²⁹ The UN Security Council also took a dim view. In March 2005, it referred Sudan to the International Criminal Court for prosecution.²³⁰ But BNPP persisted. In Paris, the Credit Committee decided to *triple* Sudan's credit limit. In June 2005, it approved ECEP's request for a two-year, "multi-purpose" 150 million USD line of credit

²²⁵ Ex. 18, BNPP-KASHEF-00000146; Ex. 1, DFS Consent Order at ¶ 8; *see also infra* at 101.

²²⁶ *See, e.g.*, Ex. 55, BNPP-KASHEF-00011916 at 11916 (2001 CCDG minutes approving credit lines for Sudan); Ex. 42, BNPP-KASHEF-00005355 at 5358 (2002 CCDG minutes approving credit lines for Sudan); Ex. 58, BNPP-KASHEF-00012466 at 12466 (2003 CCDG meeting approving credit of EUR 75M for the Central Bank of Sudan); Ex. 60, BNPP-KASHEF-00013131 at 13131 (2004 CCDG minutes approving credit lines for Sudanese "state entities," "majority state-owned commercial banks," and other Sudanese entities); Ex. 57, BNPP-KASHEF-00012133 at 12133 (2005 CCDG minutes approving credit lines for Sudan); Ex. 24, BNPP-KASHEF-00000201 at 201 (2006 CCDG minutes authorizing credit for "Banks of Sudan"); Ex. 59, BNPP-KASHEF-00012862 at 12862 (2007 CCDG minutes approving 19.22 million euros in financing related to airport equipment).

²²⁷ Ex. 37, BNPP-KASHEF-00004780 at 4780.

²²⁸ *Id.*

²²⁹ *Comprehensive Peace in Sudan Act of 2004*, Pub. L. 108-497, 118 Stat. 4012 (2004), § 8(a)(1), <https://www.govinfo.gov/content/pkg/PLAW-108publ497/pdf/PLAW-108publ497.pdf>; *see* ECF No. 435-68, Hudson Report at ¶ 132.

²³⁰ S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005), <http://unscr.com/en/resolutions/doc/1593>; *see* ECF No. 435-68, Hudson Report at ¶ 210 (citing same).

for the Central Bank “to address an urgent need . . . in particular for the oil industry . . . covering the import of vehicles.”²³¹

BNPP General Management in Paris had the ultimate authority on whether to cut off support for the Bashir Regime.²³² Instead, it dismissed repeated compliance warnings. In 2005, BNPP’s Chief of Compliance in Geneva escalated his concerns about the bank’s circumvention of the U.S. embargo to senior management in Geneva and Paris. In an August 5, 2005 memo, he warned that the Satellite Bank scheme put BNPP “in the position of taking part in the circumvention of the US embargo on transactions processed in USD executed by Sudan.”²³³ He added: “it is essential to notify the Executive Board of [Corporate Investment Banking].”²³⁴

But these transactions already had the “full support” of “Senior Management in Paris,” as BNPP Geneva’s CEO admitted in response to another email raising the same concerns:

I see that certain questions are resurfacing concerning how we process these transactions. I recall that back when you introduced me to the Sudanese Finance Minister and the President of the Central Bank, . . . it was specified that ***all business activity . . . had received the full support of our General Management in Paris.***²³⁵

BNPP’s guilty plea admits that: “In September 2005, senior compliance officers at BNPP Geneva arranged a meeting of BNPP executives ‘to express, to the highest level of the bank, the reservations of the Swiss Compliance office concerning the transactions executed with and for Sudanese customers.’ The meeting was attended by several senior BNPP Paris and Geneva executives. At the meeting, a senior BNPP Paris executive dismissed the concerns of the

²³¹ Ex. 97, BNPP-KASHEF-00038899 at 38901; Ex. 72, BNPP-KASHEF-00014532 at 14538-39 (approving the loan).

²³² See ECF No. 435-83, Koch Report at ¶ 157. For example, on February 22, 2007, the Head of ECEP’s Business Center in Geneva, [REDACTED] stated in an email to BNPP Paris compliance officer [REDACTED] concerning Sudan “no one is immune to operational risk or to a “political” attack organized by the US, therefore, I would like to point out that we defer to General Management to decide on how to proceed with these relations.” Ex. 46, BNPP-KASHEF-00005642 at 5642-43.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Ex. 14, BNPP-KASHEF-00000066 at 68 (emphasis added).

compliance officials and *requested that no minutes of the meeting be taken.*”²³⁶ That senior executive was [REDACTED]—BNPP’s Chief Operating Officer in Paris.²³⁷

C. “Stained by the Darfur problem”: BNPP knew.

BNPP General Management knew it was contributing to the Regime’s mass atrocities. As determined by the Second Circuit, BNPP’s guilty plea “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.” *Kashef II*, 925 F.3d at 56. BNPP admitted that its “central role in providing Sudanese financial institutions access to the U.S. financial system, despite the Government of Sudan’s role in supporting terrorism and committing human rights abuses, was recognized by BNPP employees.”²³⁸ BNPP knew that the political environment was “dominated by the crisis in Darfur”²³⁹ and “stained by the humanitarian tragedy.”²⁴⁰ And BNPP knew the illegal oil sales it financed were driving the genocide. A 2006 compliance memorandum warned: “The growth in oil revenue is unlikely to contribute to ending the conflicts [in Darfur], and it is likely that Sudan will remain torn apart for a long time by insurrectionist movements and resulting repressive measures.”²⁴¹

BNPP knew Sudan’s Central Bank was a pillar of the Regime. [REDACTED]

BNPP’s Global Head of International Financial Sanctions, wrote in March 2007: “These targeted

²³⁶ ECF No. 435-1, SSOF at ¶ 33 (emphasis added); Ex. 30, BNPP-KASHEF-00000885; Ex. 27, BNPP-KASHEF-00000326 at 327; Ex. 91, BNPP-KASHEF-00030213 at 30213.

²³⁷ Ex. 27, BNPP-KASHEF-00000326 at 327. The Geneva compliance officer who sounded the alarm, [REDACTED] was fired because BNPP’s Head of Territory in Switzerland did not find him to be “constructive.” ECF No. 435-83, Koch Report at ¶ 248.

²³⁸ ECF No. 435-1, SSOF at ¶ 20.

²³⁹ Ex. 12, BNPP-KASHEF-00000023 at 23.

²⁴⁰ Ex. 43, BNPP-KASHEF-00005435 at 5435. BNPP’s bankers had notice as early as 1997, from the sanctions themselves. OFAC bulletins found in BNPP files in Paris and New York confirm that the U.S. sanctions were put in place due to the “policies and actions of the Government of Sudan, including . . . the prevalence of human rights violations, including slavery and the denial of religious freedom.” ECF No. 435-68, Hudson Report at ¶ 208; *see, e.g.*, Ex. 54, BNPP-KASHEF-00011365 at 11373 (OFAC bulletin in BNPP Paris files); Ex. 50, BNPP-KASHEF-00007994 (OFAC bulletin in BNPP NY files).

²⁴¹ Ex. 26, BNPP-KASHEF-00000210 at 211.

state banks play a pivotal role in the supporting the Sudanese government which, let's not forget, provided refuge for Osama Bin Laden and refuses to allow UN intervention in Darfur.”²⁴² BNPP’s leadership knew about “the growing opprobrium heaped by a large part of the international community on the behavior of this country’s authorities.” A September 2006 memorandum to Paris executives including the CEO, COO, and Head of Group Compliance warned about the “worrying developments of the last few weeks and the humanitarian risks that are reported daily in the international press.”²⁴³ Yet even with Sudan “stained by the Darfur problem”,²⁴⁴ the Credit Committee in Paris raised Sudan’s credit limit from 500 to 600 million euros in July 2006.²⁴⁵ The meeting minutes note the “Compliance Recommendations ‘The relationship with this group of counterparties is historical, and the commercial stakes are high. For these reasons, Compliance does not wish to stand in the way of maintaining this business activity for ECEP and BNPP Suisse.’”²⁴⁶ BNPP knew that its support “for a significant part, allows this government to keep things running in Khartoum.”²⁴⁷

BNPP had only one concern: what would happen to its reputation if the world found out? In a 2007 memorandum, a BNPP Paris executive warned: “In a context where the international community puts pressure to end the dramatic situation in Darfur, no one would understand why BNP Paribas persists in, what could be viewed as, supporting the rulers in power.”²⁴⁸ BNPP never expressed any concern for its victims. Indeed, when BNPP learned that victims of the al-Qaeda

²⁴² ECF No. 435-1, SSOF at ¶ 20; Ex. 9, BNPP-KASHEF-00000007 at 8.

²⁴³ Ex. 74, BNPP-KASHEF-00014655 at 14656. One of the recipients, [REDACTED] defied an order from Magistrate Judge Willis that he submit to deposition in this case. ECF No. 395, Order re Mot. For Sanctions, Aug. 22, 2022.

²⁴⁴ Ex. 97, BNPP-KASHEF-00038899 at 38904.

²⁴⁵ Ex. 24, BNPP-KASHEF-00000201 at 206.

²⁴⁶ *Id.* at 202.

²⁴⁷ Ex. 82, BNPP-KASHEF-00024869 at 24869.

²⁴⁸ ECF No. 435-1, SSOF at ¶ 20; Ex. 25, BNPP-KASHEF-00000207 at 207.

attack on the USS Cole had sued the Government of Sudan, its employees joked: “I better shut up... the victims might sue me :-).”²⁴⁹

D. “I can’t even get U.S. dollars now”: Under investigation by OFAC, BNPP shifts its support for the Regime through other channels until at least 2010.

On October 17, 2006, President Bush issued additional sanctions aimed at the Bashir Regime’s ability to finance genocide with oil revenues.²⁵⁰ Executive Order 13412 prohibited “all transactions by United States persons relating to the petroleum or petrochemicals industries in Sudan.”²⁵¹ In May 2007, the U.S. launched a sanctions strategy “targeting the oil and military-industrial complex and Sudan’s international accomplices[.]”²⁵² OFAC announced it would pursue “aggressive investigation of the methods and accomplices that the Government of Sudan may be using to circumvent our sanctions and access the U.S. financial system illegally.”²⁵³

Following a trail of evidence that slipped through BNPP’s concealment, OFAC requested a meeting with BNPP executives. In a May 2007 meeting attended by OFAC director Adam Szubin, OFAC voiced concern about [REDACTED]

[REDACTED]²⁵⁴ BNPP was rattled. Two weeks later, BNPP’s Global Head of Compliance authored a memo alarmed at how to manage “the reputational risk vis-à-vis Sudan, given the conflict in

²⁴⁹ Ex. 44, BNPP-KASHEF-00005469 at 5469. BNPP denies that Plaintiffs and class members are victims at all, quoting the statement of an Assistant U.S. Attorney at its sentencing hearing out of context. MSJ at 20. In that same hearing, 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.” The Department of Justice specifically sought information from those harmed “during the course of BNPP’s conspiracy.” Ex. 2 to Lee Decl., ECF No. 435-2, at 12. Prosecutors further stated that “in light of the unprecedented nature of the BNPP’s criminal conspiracy and the resulting forfeiture, the government believes 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.

²⁵⁰ ECF No. 435-68, Hudson Report at ¶¶ 140-142.

²⁵¹ *Blocking Property of and Prohibiting Transactions with the Government of Sudan*, Exec. Order No. 13412, 71 Fed. Reg. 61369 (Oct. 17, 2006), <https://www.govinfo.gov/content/pkg/FR-2006-10-17/pdf/06-8769.pdf>

²⁵² ECF No. 435-68, Hudson Report at ¶ 165.

²⁵³ U.S. Department of the Treasury, *Prepared Remarks of Adam J. Szubin Director of the Treasury Department’s Office of Foreign Assets Control*, May 29, 2007, <https://home.treasury.gov/news/press-releases/hp427>.

²⁵⁴ Ex. 106, BNPP_KASHEF-00037990 at 37994.

Darfur and the international condemnation of Sudanese authorities.”²⁵⁵ Then, on June 12, 2007—after ignoring years of warnings—General Management in Paris issued a “Group Policy on relationships with Sudanese entities and individuals,” announcing its “decision is to stop all BNPP relationships with Sudanese entities and individuals based there.”²⁵⁶ Specifically, “channeling funds to Sudan through BNPP Geneva, which used to entertain some relations with this country, is no longer possible.”²⁵⁷

Despite this announcement, ECEP continued “channeling funds to Sudan” through Geneva with Head Office approval.²⁵⁸ ECEP banker [REDACTED] flew to Khartoum to negotiate a deal with Sudanese authorities.²⁵⁹ BNPP agreed to continue processing US dollar transactions “in house” until the end of 2007 and then would start converting payments to euros.²⁶⁰ BNPP also agreed that the Central Bank of Sudan could continue to pay commitments linked to the \$150 million credit line approved by BNPP Paris, all the way through 2009.²⁶¹ A Central Bank of Sudan official wished to send a message to the “Head Office in Paris”: “I feel bitter at seeing ‘a major correspondent who has been present from the outset and at the most sensitive times leaving,’ particularly an ‘oil bank on which international players rely . . .’”²⁶²

Clamping off the flow of U.S. dollars from BNPP to Khartoum had an immediate impact on the Bashir Regime. In Fall 2007, Sudan’s Finance Minister requested a meeting with Plaintiffs’ expert Cameron Hudson and National Security Council staff to protest the sanctions. As Mr.

²⁵⁵ Ex. 25, BNPP-KASHEF-00000207 at 207.

²⁵⁶ Ex. 31, BNPP-KASHEF-00001184 at 1184.

²⁵⁷ Ex. 31, BNPP-KASHEF-00001184 at 1185.

²⁵⁸ See ECF No. 435-83, Koch Report at ¶¶ 235-241.

²⁵⁹ ECF No. 435-83, Koch Report at ¶ 236.

²⁶⁰ Ex. 85, BNPP-KASHEF-00028707 at 28707.

²⁶¹ *Id.*

²⁶² *Id.* at 28708.

Hudson recounts, “Clearly upset, Finance Minister Al-Hassan argued: ‘All transfers are affected and now cost us more. I can’t even get U.S. dollars now.’”²⁶³

But the Regime could still get British pounds from BNPP, with Head Office approval. Transactions coordinated between BNPP Paris and BNPP Geneva continued to channel oil proceeds into Sudan’s treasury, as a senior compliance officer in Paris voiced protest:

I just wanted to have everybody aware that, currently, each month, BNPP Geneva is feeding the Sudanese government with £30 million, which is about \$60 million. Compared to a yearly budget of \$ 7 billion for the Republic of Sudan (which probably has increased with the price of oil), this means that BNPP Geneva represents, month after month, 10% of the revenue of a government which, for a large part of the public opinion, is not made with nice people.

For every dollar that this government is spending, 10 cents are coming direct from the pocket of BNPP in Switzerland and the [redacted] in Geneva is writing a monthly cheque (fortunately not in US dollar) which, for a significant part, allows this government to keep things running in Khartoum. The management of BNPP has explained that, since June 2007, the bank was not doing anything any more with this country, and I will not be the one who will explain to the US administration how it comes that the bank has been able to overcome this contradiction.²⁶⁴

BNPP’s counsel at Cleary Gottlieb knew that BNPP was still funneling oil proceeds to the Regime, and knew it was benefitting the Regime, but condoned this support: “This question of escrow account has been discussed with Cleary Gottlieb yesterday . . . and [they] have been made aware of its existence, its reasons, *the advantage it entails for the government of Sudan* and the approach taken by ECEP for keeping it in Geneva . . .”²⁶⁵ An employee replied to the email: “Personally, this scares me.”²⁶⁶ But neither BNPP management nor Cleary seemed to share that concern.

²⁶³ ECF No. 435-68, Hudson Report at ¶ 172.

²⁶⁴ Ex. 82, BNPP-KASHEF-00024869 at 24869-70.

²⁶⁵ Ex. 53, BNPP-KASHEF-00011268 at 11271.

²⁶⁶ *Id.* at 11268.

In January 2008, the same Paris compliance officer discovered that, in fact, the amount “fed” to the Sudanese government was “significantly more.”²⁶⁷ In the six months following BNPP’s purported withdrawal from Sudan, the bank channeled funds with an “exchange value of more than USD 0.5 billion” to “the Sudanese government.”²⁶⁸ Later that month, he renewed his request that [REDACTED] Global Head of ECEP, stop the payments to the Regime: “the clock is ticking and the fact that each time one sterling pound is received by ECEP Paris to reimburse the [CH UAE Corporate 16] loan, BNPP Geneva is feeding the Sudanese treasury with many times this amount is well taken into account by everybody.”²⁶⁹

A year later, the clock was still ticking. A March 2009 country-risk analysis circulated by [REDACTED] reported that the “International Criminal Court (ICC) issued an arrest warrant on March 4, 2009 against President Omar al-Bashir for ‘war crimes and crimes against humanity in Darfur.’”²⁷⁰ But the Sudan accounts were still open, despite a GC8 “post-mortem” in October 2009.²⁷¹ In fact, BNPP London facilitated \$6.7 billion in Sudan transactions from 2008 through 2010—transactions that BNPP admitted violated U.S. sanctions.²⁷²

The deadly effects of BNPP’s conspiracy with the Regime continued through at least 2011. The weapons systems the Regime purchased with BNPP-generated petrodollars remained, even after the money flows dried up. As Dr. Verhoeven explained, “providing the regime with oil dollars all these years ago continued to have lethal consequences for beleaguered populations for a long time thereafter.”²⁷³ Indeed, “the arsenal acquired by SAF during the peak oil years of the early 2000s was vital for the [Regime] when war resumed in South Kordofan and Blue Nile State in

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²⁶⁸ Ex. 90, BNPP-KASHEF-00030053 at 54.

²⁶⁹ Ex. 63, BNPP-KASHEF-00013746 at 13748-49.

²⁷⁰ Ex. 67, BNPP-KASHEF-00014068 at 14073.

²⁷¹ Ex. 66, BNPP-KASHEF-00014009 at 14010.

²⁷² ECF No. 435-64, Fogarty Reply at ¶¶ 99-102; ECF No. 435-63, Fogarty Report at ¶ 250, and Ex. 6.

²⁷³ ECF No. 435-93, Verhoeven Report at 57.

June 2011; some of the fighter jets, artillery and ammunitions that were purchased in the early to mid-2000s with petrodollars were used in bombardments of civilian areas.”²⁷⁴

From NISS’s network of horrific “ghost houses,” to the oil fields of Abyei and South Sudan, to the torched villages of Darfur, the Bashir Regime’s nationwide campaign of persecution forcibly displaced millions of Sudanese citizens. They were displaced, as Plaintiffs’ expert Dr. Jok explains, “through the destruction of their means of livelihood and theft of their land and cattle, through the raids on their villages, and the terror of the police state.”²⁷⁵

Hundreds of thousands gathered in internally displaced persons (“IDP”) camps within Sudan or sought refuge across international borders, sheltering in squalid refugee camps in Chad and Egypt.²⁷⁶ The United States provided refuge and asylum to thousands of Sudanese civilians forcibly displaced by the Bashir Regime. As Plaintiffs’ immigration expert, former U.S. Citizenship and Immigration Services Ombudsman Prakash Khatri, explains, an estimated 25,800 victims who fled Sudan during the 1997 to 2011 period were admitted to the United States, in 92.8% of those cases with a U.S. government determination that they “suffered or faced persecution at the hands of the Government of Sudan or its agents.”²⁷⁷ Plaintiffs are among these victims: their ordeals are detailed below and in Annex A.

PROCEDURAL HISTORY

As this Court held last year in denying BNPP’s motion to dismiss on *forum non conveniens* grounds: “This case has been ongoing for six years now, with Defendants making every effort to avoid actually litigating and resolving the dispute. . . . Thus, there is simply no reason to impose a

²⁷⁴ *Id.* at 56.

²⁷⁵ Ex. 5, Jok Report at ¶ 117.

²⁷⁶ Ex. 5, Jok Report at ¶¶ 117-28.

²⁷⁷ Ex. 76 to Lee Decl., ECF No. 435-76, Expert Reply Report of Prakash Khatri (“Khatri Reply”) at 12-13 n. 24, 18.

disproportionate (or any) burden on Plaintiffs . . . and, to delay any recovery to which they may be entitled—by granting the motion to dismiss.” *Kashef VI*, ECF No. 338 at 9-10.

On April 29, 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 II*, 925 F.3d at 57. In 2019, the Second Circuit reversed this Court’s initial dismissal of the case, holding that the act of state doctrine does not preclude judicial review of universally prohibited acts of genocide. *Id.* at 58-62. The Second Circuit also held that Plaintiffs’ claims were timely under N.Y.C.P.L.R. § 215(8)(a), which gives crime victims one year from the date of conviction to bring related civil claims. *Id.* at 62-63.

On remand, this Court held that under New York conflicts of law principles, substantive Swiss law applied to Plaintiffs’ claims. *Kashef III*, 442 F. Supp. 3d at 824. In February 2021, after months of Swiss law expert discovery, supplemental briefing, and oral argument, this Court denied in large part BNPP’s motion to dismiss. *Kashef IV*, 2021 WL 603290 at *9. Specifically, the 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. *Id.* at *9.

Discovery opened on May 6, 2021, and BNPP began producing to Plaintiffs the same set of Sudan-related documents previously produced to the U.S. government, in the same tampered state: “heavily redacted” purportedly “due to bank secrecy laws in Switzerland.”²⁷⁸ Defense counsel also informed Plaintiffs that BNPP did not retain records predating 2002—with some notable, but sparse, exceptions demonstrating that the sanctions-evasion conspiracy began as early as November 1997, the same month the U.S. embargo of Sudan was implemented.²⁷⁹

²⁷⁸ See ECF No. 435-1, SSOF at ¶ 72.

²⁷⁹ E.g., Ex. 69, BNPP-KASHEF-00014196; ECF No. 435-68, Hudson Report at ¶ 54.

BNPP waited six years into the litigation, and until Judge Nathan was nominated for the Second Circuit, to move to dismiss the case under *forum non conveniens* in December 2021. This Court denied BNPP's motion on May 5, 2022, noting the "bad faith of defendants." *Kashef VI*, ECF No. 338 at 9. The Court declined BNPP's invitation to treat the African-American Plaintiffs as second-class citizens due to their being Sudanese refugees: "Defendants . . . endeavor to undermine Plaintiffs' connections to New York and the United States by characterizing them as Sudanese refugees, seemingly to suggest that I should treat them differently based on their national origin." *Kashef VI*, ECF No. 338 at 5. Discovery is now complete. The case should proceed expeditiously to trial, with no further delay from BNPP allowed. As set forth in Plaintiffs' Motion for Class Certification, Rule 23 offers the best path for efficient, streamlined proceedings of a class unified by the U.S. government's immigration determination that the refugees and asylees were fleeing Bashir Regime persecution. It would also ensure that BNPP and its 20+ team of lawyers are not permitted to protract this litigation for another seven years.

LEGAL STANDARDS

I. Summary Judgment.

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of identifying portions of the record it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is "material" if it is capable of affecting the outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . ." *Id.* at 255; *Williams v. New York City Hous. Auth.*, 61 F.4th 55, 76 (2d Cir. 2023).

Moreover, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255. “If reasonable minds could differ as to the import of the evidence,” the motion must be denied. *Id.* at 250-51.

II. Overview of Swiss tort law.

Swiss tort law is principally governed by the Swiss Code of Obligations, articles 41-61.²⁸⁰ As Prof. Werro explains, “[u]nlike American law, Swiss tort law does not specifically define distinct causes of action, such as trespass, battery, or various torts of negligence.”²⁸¹ Instead, it operates by general principles.²⁸²

Primary Liability: Article 41.1 CO provides for primary tort liability: “Any person who unlawfully causes damage to another, whether willfully or negligently, is obliged to provide compensation.”

Secondary Liability: In certain circumstances, “Swiss tort law extends civil liability beyond the direct perpetrator.”²⁸³ For example, corporations are liable for their officers, Article 722 CO; employers are liable for their employees, Article 55 CO; and accomplices and instigators are liable for contributing to the unlawful act of a perpetrator, Article 50.1 CO.

Accomplice Liability: Article 50.1 CO states in full: “Where two or more persons have together caused damage, whether as instigator, perpetrator or accomplice, they are jointly and severally liable to the person suffering damage.”

The Swiss Supreme Court makes clear that although Article 50.1 “only stipulates that several participants are jointly and severally liable for damage caused collectively,” it “is

²⁸⁰ The Swiss Code of Obligations is published online by the Swiss government, in an unofficial English translation which lacks legal force: https://www.fedlex.admin.ch/eli/cc/27/317_321_377/en.

²⁸¹ ECF No. 435-105, Werro Decl. II at ¶ 20.

²⁸² For an overview of the Swiss civil law system, Plaintiffs refer the Court to Ex. 105 to Decl. of Charity E. Lee, ECF No. 435-105, Declaration of Professor Franz Werro (“Werro Decl. II”), at ¶¶ 15-28, dated Aug. 31, 2020, which provides a succinct overview of the official languages, court structure, codes, and case citation conventions.

²⁸³ ECF No. 435-105, Werro Decl. II at ¶¶ 20, 23.

nevertheless interpreted as a statutory recognition of the civil liability of the participants.” Ex. 112, *Swisscom Case* at § 2.2.1, p. 74. Accordingly, a “person who contributes to the infringement as an accomplice, but does not himself fulfill any statutory infringement requirement, is jointly and severally liable for the tort pursuant to Article 50 para. 1 CO.” *Id.* The Swiss Supreme Court has defined specific elements and standards for accomplice liability under Article 50.1, which this Court adopted in its February 16, 2021 opinion on Swiss law.

BNPP is liable as an accomplice under Article 50.1 CO.

ARGUMENT

I. The Swiss law standards set by this Court should continue to govern at summary judgment.

A. This Court’s opinion on Article 50.1 liability is the law of the case.

This Court has already determined the elements of accomplice liability under Article 50.1 that Plaintiffs must prove at trial. However, BNPP’s motion appears to want this case to be tried under its new experts’ rules, not the Court’s. It does not show cause for doing so; it simply pretends a change of legal standards under Art. 50.1 is a *fait accompli*. However, the law of the case doctrine disposes of pages 25-57 of BNPP’s brief in one fell swoop.

Under the law of the case doctrine, a decision on an issue of law becomes “binding precedent” in subsequent stages of the same litigation. *In re PCH Assocs.*, 949 F.2d 585, 592 (2d Cir. 1991). It authorizes departure from a prior ruling only when there has been an intervening change of controlling law, new evidence becomes available, or there is a “need to correct a clear error or prevent manifest injustice.” *Virgin Atl. Airways v. Nat’l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992).

On February 16, 2021, the Court set forth the elements of accomplice liability under Article 50.1. *Kashef IV*, 2021 WL 603290 at *2. The Court “adopt[ed] Plaintiffs’ expert’s descriptions of

the applicable Swiss law” and denied BNPP’s motion to dismiss. *Id.* Plaintiffs’ expert, Professor Franz Werro is “a tenured Professor of Law at the University of Fribourg and Georgetown University Law Center and President of the Council of the Swiss Institute of Comparative Law.” *Id.* As the Court noted, “he has written extensively on Article 50.1 and has been cited by the Swiss Supreme Court on this precise provision.” *Id.* at *3. The Court deemed his “descriptions of Article 50.1 and the surrounding case law to be coherent, credible, and supported by Swiss case law.” *Id.*²⁸⁴

BNPP accepted that the Court was correct. In moving for partial reconsideration on other grounds, it stipulated that the Court’s decision set forth the operative law:

To state a claim for secondary liability under Article 50(1) of the Swiss Code of Obligations, a plaintiff needs to allege that “(1) a main perpetrator committed an illicit act, (2) the accomplice consciously assisted the perpetrator and knew or should have known that he was contributing to an illicit act, and (3) their culpable cooperation was the natural and adequate cause of the plaintiff’s harm or loss.”

Defs.’ Mot. for Partial Recon., ECF No. 198, at 2 (quoting *Kashef IV*, 2021 WL 603290 at *4-5).²⁸⁵

For two years, the parties conducted fact and expert discovery in reliance on these standards. But discovery did not go as BNPP hoped. First, it lost its *forum non conveniens* motion and its escape route to Switzerland. *See Kashef VI*, ECF No. 338 at 338 (“Defendants appear to be seeking to avoid the jurisdiction of this Court, perhaps in favor of another more favorable forum.”). Then, Magistrate Judge Willis ordered BNPP to produce transaction reviews and other materials it had provided to the U.S. Department of Justice without a confidentiality agreement but tried to shield as privileged. Order re Mot. to Compel, ECF No. 343, May 23, 2022, at 13. The record

²⁸⁴ The Court also noted that Professor Werro’s “authority has been recognized by other courts in this district.” *Kashef IV*, 2021 WL 603290 at *3. In *Mastercard Intern. Inc. v. FIFA*, 464 F. Supp. 2d 246, 303 (2006), “Judge Preska found Professor Werro’s conclusions ‘to be the most persuasive and informative,’ and called him ‘eminently qualified’ and adopted his opinions and conclusions ‘in their entirety.’” *Kashef IV*, 2021 WL 603290 at *3.

²⁸⁵ BNPP could hardly disagree that these were the operative elements: Judge Nathan was quoting BNPP’s own expert, Professor Vito Roberto. *Kashef IV*, 2021 WL 603290 at *4-5 (quoting Roberto Reply Dec., ECF No. 170 ¶ 6).

evidence now reveals that BNPP laundered more than Sudan’s entire military budget—a benchmark recognized by this Court as satisfying natural (but-for) causation under Swiss law. *Kashef IV*, 2021 WL 603290 at *6.

Since BNPP can no longer hide from the facts revealed in discovery, it attempts to change the law. It withdrew its Swiss law expert and replaced him with two eleventh-hour substitutes—three years after the close of Swiss-law expert discovery on August 3, 2020. Order re Swiss Law Discovery Schedule, ECF No. 155, Mar. 20, 2020. Now it seeks summary judgment under Swiss law standards of its own making. As Table 1 illustrates, BNPP’s brief disregards or contradicts nearly every legal standard adopted by this Court.

ELEMENTS OF ART. 50.1	SWISS LEGAL STANDARDS DETERMINED BY THIS COURT FEB. 16, 2021	BNPP’S NEW PURPORTED LEGAL STANDARDS JULY 21, 2023
Basis of Accomplice Liability	“Article 50.1 provides for secondary tort liability.” <i>Kashef IV</i> , 2021 WL 603290 at *4-5 (“The parties’ experts agree”).	<u>No secondary liability:</u> “Article 50(1) SCO . . . is not an independent basis for liability.” MSJ at 27.
		<u>No accomplice liability:</u> “[E]ach defendant, whether a perpetrator or accomplice, must meet not only the criteria of joint fault and joint causation for Article 50(1) SCO, but also the criteria for general tort liability under Article 41 SCO— <i>i.e.</i> , unlawfulness of the defendant’s act that forms the basis of the plaintiff’s claim, fault, causation and a damage or injury to the plaintiff.” <i>Id.</i> “‘[U]nlawfulness’ for purposes of Swiss tort liability requires a violation

		of a Swiss protective norm by each alleged tortfeasor.” <i>Id.</i>
Illicit Act by Principal	“The first element of an Article 50.1 claim is that a ‘main perpetrator commit an illicit act.’” <i>Id.</i> at *3 (quoting BNPP’s Expert Roberto). “ The parties stipulate that this element is satisfied here. ” <i>Id.</i> at *3 (emphasis added).	
Collective Fault (Accomplice)	“The Second Element of Article 50.1 requires that ‘the accomplice consciously assisted the perpetrator and knew or should have known that he was contributing to an illicit act.’” <i>Id.</i> (quoting BNPP’s Expert Roberto).	<u>Omits entire standard, inserts “injurious course of conduct”:</u> “To show collective fault, Plaintiffs needed to [establish] ... that the BNPP Defendants consciously collaborated in the injurious course of conduct.” <i>Id.</i> at 34.
Collective Causation (Principal & accomplice)	“The third element of an Article 50.1 claim[] is that the accomplice’s ‘culpable cooperation was the natural and adequate cause of the plaintiff’s harm or loss.’” <i>Id.</i> at *6 (quoting BNPP’s Expert Roberto).	“Article 41(1) SCO and Article 50(1) SCO require Plaintiffs to establish that the BNPP Defendants were both the ‘natural’ and ‘adequate’ cause of Plaintiffs’ injuries.” <i>Id.</i> at 37.
Natural Causation (Principal & accomplice)	“[A] natural causal link exists where the harm would not have occurred at the same time or in the same way or magnitude without the conduct alleged.” <i>Id.</i> (quoting Plaintiffs’ expert Werro).	<u>Omits same time, way or magnitude:</u> “There is accordingly a natural causal link between an event and a result if, without the event, the result would not have occurred.” <i>Id.</i>
Adequate Causation (Principal & accomplice)	“[A]n adequate causal link exists when the wrongdoer’s conduct was capable, in the ordinary course of events and common experience, of	<u>Omits reasonableness and foreseeability:</u> “[L]ike proximate cause, the requirement of adequate cause works as a limit on legal liability in an otherwise

	<p>leading to the kind of result that occurred.”</p> <p><i>Id.</i> at * 7 (quoting Plaintiffs’ expert Werro). “[L]ike proximate cause, the requirement of adequate cause works as a limit on legal liability in an otherwise infinite chain of but-for causal effects.” <i>Id.</i></p> <p>The Court therefore determines, based on the experts reports, that a finding of adequate cause under Swiss tort law requires determining whether it would be “<u>reasonable</u>” to hold BNPP responsible for causing at least some of human rights abuses in Sudan, which <u>includes looking at the factor of whether those atrocities were foreseeable</u> to BNPP at the time. <i>Id.</i> at 7.</p>	<p>infinite chain of but-for causal effects.” <i>Id.</i> at 44.</p> <p>The Court “must consider not only all the circumstances of the case, but also the protective function of the norm and the types of circumstances that appropriately should give rise to liability.” <i>Id.</i> at 45.</p> <p>“[N]ot every act of participation that is merely ‘somewhat’ of promoting influence, but is not sufficiently closely related to the act itself, is sufficient.” <i>Id.</i></p>
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No actual change in the law or the facts warrants departing from Judge Nathan’s opinion.²⁸⁶

This Court looks “askance” at a “bid for a do-over based on this Court’s assignment” of a new judge. *Taboola, Inc. v. Ezoic Inc.*, No. 17CIV9909PAEKNF, 2021 WL 2041639, at *10 (S.D.N.Y. May 21, 2021). Indeed, “fidelity to the law of the case is especially important when a newly assigned judge ‘is asked to consider the ruling of a different judge.’” *Id.* (quoting *Lillbask ex rel. Mauclaire v. State of Conn. Dep’t of Educ.*, 397 F.3d 77, 94 (2d Cir. 2005)). As this Court has recognized, “upon reassignment, the new judge is well advised to pay particular heed to the doctrine of law of the case, and not to attempt a de novo review of . . . decisions made over a lengthy period by diligent and experienced judicial officers who have handled the case previously.”

²⁸⁶ Ex. 247, Werro Decl. V at ¶ 3.

Waverly Props., LLC v. KMG Waverly, No. 09 Civ. 3940 (PAE), 2011 WL 13322667, at *1 (S.D.N.Y. Dec. 19, 2011) (cleaned up).

B. BNPP’s untimely proffer of two new Article 50 experts comes two years after the close of Swiss law discovery.

Despite the prohibition on multiplying proceedings, BNPP has proffered nine expert reports on Article 50.1, through four proposed experts, applying a constellation of more than 14 purported “requirements”²⁸⁷ that the Court previously determined “are not elements articulated by the Swiss courts.” *Kashef IV*, 2021 WL 603290 at *4. The only thing consistent about BNPP’s “requirements” is that they have been contrary to the text of Article 50 (somehow a statute that applies to a “perpetrator or accomplice” does not apply to accomplices);²⁸⁸ logically impossible (somehow complicity can be negligent but must be intentional); “demonstrably incompatible” with Swiss case law, *Kashef IV*, 2021 WL 603290 at *4; and inconsistent with the prior publications of BNPP’s experts, *see* ECF No. 435-104, Werro Decl. IV at ¶¶ 53, 112 (noting Muller’s contradictory publications) and with the positions taken by BNPP at different stages of this case.

Nevertheless, anticipating its “do-over” strategy for dispositive motions, BNPP served a surprise expert declaration by Professor Christoph Muller on January 6, 2023.²⁸⁹ Plaintiffs responded, as they had to, with a rebuttal declaration from Professor Werro served on March 2, 2023.²⁹⁰ BNPP then waited until July 21, 2023, months after the close of merits discovery, to

²⁸⁷ As of August 2020, BNPP had requested the Court to impose the following requirements on Article 50: (1) “willful,” ECF No. 172, Aug. 17, 2020, BNPP Supplemental Mem. in support of Motion to Dismiss at 8; (2) “substantial,” *id.*; (3) “immediate,” *id.*; (4) “in the injurious course of conduct,” *id.*; (5) “in the relevant course of conduct,” *id.* at 9; (6) “committing . . . violations together,” *id.* at 10; (7) “encouraged or directed,” *id.*; (8) “closely manage or control,” *id.* at 11, (9) commit “analogous” “primary” violations, *id.*; (10) “close proximity,” *id.*; (11) “directly interacted,” *id.*; (12) “for the purpose and with the intent to aid,” *id.*; (13) not “through a separate course of conduct,” *id.* at 13; and, if we count compounds, (14) “intentional, deliberate cooperation in a particular injurious course of conduct,” *id.* at 15.

²⁸⁸ *See* ECF No. 445-104, Werro Decl. IV at ¶¶ 27-34.

²⁸⁹ Ex. 98 to Lee Decl., ECF No. 435-98, First Expert Report of Christoph Muller (“Muller Report I”).

²⁹⁰ Ex. 104 to Lee Decl., ECF No. 435-104, Declaration of Professor Franz Werro (“Werro Decl. IV”).

submit *two* surprise reports on Article 50 replying to Professor Werro: one by Professor Isabelle Romy (“Romy Report III”)²⁹¹ as well as a “Second Expert Report” by Muller.²⁹²

All three reports are untimely and should be excluded. *First*, all three reports were served years after the close of Swiss law discovery on August 3, 2020. *See* ECF No. 155, Order re Swiss Law Discovery Schedule (Mar. 20, 2020). What was the point of expending time and resources on depositions, reports, and briefs, if the losing party could simply dump their Article 50 expert and replace him with someone unencumbered by prior impeachment? BNPP understandably wants to avoid the consequences of proffering junk Swiss-law expert opinion. But it had five expert reports from Professor Roberto to get it right and it failed. It is not entitled to a sixth, seventh, and eighth chance. Regardless, the Muller and Romy “Replies” were not served “within 30 days” after the March 2, 2023 Werro Declaration, as required under Fed. R. Civ. P. 26(a)(2)(D)(ii).

Second, all three reports are a bad faith effort at gaming discovery and gaming Judge Nathan’s departure. If BNPP intended to seek reconsideration of the Court’s rulings on the Article 50.1 elements, it should have done so in its March 2, 2021 motion for reconsideration. ECF No. 198. Instead, BNPP waited until the end of fact discovery and the first wave of Plaintiffs’ expert reports to figure out how best to rewrite the rules.

Finally, rather than clarify the issues, the new expert reports plunge the Court—seven years into this case—into a doctrinal muddle best left for a law review symposium and a juvenile smear campaign fit for a faculty lounge. BNPP already tried this once. *Kashef IV*, 2021 WL 603290 at *4. It is not entitled to replace Roberto’s incoherent inventions with “Professor Müller’s convoluted, nine-element analysis” that bears no resemblance to “Swiss law as actually applied by Swiss

²⁹¹ Ex. 102 to Lee Decl., ECF No. 435-102, Third Expert Report of Isabelle Romy (“Romy Report III”).

²⁹² Ex. 99 to Lee Decl., ECF No. 435-99, Second Expert Report of Christoph Muller (“Muller Report II”).

courts.”²⁹³ It is well-settled that “courts will not admit supplemental expert evidence following the close of discovery when it expounds a wholly new and complex approach designed to fill a significant and logical gap in the first report, as doing so would eviscerate the purpose of the expert disclosure rules.” *Adv. Analytics, Inc. v. Citigroup Glob. Markets, Inc.*, 301 F.R.D. 31, 36 (S.D.N.Y. 2014) (cleaned up).

The untimely Müller and Romy “Replies” compound BNPP’s problems, adding into the record a false statement in a sworn declaration. Müller has a theory that Article 50—a statute that says it applies to an “accomplice”—does not apply to accomplices. But Professor Werro served on Müller’s PhD jury and when he received Müller’s “First Expert Report” he immediately spotted his junior colleague’s error: Müller was citing Article 51 cases and passing them off as Article 50 cases, making it look like there was actual caselaw behind his theory.²⁹⁴

Now, Professor Werro has caught Müller again in another falsehood.²⁹⁵ In his “Second Expert Report,” Müller states under penalty of perjury that in 2017 Professor Werro’s PhD student invented the “novel theory” that Article 50 is a basis for accomplice liability and that Professor Werro subsequently adopted it.²⁹⁶ But Müller knows this is false: in his first declaration, he wrote

²⁹³ ECF No. 435-104, Werro Decl. IV at ¶ 14.

²⁹⁴ As Professor Werro explains more fully in his March 2, 2023 Declaration, Muller “adopts a paradoxical theory that an accomplice or an instigator can only be liable under Article 50.1 CO if they are also liable as a perpetrator under Article 41.1 CO—a proposition contradicted by a century of case law.” ECF No. 435-104, Werro Decl. IV at ¶ 10. “To support this theory, he passes off case law (and even [Werro’s] own writing) on Article 51.1 CO (a provision [that applies] when multiple perpetrators independently cause the same harm) as if it were about Article 50.1 CO (a provision imposing joint and several liability on accomplices and instigators who have contributed to a perpetrator’s illicit and harmful act through collective fault).” *Id.* Moreover, “Professor Müller plays the role of a factfinder, not a Swiss law expert, by weighing evidence, introducing new facts outside his expertise, disregarding BNPP’s own guilty plea and internal documents, deciding that virtually all expert testimony can be ignored, and then repeatedly concluding that ‘Plaintiffs have presented no evidence’ when he himself has failed to consider all available evidence.” *Id.* at 11. Muller’s reply to Werro is even less helpful: “Müller does not correct or retract these errors, or even try to defend or explain them.” Ex. 247, Werro Decl. V at ¶ 7.

²⁹⁵ Ex. 247, Werro Decl. V at ¶¶ 8-20.

²⁹⁶ ECF 435-99, Muller Report II at ¶ 21.

that this same “theory” was published in 1991 by a different scholar.²⁹⁷ Romy repeats the lie.²⁹⁸ And BNPP plasters the lie across its brief.²⁹⁹ Declarations that make knowingly false, material representations of fact—that become a talking point for their proponents’ brief—are not reliable Rule 44.1 sources. The new Muller and Romy expert reports should be disregarded.

II. BNPP is liable as an accomplice under Article 50.1 of the Swiss Code of Obligations.

A. Illicit Act: The Regime’s atrocities were illicit acts and Plaintiffs were its victims.

“The first element of an Article 50.1 claim is that a ‘main perpetrator commit an illicit act.’” *Kashef IV*, 2021 WL 603290 at *3 (quoting BNPP’s expert, Roberto Reply Decl. at ¶ 6). An act is illicit either when it either (1) infringes an absolute right or (2) violates a specific rule of conduct aimed at protecting the economic interests of the victim.³⁰⁰ This case is about the violation of Plaintiffs’ absolute rights by the Regime’s atrocities. Yet the phrase “absolute rights,” and the Swiss law around it, are absent from BNPP’s motion.

According to the Swiss Supreme Court, an act is unlawful for tort law purposes when it “violates an absolute right, such as life, bodily integrity, or property.” Ex. 121, *Plane Crash*, SSC 112 II 118 at p. 128 (1986).³⁰¹ Swiss courts recognize a “general duty to respect the right to life and bodily integrity as an absolute right.” Ex. 117, *Ski Lift Case*, SSC 126 III 113 (2000) at p. 115.

²⁹⁷ ECF No. 435-98, Muller Report I at ¶ 43.

²⁹⁸ ECF No. 435-102, Romy Report III at ¶ 14 (“This is a novel theory that was only recently introduced by Prof. Werro and his former colleagues.”).

²⁹⁹ BNPP will claim the “novel theory” smear is substantiated by an article published in May 2023 by Professor Werro’s former student, where the word “new” appears in the following phrase: “the (new) view that art. 50 para. 1 SCO forms the basis for the individual liability . . .” ECF 435-99, Muller Report II ¶18; MSJ at 32, n.19. But this 2023 article, on which BNPP puts such weight, was edited by none other than BNPP’s hired expert, Christoph Muller.

³⁰⁰ See ECF No. 435-104, Werro Decl. IV at ¶ 64 n. 60 (“Professor Müller is correct that an act can also be unlawful within the meaning of Art. 41 CO when it violates a rule of conduct that aims to protect the mere economic interest of the plaintiff, but such interests are not at stake here.”); ECF No. 435-98, Muller Report I at ¶ 117.

³⁰¹ In this case, a military aircraft crash-landed, killing two children on the ground and sending their father into a nervous shock. The Court held: “It does not matter in this regard whether the causal chain is longer or shorter, whether the attack is immediate or the result of an indirect effect against a person who had a relationship with the immediate victim.” Ex. 121, *Plane Crash* at p. 128.

A breach of that duty is unlawful. *Id.* “In the context of liability law, absolute rights are those which must be respected by all third parties: life, health, physical and mental well-being, personality rights, personal freedom, property, ownership and other real rights.” Ex. 120, *Strip Search Case*, SSC 2C_19/2022 (2022) at § 4.3. A person whose absolute rights are violated can recover compensation for their pain and suffering, called “moral harm” in Swiss law.³⁰² Economic loss is also compensable.³⁰³

1. The Regime violated Plaintiffs’ absolute rights through rape, torture, murder, and pillage.

Record evidence confirms that the “the main perpetrator is the Sudanese government and the illicit acts are the atrocious genocide and human rights violations it perpetrated for over a decade beginning in the early 1990s.” *Kashef IV*, 2021 WL 603290 at *3. Annex A sets out in full each Plaintiff’s ordeals, and the fact and expert evidence that links them to the Regime.

1. ***Plaintiff Isaac Ali***: In 1998, uniformed SAF soldiers invaded Plaintiff Isaac Ali’s home in Wau (southern Sudan) and killed his father, a prominent educator Annex A at ¶ 6. After he moved to Khartoum, he was arrested by military intelligence, detained for months in a ghost house, whipped, beaten, stabbed with a bayonet, accused of being a rebel and called an “infidel” for being Catholic. *Id.* At ¶¶ 7-8.
2. ***Plaintiff Halima Samuel Guma Khalifa***: In 1998, Plaintiff Halima Khalifa was forced to flee her home near Juba in southern Sudan when SAF soldiers attacked, ending up in an internally displaced persons camp. *Id.* at ¶ 17. But in 1999 SAF soldiers and police bulldozed her home, detained her, and whipped her. When she searched for her disappeared husband after her release, she was beaten by military and security personnel, who falsely accused her husband of being a rebel *Id.* at ¶¶ 18-20. Later, uniformed SAF soldiers invaded her home, raped her and her mother in front of her son; shoved hot peppers into her genitals and scarred her legs with “clippers.” *Id.* at ¶ 21. Then, she was taken to a detention center where security officers tried to extract a confession by pulling her nails out, putting clamps on her feet, and raping her repeatedly. *Id.* at ¶¶ 22-23.

³⁰² See ECF No. 435-104, Werro Decl. IV at ¶¶ 145-56. Article 49 CO provides compensation for moral harm: “Any person whose personality rights are unlawfully infringed is entitled to a sum of money by way of satisfaction provided that this is justified by the seriousness of the infringement and no other amends have been made.” The term “satisfaction” is a literal translation from the French, but as Professor Werro explains “the analogous concept in U.S. law is ‘compensation for pain and suffering.’” ECF No. 435-104, Werro Decl. IV at ¶ 147 n. 174.

³⁰³ *Id.* at ¶¶ 163-84.

3. ***Plaintiff Turjuman Adam:*** A judge and attorney in Wau (southern Sudan), Plaintiff Turjuman Adam was repeatedly harassed and arrested on multiple occasions for his reporting of the GOS's killing of its suspected political enemies. *Id.* at ¶¶ 30-34. Following one arrest, he was detained for several days, beaten and required stitches in his face *Id.* at ¶ 32. He was detained for eleven days following another, after which he was transferred by military aircraft back to Khartoum, where he discovered his law offices had been shut down. *Id.* at ¶ 34.
4. ***Plaintiff Abbo Abakar:*** In July 2003, Plaintiff Abbo Abakar fled from his home in Western Darfur when the government's Janjaweed militia backed by a helicopter raided and set fire to his village of Bawuda in West Darfur. *Id.* at ¶ 188. In 2005, the village to which they had relocated came under attack and was torched with his wife and children in it. Abbo fled for his life and never saw his family again. *Id.*
5. ***Plaintiff Hawa Omar.*** In December of 2003, Plaintiff Hawa Omar witnessed the Janjaweed militia attacking civilians near her village of Sulu, Western Darfur. *Id.* at ¶ 149. She heard bombs dropped from camouflage military planes as the Janjaweed set fire to Sulu on the ground. *Id.* at ¶ 150. She could hear women being raped. *Id.*
6. ***Plaintiff Hamdan Abakar.*** In 2003, Plaintiff Hamdan Abakar witnessed four separate attacks by the GOS and its agents. *Id.* at ¶¶ 173-179. In the first, uniformed men attacked and burned Abu Daheia, Mr. Abakar was shot by the Janjaweed, and his grandfather was killed in the attack. *Id.* at ¶¶ 173-174. He later witnessed an attack on Danajour with three camouflage helicopters flying the Sudanese flag; he helped bury the dead. *Id.* at ¶ 175. In the third, bombs from an Antonov hit civilians, and Mr. Abakar witnessed four women, including a woman pregnant with twins ripped apart, pieces of their bodies strewn across the area. *Id.* at ¶ 176.
7. ***Plaintiff Abulgasim Abdalla.*** Plaintiff Abulgasim Abdalla witnessed multiple attacks by the SAF, Popular Defense Forces and the Janjaweed of his village, Doweit. *Id.* at ¶¶ 158-163. He was separated from his family as the village burned, his wife and children escaped but he never saw his parents or siblings again. *Id.* at ¶ 163. He attempted to flee in a lorry but was stopped and beaten by the Janjaweed, hit repeatedly in the head and legs with the butts of their guns. *Id.* at ¶¶ 164-165.
8. ***Plaintiff Nyanriak Tingloth.*** Plaintiff Nyanriak Tingloth survived two attacks by SAF and the Regime's *mujahideen* militia in 2004. *Id.* at ¶¶ 103-106. During the first, she fled and her brother was shot and killed. *Id.* at ¶ 105. During the second, she ran as she heard the attack from the Antonov plane, setting the village on fire, including her grandmother's home. *Id.* at ¶ 106. Her grandmother and brother died in the attack *Id.* She saw her grandmother burn to death. *Id.*
9. ***Plaintiff Entesar Kashef.*** Plaintiff Entesar Kashef's family home was destroyed by two coordinated SAF and Janjaweed attacks. *Id.* at ¶ 195. As a teenager, soldiers

invaded her home, shooting and killing her grandmother, her father, her uncle, and her sister as she hid. *Id.* at ¶ 197. She was detained twice by government security for up to three months during which she was tortured, tied up, hung upside-down, and whipped with a belt and raped multiple times a day by men in uniform, “[i]t became like a meal for them. In the morning, in the evening, and at night. Every day.” *Id.* at ¶ 200-201.

10. ***Plaintiff Jane Doe.*** In November 2003 Plaintiff Jane Doe, who was pregnant at the time, fled an attack by SAF and Janjaweed fighters her mother and daughter into a valley. *Id.* at ¶¶ 221-223. They were caught by the fighters, who beat Jane Doe’s four-year-old daughter with the butt of a gun, breaking her arm, and beat her son on his head. *Id.* at ¶ 222. Jane Doe and her mother were raped by multiple soldiers “wearing the uniform of the military.” *Id.* One of the rapists called Jane Doe and her mother “you slaves.” *Id.*
11. ***Plaintiff Abubakar Abakar.*** In 2003, the Janjaweed swept the local villages around Plaintiff Abubakar Abakar. *Id.* at ¶ 213. The Janjaweed militia included men Mr. Abakar knew personally. *Id.* The attack killed 13 people, including three members of Mr. Abakar’s wife’s family and a student of Abubakar’s. *Id.*
12. ***Plaintiff Shafika G. Hassan.*** In 2004, armed members of the GOS military intelligence came into Plaintiff Shafika Hassan’s home, searched for documents and stole her gold. *Id.* at ¶ 134. During that time, and the several times they returned, they beat her, kicked her, twisted her arm and grabbed her breasts; her children stopped them from raping her, one of whom was hit with a gun in the back. *Id.* at ¶¶ 136-137.
13. ***Plaintiff John Doe.*** In 2004, four armed men arrested Plaintiff John Doe from his home in Khartoum, detaining and interrogating him for about two weeks. *Id.* at ¶¶ 126-130. They repeatedly beat him with gun butts and hoses, whipped him on the soles of his feet, kicked him in the knee and on his back, forced him to crawl on stones while beating his back, and doused him with dirty water. *Id.* at ¶ 128. They brutally raped him, anally and orally, during his detention. *Id.* at ¶ 129.
14. ***Plaintiff Jane Roe.*** In 2003, four men with the Sudanese security forces stormed the home of Plaintiff Jane Roe, blindfolding her and detaining her in an office for several days. *Id.* at ¶¶ 116-120. She was interrogated and tortured, continually blindfolded, slapped, kicked, whipped, and verbally insulted. *Id.* She was raped repeatedly, resulting in her infection with HIV. *Id.* at ¶ 124. She subsequently experienced a miscarriage. *Id.* at ¶ 120.
15. ***Plaintiff Kuol Shbur.*** In 2001, four or five men from Sudanese security services took Plaintiff Kuol Shbur and detained him for three weeks. *Id.* at ¶¶ 91-92. In that time, he was threatened, interrogated and tortured—brought to a large room with a large table, tied up, beaten on top of the table until he was unconscious, had his nails removed and his genitals burned, electrocuted and pinched with pliers. *Id.*

16. **Plaintiff Judy Doe.** While Plaintiff Judy Doe’s husband was arrested and detained in 2004, accused of supporting the opposition, uniformed men came to her home and raped her repeatedly, infecting her with HIV. *Id.* at ¶¶ 43-46.
17. **Plaintiff Nicolas Hakim Lukudu.** In February 2004, Plaintiff Nicolas Lukudu, was arrested by four armed members of the Sudanese military and was detained for approximately two months. *Id.* at ¶¶ 68-69. In that time, he was threatened, beaten and tortured with *falaqa*, the beating of the soles of his feet with plastic sticks. *Id.* at ¶ 69.
18. **Plaintiff Ambrose Martin Ulau.** Plaintiff Ambrose Ulau’s home was raided by members of the Sudanese security and detained for eleven days. *Id.* at ¶¶ 78-81. He was interrogated, threatened and tortured with beatings to his stomach, head, the soles of his feet with a plastic hose and the butts of guns, being doused with water and hung upside down for 10-15 minutes at a time. *Id.* at ¶ 80.
19. **Plaintiff Judy Roe.** Plaintiff Judy Roe was at home in November 1999 when two military vehicles came to her home and uniformed men beat and tied up her family members. *Id.* at ¶¶ 53-56. They dragged her to her bed, beat her and gang raped her. *Id.* at ¶ 54. One bit off a piece of her right breast, another cut her neck so hard she was not sure if they did it to “slaughter” her, while saying “you are slaves, you don’t have to be right in this country.” *Id.* She was knocked unconscious and discovered later that she was infected with HIV as a result of the rape she suffered. *Id.* at ¶ 57.

As set forth in Annex A, the record is replete with evidence—direct and circumstantial—that the Plaintiffs were harmed by the Regime’s military, security, and/or militia forces, which were organized under the Popular Defense Act and other statutory grounds, which were funded with BNPP’s support, and which carried out a policy of committing mass atrocities and ethnic cleansing of non-Arab civilians considered an obstacle to a racist regime’s control over Sudan’s oil, government, and economy.

For seven years of litigation, BNPP conceded that these atrocities were unlawful acts. As this Court found, BNPP “stipulate[d] that this element is satisfied.” *Kashef IV*, 2021 WL 603290 at *3. Indeed, BNPP conceded to the Second Circuit that the Regime’s atrocities were unlawful: “By BNPP’s own concession, the acts of Sudan to which BNPP asks us to defer are the atrocities

committed against innocent civilians.” *Kashef II*, 925 F.3d at 60 (noting that “[n]o one here . . . contends that genocide, mass rape, and ethnic cleansing are ‘valid’”).

But now BNPP claims that the forced displacement, genocide, mass rape, torture, and ethnic cleansing committed by the Sudanese regime are not unlawful. And it starts by misrepresenting the Court’s own prior ruling, claiming “[a]s to the illicit act by the main perpetrator, the Court assumed for the purposes of the motion to dismiss that this factor was met.” MSJ at 23. The Court did not assume this; BNPP “stipulate[d]” to it. *Kashef IV*, 2021 WL 603290 at *3.

Summary judgment should be denied because the atrocities the Regime inflicted on the Plaintiffs, including the persecution that forcibly displaced them, violated absolute rights, were unlawful, and are compensable under Article 50.

2. The Regime violated Plaintiffs’ absolute rights through forced displacement.

BNPP disputes that Sudanese refugees forced into exile by violent state persecution have had their absolute rights violated. *See* MSJ at 31. And BNPP apparently claims the Plaintiffs have not been harmed by being unable to return to their homeland due to a government that has targeted them for extermination, mass rape, torture, bombing, or otherwise terrorizing them as part of a state policy of ethnic cleansing and persecution. BNPP makes this argument by attacking a strawman: invoking common-law concepts, it argues there is no “cause of action or theory of liability” for forced displacement. MSJ at 31.

But Plaintiffs’ tort claims are governed by Swiss law, not common law. And Swiss law does not require a plaintiff to identify a specific prohibition or “cause of action” to recover compensation for violations of absolute rights. As the Swiss Supreme Court explains: “The legal order directly protects these rights, without it being necessary to determine in each case whether

the perpetrator of the injury violated a specific prohibition.” Ex. 121, *Plane Crash* at p. 128; *see also* ECF No. 435-104, Werro Decl. IV at ¶¶ 64, 73-75, 150 (“There is no enumerated list of types of physical injuries that are cognizable, just as there are no ‘causes of action’ for personal injury under Swiss law, in contrast to American tort law.”).

Therefore, the question is not whether Swiss law specifically prohibits “forced displacement” and provides a cause of action. It is whether being forced into exile by violent state persecution (*i.e.*, the fact of forced displacement) infringes absolute rights and causes compensable moral harm, within the meaning of Article 49 CO.

On this, the European Convention of Human Rights (“ECHR”) and jurisprudence of the European Court of Human Rights (“ECtHR”) are instructive for three reasons.³⁰⁴ *First*, they form part of domestic Swiss law: “The ECHR, as a state treaty approved by the Federal Assembly, is no less binding on the authorities applying the law than federal laws.” Ex. 172, *Deportation Case*, SSC 111 Ib 68 at p. 70-71. *Second*, the ECtHR has long recognized that forced displacement or expulsion from one’s home is a violation of the “right to respect for private life” and property rights.³⁰⁵ *Third*, the ECtHR specifically recognizes that the violation of these rights—when a victim is “forced by . . . military forces” to “abandon their home, property, and possessions”³⁰⁶—can cause “anguish and feelings of helplessness and frustration” that are compensable as non-pecuniary damage.³⁰⁷

³⁰⁴ *See* ECF No. 435-104, Werro Decl. IV at ¶¶ 69-76.

³⁰⁵ *Maslov v. Austria*, Case No. 1638/03, Judgment, ECtHR, Grand Chamber, June 23, 2008, ¶¶ 61-63, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-87156%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-87156%22]); *Loizidou v. Turkey*, Case No. 15318/89, Judgment, ECtHR, Grand Chamber, July 28, 1998, ¶¶ 39; *Cyprus v. Turkey*, Case No. 25781/94, Judgment (Merits), ECtHR (Grand Chamber), 10/05/2001, <https://hudoc.echr.coe.int/eng?i=001-59454>; *Demades v. Turkey*, Case No. 16219/90, Judgment (merits and just satisfaction), ECtHR, 31/07/2003, <https://hudoc.echr.coe.int/fre?i=001-61272>.

³⁰⁶ *Xenides-Arestis v. Turkey*, Case No. 46347/99, Judgment, ECtHR, Dec. 22, 2005, ¶ 11, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-71800%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-71800%22]).

³⁰⁷ *Xenides-Arestis v. Turkey*, Case No. 46347/99, Just Satisfaction Judgment, ECtHR, Dec. 7, 2006, ¶ 47, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-78359%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-78359%22]) (awarding 50,000 euros in compensatory damages for moral harm).

Seven years into the case, and months after the close of expert discovery, BNPP improperly brings in a new proposed expert, Professor Hellen Keller, who answers a question that is not at issue: whether international law (as opposed to Swiss law applied in this case) creates a cause of action for forced displacement.³⁰⁸

At the outset, BNPP and Professor Keller object to the term “forced displacement,”³⁰⁹ even though the European Court of Human Rights itself uses the term. *See, e.g., Case of Chiragov and Others v. Armenia*, Case No. 13216/05, Judgment, Grand Chamber, ECtHR, June 16, 2015.³¹⁰ Professor Keller then argues that the Plaintiffs cannot establish that their violent forcible displacement was a violation of human rights because they cannot establish that their displacement was the result of “concrete actions” by the Sudanese government.³¹¹

Apparently, Professor Keller does not believe that, for example, the ordeal that forced Plaintiff Jane Doe to flee Sudan was sufficiently “concrete” to be a human rights violation: Her village in Darfur was attacked by Sudanese military and militia forces in a joint operation with an attack helicopter. Jane Doe and her mother were raped, in front of her children, by uniformed soldiers who called them slaves and who broke her four-year-old daughter’s arm with the butt of a gun.³¹² If that was not sufficiently concrete, she was later arrested by state security forces, stripped naked, beaten her all over her body “to the point of death” until “she started bleeding,”

³⁰⁸ She specifically states she is not opining on “whether and what rules of international law are applicable (or relevant for interpretative purposes) in adjudicating the issues in the case at hand.” The Complaint has factually alleged forced displacement of Plaintiffs since 2016, yet only now does BNPP submit a proposed expert on this issue. *See, e.g., Complaint*, ECF No. 4, at ¶ 10 (“Over two million Black Sudanese were displaced from their tribal homelands.”); *id.* at ¶ 135 (“forcibly removing Plaintiffs from their home and lands”).

³⁰⁹ ECF No. 435-97, Keller Report at ¶ 8; MSJ at 31.

³¹⁰ Available at <https://hudoc.echr.coe.int/eng?i=001-155353> (“*Chiragov*”). *See also* European Court of Human Rights, Guide on Article 8 of the Convention of European Court of Human Rights: Right to respect for private and family life, home, and correspondence (August 31, 2022) ¶ 423, https://www.echr.coe.int/documents/d/echr/guide_art_8_eng.

³¹¹ ECF No. 435-97, Keller Report at ¶ 12.

³¹² *See* Annex A at ¶¶ 222-24.

and then ordered upon her release to spy on her employer, Jan Pronk, the United Nations Special Representative to Sudan.³¹³ Pronk helped her flee Sudan and she eventually was admitted to the United States as a refugee, after an agency determination that she had “fled or was displaced” from Sudan.³¹⁴

Nor does Professor Keller believe that a systemic campaign of ethnic cleansing that displaced its victims is sufficiently concrete. But the European Court of Human Rights’ decision in *Chiragov* illustrates why victims forcibly displaced by an organized campaign of ethnic cleansing and persecution, who are not freely able to return, have had their rights to private life, family life, and home violated. In *Chiragov*, victims who were Azerbaijani Kurds and Muslims were “forcibly displaced from their homes by . . . Armenian-backed forces” in a “military action” that led to “large-scale ethnic expulsion and the creation of mono-ethnic areas.” *Chiragov* at ¶¶ 217, 220. The victims were “prevented from returning” to their homes “located in a territory occupied by the government.” *Id.* ¶ 3. The Court held that “their forced displacement and involuntary absence” constituted an “unjustified interference with their right to respect for their private and family lives as well as their homes.” *Id.* ¶ 206.

As Professor Werro explains, “the question in the present case is not whether there has been a violation of the European Convention on Human Rights.”³¹⁵ It is “whether the Plaintiffs’ absolute rights to private life, freedom of movement, and property, as protected under Swiss law, were violated by the fear of violent state persecution that made them flee their homes and/or be unable

³¹³ *Id.* at ¶¶ 227-29.

³¹⁴ *Id.* at ¶¶ 230-31.

³¹⁵ Ex. 247, Werro Decl. V at ¶ 54.

to return.”³¹⁶ The analogous ECtHR caselaw, which is part of Swiss law, guides the answer to that question.³¹⁷

Finally, Professor Keller’s claim that the refugee or asylee status of the Plaintiffs (and the class) is irrelevant is clearly wrong. She is not qualified to opine on U.S. immigration law. Moreover, she asserts that each Plaintiff must establish that he or she “faces a risk of human rights abuses in Sudan and therefore is prevented from returning.”³¹⁸ But that is what the U.S. government conclusively adjudicated by admitting them as refugees (primary or derivative) and asylees.³¹⁹ In short, their forced displacement is an illicit act by the Sudanese regime that violated absolute rights. The suffering they endured is compensable as moral harm under Article 49 CO. And BNPP is not entitled to summary judgment as a matter of law on the first element of Article 50.1.

3. Genocide is unlawful and BNPP cannot resurrect its act of state defense.

BNPP claims that genocide and war crimes are not unlawful acts in Switzerland – ironically the birthplace of the Geneva Conventions. Specifically, it claims Sudan’s atrocities are not unlawful for Article 50 purposes, because Sudan’s acts of state are non-justiciable and Sudan is immune from Swiss jurisdiction. MSJ at 32-33. It relies solely on its expert, Professor Isabelle

³¹⁶ *Id.*

³¹⁷ *Id.* at ¶ 55.

³¹⁸ ECF No. 435-97, Keller Report at ¶ 26.

³¹⁹ Refugee or asylee status is proof of forced displacement. As Plaintiffs’ immigration expert, Prakash Khatri, explains, “displacement is in the very definition of a refugee” that every refugee and asylee must satisfy in order to be admitted to the United States. ECF No. 435-76, Khatri Reply at 2 (citing 8 U.S.C. § 1101(a)(42)(A)); *id.* at 3 n.5 (citing statements of international authorities). In other words, no refugee or asylee can be admitted to the United States without the U.S. government having found—for each and every refugee and asylee—that they were outside their country of nationality (i.e., were displaced) and suffered or feared persecution, such that they were unable to return (i.e., the displacement was forcible). *Id.* at 2-3, 6-10; 8 U.S.C. § 1101(a)(42)(A). As Mr. Khatri has explained, the U.S. government has *already determined* that 92.8% of the over 25,800 class members were forcibly displaced by the Government of Sudan or its agents during the class period. *Id.* at 12 n.24, 18.

Romy. Two years ago, in support of BNPP’s forum non conveniens motion, she testified this case is justiciable in Switzerland.³²⁰ Now she says it is not.

Her change of heart aside, Romy should be taken with a grain of Swiss salt. During her tenure as a director of Swiss Bank UBS, the bank violated U.S. sanctions and paid a \$1.7 million settlement with OFAC—violating the same laws as BNPP, though at a much smaller scale.³²¹ That conflict, which she never disclosed, means that every statement in favor of BNPP is also a statement in her defense. Regardless, she is wrong on the merits.

First, genocide is unlawful under Swiss law.³²² The Second Circuit determined it is unlawful everywhere. *See Kashef II*, 925 F.3d at 60-61. BNPP, however, argues the Regime’s atrocities are *not* unlawful under Article 50.1 because “[a]cts of a foreign state in their sovereign capacity (*jure imperii*) are public law acts not subject to tort liability under Swiss law.” MSJ at 33. But the Second Circuit has already prohibited this Court from deeming genocide an “official act” of state: “The act of state doctrine cannot shield this genocide from scrutiny by the courts of the United States because, . . . both Sudan’s own laws and a universal international consensus *prohibit us from deeming genocide an ‘official act’ of Sudan*, or for that matter, of any state, that could supply or support a rule of decision for our courts.” *Kashef II*, 925 F.3d at 60 (reversing dismissal under act of state doctrine) (emphasis added). Even if Swiss tort law did deem genocide a lawful official act—which it does not—this Court would be barred from doing the same. *See id.* at 64 (“We are prohibited from deeming valid, for purposes of act-of-state deference, atrocities such as

³²⁰ “PLAINTIFFS CAN BRING THIS ACTION IN SWITZERLAND” ECF No. 264, Romy Report I at 6.

³²¹ Professor Romy served on the UBS board from 2012 to 2020. ECF No. 264-1, Ex. A to Romy Report I at 1. 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

³²² For example, the Swiss Criminal Code prohibits genocide (art. 264), crimes against humanity (art. 264a), and war crimes (art. 264c–h). Swiss Criminal Code, Dec. 21, 1937, RO 311. English translation available at: <https://www.admin.ch/opc/en/classified-compilation/19370083/202003030000/311.0.pdf>.

genocide, mass rape, and ethnic cleansing.”).³²³ Thus, BNPP’s effort to revive the act of state defense, in Swiss guise, is foreclosed by the Second Circuit.

Second, BNPP is also wrong that Swiss tort principles do not apply to “sovereign entities.” MSJ at 33. The Swiss Supreme Court makes clear that “[i]n principle, public officials are liable for their tortuous acts according to the ordinary rules of Art. 41 ff CO”. Ex. 118, *Revoked License Case*, SSC 2C.3_1998 (1998) at § 2a. However, as Professor Werro explains, the Code of Obligations presumptively applies to public entities, *unless* it has been displaced by specific federal or cantonal legislation, pursuant to Article 61 CO.³²⁴ Ex. 247, Werro Decl. V at ¶ 27; *accord* Ex. 118, *Revoked License Case* at § 2a. Even then, if public law legislation does not “define the conditions of liability . . . namely tort, damage, causal link and injury to personal interests”, these concepts “have the same meaning as in private civil liability law.” *Id.* at § 2b. Here, BNPP points to no Swiss legislation that derogates from the Code of Obligations to create different tort rules for foreign states and agents. Nor has it found any law, public or private, that deems genocide a lawful act. To the contrary, Swiss public law protects the same absolute rights as Swiss private law.³²⁵ Since these atrocities are universally prohibited, applying public or private law would reach the same result: Genocide, rape, and ethnic cleansing are unlawful acts.

Third, BNPP is wrong that Article 50 cannot create joint and several liability between private parties and public entities and agents. Its only authority is the *Hockey Case*, where the

³²³ The Second Circuit made clear that “[a]ll of Plaintiffs’ claims are premised on these blatant violations of *jus cogens* norms”—norms of international law “from which no derogation is permitted.” *Kashef II*, 925 F.3d at 61.

³²⁴ Article 61.1 states: “The Confederation and the cantons may by way of legislation enact provisions that deviate from those of this Section to govern the liability of civil servants and public officials to pay damages or satisfaction for any damage they cause in the exercise of their duties.”

³²⁵ See, e.g., Ex. 120, *Strip Search Case* at § 4.2-4.3 (“Unlawfulness can be established from the outset if the harmful act stems from violation of an absolute right (life, health or property rights).”). In the public law context, “absolute rights” have the exact same meaning. “In the context of liability law, absolute rights are those which must be respected by all third parties: life, health, physical and mental well-being, personality rights, personal freedom, property, ownership and other real rights.” *Id.*

Swiss Supreme Court held it was obligated under Article 59 of the Swiss Civil Code (“CC”) to apply cantonal law, not the federal Code of Obligations, to a cantonal public corporation. Ex. 119, *Hockey Case*, SSC 79 II 66 (1953).³²⁶ In this case, a mother was injured while watching her son’s ice hockey match at a municipality-owned rink. She sued the teams and the municipality as co-perpetrators, alleging the municipality failed to maintain a safe environment. The Supreme Court affirmed that while the teams and players were jointly and severally liable under Article 50 CO, the municipality was not. As a cantonal public corporation, it was only subject to cantonal public law, as required by Article 59 CC.

But the Sudanese government is not a Swiss “public or ecclesiastical corporation.” So, Article 59 CC does not apply here, and neither does the *Hockey Case*. BNPP cites no comparable Swiss statutory provision that exempts the Bashir Regime and its former officials from the Swiss Code of Obligations. Instead, BNPP and Romy grasp for the doctrine of foreign sovereign immunity and its general distinction between public acts (*jure imperii*) and private acts.³²⁷ As Romy admits, this distinction determines whether “a foreign State may invoke an immunity from jurisdiction.”³²⁸ Unlike Article 59, jurisdictional immunity addresses the power of a court to hear a matter, not what law applies. *See* Ex. 247, Werro Decl. V at ¶ 38.³²⁹ And the general principle of foreign sovereign immunity (and its exceptions) certainly is not a derogation from basic tort principles that protect the rights to life, dignity, and bodily integrity.³³⁰ As Professor Werro

³²⁶ Article 59.1 of the Civil Code states: “Public and ecclesiastical corporations are governed by federal and cantonal public law.”

³²⁷ ECF No. 435-102, Romy Report III at ¶ 29; MSJ at 33.

³²⁸ ECF No. 435-102, Romy Report III at ¶ 29.

³²⁹ Professor Werro explains: “State immunity . . . is an exemption from the jurisdiction of the Swiss courts. It is not an exemption from the substantive obligations of Swiss law (or foreign or international law). The possibility that the GOS could not be sued in a Swiss court because of jurisdictional immunities does not alter the fact that its abuses are unlawful violations of absolute rights within the meaning of Article 41.1 CO (and no doubt other bodies of law).” Ex. 247, Werro Decl. V at ¶ 38.

³³⁰ *See* Ex. 120, *Strip Search Case* at § 6.1 (noting “human dignity must be respected and protected.”).

explains, absent a statutory derogation, the Code of Obligations, including Article 50 and its elements, will apply.

Even if Sudan were immune from Swiss jurisdiction, it would still be a perpetrator of illicit acts within the meaning of Article 41 which addresses direct, not accomplice, liability. And Plaintiffs would still have a remedy against BNPP, because Article 50 (accomplice liability) does not require obtaining a judgment against all the potential defendants. *See* Ex. 107, Muller, Extracontractual Civil Liability, ¶ 825 (“The victim can therefore act as he or she wishes against one or the other, against several of them or all of them.”). In sum, BNPP is not entitled to summary judgment on its resurrected act of state defense.

4. Article 50 only requires an illicit act from the principal, not the accomplice.

BNPP devotes much of its brief to arguing that it—a convicted felon—is not an accomplice because it did not do anything unlawful (e.g., kill, torture, or rape), it just helped the Bashir Regime do something unlawful. This is like saying it’s not illegal to drive a car, so a get-away-driver can’t be an accomplice. There’s no law against unlocking doors, so letting the burglar into the bank can’t be complicity.

Setting aside that BNPP *did* violate the law, the premise of its argument is flawed. To establish accomplice liability, Plaintiffs do not need to prove that BNPP perpetrated the unlawful acts that harmed them, because as the Court correctly held, and as BNPP previously conceded, the first element of Article 50.1 is “(1) a main perpetrator committed an illicit act.” *Kashef IV*, 2021 WL 603290 at *2. Yet BNPP now argues that both the perpetrator and the accomplice must commit the illicit act, and each must meet all the elements of primary tort liability under Article 41.³³¹

³³¹ BNPP’s precise wording is less clear, but the upshot is the same. It argues that “each defendant, whether a perpetrator or accomplice, must meet not only the criteria of joint fault and joint causation for Article 50(1) SCO, but also the criteria for general tort liability under Article 41 SCO—i.e., unlawfulness of the defendant’s act that forms the basis of the plaintiff’s claim, fault, causation and a damage or injury to the plaintiff.” MSJ at 27.

BNPP's position is contrary to the language of the statute, a century of case law, and Muller's own publications.³³² On its face, Article 50.1 applies to accomplices: "Where two or more persons have together caused damage, whether as instigator, perpetrator *or accomplice*, they are jointly and severally liable to the person suffering damage." (emphasis added). Article 50 is the only provision in the entire Code of Obligations that contains the word "accomplice."

In *Swisscom*, the Swiss Supreme Court confirmed that "the person who contributes to the infringement as an accomplice, but *does not himself fulfill any statutory infringement requirement*, is jointly and severally liable for the tort pursuant to Art. 50 para. 1 CO" Ex. 112, *Swisscom Case* at p. 74 (emphasis added).³³³ Ex. 112, *Swisscom Case* at § 2.2.1, p. 74. The Court explained that Article 50.1 does not simply allocate damages, as BNPP claims. Rather, it "defin[es] complicity . . . as a basis for liability." *Id.* "Strictly speaking, [Article 50.1] only stipulates that several participants are jointly and severally liable for damage caused collectively, but is nevertheless interpreted as a statutory recognition of the civil liability of the participants." *Id.*³³⁴ The Swiss Supreme Court could not be clearer that an accomplice need not commit an unlawful act and need not fulfil all the "statutory infringement requirements" of Article 41.1 to be liable as an accomplice.

Swisscom is hardly the first case where the Court applied Article 50 to an accomplice who could not be liable as a principal. As Professor Werro exhaustively demonstrates, the Swiss

³³² See Ex. 247, Werro Decl. V at ¶¶ 8-19.

³³³ The original reads: Bereits unter dem alten Urheberrechtsgesetz, das – wie das geltende URG – keine besondere Teilnahmevorschrift kannte, hatte das Bundesgericht erwogen, dass derjenige, der als Gehilfe an der Rechtsverletzung teilhat, aber selber keinen gesetzlichen Verletzungstatbestand erfüllt, nach Art. 50 Abs. 1 OR solidarisch für die unerlaubte Handlung haftet; entsprechend hiess es gestützt auf diese Bestimmung ein gegen den Gehilfen gerichtetes Unterlassungsbegehren gut (BGE 107 II 82 E. 9a)."

³³⁴ Tellingly, BNPP quotes the first half of that sentence, but omits the second. MSJ at 27. The sentence reads in the original German: "Dieser ordnet zwar streng genommen lediglich die solidarische Haftung mehrerer Teilnehmer für einen gemeinsam verursachten Schaden an, wird aber dennoch als gesetzliche Anerkennung der zivilrechtlichen Verantwortlichkeit von Teilnehmern verstanden."

Supreme Court has consistently held accomplices jointly and severally liable even though they did not commit the unlawful act, because they consciously assisted the perpetrator. It has done so for decades, in settings as varied as antenna broadcasters, brawling striking workers, and companies providing administrative support to trademark infringers.³³⁵

For example, in the 1981 *Rediffusion Case*, the Swiss Supreme Court expressly held that an accomplice can be liable under Article 50.1 for facilitating a perpetrator’s unlawful act, even if the accomplice had not acted unlawfully.³³⁶ There, the Court held that antenna operators (the PTT companies) were complicit in the broadcasting of copyright infringing materials by a satellite TV company (Rediffusion) and therefore liable as accomplices under Article 50.1. The antenna operators argued—much like BNPP—that they provided lawful, standard commercial services. *See* Ex. 110, SSC 107 II 82 (1981) at p.86. Like BNPP, they claimed that because they did not commit unlawful infringement, they could not be held liable under Article 50.1. *Id.* The Court rejected the defense as irrelevant because an accomplice’s liability derives from their conscious assistance of a perpetrator, not their own unlawful action: “It is not necessary to rule whether the PTT companies violate copyrights in operating the directional beam network. They are jointly and severally liable under Article 50.1 [CO] for the tort if they participate in the violation of rights by Rediffusion, *even if only as an accomplice.*” *Id.* at 92-93 (emphasis added); *see* ECF No. 435-104, Werro Decl. IV at ¶ 37.

The same is true for the BNPP defendants: they participated in the violation of Plaintiffs’ rights, “even if only as accomplices,” by funding the repressive forces of the Bashir Regime, in its entirety. Despite the *Rediffusion* case being briefed three years ago, BNPP does not even cite, much

³³⁵ *See* Ex. 247, Werro Decl. V at ¶¶ 8-25.

³³⁶ ECF No. 435-105, Werro Decl. II at ¶ 78; *see also* ECF No. 435-104, Werro Decl. IV at ¶ 37.

less distinguish it. Nor does Muller, who writes, “It is difficult to draw any conclusion from this case for the case at hand.”³³⁷ So difficult that his reply report is silent.

This is hardly the only Article 50.1 cases where defendants who did not commit the unlawful act were nonetheless liable as accomplices, as Professor Werro demonstrates at length.³³⁸ For example, in the 1956 *Stamp Dealers Case*, the Swiss Supreme Court rejected the argument that an accomplice cannot be liable under Article 50.1 unless he is independently liable for his own unlawful act. Ex. 111, SSC 82 II 544 (1956) at § 1. There, a stamp dealer, who also headed a stamp collectors’ club, accused a rival stamp dealer of misconduct. The impugned stamp dealer sued his accuser and the club for unfair competition, under Article 50.1. In its defense, the club argued that it did not compete with the plaintiff as a seller of stamps, and therefore did not commit an unlawful act under Swiss competition law. Like BNPP, it argued that since it could not be primarily liable as a perpetrator, it could not be secondarily liable as an accomplice. The Court disagreed: it was “inconsequential whether the [stamp collectors’ club] trades in stamps and is therefore itself in a relationship of economic competition with the applicant. It was able to promote the economic competition . . . as a *co-perpetrator* or *abettor*.” *Id.* (emphasis added). The Court specifically noted, “Therefore, the question does not arise as to whether and under what conditions the [club] could also be prosecuted for unfair competition if it had not committed its crime in agreement with . . . [the other defendants].” *Id.* The same applies here: it is irrelevant whether BNPP itself violated human rights or acted unlawfully, because it promoted the human rights violations of its co-

³³⁷ ECF No. 435-98, Muller Report I at ¶ 77.

³³⁸ See ECF No. 435-104, Werro Decl. IV at ¶¶ 35-44.

conspirator, the Sudanese Regime. BNPP fails to mention this contrary authority, even though it previously submitted it as an exhibit before this Court.³³⁹

In his academic publications (for a French speaking audience, not as BNPP's paid expert), Professor Muller has admitted that "it is on the basis of Article 50 I CO (establishing perfect joint and several liability, N 837 ss) that the instigator, the principal author, and the accomplice are held liable, even if a causal relationship between their conduct and elements of the injury is absent."³⁴⁰ So much for Article 50 not being a basis for accomplice liability. As a matter of law, Plaintiffs are not required to establish that BNPP committed an unlawful act. *See* Ex. 112, *Swisscom Case* at § 2.2.1. All arguments on pages 27-32 of BNPP's brief have no merit, as they are premised on a Swiss decision that held the opposite of what BNPP asserts.

B. Collective Fault: BNPP consciously assisted the Regime, knowing it was funding atrocities condemned internationally as genocide.

Collective fault, the second element of Art. 50.1, requires that "the accomplice consciously assisted the perpetrator and knew or should have known that he was contributing to an illicit act." *Kashef IV*, 2021 WL 603290 at *3. To prevail on this element, Plaintiffs must establish by a preponderance of the evidence that "BNPP consciously cooperated with the Sudanese government by providing financial support and that it knew or should have known, had it exercised due care, that its support would contribute to the Sudanese government's violation of human rights." *Id.* at *4. "The accomplice need not desire or intend" to commit the violation, "nor need there be an

³³⁹ The *Locksmith Case*, previously considered by this Court, is another example. Ex. 115, *Locksmith Case*, SSC 4A_185/2007 (2007). The accused accomplice provided "administrative and financial assistance" to a locksmith who was infringing a rival's trademark. The Court rejected the defense that the accomplice "did not commit any illicit acts" because the issue was not whether it was primarily liable for infringement under Article 41 CO, but whether it was "liable for any damages caused by the illicit acts in question under the multi-liability mechanism set out in Article 50 CO." *Id.* at §§ 6, 6.2. It was immaterial whether the accomplices' administrative and financial services were themselves unlawful: what mattered was their tortious assistance of the principal perpetrator. *See* ECF No. 435-104, Werro Decl. IV at ¶¶ 35-36.

³⁴⁰ Ex. 107, Muller, *La responsabilité civile extracontractuelle*, p. 264.

express agreement.” *Id.*; see Ex. 113, *Whisky Bottle Case*, SSC 6B_473/2012 at § 3 (2013) (no agreement); Ex. 114, *Shooting Contest Case*, SSC 71 II 107 § 3 (1945) (no intent to cause injury). The accomplice’s contribution need not be substantial. Ex. 115, *Locksmith Case* at § 6.2.1 (citing Professor Werro) (“[t]he intensity of the tortfeasor’s involvement is irrelevant”). The accomplice’s contribution need only be “generally capable of facilitating” the illicit act of the perpetrator. Ex. 112, *Swisscom Case* at § 2.1.

1. BNPP admitted it consciously cooperated with the Regime and is estopped from denying it.

No conspiracy is even required, yet here one is admitted. From 1997 through at least 2010, BNPP conspired with the Sudanese regime to break a U.S. economic embargo “aimed at halting the genocide,” as held by the Second Circuit. *Kashef II*, 925 F.3d at 55; see also SAMF ¶¶17-27; 48-56, 338-404. BNPP is estopped from denying its guilty plea admissions.³⁴¹ “It is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel ... in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case.” *United States v. Podell*, 572 F.2d 31, 35 (2d Cir. 1978).³⁴² For this reason alone, BNPP is not entitled to summary judgment on the issue of whether it consciously cooperated with the Sudanese Regime to break the U.S. embargo.

BNPP admitted it broke the embargo “intentionally and willfully.”³⁴³ ECF No. 435-1, SSOF at ¶¶ 14, 16, 41. It broke the embargo in partnership with the Central Bank of Sudan, the Ministry of Defense, and Regime ministers.³⁴⁴ BNPP partnered with Sudanese banks and oil

³⁴¹ SAMF ¶ 56.

³⁴² “Because mutuality of estoppel is no longer an absolute requirement under federal law, . . . a party other than the Government may assert collateral estoppel based on a criminal conviction.” *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 43 (2d Cir. 1986) (internal citations omitted).

³⁴³ ECF No. 435-1, SSOF at ¶¶ 14, 16, 41.

³⁴⁴ See e.g., SAMF ¶¶ 16, 70-72, 227, 230-32, 308, 313-14, 326, 342, 365-67, 372; see also Ex. 14, BNPP-KASHEF-00000066 at 73 (“[B]ack when you introduced me to the Sudanese Finance Minister and the President of the Central

companies controlled by Sudan's brutal National Intelligence and Security Service ("NISS") and the Sudanese Armed Forces ("SAF").³⁴⁵ These were the same entities that tortured and raped the Plaintiffs, murdered their loved ones, destroyed their homes, and forced them to flee.³⁴⁶

BNPP collaborated with these partners to create a "money laundering structure" with the Central Bank of Sudan and so-called "satellite banks."³⁴⁷ BNPP used this money laundering structure to funnel more than \$22 billion in illegal oil sales alone into the Regime's treasury.³⁴⁸ BNPP's sanctions-evasion scheme fully funded the military and security forces with which it aligned itself—laundering more than Sudan's entire defense budget to the Regime.³⁴⁹ BNPP fully funded their atrocities against Plaintiffs and the Class—fueling a 3,000% increase in defense spending and the escalation of genocidal violence.³⁵⁰ BNPP profited from those atrocities, because those atrocities kept BNPP's co-conspirators in control of the government, the economy, and the oil wealth that flowed through BNPP's money laundering structure in Paris, New York, London, and Geneva.³⁵¹ BNPP even shared contempt for the Regime's victims, mocking them in emails: "I better shut up . . . the victims might sue me :-)[.]"³⁵² Because BNPP's intentional conspiracy with

Bank, . . . it was specified that all business activity, with which, by the way, the Minister and the President were very please, had received the full support of our General Management in Paris.").

³⁴⁵ SAMF ¶¶ 222-29.

³⁴⁶ For example, Isaac Ali was arrested by military intelligence, detained for months in a ghost house, whipped, beaten, stabbed with a bayonet, accused of being a rebel and called an "infidel" for being Catholic, *see* Annex A at ¶¶ 7-9; Plaintiff Jane Roe was detained by the security services and was interrogated, tortured, raped repeatedly, infected with HIV, and experienced a miscarriage while in custody, *id.* at ¶¶ 116-18, 120, 124; Plaintiff Ambrose Ulu was arrested by the security services and taken to a detention center where he was interrogated, threatened and tortured, including hung upside down, *id.* at ¶¶ 78-81; Plaintiff Kuol Shbur was detained for three weeks by the security services and was threatened, interrogated and tortured—including by having his nails removed and his genitals burned, electrocuted and pinched with pliers, *id.* ¶¶ 91-92.

³⁴⁷ SAMF ¶¶ 57-69.

³⁴⁸ SAMF ¶ 91.

³⁴⁹ SAMF ¶¶ 143-47; *id.* at ¶ 146 ("Between 1999 and 2009, the \$22.2 billion in oil revenue generated by the Regime exceeded the Regime's entire military budget of \$15.1 billion by 46% on average.").

³⁵⁰ SAMF ¶ 179.

³⁵¹ SAMF ¶¶ 101-03, 298-03.

³⁵² Ex. 44, BNPP-KASHEF-00005469 at 5469.

the Sudanese Regime was the basis of its criminal conviction, it cannot dispute it engaged in collective fault.

2. BNPP knew that breaking the embargo and laundering billions to the Regime would facilitate mass atrocities.

BNPP's brief does not dispute that it "knew or should have known" that its co-conspirator was committing atrocities. *Kashef IV*, 2021 WL 603290 at *4; *see* MSJ at 33-37 (failing to even address knowledge element of Art. 50). As the Second Circuit concluded, BNPP's guilty plea "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." *Kashef II*, 925 F.3d at 56. BNPP admitted that its "central role in providing Sudanese financial institutions access to the U.S. financial system, despite the Government of Sudan's role in supporting terrorism and committing human rights abuses, was recognized by BNPP employees." ECF No. 435-1, SSOF at ¶ 20.³⁵³

It was impossible to ignore the Regime's human rights atrocities: they appeared on the face of the U.S. sanctions orders³⁵⁴ and were "reported daily in the international press," as a BNPP memorandum admits.³⁵⁵ BNPP executives visited Khartoum and knew the political environment in Sudan was "stained by the humanitarian tragedy."³⁵⁶ BNPP knew the oil proceeds it laundered were driving the Regime's atrocities: "The growth in oil revenue is unlikely to contribute to ending the conflicts [in Darfur] and it is likely that Sudan will remain torn apart for a long time by insurrectionist movements *and the resulting repressive measures*."³⁵⁷ In its own words, BNPP knew its support "for a significant part, allows this government to keep things running in

³⁵³ In his deposition, BNPP's Rule 30(b)(6) representative, Dan Cozine, testified that "there is clearly documentation here certain employees referenced that our involvement in these transactions was allowing Sudan to have access to U.S. dollars, and supporting terrorism and committing human rights abuses." Ex. 126, Cozine Dep. at 120:13-20.

³⁵⁴ SAMF ¶ 280.

³⁵⁵ Ex. 74, BNPP-KASHEF-00014655 at 14656; *see also* SAMF ¶ 279-83.

³⁵⁶ SAMF ¶ 295.

³⁵⁷ SAMF ¶ 301 (emphasis added).

Khartoum.”³⁵⁸ BNPP even admitted in its Rule 30(b)(6) deposition: “BNPP’s role allowed the Sudanese government to have access to funds. The U.S.’s view was that those funds were then being used by the Sudanese government to repress their people.”³⁵⁹ A reasonable jury could reach the very same conclusion and find that BNPP consciously assisted the Regime, knowing it was contributing to human rights abuses.

Instead of applying the actual elements of collective fault, BNPP simply makes up a rule that suits it, claiming an accomplice must have “consciously collaborated in the injurious course of conduct.” MSJ at 33-34. But these “are not elements articulated by the Swiss courts.” *Kashef IV*, 2021 WL 603290 at *4.³⁶⁰ BNPP was already caught passing off “requirements” invented by its experts, so it needs to back up its claims with actual holdings from Swiss courts. It cannot.³⁶¹

The Swiss Supreme Court has expressly held that an accomplice *need not* “actually participate in the injury-causing conduct,” contrary to BNPP. MSJ at 2. In the *Shooting Contest Case*, the Court held that an innkeeper was negligently complicit under Article 50.1 CO for failing to prevent his customers from shooting at glassware. Ex. 114 at § 3. It specifically noted he did not need to participate in the shooting to be liable: “It cannot be said, therefore, that by tolerating this dangerous game, the defendant has also joined in it.” *Id.* Similarly, in the *Carpenters’ Strike Case*, the Swiss Supreme Court held a union leader liable under Article 50 for a brawl, even though

³⁵⁸ SAMF ¶ 394.

³⁵⁹ SAMF ¶ 95.

³⁶⁰ BNPP is again trying to revive one of purported “requirements” invented by BNPP’s former expert and debunked by this Court. *See Kashef* at *4.; *see* Defs.’ Supp. MTD, ECF No. 172 at 8. BNPP cites to the *Locksmith Case*, Ex. 115 at § 6.2.1. But as this Court already noted, “this precise paragraph of the Locksmith case” is “in fact citing [Professor Werro’s] own scholarly work.” *Kashef* at *4. This Court followed Werro’s interpretation of that case, not BNPP’s. *Id.* It should continue to do the same.

³⁶¹ BNPP also rattles off a number of its former expert’s invented “requirements”, which again “are not elements articulated by the Swiss courts.” *Kashef* at *4. BNPP claims it “did not injure” Plaintiffs, was “not present,” and “did not enter into a conspiracy to injure” them. MSJ at 2. The Court has already rejected these “requirements” as “unsupported by, and at times inconsistent with” Swiss caselaw, so the Court should not indulge BNPP’s frivolous re-litigation. *Kashef* at *4.

he was *not* present and did *not* intend the injuries: he merely gave a speech the day before. Ex. 116, SSC 57 II 417 (1931) at § D.2.³⁶²

3. BNPP was far worse than negligent: It was willfully indifferent to the known risks of funding a mass murderer.

BNPP objects that it owed no duty to Plaintiffs, arguing it cannot be liable under a “negligence theory.” MSJ at 2, 36. BNPP is wrong. *First*, Article 50.1 CO does not require that an accomplice breach a duty owed to a victim.³⁶³ As Professor Werro explains, the Swiss Supreme Court has “found accomplices liable under Article 50.1 CO, without determining they owed any duty of care, merely because they should have been aware of the risks of the perpetrator’s unlawful act occurring.”³⁶⁴ In the *Carpenters’ Strike Case*, the Court found that the accomplices of a striking worker who attacked a strike-breaker “had not intended such a brutal abuse.” Ex. 116, at § D.2. But their lack of intent did not matter “since even negligent complicity can establish joint and several liability pursuant to Art. 50 CO.”³⁶⁵ *Id.* The Court held them liable for negligent complicity under Art. 50, without determining if they owed a duty to the victim. It was not necessary: they were secondarily liable through collective fault.³⁶⁶

Second, BNPP *did* owe a duty. Swiss law imposes a “general duty to respect the right to life and bodily integrity as an absolute right.” Ex. 117, *Ski Lift Case* at p. 115. It is a “general

³⁶² There are, of course, cases where co-perpetrators of the same conduct are liable under Article 50.1 CO, *e.g.*, bar fights or children playing with bows and arrows, firecrackers, matches, or stones. *See* MSJ at 34-35 (string-citing cases). But the fact that co-perpetration is *sufficient* does not make it *necessary*. After all, Article 50.1 CO applies to the “perpetrator *or* accomplice.” (emphasis added).

³⁶³ Art. 50 CO provides for secondary liability, not primary liability. As Professor Werro explains, BNPP and Muller “misconstrue[] the Federal Supreme Court’s jurisprudence on collective fault by conflating negligence or carelessness as a state of mind—*i.e.*, what an accomplice should have known if he had paid reasonable attention—and negligence as a tort, that is the basis of liability under Article 41.1 CO.” ECF No. 435-104, Werro Decl. IV at ¶ 94.

³⁶⁴ ECF No. 435-104, Werro Decl. IV at ¶ 95.

³⁶⁵ BNPP is wrong that the *Carpenters’ Strike Case* was an intentional tort case. MSJ at 35, n. 35. The perpetrator who struck the plaintiff acted intentionally, but as the Court explained, his accomplices did not.

³⁶⁶ As Professor Werro explains, “if the accomplice breached a duty of care owed to the victim, it would be a perpetrator liable under Article 41.1 CO or another norm, and Article 50.1 CO would not need to come into the picture.” ECF No. 435-104, Werro Decl. IV at ¶ 96.

principle” of Swiss law “that a person who creates or maintains a dangerous state of affairs for another person is liable if the third party suffers damage.” Ex. 114, *Shooting Contest Case* at § 2. By breaking the embargo, BNPP “contribute[d] to creating or maintaining” a situation so dangerous that in 2005 the UN Security Council referred Sudan to the International Criminal Court. *Id.* at § 3.³⁶⁷ This did not stop BNPP: it funded the Regime for *five* more years.³⁶⁸

Finally, BNPP was far more than negligent. In its own words, BNPP was “feeding the Sudanese government” despite the embargo aimed at halting the genocide.³⁶⁹ It persisted in funding a Regime under indictment by the International Criminal Court.³⁷⁰ It even coordinated with leaders in Khartoum to manage the bad PR from the “growing opprobrium that a large part of the international community is casting on the behavior of the country’s authorities.”³⁷¹ According to an executive’s 2006 email:

We have been working since the beginning in a delicate humanitarian environment which has its media flare-ups from time to time... in substance, no change with economic growth and a booming financial situation... I’m leaving for Khartoum tomorrow morning, where I’ll pass on a fairly strong message to the leaders on the impact on image, and I’ll come back with a more realistic view on the ongoing conflict...³⁷²

BNPP was worried about its reputation, not its victims. As its former Global Head of Compliance wrote in May 2007: “In a context where the international community puts pressure to end the dramatic situation in Darfur, no one would understand why BNP Paribas persists in, what could be viewed as, supporting the rulers in power.”³⁷³ BNPP persisted in supporting the Bashir

³⁶⁷ ECF No. 435-68, Hudson Report at ¶ 210; UN Security Council Res. 1593 (2005), available at: <https://digitallibrary.un.org/record/544817>.

³⁶⁸ SAMF ¶ 403.

³⁶⁹ Ex. 82, BNPP-KASHEF-00024869 at 24869-70; SAMF ¶ 394.

³⁷⁰ SAMF ¶¶ 288, 289, 400.

³⁷¹ Ex. 74, BNPP-KASHEF-00014655 at 56; SAMF ¶ 403.

³⁷² Ex. 74, BNPP-KASHEF-00014655 at 55.

³⁷³ Ex. 25, BNPP-KASHEF-00000207 at 209; SAMF ¶ 302.

Regime because it had a “historical” partnership and the “commercial stakes [were] high.”³⁷⁴ If the price of keeping the Regime in power was the bloodied bodies of hundreds of thousands of civilians, so be it. For the bank, this was nothing more than a “reputational risk.”³⁷⁵ A reasonable jury could conclude this is *recklessness* as Swiss law defines it.³⁷⁶ For that reason, BNPP is not entitled to summary judgment on the element of collective fault.

C. Natural Causation: The mass atrocities that injured Plaintiffs would not have occurred in the same manner and magnitude without BNPP’s \$22.2 billion conspiracy.

“The third element of an Article 50.1 claim[] is that the accomplice’s ‘culpable cooperation was the natural and adequate cause of the plaintiff’s harm or loss.’” *Kashef IV*, 2021 WL 603290 at *4. Although these concepts are similar to “but-for” and “proximate” causation, “Swiss law provides specific legal tests that must be applied.”³⁷⁷

“[A] natural causal link exists where the harm would not have occurred at the same time or in the same way or magnitude without the conduct alleged.” *Kashef IV*, 2021 WL 603290 at *6 (quoting Professor Werro).³⁷⁸ To be a “legally relevant contribution,” the act of the accomplice need only be “generally capable of facilitating the unlawful [act]” of the main perpetrator. Ex. 112, *Swisscom Case* at 73, § 2.1. It need not be the “sole or immediate cause.” Ex. 161, *Boat Collision*

³⁷⁴ SAMF ¶ 312.

³⁷⁵ SAMF ¶¶ 341, 382.

³⁷⁶ See Ex. 115, *Locksmith Case* at § 6.2.1 (“Article 50, para. 1 CO also requires a collective fault. All the tortfeasors either wanted the harm to occur (intent), or *at least were aware that it could happen (recklessness)*, or they could have avoided it if they had paid the necessary attention to the circumstances (negligence)”) (citations omitted and emphasis added); ECF No. 435-104, Werro Decl. IV at ¶¶ 87-88 (“Professor Müller concedes that under Swiss law, a defendant acts with intent when he engages in reckless (“*dolus eventualis*”) conduct, ‘i.e., when the tortfeasor does not seek to achieve the unlawful result but accepts it in the event that it occurs.’”) (quoting Müller Rep. I ¶ 108).

³⁷⁷ ECF No. 435-104, Werro Decl. IV at ¶ 110.

³⁷⁸ The Court’s standard is in line with Swiss precedent. Natural causation requires that the harm “could not have occurred without the relevant behavior, or it could not have occurred in the same way or at the same time.” Ex. 161, *Boat Collision Case* at § 2.1.

Case, SSC 4A_444/2010 at § 2.1 (2011). “It is sufficient if” it “was a partial cause, which— together with other causes—led to the damage incurred.”³⁷⁹

1. BNPP’s \$22.2 billion conspiracy encouraged and enabled the Regime to commit *all* the atrocities.

BNPP cannot escape from uncontested facts, the prior holdings of this Court, and basic math. The \$22.2 billion that BNPP laundered to the Regime is 12,000 times greater than the \$1.7 million in financial complicity deemed sufficient to survive summary judgment in *Carrizosa v. Chiquita Brands Int’l, Inc.*, 47 F.4th 1278, 1295 (11th Cir. 2022) (involving payments to Colombian paramilitaries). What BNPP calls a “generalization,” Opp. at 2, is the triable fact that BNPP laundered enough money to the Regime to pay for every single abuse inflicted on each Plaintiff, each class member, and each of the millions of Sudanese civilians murdered or displaced during the course of BNPP’s conspiracy. For the first seven years of this case, BNPP’s Swiss law expert did not even question that BNPP was a but-for cause of Plaintiffs’ and the Class’s injuries. *See Kashef IV*, 2021 WL 603290 at *6 (“Professor Roberto does not address the issue of natural cause as it pertains to this case in his testimony.”) There is no need to trace a particular transaction to a particular operation by a particular unit of the Sudanese army, when BNPP provided more than enough funds for *every* operation. The atrocities that the Regime inflicted on millions, including the Plaintiffs and the Class, “would not have occurred at the same time or in the same way or magnitude” without BNPP’s embargo-breaking conspiracy and its pervasive support as “the Sudanese government’s de facto central bank.” *Kashef IV*, 2021 WL 603290 at *6.

BNPP does not dispute that the funds generated by the Regime with BNPP’s support were enough to pay for the entire genocide in Sudan. Instead, BNPP doubles down on its protest that there is “no evidence” that its “financial services were actually used for the attacks that injured

³⁷⁹ ECF No. 435-104, Werro Decl. IV at ¶ 113.

Plaintiffs.” MSJ at 38. BNPP claims that Plaintiffs are required to produce receipts from BNPP’s Sudan accounts and then show that those exact revenues (even though money is fungible) were used by Sudan to purchase the exact weapon from Russia or China that was used bomb Plaintiff Abdalla’s village.

But this is not the standard of causation set by this Court, or by Swiss law. It came from BNPP’s expert, Enrico Carisch, a former UN sanctions investigator.³⁸⁰ And Carisch’s “direct receipts” standard is, according to him, even higher than the standard in criminal law (*i.e.*, beyond a reasonable doubt).³⁸¹ The BNPP/Carisch standard even excludes consideration of all circumstantial evidence.³⁸² This is obviously wrong. And it is incompatible with Swiss law, because, as BNPP’s new Swiss law expert Christoph Muller admits, “[i]t is not necessary that each tortfeasor has directly contributed to the occurrence of the injury.”³⁸³

Under the commonsense causation standard previously adopted by this Court, in line with Swiss law, Plaintiffs can satisfy natural (but-for) causation by establishing “that the revenue generated for the Sudanese government by BNPP’s assistance exceeded its entire military budget, leading to a massive increase in military expenditures . . .” *Kashef IV*, 2021 WL 603290 at *6. This Court found that this level of pervasive support would suffice to establish that “the funds accessed

³⁸⁰ Ex. 153, Carisch Dep. at 204: 12-205:13.

³⁸¹ Carisch admitted in his deposition that his expert opinion applies the standard of proof described in his article “Iran Missiles to Yemen: Is There Room for Circumstantial Evidence in UN Sanctions?”, PassBlue, Jan. 16, 2018, <https://www.passblue.com/2018/01/16/iran-missiles-to-yemen-is-there-room-for-circumstantial-evidence-in-un-sanctions/>. There, Carisch asserts that his standard of proof is more stringent than the criminal law standard and disregards circumstantial evidence: “But is it fair or wise to introduce cases built on circumstantial evidence into the highly politicized UN sanctions system? Of course, in criminal law, cases are often decided on by circumstantial evidence. In these cases, however, prosecutors usually have subpoena power that enables them to compel a party to disclose all relevant facts. UN experts do not have such power.”

³⁸² Ex. 153, Carisch Dep. at 204:12-205:13.

³⁸³ Ex. 107, Muller, *Extracontractual Civil Liability* at 265.

by Sudan through the BNPP Defendants’ financial services were actually used for the attacks that injured plaintiffs.” *Id.*³⁸⁴

This is precisely what the record evidence shows. Beginning in 1997, BNPP laundered “all of the principal sources of non-tax revenue for the Government of Sudan” including \$22.2 billion in illicit oil revenue.³⁸⁵ The BNPP-laundered oil revenue alone exceeded the Regime’s entire military expenditures of \$15.1 billion by 46% on average.³⁸⁶ BNPP’s conspiracy with the Regime funded a 3,000% increase in military spending—from \$97.7 million in 1997, the year the U.S. embargo began, to over \$3.1 billion in 2009.³⁸⁷ According to Plaintiffs’ expert Timothy Fogarty, formerly of the Federal Reserve Bank of New York, BNPP laundered “all of the funds that were necessary to carry out *all* of the Bashir Regime’s attacks on civilians in the relevant time period.”³⁸⁸

BNPP’s conspiracy provided the Regime with the specific resource it needed to buy arms on the black market and evade an arms embargo imposed by the UN: hard currency in U.S. dollars. The Regime bought weapons from arms traders “in cash” deals “often involving millions of U.S. dollars.”³⁸⁹

In addition, beginning in 2001, BNPP laundered the entire operating budget of Sudan’s Civil Aviation Authority in charge of maintaining the air bases used by the air force to bomb civilians.³⁹⁰ The Regime used those airbases to conduct more than 1,800 documented aerial bombing attacks on civilian targets between 1999 and 2012.³⁹¹ SAF would use gunship helicopters

³⁸⁴ The Court did not hold that Art. 50 required a showing of “actual use”: the Court was simply quoting BNPP’s own argument to show that even under BNPP’s proposed heightened standard, causation was met. *Kashef IV*, 2021 WL 603290 at *6.

³⁸⁵ SAMF ¶ 91.

³⁸⁶ ECF No. 435-63, Fogarty Report at ¶ 260; ECF No. 435-64, Fogarty Reply at ¶ 128; ECF No. 435-88, Patey Report at 18; ECF No. 435-53, Austin Reply at ¶ 80.

³⁸⁷ ECF No. 435-53, Austin Reply at ¶ 96.

³⁸⁸ ECF No. 435-64, Fogarty Reply at ¶ 130.

³⁸⁹ See Ex. 153, Carisch Dep. at 58:8-59:16.

³⁹⁰ SAMF ¶¶ 237-48.

³⁹¹ ECF No. 435-54, Baldo Report at ¶¶ 179-180.

to strafe civilians and would drop bombs from Antonov cargo planes, literally rolling barrels packed with explosives onto Black African villages below. A reasonable juror could conclude that in 2004, the Antonov bomber that burned Plaintiff Nyanriak Tingloth's grandmother to death flew from a BNPP-funded airfield.³⁹² Similarly, between 2004 and 2008, BNPP financed the import of armored vehicle components to GIAD, the Ministry of Defense's supplier of armored vehicles used by the Regime's army and militia in attacks on civilians.³⁹³ GIAD was not the only military entity that BNPP directly did business with.

A reasonable jury could conclude that the Regime's decade-long campaign of mass atrocities, waged against Plaintiffs and millions of other Black African civilians, "would not have occurred at the same time or in the same way or magnitude" without BNPP's complicity. *Kashef IV*, 2021 WL 603290 at *6. Without BNPP's laundered billions, the Regime could not have sustained the same campaign of mass destruction, while meeting all the state's other needs. BNPP's internal documents confirm that BNPP's embargo-breaking transformed the Regime's economic fortunes: "Until 1999, the country was in an extremely difficult situation, in both political and financial terms."³⁹⁴

BNPP speculates, without evidence, that if the Regime had not generated billions from BNPP's crimes, it could have simply reallocated funds from other areas and put them toward the military budget. But there is no record evidence that Sudan could have, much less would have, been able to cannibalize the equivalent of \$22.2 billion from elsewhere in the public treasury, at a "politically sensitive time."³⁹⁵

³⁹² Ex. 146, Tingloth Dep. at 118:11–121:23, 120:15-19, 120:4–121:23; ECF No. 435-97, Keller Report, Appendix C15, Nyanriak Appendix at 3.

³⁹³ SAMF ¶¶ 249-64.

³⁹⁴ Ex. 30, BNPP-KASHEF-00000885 at 88.

³⁹⁵ ECF No. 435-94, Verhoeven Reply at 31.

BNPP points out that the Regime did not spend its entire budget on the military, noting expenditures on infrastructure and social programs. MSJ at 51. But this just proves that BNPP's petrodollars gave the Regime a surplus: the Regime could both expand military spending by 3,000% *and* increase other areas of spending. BNPP also argues that the Regime could have spent all of its oil revenue on non-military expenditures. *Id.* But as Dr. Verhoeven notes, this "assumes without evidence that the [Regime] could have simply re-allocated other sources of income in order to fund its military at the same level, had it not received the glut of BNPP-enabled oil revenue."³⁹⁶ The Regime would have had to either "defund other areas of government at a politically very sensitive time" or "reduce defense spending in the midst of several wars."³⁹⁷

This is why it matters that BNPP's expert Llewellyn cannot find Sudan on the map.³⁹⁸ One can easily look at macroeconomic data, divorced from political reality, and conclude that Sudan could have just re-allocated funds if it did not have BNPP. But as Plaintiffs' experts Dr. Harry Verhoeven, renowned Sudan political economy expert, and Cameron Hudson, former U.S. National Security Council member during the Darfur Genocide, explain, the Regime was a corrupt patronage state that ruled through a combination of savage repression, oil wealth, an ideology of Arab supremacy and, ultimately, buying loyalty.³⁹⁹ Defunding any component could have led to collapse of an unpopular dictatorship. Indeed, the Regime fell within a decade of BNPP pulling out by 2010.⁴⁰⁰

In fact, the Regime's dependence on BNPP was so great that in 2007, after OFAC launched its investigation and BNPP started phasing out U.S. dollar laundering, Sudan's finance minister

³⁹⁶ ECF No. 435-94, Verhoeven Reply at 31.

³⁹⁷ *Id.*

³⁹⁸ Ex. 254, Llewellyn Dep. at 236:3-9.

³⁹⁹ Similarly, BNPP claims that it had billions in tax revenue that it could have used to pay for its genocide. But BNPP's expert Mr. Carisch admitted that the Regime's taxes that contributed to its war chest were "most likely" on oil extraction. Ex. 153, Carisch Dep. at 276:11-13. BNPP therefore had a hand in boosting tax revenue as well.

⁴⁰⁰ ECF No. 435-68, Hudson Report at ¶¶ 250-56.

personally came to Washington and pounded on the desk of Cameron Hudson, howling: “All transfers are affected and now cost us more. I can’t even get U.S. dollars now.”⁴⁰¹ The Regime would now struggle to get the hard U.S. currency that was vital for importing arms through the illicit arms trade, according to BNPP’s own expert Carisch.⁴⁰² From 1997 to 2007, Sudan had no fear of the U.S. embargo, thanks to BNPP. But “once OFAC forced BNPP to cut off the flow of funds to Khartoum,” there “was no bilateral conversation with the Sudanese that did not begin and end with pleas and complaints of U.S. sanctions.”⁴⁰³

Nothing more is required. As Professor Werro explains, based on Swiss Supreme Court precedent, under Article 50, “BNPP’s support need not be directly linked to each plaintiffs’ harm, and it need not be the sole source of funding for the government’s human rights abuses.”⁴⁰⁴ Complicity on this pervasive scale is a natural (but-for) cause of *all* the atrocities that were funded by the Regime during the course and the tail-end of BNPP’s conspiracy. *See Kashef IV*, 2021 WL 603290 at *6.

Finally, resolving causation in this case will be heavily dependent on expert opinion. BNPP is not entitled to summary judgment on causation for the simple reason that “[s]ummary judgment is inappropriate when there is a battle of the experts.” *Haughey v. Cnty. of Putnam*, No. 18-CV-2861 (KMK), 2022 WL 4468066, at *7 (S.D.N.Y. Sept. 26, 2022). On page after page, BNPP presents dueling experts on issues of causation, from how much money the bank laundered and placed in the hands of the very state-controlled institutions committing the atrocities, MSJ at 20-

⁴⁰¹ ECF No. 435-68, Hudson Report at ¶ 172.

⁴⁰² Ex. 153, Carisch Dep. at 58:8-59:16.

⁴⁰³ ECF No. 435-68, Hudson Report at ¶ 177. Cameron Hudson testified that it “was only after the Treasury Department began its action against BNPP and BNPP suspended its banking operations with Sudan that it [lifting the sanctions] became virtually the only topic of conversation that Sudanese officials wanted to have with us when we would meet with them. And that was a demonstration of the fact . . . that the sanction was actually . . . working, because they were no longer able to access U.S. dollars.” Ex. 152, Hudson Dep. at 95:22-96:6.

⁴⁰⁴ ECF No. 435-104, Werro Decl. IV at ¶ 115.

21, to how much was spent on building dams (which Plaintiffs’ expert showed to be fraught with human rights abuses) versus bombing villages, MSJ at 50-52. Yet only the jury can decide whether BNPP’s experts are credible—including, *e.g.*, (i) BNPP’s economist who cannot find Sudan on a map;⁴⁰⁵ (ii) BNPP’s accountant fired in connection with document shredding in the Enron scandal;⁴⁰⁶ and (iii) BNPP’s Swiss financial consultant who copied and pasted his definition of the “Janjaweed” from Wikipedia, cited a paid Sudanese lobbyist famous for wearing a “Hang Mandela” t-shirt, and wrote that the founders of the Save Darfur campaign, which include the U.S. Holocaust Memorial Museum, are “shrill” advocates whose “propaganda narratives” help “to raise even more money.”⁴⁰⁷ “Trial courts should not arrogate the jury’s role in evaluating the evidence and the credibility of expert witnesses by simply choosing sides in the battle of the experts.” *In re Joint E. & S. Dist. Asbestos Litig.*, 52 F.3d 1124, 1135 (2d Cir. 1995) (cleaned up). Plaintiffs are entitled to bring this “battle” before the jury.

2. BNP Paribas SA admitted it carried out its conspiracy through BNPP Suisse and its predecessors and is estopped from denying its guilty plea.

BNPP claims it is not responsible for transactions that its Swiss subsidiary carried out in furtherance of BNPP’s conspiracy. But it is estopped from denying this fact, and in any case, it is immaterial because Article 50 makes all participants in the collective fault jointly and severally liable. A central admission in BNPP’s federal and New York state guilty pleas was that it conspired with the Regime and the satellite bank money-launderers “through its Swiss-based subsidiary, BNPP Geneva.”⁴⁰⁸ BNPP’s Consent Order with the New York Department of Financial Services admitted that “BNP Paribas, through the Geneva branch of its Swiss subsidiary, BNP Paribas

⁴⁰⁵ Ex. 254, Llewellyn Dep. at 236:3-9.

⁴⁰⁶ Ex. 156, Goolsby Dep. at 154:8-163:8.

⁴⁰⁷ Ex. 153, Carisch Dep. at 334:3-350:17; 352: 21-358:9; ECF No. 435-55, Baldo Reply at ¶ 110.

⁴⁰⁸ ECF No. 435-1, SSOE at ¶ 17; NY SOF ¶ 17; Ex. 126, Cozine Dep. at 97:14-22.

(Suisse) S.A. . . . created deceptive schemes and transaction structures to conceal thousands of illegal Sudanese transactions from scrutiny by U.S. financial institutions, regulators, and authorities. These transactions were valued at more than \$20 billion dollars.”⁴⁰⁹ BNPP also admitted that it maintained its pre-merger predecessors’ embargo-breaking scheme and “satellite bank” structure.⁴¹⁰ It even admitted that these predecessors were the same entity as “BNPP Geneva.”⁴¹¹

BNP Paribas SA is estopped from denying these admissions. *Podell*, 572 F.2d at 35; *S.T. Grand, Inc. v. City of N.Y.*, 32 N.Y.2d 300, 304–05 (1973).⁴¹² Specifically, BNPP is barred from disclaiming responsibility for the full \$22.2 billion (and more) laundered to the Regime and it cannot shelter behind the corporate separateness of its Swiss subsidiary. MSJ at 39. This would directly contradict BNPP’s plea agreements and consent order. Regardless, it is immaterial to BNPP’s liability under Article 50.1. As Professor Werro explains, “[t]he separate corporate personality between a parent and a subsidiary is immaterial if both corporate entities have joined in a collective fault with the perpetrator.”⁴¹³ Since Article 50.1 already provides a form of vicarious liability, it “does not require piercing the corporate veil.”⁴¹⁴ “All that matters is whether each accomplice has intentionally or carelessly contributed to the unlawful acts of the perpetrator and

⁴⁰⁹ ECF No. 435-1, SSOF at ¶ 10.

⁴¹⁰ *Id.* at ¶ 19.

⁴¹¹ *Id.*

⁴¹² “It is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel ... in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case.” 572 F.2d 31, at 35. “Because mutuality of estoppel is no longer an absolute requirement under federal law, . . . a party other than the Government may assert collateral estoppel based on a criminal conviction.” *Gelb*, 798 F.2d at 43 (internal citations omitted).

⁴¹³ ECF No. 435-104, Werro Decl. IV at ¶ 100.

⁴¹⁴ *Id.*

whether the collective conduct—the combined effect of all participants’ efforts—has a natural and adequate causal link to the damage.”⁴¹⁵

Even taking BNP Paribas SA’s conduct in isolation, it had a decisive causal role. All of the Sudanese credit lines and oil sale transfers were under the control of BNPP’s global business line ECEP, managed by [REDACTED] in Paris.⁴¹⁶ BNPP documents reveal that “ECEP Paris” had the “decision level” for loans to the Sudanese government—including the joint credit facility shared by BNPP Paris and BNPP Geneva that financed Sudan’s Civil Aviation Authority, which operated the air force’s airfields including those used for transporting weapons, aircraft and military vehicles and personnel into Darfur for genocidal purposes.⁴¹⁷

Each year, General Management in Paris set the revolving credit limit for Sudan—effectively a credit card with a limit in the hundreds of millions for a Regime that Paris knew was “stained by the humanitarian tragedy.”⁴¹⁸ It ordered the entire bank group to strip the identity of Sudanese parties from wire payments.⁴¹⁹ It overrode the compliance protests of BNPP Geneva and instructed Geneva to continue its conspiracy with Sudan. It had the authority to stop the conspiracy, and when it decided it was time to pull the plug, it ordered BNPP Suisse to do so.⁴²⁰ The proof of BNPP Paris’s control is in the pudding. BNPP also had the power to authorize some Sudan business

⁴¹⁵ *Id.* The Swiss Supreme Court confirmed this in the *Union of Socialist Press* case, discussed in ECF No. 435-104, Werro Decl. IV at ¶ 102: “As the four [corporate] defendants are liable for fault, either personal fault or fault on the part of their officers, it is unnecessary to consider whether Art. 55 CO [concerning corporate liability] is applicable. Through their common fault, they have jointly caused damage to others.” Ex. 162, *Union of Socialist Press*, SSC 64 II 24 at 25 (1938).

⁴¹⁶ SAMF ¶¶ 7-8.

⁴¹⁷ See e.g., Ex. 105, BNPP-KASHEF-00048093 at 48095.

⁴¹⁸ SAMF ¶ 295.

⁴¹⁹ BNPP France also laundered oil payments. It admits that Paris was responsible for \$130 million in oil transactions, as if this mitigates its responsibility. Yet, this is 76.5 times greater than the \$1.7 million in financial complicity that survived summary judgment in *Carrizosa*, 47 F.4th at 1295.

⁴²⁰ SAMF ¶ 383.

to continue: it authorized BNPP London to continue facilitating billions in transactions for Sudan through 2011, in violation of the embargo.⁴²¹

3. BNPP contributed to the abuses suffered by Plaintiffs before 1999.

BNPP is wrong to claim that it did not contribute to the abuses suffered prior to the launch of oil exports in August 1999. MSJ at 43-44. To the contrary, BNPP's partnership had an immediate impact beginning in 1997 to incentivize the Regime to use future oil sales as a means to increase its military weaponry, arm militias, and oil field clearing of civilians and perceived enemies of the regime, in order to maintain its grip on Khartoum and the oil-producing states.⁴²²

Genocide no longer came with a price, so the Regime forged ahead, giving speeches in the late 1990s "vowing explicitly to channel petrodollars to finance weapons factories."⁴²³ In the Sudan Peace Act of 2002, Congress found that the Regime had "repeatedly" stated its intention "to use the expected proceeds from future oil sales to increase the tempo and lethality of the war."⁴²⁴

According to BNPP's expert Prof. Muller, even moral support is enough for natural causation: "it suffices that a person indirectly, simply by psychological contribution, . . . contributes to the occurrence of the injury." Ex. 107, Muller, *Extracontractual Liability*, ¶ 840 accord ECF No. 435-104, Werro Decl. IV at ¶¶ 111-112.⁴²⁵ But BNPP did much more: the moral encouragement that BNPP's conspiracy lent to the Regime translated into military action, massive weapons purchases, development of its own domestic weapons manufacturing and militarization

⁴²¹ SAMF ¶¶ 388-404.

⁴²² ECF No. 435-93, Verhoeven Report at 26, 37; ECF No. 435-94, Verhoeven Reply at 29-30; ECF No. 435-52, Austin Report ¶¶ 81, 270; ECF No. 435-63, Fogarty Report ¶¶ 64, 101, 106; ECF No. 435-68, Hudson Report ¶ 48; Ex. 170, Verhoeven Dep. at 264:12-265:10.

⁴²³ ECF No. 435-94, Verhoeven Reply at 29.

⁴²⁴ *Sudan Peace Act*, Pub. L. No. 107-245, 116 Stat. 1503 (2002), <https://www.govinfo.gov/content/pkg/PLAW-107publ245/pdf/PLAW-107publ245.pdf>.

⁴²⁵ As another Swiss scholar wrote: "Anyone who causes harm indirectly, for example through moral support to the main perpetrator, is responsible to the harmed party in the same way as the perpetrator himself." Ex. 163, Brunner, *Liability of Several Persons From Collective Fault (Art. 50)* at ¶ 312.

of imported trucks and aviation equipment, as well as arming its militia.⁴²⁶ And BNPP backed this up with billions in credit representing large portions of the country's economy, financing the import of fuel for the Regime at a time when Sudan (and its military) was entirely dependent on imports.⁴²⁷ With BNPP ensuring the Regime's ability to enter onto the global market once its oil exports started flowing, the Regime borrowed against future oil proceeds to finance weapons purchases.⁴²⁸

Encouraged to act with impunity, the Regime unleashed its military and security forces who (1) arbitrarily detained Judge Turjuman Adam in 1998, tortured him in 2003/2004, and gangraped his wife, infecting her with HIV;⁴²⁹ (2) whipped, tortured, and raped Halima Khalifa in 1999 and forcibly disappeared her husband;⁴³⁰ and (3) summarily executed Isaac Ali's father in 1998.⁴³¹ With BNPP's help, the Regime could atrocities with economic impunity—and it did.

4. Writing a genocidal regime a blank check is not the defense BNPP thinks it is.

BNPP argues it cannot be liable for writing the Regime a blank check that could be used for whatever it desired, be it burning a village or building a dam. *See* MSJ at 50-51. Its Rule 30(b)(6) representative even admitted that “access to dollars would have clearly allowed them to have funds to develop whatever their priorities were . . .”⁴³²

But the blank check defense has fared poorly for financiers accused of complicity in mass atrocities. In *The Flick Trial*, the Nuremberg Tribunal found a German industrialist guilty of complicity in crimes against humanity for, among other things, joining a circle of bankers who

⁴²⁶ Austin, Verhoeven, Cameron, Baldo,

⁴²⁷ SAMF ¶ 34.

⁴²⁸ *See* ECF No. 435-88, Patey Report at 8 (“Now able to use future oil production as collateral for international loans, GoS bought heavy military weapons and aircraft from Iran, China, Russia, and elsewhere in order to wage war and depopulate oil regions.”); ECF No. 435-68, Hudson Report at ¶¶ 79-81.

⁴²⁹ *See* Annex A at ¶¶ 31, 33-34.

⁴³⁰ *See* Annex A at ¶¶ 18-19.

⁴³¹ *See* Annex A at ¶ 6.

⁴³² Ex. 126, Cozine Dep. at 117:23-118:1.

financed the Nazi regime: “each of them gave to Himmler, the Reich Leader SS, a blank check. His criminal organization was maintained, and we have no doubt that some of this money went to its maintenance. It seems to be immaterial whether it was spent on salaries or for lethal gas.”⁴³³

Tellingly, BNPP cannot cite examples of ‘legitimate’ Sudanese government spending that are not tainted by human rights violations. BNPP points to the Merowe Dam and Roseires Dam projects. MSJ at 51. But as Plaintiffs’ expert, political economist Dr. Harry Verhoeven, explains, the Regime forcibly displaced upwards of 150,000 Sudanese citizens to build these projects and was urged by UN officials to suspend them in 2007, when the Regime murdered civilian demonstrators.⁴³⁴ As for “infrastructure,” MSJ at 51, Plaintiffs’ Sudan oil industry expert Luke Patey explained: “New all-weather roads built for the oil industry concurrently sped up the advancement of the Sudanese army to launch attacks against civilian populations.”⁴³⁵ To top it off, BNPP seems to suggest that perhaps BNPP-laundered crime proceeds went directly to Sudan’s dictator al-Bashir. MSJ at 51 (noting alleged diversion of \$4 billion to al-Bashir). Even if this were true, funneling \$4 billion to the man *most* responsible for the atrocities—the commander in chief personally indicted for genocide—would be a very direct form of complicity indeed.

The jury will, of course, need to resolve which expert is correct. On one side there is Dr. Verhoeven of Columbia University—a Sudan political economy specialist who literally wrote the book on the subject,⁴³⁶ speaks Arabic and has personally interviewed Sudanese government

⁴³³ *United States v. Flick et al.*, Nuremberg Military Tribunal Under Control Council Law No. 10 (Dec. 22, 1947) at 11021-22 available at <https://digitalcommons.law.uga.edu/nmt5/4>. BNPP will no doubt argue that the mere citation of an international criminal court undoes the Court’s choice of law and somehow transforms Plaintiffs’ claim from a Swiss Art. 50 CO action to a federal common law claim. BNPP thinks it can then rely on irrelevant cases addressing the extraterritorial scope of the Alien Tort Statute. *See* MSJ at 31, n.18. But the Court has already rejected that argument. *Kashef III*, 442 F. Supp. 3d at 821-22.

⁴³⁴ ECF No. 435-94, Verhoeven Reply at 20.

⁴³⁵ ECF No. 435-89, Patey Reply at 31.

⁴³⁶ Harry Verhoeven, *Water, Civilization, and Power in Sudan: The Political Economy of Military-Islamist State Building* (Cambridge University Press, 2015).

officials for years.⁴³⁷ On the other side is BNPP's proposed expert on Sudan's economy, the geographically challenged Llewellyn, who cannot name Sudan's currency or official language, does not speak Arabic, has never met a Sudanese person, and has not published a single article on Sudan's economy, politics, or history.⁴³⁸ Even BNPP's other proposed Sudan expert, Carisch, agrees that someone who cannot find Sudan on a map is no expert.⁴³⁹

There is another problem with BNPP's blank check defense. Money is fungible. BNPP proffers no evidence that Sudan maintained a firewall segregating the \$22.2 billion in BNPP-laundered petrodollars from the "war chest" used for internal repression. Nor do its experts dispute that the Regime's military-security operations were funded from the general treasury, which received the oil transfers from BNPP.⁴⁴⁰ Plaintiffs' experts Timothy Fogarty and Kathi Austin apply the industry-standard analytical framework on fungible financial complicity used by the International Criminal Court and developed by the Financial Action Task Force.⁴⁴¹ As Mr. Fogarty explains, "it is unnecessary to 'tag' a specific revenue stream to a specific act because fungible monies can be re-purposed for violent use; they can sustain the entity's capability to mount acts of violence, and they can substitute for other funds, freeing them up for use in funding acts of violence."⁴⁴² These are all contributions that are "generally capable of facilitating" the atrocities. Ex. 112, *Swisscom Case* at § 2.1, p. 73.

⁴³⁷ ECF No. 435-93, Verhoeven Rep. at 1 & Appendix A at 5.

⁴³⁸ Ex. 254, Llewellyn Dep. at 239:7-243:7.

⁴³⁹ Ex. 153, Carisch Dep. at 159:6-18.

⁴⁴⁰ See ECF No. 435-53, Austin Reply at ¶ 48.

⁴⁴¹ ECF No. 435-64, Fogarty Reply at ¶¶ 121-27; ECF No. 435-53, Austin Reply at ¶¶ 82-94.

⁴⁴² ECF No. 435-64, Fogarty Reply at ¶ 126. BNPP, without evidence, claims the framework is limited to terrorism. But as arms and war crimes investigator Kathi Austin explains, in practice, the FATF recommendations and standards are applied by the International Criminal Court ("ICC") with respect to "other international crimes, including war crimes, crimes against humanity and genocide." ECF No. 435-53, Austin Reply at ¶ 85. See also ECF No. 435-64, Fogarty Reply at ¶ 124 (citing ICC report discussing integration of FATF with the Court's work on "financial investigation").

Ironically, the blank check defense evinces the same disregard for human life that got BNPP into trouble in the first place. Throughout this case, BNPP has argued some variation of the themes: “If we hadn’t paid for this genocide, someone else would have” or “These victims were going to get killed anyway, so there’s no harm in us paying for it.” The government tortured people in “ghost houses” in the 1980s, so in BNPP’s view, there was no harm in subsidizing the massive increase in NISS facilities in the 1990s and 2000s. MSJ at 40. The Sudanese army had guns before 1997, so there was no harm in laundering more than their entire military budget. *Id.* But the Court has already rejected the defense that the Plaintiffs would have been raped or tortured anyway, *Kashef* at *6, and as Professor Werro explains, this defense is incompatible with the Swiss Supreme Court’s restrictive view on “hypothetical causation.”⁴⁴³ The fact is, without BNPP’s massive infusion of cash that gave Sudan all the resources it could ever want to commit the 21st century’s first genocide – and even more – as the US Congress well understood, the atrocities would not have happened on a fraction of the scale that they did.⁴⁴⁴

Finally, the blank check defense also shows why BNPP’s myopic focus on whether the Plaintiffs were harmed by “sophisticated weapons” is misplaced. MSJ at 40. First, it is true that some Plaintiffs were harmed by planes and others by whips. But they were government planes and government whips, and BNPP provided more than enough funds to buy these weapons and to pay men to wield them. Indeed, what the government needed to attack Plaintiff Abakar’s village in

⁴⁴³ ECF No. 435-104, Werro Decl. IV at ¶¶ 121-128. BNPP also argues that the Reime could have sold its oil in a currency other than U.S. dollars, albeit at a discount. MSJ at 54. But BNPP’s internal documents from 2007 admit that Euro deposits had “a low profitability for the client,” *i.e.*, Sudan. Ex. 45, BNPP-KASHEF-00005625 at 28. The reality is that Sudan had specific need of U.S. dollars, not just any currency. The U.S. dollar was the currency used by arms traffickers that Sudan relied upon to circumvent the UN arms embargo. Ex. 153, Carisch Dep. at 58:8-59:16; see also ECF No. 435-68, Hudson Report at ¶ 45-46. The USD was also the “historical currency of account” in Sudan, according to BNPP, Ex. 22, BNPP-KASHEF-00000177 at 179. BNPP was well aware that not being to do business in U.S. dollars would have serious consequences for its Sudanese clients: “the client has not really informed his commercial counterparties about not using USD payments, because this would have *seriously damaged his clients’ perception* of him.” Ex. 29, BNPP-KASHEF-00000787 at 93.

⁴⁴⁴ SAMF ¶ 179-80; *see also* Plaintiffs’ Response to Proposed Fact No. 107.

Darfur is not limited to the cost of the Antonov cargo-plane bomber that killed his father: even if the plane had been acquired before 1997, it needed an airfield, fuel, mechanics and a pilot, who needed pay, food, equipment, and training. These elements of military spending were equally indispensable to the attacks and detentions that harmed the Plaintiffs. And BNPP paid for them all.

D. Adequate Causation: BNPP’s conspiracy is foreseeably linked to the atrocities it funded, making it reasonable for BNPP to pay for its crimes.

“[A]n adequate causal link exists ‘when the wrongdoer’s conduct was capable, in the ordinary course of events and common experience, of leading to the kind of result that occurred.’” *Kashef IV*, 2021 WL 603290 at *7 (quoting ECF No. 435-105, Werro Decl. II, at ¶ 48). This Court previously held that a “finding of adequate cause under Swiss tort law requires determining whether it would be ‘reasonable’ to hold BNPP responsible for causing at least some of human rights abuses in Sudan, which includes looking at the factor of whether those atrocities were foreseeable to BNPP at the time.” *Id.* Adequacy “draws a reasonable limit on the scope of liability in an otherwise infinite chain of causes.” *Id.* As Professor Werro explains: “ordinarily, giving someone money is not the type of action that results in someone being killed. However, giving a very large sum of money to a known mass murderer is, as a matter of common sense, an action that could lead to someone being killed.”⁴⁴⁵

As the Court noted, foreseeability is a key factor. The Swiss Supreme Court holds it is the decisive one: “objective foreseeability is decisive in determining whether an act is the adequate cause of an injury.” Ex. 164, *Borehole Case*, 119 Ib 334 (1993) at ¶ 5; *see* ECF No. 435-104, Werro Decl. IV at ¶¶ 131-34; ECF No. 435-105, Werro Decl. II at ¶¶ 48, 51. BNPP, however, fails to present any argument on this determinative issue.

⁴⁴⁵ ECF No. 435-104, Werro Decl. IV at ¶ 129.

Since BNPP concedes it was foreseeable that undermining an embargo aimed at halting atrocities would help the Regime continue to perpetrate atrocities, summary judgment should be denied.

1. The “oil-genocide nexus”: BNPP funded and profited from the mass atrocities.

It is reasonable to hold BNPP liable for its crimes because BNPP “was a core piece of the ‘oil-genocide nexus as its chief financier.” *Kashef IV*, 2021 WL 603290 at *9. This Court held this allegation was sufficient. And now the evidence proves that “each link” in the causal chain between BNPP’s conspiracy and the atrocities “was the natural and foreseeable result of the former,” making it “reasonable to hold BNPP responsible,” *id.* at *8.

BNPP admits that it “helped the Regime subvert its ban from U.S. financial markets.” *Id.* It does not dispute that this “generated massive revenues in oil sales.” *Id.*⁴⁴⁶ They were so massive they exceeded Sudan’s entire military budget.⁴⁴⁷ Indeed, BNPP’s documents and Plaintiffs’ expert witnesses provide direct and circumstantial evidence that BNPP’s laundering of \$22.2 billion in oil sales—plus its financing of the SAF airfields and armored vehicles and its facilitation of the Regime’s arms procurement network—“allowed the Regime to ‘equip and mobilize armed forces’” *Id.*⁴⁴⁸ The evidence also shows that these very same Regime forces “committed ethnic cleansing in oil regions to obtain and sell more oil.” *Kashef IV*, 2021 WL 603290 at *9.⁴⁴⁹ As the Court recognized, this cycle of oil for atrocities and atrocities for oil formed a “macabre-feedback loop.” *Kashef III*, 442 F. Supp. 3d at 815-16.⁴⁵⁰

⁴⁴⁶ BNPP’s proposed expert Mr. Goolsby quibbles whether this was \$6.6 billion or the full \$22.2 billion identified by Plaintiffs’ expert Mr. Fogarty. SAMF ¶ 91; ECF No. 435-61, Goolsby Report at ¶ 64. Only the jury can resolve this battle of the experts.

⁴⁴⁷ SAMF ¶146.

⁴⁴⁸ SAMF ¶¶ 146, 177-183.

⁴⁴⁹ SAMF ¶¶ 148-169; 184-200; 300.

⁴⁵⁰ SAMF ¶¶ 101-103; 171-176.

BNPP’s defense is that the Plaintiffs did not live on top of an oil well. But suppose the U.S. government were desperate for oil revenue and Texas was trying to secede, taking its oil reserves with it. If the federal government tried to prevent that by torturing Texans in downtown Dallas, the link to oil would be undeniable. It would be immaterial that the victims did not live in an oil field. So too here.

Evidence abounds that controlling the oil regions of Sudan—present-day South Sudan, Abyei, Kordofan, and Darfur—was a main goal of the Regime’s policy of ethnic cleansing and persecution.⁴⁵¹ For example, Plaintiff Tingloth’s village in oil-rich Abyei was destroyed in a joint air and ground assault identical to the modus operandi of “oil clearance” described by Plaintiffs’ experts and the U.S. government.⁴⁵² The Regime tried to control these prized regions by terrorizing their indigenous populations, throughout the country.⁴⁵³ As a result, Plaintiffs—members of these targeted populations—were terrorized at their homes,⁴⁵⁴ in the camps for internally displaced persons,⁴⁵⁵ and in the capital after they fled atrocities in the oil regions.⁴⁵⁶ BNPP claims there is a break in this oil-genocide nexus, by speculating that there was violence by “shifting, protean factions of rival rebel groups.” MSJ at 44. But BNPP’s own map, MSJ at 15, shows there were no “areas controlled by opposition groups” near any of the sites where Plaintiffs were injured.⁴⁵⁷ For example, according to the U.S. government, the city of Wau (where Isaac Ali’s father was executed and Turjuman Adam was arrested and tortured) was a “Southern City Controlled by the

⁴⁵¹ SAMF ¶¶ 101-103; 171-176.

⁴⁵² Annex A at ¶¶ 103-08; SAMF ¶¶ 184-200.

⁴⁵³ SAMF ¶¶ 184-200.

⁴⁵⁴ Annex A at ¶¶ 43-44, 46, 53-57.

⁴⁵⁵ Annex A at ¶¶ 17-19.

⁴⁵⁶ Annex A at ¶¶ 197-201.

⁴⁵⁷ See ECF No. 435-138 (Defendants’ map of Plaintiffs’ injuries); *see generally* Annex A (identifying site of injury for all Plaintiffs).

Government of Sudan.”⁴⁵⁸ Indeed, Wau was the headquarters of the army’s Southern Command.⁴⁵⁹ Moreover, as Cameron Hudson explains, where BNPP sees “shifting protean factions” of rebels, the U.S. government saw, and “50 years of Sudanese history” confirmed, that rebel-on-rebel violence was “typically ad hoc . . . and typically at the behest of the government of Sudan as . . . part of its strategy to weaken the southern rebellion internally.”⁴⁶⁰

In Swiss law terms, it is reasonable to hold BNPP liable because it was a willing accomplice in the oil-genocide nexus. BNPP knew that the oil sales it laundered fueled the atrocities. BNPP’s former Head of Territory in Switzerland admitted that the “conflict [in Darfur] was more intense” because “some important reserves of oil were discovered in the desert.”⁴⁶¹ BNPP knew that “[t]he growth of revenue from oil is unlikely to help end the conflict, and it is probable that Sudan will remain torn up by insurrections and *resulting repressive measures* for a long time.”⁴⁶²

BNPP did not care that its conspiracy was underwriting the atrocities. Soon after Secretary of State Powell testified to Congress that a genocide was occurring, BNPP advised a Sudanese official on how to further protect its petrodollars from U.S. authorities.⁴⁶³ BNPP did not care that oil was paying for the slaughter, because the slaughter furthered BNPP’s profitable relationship by keeping the Regime in power and in good accounts: BNPP persisted “since the beginning in a delicate humanitarian environment,” and could stomach “media flare-ups from time to time” because there was “a booming financial situation.” BNPP would not let these flare-ups stop the macabre feedback loop.⁴⁶⁴

⁴⁵⁸ Ex. 253, USAID Map.

⁴⁵⁹ ECF No. 435-54, Baldo Report at ¶¶ 5, 63.

⁴⁶⁰ Ex. 152, Hudson Dep. at 114:19-117:24.

⁴⁶¹ Ex. 123, Bazire Dep. at 87:24-88:12.

⁴⁶² Ex. 26, BNPP-KASHEF-00000210 at 213 (emphasis added).

⁴⁶³ SAMF ¶ 365.

⁴⁶⁴ Ex. 74, BNPP-KASHEF-00014655.

Because BNPP both funded and profited from the humanitarian catastrophe in Sudan, the causal chain between its conspiracy and the millions of victims is foreseeable at each link. It was clearly “within the reasonable range of objectively foreseeable possibilities” that a scheme to thwart atrocity-prevention measures would facilitate atrocities. Ex. 164, *Borehole Case* at ¶ 5; *Kashef IV*, 2021 WL 603290 at *8.

2. *Swisscom* does not help BNPP.

BNPP’s Swiss law expert published in his treatise that “[i]n case law, inadequacy is only rarely found.”⁴⁶⁵ Indeed, in surveying 100 years of Article 50 case law, Roberto could only find one case dismissed for inadequate causation: *Swisscom*.⁴⁶⁶

BNPP rests its case on *Swisscom*. But it relied on *Swisscom* before, and the Court has already found that “Professor Werro persuasively explain[ed]” why *Swisscom* is “distinguishable.” *Kashef IV*, 2021 WL 603290 at *9. *Swisscom* stands for the uncontroversial proposition that an alleged accomplice cannot be liable for a tort that has already occurred, committed by a perpetrator the accomplice did not help, and did not even know. An internet access provider, Swisscom was sued to enjoin its customers from lawfully accessing copyrighted works they had a right to consume. Ex. 112, *Swisscom Case* at § 2.3.2. This is the critical issue: Swiss copyright law only prohibited uploading the infringing works, not personal use by consumers. *See id.* at § 21. The infringing works had been uploaded to the internet by unknown entities who were not Swisscom customers. *Id.* They were hosted on websites that were not Swisscom customers. *Id.* And the copyright infringement was complete long before Swisscom’s customers lawfully viewed the works. *Id.* Thus, Swisscom facilitated the *lawful* acts of its customers, *after* the infringement had

⁴⁶⁵ Ex. 255, Vito Roberto, *Liability Law*, at § 06.38.

⁴⁶⁶ *See* Roberto Suppl. Decl. ¶ 42 n.18.

occurred, and it did so through the same arms-length automated services that it provided to all its thousands of customers.

Every one of these facts is distinguishable. BNPP facilitated the unlawful genocide and other atrocities of its customer, the Sudanese government. It funded and promoted these atrocities before and during their occurrence, from 1997 through 2010.⁴⁶⁷ And it did so through a criminal conspiracy involving a custom-designed money laundering structure, through instructions from Head Office to falsify bank records (a manual, not automated process), and face-to-face meetings with the ministers of the dictatorship.⁴⁶⁸ As the Court found, and as evidence confirms, the atrocities were committed “both as a result of and in furtherance of BNPP’s profitable financial relationship with the Regime.” *Kashef IV*, 2021 WL 603290 at *9. “Most importantly, unlike the internet service provider in *Swisscom* and its hundreds of thousands of users, BNPP and the government of Sudan had a direct contractual and illegal relationship.” *Id.*

This Court concluded: “It is therefore more reasonable to determine that BNPP is responsible for the harm caused by its transactions – transactions that were illegal specifically because they would result in that harm – than the internet company that provided a legal service to members of the general public through automated transactions” *Kashef IV*, 2021 WL 603290 at *9.

3. Closely Related: BNPP directly aided the Regime perpetrating the atrocities, without any intervening actors.

BNPP plucks the words “closely related” from *Swisscom*, MSJ at 45, but ignores that *Swisscom* was not “closely related” to the infringers in that case because, unlike BNPP, it had no relationship with the infringers, only with its clients, who broke no law. The Swiss Supreme Court

⁴⁶⁷ SAMF ¶¶ 38-47.

⁴⁶⁸ SAMF ¶¶ 57-85; 365-66; 389.

stressed that Swisscom stood “at the end of the ‘chain of events.’” Ex. 112, *Swisscom Case* at § 2.1. BNPP, in contrast, was there from the beginning in 1997.

BNPP’s crimes were “closely related” because BNPP conspired directly with the perpetrator of the atrocities: the Regime. According to BNPP’s own expert, Mr. Carisch, the National Intelligence and Security Service—the secret police in whose “ghost houses” Plaintiffs Isaac Ali, Kuol Shbur, Ambrose Ula, Entesar Kashef, and Jane Doe were detained, tortured, and raped⁴⁶⁹—took the “helm of all major Sudanese companies.”⁴⁷⁰ Sudan’s banking and oil sectors were “affiliated with NISS” (Sudan’s secret police) or Bashir’s ruling party, including: “the Sudan National Petroleum Corporation, which controls the state’s entire oil and gas industry” and “most of the major national banks.”⁴⁷¹ BNPP’s partner, the Central Bank of Sudan, was no ordinary financial institution: it was a state agency dominated by military-Islamist party leaders such as Sabir Mohammad Hassan.⁴⁷² To top it off, BNPP extended loans to the Ministry of Defense and transferred payments from the Ministry to military attachés—the main purchase agents in the illicit arms trade—stationed in China, Egypt, Pakistan, and Russia—Sudan’s main arms-suppliers.⁴⁷³ Not only did BNPP partner with the Regime as a whole, it embedded itself with the very same institutions engaged in the slaughter.

Nevertheless, BNPP claims that the causal chain of Plaintiffs’ injuries were interrupted by the “intervention of multiple-third party actors.” MSJ at 48. But it turns out these “multiple actors” are just various components of the Regime’s military and security forces. *Id.*; see ECF No. 435-

⁴⁶⁹ See Annex A at ¶¶ 7-10 (Plaintiff Isaac Ali); *id.* at ¶¶ 91-92 (Plaintiff Kuol Shbur); *id.* at ¶¶ 78-83 (Plaintiff Ambrose Ula); *id.* at ¶ 201 (Plaintiff Entesar Kashef); *id.* at ¶¶ 228-29 (Plaintiff Jane Doe).

⁴⁷⁰ Ex. 152, Carisch Dep. at 310:4-6; Ex. 149, Enrico Carisch, *UN Sanctions, Peace and the Private Sector*, 6 JOURNAL OF INT’L PEACE OPERATIONS 18 (2010).

⁴⁷¹ Ex. 152, Carisch Dep. at 312:8-14; Ex. 149, Enrico Carisch, *UN Sanctions, Peace and the Private Sector*, 6 JOURNAL OF INT’L PEACE OPERATIONS 17 (2010).

⁴⁷² ECF No. 435-88, Patey Report at 5.

⁴⁷³ SAMF at ¶¶ 227-29; 230-36; 313.

54, Baldo Report at ¶¶ 44-78, 165-68. The fact that a government has multiple agencies, and armed forces have multiple units, does not alter the fact they comprise one entity. BNPP cites no case that would permit this sort of endless division of corporations or governments into smaller bits, creating the appearance of endless causal chains.⁴⁷⁴

Finally, BNPP gives up on Swiss law altogether and cites U.S. cases involved alleged terrorist financing. MSJ at 50-51. BNPP fails to mention that this Court has already distinguished such cases because, unlike BNPP, the alleged accomplices had not “directly transacted with the perpetrators of the violence[.]” *Kashef IV*, 2021 WL 603290 at *9. Indeed, *Rothstein v. UBS AG*, 708 F.3d 82, 97 (2d Cir. 2013) and *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 393 (7th Cir. 2018) are inapposite because each involves one accomplice (a bank) aiding another accomplice (a state that supports terrorism) with no evidence that the bank directly funded the actual terrorist entity. BNPP also fails to cite contrary authority.⁴⁷⁵

BNPP’s own expert, Mr. Carisch, can have the final word on the close relation between BNPP’s complicity and the Regime’s crimes. Sudan’s banking and oil sectors—with which BNPP handled over **\$80 billion** in U.S. dollar transactions⁴⁷⁶—was dominated by NISS, Sudan’s secret police.⁴⁷⁷ And NISS was “the single entity on which to pin responsibility for the mayhem in the

⁴⁷⁴ The *Steel Boycott Case*, which BNPP cites, offers no support. There, a steelworks cartel boycotted the plaintiff, refusing to sell it steel. After another steelworks—which was not part of the cartel—also refused to supply the plaintiff, the plaintiff sued under Article 50.1 The Court held there was no Article 50 liability, because the defendant did not join the cartel. Since it made an independent business decision, there was no collective fault and thus no collective causation. Ex. 113 to Lee Decl., ECF No. 435-113, FSC 90 II 501 (1964) at 508-09 c. 3. BNPP cannot claim that the Regime acted independently, because the Regime was locked in a conspiracy with BNPP. Moreover, Plaintiffs do not allege that BNPP and the Regime were both committing atrocities, but for independent reasons. BNPP was helping the Regime break the embargo and commit further atrocities, which were in their mutual benefit.

⁴⁷⁵ See, e.g., *Boim v. Holy Land Foundation for Relief & Development*, where the Seventh Circuit held en banc that “monetary contributions to a wrongdoer” satisfy causation even if no death could be traced to any specific contribution. 549 F.3d 685, 697-98 (7th Cir. 2008) (“The knowing contributors as a whole would have significantly enhanced the risk . . . and thus the probability that the plaintiff’s decedent would be” killed.).

⁴⁷⁶ SAMF at ¶ 86.

⁴⁷⁷ Ex. 153, Carisch Dep. at 310:4-9; Ex. 149, Enrico Carisch, UN Sanctions, Peace and the Private Sector, 6 JOURNAL OF INT’L PEACE OPERATIONS 17-18 (2010).

Sudan.” Ex. 153, Carisch Dep. at 308:13-21. There was no daylight between BNPP and the Regime.

4. BNPP broke the law of every jurisdiction where it operated.

If there is one fact a convicted conspirator cannot deny, it is that it had an illegal relationship with its co-conspirator. But BNPP thinks this Court was wrong to conclude that “BNPP and the government of Sudan had a direct contractual and *illegal* relationship.” *Kashef IV*, 2021 WL 603290 at *9. Citing *Swisscom*, BNPP objects that holding it liable would impose a “system liability” on the entire Swiss banking industry for providing “lawful” financial services. MSJ at 47-48. That argument might have merit if Plaintiffs’ theory “were that the Sudanese government used funds withdrawn from BNPP ATM machines to commit genocide.” ECF No. 435-104, Werro Decl. IV at ¶ 139. But as Professor Werro explains, “[f]alsifying banking documents, using money laundering techniques, willfully undermining an economic embargo, and conspiring with a genocidal dictatorship to cover their tracks is not a normal part of the Swiss banking system.” *Id.* at ¶ 140. “[T]here is no risk of extending an unreasonable scope of liability to the entire Swiss banking system because the highly suspect services that BNPP provided to the Sudanese government are, thankfully, not standard Swiss banking services.” *Id.* at ¶ 141.

What BNPP did was unlawful in Switzerland. The Swiss Criminal Code prohibits complicity in genocide, war crimes, and crimes against humanity.⁴⁷⁸ If BNPP believes that bankers are immune, the *Flick* case before the Nuremberg Tribunal says otherwise. More prosaically, despite BNPP’s protests that it did nothing wrong under Swiss law, FINMA, the Swiss financial regulatory authority issued an enforcement decree against BNP Paribas (Suisse) SA, finding “that

⁴⁷⁸ See Swiss Criminal Code, Dec. 21, 1937, RO 311, art. 25 (complicity liability), *in conjunction with* art. 264 (prohibiting genocide); art. 264a (prohibiting crimes against humanity); art. 264c–h (prohibiting war crimes), art. 122 (assault); art. 190 (rape); art. 185 (enforced disappearance). English translation available at: <https://www.admin.ch/opc/en/classified-compilation/19370083/202003030000/311.0.pdf>.

the bank seriously violated its duty to identify, limit, and monitor the risks involved in making transactions with business partners in countries subject to US sanctions.”⁴⁷⁹

BNP Paribas SA is a French company, and it broke French law too. In June 2014, the French banking supervisory authority, l’Autorité de Contrôle Prudentiel et de la Résolution, issued a joint cease and desist letter with the U.S. Board of Governors of the Federal Reserve System recognizing BNPP’s “illegal conduct” and ordering remedial action. Ex. F to SAC, ECF No. 49-6. But BNPP has bigger problems in France. As reported by France 24 in 2020, “French prosecutors . . . opened an inquiry into banking giant BNP Paribas over claims of complicity in crimes against humanity, genocide, and torture in Sudan.” ECF No. 435-83, Koch Rep. at ¶ 269.

In its defense, BNPP invokes an amicus brief that the Swiss government filed in a U.S. civil case against the Swiss bank UBS. MSJ at 30-31. But the Swiss government has not taken a position in *this* case. And it is unclear what interest the Swiss government has in protecting a French bank that overrode the protests of Swiss compliance personnel, compelled its Swiss subsidiary to violate the law, and fired the Swiss compliance officer who tried to halt BNPP’s conspiracy with the Bashir Regime. *See* ECF No. 435-83, Koch Report at ¶¶ 227-28, 248. Similarly, BNPP raises the irrelevant point that Switzerland did not adopt a legislative initiative to make Swiss parent corporations vicariously liable for human rights abuses committed by their foreign subsidiaries. MSJ at 48. But as Professor Werro notes, “[t]his case does not seek to hold a Swiss parent company vicariously liable for abuses committed by its foreign subsidiary.” And as he explains, “[h]olding BNPP liable under Article 50 CO would not create any new form of

⁴⁷⁹ FINMA (Swiss Financial Market Supervisory Authority), Press Release, Inadequate risk management of US sanctions: FINMA closes proceedings against BNP Paribas (Suisse), 1 July 2014, https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/8news/medienmitteilungen/2014/07/20140701-mm-abschluss-verfahren-bnp-paribassuisse.pdf?sc_lang=en&hash=4F7E75114ABD2799EDC3A927ECF73991.

vicarious liability under Swiss law: secondary liability under Article 50 CO is more than a century old.” ECF No. 435-104, Werro Decl. IV at ¶ 141 n. 169.

Despite BNPP’s apparent belief that Switzerland tolerates bank complicity in crimes against humanity, the historical record shows otherwise. In the 2000s, Switzerland embarked on a historic reckoning with the complicity of Swiss banks in the Holocaust. As compliance expert Barry Koch explains: “At the very same time that BNPP’s predecessors were partnering with the regime in Sudan, the Swiss Bankers Association was conducting an unprecedented audit of Swiss bank account[s] to identify property looted from Holocaust victims.” ECF No. 435-83, Koch Report at ¶ 270. This was the context of BNPP’s criminal conspiracy to fund the Bashir Regime by breaking the U.S. embargo. As Koch concludes, “BNPP’s willingness to support a military regime accused of genocide and crimes against humanity also indicates a willful indifference to the Swiss banking industry’s reckoning” with its past. *Id.*

Despite its guilty plea, BNPP still insists it did nothing wrong. But its executives in France have a clearer view of the wrongfulness of the bank’s conduct. At his deposition, BNPP’s former Global Head of International Financial Sanctions made it clear: “Q: How did you react when you learned that BNPP pleaded guilty to violating the US sanctions? A: I think, I always think that anyone has to pay for its mistakes.”⁴⁸⁰ A reasonable jury could agree.

III. The Court should deny summary judgment as to BNPP Wholesale.

BNPP Wholesale – formerly known as BNPP North America – is not entitled to summary judgment.⁴⁸¹ BNPP admits that Stephen Strombelline, its Head of Compliance for North America,

⁴⁸⁰ Ex. 122, De Saint André Dep. at 59:12-60:17.

⁴⁸¹ Separate from its arguments about BNPP Wholesale, BNPP seeks dismissal of BNPP NY on the grounds that it “is not an entity independent from” BNPP France. MSJ at 57. On the understanding, which BNPP now concedes, that BNPP France is therefore liable for any acts or omissions of BNPP NY, Plaintiffs do not object to BNPP NY’s dismissal. Indeed, Plaintiffs offered to stipulate to this point six years ago.

was employed by BNPP Wholesale.⁴⁸² However, BNPP has never provided Plaintiffs with requested information about who are the officers, directors, or employees of BNPP Wholesale.⁴⁸³ Putting aside the conduct of any other BNPP Wholesale officers, directors, and employees, Mr. Strombelline's knowledge, actions, and omissions alone are sufficient to defeat summary judgment.⁴⁸⁴

As Plaintiffs' expert Barry Koch opined, "BNPP's compliance program was defective by design."⁴⁸⁵ In particular, BNPP "rendered its compliance program ineffective by putting unqualified, uninformed employees in compliance management roles, where they were not competent to address the bank's compliance risks."⁴⁸⁶ This included Mr. Strombelline, whom Mr. Koch describes as [REDACTED]

⁴⁸² MSJ at 59-60.

⁴⁸³ After the close of fact discovery, BNPP's counsel sent an email on August 23, 2022 stating: "BNPP-NA did have directors and officers at all times. We are working on pulling materials from BNPP-NA's archives to confirm the identities of those directors and officers . . . BNPP-NA also did have employees, *including* Stephen Strombelline." Ex. 168, Aug. 23, 2022 and Sept. 22, 2022 emails from Katherine Lynch (emphasis added). One month later, BNPP's counsel sent another email stating that "BNPP-NA's directors and officers during the relevant period *included*" fifteen listed individuals (including [REDACTED] *Id.* (emphasis added). To date, BNPP has not identified any BNPP Wholesale employees or "dual" employees other than Mr. Strombelline, nor has it provided a complete list of officers and directors or specified which individuals filled which roles. BNPP has therefore obstructed Plaintiffs' ability to obtain evidence as to the full scope of conduct attributable to BNPP Wholesale.

⁴⁸⁴ Throughout discovery, BNPP and its witnesses were unable to provide even the most basic information about BNPP Wholesale's officers, directors, or employees. Ex. 128, Deposition of Everett Schenk at 41:9-13 ("Q. Did you play any role at BNP Paribas North America Incorporated? A. In the latter years, I was its – I do forget whether I was chairman or chief executive of PNA, is what we called it."); *id.* at 46:9-11 ("I don't know that BN – BNP North America PB – PNA – I call it PNA, Paribas North America – had any employees."); Ex. 126, Cozine Dep. at 269:10-24 (testimony of BNPP Wholesale's Rule 30(b)(6) witness that "I don't know" if BNPP Wholesale had officers or directors); *id.* at 270:21-23 ("we're working to understand the corporate governance around Wholesale"); *id.* at 273:20-22 ("Q. Between 1997 and 2009, did BNP Paribas U.S. Wholesale Holdings have any employees? A. We're still investigating."); *id.* at 273:23-274:10 ("I don't know if [REDACTED] had dual employment . . . [w]ith U.S. Holdings. . . We are investigating."); *id.* at 274:11-14 ("Q. What about Steven Strombelline? A. He was the head of compliance. I don't know if he had any dual – I don't know what his reporting line was at the time."); Ex. 129, Strombelline Dep. at 17:23-18:1 ("Q. During your time at BNPP, do you recall which specific entity employed you? A. I don't know the – I don't recall, no.").

⁴⁸⁵ ECF No. 435-83, Koch Report at ¶ 246.

⁴⁸⁶ *Id.* at ¶ 247.

⁴⁸⁷ As Mr. Koch recounts, [REDACTED]

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Mr. Strombelline testified that “at some point” he heard of the Darfur genocide and knew that “people were killed in Sudan” and that U.S. sanctions were imposed.⁴⁸⁹ An OFAC document regarding those sanctions and maintained in the New York office, where Mr. Strombelline worked, described “the prevalence of human rights violations, including slavery and the denial of religious freedom” in Sudan as well as “violence against civilians and sexual violence against women and girls.”⁴⁹⁰

Yet Mr. Strombelline does not “recall” whether, as Head of Compliance for BNPP, he believed that “BNPP had a responsibility to help end the genocide in Sudan.”⁴⁹¹ He also disclaimed any personal responsibility to do so:

Q. And you didn’t personally view yourself as having a responsibility to help end the genocide in Sudan?

MS. SEYMOUR: Objection.

A. I don’t recall having that thought.⁴⁹²

⁴⁸⁷ *Id.* at ¶ 182.

⁴⁸⁸ *Id.* at ¶ 247. For example: “Q. As head of compliance for the U.S. and then head of compliance to North America, was it part of your job to know who had ultimate responsibility for ensuring compliance? A. I don’t recall that being in my job description. Q. In your role, would you try to personally keep up to date on what the sanction rules were? A. Not that I recall. Q. Are you aware of anyone at the Bank whose job it was to ensure compliance? A. I don’t recall. Q. Given that there were sanctions related to Sudan, did you consider it part of your job to be informed about world events as they related to Sudan? A. Not that I recall. Q. Have you ever read any of the actual Executive Orders regarding sanctions on any country? A. Not that I recall.” *Id.* (quoting Ex. 129, Strombelline Dep. at 52:20-53:1, 54:2-5, 53:12-14, 57:9-13, 60:20-23); *see also id.* at ¶ 182 (testimony that “I’m not totally familiar with the whole banking operation process” and “[a]ny specific controls would be beyond my expertise”) (quoting Ex. 129, Strombelline Dep. at 95:5-13, 113:20-25).

⁴⁸⁹ Ex. 129, Strombelline Dep. at 56:16-57:8. Mr. Strombelline agreed at his deposition that it is “the nature of sanctions to cut off targeted entities from the U.S. financial markets.” *Id.* at 69:4-7.

⁴⁹⁰ Ex. 129, Strombelline Dep. at 59:2-13, 61:14-23, 62:14-21; Ex. 28, BNPP-KASHEF-00000753 (Dep. Ex. 152).

⁴⁹¹ Ex. 129, Strombelline Dep. at 71:16-20.

⁴⁹² *Id.* at 74:7-12.

Mr. Strombelline would say only that “I had a responsibility to have a compliance department that supported the bank to follow U.S. sanctions,” which of course BNPP pleaded guilty to not doing.⁴⁹³ However, by the time he was deposed in June 2022, he candidly admitted that he would now “be concerned with a financial institution doing business with Sudan” because “things were being done” by the Government of Sudan that were “not good.”⁴⁹⁴

Unfortunately, Mr. Strombelline [REDACTED] [REDACTED] while serving as BNPP’s Head of Compliance. Even after being informed in January 2006 that the State of Illinois would not do business with BNPP because of BNPP’s relationship with the Central Bank of Sudan, Mr. Strombelline [REDACTED] writing: “I am not concerned with non-US BNPP affiliates doing business with the Central Bank of Sudan.”⁴⁹⁵

Notwithstanding this lack of concern, Mr. Strombelline was well aware of the weaknesses in BNPP’s compliance function that permitted those “non-US BNPP affiliates” to evade U.S. sanctions and provide the Government of Sudan with access to U.S. dollars. In January 2004, Mr. Strombelline received an email detailing the improper use of MT202 payment messages to strip out sanctioned parties to a U.S. dollar transaction cleared through BNPP in New York, including the following:

- A wire of U.S. dollars to Sudan that “deliberately reformatted the payment to avoid detection by our OFAC filter and has therefore made BNPP Paribas New York an unwilling accomplice to an OFAC violation.”

⁴⁹³ *Id.* at 72:8-16.

⁴⁹⁴ *Id.* at 81:25-82:12.

⁴⁹⁵ *Id.* at 87:13-17; Ex. 77, BNPP-KASHEF-00020847 (Dep. Ex. 154); *see also* Ex. 129, Strombelline Dep. at 129:1-133:24 (discussing his participation in an October 2004 decision about processing payments for “Sudan’s leading oil company” despite the “reputational risk”); Ex. 78, BNPP-KASHEF-00020893 (Dep. Ex. 158). Even as late as 2009, Mr. Strombelline approved opening an account for a customer affiliated with Sudanese companies that “may have financially contributed to genocidal activity and may provide little benefit to the disadvantaged populations of Sudan,” including through documented “forcible displacement” of thousands of people, despite consideration of a “UN report on Darfur that had investigated reports of violations of international humanitarian law and human rights law in Darfur.” Ex. 129, Strombelline Dep. at 258:8-261:5, 294:5-298:13.

- Stripping out the word “Sudan” in a payment for a shipment to Port Sudan that was a “rather transparent way of making us process a previously rejected payment.”
- A \$118,000 payment to a Sudanese bank that was “deliberately reformatted in order to avoid our OFAC filtering.”
- How the use of MT202 messages “enable[d]” the bank “to avoid OFAC filtering, which results in us having no idea how much funds involving embargoes countries are actually transiting by us” and how “New York could be criticized for not having put controls in place in due time.”⁴⁹⁶

The only remedial action taken in response was an email directing BNPP personnel not to “resubmit” payments that been rejected, but as Plaintiffs’ expert Mr. Koch explains, and as Mr. Strombelline acknowledged, “the email is only about resubmissions – i.e., payment messages that at one point included a reference to a sanctioned entity – and says nothing about payment messages that never included such a reference in the first place,” which “is a striking omission.”⁴⁹⁷

In December 2005, ABN AMRO was fined \$80 million for its own wire-stripping sanctions violations.⁴⁹⁸ As Mr. Strombelline testified, BNPP had been doing the very same thing.⁴⁹⁹ Upon learning of the ABN AMRO fine, Mr. Strombelline wrote in an email: “The dirty little secret isn’t so secret anymore, oui?”⁵⁰⁰ This email appears in BNPP’s guilty plea documents as an admission of BNPP’s knowledge,⁵⁰¹ but now BNPP attempts to do something it cannot under the terms of its federal plea deal: back-pedal. In its motion, BNPP asserts that “dirty little secret” was “in fact a reference to OFAC’s knowledge of non-U.S. banking practices before the ABN AMRO settlement in 2010 with the Department of Justice for sanctions violations involving Iran, Libya, Sudan, Cuba

⁴⁹⁶ *Id.* at 97:18-113:15; Ex. 94, BNPP-KASHEF-00031735 (Dep. Ex. 156); ECF No. 435-83, Koch Report at ¶¶ 177-179.

⁴⁹⁷ ECF No. 435-83, Koch Report at ¶¶ 180-81 (quoting Ex. 99, BNPP-KASHEF-00039213 and Ex. 129, Strombelline Dep. at 120:10-122:6). As BNPP admitted when pleading guilty, its “internally published policy for processing U.S. dollar payments involving Sudan stated: ‘Do not list in any case the name of Sudanese entities on messages transmitted to American banks or to foreign banks installed in the U.S.’” ECF No. 435-1, SSOF at ¶ 22.

⁴⁹⁸ ECF No. 435-83, Koch Report at ¶ 219.

⁴⁹⁹ *Id.* (citing Ex. 129, Strombelline Dep. at 143-45, 157-58).

⁵⁰⁰ Ex. 18, BNPP-KASHEF-00000146 (Dep. Ex. 160); Ex. 129, Strombelline Dep. at 152:17-25.

⁵⁰¹ Ex. 1, DFS Consent Order at ¶ 8.

and other countries.”⁵⁰² Of course, it is for a jury to assess Mr. Strombelline’s credibility. In doing so, the jury might consider: (1) BNPP’s consent order with the New York Department of Financial Services (“DFS”), in which BNPP stipulated that Mr. Strombelline’s “dirty little secret” email was about how “the highest level of the compliance division for the New York Branch recognized and accepted that amending, omitting and stripping was widespread among foreign banks transmitting funds through the U.S.,” not *OFAC*’s supposed knowledge of the practice;⁵⁰³ (2) Mr. Strombelline’s own knowledge as described above, prior to sending the “dirty little secret” email, that BNPP had itself engaged in wire-stripping; (3) BNPP’s guilty plea admissions that it was indeed engaged in these same practices at the same time;⁵⁰⁴ and (4) that after spending seven hours meeting with BNPP’s counsel to prepare for his deposition, the “dirty little secret” email was the *only* BNPP document that he was able to recall clearly (three others looked “vaguely familiar” and the rest he could not recall at all).⁵⁰⁵

Just two days after Mr. Strombelline wrote about the “dirty little secret,” a more junior compliance employee emailed him to express that she was “unsettled by what some of the people in our department are saying” and concerned about “willful blindness” to customers being involved in “something illegal.”⁵⁰⁶ But he responded to his subordinate’s email by assuring her that he could “get comfortable with the compliance officer in a secrecy territory like Geneva telling me that a

⁵⁰² MSJ at 59-60. Mr. Strombelline did offer an explanation along these lines (though he was referencing ABN AMRO’s settlement in 2005, not 2010, and did not refer at all to “non-U.S. banking practices”) in response to redirect questioning from BNPP’s counsel later in his deposition. Ex. 129, Strombelline Dep. at 290:9-291:18 (testifying that at an “informal meeting,” ██████████ “said that he had heard that there were banks” engaged in wire-stripping “and that OFAC was aware of it and it was a ‘dirty little secret’ was his comment,” but that Mr. Strombelline “didn’t believe it” and that when the ABN AMRO fine was announced he sent his email “referencing that the ‘dirty little secret’ meaning that a firm was out stripping and OFAC knew about it wasn’t so secret anymore”).

⁵⁰³ Ex. 1, DFS Consent Order at ¶ 8.

⁵⁰⁴ Ex. 129, Strombelline Dep. at 298:15-300:1.

⁵⁰⁵ *Id.* at 12:2-11, 138:1, 146:1-7, 179:9, 230:18.

⁵⁰⁶ Ex. 104, BNPP-KASHEF-00047372 (Dep. Ex. 161); Ex. 129, Strombelline Dep. at 158:24-164:7. Mr. Strombelline testified that “willful blindness” is “being aware of something that you may think is wrong and just kind of turn your back on it.” Ex. 129, Strombelline Dep. at 162:23-163:4.

thorough investigation of the facts we presented to them was conducted, and though they can't give us the details, they are confident that the activity is appropriate.”⁵⁰⁷

And when Mr. Strombelline prepared a memo for BNPP's top executives in Paris about the ABN AMRO fine and “why it won't happen to us,” he “omitted any mention of BNPP's use of MT202 messages to conceal information about sanctioned entities.”⁵⁰⁸ This key omission was not due to the problem having been resolved: several months later, Mr. Strombelline “was still reporting to his compliance superiors in Paris about ‘the recent problems with ABN AMRO concerning the disguising of unacceptable OFAC names by purposely using bank-to-bank MT202 cover payments,’ just as BNPP had been doing.”⁵⁰⁹ Mr. Strombelline “recommended discontinuing the use of cover payments,” but [REDACTED] of BNPP Paris compliance [REDACTED] was dismissive because of the impact it would have on the bank's Sudanese business,” and Mr. Strombelline did nothing to follow up.⁵¹⁰ His inaction is perhaps unsurprising, given BNPP's admission when it

⁵⁰⁷ Ex. 104, BNPP-KASHEF-00047372; Ex. 129, Strombelline Dep. at 164:11-165:5. Mr. Strombelline testified at his deposition that “I'm not sure that I did get comfortable, but just that I can get comfortable.” Ex. 129, Strombelline Dep. at 165:6-165:12. BNPP's expert, Theresa Pesce, opines that “it is apparent to me that this conversation had nothing to do with sanctions.” ECF No. 435-91, Pesce Expert Report at ¶ 56. In a footnote supporting that assertion, Ms. Pesce “surmise[s]” that the *stipulated* statement of facts in BNPP's guilty plea misstates BNPP's Memorandum of Understanding with the federal and New York banking regulators (which she admits to not having seen). *Id.* ¶ 56 n.113; *see also* ECF No. 435-1, SSOF at ¶ 28. It is for the jury to assess Ms. Pesce's credibility on this point, particularly given that her opinion (1) contradicts BNPP's guilty plea, (2) ignores that the discussion appears in an email chain titled “ABN AMRO” specifically about how ABN AMRO had “[e]xcluded client and country specific information from the payment instructions so that transactions would pass through the New York OFAC filter and would not be detected or blocked,” just as BNPP had done, *see* Ex. 104, BNPP-KASHEF-00047372 (Dep. Ex. 161), and (3) finds no support in Mr. Strombelline's own testimony about this document, *see* Ex. 129, Strombelline Dep. at 159:2-4 (testifying that he did not “specifically” recall the document); *id.* at 164:2-3 (“I don't remember the interaction”); *id.* at 159:23-161:14 (discussing the employee's concerns in the context of filing reports for sanctions violations).

⁵⁰⁸ ECF No. 435-83, Koch Report at ¶ 221 (citing Ex. 129, Strombelline Dep. at 181-82, 186, 190-93; Ex. 100, BNPP-KASHEF-00039354 (Dep. Ex. 163B); Ex. 103, BNPP-KASHEF-00047293 (Dep. Ex. 163A); Ex. 102, BNPP-KASHEF-00047292 (Dep. Ex. 164A)).

⁵⁰⁹ ECF No. 435-83, Koch Report at ¶ 223 (citing Ex. 23, BNPP-KASHEF-0000191 (Dep. Ex. 166); Ex. 129, Strombelline Dep. at 209-210).

⁵¹⁰ *Id.* (citing Ex. 23, BNPP-KASHEF-0000191 (Dep. Ex. 166) (“If Steve Strombelline only offers the choice between abandoning the MT20[2] for movements in favor of clientele or promising BNPP NY we do not do wire transfers in USD concerning Cuba, Iran, Sudan or Syria, I only see the solution of going through another bank than BNPP NY for all transactions to these destinations. The other less gratifying alternatives are to stop working in USD in these zones or to disguise the reality with the no win situation between telling stories to BNPP NY or to JP

pleaded guilty that “[c]ompliance staff at the New York Branch operated knowing that they did not have adequate legal and compliance authority to ensure that activities conducted from BNP Paribas offices outside of the United States complied with New York and U.S. laws and regulations. This practice was intentional.”⁵¹¹

Following the U.S. government’s investigation into BNPP’s criminal conduct, Mr. Strombelline’s employment was terminated when he was “asked to resign” at the direction of the New York DFS.⁵¹² BNPP nevertheless insists that BNPP Wholesale and Mr. Strombelline were “not involved in any of the conduct” at issue here.⁵¹³ A reasonable juror – evaluating the totality of the evidence about Mr. Strombelline’s knowledge, actions, and omissions that led to the termination of his employment – surely could disagree with BNPP’s protestations of his innocence.

As Mr. Strombelline testified, he “had ultimate responsibility for managing the compliance department” in North America.⁵¹⁴ He agreed at his deposition that the “difficulty” of “monitoring compliance on a global scale . . . cannot be used as an excuse to turn a blind eye to problematic

Morgan.”); Ex. 129, Strombelline Dep. at 213:2-5 (testifying that “I don’t recall” whether he “received any response to this e-mail”); *id.* at 228:23-25 (“Q. Did you ever discuss this issue of the MT202s with [REDACTED] directly? A. Not that I recall.”); *id.* at 229:3-16 (testifying that he “may have discussed” the issue with others in Paris but “can’t remember specific conversation[s]” and did not “remember” their reaction to his suggestion about MT202s). BNPP did indeed use “the solution of going through another bank” for Sudanese transactions, Ex. 23, BNPP-KASHEF-00000191 (Dep. Ex. 166), which BNPP admitted in its guilty plea was “an attempt to decrease BNPP New York’s exposure to enforcement actions by U.S. authorities.” ECF No. 435-1, SSOF at ¶ 30.

⁵¹¹ Ex. 1, DFS Consent Order at ¶ 7.

⁵¹² Ex. 129, Strombelline Dep. at 261:19, 262:10-15; Ex. 186, June 30, 2014 DFS Press Release (noting that Mr. Strombelline was among the “senior executives” who “were terminated by or separated from the Bank as a result of the investigation” at the direction of DFS). Under the DFS Consent Order, BNPP was specifically prohibited from “in the future, directly or indirectly, retain[ing]” Mr. Strombelline “as either an officer, employee, agent, consultant, contractor of BNPP, or any affiliate of BNPP, or in any other capacity.” Ex. 1, DFS Consent Order at ¶ 58, Mr. Strombelline [REDACTED]

[REDACTED] ECF No. 435-9, BNPP 2d Supp. Interrog. Resp., App’x 1; Ex. 129, Strombelline Dep. at 264:15-265:24.

⁵¹³ MSJ at 59.

⁵¹⁴ Ex. 129, Strombelline Dep. at 23:4-8.

business practices.”⁵¹⁵ But that is exactly what Mr. Strombelline did in allowing BNPP’s criminal conspiracy with the Government of Sudan to take place under his watch.⁵¹⁶

Compliance expert Mr. Koch opines that “no multinational bank’s compliance program would have allowed the catastrophically bad decisions that BNPP supported in its continued financing of well-documented genocide without taking more effective steps to address the legal and reputational risks.”⁵¹⁷ He further opines that “BNPP’s ineffective compliance program . . . was intentionally ignored by BNPP’s senior management, the result of which facilitated BNPP’s criminal scheme in support of the Government of Sudan.”⁵¹⁸ As Mr. Koch explains, “a compliance officer . . . in a healthy and effective compliance program, would normally provide advice and guidance on exactly the kind of policy and procedural issues that BNPP handled so badly.”⁵¹⁹ Mr. Strombelline’s failure to do so contributed to the harm experienced by Plaintiffs and members of the proposed class.⁵²⁰

Mr. Strombelline and BNPP Wholesale are therefore like the innkeeper in the *Shooting Contest* case, who “was found liable under Article 50.1 when inebriated soldiers organized a

⁵¹⁵ *Id.* at 277:11-18.

⁵¹⁶ BNPP Wholesale’s liability is not based on Mr. Strombelline’s “knowledge of U.S. sanctions violations . . . alone,” MSJ at 60, but on the totality of his knowledge, actions, and omissions. As detailed above, he knew (or should have known) that Sudanese sanctions were in place to cut the Government of Sudan off from the U.S. financial markets given its commission of human rights abuses. He knew (or should have known) that BNPP’s procedures were ineffective in preventing transactions for the benefit of sanctioned countries but did nothing to address it. And he knew (or should have known) that BNPP – aided by his own compliance failures – was supporting a genocidal regime, but disclaimed any responsibility to do anything about it.

⁵¹⁷ ECF No. 435-83, Koch Report at ¶ 284.

⁵¹⁸ Ex. 6, Koch Reply at ¶ 3.

⁵¹⁹ *Id.* at ¶ 14.

⁵²⁰ BNPP’s claim that BNPP Wholesale was “only a holding company” is at odds with its concession that BNPP Wholesale employed the Head of Compliance for North America, Mr. Strombelline. MSJ at 59. And whether BNPP Wholesale itself engaged in “transactions with Sudanese clients” or had what BNPP would characterize as a “relationship” with those clients, *see id.*, does not answer whether BNPP Wholesale is liable as an accomplice for its conscious cooperation and causal role. Just as Article 50 does not require BNPP to have perpetrated the unlawful act that harmed a Plaintiff or class member given its role as an accomplice in providing financial support for the Government of Sudan, Article 50 likewise does not require BNPP Wholesale to have processed the wire transfers itself when its own role as an accomplice involved turning a blind eye to BNPP’s compliance failures that facilitated those transactions.

shooting contest in the hotel garden and a nearby guest was struck in the eye by a stray bullet,” even though “the innkeeper may not even have known about the contest.”⁵²¹ As BNPP notes in its own brief, the innkeeper was liable due to his failure to “tak[e] the proper safety measures.”⁵²² For the unlawful transactions at issue in this case that provided the Government of Sudan with billions of U.S. dollars it should not have had, the “proper safety measures” to be implemented by Mr. Strombelline and BNPP Wholesale would have included a well-designed, effective compliance program, not the “willful blindness” exhibited by Mr. Strombelline, or as he put it himself, “being aware of something that you may think is wrong and just kind of turn your back on it.”⁵²³

IV. All of Plaintiffs’ claims are timely.

A. The Second Circuit’s decision is binding under the mandate rule: All claims are timely under N.Y. C.P.L.R. § 215(8)(a).

BNPP again tosses sand in the gears of litigation by refusing to be bound by the Second Circuit’s decision in this case holding all claims timely under N.Y. C.P.L.R. § 215(8)(a). *See Kashef II*, 925 F.3d at 63. Seven years into litigation, and after consenting for years that *New York* law applies,⁵²⁴ BNPP switches course and now asks the Court to apply a *Sudanese* statute of limitations to Plaintiffs’ claims, which BNPP asserts would bar “Plaintiffs’ claims for injuries occurring before April 29, 2001.” MSJ at 60.⁵²⁵ BNPP’s actions are plain: it “test[ed] its case under of the laws of [New York] and, when unsuccessful there, change[d] the playing field and [now] tr[ies] again under the laws of [Sudan].” *Call Ctr Tech., Inc. v. Interline Travel & Tour, Inc.*, 622 Fed. Appx.

⁵²¹ *Kashef IV*, 2021 WL 603290 at *4.

⁵²² MSJ at 36.

⁵²³ Ex. 129, Strombelline Dep. at 162:23-163:4.

⁵²⁴ *Tehran-Berkeley Civil & Env’t & Eng’rs v. Tippetts-Abbett-McCarthy-Stratton*, 888 F.2d 239, 242 (2d Cir. 1989) (holding that the parties’ briefs discussing only New York law gave implied consent to use New York law).

⁵²⁵ Even if BNPP correctly articulated the Sudanese statute of limitations—which it did not—its application would not dispose of all claims. BNPP admits that it would only trim the representative Plaintiffs’ and putative class claims that occurred prior to Apr. 29, 2001. MSJ at 60.

73, 75 (2d. Cir. 2015). Second Circuit law “disfavors a double-bite at the apple,” *id.*, and specifically precludes BNPP’s antics here.

The law of the case or mandate rule “requires a trial court to follow an appellate court’s previous ruling on an issue in the same case.” *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002) (citations omitted). This means that the Court here “is bound by the [appellate] decree as the law of the case and must carry it into execution according to the mandate.” *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895). The lower court “cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal.” *Id.*

In 2019, the Second Circuit expressly held that the “Plaintiffs’ claims are timely under [N.Y. C.P.L.R.] § 215(8)(a),” which provides a one-year limitations period for crime victims. *Kashef II*, 925 F.3d at 63. The mandate rule dictates that this Court cannot reverse either holding from the Second Circuit: that the statute of limitations is governed by N.Y. C.P.L.R. § 215(8)(a) or the express holding that Plaintiffs’ claims were timely filed. Two years after the decision of the Court of Appeals on statute of limitations, this Court unequivocally reiterated the mandate in its February 16, 2021 Opinion and Order on Defendants’ Motion to Dismiss: the “Second Circuit . . . h[eld] that Plaintiffs’ claims were not . . . untimely.” *Kashef IV*, 2021 WL 603290 at *2. Dismissing even a portion of Plaintiffs’ claims as time-barred under Sudanese law would be to give the Second Circuit’s mandate “no legal effect,” *In re Coudert Bros. LLP*, 809 F.3d 94, 99 (2d Cir. 2015).

Further, BNPP waived consideration of other statutes of limitations by failing to raise either the borrowing statute or Sudan’s statute of limitations before the Second Circuit: “The ‘mandate rule’ ordinarily forecloses relitigation of all issues previously waived by the defendant” *United States v. Quintieri*, 306 F.3d at 1225. An issue will be considered waived so long as the party had

“an opportunity and an incentive to raise it . . . on appeal,” *id.* at 1229—both of which BNPP had. Rather than raise all potential statute of limitations with the Second Circuit in 2018, BNPP instead elected to argue under New York law that N.Y. C.P.L.R. § 213(b) and § 215(8)(a) were inapplicable. *See* Brief of Defendants-Appellees at 43-52, *Kashef v. BNP Paribas S.A.*, Case No. 18-1304-cv (2d Cir. Aug. 9, 2018), ECF No. 92 (“BNPP Appellee Brief”).

BNPP’s untimely argument to apply an alternate jurisdiction’s statute of limitations is precisely what the Second Circuit rejected in *Call Center Technologies*, 622 Fed. Appx. at 74. Following remand from the Second Circuit in *Call Center Technologies*, defendant argued for the first time that Texas and not Connecticut law applied. *Id.* The parties had for ten years exclusively relied on Connecticut law in the litigation and defendant claimed “it had no incentive” to argue application of Texas law “prior to the first appeal” because it believed it would win under Connecticut law. *Call Ctr Tech*, 622 Fed. Appx. at 75. The Second Circuit rejected this argument: “[Defendant] had every incentive to put its best case forward prior to the initial appeal—whether under Connecticut law or Texas law. The fact that it now believes Texas law is more favorable than Connecticut law in light of our decision in the initial appeal does not mean that it did not have the incentive and opportunity to pursue the case under Texas law prior to that appeal.” *Id.*

Likewise for BNPP there is no do-over: “[e]specially given the long history of this case and the fact that *for years the parties and the court operated under the premise that* [N.Y. C.P.L.R. § 213(b)] applied, [BNPP’s] failure to raise the choice of law issue in the district court prior to the first appeal served as a waiver of the argument.” *Id.* (emphasis added).⁵²⁶

⁵²⁶ Notably, BNPP has failed at every juncture to raise the specter of Sudanese statute of limitations in motion practice. It failed to raise it: (1) with the Court in its initial 2017 motion to dismiss, *see* ECF No. 69, Mem. of L. of Defs. in support of their Mtn. to Dismiss the Second Amended Complaint, Mar. 21, 2017 at 6-10; (2) during the 2018 Second Circuit appeal, *see* BNPP Appellee Brief at 43-52; (3) on remand in 2019 when the Court provided BNPP with an opportunity to file a supplemental brief to address any instance where “Defendants contend that the Second Circuit’s decision in *Kashef* [II], bears on the remaining grounds to which Defendants already moved [on motion to dismiss]”,

B. Plaintiffs’ claims would still be timely under New York’s borrowing statute because the one-year limitations period under N.Y. C.P.L.R. § 215(8)(a) is shorter than Sudan’s limitations period, which did not even begin to run until 2019.

As an initial matter, Mr. Hassabo has been BNPP’s Sudanese law expert since the beginning of the litigation when he submitted substantive law declarations in support of BNPP’s motion to dismiss Plaintiffs’ claims under Sudanese law. In more than 45 single-spaced pages of submissions arguing that Plaintiffs could state no claims under Sudanese law, Mr. Hassabo made no mention of any argument that Plaintiffs’ claims would be time-barred.⁵²⁷

Putting aside the credibility issue facing BNPP’s expert’s light-bulb moment over seven years into the case on statutes of limitations that have been on the books since the 1980s, BNPP well knows, under New York’s borrowing statute, N.Y. C.P.L.R. § 202, the result is the same as found by the Second Circuit: N.Y. C.P.L.R. § 215(8)(a) governs the limitations period and all claims are timely.⁵²⁸ The borrowing statute first requires a *comparison* between the New York limitations—here, N.Y. C.P.L.R. § 215(8)(a)—and Sudan’s “limitations period . . . fully encumbered with all [of Sudan’s] tolling rules”; the foreign period is only *borrowed* if it is the shorter of the two. *Norex Petroleum Ltd. v. Blavatnik*, 16 N.E.3d 561, 568 (N.Y. 2014). BNPP urges the Court to not only override the Second Circuit but to apply a statute of limitations from Sudan—

see ECF No. 112, Order, Jun. 14, 2019 at 1, ECF No. 117, Suppl. Br. of Defs. in further support of their Mtn. to Dismiss the Second Amended Complaint, Jun. 28, 2019, ECF No. 128, Suppl. Reply Br. of Defs. in further support of their Mtn. to Dismiss the Second Amended Complaint, Aug. 9, 2019; and (4) when it subsequently sought reconsideration of the Court’s February 16, 2021 decision on its motion to dismiss following remand, *see* ECF No. 198, BNPP also filed another motion to dismiss for *forum non conveniens* in 2022—denied by this Court—and again failed to argue that a new Sudanese limitations period applied. *See* ECF No. 262, Mem. of L. in support of Defs.’ Mtn. to Dismiss for Forum Non Conveniens, Dec. 18, 2021.

⁵²⁷ *See* ECF No. 67, Decl. of Tayeb Hassabo, Mar. 21, 2017; ECF No. 86, Reply Decl. of Tayeb Hassabo, Jul. 6, 2017.

⁵²⁸ The Court previously held that “[t]he parties agree that New York’s statutes of limitations will apply to the causes of action in this case because under New York’s borrowing statute, N.Y. C.P.L.R. 202, the Court must apply the shorter statute of limitations period of either New York or the state where the cause of action accrued.” *Kashef I*, 316 F. Supp 3d at 779.

which had and still has a non-functioning legislative and judicial system⁵²⁹—to claims belonging to U.S. citizen and lawful permanent resident plaintiffs. But the borrowing statute requires no such injustice.

Even if it did, Section 159 of Sudan’s Civil Transactions Act 1984 (“CTA”) providing for a fifteen-year limitations period, MSJ at 62,⁵³⁰ is subject to tolling or suspension. *See* Ex. 246, Decl. of Osman Mekki Osman Abdulrahman (“Mekki Decl.”) at ¶¶ 3, 17-62.⁵³¹ As Plaintiffs’ expert points out, the Sudanese limitations period did not even *begin* to run until at least 2019 when the Bashir government was ousted, based on multiple sources of Sudanese law, including the Maliki school of Shari’a and Egyptian jurists’ interpretation of a general rule of suspension from Article 382 of the Egyptian Civil Code⁵³²—due to threat of persecution and retaliation and the Regime’s control over the military and its agents, fraudulent concealment of BNPP’s involvement with the Regime, and a non-functioning judiciary that prevented victims from

⁵²⁹ *See, e.g.*, Ex. 245, United Nations, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General Pursuant to Security Council Resolution 1564 of 18 September 2004, Jan. 25, 2005 at 5 (Restrictive laws “grant[ing] broad powers to the executive have undermined the effectiveness of [Sudan’s] judiciary, and many laws in force contravene basic human rights standards” leaving many victims with “little confidence in the impartiality of the Sudanese justice system” and many victims “have feared reprisals in the event that they resort to the national justice system.”); *see also id.* ¶ 455; Ex. 5, Jok Report at ¶ 63 (“Judges have been purged and replaced with those sympathetic to the [al-Bashir] government”); ECF No. 435-54, Baldo Report at ¶ 128 (The “judiciary is largely subservient to the Government.”) (internal citation omitted).

⁵³⁰ *See also* ECF No. 435-100, Decl. of Tayeb Hassabo dated Sept. 30, 2022 (“Hassabo SOL Decl.”) at ¶ 22.

⁵³¹ BNPP’s brief does not so much as mention Mr. Mekki’s report (served on January 6, 2023) or address at all the suspension of Sudanese limitation periods. BNPP should therefore not be permitted to do so for the first time on reply. *See, e.g., Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993) (“Arguments may not be made for the first time in a reply brief.”)

⁵³² Shari’a, principally the Maliki school of jurisprudence, is Sudan’s “main source” of legislation and no legislation can contradict Shari’a. *See* ECF No. 435-100, Hassabo SOL Decl. ¶ 16; Ex. 246, Mekki Decl. at ¶ 18. Sudanese courts similarly look to Egyptian jurists’ interpretation of the Egyptian civil code to aid in interpretation of the CTA. *See* ECF No. 435-100, Hassabo SOL Decl. at ¶ 21; Ex. 246, Mekki Decl. at ¶¶ 26-37. Where, as here, there is no legislative text addressing suspension or interruption of the limitation periods, “the courts shall apply Islamic Shari’a . . .” Ex. 246, Mekki Decl. at ¶ 22 (quoting Civil Procedures Act of 1983, Section 6(2)); *see also id.* ¶ 21 (discussing for example, that the CTA refers to general principles of limitation including “interruption, cessation . . .” in Section 652 that do not exist in Act). BNPP’s Sudanese law expert bases his entire interpretation on Section 159 of the CTA being the “legislative text” and the fact that solely in his opinion, no Sudanese court has cited Egyptian cases in the tort context. *See generally* ECF No. 101, SOL Reply Decl. of Tayeb Hassabo dated Mar. 2, 2023. But the absence of court precedent (especially in Sudan) is not authority.

bringing suit in Sudan. *See* Ex. 246, Mekki Decl. at ¶¶ 3(a), 17-59.⁵³³ Tolling under Sudanese law is consistent with U.S. tolling when civil war or repressive authoritarian regimes constitute extraordinary circumstances. *See, e.g., Warfaa v. Ali*, 1 F. 4th 289, 295 (4th Cir. 2021) (tolling justified until claimants had ability to gather evidence and pursue claims without reprisal because “regimes committing egregious human rights violations don’t ordinarily foster legal systems in which those abuses can be redressed”).⁵³⁴

Thus, since N.Y. C.P.L.R. § 215(8)(a) limits tolling to one year from BNPP’s judgment of conviction—May 1, 2015, *see Kashef II*, 925 F.3d at 63, and Sudan’s statute of limitations did not even *begin* to run until at least 2019—three years after this lawsuit was filed, *see* Ex. 246, Mekki Decl. at ¶ 59—the borrowing statute mandates applying N.Y. C.P.L.R. § 215(8)(a), under which the Second Circuit has already ruled Plaintiffs’ claims are timely.

V. BNPP is not entitled to summary judgment as to the measure of damages.

BNPP’s effort to obtain summary judgment on certain measures of damages is misplaced. What BNPP describes as “Plaintiffs’ *claims* for punitive damages, disgorgement and property damages” are not actually “claims” at all. MSJ at 63 (emphasis added). Rule 56 provides for summary judgment as to “claims,” not particular measures of damage. Fed. R. Civ. P. 56. “[T]he very concept of defendants’ proposal—partial summary judgment as to a particular remedy—is outside the contemplation of the Federal Rules.” *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 517 F. Supp. 2d 662, 666 (S.D.N.Y. 2007); *see also id.* (“Punitive damages are

⁵³³ The same result is alternately reached because under Sudanese law, where the wrongful acts of the Bashir regime created both criminal and civil liability, the civil limitation does not expire until the criminal limitation lapses—again at least until 2019 with the ouster of the Bashir regime. Ex. 246, Mekki Decl. at ¶¶ 3(b), 31, 60.

⁵³⁴ “[E]very court that has considered the question of whether a civil war and a repressive authoritarian regime constitute ‘extraordinary circumstances’ has answered in the affirmative.” *Jean v. Dorelien*, 431 F.3d 776, 780 (11th Cir. 2005) (pattern and practice of torture, murder, intimidation, and reprisals during Haitian military regime qualified as “extraordinary circumstances” to toll statute of limitations); *see also Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 135-36 (E.D.N.Y. 2000) (claims tolled against French financial institutions who allegedly participated in scheme to expropriate assets from Jewish customers during Nazi occupation and withhold assets from descendants).

not a ‘claim’ and thus summary judgment is an ill-suited procedural vehicle.”); *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 568 F. Supp. 2d 376, 380 (S.D.N.Y. 2008) (“The problem with defendants’ argument is that lost profits are merely a way of measuring compensatory damages—there is no such thing as a ‘lost profit claim.’”).⁵³⁵

The Court should reject BNPP’s arguments for this reason alone. But as described below, BNPP is wrong on the merits as well.⁵³⁶

A. Plaintiffs can recover for their property damage.

BNPP claims that Plaintiffs’ lack of documentary evidence of property losses “entitle[s] it] to summary judgment on the issue of Plaintiffs’ alleged damages to property.” MSJ at 66. Plaintiffs were forcibly displaced from Sudan by the GOS forces that stole their homes, farms, land, businesses, and vehicles, for which they now seek damages. As with any victims fleeing genocide, it should be unsurprising that they did not meticulously gather property documents.⁵³⁷ Plaintiffs are not required to have *documents* in order to defeat summary judgment as to *property* damage. *See Holt v. KMI-Cont’l, Inc.*, 95 F.3d 123, 129 (2d Cir. 1996) (“Summary judgment is improper” when “there is any evidence in the record from which a reasonable inference could be drawn in favor of the non-moving party on a material issue of fact”); Fed. R. Civ. P. 26(1)(A), Notes of Advisory Committee on Rules—1993 Amendment (logically, the “obligation [to make documents

⁵³⁵ BNPP’s arguments, to the extent they go to how the jury will be instructed on damages or what evidence Plaintiffs may introduce at trial, are more properly the subject of motions *in limine*, which are premature at this time. *MTBE*, 517 F. Supp. 2d at 666-67.

⁵³⁶ BNPP spends a page and a half urging summary judgment on what they describe as the “remedy” of disgorgement. MSJ at 64-65. But as they note, Plaintiffs are not *seeking* damages for disgorgement. *Id.* There is no reason for the Court to grant summary judgment as to a measure of damages – not even a claim – that Plaintiffs are not pursuing.

⁵³⁷ *See, e.g.*, Ex. 134, John Doe Dep. at 155:15-17 (“Q. Do you have papers for this land in Soba? A. All my paper, all my documents, I left them in Sudan when I left.”), 158:12-15 (“So because when I left Sudan, I left everything. It was just only the clothing I had on my body. And then I did not return back until like -- like 17 years after that. So I left everything when I was leaving Sudan.”)

available for inspection] applies only with respect to documents then *reasonably available*”) (emphasis added).

First, Plaintiffs’ property damages disclosures comply with Rule 26(a). *See Cheng v. Guo*, 20-cv-5678-KPF, 2022 WL 4237079, *8-9 (S.D.N.Y. Sept. 13, 2022) (Plaintiff’s disclosure of “the nature of his claimed damages” satisfied Rule 26(a) and Defendant not “immunize[d] . . . from liability for damages” on summary judgment); *King v. Strawberry Park Resort Campground, Inc.*, 20-cv-01905-JCH, 2023 WL 2265948, *9-10 (D. Conn. Feb. 28, 2023) (same); *contra* MSJ at 65-66.⁵³⁸ Plaintiffs, who have every right to present testimony at trial on their personal loss of property, provided Supplemental Initial Disclosures addressing in ten pages the claimed property damages for each Plaintiff broken down by: agricultural and urban land (including location, acreage, and value per acre); structures (including location, number and type of rooms, and value); businesses; vehicles (by brand and value); livestock (including type, number, and value per animal); and miscellaneous (jewelry). *See* Ex. 249, Pls.’ Suppl. Initial Discl. Pursuant to Fed. R. Civ. P. 26(a)(1), Dec. 21, 2022 (“Pls.’ Suppl. Initial Discl.”) at 5-16. Rule 26(a) requires a party to produce documents in its possession without being asked; the rule does not require production of documents that do not exist.

Similarly, BNPP fails to mention that it had the opportunity to and actually did inquire at deposition about Plaintiffs’ property losses, and their testimony is consistent with Plaintiffs’ Supplemental Initial Disclosures. *See, e.g.*, Ex. 134, John Doe Dep. at *e.g.*, 153:3-158:23 (discussing multiple homes, land, and multiple cars he owned); Ex. 136, Turjuman Adam Dep. at

⁵³⁸ The cases BNPP relies on to say that Plaintiffs’ disclosures are nothing more than “mere speculation or conjecture” are inapposite as *Harlen Associates v. Village of Mineola*, 273 F.3d 494, 499 (2d Cir. 2001), does not pertain to damages, and *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 295-96 (2d Cir. 2006), is not a summary judgment case. Moreover, in *Design Strategy*, the plaintiff failed to produce business documents related to its calculation of lost profits – the case did not involve, as this one does, the lack of any existing documentation at all.

44:23-25, 123:25-125:24 (discussing multiple homes, multiple cars, and a motorcycle he owned); Ex. 142, Nicolas Lukudu Dep. at 37:7-13, 134:6-136:1 (discussing home he owned).⁵³⁹

Second, Plaintiffs can and will provide their testimonial evidence of property damage at trial consistent with the Initial Disclosures. Defendants have the right to test the credibility Plaintiffs' testimony on cross-examination, including by questioning Plaintiffs on any lack of supporting documentation. *See, e.g., Martin v. Shell Oil Co.*, 180 F. Supp. 2d 313, 322-23 (D. Conn. 2002) ("[P]laintiffs may testify about the effect of different factors on their own property values and other property damage."); *see also* Fed. R. Evid. 701 (lay witnesses); *id.* R. 602 (personal knowledge); R. 401, 402 (relevance). Should BNPP wish to seek preclusion of Plaintiffs' property evidence, the time do to so is at trial.⁵⁴⁰

B. Plaintiffs are entitled to seek punitive damages.

With respect to punitive damages, New York's choice of law analysis applies the doctrine of *dépeçage*, which makes the punitive damage analysis "distinct from the analysis for compensatory damages." *Nat'l Jewish Democratic Council v. Adelson*, 417 F. Supp. 3d 416, 426 (S.D.N.Y. 2019). Because punitive damages serve a wholly different purpose than compensatory damages, "the application of different laws to these different issues may be appropriate." *In re Air Crash Near Clarence Ctr., NY, on Feb. 12, 2009*, 798 F. Supp. 2d 481, 488 n.6 (W.D.N.Y. 2011) (citation and quotation omitted).

⁵³⁹ BNPP tries to prove too much with *Philadelphia Indemnity Insurance Co. v. Barker*, 1:19-cv-1456, 2021 WL 1840592, at *3-5 (N.D.N.Y. May 7, 2021); contrary to its assertion, the summary judgment motion as to property damages in that case was denied *without* supporting expert reports. In *Maier-Schule GMC, Inc. v. General Motors Corp.*, 154 F.R.D. 47, 60 (W.D.N.Y. 1994), summary judgment as to property damages was denied for reasons not present here including that submitted information "purported to estimate damages using improper periods of time" and also "included impermissible elements of damages." Equally uninformative is BNPP's reliance on *Palmieri v. Allstate Insurance Co.*, 445 F.3d 179 (2d Cir. 2006), where the court in an insurance action found that checks for home repairs were sufficient evidence to grant summary judgment on property damages—here no checks exist for the cost of repairs to Plaintiffs' homes, farms, fields, vehicles, businesses, and livestock that were either razed or stolen by the GOS.

⁵⁴⁰ BNPP appears to recognize this itself. *See* MSJ at 66 n.29 (reserving right to seek an order precluding the introduction of new evidence).

Applying the New York choice of law analysis, New York permits punitive damages and Swiss law does not, *see* MSJ at 64; therefore there is a conflict of laws on this issue. *See, e.g., Licci v. Lebanese Canadian Bank, SAL*, 672 F.3d 155, 157 (2d Cir. 2012). In order to resolve the conflict, the Court must conduct a co-called “interest analysis” which examines “the purpose of the law in conflict . . . and identif[ies] the jurisdiction in which the significant contacts relating to the law occurred.” *In re Air Crash Near Clarence Center*, 798 F. Supp. 2d at 488. In order to determine which state has the prevailing interest, courts “look only to those facts or contacts that relate to the purpose of the particular laws in conflict.” The purpose of punitive damages is simple: “deterrence and retribution,” *State Farm Mut. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003), and therefore require a “defendant-focused inquiry.” *Golden v. Wyeth, Inc.*, 04-CV-2841-JS, 2013 WL 4500879, at *3 (E.D.N.Y. Aug. 20, 2013). In New York, punitive damages are available for tort claims when “the defendant’s wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime.” *Prozeralik v. Cap. Cities Commc’ns, Inc.*, 626 N.E.2d 34, 41-42 (N.Y. 1993) (quoting Prosser and Keeton, Torts § 2, at 9 [5th ed. 1984]).

Here, New York has the stronger interest. The State of New York has already articulated its compelling interest in deterring its financial market from being abused to facilitate genocide. When Governor Cuomo announced BNPP’s guilty plea in 2014, he stated: “New York State will not allow companies to break the law, especially when they put our national security at risk This enforcement action should serve as a warning to any company that provides financial support to global terrorism and *enables human rights atrocities*”⁵⁴¹

⁵⁴¹ Ex. 186, N.Y. Dep’t Fin. Servs., Press Release, “Cuomo Administration Announces BNP Paribas To Pay \$8.9 Billion, Including \$2.24 Billion To NYDFS, Terminate Senior Executives, Restrict U.S. Dollar Clearing Operations For Violations Of Law,” Jun. 30, 2014 (Benjamin M. Lawsky, Superintendent of Financial Services, added, “BNPP employees – with the knowledge of multiple senior executives – engaged in a long-standing scheme that illegally funneled money to countries involved in terrorism and genocide. As a civil regulator, we are taking action today not only to penalize the bank, but also expose and sanction individual BNPP employees for wrongdoing. In order to deter future offenses, it is important to remember that banks do not commit misconduct – bankers do.”)

Yet nine years later, BNPP disputes it had an “illegal relationship” with Sudan, MSJ at 47, and renounces its guilty plea admission that it was responsible for the criminal conduct of its Swiss subsidiary, *id.* at 17. Clearly, BNPP still has not accepted that what it did was wrong. Since the criminal fines were apparently not a strong enough message, New York has a distinct interest in enhancing their deterrent effect through punitive damages. Indeed, New York has an interest in ensuring application of its punitive damages provision in this action because it is BNPP’s New York-based criminal conduct that contributed to its U.S. sanctions violations, conviction, unprecedented financial penalty, and Plaintiffs’ civil lawsuit. *See Kashef II*, 925 F.3d at 55-57. Plaintiffs’ causes of action “arise out of the same occurrence as the criminal prosecution” in New York. *Id.* at 62-63. The Second Circuit further affirmed New York’s compelling interest in providing a remedy for victims of New York and federal crimes that occurred in New York when it found that Plaintiffs qualify as victims under § 215(8)(a), which explicitly provides for a civil action when it arises out of the same occurrence as a criminal prosecution. *See Kashef II*, 925 F.3d at 62.⁵⁴²

In addition, discovery has revealed the acts and omissions of BNPP’s New York-based compliance chief, Stephen Strombelline, who was ordered terminated by the New York DFS as one of the BNPP Group employees responsible for the sanctions-evasion scheme.⁵⁴³ As explained in further detail earlier in this brief, *see supra* Section III, Plaintiffs’ expert Barry Koch opined that BNPP’s compliance program, of which Mr. Strombelline was a key node, was “defective by design”⁵⁴⁴ and Mr. Strombelline was [REDACTED]

⁵⁴² Plaintiffs acknowledge that Judge Nathan previously held that Switzerland had a greater interest than New York in applying its substantive law to Plaintiffs’ claims. *Kashef III*, 442 F. Supp. 3d at 818-21. However, Judge Nathan did not address punitive damages in particular, which as noted above are not necessarily governed by the same law as substantive claims.

⁵⁴³ Ex. 186, DFS Press Release - Cuomo Administration Announces BNP Paribas to Pay 8.9 Billion (June 30, 2014).

⁵⁴⁴ ECF No. 435-83, Koch Report at ¶ 246.

[REDACTED]

[REDACTED] *Id.* at ¶ 182. Mr. Strombelline and BNPP’s conduct in New York is akin to conduct the court credited in part with application of New York punitive damages law in *In re Air Crash Near Clarence Center New York, on February 12, 2009* where plaintiffs alleged defendants “recklessly operated [a plane] in New York with deficient, unfit pilots who lacked fundamental knowledge and ability to safely operate the [] aircraft,” even though “relevant corporate decisions may have been made in Virginia.” 798 F. Supp. 2d at 490-91. BNPP’s New York-based malfeasance was tragically even worse.

Accordingly, New York has the greater interest in having its punitive damages laws apply. But as explained above, there is no punitive damages “claim” and summary judgment is therefore inappropriate on this issue. The Court can decide how to instruct the jury on damages at the time of trial.

CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court deny Defendants’ Motion for Summary Judgement.

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ANNEX A



Figure 1: USAID Oil Gas and Concession Holders Map, c. 2001; see Ex. 253.

I. Isaac Ali

1. Plaintiff Isaac Ali (“Mr. Ali”) is a U.S. citizen born in 1970 in El Obeid in Kordofan, Sudan.¹ He is a member of the Bongo tribe, an African ethnic group traditionally from southern Sudan and which was racially targeted by the Government of Sudan (“GOS”).² His family moved to the GOS-held cities of Wau and Juba in southern Sudan.³

2. Wau and Juba were of strategic importance to the Regime as they were populous cities and administrative capitals in Sudan’s oil-producing region.⁴

3. The Southern Command of the Sudan Armed Forces (“SAF”) was based in Juba.⁵ Sudan’s National Intelligence and Security Service (“NISS”) and military intelligence operated in southern Sudan, which includes Wau and Juba.⁶ Sudan’s national security services carried out surveillance, detention, and persecution of perceived opponents of the Regime using a consistent, nationwide *modus operandi*: “Armed National Security agents, sometimes in uniform, sometimes in plain clothes, would conduct home raids, load victims into vehicles, blindfold them, and transport them to detention centers—sometimes publicly known security offices or police stations, sometimes unmarked, clandestine “ghost houses”—where they would be detained without charge, interrogated and frequently subjected to various forms of physical or mental torture.”⁷ The NISS and military intelligence forces in southern Sudan operated under a chain of command leading up to Sudan’s National Security Council and President Bashir⁸ and were funded by the Government of Sudan.⁹

4. Mr. Ali’s father was a prominent English professor who became the director of the Ministry of Education’s regional department in Wau.¹⁰ Mr. Ali paternal uncle was a high-ranking brigadier general in SAF who had ambitions of running for President of Sudan.¹¹ In 1998, he was falsely accused of plotting a coup against the Bashir Regime and was killed.¹² The GOS routinely accused Christians and non-Arabs from southern Sudan to be working with rebels simply on the

¹ Exhibit 137 to Decl. of Scott Gilmore in support of Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment (“Ex. 137”) (hereinafter “Ex.”), Deposition of Isaac Ali (“Ali Dep.”) at 9:7-8; 29:9-11.

² Ex. 137, Ali Dep. at 37:22–38:16; Ex. 54 to Decl. of Charity E. Lee, ECF No. 435-54, Expert Report of Dr. Suliman Baldo (“Baldo Report”), dated September 30, 2022 ¶ 108 (“The regime used divide to rule strategies that targeted ethnic and religious minorities in South Sudan, Nuba Mountains, Blue Nile, and Darfur regions . . .”).

³ Ex. 137, Ali Dep. at 30:6-31:12.

⁴ See Fig. 1; ECF No. 435-54, Baldo Report ¶¶ 53, 55, 168; Ex. 93 to Decl. of Charity E. Lee, ECF No. 435-93, Expert Report of Dr. Harry Verhoeven (“Verhoeven Report”), dated September 30, 2022, at 33–34.

⁵ ECF No. 435-54, Baldo Report ¶ 53.

⁶ *Id.* ¶¶ 5, 63.

⁷ *Id.* ¶ 125.

⁸ *Id.* ¶¶ 42-43.

⁹ *Id.* ¶¶ 108, 147, 166; ECF No. 435-93, Verhoeven Report at 27.

¹⁰ Ex. 137, Ali Dep. at 34:11-24.

¹¹ *Id.* at 52:24–53:2; Ex. 97 to Decl. of Charity E. Lee, ECF No. 435-97, Ex. 7, Expert Report of Dr. Allen Keller & Dr. Barry Rosenfeld (“Keller & Rosenfeld Report”), September 30, 2022, Appendix C6 (“Ali App’x”) at 2.

¹² Ex. 137, Ali Dep. at 54:6–61:2.

basis of their ethnicity or religion.¹³ The GOS declared a jihad (holy war) on the largely Christian southern portion of Sudan.¹⁴

5. After his uncle was killed, uniformed military intelligence agents began following Mr. Ali's father and coming to their home in Wau. On one occasion, they attempted to break into the home and were confronted by his father's personal security detail, who guarded him as a local government official.¹⁵

6. One evening in November 1998, six armed agents of the GOS kicked in the door of Mr. Ali's home in Wau.¹⁶ Five were dressed in military uniforms, with SAF hats and insignias, and carried rifles.¹⁷ The sixth wore civilian clothes and was armed with a handgun.¹⁸ His father's security detail, who normally were present every day, suspiciously did not come to guard the house that day.¹⁹ Mr. Ali went to hide in his room, pretending to be asleep. From there, he heard them fire two gunshots, killing his father.²⁰ Mr. Ali hid in his bedroom until the morning. When he came out from hiding, he learned that his father had been killed.²¹ His family reported the killing to law enforcement, but were informed that the police could not "open or investigate this case."²² They even spoke to the Governor, who told them that "the case was directly related to the rebel status that time, and . . . when it comes to rebel, it is out of his control."²³ His family was not even allowed to attend funeral rites.²⁴ Sudanese military forces continued to monitor Mr. Ali and his family after his father was murdered, so Mr. Ali's mother decided to send him and his sister to Khartoum to live with their aunt in January 1999.²⁵

7. In January 2000, Mr. Ali was pulled over in Khartoum by Toyota truck bearing the military intelligence logo "LFC" in Arabic. Three intelligence agents dressed in identical black Sudanese suits and carrying handguns told him to get into their car and then blindfolded him, telling him they didn't want him to see where they were taking him. Once they arrived at their destination, the agents led him into a building, removed his blindfold, and pushed him into a large room filled with approximately 16 people.²⁶

8. Two days after his imprisonment, he was taken to an office for interrogation. His interrogators were armed with handguns and wore the same Sudanese suits as the military intelligence agents who initially arrested him. They questioned him about his relationship with his father and uncle and stated they were killed because they were rebels. They accused him of having

¹³ ECF No. 435-54, Baldo Report ¶¶ 145–46.

¹⁴ *Id.* ¶ 165.

¹⁵ Ex. 137, Ali Dep. at 61:11–65:8.

¹⁶ *Id.* at 65:9-16; 66:22–67:13.

¹⁷ *Id.* at 67:5–69:14.

¹⁸ *Id.*

¹⁹ *Id.* at 73:15-21.

²⁰ *Id.*

²¹ *Id.* at 71:16–72:1.

²² *Id.* at 75:5-13.

²³ *Id.* at 75:24–76:20.

²⁴ Ex. 7, Ali App'x at 2.

²⁵ Ex. 137, Ali Dep. at 75:21–76:10.

²⁶ *Id.* at 82:19–85:24.

a relationship with rebels and demanded that he give them clues.²⁷ The interrogations continued two or three times a week for three and each time he was tortured. His torturers whipped him all over his body with a rubber hose, placed bags over his face filled with chili peppers, beat him the butts of AK47 rifles, while demanding that he confess to being a “revolutionary” or a rebel.²⁸ Mr. Ali was told that if he did not confess, “they would go after my family.”²⁹ They used racial insults and called him an “infidel” because he is Catholic.³⁰ At one point, they stabbed him in his thigh with a bayonet attached to a machine gun.³¹

9. After approximately three months, Mr. Ali was released. He was blindfolded and dropped off at an unfamiliar location. The military intelligence agents gave him a paper stating that he was required to report to an office once a week. The GOS frequently imposed post-release conditions, including having to report back to security forces and requests to inform on neighbors, relatives, and work colleagues.³²

10. For the next four or five weeks, Mr. Ali reported to the security office as instructed. There, he faced racial and religious insults and fresh demands that he confess to being “affiliated with the rebellions.”³³ On one occasion when he reported to the office, an agent met with him and looked at his file. He asked if he was the son of his father and then told him that “the outcome . . . would not be good.” He asked Mr. Ali to call him when he got home. When Mr. Ali called, the agent told Mr. Ali that his “end will be similar to your father and uncle, and you better leave the country.”³⁴

11. There is no record evidence that any actor other than the Sudanese government made arrests, maintained detention centers, accused detainees of being rebels, or required released detainees to report weekly to intelligence offices for further questioning.

12. In January 2001, Mr. Ali fled Sudan to Egypt with his wife and two children., fearing for his life:³⁵ “Q: At the time you left Sudan, what did you think would have happened if you had stayed rather than left at that time? A: What I can say in short is that I would have not been on earth.”³⁶

13. Mr. Ali was admitted to the United States as a refugee on January 28, 2004 following an agency determination that he “fled or was displaced” from Sudan.³⁷ U.S. immigration authorities made the explicit finding that if Mr. Ali “were to return to Sudan, his life will be at risk for further security harassment amounting to persecution” and that Mr. Ali “qualified for refugee

²⁷ *Id.* at 88:19–89:21.

²⁸ *Id.* at 91:7–93:25.

²⁹ Ex. 7, Ali App’x at 2.

³⁰ ECF No. 137, Ali Dep. at 94:1-6.

³¹ *Id.* at 99:3–100:8.

³² Ex. 5, Expert Report of Dr. Jok Madut Jok (“Jok Report”), dated September 30, 2022 ¶ 61; ECF No. 435-54, Baldo Report ¶¶ 17–18, 154.

³³ Ex. 137, Ali Dep. at 97:2–98:16.

³⁴ *Id.* at 102:24–103:22.

³⁵ *Id.* at 102:4-5, 104:8-11.

³⁶ *Id.* at 126:17-21.

³⁷ Ex. 199, PLA-001228 at 1229–30.

status as falls under criteria set forth under Article 6(B) of the UNHCR Statute owing to a well-founded fear of persecution on the ground of imputed political opinion.”³⁸

14. Mr. Ali continues to suffer physical and psychological injuries, including but not limited to frequent intrusive memories of the traumatic experiences and symptoms consistent with PTSD and chronic depression, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.³⁹

II. Halima Samuel Guma Khalifa

15. Plaintiff Halima Samuel Guma Khalifa (“Ms. Khalifa”) is a U.S. citizen born in 1969 in Maridi, close to Juba.⁴⁰ She is of the Baka ethnic group, an African ethnic group traditionally from southern Sudan and which was racially targeted by the GOS.⁴¹

16. The Southern Command of the SAF was based in Juba, the capital of what is now South Sudan,⁴² and Sudan’s National Intelligence and Security Service (“NISS”) and military intelligence operated in southern Sudan, which includes Wau and Juba.⁴³ The Sudanese air force operated an airport in Juba, and Juba Air Cargo confirmed to the UN that a company leased aircraft for Sudanese Armed Forces flights.⁴⁴ Ms. Khalifa testified that while she was in Juba, she witnessed many bombings from aircraft, and that the army was free to shoot civilians on the streets, and “[t]here is nobody” who shot back at the SAF.⁴⁵

17. Around 1998, GOS soldiers with “big guns” attacked people in Maridi, forcing Ms. Khalifa, her husband, her children, and her mother to flee to Zaire.⁴⁶ After three months, they returned to Sudan, moving to the Jabel Awulia internally displaced persons (“IDP”) camp near Khartoum.⁴⁷ Ms. Khalifa and her husband built a home in Jabel Awulia, and her husband supported her by working on a remote farm for months at a time.⁴⁸

18. Around 1999, the GOS military bulldozed homes in the camp, including Ms. Khalifa’s. Ms. Khalifa witnessed men in military uniforms, police uniforms, and armed men in plain dress who she observed as military personnel involved in demolishing the homes in Jebel

³⁸ *Id.* at 1244.

³⁹ Ex. 7, Ali App’x at 6.

⁴⁰ Ex. 141, Deposition of Halima Samuel Guma Khalifa (“Khalifa Dep.”), dated June 2, 2022, at 8:20–9:16, 31:20–32:4; Ex. 7, Keller & Rosenfeld Report, Appendix C13 (“Khalifa App’x”) at 2.

⁴¹ Ex. 141, Khalifa Dep. at 37:22–38:16; ECF No. 435-54, Baldo Report ¶ 108 (“The regime used divide to rule strategies that targeted ethnic and religious minorities in South Sudan, Nuba Mountains, Blue Nile, and Darfur regions . . .”).

⁴² ECF No. 435-54, Baldo Report ¶ 53; *see* Fig. 1.

⁴³ ECF No. 435-54, Baldo Report ¶¶ 5, 63; *see supra* ¶ 3 & notes 5–9.

⁴⁴ ECF No. 435-54, Baldo Report ¶ 55; Ex. 52 to Decl. of Charity E. Lee, ECF No. 435-52, Expert Report of Kathi Austin (“Austin Report”), dated September 30, 2022 ¶ 158.

⁴⁵ Ex. 141, Khalifa Dep. at 132:7–133:6.

⁴⁶ *Id.* at 34:8–35:15.

⁴⁷ *Id.* at 42:5-22.

⁴⁸ *Id.* at 43:20-44:3; Ex. 7, Khalifa App’x at 2.

Awulia: “It was the army, the police, the security who came with guns. And they came with a tractor, and they demolished the homes.”⁴⁹ All of the men involved were armed.⁵⁰

19. Ms. Khalifa was taken from the scene in a government car, along with other women, to a military office.⁵¹ She was detained in that office for a day, during which she was beaten with a leather horse whip: “When the homes were broken down, we – when we were crying, the – the military came and took us to someplace and started hitting us, whipping us with the whip so that we would not say anything.”⁵² The pain lasted for about a week.⁵³

20. After her detention, Ms. Khalifa moved to her mother’s home in Kalakala, also in Khartoum State.⁵⁴ After 10 days, she left her children with her mother, and went to Gedaref, a city southeast of Khartoum State, to find her husband.⁵⁵ She was told by someone there that her husband to was taken somewhere, there were gunshots, and nobody returned.⁵⁶ When she asked to speak with government military personnel about her husband, she was informed that her husband was a rebel; four security and army personnel then hurt her, “kicking and beating any part of your body with the end of the gun – the bottom of the gun,” and warned her not to return.”⁵⁷ The military men in Gedaref wore green military uniforms and boots and carried weapons.⁵⁸ Ms. Khalifa has not heard from or seen her husband to this day, and continues to experience considerable pain in her right abdomen from the assault.⁵⁹

21. When she left towards Khartoum, two of the government personnel followed her.⁶⁰ The night after Ms. Khalifa returned home to her children, four men in the military uniforms broke into her home, and beat her, her mother, and her children.⁶¹ The men raped Ms. Khalifa and Ms. Khalifa’s mother, each multiple times, in front of Ms. Khalifa’s son.⁶² GOS forces often committed rape in front of family members as a way of showing force and dominance.⁶³ They shoved hot peppers in her genitals, and her legs were scarred from their use of “clippers” to hold and twist her legs.⁶⁴

22. Ms. Khalifa’s head was covered in a sack filled with red pepper and she was taken to a prison-like complex in Jabel Awulia, about an hour away from Kalakala.⁶⁵ While putting her in the vehicle, the sack briefly fell off her head and she was able to see that it was a military

⁴⁹ Ex. 141, Khalifa Dep. at 44:11-15, 60:5-62-14.

⁵⁰ *Id.* at 62:10-14.

⁵¹ *Id.* at 64:17-65:1.

⁵² *Id.* at 55:3-13, 65:13-19; Ex. 7, Khalifa App’x at 3.

⁵³ Ex. 141, Khalifa Dep. at 66:15-21.

⁵⁴ *Id.* at 66:7-14.

⁵⁵ *Id.* at 66:22-67:18.

⁵⁶ *Id.* at 66:22-67:18.

⁵⁷ Ex. 7, Khalifa App’x at 3;.

⁵⁸ Ex. 141, Khalifa Dep. at 78:5-11.

⁵⁹ Ex. 7, Khalifa App’x at 3.

⁶⁰ Ex. 141, Khalifa Dep. at 82:20–83:9.

⁶¹ *Id.* at 66:22–67:18, 75:15–76:14.

⁶² *Id.* at 75:15-76:14.

⁶³ Ex. 5, Jok Report ¶ 150 & n.74.

⁶⁴ Ex. 141, Khalifa Dep. at 83:20–84:4; Ex. 7, Khalifa App’x at 3.

⁶⁵ Ex. 141, Khalifa Dep. at 87:2–88:10.

vehicle.⁶⁶ Once inside the office, the men removed the sack from Ms. Khalifa's head, pulled her nails out with pliers, and put clamps on her feet to try to force a false confession.⁶⁷ Her captors asked about why she had gone to Gedaref where her husband had been.⁶⁸ Targeting the family members of rebels and suspected rebels was a "well-documented human rights abuse[]" committed by the GOS after 1997, including NISS and other security organs "often arresting, assaulting and raping wives, adult children, or brothers and sisters of the suspect."⁶⁹

23. She was detained there for four days, beaten, whipped, kicked, hit with the back of the gun, and raped by multiple men.⁷⁰ When they released her, they covered her head and pushed her onto a road, instructing her not to speak with anyone about what she had experienced.⁷¹ Her legs were broken and she was unable to walk for a month.⁷² She continues to have pain from her injuries.⁷³

24. After a month of recovery, Ms. Khalifa's neighbor helped her get a passport and she fled to Egypt.⁷⁴

25. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over and near Khartoum State in 1999 and later; disappeared people; detained individuals in this time, place, or manner; accused people of being rebels; committed acts of torture and sexual assault on civilians; or was uniformed as described by Ms. Khalifa.

26. In 2005, Ms. Khalifa came to the United States and was admitted as a refugee, following an agency determination that she had "fled or was displaced" from Sudan.⁷⁵

27. Ms. Khalifa continues to suffer physical and psychological symptoms, including but not limited to frequent intrusive memories of the traumatic experiences and symptoms consistent with PTSD, chronic depression and generalized anxiety, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.⁷⁶

III. Turjuman Ramadan Adam

28. Plaintiff Turjuman Ramadan Adam ("Turjuman") is a U.S. citizen born in 1959 in Wau, the capital of Western Bahr El Ghazal state in what is now South Sudan.⁷⁷ Mr. Adam's father's tribe was known as the Kresh, an indigenous African tribe from South Sudan targeted by

⁶⁶ *Id.*

⁶⁷ *Id.* at 89:6-11; Ex. 7, Khalifa App'x at 3.

⁶⁸ Ex. 141, Khalifa Dep. at 90:16-91:3.

⁶⁹ Ex. 5, Jok Report ¶¶ 66-67.

⁷⁰ Ex. 141, Khalifa Dep. at 88:16-22, 89:21-90:2, 92:16-93:2; Ex. 7, Khalifa App'x at 3.

⁷¹ Ex. 141, Khalifa Dep. at 93:8-12; Ex. 7, Khalifa App'x at 3.

⁷² Ex. 141, Khalifa Dep. at 94:20-24.

⁷³ *Id.* at 95:6-8.

⁷⁴ *Id.* at 95:19-96:1.

⁷⁵ Ex. 202, PLA-001407 at 118-19.

⁷⁶ Ex. 7, Khalifa App'x at 8.

⁷⁷ Ex. 136, Deposition of Turjuman Ramadan Adam ("Adam Dep."), dated July 14, 2022, at 8:12-18; 56:3-6.

the GOS,⁷⁸ but Mr. Adam does not consider himself to be a member of a particular tribe, just part of “the people of Sudan.”⁷⁹ Mr. Adam and his family are Muslim, but he has Christian cousins “and we love each other.”⁸⁰ He lived in Wau until completing his high school education.

29. In 1983, Mr. Adam moved to Khartoum to attend the Islamic University of Omdurman.⁸¹ He obtained a bachelor’s degree in law in 1987, and worked as a teacher for two years in Atbara in the Northern State.⁸² Mr. Adam passed the bar exam in Khartoum in 1989, interned with a well-respected Sudanese law office, and applied for the judiciary.⁸³ He began as a judge in family and civil courts, but after two years was appointed to a “special court” used to prosecute political dissidents.⁸⁴ Rather than “work[ing] for the dictators to oppress people,” Mr. Adam instead resigned; his resignation was eventually accepted and signed for by President al-Bashir himself.⁸⁵

30. Upon returning to private practice in Wau, Mr. Adam opened his own firm and became a successful lawyer known for suing the GOS in particular, with multiple homes in Wau and Khartoum.⁸⁶ Mr. Adam was also involved with reporting on the GOS’s human rights abuses, and eventually was branded an opponent of the government for resigning from the judiciary.⁸⁷ The GOS frequently branded activists, lawyers, and others seeking a more liberal society as opponents of the regime, subjected to various degrees of monitoring, detention, torture, and death.⁸⁸

31. In 1998, Mr. Adam refused an invitation from a Wau politician due to time constraints and was arrested by intelligence services men armed with Kalashnikov rifles on the false allegation of being an opponent of the government; he managed to get word to the local governor, who happened to be a blood relative and secured Mr. Adam’s release.⁸⁹

32. In 2000, following a petition on behalf of a woman whose home was being confiscated by the GOS, Mr. Adam was arrested again, this time held for several days during which he was beaten and abused to the point of unconsciousness and requiring stitches in his face.⁹⁰ He was specifically warned by army generals (including one named “Abdalla”) to stop reporting on the GOS’s secret killing of its suspected political enemies.⁹¹ Mr. Adam’s life was spared due to his connection to the governor and local recognition.⁹² Mr. Adam was arrested again in 2002 and

⁷⁸ ECF No. 435-54, Baldo Report ¶ 108 (“The regime used divide to rule strategies that targeted ethnic and religious minorities in South Sudan, Nuba Mountains, Blue Nile, and Darfur regions . . .”).

⁷⁹ Ex. 136, Adam Dep. at 60:1-61:16.

⁸⁰ *Id.* at 61:25-62:2.

⁸¹ *Id.* at 62:17-63:20.

⁸² *Id.* at 63:21-64:11, 67:1-68:1.

⁸³ *Id.*

⁸⁴ *Id.* at 69:15-71:10.

⁸⁵ *Id.* at 69:18-22, 71:14-72:5.

⁸⁶ *Id.* at 86:12-90:2; Ex. 7, Keller & Rosenfeld Report, Appendix C5 (“Adam App’x”) at 2.

⁸⁷ Ex. 136, Adam Dep. at 72:10-23, 93:7-20.

⁸⁸ ECF No. 435-54, Baldo Report ¶¶ 19, 117-28.

⁸⁹ Ex. 136, Adam Dep. at 94:6-97:3.

⁹⁰ *Id.* at 99:21-101:17; Ex. 7, Adam App’x at 2.

⁹¹ Ex. 136, Adam Dep. at 100:3-102:13.

⁹² *Id.* at 102:10-13.

2003, each time by security forces in civilian clothing who warned him not to talk about the killings that the regime's forces were committing.⁹³

33. In late 2003 or early 2004, following the filing of a petition against GOS security forces, Mr. Adam was arrested in Wau by security forces armed with Kalashnikov rifles.⁹⁴ He knew many of his captors personally, including some from his tribe.⁹⁵

34. After eleven days in captivity in Wau, the Director General of the Wau regional national security forces transferred Mr. Adam by military aircraft to Khartoum, and Mr. Adam's law offices in Wau were shut down.⁹⁶ The military officer that greeted Mr. Adam upon his arrival happened to be a former university classmate, who was able to release Mr. Adam the next day on a technicality.⁹⁷

35. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Wau from 1998 to 2004, or Khartoum at any time during the Proposed Class Period; conducted arrests in this time, place, or manner; accused detainees of supporting rebels or being enemies of the government; or targeted attorneys and other members of civil society for speaking out against the GOS.

36. Mr. Adam was determined to leave the country following his latest arrest. He summoned his family to Khartoum, and they left for Cairo, Egypt, where they lived for approximately one year.⁹⁸ While there, their daughter died following routine treatment for an infection at a local Egyptian hospital.⁹⁹ Mr. Adam also received threats from Sudanese security officers by way of the local embassy, threatening that if he did not voluntarily return to Sudan they would use their connections with the Egyptian government to have him sent back to Sudan.¹⁰⁰ He reported those threats to the UN High Commission for Refugees, and his refugee application was expedited.¹⁰¹

37. Mr. Adam was admitted to the United States as a refugee on February 28, 2005 following a determination that he "fled or was displaced" from Sudan.¹⁰²

38. Mr. Adam continues to suffer physical and psychological injuries, including but not limited to frequent intrusive memories of the traumatic experiences and symptoms consistent with PTSD and chronic depression, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.¹⁰³

⁹³ *Id.* at 104:14–106:21.

⁹⁴ *Id.* at 111:8–112:7.

⁹⁵ *Id.* at 112:8–13.

⁹⁶ *Id.* at 112:14–113:23.

⁹⁷ *Id.* at 114:1–115:10.

⁹⁸ *Id.* at 118:1–3, 120:12–121:2.

⁹⁹ *Id.* at 128:8–129:15; Ex. 7, Adam App'x at 2–3.

¹⁰⁰ Ex. 136, Adam Dep. at 121:3–123:13.

¹⁰¹ *Id.*

¹⁰² Ex. 198, PLA-001145-46.

¹⁰³ Ex. 7, Adam App'x at 7–8.

IV. Judy Doe

39. Plaintiff Judy Doe (“Judy Doe”) is a U.S. citizen born in 1972 in Wau, the capital of Western Bahr El Ghazal state in what is now South Sudan.¹⁰⁴ She grew up with her mother, father, brothers and sisters, and cousins who lived with her immediate family.¹⁰⁵ Her family was well off; her father served as the Director General of Water Development for UNICEF for the Sudanese states of Malakal, Juba, and Wau, while her mother was principal of a local private school.¹⁰⁶ Judy Doe worked for a French company, Action Contre La Faim, for five years at a healthcare facility in Wau helping to care for and feed the malnourished.¹⁰⁷

40. The Southern Command of the Sudan Armed Forces (“SAF”) was based in Juba, the capital of what is now South Sudan,¹⁰⁸ and Sudan’s National Intelligence and Security Service (“NISS”) and military intelligence operated in southern Sudan, which includes Wau and Juba.¹⁰⁹ Judy Doe testified that she never saw the Sudanese People’s Liberation Army in Wau, just the Sudanese military and security services.¹¹⁰

41. Judy Doe married in 1990.¹¹¹ Between 1990 and 1994, Judy Doe alternated between Obeid in North Kordofan, where her mother-in-law lived and her children were born and raised, and Khartoum and Wau, where her husband worked, then moved back to Wau in 1994.¹¹²

42. In the late 1990s and early 2000s, her husband was arrested on many occasions by armed men in green camouflage military uniforms with “the logo of the military.”¹¹³ Judy Doe was not aware of why he was arrested or whether it was connected to his work, but testified that she saw that “[h]e suffered. And I saw that suffering in him and I saw that suffering in me.”¹¹⁴ He was arrested so frequently that Judy Doe knew that “[i]f he didn’t come home, then I know that he has been arrested.”¹¹⁵

43. In 2004, her husband was arrested in Wau following his filing of a petition against GOS security forces. Nine uniformed men with assault weapons brought her husband to the family home in Wau before detaining him.¹¹⁶ Later that night, uniformed men returned to Judy Doe’s house and raped her repeatedly.¹¹⁷

¹⁰⁴ Ex. 145, Deposition of Judy Doe (“Judy Doe Dep.”), dated June 8, 2022, at 9:13-14, 36:3-4.

¹⁰⁵ *Id.* at 36:14-37:11.

¹⁰⁶ *Id.*; Ex. 7, Keller & Rosenfeld Report, Appendix C18 (“Judy Doe App’x”) at 2.

¹⁰⁷ Ex. 145, Judy Doe Dep. at 20:19-23:16.

¹⁰⁸ ECF No. 435-54, Baldo Report ¶53.

¹⁰⁹ *Id.* ¶¶ 5, 63.

¹¹⁰ Ex. 145, Judy Doe Dep. at 77:6-19.

¹¹¹ *Id.* at 38:6-13.

¹¹² *Id.* at 38:11-42:14, 46:16-48:17.

¹¹³ *Id.* at 64:17-65:16, 75:24-76:16; Ex. 7, Judy Doe App’x at 2.

¹¹⁴ Ex. 145, Judy Doe Dep. at 65:10-16.

¹¹⁵ *Id.* at 70:6-21.

¹¹⁶ *Id.* at 77:20-85:13.

¹¹⁷ *Id.* at 84:23-86:10.

44. GOS security forces were known for raping women, including the families of their perceived political enemies.¹¹⁸ President al-Bashir gave a speech suggesting that non-Arabs should feel honored to be raped by his followers.¹¹⁹ Christian and other non-Muslim women were particularly targeted for even worse treatment, including slurs and epithets such as being referred to as “slaves,” “infidels,” “uncivilized,” and “dirty.”¹²⁰

45. She was too terrified to seek medical attention at the local hospital and relied only on antibiotics provided by her mother.¹²¹ In Sudanese culture, rape carries an enormous stigma, and consequently most women did not report their rapes, or seek medical treatment.¹²²

46. Judy Doe later learned that she became infected with HIV as a result of her rape, during the final portion of her refugee application process.¹²³ The GOS was aware the widespread prevalence of HIV among its armed forces, and the consequential risk of inflicting HIV on the undesirable population of non-Arabs, moderate Muslims, and non-Muslims.¹²⁴

47. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Wau from 1998 to 2004; used rape as a weapon against their political enemies and their families; or wore uniforms emblazoned with the insignia of the Sudanese military.

48. In 2004, Judy Doe and her family fled to Egypt by train.¹²⁵ She was admitted to the United States as a refugee on March 16, 2005 following an agency determination that she “fled or was displaced” from Sudan.¹²⁶

49. Judy Doe continues to suffer physical and psychological symptoms, including but not limited to frequent intrusive memories of the traumatic experiences, symptoms consistent with PTSD, intensive fear, and HIV infection, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.¹²⁷

¹¹⁸ ECF No. 435-54, Baldo Report ¶¶ 128, 152; Ex. 5, Jok Report ¶¶ 69–71.

¹¹⁹ Ex. 5, Jok Report ¶ 9.

¹²⁰ *Id.* ¶¶ 96–97.

¹²¹ Ex. 145, Judy Doe Dep. at 86:11–88:12.

¹²² Ex. 5, Jok Report ¶¶ 93, 148–57.

¹²³ Ex. 145, Judy Doe Dep. at 88:22–90:4.

¹²⁴ Ex. 5, Jok Report ¶ 155.

¹²⁵ Ex. 145, Judy Doe Dep. at 42:20:43:3.

¹²⁶ Ex. 207, PLA-001647 at 1648–50.

¹²⁷ Ex. 7, Judy Doe App’x at 6.

V. Judy Roe

50. Plaintiff Judy Roe (“Judy Roe”) is an U.S. citizen born in 1969 in Juba, in what was then Southern Sudan.¹²⁸ She is a Christian and of indigenous African descent,¹²⁹ both characteristics that were targeted by the GOS for its campaign of violence.¹³⁰

51. In 1989, Judy Roe married her husband, an air traffic controller.¹³¹ They moved to Khartoum, where they bought a house and Judy Roe opened a hair salon.¹³²

52. The Sudanese armed forces regularly operated out of both military and civilian airports and used civilian infrastructure such as air traffic controllers to conduct bombing attacks on civilian targets.¹³³

53. In November 1999, Judy Roe, her husband, two brothers, and sister were assaulted at their home in Khartoum shortly after dinner.¹³⁴ Two military vehicles with green and blue markings pulled up in front of their house, and many men in green military uniforms kicked in the fence, and demanded to see her husband.¹³⁵ The men beat everyone, including Judy Roe’s young son, and tied up Judy Roe’s husband, two brothers, and sister; her sister escaped with the help of a neighbor.¹³⁶ They beat her husband and brothers with the butts of their guns, hauled her husband away, and left Judy Roe’s brothers tied up in the yard.¹³⁷

54. Shortly afterwards, while Judy Roe’s brothers were still tied up in the yard, five men in green military uniforms and carrying guns returned to her home.¹³⁸ They demanded money, and when Judy Roe replied that she did not have any money, one of them replied “If there’s no money, give us gold.”¹³⁹ They dragged her into her marital bedroom, beat her, and each of the five proceeded to brutally rape her.¹⁴⁰ One bit off a piece of her right breast, another cut her neck so hard she was not sure if they did it to “slaughter” her, and they said “you are slaves, you don’t have to be right in this country.”¹⁴¹

¹²⁸ Ex. 139, Deposition of Judy Roe (“Judy Roe Dep.”), dated July 11, 2022, at 36:3-10; *see* Fig 1.

¹²⁹ *See* Ex. 5, Jok Report ¶ 97.

¹³⁰ *Id.* ¶¶ 96–98; ECF No. 435-54, Baldo Report ¶ 165; Ex. 68 to Decl. of Charity E. Lee, ECF No. 435-68, Expert Report of Cameron Hudson (“Hudson Report”), dated September 30, 2022 ¶¶ 11, 41.

¹³¹ Ex. 139, Judy Roe Dep. at 22:1-9, 36:16–37:19.

¹³² *Id.* at 38:17–39:21.

¹³³ ECF No. 435-54, Baldo Report ¶¶ 6, 13, 55–60; ECF No. 435-52, Austin Report ¶¶ 43, 138, 150–51, 158; Ex. 5, Jok Report ¶ 18; Ex. 53 to Decl. of Charity E. Lee, ECF No. 435-53, Expert Reply Report of Kathi Austin (“Austin Reply”), dated March 2, 2023 ¶¶ 150–63.

¹³⁴ Ex. 139, Judy Roe Dep. at 61:3-21.

¹³⁵ *Id.* at 62:4–65:25; Ex. 7, Judy Roe App’x at 2.

¹³⁶ *Id.*

¹³⁷ Ex. 139, Judy Roe Dep. at 61:3-21.

¹³⁸ *Id.* at 66:1-13.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 67:9–68:19.

¹⁴¹ *Id.* at 67:9–69:14; Ex. 7, Judy Roe App’x at 2.

55. GOS security forces were known for raping women, including the families of their perceived political enemies.¹⁴² President al-Bashir gave a speech suggesting that non-Arabs should feel honored to be raped by his followers.¹⁴³ Christian and other non-Muslim women were particularly targeted for even worse treatment, including slurs and epithets such as being referred to as “slaves,” “infidels,” “uncivilized,” and “dirty.”¹⁴⁴

56. When they were done, they pushed Judy Roe to the floor, where her head hit a metal doorstep and she lost consciousness; she carries physical and emotional scars to this day.¹⁴⁵ Her young son was hiding in the bedroom closet during the rape.¹⁴⁶ GOS forces often committed rape in front of family members as a way of showing force and dominance.¹⁴⁷

57. Later, Judy Roe learned that she was infected with HIV from her rape at the hands of the military.¹⁴⁸ The GOS was aware the widespread prevalence of HIV among its armed forces, and the consequential risk of inflicting HIV on the undesirable population of non-Arabs, moderate Muslims, and non-Muslims.¹⁴⁹

58. Judy Roe does not know if her sister was also raped: “We don’t talk about those things.”¹⁵⁰ In Sudanese culture, rape carries an enormous stigma, and consequently most women did not report their rapes, or seek medical treatment.¹⁵¹ The stigma of rape was so severe that women we be disowned by their husbands or fathers if it became known that they had been raped.¹⁵²

59. After the men left, neighbors came to untie her brothers and check on Judy Roe.¹⁵³ Some of her skin was hanging off of her face, and she lost a lot of blood.¹⁵⁴ They took her to a nearby hospital, where she stayed for a week after they stitched her up.¹⁵⁵ Following her discharge, she stayed at a pastor’s house for six weeks, and her aunt’s house for another two months.¹⁵⁶ Eventually, Judy Roe returned to her home in Khartoum.¹⁵⁷

60. Judy Roe did not see her husband for several months while he was in detention. The pastor with which Judy Roe had stayed worked to communicate with her husband and secure his release.¹⁵⁸ After approximately four months, her husband was released, and the pastor arranged

¹⁴² ECF No. 435-54, Baldo Report ¶¶ 128, 152; Ex. 5, Jok Report ¶¶ 69–71.

¹⁴³ Ex. 5, Jok Report ¶ 9.

¹⁴⁴ *Id.* ¶¶ 96–97.

¹⁴⁵ Ex. 7, Judy Roe App’x at 8.

¹⁴⁶ Ex. 139, Judy Roe Dep. at 67:9–69:14.

¹⁴⁷ Ex. 5, Jok Report ¶ 150 & n.74.

¹⁴⁸ Ex. 139, Judy Roe Dep. at 74:13–76:3.

¹⁴⁹ Ex. 5, Jok Report ¶ 155.

¹⁵⁰ Ex. 139, Judy Roe Dep. at 68:22–69:3; Ex. 7, Judy Roe App’x Appendix at 2.

¹⁵¹ Ex. 5, Jok Report ¶¶ 93, 148–57.

¹⁵² *Id.*

¹⁵³ Ex. 139, Judy Roe Dep. at 69:4–69:25.

¹⁵⁴ *Id.*

¹⁵⁵ Ex. 7, Judy Roe App’x at 2.

¹⁵⁶ Ex. 139, Judy Roe Dep. at 69:4–25.

¹⁵⁷ *Id.* at 70:1–3.

¹⁵⁸ *Id.* at 70:4–72:1.

for him to be transported to Aswan on the border with Egypt, and eventually to Egypt.¹⁵⁹ Judy Roe was able to join her husband in Egypt around June 2000, leaving behind her house, car, family, and life.¹⁶⁰

61. Her husband, who is now deceased, relayed his detention experience to Judy Roe.¹⁶¹ He was tortured, stomped on with boots until he vomited blood, leaving scars on back and chest.¹⁶² They put a bag filled with hot pepper over his head (damaging his eyes), beat him, sprayed him with cold water, and deprived him of food. They falsely accused him of supporting the SPLM.¹⁶³

62. Judy Roe was admitted to the United States as a refugee on August 30, 2001 after a finding that she “fled or was displaced” from Sudan.¹⁶⁴

63. Judy Roe continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and depression, including intrusive memories, instances in which she reexperiences her traumas, deliberate attempts to avoid reminders of her experiences in Sudan, and profound changes in her mood and thinking, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.¹⁶⁵

VI. Nicolas Hakim Lukudu

64. Plaintiff Nicolas Hakim Lukudu (“Mr. Lukudu”) is a U.S. citizen who was born in 1973 in El-Gadarif, near Khartoum, Sudan.¹⁶⁶ He is a member of the Pojulu tribe, one of a number of tribes that speak Bari and traditionally hail from Juba in what is now South Sudan, and a targeted ethnicity by the GOS.¹⁶⁷ Mr. Lukudu’s father was a member of the pre-Bashir government of Sudan.¹⁶⁸ Mr. Lukudu’s family moved to the government-controlled city Juba when he was two years old to enable his father to serve as an assistant to the governor of Juba.¹⁶⁹ Mr. Lukudu and his family grew up Christian.¹⁷⁰

65. Mr. Lukudu returned to Khartoum in 1985 to finish his primary education and complete a degree in artistic drawing from Sudan University.¹⁷¹ Mr. Lukudu, his father, and his

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 88:19–89:11.

¹⁶¹ *Id.* at 79:15–80:10; Ex. 7, Judy Roe App’x at 2.

¹⁶² *Id.*

¹⁶³ Ex. 139, Judy Roe Dep. at 82:14–83:23.

¹⁶⁴ Ex. 212, PLA-012583 at 85-86.

¹⁶⁵ Ex. 7, Judy Roe App’x at 9.

¹⁶⁶ Ex. 142, Deposition of Nicolas Hakim Lukudu (“Lukudu Dep.”), dated June 1, 2022, at 35:13-25, 52:1-8.

¹⁶⁷ Ex. 142, Lukudu Dep. at 42:3–43:4; ECF No. 435-54, Baldo Report ¶ 108 (“The regime used divide to rule strategies that targeted ethnic and religious minorities in South Sudan, Nuba Mountains, Blue Nile, and Darfur regions . . .”).

¹⁶⁸ Ex. 142, Lukudu Dep. at 45:20–46:4.

¹⁶⁹ *Id.* at 36:25-37:5, 40:19–41:9.

¹⁷⁰ *Id.* at 44:16–45:2.

¹⁷¹ *Id.* at 37:20–38:22.

uncle started an import and export company, Mercantile, primarily engaged in exporting Sudanese coffee to clients in the Arab world.¹⁷²

66. In 1998, Mr. Lukudu fled Sudan for Egypt to avoid being forcefully enlisted in the People's Defense Forces ("PDF").¹⁷³ The PDF was "an armed wing of the Islamist Movement that could channel its revolutionary fervor and act as a strike force for dangerous missions on the front."¹⁷⁴ The PDF was largely assembled from the Murahalin militias previously co-opted by the GoS, jihadist Islamist extremists, former soldiers, people from tribes allied with the GoS, and conscripts, led by Islamic sheiks, and modeled after the Iranian Guardians of the Revolution.¹⁷⁵ Many civilians were required to train with the PDF or risk losing their employment, including "the civil service and diplomatic corps, judiciary and medical profession, teachers, university and high school students, and even private sector workers."¹⁷⁶

67. While in Egypt, Mr. Lukudu was reunited his wife, who had fled from Sudan and previously had applied for, and was granted, refugee status by the United States in 2000.¹⁷⁷ In 1998, Mr. Lukudu applied for refugee status with the United Nations based on his fear of conscription, but his application was denied and he was told that he could reapply.¹⁷⁸ He did not make any further refugee applications.¹⁷⁹ After approximately one month in Egypt, Mr. Lukudu returned to Sudan to help his ailing mother, where he remained until 2004.¹⁸⁰

68. In February 2004, four armed members of the Sudanese military, wearing khaki uniforms with military insignia, arrested Mr. Lukudu as his company's office in Khartoum.¹⁸¹ They were carrying Jim 3s (a type of large gun) and MP5s (a type of submachine gun).¹⁸² The four men asked employees where Mr. Lukudu was located, put handcuffs on him, lead him outside, covered his head with a black hood, and put him into a khaki military Toyota Land Cruiser,¹⁸³ a vehicle commonly used by the GOS and its agents.¹⁸⁴ They took Mr. Lukudu to an unknown location and placed him in a windowless cell with a metal door.¹⁸⁵

69. Mr. Lukudu's captors removed his hood. The four military members were joined by three security persons wearing civilian clothing and armed with handguns.¹⁸⁶ The three security persons beat Mr. Lukudu with Jim 3s from the military members, repeatedly hitting him with the bottom of the gun all over his body.¹⁸⁷ For the next three days, the same three security persons

¹⁷² *Id.* at 38:23–40:9.

¹⁷³ *Id.* at 63:19–64:14, 148:18–149:21.

¹⁷⁴ *Id.* at 53:19–64:14; ECF No. 435-93, Verhoeven Report at 10.

¹⁷⁵ ECF No. 435-93, Verhoeven Report at 10; ECF No. 435-54, Baldo Report ¶ 70.

¹⁷⁶ ECF No. 435-54, Baldo Report ¶ 70.

¹⁷⁷ Ex. 142, Lukudu Dep. at 62:5-7.

¹⁷⁸ *Id.* at 58:21–59:9, 60:15-20, 148:18–149:21.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 62:19–63:1, 64:23–65:11, 98:2–99:25.

¹⁸¹ *Id.* at 67:14–69:10.

¹⁸² *Id.* at 71:1–73:9.

¹⁸³ *Id.* at 69:25–74:8.

¹⁸⁴ ECF No. 435-52, Austin Report ¶ 188; ECF No. 435-54, Baldo Report ¶ 129; Ex. 5, Jok Report ¶ 114 n.57.

¹⁸⁵ Ex. 142, Lukudu Dep. at 77:25–79:13.

¹⁸⁶ *Id.* at 79:15–80:1.

¹⁸⁷ *Id.* at 80:2–81:17.

would return to beat Mr. Lukudu, including by beating the soles of his feet with plastic sticks and threatening to unleash cages rats on him.¹⁸⁸ Beating the soles of the feet, or *falaqa*, was a common method of torture used by the GOS and its security organs.¹⁸⁹ After three days, they informed Mr. Lukudu that they had information that Mr. Lukudu was trading guns, which Mr. Lukudu vehemently denied.¹⁹⁰ Mr. Lukudu was questioned daily for approximately two months, after which the same four military members released a barefoot Mr. Lukudu in the middle of the night to an open space in the Sahara desert.¹⁹¹

70. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in February 2004; conducted arrests in this time, place, or manner; accused detainees of transporting guns; or confiscated the homes and businesses of detainees.

71. Mr. Lukudu was able to recover with his uncle, who was a doctor, for approximately two weeks.¹⁹² Once he was somewhat recovered, Mr. Lukudu fled Sudan for Egypt, abandoning his business and home, which were seized by the same four military members that had arrested Mr. Lukudu in the first place.¹⁹³

72. Mr. Lukudu's wife's refugee application had been approved,¹⁹⁴ and later in 2004, Mr. Lukudu emigrated to the United States as a derivative refugee.¹⁹⁵ As explained by Plaintiffs' expert Prakash Khatri, the definition of "refugee" includes the spouse and/or minor children of the primary applicant, and "are treated in the same manner as the principal themselves" such that "the principal applicant and his or her spouse and minor children are treated as a single-family unit that qualifies for refugee status."¹⁹⁶

73. Mr. Lukudu continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and depression, including intrusive memories and attempts to avoid reminders of his experiences in Sudan, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.¹⁹⁷

¹⁸⁸ *Id.* at 80:2–84:9; Ex. 7, Keller & Rosenfeld Report Appendix C14 ("Lukudu App'x") at 2.

¹⁸⁹ ECF No. 435-54, Baldo Report ¶ 126.

¹⁹⁰ Ex. 142, Lukudu Dep. at 80:2–84:9.

¹⁹¹ *Id.* at 85:9–86:7.

¹⁹² *Id.* at 90:20–92:5.

¹⁹³ *Id.* at 92:6–94:20, 136:3–15.

¹⁹⁴ Ex. 7, Lukudu App'x at 2–3.

¹⁹⁵ Ex. 142, Lukudu Dep. at 60:21–61:2, 100:19–101:2.

¹⁹⁶ Ex. 75 to Decl. of Charity E. Lee, ECF No. 435-75, Expert Report of Prakash Khatri ("Khatri Report"), dated September 30, 2022, at 16.

¹⁹⁷ Ex. 7, Lukudu App'x at 6.

VII. Ambrose Martin Ulau

74. Plaintiff Ambrose Martin Ulau (“Mr. Ulau”) is a U.S. citizen born in 1975, in Wau, Bhar al Ghazal, South Sudan.¹⁹⁸ He is of Balenda ethnic origin,¹⁹⁹ and is a Christian (specifically, Catholic), both being targeted groups by the GOS.²⁰⁰

75. Mr. Ulau was the chairman of the St. Stephen’s Bible Society and head of the Holy Bible Association in Haj Youssef-Al Takamol Square.²⁰¹

76. [Intentionally omitted]

77. In or around October 1999, two Muslims enrolled with the Holy Bible Association, expressing a desire to learn more about Christianity.²⁰² Around November 30, 1999, they went missing, and Mr. Ulau began searching for them, together with their family members.²⁰³

78. On Thursday, December 2, 1999, “very late at night[,] three policemen and people from the intelligence” with guns raided Mr. Ulau’s home and took him to a detention center blindfolded.²⁰⁴ Mr. Ulau knew that these three individuals to be security officers because when they arrived at his home, they self-identified as members of the “Sudanese security.”²⁰⁵ At the detention center, the Sudanese security forces interrogated Mr. Ulau, demanding information about the mission of the Holy Bible Association, while hitting and slapping him, and pouring cold water on his face.²⁰⁶ When Mr. Ulau told the interrogators about the goals and work of the Holy Bible Association, the interrogators accused Mr. Ulau of lying, and said “the goals of the Bible Society is to convert Muslims.”²⁰⁷

79. The GOS routinely victimized Christians through harsh enforcement of Shari’a laws “in accordance with the Islamist Movement’s interpretation of Islam.”²⁰⁸ NISS suspected ordinary religious activities to have a hidden agenda of seeking to convert Muslims to Christianity.²⁰⁹

80. Sudanese security forces and intelligence officers searched Mr. Ulau’s home and found a letter from Mr. Ulau’s older brother, who at the time was working as a doctor in a liberated area of Tumbura.²¹⁰ The Sudanese security forces and intelligence officers brought the letter back to the detention center, and accused Mr. Ulau of being an agent for the SPLM, using his pastoral

¹⁹⁸ Ex. 147, Deposition of Ambrose Martin Ulau (“Ulau Dep.”) at 15:15-21.

¹⁹⁹ *Id.* at 41:15-19.

²⁰⁰ *Id.* at 45:7-18; ECF No. 435-54, Baldo Report ¶¶ 108, 144-46.

²⁰¹ Ex. 147, Ulau Dep. at 53:10-18.

²⁰² Ex. 147, Ulau Dep. at 54:2-11.

²⁰³ Ex. 147, Ulau Dep. at 54:12-21; Ex. 7, Keller & Rosenfeld Report, Appendix C16 (“Ulau App’x”) at 2.

²⁰⁴ Ex. 147, Ulau Dep. at 54:22-25, 55:15-19, 57:11-14.

²⁰⁵ Ex. 147, Ulau Dep. at 55:17-23.

²⁰⁶ Ex. 147, Ulau Dep. at 57:18-58:4, 58:12-25.

²⁰⁷ Ex. 147, Ulau Dep. at 57:18-58:4, 58:25-59:23.

²⁰⁸ ECF No. 435-54, Baldo Report ¶ 49.

²⁰⁹ *Id.* ¶¶ 145-46.

²¹⁰ Ex. 147, Ulau Dep. at 49:15-50:1, 52:10-16.

position to gather information.²¹¹ While in detention, he was physically tortured daily, verbally abused often, and deprived of rest and food.²¹² Among other things, the interrogators beat Mr. Ulau on his stomach, his head, and soles of his feet with a plastic hose and with the butts of guns, doused him with water at nighttime, and, on at least two occasions, hung him upside down for 10-15 minutes to press him to confess.²¹³ While he was hung upside down, the interrogators soaked Mr. Ulau with freezing cold water.²¹⁴ His captors threatened to kill his family if he did not confess.²¹⁵

81. Mr. Ulau was detained for eleven (11) days, leaving with a crushed spirit and a tortured body.²¹⁶

82. On or about December 13, 1999, Mr. Ulau was released from the interrogators' custody on four conditions: (1) to stop preaching Christianity and to stop broadcasting films about the Bible; (2) to collect information about the rebels and provide that information to the interrogators, (3) to report to the interrogators' office three times per week, and (4) not to tell anyone about what happened to him during detention.²¹⁷

83. When Mr. Ulau attempted to comply by reporting, he was again tortured, questioned, threatened with death, and beaten.²¹⁸ The government agent interrogators came to Mr. Ulau's home unannounced at night, and took him into their cars and interrogated him.²¹⁹

84. Mr. Ulau sought the help of his pastor, who provided Mr. Ulau with some cash to facilitate Mr. Ulau's escape in 2000.²²⁰

85. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in 2000; conducted arrests in this time, place, or manner; accused detainees of converting Muslims to Christianity; or imposed post-release reporting conditions.

86. Mr. Ulau was admitted to the United States as a refugee on September 29, 2004, with his spouse and their daughter, following an agency determination that he "fled or was displaced" from Sudan.²²¹

87. Mr. Ulau continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and depression, including intrusive memories, instances in which he reexperiences her traumas, deliberate attempts to avoid reminders of his experiences in

²¹¹ *Id.* at 51:14–52:16, 60:2-9, 62:8-21.

²¹² *Id.* at 51:14–52:16, 60:2-9, 62:8-21.

²¹³ *Id.* at 63:12-19.

²¹⁴ *Id.* at 61:12-18.

²¹⁵ Ex. 7, Ulau App'x at 2.

²¹⁶ Ex. 147, Ulau Dep. at 61:6-11.

²¹⁷ *Id.* at 66:7–67:8.

²¹⁸ *Id.* at 72:11-73:2.

²¹⁹ *Id.* at 74:15–75:18.

²²⁰ *Id.* at 75:19–77:2.

²²¹ Ex. 209, PLA-001726 at 1727–28.

Sudan, and profound changes in his mood and thinking, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.²²²

VIII. Kuol Shbur

88. Plaintiff Kuol Shbur (“Mr. Shbur”) is a U.S. citizen born in 1965 in Abyei, Western Kordofan, Sudan.²²³ He is of Dinka ethnic origin,²²⁴ an ethnicity targeted by the Regime for violence and extermination,²²⁵ and a Christian.²²⁶ He is married to Plaintiff Nyanriak Tingloth.²²⁷

89. Abyei is one of Sudan’s principal oil-producing regions.²²⁸ As Dr. Patey explained, “in the early 2000s, the region, largely within Block 4 of the GNPOC consortium, was a key for oil production.” In 2003, “Abyei represented over a quarter of Sudan’s oil production.”²²⁹ For this reason, the Regime was “particularly keen” to maintain control of Abyei and used the region as a “‘testing ground’ for the Sudanese government’s strategy of blending regular armed forces with Arab militias to clear local Ngok Dinka populations from oil fields and their traditional homes.”²³⁰

90. [Intentionally omitted]

91. While at home, Mr. Shbur was approached by four or five “security people” who knocked on the door.²³¹ Upon opening the door, one of the security men approached Mr. Shbur, pointed a gun at him, demanded Mr. Shbur to go into a dark-colored vehicle recognizable as GOS issued nearby, and blindfolded him.²³² He was left overnight in a small cell at an unidentified location, along with two other Southern Sudanese men.²³³

92. The next morning, Mr. Shbur was interrogated about his association with anyone working in the Sudanese government, and accused of being a “fifth columnist” for the SPLA, which Mr. Shbur denied, and questioned about Dinka political and cultural events that took place at the Comboni Ground Club in Khartoum.²³⁴ Mr. Shbur was brought to a large room with a large table, tied up, and beaten on top of the table with a rubble hose as he continued to deny allegations against him. He was beaten until he fell off the table and unconscious. Mr. Shbur was later brought back to the same room, beaten, and had his toenails removed.²³⁵ Removal of toenails was a typical

²²² Ex. 7, Ulau App’x at 4–6.

²²³ Ex. 144, Deposition of Kuol Shbur (“Shbur Dep.”), dated July 15, 2022, at 136:5-18; Ex. 188, PLA-000537; Ex. 206, PLA-001587 at 1642.

²²⁴ Ex. 144, Shbur Dep. at 14:11-12.

²²⁵ ECF No. 435-54, Baldo Report ¶¶ 7, 63–64, 94, 167; ECF No. 435-93, Verhoeven Report at 7, 20, 33–34; ECF No. 435-68, Hudson Report ¶¶ 69–70, 190, 196.

²²⁶ Ex. 144, Shbur Dep. at 40:13-4; Ex. 17, Keller & Rosenfeld Report, Appendix C17 (“Shbur App’x”), at 2.

²²⁷ Ex. 146, Deposition of Nyanriak Tingloth (“Tingloth Dep.”), dated July 13, 2022, at 83:7-15.

²²⁸ See Ex. 88 to Decl. of Charity E. Lee, ECF No. 435-88, Expert Report of Dr. Luke Patey (“Patey Report”), dated September 30, 2022, at 9.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Ex. 144, Shbur Dep. at 52:16–53:3.

²³² Ex. 144, Shbur Dep. at 53:5-54:2.

²³³ *Id.*

²³⁴ *Id.* at 53:1-54:2, 102:15-105:10.

²³⁵ Ex. 7, Shbur App’x at 3.

and unique form of torture used by the Sudanese security services.²³⁶ His genitals were subjected to burning, electrocution, and pinching with pliers.²³⁷ He was held for three weeks, during which he was interrogated and tortured twice more. By the end of his detention, his “body was swelling and it was painful” as a result of the torture; he “was limping” as a result of his right knee being hit, his left leg being burned, and his toenails being removed.²³⁸

93. Following his detention, Mr. Shbur was released on the condition that he report back to the same office, daily, for thirty days, after which his conditions would be reevaluated.²³⁹

94. Mr. Shbur arrived in Egypt on September 19, 2002,²⁴⁰ fearing further persecution by the Government of Sudan.

95. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in January 2001; conducted arrests in this time, place, or manner; or accused detainees of supporting the SPLA.

96. Mr. Shbur was admitted to the United States as a refugee on August 1, 2005, with his spouse and their three children, following an agency determination that he “fled or was displaced” from Sudan.²⁴¹

97. Mr. Shbur continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and depression, including instances in which he reexperiences his traumas and deliberate attempts to avoid reminders of his experiences in Sudan, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.²⁴²

IX. Nyanriak Tingloth

98. Plaintiff Nyanriak Tingloth (“Ms. Tingloth”) is a U.S. citizen born in the Abyei region of Sudan in 1970.²⁴³ She is a member of the Dinka tribe,²⁴⁴ an African ethnic group indigenous to Abyei, which was a target of the Regime for violence and extermination.²⁴⁵ She is a practicing Christian.²⁴⁶ She is married to plaintiff Kuol Shbur.²⁴⁷

99. Ms. Tingloth and Mr. Shbur moved from Abyei to Khartoum in 1988.²⁴⁸ In 2002, Mr. Shbur was arrested, detained, and tortured by security forces in Khartoum and, upon his

²³⁶ Ex. 5, Jok Report ¶ 79.

²³⁷ Ex. 7, Shbur App’x at 2–3.

²³⁸ Ex. 144, Shbur Dep. at 118:2-22.

²³⁹ *Id.* at 98:25-99:17.

²⁴⁰ *Id.*

²⁴¹ Ex. 206, PLA-001587 at 1589.

²⁴² Ex. 7, Shbur App’x at 7.

²⁴³ Ex. 146, Deposition of Nyanriak Tingloth (“Tingloth Dep.”) at 39:7-11.

²⁴⁴ Ex. 7, Keller & Rosenfeld Report, Appendix C15 (“Tingloth App’x”) at 2.

²⁴⁵ ECF No. 435-54, Baldo Report ¶¶ 7, 63–64, 94, 167; ECF No. 435-93, Verhoeven Report at 7, 20, 33–34; ECF No. 435-68, Hudson Report ¶¶ 69–70, 190, 196.

²⁴⁶ Ex. 146, Tingloth Dep. at 41:14; 48:1-9; ECF No. 435-88, Patey Report at 8–9.

²⁴⁷ Ex. 146, Tingloth Dep. at 83:7-15.

²⁴⁸ *Id.* at 81:13-16.

release, went into hiding.²⁴⁹ While he was hiding, Ms. Tingloth and her children were alone in Khartoum and security officers made several visits to their home to inquire where Kuol was.²⁵⁰ Afraid for their safety and in need of support to live, Ms. Tingloth fled with her children to Abyei, where they could be supported by relatives in the village of Romamer.²⁵¹

100. Beginning in 1995, the Bashir Regime entered into a strategic partnership with China that would jump-start Sudan's oil industry and, with BNPP's assistance, opened a stream of revenue and weaponry to the regime.²⁵² The GOS entered into an agreement with the China National Petroleum Corporation ("CNPC")—China's state-owned oil company—to develop a Sudanese oil concession—Block Six in the Muglad basin in the Kordofan and Abyei regions.²⁵³ The Regime considered Sudanese Christians and non-extreme Muslims to be sympathizers of the rebellious SPLM, and considered such Christians and non-extreme Muslims to be "Fifth Columnists," serving as sleeping cells for the SPLM.²⁵⁴

101. In the late 1990s and early 2000s, the Regime pursued a strategy of depopulating Abyei and other southern oil-regions of "undesirable" ethnic groups ("the Oil Clearance Plan").²⁵⁵ To supplement the SAF, the Regime mobilized an array of paramilitaries and tribal militias pursuant to the Popular Defense Forces Act of 1989.²⁵⁶ The Regime implemented mandatory training and service in the Popular Defense Forces and formed a paramilitary force to deploy Arab, Islamist fighters against the primarily Christian, African populations of Abyei and present-day South Sudan.²⁵⁷

102. The Sudanese Military Intelligence recruited, armed, and paid tribal militia as "part of the Regime's divide and conquer strategy to maintain Khartoum's control over the far-flung communities of Sudan's periphery."²⁵⁸ The ranks of the militia were filled with fighters from Arab tribes—known variously as *mujahedeen* (holy warriors), bagarra, marahel or murahaleen.²⁵⁹ The Regime provided the militias with uniforms, rations, and weapons; paid them compensation; and recognized "militia internal command structures and the creation of a parallel ranking system to accommodate it."²⁶⁰ In May 1999, Sudan's Energy and Mining Minister Dr. Awad al-Jaz oversaw the deployment of the paramilitary "'Protectors of the Oil Brigade' to the oil fields."²⁶¹ These SAF, security, paramilitary, and tribal militia forces that executed the Oil Blocks Clearance Plan operated under a chain of command that included the Ministry of Defense, National Intelligence

²⁴⁹ *Id.* at 89:17–98:18.

²⁵⁰ *Id.* at 101:2–106:5.

²⁵¹ *Id.*

²⁵² ECF No. 435-54, Baldo Report ¶ 81.

²⁵³ *Id.*

²⁵⁴ *Id.* ¶ 146.

²⁵⁵ *Id.* ¶¶ 161, 171–76; Ex. 55 to Decl. of Charity E. Lee, ECF No. 435-55, Expert Reply Report of Dr. Suliman Baldo ("Baldo Reply"), dated March 2, 2023 ¶ 87; ECF No. 435-93, Verhoeven Report at 10–11, 19–22; Ex. 5, Jok Report ¶ 8.

²⁵⁶ ECF No. 435-54, Baldo Report ¶¶ 61–70.

²⁵⁷ *Id.* ¶¶ 69–70.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.* ¶ 66.

²⁶¹ *Id.* ¶ 175.

and Security Service, National Security Committee and, ultimately, President Bashir (collectively the “Oil Clearance Command Structure”).²⁶²

103. While staying in Abyei, Ms. Tingloth survived two attacks by SAF and the Regime’s *mujahideen* militia in 2004. Ms. Tingloth had seen mujahideen in the area wearing “the hats with military clothing and . . . the eagle that was known as the eagle of Sudan.”²⁶³ Ms. Tingloth had seen their training camp: “It was something known, that this was the camp for the militia where they do the training and even high school students for them to receive their certificate, they were forced to go for training.”²⁶⁴

104. On one occasion, Ms. Tingloth witnessed children approximately 8- or 9-years old jumping into a branch of the Nile river to escape capture; they drowned in front of her as she escaped with her own children.²⁶⁵

105. In the first attack on Romamer in Abyei, Ms. Tingloth “saw the Mujahideen in khaki” carrying guns, and she fled the village, running to hide in a forest near a river.²⁶⁶ While she was hiding, her brother named Ring was shot with a bullet in his head and back: his body lay chest-down on the ground.²⁶⁷

106. Later that same month, the Regime attacked the village again, this time a combined ground attack by militia fighters and aerial bombing. When Ms. Tingloth heard the sound of gunshots, she fled the village: “when you hear the guns, you don’t wait for the enemy. You just run with your kids to go hide.”²⁶⁸ She heard the sound of an Antonov plane attacking: “I heard the Antonov, and I saw the people who died . . . [f]or you to look up, you – you think it’s going to fall on you and the noise is too much. So you just run.”²⁶⁹ “The Antonovs will come -- of the government will come from above, and if you are lucky, you will survive. If you are not, then the barrels would fall on you and you would die. And even other animals and other people died.”²⁷⁰ The Antonovs were “hitting from above” setting the village aflame, the wind spreads fire from one grass home to another.²⁷¹ Ms. Tingloth saw the aftermath of the Antonov attack: “When she arrived at her grandmother’s house it was destroyed and on fire, and she saw her grandmother on fire, still alive. She watched as her grandmother died.”²⁷² Her brother “had died and had cuts, and his body was broken . . . even some of the animals and other people their bodies were broken and there were things in their body.”²⁷³ In the village, “all the homes were burned down.”²⁷⁴

²⁶² See *id.* ¶¶ 41–70.

²⁶³ Ex. 146, Tingloth Dep. at 112:2-4.

²⁶⁴ *Id.* at 116:2-9.

²⁶⁵ Ex. 7, Tingloth App’x at 3.

²⁶⁶ Ex. 146, Tingloth Dep. at 117:1-14.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at 119:18-21.

²⁶⁹ *Id.* at 120:4–121:23.

²⁷⁰ *Id.* at 120:15-19.

²⁷¹ *Id.* at 118:11–121:23.

²⁷² Ex. 7, Keller & Rosenfeld Report, Appendix C15, Tingloth App’x at 3.

²⁷³ Ex. 146, Tingloth Dep. at 120:4-13.

²⁷⁴ *Id.* 123:3-4.

107. The Oil Clearance Command Structure²⁷⁵ carried out joint, combined arms attacks against indigenous African tribes, notably the Dinka, where SAF soldiers, PDF paramilitaries, and tribal militias were often backed by aerial bombing from Antonov cargo planes and aerial attacks by helicopter gunships.²⁷⁶ Regime used oil fields as bases of operation.²⁷⁷ In addition to civilian airports, the Regime used oil field landing strips to carry out aerial attacks by helicopter gunships and bombing raids by Antonov cargo planes.²⁷⁸ The Regime also used oil field access roads to transport troops.²⁷⁹

108. Ms. Tingloth was not affiliated with any opposition or rebel group and there is no record evidence that such groups were present in Romamer at the time of the attacks. There is no record evidence that any actor other than the Government of Sudan, through its Oil Clearance Command Structure, was carrying out attacks on Dinka villages in Abyei in 2004 and no record evidence that any actor other than the Government of Sudan conducted aerial bombing in Abyei in 2004 or even had the aircraft to do so.

109. Ms. Tingloth was internally displaced once again, fleeing Abyei with her children and returning to Khartoum. Eventually, in December 2004, she fled Sudan by boat to Egypt, where she was registered as a refugee by the UN High Commissioner for Refugees (“UNHCR”) on December 29, 2004.²⁸⁰

110. There is no record evidence that rebels from the Justice and Equality Movement (“JEM”), Sudan Liberation Army (“SLA”), the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Romamer at the time of the attacks experienced by Ms. Tingloth; or were operating bomber aircraft at all.

111. Ms. Tingloth was admitted to the United States as a refugee on April 27, 2005 following an agency determination that she “fled or was displaced” from Sudan.²⁸¹

112. Ms. Tingloth continues to suffer physical and psychological symptoms, including but not limited to substantial symptoms of PTSD, including intrusive memories and functional impairment, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.²⁸²

²⁷⁵ See *supra* ¶ 103, n.289.

²⁷⁶ ECF No. 435-54, Baldo Report ¶¶ 175–79; Ex. 146, Tingloth Dep. at 53:20-22; 57:10-12 (“The Marahel we did not know where the government brings them, but the government brings them and the Marahel is the government.”); *id.* at 65:7-9 (“Q: Was those people the marahel? A: Yes, they are called Mujahideen, and that is their name. We also say mujahideen.”).

²⁷⁷ ECF No. 435-54, Baldo Report ¶¶ 179–82.

²⁷⁸ *Id.*

²⁷⁹ *Id.* ¶ 182.

²⁸⁰ Ex. 208, PLA-001688 at 1709.

²⁸¹ *Id.* at 1689–90.

²⁸² Ex. 7, Tingloth App’x at 5–6.

X. Jane Roe

113. Plaintiff Jane Roe (“Jane Roe”) is a U.S. citizen born in 1977 in Juba, Bahr El Jabal province, South Sudan.²⁸³ She is of Kuku ethnic origin,²⁸⁴ and a Christian, both groups which were targets of the GOS.²⁸⁵

114. The Southern Command of the SAF was based in Juba, the capital of what is now South Sudan,²⁸⁶ and Sudan’s National Intelligence and Security Service (“NISS”) and military intelligence operated in southern Sudan, which includes Wau and Juba.²⁸⁷

115. In 1995, Jane Roe married her husband.²⁸⁸

116. On or about January 3, 2003, shortly after Jane Roe’s husband returned from a business trip in Wau, while she and her husband were at home, four security men with long guns in khaki attire stormed the home.²⁸⁹ Her husband escaped through a window, and she has not seen him since.²⁹⁰ The security forces wearing hats with the insignia of the GOS broke down the door and entered the home.²⁹¹ Then, the Sudanese security forces searched the house and asked Jane Roe about her husband’s whereabouts; Jane Roe responded that her husband did not return from Wau.²⁹² The security men accused Jane Roe of lying to them, then blindfolded her and took her to a car to an unknown location, leaving her daughter behind alone in the family home.²⁹³ Upon arrival at the unknown location, Jane Roe was locked in a cell, still blindfolded.²⁹⁴

117. The next day, on or about January 4, 2003, Jane Roe was brought to another office, and she was told that her husband was collaborating with the rebels by transferring information and relief items to them.²⁹⁵ The interrogators inquired about Jane Roe’s husband’s supposed accomplices whom they claimed frequently visited Jane Roe’s home.²⁹⁶ Jane Roe denied having any knowledge of her husband’s supposed accomplices,²⁹⁷ and as a result, the interrogators detained Jane Roe for several days more, during which she was continually blindfolded and unable to see, slapped, kicked, whipped, and verbally insulted.²⁹⁸

²⁸³ Ex. 148, Deposition of Jane Roe (“Jane Roe Dep.”), dated June 4, 2022, at 49:5-15.

²⁸⁴ Ex. 148, Jane Roe Dep. at 49:14-15.

²⁸⁵ *Id.* at 49:19-20; Ex. 5, Jok Report ¶¶ 96–98; ECF No. 435-54, Baldo Report ¶¶ 108, 165; ECF No. 435-68, Hudson Report ¶¶ 11, 41.

²⁸⁶ ECF No. 435-54, Baldo Report ¶53.

²⁸⁷ *See supra* notes 5–9.

²⁸⁸ Ex. 148, Jane Roe Dep. at 50:21–51:7.

²⁸⁹ *Id.* at 77:21–78:14, 79:4-19.

²⁹⁰ *Id.* at 78:2-10.

²⁹¹ *Id.* at 78:2-10, 120:13–121:6.

²⁹² *Id.* at 80:8-23.

²⁹³ *Id.* at 80:15-18, 81:5–82:21.

²⁹⁴ *Id.* at 81:5–82:21.

²⁹⁵ *Id.* at 82:21–83:10.

²⁹⁶ *Id.*

²⁹⁷ *Id.* at 83:10–84:8.

²⁹⁸ *Id.* at 84:7-15, 84:18-22, 91:1-12.

118. On the second day of her detention, Jane Roe was sexually harassed and then raped “repeatedly.”²⁹⁹ GOS security forces were known for raping women, including the families of their perceived political enemies, and especially targeted Christian, non-Arab women, referring to them as “slaves,” “infidels,” “uncivilized,” and “dirty.”³⁰⁰ Later, during her refugee screening, Jane Roe would become aware that she had been infected with HIV as a result of her rape.³⁰¹

119. On or about January 6, 2003, Jane Roe was released from the interrogators’ custody on three conditions: (1) not to tell anyone about her detention; (2) to inform the interrogators of her husband’s whereabouts to the extent he contacted her; and (3) not to leave Khartoum without the interrogators’ prior permission.³⁰² The Sudanese security forces told Jane Roe that if she “open[ed] her mouth” to discuss “anything” about her detention, they would “kill all [her] relatives.”³⁰³ The GOS frequently imposed post-release conditions, including having to report back to security forces and requests to inform on neighbors, relatives, and work colleagues.³⁰⁴

120. After she was removed from the detention facility on January 6, 2003, Jane Roe was blindfolded, placed into a car, and dropped off in Haj Yusuf, and she proceeded to her uncle’s home in Omdurman.³⁰⁵ While en route to Haj Yusuf from the detention center, while still in the custody of the Sudanese security forces, Jane Roe experienced a miscarriage.³⁰⁶ After arriving at her uncle’s home, Jane Roe was reunited with her daughter, and she remained there with her uncle in Omdurman until her travel documents were secured.³⁰⁷

121. On March 27, 2003, Jane Roe and her daughter left Sudan from the port at Wadi Halfa, and arrived in Egypt on March 28, 2003.³⁰⁸

122. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in 2003; conducted arrests in this time, place, or manner; accused detainees of collaborating with rebels; or targeted ethnic and religious minorities such as black Africans and Christians.

123. Jane Roe was admitted to the United States as a refugee on March 27, 2006, with her daughter.³⁰⁹

124. Prior to 2003, Jane Roe was in good health.³¹⁰ As a direct result of the violence and multiple rapes she experienced at the hands of the Sudanese security forces, Jane Roe experienced

²⁹⁹ *Id.* at 84:7-15.

³⁰⁰ ECF No. 435-54, Baldo Report ¶¶ 128, 152; Ex. 5, Jok Report ¶¶ 69-71, 96-97.

³⁰¹ Ex. 148, Jane Roe Dep. at 105:15-25.

³⁰² *Id.* at 84:7-15.

³⁰³ *Id.* at 86:11-18.

³⁰⁴ Ex. 5, Jok Report ¶ 61; ECF No. 435-54, Baldo Report ¶¶ 17-18, 154.

³⁰⁵ Ex. 148, Jane Roe Dep. at 86:11-18.

³⁰⁶ *Id.* at 86:11-18, 87:8-21, 88:2-11.

³⁰⁷ *Id.* at 89:21-90:12.

³⁰⁸ *Id.* at 89:21-90:12.

³⁰⁹ Ex. 185, PLA-000223 at 0226; Ex. 210, PLA-001780 at 1781.

³¹⁰ Ex. 7, Keller & Rosenfeld Report, Appendix C19 (“Jane Roe App’x”) at 4.

a miscarriage and is now HIV positive.³¹¹ She has experienced, and continues to experience, symptoms of PTSD and depression, including suicidal ideation, as a direct result of the violence, multiple rapes, and miscarriage she suffered.³¹²

XI. John Doe

125. Plaintiff John Doe is a U.S. citizen that was born in 1972 in Wau, the capital of Western Bahr El Ghazal state in what is now South Sudan.³¹³ He is a member of the Fur tribe, an ethnic African group traditionally based in Darfur,³¹⁴ which was targeted by the Regime for genocide.³¹⁵ He moved to Khartoum, Sudan's capital, in the 1980s, where he worked as a car mechanic.³¹⁶

126. On April 15, 2004, after he had returned to his home in Khartoum, he heard a knocking on the door late at night.³¹⁷ He looked out and saw a white Land Cruiser pick-up truck with tinted windows parked outside,³¹⁸ a vehicle commonly used by the GOS military and its agents.³¹⁹ Four men armed with pistols and Kalashnikov rifles and dressed in plainclothes approached him and asked, "Are you [John Doe]?" When he answered, "Yes", they handcuffed him, blindfolded him and pushed him into the vehicle.³²⁰ The car drove for a distance and then stopped. John Doe's captors pulled him out of the vehicle, took him inside a building, and left him in a room, blindfolded the entire time.³²¹ Some time later, his captors entered the room and removed the blindfold.

127. John Doe was detained and interrogated for about two weeks.³²² They beat him and accused him of being a member of the opposition and a spy, which he denied: "No, I'm not any of these. I'm just a mechanic."³²³ They accused him of transporting secret documents: "They ask me if I'm used to carry like, you know, secret document to east of Sudan and then also to the west part of Sudan. Then I told them that I'm just -- just a regular mechanic. I -- I don't do anything like that."³²⁴ John Doe was not a member of any rebel or other opposition group.³²⁵

³¹¹ *Id.* at 5; Ex. 148, Jane Roe Dep. at 91:10-20; Ex. 5, Jok Report ¶ 155.

³¹² Ex. 148, Jane Roe Dep. at 92:4-7; Ex. 7, Jane Roe App'x at 6-9.

³¹³ Ex. 134, Deposition of John Doe ("John Doe Dep."), dated June 9, 2022, at 149:7-8, 151:11-12; Ex. 223, UNHCR, Sudan Administrative Map as of August 2007, <https://data.unhcr.org/en/documents/download/82260>.

³¹⁴ Ex. 134, John Doe Dep. at 85:5.

³¹⁵ ECF No. 435-54, Baldo Report ¶¶ 72, 191; ECF No. 435-68, Hudson Report ¶ 91; ECF No. 435-93, Verhoeven Report at 17-18. The UN's Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was "one of the objectives" of the GOS's campaign of terror, conducted in large part through the Janjaweed. *See* Ex. 55 to Decl. of Charity E. Lee, ECF No. 435-55, Baldo Reply ¶ 152.

³¹⁶ Ex. 134, John Doe Dep. at 160:16-19.

³¹⁷ *Id.* at 77:20-78:12.

³¹⁸ *Id.* at 81:25-82:1, 83:5-9.

³¹⁹ ECF No. 435-52, Austin Report ¶ 188; ECF No. 435-54, Baldo Report ¶ 129; Ex. 5, Jok Report ¶ 114 n.57.

³²⁰ Ex. 134, John Doe Dep. at 78:15-24.

³²¹ *Id.* at 78:25-79:8.

³²² Ex. 7, Keller & Rosenfeld Report, Appendix C10 ("John Doe App'x") at 2.

³²³ Ex. 134, John Doe Dep. at 79:10-12.

³²⁴ *Id.* at 160:12-19.

³²⁵ *Id.* at 80:4-6.

128. His interrogators threatened John Doe and his family: “if you don’t tell us the truth, we are going to kill your family.”³²⁶ Then they tortured him. They repeatedly beat him with gun butts and hoses, whipped him on the soles of his feet, kicked him in the knee and on his back, forced him to crawl on stones while beating his back, and doused him with dirty water.³²⁷ After his captors momentarily left him, he overheard them talking to each other: “One of them [would] say ‘Can we kill him?’ ‘No, don’t kill him.’ And the other would say ‘No, we can kill him’ and then the other [would] say, ‘No, we can go and kill his children if he doesn’t tell us the truth.’”³²⁸

129. When John Doe refused to falsely confess, his captors started to “violently sexually assault” him, raping him anally and orally at least three times, while telling him that “if he [doesn’t] confess, they are going to kill [him] or they are going to kill [his] family.”³²⁹ After that, they left him for a long period of time in a “dark, filthy place” with no water or food.³³⁰ The GOS used rape and sexual assault against men with the goal of demoralizing, dehumanizing, and humiliating their victims, as it “is a supreme humiliation as Sudanese culture considers it beyond shameful.”³³¹ To this day, John Doe has not told his wife of his sexual abuse: “it’s something I’m ashamed to tell her.”³³²

130. After 14 days in detention, his captors blindfolded him, placed him in the back of a pick-up truck, and drove him to an isolated area. They told him he was being released on the condition that he should report to the general security headquarters every Monday and that he should not leave the country. He agreed and they left him.³³³ He hitched a ride out of Khartoum and stayed with a friend who helped him arrange passports and visas for him and his family to escape Sudan for Egypt.³³⁴

131. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in April 2004; conducted arrests in this time, place, or manner; accused detainees of being members of the opposition; or requested that released detainees report back to general security headquarters.

132. John Doe was admitted to the United States as a refugee on July 11, 2010, accompanied by his wife and children, following a determination that he “fled or was displaced” from Sudan.³³⁵

133. John Doe continues to suffer physical and psychological symptoms, including but not limited to symptoms of physical pain, PTSD, and depression, including frequent intrusive

³²⁶ *Id.* at 79:15-19.

³²⁷ *Id.* at 28:25-29:3, 58:14-21.

³²⁸ *Id.* at 79:24-80:6.

³²⁹ *Id.* at 55:24-58:12, 80:7-9.

³³⁰ *Id.* at 80:12-15.

³³¹ Ex. 5, Jok Report ¶¶ 99-100.

³³² Ex. 7, John Doe App’x at 2.

³³³ Ex. 134, John Doe Dep. at 107:13-109:24.

³³⁴ *Id.* at 114:1-118:6.

³³⁵ Ex. 213, PLA-013072 at 74, 76.

memories of traumatic experiences and avoidance of reminders of his experiences in Sudan, as a result of the multiple traumatic experiences inflicted by the GOS and its agents.³³⁶

XII. Shafika G. Hassan

134. Plaintiff Shafika G. Hassan (“Ms. Hassan”) is U.S. citizen born in 1975 in Aweil, Sudan (now South Sudan).³³⁷ She is a member of the Fur tribe,³³⁸ an ethnic African group traditionally based in Darfur, which was targeted by the Regime for genocide.³³⁹

135. She moved to Khartoum, Sudan’s capital, where she lived with her husband and children.³⁴⁰ Ms. Hassan’s husband was a mechanic, who would leave Khartoum to take spare parts to the western part of Sudan.³⁴¹

136. In April 2004, Ms. Hassan woke up to find that her husband was gone.³⁴² The GOS suspected that he was passing information³⁴³ to Darfur rebels.³⁴⁴ The next day, members of the GOS military intelligence came to her home while she and her children were sleeping.³⁴⁵ They were armed with small guns, carrying government badges, and wearing boots commonly worn by members of the government.³⁴⁶ Their appearance was consistent with NISS and other military intelligence agencies.³⁴⁷ They searched her house for documents, turned the house upside down, and stole her gold.³⁴⁸

137. These men “asked her where the information was that her husband was passing to rebels.”³⁴⁹ When they did not find documents, they started to beat Ms. Hassan, kicking her, twisting her arm and grabbing her breasts.³⁵⁰ Her children stopped the men from raping her.³⁵¹ Her son Nasr was hit with a gun in the back.³⁵²

138. Other members of government military intelligence, also wearing badges, returned to Ms. Hassan’s home on several occasions following the initial assault.³⁵³ She testified that they

³³⁶ Ex. 7, John Doe App’x at 7.

³³⁷ Ex. 7, Keller & Rosenfeld Report, Appendix C11 (“Shafika App’x”) at 2.

³³⁸ Ex. 7, Shafika App’x at 2.

³³⁹ ECF No. 435-54, Baldo Report ¶¶ 72, 191; ECF No. 435-68, Hudson Report ¶ 91; ECF No. 435-93, Verhoeven Report at 17–18. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. *See* ECF No. 435-55, Baldo Reply ¶ 152.

³⁴⁰ Ex. 7, Shafika App’x at 3.

³⁴¹ Ex. 138, Deposition of Shafika Hassan (“Hassan Dep.”), dated June 9, 2022, at 50:11-16.

³⁴² *Id.* at 127:20-22; 58:4–59:1.

³⁴³ *Id.*

³⁴⁴ Ex. 7, Shafika App’x at 3.

³⁴⁵ Ex. 138, Hassan Dep. at 50:24–52:2.

³⁴⁶ *Id.* at 50:24–52:2; 63:9-14.

³⁴⁷ Ex. 5, Jok Report ¶¶ 108–11.

³⁴⁸ Ex. 138, Hassan Dep. at 50:24–52:2.

³⁴⁹ Ex. 7, Shafika App’x at 3.

³⁵⁰ Ex. 138, Hassan Dep. at 53:2-10; 71:15–72:18.

³⁵¹ *Id.* at 53:17-22.

³⁵² *Id.* at 62:9-15.

³⁵³ *Id.* at 53:23–54:4.

would ask “[w]here are the papers?” and when she did not have any papers to give them, they threatened her and her children.³⁵⁴ During these occasions, the men would grab her breasts, beat her, step on her,³⁵⁵ and “deman[d] she tell them about her husband’s contacts with rebel groups in Darfur.”³⁵⁶

139. Ms. Hassan was left with scratches on her body from the kicking and hitting she suffered.³⁵⁷ She is still unable to lift heavy objects due to how her arm was twisted backwards during the attack.³⁵⁸ She feels psychological as well as physical pain. As she testified, “the psychological injuries are worse than the physical injuries because those are things you cannot forget. [...]t’s something that will be there in your life, and you will keep on crying. It’s better to be physically beaten.”³⁵⁹ Her children were terrified by the attacks.³⁶⁰ She was too afraid to seek medical attention because the government would suspect her of reporting the attacks.³⁶¹

140. Ms. Hassan’s husband returned injured after being detained for two weeks.³⁶² She tended to his wounds with saltwater.³⁶³ He told her that his captors threatened him, asking for the documents he used to transfer information.³⁶⁴

141. Ms. Hassan and her family stayed with a friend who helped arrange passports to escape Sudan for Egypt.³⁶⁵

142. There is no record evidence that any armed actor other than the Government of Sudan and its agents exercised control over Khartoum in April 2004; conducted arrests in this time, place, or manner; visited detainees’ homes seeking documents related to providing information to rebels in Darfur; or carried badges as described by Ms. Hassan.

143. Ms. Hassan was admitted to the United States as a refugee in 2010, accompanied by her husband and children, following an agency determination that she “fled or was displaced” from Sudan.³⁶⁶

144. Ms. Hassan continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD, including frequent intrusive memories of her traumatic experiences, intense fear surrounding anything to do with the sexual assaults by government

³⁵⁴ *Id.* at 54:18–55:1.

³⁵⁵ *Id.* at 53:2–10.

³⁵⁶ Ex. 7, Shafika App’x at 3.

³⁵⁷ Ex. 138, Hassan Dep. at 71:15–20.

³⁵⁸ *Id.* at 71:15–72:7.

³⁵⁹ *Id.* at 81:11–16.

³⁶⁰ *Id.* at 81:25–82:13.

³⁶¹ *Id.* at 81:25–82:13.

³⁶² *Id.* at 58:19–59:1.

³⁶³ *Id.* at 64:19–65:7.

³⁶⁴ *Id.* at 63:15–22.

³⁶⁵ *Id.* at 56:14–23.

³⁶⁶ Ex. 200, PLA-001279 at 1280–81.

officials, and related somatic physical symptoms as a result of the multiple traumatic experiences inflicted by the GOS and its agents.³⁶⁷

XIII. Hawa Omar

145. Plaintiff Hawa Omar (“Ms. Omar”) is a U.S. citizen who was born in 1979 in Sulu, Western Darfur.³⁶⁸ She is a member of the Fur tribe,³⁶⁹ an ethnic African group traditionally based in Darfur, which was targeted by the Regime for genocide.³⁷⁰

146. Sulu was within the jurisdiction of the Western Military Region of Sudan, under the chain of command of the SAF, Ministry of Defense, and President Omar al-Bashir.³⁷¹ The Sudanese Military Intelligence, Border Intelligence, and Janjaweed were active in the area.³⁷²



Figure 2: Extract from Ex. 218, UN Darfur Planning Map (2006).

147. The military, security, and militia forces operating in Western Darfur state were implementing a plan formulated at the highest level of the Sudanese government (the “Darfur Plan”). In 2003, the Regime’s National Security Council “‘issued an emergency plan that formed

³⁶⁷ Ex. 7, Shafika App’x at 8-9.

³⁶⁸ Ex. 143, Deposition of Hawa Omar (“Omar Dep.”), dated June 8, 2022, at 47:4-7.

³⁶⁹ *Id.* at 48:12-20.

³⁷⁰ ECF No. 435-54, Baldo Report ¶¶ 72, 191; ECF No. 435-68, Hudson Report ¶ 91; ECF No. 435-93, Verhoeven Report at 17–18. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. *See* ECF No. 435-55, Baldo Reply ¶ 152.

³⁷¹ *See* Ex. 58 to the Decl. of Charity E. Lee, ECF No. 435-58, Expert Report of Enrico Carisch (“Carisch Report”), dated January 6, 2023, at 19 n.96; *see* Ex. 215, *Prosecutor v. Kushayb*, ICC-02/05-01/20, Prosecutor’s Trial Brief, ¶¶ 33–34 (Feb. 4, 2022) (the “Trial Brief”), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1801f86f5.pdf>.

³⁷² Ex. 59 to the Decl. of Charity E. Lee, ECF No. 435-59, Declaration of Nima Elbagir (“Elbagir Decl.”), dated August 9, 2022 ¶ 18; Ex. 143, Omar Dep. 72:20-25.

the basis for the [Government] to launch its counterinsurgency campaign” calling for the use of “Arab tribes to target members of the non-Arab tribes that were accused of supporting the rebellion, as well as residential areas where rebels were believed to be hiding.”³⁷³ A March 6, 2004 cable from the U.S. embassy in Khartoum confirmed that the Janjaweed were deployed as an auxiliary government force: “When the Sudanese Armed Forces was unable to defeat the SLA following the April 2003 attack on El Fasher, the GOS engaged a proxy force of Arab militia which, because they ride horses and camels, are known as the jinjaweed. While the air force has bombed towns, the jinjaweed, working in concert with the army, have continued on the rampage.”³⁷⁴ The U.S. embassy reported: “Given reports from the field increasingly pointing to army complicity in the coordination and implementation of attacks, there seems little way to avoid the conclusion that the Government of Sudan is pursuing a full-fledged war on the non-Arab peoples of Darfur”³⁷⁵ In April 2007, the International Criminal Court issued an arrest warrant for Ahmad Harun, Sudan’s Minister of State for the Interior of the Government of Sudan, finding reasonable grounds to conclude that he “was in charge of the management of the ‘Darfur Security Desk’ thereby coordinating the different bodies of the Government involved in the counter-insurgency, including the Police, the Armed Forces, the National Security and Intelligence Service and the Militia/Janjaweed.”³⁷⁶ A 2009 UN report co-authored by BNPP’s expert Enrico Carisch confirms that the Janjaweed were part of the Regime’s fighting forces in Darfur: “The Government of the Sudan alleges that all Janjaweed militias have been integrated into SAF and its auxiliary forces”³⁷⁷ Collectively, these actors who implemented the Darfur Plan are referred to as the “Darfur Command Structure.”

148. In June 2002, she witnessed the Janjaweed arrive from the east, round up cattle and other animals outside of her village, and abscond with the animals, including her family’s cattle, sheep, and goats.³⁷⁸ The Janjaweed were wearing khaki uniforms with an insignia on the shoulder carrying “Jim” and “Kalesh” (likely Kalashnikov) guns, and rode on camels and horses.³⁷⁹ People from the village followed her for a while to attempt to take back some of the animals, but the Janjaweed fired their weapons, and the people, including Ms. Omar, fled.³⁸⁰

149. In December of 2003, following implementation of the Darfur Plan, Ms. Omar witnessed the Janjaweed militia attacking civilians near her village: “The Janjawees were the

³⁷³ ECF No. 435-55, Baldo Reply ¶ 57 (quoting Ex. 215, *Prosecutor v. Kushayb*, ICC-02/05-01/20, Prosecutor’s Trial Brief, ¶ 57 (Feb. 4, 2022), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1801f86f5.pdf>).

³⁷⁴ Ex. 216, U.S. Embassy Khartoum Cable to Secretary of State, “The Jinjaweed” March 6, 2004, <https://nsarchive.files.wordpress.com/2016/03/document-4-20040306-the-janjaweed.pdf>, quoted in Ex. 9 to ECF No. 435-68, Hudson Report ¶ 102.

³⁷⁵ *Id.*

³⁷⁶ Ex. 217, *Prosecutor v. Harun*, Case No. ICC-02/05-01/07, Warrant of Arrest for Ahmad Harun, at 5 (Apr. 27, 2007), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2007_02902.PDF. See also ECF No. 435-59, Elbagir Decl. ¶ 18 (reporting that Military Intelligence officers and local police in West Darfur were concerned about the recruitment of Arab tribes by Ahmad Harun).

³⁷⁷ Ex. 174, U.N. S.C., Letter dated 27 October 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) addressed to the President of the Security Council, U.N. Doc. S/2009/562 ¶ 175 (Oct. 29, 2009) (“2009 POE Report”).

³⁷⁸ Ex. 143, Omar Dep. at 86:15–91:12.

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 91:13–93:6.

ones alone who would come and kill us and burn us. [...] Nobody has a gun to fight the Janjaweed.”³⁸¹ The only other armed groups she witnessed were “the military” that “would be there with” the Janjaweed, who “were the ones who would come there and kill the people, burn the place, take the cattle.”³⁸²

150. Ms. Omar watched the Janjaweed enter the village in camouflage vehicles and on horses and camels, heavily armed, and wearing khaki camouflage with a shoulder patch and boots.³⁸³ Military planes painted camouflage circled overhead; Ms. Omar heard the bombs going off as the Janjaweed set fire to Sulu from the ground:

I have seen people being shot and places being burned, and you could be running and you could see somebody falling in front of you who has been shot. And sometimes you will see women being raped. You would just be running. And if God has not saved you, you could be in the same situation as well. All we do is to run to safety, to a place that is safe and -- but we had seen all this happening.

[...]

The farm, it was burned down. And whatever crops that were left -- for example, the ground nuts, the okra and the sorghum, whatever was left were eaten by the animals of the Janjaweed. And whatever we had, properties that we had, the furniture or the things that we had in the house were also all burned down. We all ran only with the clothes on our backs. And you would see some people are running sometimes with one shoe on one foot or no shoes.³⁸⁴

151. The airport of Al Geneina was located in Western Darfur state. According to BNPP expert Enrico Carisch, the SAF made military use of the Al Geneina airport, which was administered by the Civil Aviation Authority.³⁸⁵ A 2009 UN report co-authored by Mr. Carisch stated that, at that time, the “SAF presence in Darfur” was “supported by around a dozen helicopters (both attack and transport), three jet aircraft and three cargo aircraft.”³⁸⁶ Mr. Carisch’s panel confirmed the use of Antonov aircraft, having “collected over one hundred witness statements to the effect that those Antonov aircraft conducted aerial bombardments” in areas of Darfur.³⁸⁷

152. Ms. Omar fled to Mornei with her daughter and grandmother, where they stayed under a tree with no food, toilets, or water.³⁸⁸ She relocated to a Zalingei refugee camp before taking her daughter to join her husband in a refugee camp in Chad in 2005.³⁸⁹

³⁸¹ Ex. 143, Omar Dep. at 72:10-19.

³⁸² *Id.* at 72:20-25.

³⁸³ *Id.* at 74:13-18, 79:10-15, 80:8-9, 90:17-18.

³⁸⁴ *Id.* at 81:10-24.

³⁸⁵ Ex. 153, Deposition of Enrico Carisch (“Carisch Dep.”), dated April 26, 2023, at 225:7-20.

³⁸⁶ Ex. 174, 2009 POE Report ¶ 172.

³⁸⁷ *Id.* ¶ 193.

³⁸⁸ Ex. 7, Keller & Rosenfeld Report, Appendix C8 (“Omar Appendix”) at 3.

³⁸⁹ *Id.*

153. There is no record evidence that any armed forces in Sudan other than the GOS had access to helicopter gunships and cargo planes, conducted aerial attacks against civilian and humanitarian targets, or engaged in the systematic targeting of the Masalit, Zaghawa, Fur, and other black African tribes in Darfur.³⁹⁰ Nor is there record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Sulu at the time of the attacks experienced by Ms. Omar.³⁹¹

154. In 2009, Ms. Omar was admitted to the United States as a refugee, along with her two accompanying children, following an agency determination that she had “fled or was displaced” from Sudan.³⁹²

155. Ms. Omar suffered posttraumatic sequelae following the abuses she faced in at the hands of the GOS and its agents.³⁹³ She avoids discussions of her experiences in Sudan and uses interventions to change her thoughts when she experiences intrusive memories.³⁹⁴

XIV. Abulgasim Suleman Abdalla

156. Plaintiff Abulgasim Suleman Abdalla (“Mr. Abdalla”) is a U.S. citizen who was born in 1976 in Doweit, a village of approximately 200–300 families near Al Geneina, the capital of West Darfur state.³⁹⁵ His parents grew vegetables and tended to livestock.³⁹⁶ Mr. Abdalla is part of the Masalit tribe, which was targeted by the GOS for genocide,³⁹⁷ and is a Muslim.³⁹⁸

157. Western Darfur state, which includes Al Geneina, Bawudah, and Kassaross, was within the jurisdiction of the Western Military Region of Sudan, under the chain of command of the Sudanese Armed Forces (“SAF”), Ministry of Defense, and President Omar al-Bashir.³⁹⁹ The Sudanese Military Intelligence and Border Intelligence were active in the area.⁴⁰⁰ Also active in the area were the government-recruited Arab tribal militia called the *Janjaweed*.⁴⁰¹ Western Darfur state was subject to the Darfur Plan.⁴⁰²

³⁹⁰ ECF No. 435-55, Baldo Reply ¶ 26; Ex. 5, Jok Report ¶ 15.

³⁹¹ See Ex. 143, Omar Dep. at 72:20-25.

³⁹² Ex. 204, PLA-001506 at 1507–08.

³⁹³ Ex. 7, Omar Appendix at 5.

³⁹⁴ *Id.*

³⁹⁵ Ex. 133, Deposition of Abulgasim Suleman Abdalla (“Abdalla Dep.”), dated June 9, 2022, at 7:23-24, 12:2-5, 49:21–51:2; Ex. 229, Pl. Abulgasim Suleman Abdalla’s Objs. & Resps. to Defs.’ First Set of Interrogs. (Nos. 1-4) (“Abdalla First Interrogs.”), dated April 18, 2022, Resp. No. 1; see Fig. 2.

³⁹⁶ *Id.*

³⁹⁷ Ex. 5, Jok Report ¶ 11. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. See ECF No. 435-55, Baldo Reply ¶ 152.

³⁹⁸ Ex. 133, Abdalla Dep. at 7:23-24, 12:2-5, 49:21–51:2; Ex. 229, Abdalla First Interrogs., Resp. No. 1.

³⁹⁹ See ECF No. 435-58, Carisch Report at 19 n.96; see Ex. 215, *Prosecutor v. Kushayb*, ICC-02/05-01/20, Prosecutor’s Trial Brief, ¶¶ 33–34 (Feb. 4, 2022) (the “Trial Brief”), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1801f86f5.pdf>.

⁴⁰⁰ See ECF No. 435-59, Elbagir Decl. ¶ 18.

⁴⁰¹ *Id.*

⁴⁰² See *supra* ¶¶ 146–47.

158. In 1997, Mr. Abdalla married his wife in Dowiet, and they moved into a home that he had built for them on the land that his father passed to him.⁴⁰³ Mr. Abdalla and his wife farmed vegetables and tended to over 100 cows and goats.⁴⁰⁴ Beginning around 1997 or 1998, armed people began stealing cattle by force, and local authorities refused to do anything about the thefts when reported.⁴⁰⁵

159. In 1999, members of the “People’s Armed Forces” (the SAF), Popular Defense Forces (the PDF), and the Janjaweed attacked Doweit.⁴⁰⁶ Mr. Abdalla was in a nearby market shopping when the attack occurred and saw smoke rising from the village.⁴⁰⁷ He sneaked back near the village and hid in a tree, where he witnessed the attackers pillage the valuable property, steal all the livestock, and set fire to homes and the entire village.⁴⁰⁸ Mr. Abdalla recognized the uniforms; each force was wearing a slightly different version of a khaki uniform.⁴⁰⁹ The Janjaweed were on horseback, while the government forces and militia had Toyotas, and they were all armed.⁴¹⁰

160. Mr. Abdalla also witnessed a helicopter delivering supplies to the attackers.⁴¹¹ Air transportation was important for maintaining supply lines across Sudan’s vast territory in Darfur.⁴¹²

161. He also saw an airplane dropping bombs on people fleeing the village: “From far away, you see plane – you see the plane dropping down bombs on people who are fleeing . . . and then there will be explosions, explosions of the people.”⁴¹³ The GOS routinely engaged in bombing villages of undesirable populations in Darfur in coordination with attacks by the Janjaweed and GOS military and paramilitary forces.⁴¹⁴ As admitted by Sallah Gosh, head of Sudan’s security agency, in 2004: the GOS “will bomb those villages. It will attack those villages because the villages were attacking them.”⁴¹⁵ Up to two-thirds of attacks on villages in Darfur involved aerial bombing.⁴¹⁶ One study documented more than 1800 instances of aerial bombardment carried out by the al-Bashir regime on civilian and humanitarian targets, including hospitals and feeding centers for malnourished children, between 1999 and 2012.⁴¹⁷ The GOS typically used “dumb” bombs, often just barrels packed with shrapnel and explosives to maximize damage to unarmored targets such as civilians, and rolled them off the back of cargo planes flying at medium and high

⁴⁰³ Ex. 133, Abdalla Dep. at 52:8–53:18, 54:22–55:13.

⁴⁰⁴ *Id.*

⁴⁰⁵ Ex. 7, Keller & Rosenfeld Report, Appendix C4 (“Abdalla App’x”) at 2.

⁴⁰⁶ Ex. 133, Abdalla Dep. at 75:19–81:13.

⁴⁰⁷ *Id.* at 75:19–81:13, 85:14–18.

⁴⁰⁸ *Id.* at 82:9–84:25.

⁴⁰⁹ *Id.* at 75:19–81:13.

⁴¹⁰ *Id.* at 82:21–83:7.

⁴¹¹ *Id.* at 86:3–87:25.

⁴¹² ECF No. 435-54, Baldo Report ¶ 60.

⁴¹³ Ex. 133, Abdalla Dep. at 87:4–25.

⁴¹⁴ ECF No. 435-54, Baldo Report ¶ 73; ECF No. 435-93, Verhoeven Report at 26; ECF No. 435-52, Austin Report ¶¶ 166, 202; Ex. 5, Jok Report ¶¶ 14–15, 28.

⁴¹⁵ ECF No. 435-54, Baldo Report ¶ 73.

⁴¹⁶ ECF No. 435-55, Baldo Reply ¶ 26.

⁴¹⁷ ECF No. 435-54, Baldo Report ¶ 180; ECF No. 435-55, Baldo Reply ¶ 100.

altitudes.⁴¹⁸ These barrel bombs were dropped on civilians as they sought shelter or attempted to flee.⁴¹⁹

162. Following the 1999 attack, Mr. Abdalla had no idea where his wife and other family members had fled.⁴²⁰ Eventually, he found his family in Chad, where they lived a difficult life for a short period of time.⁴²¹ The GOS, through its state-controlled radio station, announced that people would not be attacked again.⁴²² The GOS would sometimes trick local population into returning, then attack again once the local population had begun to rebuild.⁴²³ Mr. Abdalla and his family built a small brick house in the area nearby Doweit.⁴²⁴

163. In 2003, Doweit was attacked again. Mr. Abdalla was at a nearby market in Abila-Karare when he saw a mass of people fleeing and was told that everyone had been burnt down: “I could not go back because they told me they burned everything. There is no way to go back.”⁴²⁵ Mr. Abdalla, separated from his family, had no choice but to flee on foot to Murnay.⁴²⁶ While his wife and children escaped Doweit, leaving everything behind, and met Mr. Abdalla in Murnay, he never saw his parents and siblings again.⁴²⁷

164. Mr. Abdalla and his family attempted to flee from Murnay to Nyala in a lorry, but were stopped by around ten or more Janjaweed wearing khaki uniforms, riding horses, and accompanied by a Toyota.⁴²⁸ The first thing they asked was whether Mr. Abdalla “belong[ed] to one of the four tribes” (the Masalit, Fur, Zaghawa, and Midob), and when he responded that he was Masalit, they took him to a nearby forest and beat him with the butts of their guns.⁴²⁹ The Janjaweed stated that they did not want or need Masalit in Sudan, and as they beat him said they would kill members of the four tribes.⁴³⁰ They struck him repeatedly in the head and legs with the butts of Kalashnikov and Jim 3 rifles, and knocked him unconscious.⁴³¹

165. The beating continued until a Red Cross car happened across the road; the Janjaweed was afraid of being videotaped committing human rights abuses.⁴³² The Red Cross assisted Mr. Abdalla back onto the lorry, and accompanied the truck all the way to the IDP camp

⁴¹⁸ ECF No. 435-54, Baldo Report ¶¶ 60, 199; Ex. 5, Jok Report ¶¶ 14, 34.

⁴¹⁹ Ex. 5, Jok Report ¶¶ 28, 32; Ex. 133, Abdalla Dep. at 91:19-23 (“Usually, they drop bombs on areas where there are a lot of residents. There were groups of people who were fleeing, a lot of them. They don’t waste a bomb on one person.”).

⁴²⁰ Ex. 7, Abdalla App’x at 2.

⁴²¹ Ex. 133, Abdalla Dep. at 92:20–93:16.

⁴²² *Id.* at 93:24–94:95:5.

⁴²³ Ex. 5, Jok Report ¶ 31; Ex. 7, Abdalla App’x at 2.

⁴²⁴ Ex. 133, Abdalla Dep. at 95:6-24.

⁴²⁵ *Id.* at 96:2–98:16.

⁴²⁶ *Id.* at 98:21–99:24.

⁴²⁷ *Id.*

⁴²⁸ *Id.* at 59:6–60:15, 101:13–104:4.

⁴²⁹ *Id.* at 102:18–103:15.

⁴³⁰ *Id.*

⁴³¹ *Id.* at 105:1–106:8; Ex. 7, Abdallah App’x at 2-3.

⁴³² Ex. 133, Abdalla Dep. at 106:19–108:9.

in Nyala.⁴³³ “[T]hat’s how, with the help of the Red Cross, I was saved. I escaped death.”⁴³⁴ Mr. Abdalla received surgery at a hospital in Nyala for his leg and head injuries, and required follow up surgery in 2015 in the United States on his right leg.⁴³⁵

166. Mr. Abdalla and his family settled in the Siraif IDP camp near Nyala.⁴³⁶ While Mr. Abdalla was at work, the SAF, PDF, and Janjaweed attacked the camp, kicked out the aid organizations that were there, and burned down “all of it.”⁴³⁷ He returned from work to find them surrounding the IDP camp, with “cars belonging to the army and to the Janjaweed and to the People’s Defense [Force].”⁴³⁸

167. Following the attack near Nyala, Mr. Abdalla and his family fled again, this time to Camp Kauda, and IDP in Sudan.⁴³⁹ From there, an aid agency helped him and his family escape to a refugee camp in Kenya “[s]o I won’t be killed. So I don’t die.”⁴⁴⁰ He remained there for six years.⁴⁴¹

168. There is no record evidence that any armed forces in Sudan other than the GOS had access to helicopter gunships and cargo planes, conducted aerial attacks against civilian and humanitarian targets, or engaged in the systematic targeting of the Masalit, Zaghawa, Fur, and other black African tribes in Darfur.⁴⁴² Nor is there record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Doweit or Siraif IDP camp at the time of the attacks experienced by Mr. Abdalla.

169. Mr. Abdalla was admitted to the United States as a refugee on December 2, 2013 after an agency finding that he “fled or was displaced” from Sudan.⁴⁴³

170. Mr. Abdalla continues to suffer symptoms of an ongoing depressive disorder, including symptoms of anhedonia, issues concentrating, avoidance of discussions related to past traumatic experiences and other chronic depressive symptoms.⁴⁴⁴ Additionally, he has “ongoing physical pain and significant functional limitations,” like chronic leg pain and difficulty walking, resulting from his multiple traumatic experiences inflicted by the GOS and its agents.⁴⁴⁵ The scarring from his beatings seems to have resulted in inadequate return of blood to his legs, especially his right leg, causing varicose veins and chronic pain symptoms.⁴⁴⁶

⁴³³ *Id.*

⁴³⁴ *Id.* at 107:2-3.

⁴³⁵ *Id.* at 108:10–109:14.

⁴³⁶ *Id.* at 110:3-9.

⁴³⁷ *Id.* at 110:10–111:7.

⁴³⁸ *Id.*

⁴³⁹ *Id.* at 62:18–63:7.

⁴⁴⁰ *Id.* at 63:11-18, 65:22-23.

⁴⁴¹ Ex. 7, Abdallah App’x at 3.

⁴⁴² ECF No. 435-55, Baldo Reply ¶ 26; Ex. 5, Jok Report ¶ 15.

⁴⁴³ Ex. 211, PLA-001837 at 1837.

⁴⁴⁴ Ex. 7, Keller & Rosenfeld Report, Appendix C4, Abulgasim Appendix at 6–7.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* at 7.

XV. Hamdan Juma Abakar

171. Plaintiff Hamdan Juma Abakar (“Mr. Hamdan Abakar”) was born in 1977 in the village Abu Daheia, approximately an hour and a half by donkey west of Habila, in Western Darfur.⁴⁴⁷ Mr. Hamdan Abakar is a member of the Masalit tribe, one of the tribes targeted by the GOS for genocide,⁴⁴⁸ and like most of his community grew up Muslim.⁴⁴⁹ He and his family grew grain, sorghum, and peanuts during the rainy season, and owned nearly 100 cattle.⁴⁵⁰

172. Western Darfur state, which includes Habila,⁴⁵¹ was within the jurisdiction of the Western Military Region of Sudan, under the chain of command of the Sudanese Armed Forces (“SAF”), Ministry of Defense, and President Omar al-Bashir.⁴⁵² The Sudanese Military Intelligence and Border Intelligence were active in the area.⁴⁵³ Also active in the area were the government-recruited Arab tribal militia called the *Janjaweed*.⁴⁵⁴ Western Darfur state was subject to the Darfur Plan.⁴⁵⁵

173. In February 2003, Mr. Hamdan Abakar was tending to cattle outside Abu Daheia when Janjaweed on horses and camels and the Sudanese army in Land Cruisers attacked the village by the hundreds.⁴⁵⁶ This pattern of attack – beginning with GoS soldiers in Land Cruisers and other military vehicles and followed by Janjaweed forces on horse and camel – was repeated throughout Darfur, which colloquially became known as the “Land Cruiser War.”⁴⁵⁷ Some of the Janjaweed wore khaki military-like uniforms, and they were all armed with the same types of weapons used by the military – machine guns, Kalashnikovs, and DShKs.⁴⁵⁸ Mr. Hamdan Abakar recognized the army’s vehicles, their camouflage green color uniforms, and the insignia emblazoned on their shoulders and hats from an earlier encounter with the army.⁴⁵⁹

174. The attack came from the north and south.⁴⁶⁰ Mr. Hamdan Abakar was shot in the leg by the Janjaweed forces coming from the south with a bullet later identified as having come from a Kalishnikov rifle.⁴⁶¹ Mr. Hamdan Abakar recognized that the Janjaweed were far better

⁴⁴⁷ Ex. 132, Deposition of Hamdan Abakar (“Hamdan Abakar Dep.”), dated June 3, 2022, at 38:17–39:18.

⁴⁴⁸ Ex. 5, Jok Report ¶ 11. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. See ECF No. 435-55, Baldo Reply ¶ 152.

⁴⁴⁹ Ex. 132, Hamdan Abakar Dep. at 44:19–45:7, 52:23–53:9.

⁴⁵⁰ *Id.* at 41:8–43:16.

⁴⁵¹ See Fig. 2.

⁴⁵² See ECF No. 435-58, Carisch Report at 19 n.96; see Ex. 215, *Prosecutor v. Kushayb*, ICC-02/05-01/20, Prosecutor’s Trial Brief, ¶¶ 33–34 (Feb. 4, 2022) (the “Trial Brief”), <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1801f86f5.pdf>.

⁴⁵³ See ECF No. 435-59, Elbagir Decl. ¶ 18.

⁴⁵⁴ *Id.*

⁴⁵⁵ See *supra* ¶¶ 146–47.

⁴⁵⁶ Ex. 132, Hamdan Abakar Dep. at 58:24–60:8.

⁴⁵⁷ ECF No. 435-52, Austin Report ¶ 188; see also ECF No. 435-54, Baldo Report ¶ 129; Ex. 5, Jok Report ¶ 114 n.57.

⁴⁵⁸ Ex. 132, Hamdan Abakar Dep. at 60:9–61:10.

⁴⁵⁹ *Id.* at 52:14–22, 61:11–24.

⁴⁶⁰ *Id.* at 62:1–23.

⁴⁶¹ *Id.*

armed than they had been during a 1997 attack by ethnically Arab nomadic raiders.⁴⁶² The Janjaweed burned the village and stole the livestock.⁴⁶³ Mr. Hamdan Abakar saw the fires rising from Abu Daheia as he lay on the ground.⁴⁶⁴ His grandfather was shot in the head in front of Hamdan's sister, mother, and grandmother by government forces.⁴⁶⁵ Mr. Hamdan Abakar had surgery in the nearby city Habila to remove the bullet, and after several weeks returned to Abu Daheia where he recovered for three more months.⁴⁶⁶

175. Several months later, Mr. Hamdan Abakar witnessed another attack by the army and Janjaweed, this time on the nearby village Danajour (where Plaintiff Abubakar Abakar owned a mill, *supra*).⁴⁶⁷ Three camouflage green helicopters with the flag of Sudan – red, green, and black – on the side bombed the village, while the Janjaweed attacked from the south on horse and camel back.⁴⁶⁸ The attack lasted “a very long time because the entire village was burned down,” including “[e]lderly people” and Mr. Hamdan Abakar's aunt.⁴⁶⁹ Mr. Hamdan Abakar helped bury the 45 dead.⁴⁷⁰

176. In 2003, Mr. Hamdan Abakar got married in and moved to Habila.⁴⁷¹ He and his wife purchased a small tract of land to farm and had their first baby in 2003.⁴⁷² In September 2003, less than a month after he had moved to Habila and built a home, a white Antonov airplane circled the city several times before dropping four bombs in the residential area where they lived.⁴⁷³ The results were horrific: Mr. Hamdan Abakar witnessed four women, including a woman pregnant with twins ripped apart by bombs, pieces of their bodies strewn across their home, tree, and neighborhood, an image that haunts him to this day.⁴⁷⁴ Mr. Hamdan Abakar's father, who was three houses away, was killed in the attack. In all, 51 people were killed.⁴⁷⁵ Mr. Hamdan Abakar's wife was injured, and carries a scar from the attack to this day.⁴⁷⁶

177. The following day, as Mr. Hamdan Abakar and others attempted to bury the dead, Janjaweed and government soldiers attacked from the west of the city by the hundreds, the former on horse and camel back, and the latter on Land Cruisers.⁴⁷⁷ This tactic of following up airstrikes with a ground attack of soldiers and Janjaweed in Land Cruisers was a common form of attack in Darfur.⁴⁷⁸

⁴⁶² Ex. 7, Keller & Rosenfeld Report, Appendix C3 (“Hamdan Abakar App’x”) at 2.

⁴⁶³ Ex. 132, Hamdan Abakar Dep. at 66:5-21.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.* at 67:1-25.

⁴⁶⁶ *Id.* at 68:3-22; Ex. 7, Hamdan Abakar App’x at 2.

⁴⁶⁷ Ex. 132, Hamdan Abakar Dep. at 70:25-71:10.

⁴⁶⁸ *Id.* at 73:8-76:24, 78:9-15.

⁴⁶⁹ *Id.* at 76:10-77:24.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 79:12-80:14.

⁴⁷² *Id.* at 81:19-84:6.

⁴⁷³ *Id.* at 84:7-86:6, 87:22-88:4.

⁴⁷⁴ *Id.*; Ex. 7, Hamdan Abakar App’x at 3.

⁴⁷⁵ Ex. 132, Hamdan Abakar Dep. at 86:7-89:6.

⁴⁷⁶ *Id.* at 89:7-18.

⁴⁷⁷ *Id.* at 92:9-94:11.

⁴⁷⁸ ECF No. 435-52, Austin Report ¶ 167.

178. The combined forces shot people, looted and burned houses, and dragged a Masalit man named Yaakob through the streets behind a horse.⁴⁷⁹ Mr. Hamdan Abakar's furniture was stolen and his house was burned down.⁴⁸⁰ Mr. Hamdan Abakar and his wife were forced to live in a "temporary makeshift" structure.⁴⁸¹

179. In November 2003, Mr. Hamdan Abakar went to visit his sister in a nearby city called Simbila, a short 20 minute walk south of Habila.⁴⁸² The morning after his arrival, the Janjaweed and army attacked Simbila. The Janjaweed once again arrived on horse and camel back, while the army had Land Cruisers, three tanks, and two camouflage green helicopters.⁴⁸³

180. After the attack on Simbila, Mr. Hamdan Abakar fled to the Nuba Mountains.⁴⁸⁴ They were moved around by agencies, eventually ending up the Kakuma refuge camp in Kenya around 2006.⁴⁸⁵

181. There is no record evidence that any armed forces in Sudan other than the GOS had access to helicopter gunships and cargo planes, conducted aerial attacks against civilian and humanitarian targets, or engaged in the systematic targeting of the Masalit, Zaghawa, Fur, and other black African tribes in Darfur.⁴⁸⁶ Nor is there record evidence that rebels from the JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Abu Daheia, Habila, or Simbila at the time of the attacks experienced by Mr. Hamdan Abakar.

182. Mr. Hamdan Abakar and his wife and children were admitted to the United States in 2014 as refugees following an agency determination that he "fled or was displaced" from Sudan.⁴⁸⁷ and Mr. Hamdan Abakar is a lawful permanent resident who is in the process to become a U.S. citizen.⁴⁸⁸

183. Mr. Hamdan Abakar has suffered symptoms of post-traumatic stress disorder for almost 20 years as a result of the multiple traumatic experiences inflicted by the GOS and its agents.⁴⁸⁹

XVI. Abbo Ahmed Abakar

184. Plaintiff Abbo Ahmed Abakar ("Mr. Abbo Abakar"), a naturalized U.S. citizen, was born in 1976 in Bawudah, approximately two kilometers southwest of the city of Kango

⁴⁷⁹ Ex. 132, Hamdan Abakar Dep. at 94:16-10.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.* at 96:20-25.

⁴⁸² *Id.* at 97:1-98:16.

⁴⁸³ *Id.* at 98:15-100:8.

⁴⁸⁴ *Id.* at 100:14-108:13.

⁴⁸⁵ *Id.*

⁴⁸⁶ ECF No. 435-55, Baldo Reply ¶ 26; Ex. 5, Jok Report ¶ 15.

⁴⁸⁷ Ex. 196, PLA-000924 at 0924-25.

⁴⁸⁸ *Id.*; Ex. 132, Hamdan Abakar Dep. at 124:4-7.

⁴⁸⁹ Ex. 7, Hamdan Abakar App'x at 6.

Haraza, where he lived until 2003.⁴⁹⁰ He comes from the Masalit people, an indigenous African ethnic group, which was targeted by the GOS for genocide.⁴⁹¹ The traditional homeland of the Masalit is the region around Al Geneina (a.k.a. El Geneina), the capital of West Darfur state, including the villages of “Kassaross, Beida, Congo [Kango Haraza] . . . Anila” and “Bawudah.”⁴⁹² In the summer of 2003, Mr. Abbo Abakar was living with his wife and two sons in Bawudah, where his parents and extended family also lived, and where he worked as a tailor and raised cattle.⁴⁹³

185. West Darfur fell under the jurisdiction of the Western Military Region of Sudan, under the chain of command of the SAF, Ministry of Defense, and President Omar al-Bashir, and was subject to the Darfur Plan.⁴⁹⁴

186. During this time period, in 2003, Mr. Abbo Abakar observed Janjaweed forces and Sudanese military in the vicinity of his village: “These are people who would come with the government. Sometimes they will come with cars. They come with helicopters. Or sometimes they will ride horses.”⁴⁹⁵ On several occasions, in Conga Haraza (2 km from his home) he saw Janjaweed come in a helicopter.⁴⁹⁶

187. The airport of Al Geneina was located within roughly 150 km from Buwadah, based on UN maps of the region. According to BNPP expert Enrico Carisch, the SAF made military use of the Al Geneina airport, which was administered by the Civil Aviation Authority.⁴⁹⁷ A 2009 UN report co-authored by Carisch stated that, at that time, the “SAF presence in Darfur” was “supported by around a dozen helicopters (both attack and transport).”⁴⁹⁸ In fact, Carisch’s panel observed “attack and transport helicopters” at “various airports in Darfur.”⁴⁹⁹ Carisch’s 2008 UN report included photographs of a SAF attack helicopter being serviced at El Geneina airport.⁵⁰⁰

188. In approximately July 2003, Mr. Abbo Abakar saw uniformed Sudanese government forces and other fighters on horseback attack Buwadah from the south, with air

⁴⁹⁰ Ex. 130, Deposition of Abbo Abakar (“Abbo Abakar Dep.”), dated June 6, 2022, at 9:18-19, 58:20–60:7; *see* Fig. 2.

⁴⁹¹ Ex. 130, Abbo Abakar Dep. at 73:19-21; Ex. 5, Jok Report ¶ 11. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. *See* ECF No. 435-55, Baldo Reply ¶ 152.

⁴⁹² Ex. 130, Abbo Abakar Dep. at 73:19–74:5; *see* ECF No. 435-54, Baldo Report ¶ 72; Ex. 5, Jok Report ¶ 11; Ex. 218, Darfur Planning Map, United Nations Dept. of Peacekeeping Operations, Cartographic Section, Map E411.2/10/2006, Mar. 2006, available at: <https://digitallibrary.un.org/record/1326236?ln=en>.) (“UN Darfur Planning Map”).

⁴⁹³ Ex. 130, Abbo Abakar Dep. at 64:18–66:22.

⁴⁹⁴ *See supra* ¶¶ 146–47.

⁴⁹⁵ Ex. 130, Abbo Abakar Dep. at 76:18–77:11; *see also* Ex. 7, Keller & Rosenfeld Report, Appendix C1 (“Abbo Abakar App’x”) at 2.

⁴⁹⁶ *Id.*

⁴⁹⁷ Ex. 153, Carisch Dep. at 225:7-20.

⁴⁹⁸ Ex. 174, 2009 POE Report ¶ 172.

⁴⁹⁹ *Id.* ¶¶ 190–91.

⁵⁰⁰ Ex. 175, UN Panel of Expert Report 2008 ¶¶ 85-86, Photo 12.

support from a helicopter.⁵⁰¹ The attackers opened fire and set fire to the village.⁵⁰² Mr. Abbo Abakar and his family fled from the attack and were forced to abandon their home in Buwadah.⁵⁰³ They resettled in another Masalit village in the area called Kassaross.⁵⁰⁴ He built another home for his family there but he unable to continue working as a tailor because the equipment was destroyed in the attack on Buwadah.⁵⁰⁵ One day in 2005, Mr. Abbo Abakar was in the wilderness tending his cattle when he saw smoke and heard a commotion coming from Kassaross.⁵⁰⁶ As he approached the periphery of the village, he saw his uncle lying dead on the ground.⁵⁰⁷ The village was burning and full of smoke.⁵⁰⁸ Mr. Abbo Abakar fled and hid in the wilderness, unable to return to the “area of death” because he feared he would be killed.⁵⁰⁹ His wife and children had been in the village when it was attacked: He never saw them again.⁵¹⁰

189. Mr. Abbo Abakar escaped from Darfur to Chad on foot.⁵¹¹ Eventually, on March 30, 2005, he entered Ghana, where he was recognized by the UN High Commissioner for Refugees as a refugee and lived in a refugee camp.⁵¹²

190. There is no record evidence that any armed forces in Sudan other than the GOS had access to helicopter gunships and cargo planes, conducted aerial attacks against civilian and humanitarian targets, or engaged in the systematic targeting of the Masalit, Zaghawa, Fur, and other black African tribes in Darfur.⁵¹³ Nor is there record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Buwdadah or Kassaross at the time of the attacks experienced by Mr. Abbo Abakar.⁵¹⁴

191. From Ghana, Mr. Abbo Abakar was admitted to the United States as a refugee on April 2, 2009, following an agency determination that he “fled or was displaced” from Sudan.⁵¹⁵

192. Mr. Abbo Abakar continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and chronic depression, notably suffering intrusive memories of the multiple traumatic experiences inflicted by the GOS and its agents.⁵¹⁶

⁵⁰¹ Ex. 130, Abbo Abakar Dep. at 87:12–102:23.

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at 74:1-9.

⁵⁰⁵ Ex. 7, Abbo Abakar App’x at 2.

⁵⁰⁶ Ex. 130, Abbo Abakar Dep. at 103:17–104:17.

⁵⁰⁷ *Id.* at 104:18–106:5.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* at 110:16–111:2.

⁵¹⁰ *Id.* at 110:16–111:5, 114:5-15.

⁵¹¹ *Id.* at 109:9-10.

⁵¹² *Id.* at 86:9-14.

⁵¹³ ECF No. 435-55, Baldo Reply ¶ 26; Ex. 5, Jok Report ¶ 15.

⁵¹⁴ See Ex. 130, Abbo Abakar Dep. at 75:5–76:2; 78:1–80:4.

⁵¹⁵ Ex. 194, PLA-000756 at 758–59.

⁵¹⁶ Ex. 7, Abbo Abakar App’x at 6.

XVII. Entesar Kashef

193. Entesar Kashef (“Ms. Kashef”) is a U.S. citizen, born in 1984⁵¹⁷ in Kadugli, South Kordofan, Sudan.⁵¹⁸ She is a member of the Fur people, an indigenous African ethnic group targeted by the GOS for genocide.⁵¹⁹ After the death of her mother in 1992, her family moved to Kutum, a rural area in Northern Darfur, northwest of El Fasher.⁵²⁰

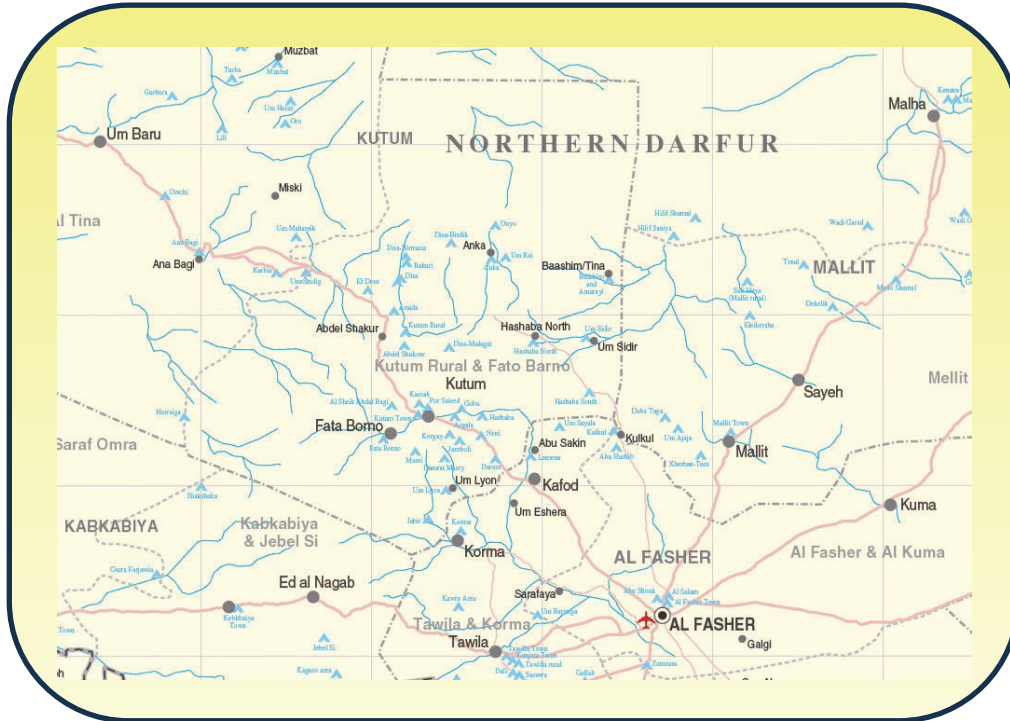


Figure 3: Extract from Ex. 218 UN Darfur Planning Map (2006).

194. Between 2003 and 2008, the Kutum region in Northern Darfur was subjected to the Regime’s Darfur Plan, implemented by the Darfur Command Structure (described *supra*). The Janjaweed leader Musa Hilal—sanctioned as a Specially Designated National by the United States—was originally from Kutum.⁵²¹ In the summer of 2004, Musa Hilal admitted to Sudanese journalist Nima Elbagir that he organized Arab tribal militias to fight for the Sudanese government in Darfur, although he rejected the label “Janjaweed.”⁵²² “I answered my government’s call,” he said: “According to Hilal, fighting for the government in Darfur was part of a longstanding legal

⁵¹⁷ Ex. 140, Deposition of Entesar Kashef (“Kashef Dep.”), dated June 7, 2022, at 37:8-9.

⁵¹⁸ Ex. 140, Kashef Dep. at 44:18-24.

⁵¹⁹ *Id.* at 57:21-23. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. See ECF No. 435-55, Baldo Reply ¶ 152.

⁵²⁰ Ex. 218, UN Darfur Planning Map.

⁵²¹ Ex. 219, U.S. Dept of the Treasury, Office of Foreign Assets Control, Issuance of new Sudan Executive Order; Sudan Designations; SDGT Designation Update, April 27, 2006, <https://ofac.treasury.gov/recent-actions/20060427>

⁵²² ECF No. 435-59, Elbagir Decl. ¶ 26.

framework for the arming of militia.”⁵²³ When Elbagir asked him about “the rapes of African women by Arab militias under his command . . . he laughed” saying: “It is not rape with slave girls because they have no honor.”⁵²⁴ Hilal’s militia base of operations was in North Darfur. In July 2004, Elbagir and American journalist and scholar Samantha Power (currently the head of USAID) were invited by Musa Hilal to visit his stronghold in North Darfur. They flew with Hilal from the military section of the Khartoum International Airport, where Elbagir saw Hilal receive a briefcase from a Sudanese intelligence officer and be asked to “sign for the salaries for the men.”⁵²⁵ After arriving at El Fasher airport, Hilal handed the briefcase to a Sudanese officer wearing a Border Intelligence uniform. The group were then flown in a Sudanese military helicopter to a town in North Darfur, where Hilal told the journalists: “You’re in my territory now. You’re in territory under the control of the leader of the *Janjaweed*.”⁵²⁶

195. Hilal’s forces in North Darfur were part of the government’s command structure and military supply chain. The UN Security Council imposed sanctions on Hilal based on reports, including INTERPOL reports, that the Sudanese government issued a memorandum on February 13, 2004 ordering “security units in the locality” to “allow the activities of the mujahideen and the volunteers under the command of the Sheikh Musa Hilal to proceed in the areas of [North Darfur] and to secure their vital needs.”⁵²⁷

196. In August 2003, Ms. Kashef’s home in Kutum was subjected to coordinated attacks involving SAF aerial bombing and Janjaweed militia forces on horseback and pick-up trucks. The first attack came in the early morning hours: “Everybody was running for their lives. They were attacking us from the air by air strikes, and they were attacking us on land by riding on horses, so we were just trying to escape.”⁵²⁸ That morning, Ms. Kashef saw the lights of three planes attacking overhead: when they returned for another attack later that day, she could see that the planes were green camouflage colored.⁵²⁹ The horsemen who attacked the town wore military uniforms in the same camouflage.⁵³⁰ Other fighters came in green and camouflage colored pick-up trucks with military insignias.⁵³¹ The attacks torched her village: Ms. Kashef’s grandmother’s house was destroyed.⁵³² After the attack, her family stayed in Kutum and rebuilt their home. However, they remained terrified of further attacks, sleeping with their shoes on, with peanuts in their pockets and water ready to run, “like a corpse, waiting to be dead.”⁵³³

⁵²³ *Id.*

⁵²⁴ *Id.* ¶ 28.

⁵²⁵ *Id.* ¶ 31.

⁵²⁶ *Id.* ¶ 34; *see also* ECF No. 435-54, Baldo Report ¶¶ 71–75.

⁵²⁷ Ex. 220, Council of the European Union, Council Implementing Decision (CFSP) 2017/413, Official Journal of the European Union, March 9, 2017, Annex, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0413>; *see also* ECF No. 435-55, Baldo Reply ¶ 62; ECF No. 435-54, Baldo Report ¶ 193 & n.195 (citing a Human Rights Watch Report where Hilal in 2003 claimed to be sent from the GOS), *id.* ¶¶ 74–75 (citing media interviews with Hilal).

⁵²⁸ Ex. 140, Kashef Dep. at 66:20-23.

⁵²⁹ *Id.* at 68:2-12, 73:6-21.

⁵³⁰ *Id.*

⁵³¹ *Id.* at 71:14–73:5.

⁵³² *Id.* at 66:1-12.

⁵³³ Ex. 7, Keller & Rosenfeld Report, Appendix C12 (“Kashef App’x”) at 2.

197. Ms. Kashef's father served in the SAF and did not live with her family in Kutum. In April 2008, he visited them for the first time since her childhood.⁵³⁴ One evening, while they were eating dinner outside their home, three men wearing military uniforms and speaking Sudanese Arabic arrived on horseback and asked to see her father.⁵³⁵ When he heard them, her father ran inside their house.⁵³⁶ The soldiers asked her grandmother where her father was, and when she answered that he was not there, they shot and killed her.⁵³⁷ Ms. Kashef and her sister ran inside and hid under a bed. Her father came out to see the soldiers and they shot and killed him. Ms. Kashef's sister screamed and the soldiers found her, struck her with the butt of a rifle, and shot her.⁵³⁸ Her uncle came running over to the scene and the soldiers shot him as well.⁵³⁹ Ms. Kashef, a teenager, hid under the bed until the next morning. Following the attack, a neighbor in Kutum helped Ms. Kashef go to Khartoum and arranged for her to live there with his brother Harun's family.⁵⁴⁰ Harun's family came from the Zaghawa tribe, an ethnic African group in Darfur.⁵⁴¹

198. In May 2008, JEM, a Darfuri rebel group, carried out the first ever attack on Khartoum—a raid by JEM rebels that lasted 24 hours before being repelled by national security and police forces. After the attack, the security services made a dragnet arrest, rounding up more than 1000 individuals, principally targeting Darfuris from the Zaghawa tribe.⁵⁴²

199. Ms. Kashef was caught up in the dragnet arrests of Darfuris in Khartoum. Security forces in plainclothes raided the home of the Zaghawa family she was staying with: “they had come to Omdurman and they were looking for the Zaghawa tribes, people.”⁵⁴³ They arrested Ms. Kashef as well as Harun and his family and brought them to a police station, where some officers wore uniforms while others were in plainclothes.⁵⁴⁴ Ms. Kashef was detained for as long as three months at that station.⁵⁴⁵ She was interrogated under torture about who Harun was meeting with, what time he comes home, and how she knew him.⁵⁴⁶

200. During her detention, Ms. Kashef, a teenager, was tortured and raped every day, multiple times a day. “It became like a meal for them. In the morning, in the evening, and at night. Every day.” Her torturers dressed in police uniforms and two at a time in morning and evening shifts. They repeatedly beat her, struck her with rifle butts, burned her with cigarettes, and raped her.⁵⁴⁷ They burned letters – their initials – into her back, thighs, and hands using hot metal.⁵⁴⁸

⁵³⁴ Ex. 140, Kashef Dep. at 79:9-10.

⁵³⁵ *Id.* at 78:14-18.

⁵³⁶ *Id.* at 78:19-21.

⁵³⁷ *Id.* at 78:22-23.

⁵³⁸ *Id.* at 79:10-18; Ex. 7, Kashef App'x at 3.

⁵³⁹ Ex. 140, Kashef Dep. at 79:10-18.

⁵⁴⁰ *Id.* at 89:23-25.

⁵⁴¹ *Id.* at 90:1-6.

⁵⁴² ECF No. 435-54, Baldo Report ¶¶ 130-33; Ex. 140, Kashef Dep. at 94:14-19.

⁵⁴³ Ex. 140, Kashef Dep. at 60:6-13.

⁵⁴⁴ *Id.* at 93:6-11.

⁵⁴⁵ *Id.* at 110:1-5.

⁵⁴⁶ *Id.* at 95:5-12.

⁵⁴⁷ *Id.* at 109:2-21.

⁵⁴⁸ Ex. 7, Kashef App'x at 3-4.

Before she was released, her captors threatened her and told her to report back to them as in informant if she saw people meeting.⁵⁴⁹ After her release she found herself in a hospital, unsure how she had gotten there, with lapses of consciousness.⁵⁵⁰

201. Over the following weeks, Ms. Kashef worked as a tea vendor in a market in Khartoum. Then she was arrested by the police again, along with other women working in the market. She was taken to the same police station and saw one of the same officers who had previously interrogated her.⁵⁵¹ She was detained at the station for several days and repeatedly tortured again. Twice a day, morning and evening, she would be tied up, hanging upside down, and whipped on the back with a belt by police in uniform.⁵⁵² She was released several days later.

202. [Intentionally omitted]

203. There is no record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Kutum at the time of the attack experienced by Ms. Kashef. Nor is there record evidence that any actor other than the Sudanese government made arrests, maintained detention centers, or accused detainees of being rebels.

204. Ms. Kashef was admitted to the United States as a refugee, with her husband and children, on June 16, 2015, following an agency determination that she “fled or was displaced” from Sudan.⁵⁵³

205. Ms. Kashef continues to suffer physical and psychological symptoms, including but not limited to symptoms of PTSD and depression, notably suffering intrusive memories of her traumatic experiences, “significant distress when triggered by these memories and deliberate attempts to avoid reminders of her trauma,” as inflicted by the GOS and its agents.⁵⁵⁴

XVIII. Abubakar Abakar

206. Plaintiff Abubakar Abakar (“Mr. Abubakar Abakar”) is a U.S. citizen born in 1968, in the village of Halfa, near the city of Gereida, Sudan.⁵⁵⁵ Gereida is part of the state of South Darfur in the province of Brahm, located south of Nyala, the administrative capital of South Darfur.⁵⁵⁶ Mr. Abubakar Abakar is a member of the Masalit tribe, the largest of many tribes in the

⁵⁴⁹ Ex. 140, Kashef Dep. at 111:22–112:16.

⁵⁵⁰ *Id.* at 113:2–17.

⁵⁵¹ *Id.* at 116:1–118:25.

⁵⁵² *Id.* at 119:17–28, 120:5–22.

⁵⁵³ *Id.* at 1313–16.

⁵⁵⁴ Ex. 7, Kashef App’x at 7.

⁵⁵⁵ Ex. 131, Deposition of Abubakar Abakar (“Abubakar Abakar Dep.”), dated June 7, 2022, at 60:5–61:11.

⁵⁵⁶ *Id.*

region and targeted by the GOS for genocide.⁵⁵⁷ His father served as an Umdha (a group selected leader) in Gereida.⁵⁵⁸ He and his family were Muslims.⁵⁵⁹

207. South Darfur is an oil producing state and subjected to the Darfur Plan by the Darfur Command Structure.⁵⁶⁰

208. Mr. Abubakar Abakar attended school in Nyala to become a teacher.⁵⁶¹ While there, he was forced to undergo six months of military training as a condition of receiving a salary as a teacher.⁵⁶² After teaching for eight years in Gereida, Mr. Abubakar Abakar attended the College of Education at the University of Nyala.⁵⁶³

209. While there, the GOS attempted to impress students, including Mr. Abubakar Abakar, into the Mujahideen (“a religious group that will go and fight for religion”) to fight the regime’s enemies in what was then Southern Sudan.⁵⁶⁴ In 1993, a conference of religious scholars issued a “Fatwa” (religious edict) that justified the killing of the killing of Muslims and non-Muslims alike in South Kordofan and Southern Sudan.⁵⁶⁵ The regime often co-opted broad swaths of civil society, including university students, into service into what ultimately became the PDF to fight its wars against the SPLA.⁵⁶⁶ Recruits, including children, were forcibly conscripted and trained as “holy warriors” to support an Islamic “holy war” against the rebels in Southern Sudan.⁵⁶⁷ Mr. Abubakar Abakar, having “a conscience as a human being,” could not imagine how he could “go to fight someone in the south without any reason,” and refused service, dodging the government’s security people sent to grab him.⁵⁶⁸

210. In early 1999, Mr. Abubakar Abakar fled to Sulu in Darfur.⁵⁶⁹ He briefly returned to Gereida for three months before becoming scared and eventually settling in Baidha, West Darfur. West Darfur was within the jurisdiction of the Western Military Region of Sudan, under the chain of command of the Sudanese Armed Forces (“SAF”), Ministry of Defense, and President Omar al-Bashir.⁵⁷⁰ The Sudanese Military Intelligence and Border Intelligence were active in the

⁵⁵⁷ Ex. 5, Jok Report ¶ 11. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. *See* ECF No. 435-55, Baldo Reply ¶ 152.

⁵⁵⁸ Ex. 131, Abubakar Abakar Dep. at 65:11-20, 67:14–68:19.

⁵⁵⁹ *Id.*

⁵⁶⁰ *See supra* ¶¶ 146–47.

⁵⁶¹ Ex. 131, Abubakar Abakar Dep. at 72:13–73:11.

⁵⁶² *Id.* at 89:6–92:12; Ex. 7, Keller & Rosenfeld Report, Appendix C2 (“Abubakar Abakar App’x”) at 2.

⁵⁶³ Ex. 131, Abubakar Abakar Dep. at 75:2–76:6, 89:6-21.

⁵⁶⁴ *Id.* at 75:2-76:6, 90:1-7; Ex. 7, Abubakar Abakar App’x at 2; *see* Fig. 2.

⁵⁶⁵ ECF No. 435-55, Baldo Reply ¶ 128.

⁵⁶⁶ ECF No. 435-54, Baldo Report ¶ 70.

⁵⁶⁷ ECF No. 435-55, Baldo Reply ¶ 148.

⁵⁶⁸ Ex. 131, Abubakar Abakar Dep. at 86:10–88:5.

⁵⁶⁹ *Id.* at 94:14–95:4.

⁵⁷⁰ *See supra* ¶¶ 146–47.

area.⁵⁷¹ Also active in the area were the government-recruited Arab tribal militia called the *Janjaweed*.⁵⁷² Baidha was home to an army headquarters.⁵⁷³

211. In Baidha, Mr. Abubakar Abakar rented some farmland, owned a small store, and worked as a mechanic and teacher.⁵⁷⁴ He also owned a mill in a nearby village called Danajour, and hired his cousin to operate the mill.⁵⁷⁵ While living in Baidha, Mr. Abubakar Abakar frequently saw planes from Khartoum flying overhead and “lots of arm take[n] to Jan[j]awed; from there, get arms, mobilized to attack villages.”⁵⁷⁶

212. In June 2003, the Janjaweed attacked a nearby village called Kasia, approximately two hours from Baidha on foot.⁵⁷⁷ Following the attack, government leaders in the region gave guns to only Arab tribes, and a local Janjaweed leader from Baidha named Hamid al Douai Dabouk openly called for the killing of Fur, Masalit, and Zagawa people due to their alleged support for rebels.⁵⁷⁸ The GOS frequently blamed entire ethnic groups for supposed rebel activity as a tactic to disguise their genocidal campaign.⁵⁷⁹

213. In November 2003, the Janjaweed swept in from the west and north to attack Danajour as well as the nearby villages of Ginda, Surratia, Kul Kata Harasa, and Biyot Talata.⁵⁸⁰ Mr. Abubakar Abakar could see the smoke rising from Danajour from the schoolhouse in Baidha where he and his wife lived, approximately three kilometers away.⁵⁸¹ The Janjaweed arrived on horses and camels, wearing a variety of civilian clothes, military uniforms, and jalebi (a sort of long uniform for men common among the Janjaweed),⁵⁸² and armed with a variety of guns.⁵⁸³ Mr. Abubakar Abakar knew many of “them personally . . . by name,” including Dabouk, whose children Mr. Abubakar Abakar taught.⁵⁸⁴ Mr. Abubakar Abakar witnessed Dabouk and his men take weapons from the military garrison in Baidha on the morning of the attack.⁵⁸⁵ The attack killed 13 people, including three members of Mr. Abubakar Abakar’s wife’s family and a student of Mr. Abubakar Abakar’s.⁵⁸⁶

214. Several months after the attack, Mr. Abubakar Abakar fled to a refugee camp in the Goz Beida region of Chad.⁵⁸⁷ He was later transferred to the Gaga refugee camp, and then to a

⁵⁷¹ See ECF No. 435-59, Elbagir Decl. ¶ 18.

⁵⁷² *Id.*

⁵⁷³ Ex. 131, Abubakar Abakar Dep. at 124:8-11.

⁵⁷⁴ *Id.* at 97:5–98:21.

⁵⁷⁵ *Id.* at 98:22–101:18.

⁵⁷⁶ Ex. 7, Abubakar Abakar App’x at 2.

⁵⁷⁷ Ex. 195, PLA-000830 at 0869.

⁵⁷⁸ *Id.*; Ex. 131, Abubakar Abakar Dep. at 117:7–118:19.

⁵⁷⁹ ECF No. 435-54, Baldo Report ¶¶ 72–73.

⁵⁸⁰ Ex. 131, Abubakar Abakar Dep. at 105:7-16, 123:7-15.

⁵⁸¹ *Id.* at 109:3-24.

⁵⁸² See Ex. 135, Jane Doe Dep. at 87:8-14 (describing Janjaweed dressed in long “galabia” robes); Ex. 134, John Doe Dep. at 85:22–86:20 (describing perpetrators dressed in “jalabiya” long robes).

⁵⁸³ Ex. 131, Abubakar Abakar Dep. at 117:7–118:19.

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.* at 126:9-23.

⁵⁸⁶ *Id.* at 121:3-14.

⁵⁸⁷ *Id.* at 152:3-22.

camp in Abeche, Chad.⁵⁸⁸ Mr. Abubakar Abakar’s first wife, Ashe, was severely traumatized in 2005 when she witnessed her brothers killed in Sudan, and she joined Mr. Abubakar Abakar in Chad in 2007.⁵⁸⁹

215. There is no record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Danajour at the time of the attack experienced by Mr. Abubakar Abakar.

216. In 2010, Mr. Abubakar Abakar and his wife and children arrived in San Diego as refugees following an agency determination that he “fled or was displaced” from Sudan.⁵⁹⁰

217. Mr. Abubakar Abakar continues to suffer physical and psychological symptoms, including but not limited to some symptoms of PTSD, deliberately avoiding memories, thoughts, feelings and external reminders of the traumatic experiences inflicted by the GOS and its agents.⁵⁹¹

XIX. Jane Doe

218. Plaintiff Jane Doe was born in 1969 in Nyala, the administrative capital of South Darfur.⁵⁹² She is a member of the Fur tribe, an ethnic African group traditionally based in Darfur, which was targeted by the Regime for genocide.⁵⁹³

219. South Darfur is an oil producing state, containing the oil concession Block 6, which, according to the U.S. State Department, was licensed to the China National Petroleum Corporation.⁵⁹⁴

⁵⁸⁸ *Id.* at 154:15–155:2.

⁵⁸⁹ Ex. 7, Abubakar Abakar App’x at 3.

⁵⁹⁰ *Id.*; Ex. 195, PLA-000830 at 0831–33.

⁵⁹¹ Ex. 7, Abubakar Abakar App’x at 4–5.

⁵⁹² Ex. 197, PLA-001027 at 1028.

⁵⁹³ *Id.* at 1047; ECF No. 435-54, Baldo Report ¶¶ 72, 191; ECF No. 435-68, Hudson Report ¶ 91; ECF No. 435-93, Verhoeven Report at 17–18. The UN’s Commission of Inquiry noted that the displacement of the black African Masalit, Zaghawa, and Fur tribes was “one of the objectives” of the GOS’s campaign of terror, conducted in large part through the Janjaweed. *See* ECF No. 435-55, Baldo Reply ¶ 152.

⁵⁹⁴ Ex. 221, U.S. Department of State, Humanitarian Information Unit, “Southern Sudan: Aerial Bombing by GOS (2002) in Relation to Oil Concessions”, Apr. 30, 2003, published by United Nations Office for the Coordination of Humanitarian Affairs, <https://reliefweb.int/map/sudan/southern-sudan-bombing-relation-oil-concessions-2002>.

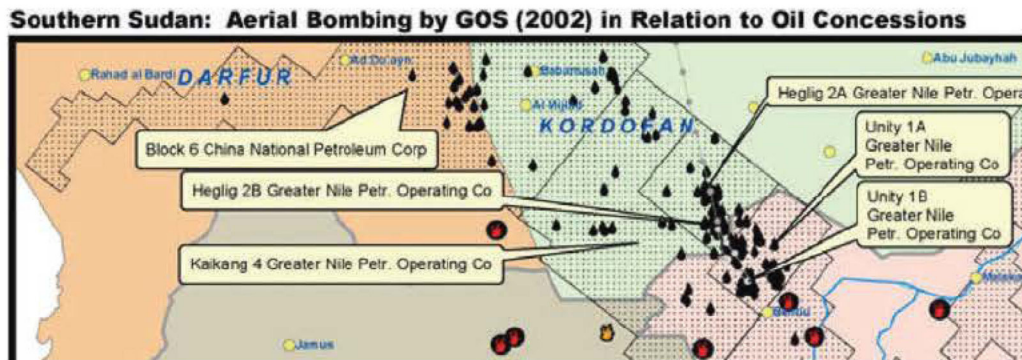


Figure 4: Extract from Ex. 221, U.S. State Dept. Oil Concession Map

220. Jane Doe and her husband, along with extended family and relatives, lived in Marla in South Darfur, to the southwest of Nyala.⁵⁹⁵ South Darfur, including Nyala and Marla, were subject to the Darfur Plan by the Darfur Command Structure.⁵⁹⁶

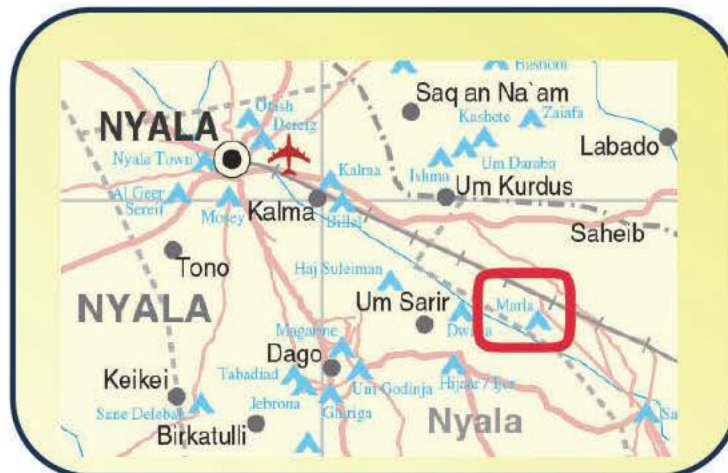


Figure 5: Extract from Ex. 218 UN Darfur Planning Map (2006).

221. One day in November 2003, a large group of SAF soldiers and Janjaweed militia raided Marla in the early morning hours.⁵⁹⁷ The SAF soldiers wore camouflage uniforms and arrived in camouflage-colored vehicles with guns mounted on top.⁵⁹⁸ They were accompanied by Janjaweed on horseback and on foot, dressed in long *galabia* robes.⁵⁹⁹ There were so many soldiers and militia fighters they “filled the neighborhood.” The attack came during morning prayers: Jane Doe was home with her children, while her husband and father were at the mosque.⁶⁰⁰ She saw the SAF and Janjaweed fighters open fire and scream in Arabic “Kill the slaves!” as their vehicles

⁵⁹⁵ Ex. 222, United Nations, Humanitarian Information Centre for Darfur, Draft South Darfur Field Atlas, Nov. 5, 2004, available at: https://reliefweb.int/attachments/bf80175f-7873-3684-abf1-0995894992f1/B00A078FFE249F94C1256F780033E175-ocha_sdarfur_sdn051104.pdf

⁵⁹⁶ See *supra* ¶¶ 146–47.

⁵⁹⁷ Ex. 135, Deposition of Jane Doe (“Jane Doe Dep.”), dated June 6 and June 10, 2023, at 87:4–88:5.

⁵⁹⁸ *Id.* at 88:2–5, 89:8–13.

⁵⁹⁹ *Id.* at 87:8–14.

⁶⁰⁰ *Id.* at 91:20–92:4.

roamed around the neighborhood.⁶⁰¹ The SAF and Janjaweed set fire to the neighborhood.⁶⁰² Jane Doe and her daughters ran away.⁶⁰³ She saw the attackers burn down her home and saw her father and uncle lying dead on the ground.⁶⁰⁴

222. Jane Doe, who was pregnant at the time, ran with her mother and daughter into a valley, where they were caught by the SAF and Janjaweed forces raiding the town.⁶⁰⁵ An attacker beat Jane Doe's four-year-old daughter with the butt of a gun, breaking her arm, and beat her son on his head.⁶⁰⁶ Jane Doe and her mother were raped by multiple soldiers "wearing the uniform of the military."⁶⁰⁷ One of the rapists called Jane Doe and her mother "you slaves."⁶⁰⁸ Referring to Black African rape victims as "slaves" was a common feature of sexual violence perpetrated by SAF and Janjaweed forces.⁶⁰⁹

223. Jane Doe and her family were forced to flee Marla and abandon their home, land, livestock, family farms, trading business, and rental homes.⁶¹⁰ Her husband disappeared and Jane Doe did not see him again for several years: he eventually found her in Egypt and told her he had been detained and tortured by the Regime.⁶¹¹

224. Throughout the attack, the SAF soldiers and Janjaweed had air support from an army-green helicopter that circled overhead.⁶¹² Marla is in the vicinity of Nyala airport, which was managed by the Civil Aviation Authority and used by SAF as a military airbase.⁶¹³

225. There is no record evidence that rebels from JEM, the SLA, the SPLA, or any armed actors other than the government and its forces, were operating in the vicinity of Marla at the time of the attack experienced by Jane Doe.⁶¹⁴

226. After the attack, Jane Doe and her family relocated to the Kalma camp for internally displaced persons, "situated 7 km south of Nyala."⁶¹⁵

⁶⁰¹ *Id.* at 88:22–90:12 ("Can you tell whether anyone in particular was giving orders during the attack?" "The noise – the noise was too much. And we were attacked just suddenly. And how can we know if they are giving orders or not?" "You don't know." "I don't know. All we could hear until the night was, 'Hit' – 'Hit the slaves. Hit all.'").

⁶⁰² *Id.* at 88:23–25.

⁶⁰³ *Id.* at 92:14–16; Ex. 7, Keller & Rosenfeld Report Appendix C9 ("Jane Doe App'x") at 2.

⁶⁰⁴ Ex. 135, Jane Doe Dep. at 95:8–11.

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.* at 92:22–93:3.

⁶⁰⁷ *Id.* at 152:18–25, 158:9–20.

⁶⁰⁸ *Id.* at 153:6–7.

⁶⁰⁹ See Ex. 5, Jok Report ¶¶ 96, 104; ECF No. 435-54, Baldo Report ¶ 163.

⁶¹⁰ Ex. 240, Pl. [Jane Doe]'s Objs. & Resps. to Defs.' First Set of Interrogs. (Nos. 1-4) ("Jane Doe Interrogs."), dated Apr 18, 2022, Resp. No. 1.

⁶¹¹ Ex. 135, Jane Doe Dep. at 134:13–135:25.

⁶¹² *Id.* at 88:8–21.

⁶¹³ See ECF No. 435-54, Baldo Report ¶¶ 55; Ex. 174, 2009 POE Report ¶ 82 (referencing SAF "aviation forces based in Nyala").

⁶¹⁴ See Ex. 135, Jane Doe Dep. at 99:3–16.

⁶¹⁵ Ex. 174, 2009 POE Report ¶ 228.

227. Later, in the Kalma camp, Jane Doe met Dutch UN official Jan Pronk who visited with UN Secretary General Kofi Annan.⁶¹⁶ He had been appointed as the United Nations Secretary-General's Special Representative to Sudan in June 2004.⁶¹⁷ As Dr. Baldo explains, Pronk was "known for being outspoken about the Government of Sudan's atrocity crimes" and was eventually expelled by the Bashir Regime in October 2006.⁶¹⁸

228. While still in Sudan, Pronk hired Jane Doe to work as a messenger and housekeeper in Khartoum.⁶¹⁹ Jane Doe moved with her children and mother to Omdurman, outside of Khartoum.⁶²⁰ On the evening of February 28, 2005, while Jane Doe was working for Pronk, she was arrested by men in plain clothes with handguns holstered at their hips.⁶²¹ They announced that they were from the security services: "'We are from security, and you cooperate with us. [sic]'"⁶²² Jane Doe was detained and severely tortured. She was stripped naked and beaten all over her body with sticks and long black plastic truncheons.⁶²³ She was punched and kicked in the pelvis.⁶²⁴ The security agents would "box" her "in the face" and slam her against the wall: "They would beat me to the beating of death, until I started bleeding."⁶²⁵

229. Her interrogators ordered her to become an informant and spy on her employer, Jan Pronk: "You tell us any information that you will get from Jan Pronk. . . . If you see any message or papers or documents, you bring it to us."⁶²⁶ She was released after three days.⁶²⁷ The GOS frequently imposed post-release conditions, including having to report back to security forces and requests to inform on neighbors, relatives, and work colleagues.⁶²⁸

230. On or about June 2, 2005, Jane Doe and her mother and children were able to escape from Sudan and, with Pronk's aid,⁶²⁹ make their way to Cairo in Egypt, where they suffered deplorable conditions.⁶³⁰

231. On September 24, 2007, Jane Doe was admitted to the United States as a refugee, along with her six accompanying children, following an agency determination that she had "fled or was displaced" from Sudan.⁶³¹

⁶¹⁶ Ex. 135, Jane Doe Dep. at 106:13–107:23.

⁶¹⁷ ECF No. 435-54, Baldo Report ¶ 219.

⁶¹⁸ *Id.*

⁶¹⁹ Ex. 135, Jane Doe Dep. at 107:7-23.

⁶²⁰ *Id.* at 108:14-23.

⁶²¹ *Id.* at 105:15–106:12; Ex. 197, PLA-001027 at 1047.

⁶²² Ex. 135, Jane Doe Dep. at 101:8-13.

⁶²³ *Id.* at 103:25–104:13.

⁶²⁴ Ex. 7, Jane Doe App'x at 3.

⁶²⁵ *Id.*

⁶²⁶ Ex. 135, Jane Doe Dep. at 103:2-12.

⁶²⁷ *Id.* at 100:23-25.

⁶²⁸ Ex. 5, Jok Report ¶ 61; ECF No. 435-54, Baldo Report ¶¶ 17–18, 154.

⁶²⁹ Ex. 197, PLA-001027 at 1028.

⁶³⁰ Ex. 135, Jane Doe Dep. at 109:7–128:16.

⁶³¹ Ex. 197, PLA-001027 at 1029–30.

232. Jane Doe continues to suffer “numerous, severe symptoms of PTSD” and she suffered a “major depression episode” following abuses inflicted by the GOS or its agents.⁶³² She reported symptoms like “frequent intrusive recollections of the many traumatic experiences she has suffered, as well as engaging in avoidance behaviors, sleep disturbance, and [feeling a] pronounced sense of shame (among others). She also reported persistent depressed mood, frequent crying, appetite disturbance and feeling cut-off from others.”⁶³³

⁶³² Ex. 7, Jane Doe App’x at 8–9.

⁶³³ *Id.*