No. 14-826-cv(L)

No. 14-832-cv(CON)

In the United States Court of Appeals for the Second Circuit

CHEVRON CORPORATION,
Plaintiff-Appellee,
v.

STEVEN DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER & ASSOCIATES, PLLC, HUGO GERARDO CAMACHO NARANJO, JAVIER PIAGUAJE PAYAGUAJE,
Defendants-Appellants

On Appeal from the United States District Court
for the Southern District of New York (The Honorable Lewis A. Kaplan)

Donziger Appellants' Motion for Judicial Notice of Transcripts in Arbitration Proceedings and Filings in Canadian Litigation

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November 5, 2015

INTRODUCTION

We respectfully request that this Court take judicial notice of major developments in two parallel proceedings: the international arbitration brought by Chevron two years before it filed this case, and the enforcement action in Canada, which is now moving toward a trial. In both proceedings, as in this one, Chevron alleges that the Ecuadorian judgment was ghostwritten and procured by bribery, while denying the extent of its environmental pollution. New developments cast grave doubt on the truth of those fraud allegations and confirm Chevron's extensive pollution of the rainforest. These developments heighten the likelihood of inconsistent results and illustrate why this proceeding is both unnecessary and in contravention of basic norms of international comity.

In the arbitral proceeding, Chevron's star witness (Alberto Guerra) has now admitted that he lied on the witness stand in New York and in his sworn witness statement. And additional evidence has come to light that further disproves his bribery account, including contemporaneous exculpatory emails and computer forensics. The admissions and new evidence make it likely that fair-minded factfinders elsewhere will conclude that they have no choice but to reject Judge Kaplan's findings.

The arbitral panel has also taken an unprecedented visit to four sites previously operated by Chevron in Lago Agrio. Although Judge Kaplan excluded

all evidence of environmental contamination below—thereby creating an insurmountable causation problem for Chevron—the arbitral panel heard expert testimony from both sides and was presented with physical evidence documenting the extent of Chevron's environmental pollution and the effect it has had on the surrounding communities.

In Canada, meanwhile, Chevron is now arguing that the enforcement court cannot make its own factual findings because it is "bound by the factual findings" of Judge Kaplan. That argument exposes Chevron's true agenda in this case—not an injunction that actually redresses any concrete injury, but a set of findings it hopes will short-circuit enforcement efforts abroad. And if Chevron is right about the preclusive effect of the decision below, then it is no different from the one Judge Kaplan previously issued—and that this Court reversed—in *Chevron Corp. v. Naranjo*, 667 F.3d 232 (2d Cir. 2012). This Court warned then that permitting preemptive "relief would encourage efforts by parties to seek a res judicata advantage by litigating issues in New York in order to obtain advantage in connection with potential enforcement efforts in other countries," thus "provok[ing] extensive friction between legal systems." *Id.* at 246. That concern is even more acute now.

At the outset, we acknowledge that this motion is a good bit longer and more thorough than the typical judicial-notice motion. But this is an extraordinary case, and these are extraordinary developments. They not only bear on the legal issues

in this appeal; they also exonerate Steven Donziger of the allegations of wrongdoing that Chevron has levied against him.

ARGUMENT

I. Judicial notice of recent developments in the arbitration and Canadian enforcement proceedings is appropriate.

Throughout this litigation, both sides have filed documents from the arbitration and Canadian enforcement action to keep this Court apprised of developments in those parallel proceedings. *See* Dkt. 346, 353, 366, 372, 422, 431, 446. This motion adds significant documents made available only recently.

A. Earlier this year, from April 21 to May 8, the arbitral panel took thorough and extensive testimony at the World Bank in Washington, D.C. The hearings involved thirteen days of adversarial proceedings, in which thirteen fact and expert witnesses testified for the two sides. The testimony covered topics such as linguistics, textual analysis, computer forensics, environmental harms, human health-risk analysis, and Ecuadorian law. The hearing transcripts were publicly released by the Ecuadorian Embassy on October 26, 2015, as reported by news outlets. *See, e.g.*, Eva Hershaw, *Chevron's Star Witness Admits to Lying in the Amazon Pollution Case*, Vice News, Oct. 26, 2015, http://bit.ly/1R9RBD3; Adam Klasfeld, *Ecuadorean Judge Backflips on Explosive Testimony for Chevron*, Courthouse News Service,

Oct. 26, 2015, http://bit.ly/1GtD9p3. Excerpts from the transcripts are attached as **Exhibit A**.[1]

One month after the hearings, in early June, the three members of the arbitral panel visited the Lago Agrio region of Ecuador to inspect four contaminated sites in the rainforest. *See* Klasfeld, *Hague Tribunal Paid Secret Visits to Amazon Oil Pits*, Courthouse News Service, Oct. 20, 2015, http://bit.ly/1ZUYNJn; Hershaw, *There Is Persistent Contamination at Former Chevron Sites in the Amazon*, Vice News, Oct. 19, 2015, http://bit.ly/1RlWXLt. Counsel for both sides accompanied the panel throughout the site visits, all of which were transcribed. These site-visit transcripts were made publicly available on the Ecuadorian Embassy's website on October 19, 2015, and are attached in their entirety as **Exhibit B**.

B. In September 2015, the Canadian Supreme Court unanimously held that the Ecuadorian judgment "merits the assistance and attention of the Ontario courts," as we have previously informed this Court. *See* Dkt. 446. Since that decision, the Ecuadorian plaintiffs have filed an amended complaint seeking enforcement of the judgment (attached as **Exhibit C**), Chevron and its Canadian subsidiary have filed statements of defence, equivalent to an answer (attached as **Exhibits D and E**), and the plaintiffs have filed replies (attached as **Exhibits F and G**). The plaintiffs have asked the court to grant preclusive effect to the

[1] The full set of transcripts is available at http://bit.ly/1jU3ra2. We attach only excerpts because the transcripts are lengthy and available in full online.

Ecuadorian intermediate court's judgment, while Chevron has asked the court to grant preclusive effect to Judge Kaplan's findings. Both sides have filed notices stating their intention to move for summary judgment.

C. This Court may take judicial notice of documents that are "not subject to reasonable dispute" because they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be disputed." Fed. R. Evid. 201(b); *Oneida Indian Nation of N.Y. v. New York*, 691 F.2d 1070, 1086 (2d Cir. 1982). As noted in our previous judicial-notice motion, the scope of sources that may be judicially noticed includes documents from other legal proceedings, where the purpose is to establish that particular matters have been raised or stated in another forum. *See* Dkt. 353, at 1–3. That rule applies equally to international arbitration proceedings, allowing a party "to establish the fact of the arbitration proceeding" and "the nature and extent of [the parties'] claims and arguments in that proceeding." *Pennecom B.V. v. Merrill Lynch & Co.*, 2003 WL 21512216, at *2 (S.D.N.Y. 2003).

II. Recent developments in the international arbitration heighten the risk of inconsistent results and illustrate why Chevron's preemptive collateral attack is impermissible.

At oral argument in this case, Judge Wesley observed that Chevron has risked "open[ing] the door to . . . inconsistent results" by mounting two separate

preemptive collateral attacks on the Ecuadorian judgment—the first in arbitration, the second here. Oral Arg. Tr. 56.

That risk is all the more real now. Chevron is making the same allegations of ghostwriting and bribery in both proceedings. But in the arbitral proceeding, the allegations are being considered on a much more developed record—a record that includes not only the full trial record in this case (which the arbitral panel incorporated into its own record), but also fresh evidence of Guerra's admitted lies, new exculpatory evidence, and site visits establishing Chevron's extensive pollution in Ecuador. Based on that record, the arbitral panel could easily determine that it has no choice but to reach a different conclusion than Judge Kaplan did below.

A. Guerra's two-day arbitral testimony is littered with explicit admissions of dishonesty, including admissions that he lied while on the stand in New York and in his witness statement in this case. To give just a few examples:

- **Guerra admitted to lying on the stand in New York.** He testified at trial in New York that Judge Zambrano agreed to give him 20 percent of the alleged $500,000 bribe. But in his arbitral testimony, Guerra confessed that this was a lie: "That was my sworn statement in New York, but what I said is that, because of a circumstance, because of a situation, I mentioned 20 percent when it wasn't true, and I think that, as a gentleman, I should say the truth, and we did not discuss—I did not discuss 20 percent with Mr. Zambrano . . . ." Tr. 730–31 (Ex. A).

- **Guerra conceded that he lied in his sworn witness statement.** In his sworn statement submitted at trial in New York, he stated that he twice traveled to Lago Agrio in August 2010 "to work on the Court rulings for the Chevron Case," SA1142—testimony on which Judge Kaplan relied, *see* SPA-256. But in his arbitral testimony, Guerra conceded that "neither of those

trips related to the Lago Agrio case" because "[a]t that date . . . Judge Zambrano was not the Judge of the case. So, if I traveled during those dates, it wasn't for me to provide assistance to the Chevron Case . . . ." Tr. 673.

- **Guerra admitted that he lied about being offered $300,000 to ghostwrite the judgment.** He testified that he "falsely t[old] the Chevron representatives that the Plaintiffs had offered [him] $300,000" to ghostwrite the judgment: "I lied there. I recognize it. I wasn't truthful. That statement was never made by the representatives of the Plaintiffs." Tr. 744.

- **Guerra admitted that he "exaggerate[d]" his knowledge and involvement on numerous occasions to obtain more money from Chevron.** Tr. 630, 743, 745, 809. As he put it: "when we are looking for a job, you say, how much experience do you have, and in fact you really don't have any experience, and you say, well, I have ten years of experience really. It's a situation just like that." Tr. 743.

- **Guerra admitted to further lies he told to make more money from Chevron.** He testified that he "did not trust [Chevron]" and "was trying to improve my position vis-à-vis a forward-looking negotiation, so I, in some cases, exaggerated—possibly I lied in other cases." Tr. 630–31.

- **Guerra knew that Chevron would not pay him if he did not implicate Zambrano.** "What I was doing ultimately was to be the spokesperson that conveyed the intention of Mr. Zambrano to Chevron," Guerra testified. Tr. 691. "[A]nd obviously I understood if that situation was forged, then I collaterally was going to obtain an economic benefit." *Id.* "I understood that . . . once I met the objective of linking [Chevron] with Zambrano which, in my understanding, was their wish, the wish that they had, then I was going to receive an economic benefit." Tr. 742.

- **Guerra admitted that he lied about the flash drive.** Questioned about earlier statements in which he represented that he had given Zambrano the draft judgment on a flash memory drive, Guerra admitted that "every time [he] represented that Judge Zambrano gave [him] a Draft Judgment by way of a flash drive was incorrect." Tr. 808.

- **Guerra admitted to receiving enormous amounts of cash and benefits from Chevron in exchange for his testimony.** He recalled

that when he met with Chevron's representatives, "one of them took me by the arm and said, 'Look, look, look what's down there. We have $20,000 there.'" Tr. 736–37. Chevron said that "they could initiate a negotiation with that amount of money," and he responded: "why don't you add some zeroes to that amount, and then later on I said, 'I think it could be 50,000.'" Tr. 735. To date, Guerra has received more than a million dollars in cash and benefits from Chevron. Dkt. 150, at 54–55.

- **Guerra admitted that he met with Chevron's lawyers 53 times for four to six hours to prepare his RICO testimony.** Tr. 612–16.

- **Guerra conceded that "there are inconsistencies" in his different accounts concerning the "Memory Aid."** In a sworn 2012 declaration, he stated that he received the document in an email from Pablo Fajardo while at home in Quito. Guerra admitted in his arbitral testimony that he later changed his story and claimed to have received the email from Fajardo while at an Internet cafe in Lago Agrio. Guerra further admitted that he changed his story yet again at trial in New York—after it was discovered that Fajardo was not in Guerra's list of email contacts—testifying that Fajardo actually hand-delivered the Memory Aid to him in Lago Agrio. Tr. 751–57.

There is more. Guerra also conceded in his arbitral testimony that there is *no evidence* (aside from the so-called Memory Aid) corroborating his allegation that the Ecuadorian plaintiffs' lawyers bribed Zambrano and ghostwrote the judgment. There is no draft judgment on Guerra's computer or in hard copy. Tr. 625. There are no emails between Zambrano and Guerra about the judgment. Tr. 626. There are no emails between the plaintiffs' lawyers and Guerra about the judgment, and none of the lawyers are even listed as contacts in Guerra's email account despite his allegation that they "exchanged emails." Tr. 821. There is no written communication from the plaintiffs' lawyers showing that they bribed Zambrano or ghostwrote the judgment. Tr. 626–27. There is no recording showing the same. *Id.*

There is no evidence of any payment to Zambrano regarding the judgment. Tr. 627. There is no evidence that Guerra edited the judgment. *Id.* There are no day planners or calendars of Guerra's for the relevant time period. Tr. 828–31. There are no phone records showing any communication between the plaintiffs' lawyers and Guerra. Tr. 831. There are no shipping records or alleged draft orders from the relevant time period. Tr. 646–70. And there are no payments made to Guerra that substantiate his allegation that the plaintiffs' lawyers bribed Zambrano and ghostwrote the judgment. Tr. 630–41, 674–76 (Question: "Do you have any evidence of any payments from [anyone] associated with the Plaintiffs for the entirety of Mr. Zambrano's second term as a judge in the Lago Agrio case beginning in October of 2010 forward?" Answer: "I do not.").[2]

There is evidence, however, that disproves that allegation. As we mentioned in our supplemental letter brief filed in May, forensic analysis of Zambrano's hard

[2] Even taken on its own terms, Guerra's story makes little sense. He says he provided only "very few changes" to the draft judgment that were "more in terms of formatting" and were "not . . . taken into account" by Zambrano anyway. Tr. 840–47. Yet Guerra was apparently let in on a "bribery" scheme and expected to receive roughly $100,000 for his unaccepted formatting contributions even though Zambrano was "very careful" and "very distrustful." *Id. See* Tr. 845 (Question: "You believed you expected to receive about $100,00 for edits you did to a Sentencia that were never accepted?"). For commentary on the weakness of Guerra's bribery account and lack of corroborating evidence, *see* Ted Folkman, *Lago Agrio: Guerra Unravels?*, Letters Blogatory (Oct. 27, 2015), http://bit.ly/1S7Wo8O, and Marc Simons, *What you Think you Know About Chevron and Steven Donziger is Wrong*, EarthRights International (Oct. 30, 2015), http://bit.ly/1kqkVdM.

drive shows that the judgment was created on *his* computer, while "increasing amounts" of text were added "between October 2010 and February 2011," and that the judgment was "edited and saved hundreds of times during this period." Dkt. 422-1, at 2–3. And a new contemporaneous email has been discovered that shows that the plaintiffs' lawyers, in the weeks leading up to the judgment, were legitimately concerned about submitting their final brief (or *alegato*) on time. Dkt. 372-2, at 142. Here is what the email from Fajardo says:

> Greetings, my friends. Forgive me for insisting further . . . but remember that we must present the *alegato* in Court this Friday, even if it is not complete . . . but we must file . . . . How is it coming?

Id. Although Judge Kaplan dismissed two other cotemporaneous emails expressing similar concerns (discussed in our opening brief, at 57–58)—on the theory that "these emails went to other people as well," and the plaintiffs' lawyers had "to keep up the pretense that the Lago Agrio litigation was in real dispute and the end result in doubt"—Judge Kaplan's theory cannot explain away this email. SPA-282–86. This email was limited to the three core members of the plaintiffs' legal team: Pablo Fajardo, Steven Donziger, and Juan Pablo Sáenz. Dkt. 372-2, at 142.

Taken together, the arbitration record illustrates the serious risk of an inconsistent result as to Chevron's core fraud allegations. It also demonstrates that Chevron has an adequate remedy at law and shows why this litigation is unnecessary and unlawful: If Chevron has sought broader relief in the arbitration

than it has here—and the arbitral panel will now decide, based on a far more developed record, whether Chevron is entitled to that relief—then what is to be gained by permitting an unprecedented preemptive collateral attack in New York?

B. The arbitral panel is also considering fresh evidence of Chevron's environmental contamination in Ecuador. After weeks of hearings and witness testimony, the panel members took the extraordinary step of traveling to four former Chevron (TexPet) sites in Ecuador to witness evidence of oil pollution and to document that pollution's effects on the environment and nearby communities. At each of these sites, environmental experts offered testimony and counsel for both sides presented physical evidence as well as argument. To illustrate, we offer just a few excerpts from the more than 100 pages of site-visit transcripts:

- **Liquid oil was found in the soil.** At the Shushufindi-34 site, the arbitral panel was presented with a sample of soil that "[wa]s saturated with oil. It is not asphalt-like. It is oil. It's liquid." Tr. 22 (Ex. B).

- **Chevron conceded oil on the ground.** Chevron's counsel acknowledged at the Shushufindi-34 site that "[y]es, we see that there is oil, remnants of oil in that pit. We certainly understand that." Tr. 47.

- **The panel heard expert testimony at the Aguarico site regarding human exposure to the oil pollution.** The "contaminated soils that are down there below us, marked by those placards, are part of the farmer's field. This is a subsistence farmer. He's planting corn by hand. He's going to come in contact with those soils as he plants his corn. . . . [T]hat corn is potentially able to uptake material from the soil and result in contamination. The farmer may also graze his livestock in here or chickens and the like where they can also be exposed, so we have clear and current human exposure here." Tr. 130.

- **More expert testimony confirms the pollution's effect.** Further discussing "the human health-risk assessment issues" at the Aguarico site, environmental expert Dr. Edward Garvey explained "that the growing of corn in this field with all of this oil present at the surface means that these materials can be taken up into the corn and then people can ingest that corn, and there's another root [sic] of exposure for that. So this represents a very vivid and ongoing exposure to the locals that live here." Tr. 205.

- **The panel heard testimony that the Shushufindi-55 site is also polluted.** The visit took place at "what has been described by the various auditors as an oily mound." Tr. 222. Dr. Garvey testified at the site: "There's actually oil present in the swamp currently. . . . [M]y associate here, has just gone in and pulled us out a bucket of contaminated sediment. I'll bring it up to you to have a look. You can smell a little bit, but you can clearly see the sheening of the oil on the surface. . . . [Y]ou can see the oil on the surface. So, this certainly is not as thick as what we've seen at the other two sites, but it's still here." Tr. 228–29.

- **The panel heard testimony that the Lago Agrio site has extensive soil and groundwater contamination.** At that site, Dr. Garvey testified: "We have direct observations of contamination. We have oil still coming out of the siphon. We have oil in the groundwater below us that's moving to the stream. Groundwater is not static." Tr. 311. He continued: "So, we're not but 25–30 yards from a residence here. This is obviously somebody's active farm, and so these people are exposed to this material on a regular basis. Okay. These oils, these contaminated sediments, and these contaminated soils and the like are part of their daily life." Tr. 314.

- **Chevron's counsel conceded that "there have been impacts" resulting from the oil pollution.** Tr. 370.

- **Oil continues to contaminate the water supply.** When Chevron's counsel contended that nearby communities' water supplies were not affected by the oil contamination at the Lago Agrio site, Dr. Garvey responded that the contaminated stream would still have human impacts: "While residents can rely on rainwater, there is clear evidence that the stream is still being used by the residents at least on occasion. A tube of toothpaste was found. Toys were also found along the stream's edge.

> Chickens, ducks, and other animals that live in this residence also drink from this stream." Tr. 315–16.

As even these brief excerpts make clear, the site visits exposed the arbitral panel to substantial, if not uncontroverted, evidence of environmental harm persisting in the impacted areas. During these visits, Chevron also had the opportunity to contest the Republic of Ecuador's evidence and to present its own expert analysis. And at the evidentiary hearings in Washington, the panel considered extensive evidence—including testimony from seven experts and numerous expert reports—relating to environmental and health impacts of the contamination. Unlike the arbitral panel, however, this Court has before it none of this evidence because Judge Kaplan excluded as irrelevant all evidence of Chevron's environmental liability at trial. *See* Dkt. 314, at 44–45.

As we have repeatedly argued and Chevron has not meaningfully contested, the overwhelming evidence of oil contamination is fatal to Chevron's claims. Chevron has not even attempted to prove that it would have no judgment against it "but for" the alleged wrongdoing, as required by Article III, RICO, and the common law (even assuming such a preemptive collateral attack were permitted). *See, e.g.*, Dkt. 150, at 78–79; Dkt. 314, at 44–45; Dkt. 422-1, at 10 (discussing common-law requirement). Nor has Chevron shown that it has satisfied RICO's more stringent proximate-causation requirement. *See* Dkt. 150, at 114–15; Dkt. 314, at 44–45. Judge Kaplan's decision to exclude all evidence of environmental

contamination in New York—in sharp contrast to the arbitral panel's numerous site visits—underscores why this proceeding is not only inferior to the arbitration, but also improper under black-letter law.

III. Recent developments in the Canadian enforcement action—where Chevron contends that Judge Kaplan's findings are binding—further confirm that this proceeding is impermissible.

In Canada, two developments are worth noting. First, the Ecuadorian plaintiffs are asking the court to enforce the judgment of the "Intermediate Court of Appeals," which "has full *de novo* jurisdiction to review the facts and change the factual determinations as well as the legal determinations." Ex. F, ¶¶ 28–35; *see also* Ex. C, ¶ 11. This is the same argument we have made in our briefing in this case. *See* Dkt. 150, at 73–79; Dkt. 314, at 8–12.

Second, Chevron is arguing that the Canadian enforcement court may not make its own determinations about Chevron's fraud allegations because "[t]he plaintiffs are bound by the factual findings made by the SDNY." Ex. D, ¶ 4; *see also id.* ¶¶ 86–87. This only confirms what we have said all along: that Chevron's only goal in this proceeding is to extract favorable findings to file abroad. *See, e.g.*, Dkt. 314, at 7–8. That is why Chevron has asked this Court to "exercise its remedial power to uphold [Judge Kaplan's] factual findings." Dkt. 253, at 92 n.19. The problem for Chevron, however, is that Article III does not sanction such advisory opinions; it authorizes courts to redress actual injuries caused by real wrongdoing.

If Chevron is right that the judgment in this case redresses an actual injury because the findings are entitled to preclusive effect abroad, that only serves to show why this proceeding is no different from *Naranjo*. An *in personam* action based on the same factual allegations is "only another way of attempting to reach the same result": blocking enforcement of the judgment. *Harrison v. Triplex Gold Mines*, 33 F.2d 667, 668, 672 (1st Cir. 1929) (court refusing to "lend [itself] to such a proceeding"—"the main object" of which was "to prevent the defendants . . . from receiving the benefit of litigation long contested" abroad). As this Court held in *Naranjo*, New York law does not "create[] causes of action by which disappointed litigants in foreign cases can ask a New York court . . . to preempt the courts of other countries from making their own decisions about the enforceability of such judgments," or "to issue injunctions preventing parties to foreign litigation from acting abroad to present issues to foreign courts." 667 F.3d at 243, 245. A "court presuming to issue" such an order "sets itself up as the definitive international arbiter of the fairness and integrity of the world's legal systems." *Id.* at 244.

That is exactly what the district court did here, and the international-comity implications are obvious. As one commentator closely following the case observed, Chevron is "arguing that Judge Kaplan's judgment should have preclusive effect in Canada. But the plaintiffs are arguing preclusion, too: they want to give preclusive effect to the Ecuadoran appellate judgment, and they claim that that judgment was

not infected by whatever fraud occurred in the first-instance proceedings. It will be interesting to see how the Canadian court squares these two claims, and I don't claim to have a good idea about the answer." Ted Folkman, *Lago Agrio Update: The Tribunal's Site Visit and Motions for Summary Judgment*, Letters Blogatory (Oct. 26, 2015), http://bit.ly/1WsvoH4.

It is precisely this unpalatable situation that this Court sought to avoid in *Naranjo*. The Court explained that permitting preemptive relief "would encourage efforts by parties to seek a res judicata advantage by litigating issues in New York in order to obtain advantage in connection with potential enforcement efforts in other countries." 667 F.3d at 246. Even if "such an advisory opinion" were to "settle the question of enforcement in New York—a question that in the ordinary course might never arise at all—it would hardly 'finalize' the larger dispute between the parties about the legitimacy of the Ecuadorian judgment or its enforceability in other countries." *Id.* This Court "thus agree[d] with the court in *Basic* [*v. Fitzroy Engineering, Ltd.*, 949 F. Supp. 1333 (N.D. Ill.1 996)] that a far better remedy is available": Chevron can defend itself in enforcement proceedings. *Id.* So too still.

CONCLUSION

For the foregoing reasons, the Donziger Appellants respectfully request that the Court take judicial notice of the recent filings in the international arbitration and Canadian enforcement proceedings.

Dated: November 5, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2015, I electronically filed the foregoing motion for judicial notice with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

Dated: November 5, 2015

/s/ Deepak Gupta
Deepak Gupta