

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MS. HOY MAI AND
MR. SMIN TIT

Applicants,

THE COCA-COLA COMPANY

Respondent.

Civil No.: _____

**In re Application of Ms. Hoy Mai
and Mr. Smin Tit for an Order
Granting Leave to Issue Subpoenas
for Taking of Discovery Pursuant
to 28 U.S.C. § 1782**

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
PURSUANT TO 28 U.S.C. § 1782**

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Ms. Hoy Mai and Mr. Smin Tit (“Applicants”)¹ hereby apply to the Court for an order pursuant to 28 U.S.C. § 1782 to obtain discovery from Respondent, The Coca-Cola Company (“Coca-Cola” or “Respondent”). Applicants seek this discovery for use in a civil case in Thailand in which they are plaintiffs.

I. JURISDICTION AND VENUE

This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this matter arises under 28 U.S.C. § 1782. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because Coca-Cola is headquartered in Atlanta, Georgia, and thus resides in this District.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Applicants seek discovery under 28 U.S.C. § 1782 (hereinafter “Section 1782”) for use in an ongoing civil case in Thailand. Congress passed Section 1782 to give interested parties access to evidence in the United States for use in their foreign proceedings. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247-49 (2004). This is a paradigmatic request under Section 1782, and it satisfies the statute’s criteria and the four discretionary factors identified in *Intel*.

Applicants are representative plaintiffs in a class action lawsuit in Thailand.

¹ Applicants file through their Thai counsel and attorney-in-fact, Sor.Rattanamanee Polkla. Sor.Rattanamanee Polkla Decl. ¶¶ 1-3.

The defendant, Mitr Phol Sugar Corporation (“Mitr Phol”), is a Thai company and one of the world’s largest producers of sugar. Applicants lived and worked as subsistence farmers in Cambodia before being violently displaced for a sugar plantation that was to be operated by a subsidiary of Mitr Phol.

In 2018, Applicants brought suit in a Thai trial court seeking redress for illegal land-grabbing and forced evictions, violence by public and private security forces, the destruction of their property, the infringement of communal environmental rights, and the loss of their livelihoods. Applicants allege that Mitr Phol is responsible for these harms because, among other things, it maintained an agent-principal relationship with its subsidiary, allowing Mitr Phol to exercise control over its subsidiary’s actions in Cambodia.

To aid their case, Applicants seek relevant evidence in Coca-Cola’s possession. From 2013 to 2014, Coca-Cola – a major purchaser of Mitr Phol’s sugar – investigated the very same conduct at issue in the Thai case, and has admitted to having routine communications with Mitr Phol about this matter from 2014 to 2020. Moreover, Coca-Cola participated in a multi-stakeholder initiative where Mitr Phol was also a member, and where its Cambodian land-grabbing was reviewed.

This Court should grant Applicants’ request. The statutory requirements of

Section 1782 are clearly met: Applicants are parties to the Thai litigation, and the documentary and testimonial evidence they seek is for use in that case. Moreover, all the *Intel* factors favor authorizing discovery: Coca-Cola is not a party in the Thai case; Thai courts are receptive to relevant non-privileged evidence, such as this, regardless of where it comes from; the discovery sought is narrowly tailored and pertains to a specific enterprise (Mitr Phol), and to specific incidents involving its operations in a specific location; and, finally, the evidence goes to central issues in the Thai proceedings. Accordingly, Applicants request that the Court exercise its discretion to grant this application for discovery as expeditiously as possible.

III. FACTUAL BACKGROUND

A. Applicants' litigation in Thailand

In March 2018, Applicants sued Mitr Phol in Thailand as representative plaintiffs in a putative class action. Polkla Decl. ¶ 10. The suit is brought on behalf of approximately 711 similarly situated families from the Samrong District of Oddar Meanchey Province, Cambodia. Polkla Decl. ¶¶ 1, 10.

The suit alleges that Mitr Phol is liable for harms plaintiffs suffered between 2008-2009. During that time, all 711 families were forcibly evicted to make way for an Economic Land Concession (ELC), which was intended to be used as an

industrial sugar plantation. Polkla Decl. ¶ 4. The ELC was awarded to Angkor Sugar Co. Ltd. (“Angkor Sugar”), a subsidiary of Mitr Phol, in December 2007. Polkla Decl. ¶¶ 19.

Before being displaced, most families were subsistence farmers, who cultivated parcels of land that they lawfully possessed. David Pred Decl. Ex. E, at 8, 10-11, 22-23. After the ELC was granted, villagers were told they must leave their lands. Pred Decl. Ex. E, at 4, 10. A combination of state and private actors escalated from threatening the villagers, to bringing false prosecutions against community leaders (including Applicant, Ms. Hoy Mai), to ultimately violently displacing the villagers. Pred Decl. Ex. E, at 4-5, 8-9, 11, 24.²

In April 2008, much of the village of O’Bat Moan was completely destroyed, and 154 homes were demolished by local authorities believed to be operating on behalf of Angkor Sugar. Polkla Decl. ¶ 7 & n.2. Another 100 homes were burned to

² See also Polkla Decl. ¶¶ 4-8; Subedi, S., *Report of the Special Rapporteur on the situation of human rights in Cambodia: A human rights analysis of economic and other land concessions in Cambodia*, A/HRC/21/63/Add.1, 55 ¶159 (Sep. 2012) (report by United Nations Special Rapporteur stating that Mitr Phol subsidiaries, Angkor Sugar, Tonle Sugar, and Cane and Sugar Valley, employed a battalion of Cambodian forces to aid in the burning and bulldozing of a village in Oddar Meanchey Province), https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session21/a-hrc-21-63-add1_en.pdf.

the ground in October 2009 by a combination of police, military personnel and hired demolition workers. Polkla Decl. ¶ 8. Ultimately, the residents of all five villages that overlapped with the Angkor Sugar ELC were displaced; most lost all their possessions, and many were plunged into homelessness and left without a means to provide for themselves. Pred Decl. Ex. E, at 8-9, 11, 23-24.

On these facts, the Thai suit seeks to impose liability on Mitr Phol under Cambodian, Thai, and international law. Polkla Decl. ¶¶ 1-2, 5. For Applicants to be successful, they must show: (1) evidence that Angkor Sugar acted as an agent of Mitr Phol during its operations in Cambodia; (2) evidence that the ELCs granted to Angkor Sugar and two other Mitr Phol subsidiaries operating in the immediate vicinity, Tonle Sugar Cane Co. Ltd. (“Tonle Sugar”) and Cambodia Cane and Sugar Valley Co. Ltd. (“Cane and Sugar Valley”), violated Cambodian law; (3) evidence of the companies’ participation in the civil wrongs in Cambodia; and (4) evidence of the harm to class members. Polkla Decl. ¶ 15.

A Thai appellate court certified the class and ruled that jurisdiction in Thailand was proper in July 2020, remanding the case to the Bangkok South Civil Court to proceed to trial. Polkla Decl. ¶ 11. The trial court will convene the parties on January 21, 2022, to confirm that the membership of the class has been finalized over the

intervening months. Polkla Decl. ¶ 12. At this hearing, the court is likely to establish a preliminary schedule for trial, including the date of a future evidentiary hearing where both parties will proffer initial disclosures; these disclosures will include a description of the evidence to be relied upon at trial, the production of documents, and a list of expected witnesses. Polkla Decl. ¶ 12, 30. At the time of this filing, the trial court has not yet set a date for this evidentiary hearing, the submission of evidence, nor a timeline for arguments. Polkla Decl. ¶ 13.

Much of the discovery sought in this application concerns the relationship between Angkor Sugar and Mitr Phol, and the role of both companies in the civil wrongs committed in Cambodia. Still, information about Mitr Phol's other two subsidiaries will be important for showing that the Angkor Sugar ELC was granted unlawfully. Cambodian law limits the total land area that may be granted to a single beneficial owner through the ELC process. Plaintiffs allege that Mitr Phol's leadership circumvented these restrictions by colluding with Cambodian authorities to obtain three adjacent ELCs through its agent-subsidaries, Angkor Sugar, Tonle Sugar, and Cane and Sugar Valley. Polkla Decl. ¶¶ 17-19.

Information regarding the coordination between Mitr Phol and all three subsidiaries could provide direct evidence that Mitr Phol purposefully circumvented

the relevant land laws, which would undermine its stated defense that villagers did not hold legal title to their lands when evictions occurred. Polkla Decl. ¶¶ 16, 24. Additionally, information concerning Tonle Sugar and Cane and Sugar Valley could further establish the existence of an agency relationship between Mitr Phol and Angkor Sugar by showing Mitr Phol’s “pattern and practice of directing the actions of its agent-subsidaries” in concert and for its own benefit. Polkla Decl. ¶ 24.

B. Respondent possesses specific evidence that would be uniquely beneficial to resolving the civil litigation in Thailand.

Coca-Cola has a long-standing business relationship with Mitr Phol, listing it as one of its three largest suppliers of sugar since at least 2013. Pred Decl. ¶ 15.

Coca-Cola likely has information relevant to the Thai litigation from two sources:

- (1) Its own investigation into Mitr Phol’s Cambodian land-grabbing, including allegations arising out of the ELCs awarded to Angkor Sugar, Tonle Sugar, and Cane and Sugar Valley Co., and subsequent communications it had with Mitr Phol concerning those findings; and
- (2) Its access to documents and communications of Bonsucro – an organization of companies, sugar farmers and civil society representatives – of which Coca-Cola is a member, and which considered complaints about Mitr Phol’s Cambodian land-grabbing, including the specific allegations arising out of the ELCs awarded to Angkor Sugar, Tonle Sugar, and Cane and Sugar Valley Co.

1. Coca-Cola likely has information relevant to the Thai litigation because it independently investigated alleged land rights abuses by Mitr Phol.

In 2013, Coca-Cola hired independent, third-party investigators to examine alleged land-rights issues in Cambodia involving the operations of its Thailand-based sugar suppliers. Pred Decl. ¶ 17. This investigation included a fact-finding mission to substantiate allegations of land grabbing and forced evictions levied against Mitr Phol and its subsidiaries. George W. Cooper Decl. ¶¶ 4-6. Between 2013-2014, these investigators traveled to Cambodia and conducted interviews with Cambodian government officials and villagers that had been displaced by Mitr Phol's subsidiaries. Cooper Decl. ¶ 4; Pred Decl. ¶ 17.

Between 2013 and 2020, Coca-Cola repeatedly told members of civil society that it was engaged in a sustained dialogue with Mitr Phol about the underlying allegations in Cambodia. Pred Decl. ¶¶ 14, 16-22, 24. These conversations included attempts by Coca-Cola to persuade Mitr Phol to reach a resolution with the displaced villagers from Oddar Meanchey Province. Pred Decl. ¶¶ 18-20, 24.³

2. Coca-Cola likely has information relevant to the Thai litigation through Bonsucro, which also considered reports of Mitr Phol's abuses.

³ During this time period, Mitr Phol returned the ELCs held by Angkor Sugar, Tonle Sugar, and Cambodian Cane and Sugar to the Cambodian government, Pred Decl. ¶ 19 n.7. Mitr Phol cited "inquiries from [its] customers" and an "increased awareness of underlying problematic issues in the Cambodian concession process" as contributing factors. Pred Decl. Ex. D.

Both Coca-Cola and Mitr Phol belong to Bonsucro (formerly named the Better Sugarcane Initiative), an international non-profit organization that acts as a certification body for sustainably produced sugar and as a membership organization similar to a trade association.⁴ Coca-Cola has been a key participant in Bonsucro since at least 2007.⁵ Bonsucro requires its members to obey a code of conduct,⁶ and if manufacturers want Bonsucro's stamp of sustainability they must meet certain production standards.⁷

Individuals may submit formal complaints to Bonsucro if they believe one of its members or certified producers has failed to meet their obligations.⁸ In 2011, two

⁴ Bonsucro's members include companies, sugar farmers and civil society representatives. Its stated organizational aim is "reducing the environmental and social impacts of sugarcane production while recognising the need for economic viability." Bonsucro, A Guide to Bonsucro 1, 4 (2013), http://www.bonsucro.com/wp-content/uploads/2017/01/ENGLISH-A-Guide-to-Bonsucro_1.pdf.

⁵ At that time, an employee in Coca-Cola's Corporate Responsibility Department, Harry Ott, was a member of the organization's steering committee. *Members & Supporters*, Better Sugarcane Initiative (Oct. 20, 2007), [archived web address, <https://web.archive.org/web/20071020023321/http://bettersugarcane.org/members-supporters.htm>], (last accessed Aug. 17, 2021).

⁶ See Bonsucro, Code of Conduct (2020), <http://www.bonsucro.com/wp-content/uploads/2020/11/Bonsucro-Code-of-Conduct.pdf>.

⁷ Bonsucro, A Guide to Bonsucro 8 (2013), http://www.bonsucro.com/wp-content/uploads/2017/01/ENGLISH-A-Guide-to-Bonsucro_1.pdf.

⁸ See Bonsucro, Bonsucro Complaint Resolution Process 1, 2 (2011), http://www.bonsucro.com/wp-content/uploads/2017/10/bonsucro_complaint_resolution_process.pdf.

civil society organizations submitted a complaint on behalf of displaced villagers, alleging that Mitr Phol’s actions in Cambodia had resulted in multiple breaches of Bonsucro’s code of conduct. Pred Decl. ¶¶ 9-10. Mitr Phol voluntarily left Bonsucro in June of 2011 before the complaint process was finalized and was later readmitted in 2015. Pred Decl. ¶¶ 10-11. A subsequent complaint was submitted to Bonsucro in February of 2016, though it was ultimately dismissed in 2018. Pred Decl. ¶ 11.

Coca-Cola is likely to have relevant information about Mitr Phol’s Cambodian operations through its representation on Bonsucro’s board during the times when these complaints were submitted.⁹ Indeed, while the complaint was ultimately rejected by Bonsucro’s board in December 2018, Bonsucro publicly stated that “Mitr Phol [had] submitted significant amounts of information” during the process, and that the litigation before the Thai courts “rests on a similar factual background.”¹⁰ Moreover, in 2016, the Chief Executive of Bonsucro specifically

⁹ When the 2011 complaint was filed, Coca-Cola’s representative was Denise Knight, *Bonsucro Board*, Bonsucro (Feb. 3, 2011), http://www.bonsucro.com/our_board.html [https://web.archive.org/web/20110203142905/http://www.bonsucro.com/our_board.html] (last accessed Aug. 17, 2021); and in 2016, it was Ben Jordan, *Board of Directors*, Bonsucro (Mar. 23, 2016), http://bonsucro.com/site/about/board_of_directors/ [https://web.archive.org/web/20160323013621/http://bonsucro.com/site/about/board_of_directors/] (last accessed Aug. 17, 2021).

¹⁰ *Public Notification of Decision in the matter of the Inclusive Development International (IDI), Equitable Cambodia (EC), and the Cambodian League for the*

indicated that Coca-Cola was given updates about the second Mitr Phol complaint. Pred Decl. ¶ 23.

IV. NATURE OF INFORMATION AND DOCUMENTS SOUGHT

Applicants seek information from Coca-Cola listed in their Request for Production of Documents, attached as Exhibit F to this Application. Applicants also seek a Rule 30(b)(6) corporate representative deposition, as set out in Exhibit G. Generally, Applicants seek documents, communications and testimony from Coca-Cola regarding the following: any of Mitr Phol's three subsidiaries with operations in Oddar Meanchey Province, Cambodia – Angkor Sugar Co. Ltd., Tonle Sugar Cane Co. Ltd., and Cambodia Cane and Sugar Valley Co. Ltd.; the ELCs awarded to those three subsidiaries; the villages of O'Bat Moan, Khtum, Taman, Bos and Trapaing Veng, and the forestry community of Ratanak Rukha; any evictions, displacement, destruction or appropriation of property, intimidation, arrest, physical violence, or other abuses suffered by the residents of the above villages between 2008-2009; coordination between Mitr Phol and/or its subsidiaries and members of the Cambodian Government in relation to the ELCs and villages described above;

Promotion and Defense of Human Rights (LICADHO) complaint against Mitr Phol, Bonsucro (Dec. 21, 2018), <https://www.bonsucro.com/public-notification-of-decision-idi-ec-licadho/> (last visited Dec. 5, 2021).

and Mitr Phol's dialogue and/or consideration of how to resolve disputes with the residents of the above villages for harms suffered between 2008-2009.

Applicants request documents within Coca-Cola's control regardless of where they are located. *See Sergeeva v. Tripleton Int'l Ltd.*, 834 F.3d 1194, 1200 (11th Cir. 2016) (evidence outside the United States is reachable under Section 1782 "so long as [the entity] ha[s] possession, custody, or control of such responsive material").

Applicants also request that the Court order Coca-Cola to cooperate in certifying the authenticity of the documents they produce in accordance with the procedures required under Thai law for the introduction of foreign documents before the Thai tribunal. *See, e.g., Amgen Inc. v. Hill*, No. 2:14- mc-00908-DN-EJF, 2015 U.S. Dist. LEXIS 38832, at *1-2 (D. Utah Feb. 24, 2015) (ordering documents produced under Section 1782 to be "accompanied by a signed certification verifying the authenticity of the documents"). Specifically, Applicants request the Court to require Respondent to certify that any copies of documents produced are true reproductions of the original sources, and for the certification to be notarized before a clerk of this Court and bear its seal. Polkla Decl. ¶¶ 36-38.

V. SECTION 1782 ENTITLES APPLICANTS TO TAKE DISCOVERY FROM COCA-COLA

Section 1782 was enacted to "provid[e] efficient means of assistance to

participants in international litigation in our federal courts and [to] encourage[e] foreign countries by example to provide similar means of assistance to our courts,” *Dep’t of Caldas v. Diageo PLC*, 925 F.3d 1218, 1224 (11th Cir. 2019) (citing *Intel*, 542 U.S. at 252). The “history of Section 1782 reveals Congress’ wish to strengthen the power of district courts to respond to requests for international assistance.” *In re Clerici*, 481 F.3d 1324, 1333 (11th Cir. 2007) (internal quotation marks omitted).

The statute itself contains four prerequisites, which are clearly met. Therefore, this Court must look to the discretionary factors identified by the Supreme Court in *Intel Corp.*, 542 U.S. at 264-65, to guide its decision to authorize discovery, each of which weighs in favor of granting the Application.

A. Applicants satisfy the four statutory requirements under Section 1782.

The four prerequisites of Section 1782 are

(1) the request must be made “by a foreign or international tribunal,” or by “any interested person”; (2) the request must seek evidence, whether it be the “testimony or statement” of a person or the production of “a document or other thing”; (3) the evidence must be “for use in a proceeding in a foreign or international tribunal”; and (4) the person from whom discovery is sought must reside or be found in the district of the district court ruling on the application for assistance.

In re Clerici, 481 F.3d at 1331-32 (quoting 28 U.S.C. § 1782) (footnote omitted).

All four are met here.

First, Applicants are litigants in the foreign proceeding, “the most common example” of an “interested person.” *Intel*, 542 U.S. at 256. Second, they seek documents and testimony from Respondent, which falls within the plain text of the discovery authorized under the statute. 28 U.S.C. § 1782. Third, the information sought is “for use” in the Thai litigation; specifically, it will be used to establish Mitr Phol’s effective control over Angkor Sugar and its legal responsibility for the abuses in Cambodia. Polkla Decl. ¶¶ 15-17, 20-25, 31-35. Fourth, Coca-Cola is headquartered in Atlanta, Georgia,¹¹ and thus both resides and is found in the Northern District of Georgia. *See, e.g., In re Gov’t of Mong. v. Itera Int’l Energy*, No. 3:08-mc-46-J-32MCR, 2009 U.S. Dist. LEXIS 144214, *7-10 (M.D. Fla. Nov. 10, 2009).

B. The discretionary factors favor the grant of discovery.

The Supreme Court has identified four factors to guide district courts’ discretion: (1) whether “the person from whom discovery is sought is a participant in the foreign proceeding,” because “the need for § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a nonparticipant;” (2) “the

¹¹ Coca-Cola Company, 2020 Securities and Exchange Commission Form 10-K 25 (2021), <https://investors.coca-colacompany.com/filings-reports/annual-filings-10-k/content/0000021344-21-000008/0000021344-21-000008.pdf>.

nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance;” (3) “whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States;” and (4) whether the request is otherwise “unduly intrusive or burdensome.” *In re Clerici*, 481 F.3d at 1334 (quoting *Intel*, 542 U.S. at 264-65).

While these factors are discretionary, and thus a failure to meet any of them does not preclude discovery, *see Intel*, 542 U.S. at 246, 264, 266, all four factors strongly favor granting the requested discovery.

1. Coca-Cola is not a party in the foreign proceeding; therefore, the first *Intel* factor favors granting the Application.

Section 1782 discovery is particularly appropriate where the respondent is not a party in the foreign litigation, as nonparties may be outside the foreign tribunal's jurisdiction, and their evidence is therefore otherwise unavailable. *Intel*, 542 U.S. at 264. That is precisely the circumstance here, and "on this ground alone the first *Intel* factor is satisfied." *In re Roz Trading Ltd.*, No. 1:06-cv-02305-WSD, 2007 U.S. Dist. LEXIS 2112, at *6 (N.D. Ga. Jan. 11, 2007).

2. The evidence sought will be admissible before a foreign trial court; therefore, the second *Intel* factor favors Applicants.

The nature of the foreign tribunal, the character of the foreign proceedings, and the receptivity of foreign court to judicial assistance all favor granting Applicants' request.

The foreign tribunal in this instance is the Bangkok South Civil Court, and its nature is typical of a trial court. It is responsible for considering evidence submitted by the parties, making threshold determinations on questions of law and fact, and ultimately resolving the litigation on its merits. *See Polkla Decl.* ¶¶ 11-12, 26, 28-29. There is no procedural bar to the submission of evidence from a foreign source to the trial court, and Thai courts will accept evidence with demonstrated relevance to the case and on which a party intends to rely. *See Polkla Decl.* ¶¶ 33-34. Moreover,

the litigation in the Bangkok trial court is still in its early stages and there is ample time for both parties to present evidence. Indeed, as described above, *supra* Part III(A), after prevailing on threshold jurisdictional issues on appeal, plaintiffs are still in the process of satisfying procedural requirements related to the publication of the class and confirmation of class membership; this stage of the case will continue to be finalized at least through a pre-trial conference scheduled for January 21, 2022. Polkla Decl. ¶¶ 10-12.

At present, neither a date for initial disclosures of evidence nor a schedule for arguments has been set, Polkla Decl. ¶¶ 12-13, 30. Applicants are on schedule to continue developing evidence, witness lists, and documents to be relied upon at trial while this application is pending, and thus the character of the Thai proceeding is at the ideal stage for this Court to provide effective assistance. *See Salcido-Romo v. S. Copper Corp.*, No. CV-16-01639, 2016 U.S. Dist. LEXIS 76584, at *6 (D. Ariz. June 10, 2016) (finding proceedings at the proof gathering stage supported granting the application); *Ht S.R.L. v. Velasco*, 125 F. Supp. 3d 211, 223-24 (D.D.C. 2015) (finding the foreign proceeding in the early stages of discovery as central to its “character” and supportive of granting discovery,) *aff’d in relevant part and rev’d in part on other grounds*, No. 15-664, 2015 U.S. Dist. LEXIS 194164, at *8 (D.D.C.

Nov. 13, 2015).

3. The requested production does not circumvent foreign proof-gathering restrictions; therefore the third *Intel* factor favors Applicants.

This Application is a good-faith effort to obtain evidence that is central to the allegations in the ongoing Thai proceedings; it is not an attempt to circumvent Thai proof-gathering restrictions. Proof-gathering restrictions “are best understood as rules akin to privileges that prohibit the acquisition or use of certain materials.” *Mees v. Buiter*, 793 F.3d 291, 303 n.20 (2d Cir. 2015); *In re MTS Bank*, No. 17-21545-MC-WILLIAMS/TORRES, 2018 U.S. Dist. LEXIS 107147, at *21-23 (S.D. Fla. June 27, 2018) (same). Beyond shielding privileged materials, “nothing in the text of § 1782 limits a district court's production order authority to materials that could be discovered in the foreign jurisdiction if the materials were located there.” *Intel*, 542 U.S. at 260; *see also In re Clerici*, 481 F.3d at 1333 n.12. Nor does Section 1782 require applicants to exhaust foreign discovery options. *Halliwel Assets, Inc. v. Hornbeam Corp.*, 663 F. App'x 755, 765 (11th Cir. 2016) (finding “no requirement to first seek discovery from the non-US tribunal or exhaust other options”).

Applicants do not circumvent any privileges or restrictions under Thai law in making this request; they are aware of no rule of Thai procedure or evidence that

bars the evidence sought by this request. Polkla Decl. ¶¶ 33-35. To the extent there are any relevant restrictions under Thai law, they relate to the authentication of foreign documents. *Supra* Part IV. Applicants do not seek to circumvent these procedures; rather, they intend to obey them. Moreover, the presence of this certification process shows that the Thai government has specifically contemplated, and is receptive to, the introduction of properly authenticated materials originating in the United States for use in official Thai legal proceedings.

4. The discovery request is narrowly tailored and is not unduly intrusive or burdensome; therefore the fourth *Intel* factor favors Applicants.

Discovery under Section 1782 is governed by the Federal Rules of Civil Procedure and may be as broad as the Rules allow. *See, e.g., In re O’Keeffe*, 660 F. App’x 871, 872-873 (11th Cir. 2016). Accordingly, an applicant may seek discovery of “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Here, Applicants’ discovery requests are relevant and proportional. They are limited to a specific dispute, involving the following limited facts: three tracts of land in Cambodia; Mitr Phol’s knowledge of and involvement in harms suffered by villagers living on those lands; and Mitr Phol’s involvement with and control over its subsidiaries that were awarded concessions over those lands. In light of the serious harms suffered by

Applicants, such targeted discovery can neither be deemed unduly intrusive nor burdensome; indeed, it falls well within the scope of discovery that the Federal Rules allow. Especially for a major corporation like Coca-Cola, which has likely already organized the relevant information through its own investigation of these events, the burden of gathering and producing these documents is minimal and clearly outweighed by their evidentiary value.

VI. CONCLUSION

The information sought by this Application is essential to the full and fair adjudication of the Thai proceedings. For the foregoing reasons, Applicants respectfully request that the Court enter an Order granting leave to serve Coca-Cola with the discovery attached to this Application as Exhibits F and G.

Dated: December 14, 2021

Respectfully submitted,

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CERTIFICATE OF APPROVED FONT AND POINT SELECTIONS

I, Kristi Stahnke McGregor, hereby certify that the brief has been prepared with 14-point Times New Roman font, as approved by the Court in LR 5.1(B).

Dated: December 14, 2021

/s/ Kristi Stahnke McGregor
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