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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alberto Salcido Romo, *et al.*,

Applicants,

vs.

Southern Copper Corporation.,

Respondent.

Case No. MC-16-0035-PHX-DLR

APPLICANTS' REPLY IN SUPPORT OF APPLICATION FOR AN ORDER GRANTING LEAVE TO ISSUE SUBPOENAS FOR THE TAKING OF DISCOVERY PURSUANT TO 28 U.S.C. § 1782

I. APPLICANTS HAVE SATISFIED THE STATUTORY REQUIREMENTS.

This 28 U.S.C. § 1782 discovery request relates to the largest environmental disaster in Mexico's recent history. This is a narrow request for information from Southern Copper Corp. (SCC), a U.S.-based, publicly traded company that has repeatedly told investors and the U.S. federal government that it has access to extensive information regarding the spill.

a. Respondent – a corporate entity – resides in this District.

Respondent SCC does not dispute that it "resides" in the District by virtue of its headquarters in Phoenix. The "resides" requirement focuses on the residence of the Respondent itself – not the persons from whom information will be obtained. *See, e.g., In re: Application of Ontario Principals' Council*, No. MC-14-00050, 2014 WL 3845082 (D. Ariz. Aug. 1, 2014) (finding that a company headquartered in this District of Arizona resides here, but denying the request on other grounds). SCC's CEO has repeatedly told its investors and the U.S. government (in SEC disclosures) that its "principal executive officers" are in this District. (Doc 1-1, Ex. D.)

SCC cites two cases to support its argument that it does not "reside" and is not "found" in this District – *In re Nokia Corp.*, No. 107-MC-47, 2007 WL 1729664, at *3-4 (W.D. Mich. June 13, 2007), and *In re Godfrey,* 526 F. Supp. 2d 417, 419 (S.D.N.Y. 2007). Neither case held that the residence prong is determined by the location of the discovery sought. On the contrary, both found that the residence prong must be determined by the connection of the company to the forum. *Id.* In each cases, the respondent was not registered to do business in the state in question, had no offices there, and had no other connection to the state at all. *Id.* Here, it is undisputed that SCC is registered to do business in the District and maintains its headquarters here. (Doc. 1 at 7.) SCC resides in the District of Arizona.

b. Applicants seek information "for use" in foreign litigation.

Applicants seek discovery "for use" in seven ongoing *amparo* actions (Mexican constitutional challenges) and for an environmental lawsuit to be filed shortly in Mexico. Contrary to SCC's assertion, Applicants have submitted sufficient evidence to establish both that the evidence will be used in the *amparo* actions and that it is within "reasonable

contemplation" of use in the soon-to-be-filed environmental lawsuit. *Intel Corp. v. Advanced Micro Devices, Inc.,* 542 U.S. 241, 263-64 (2004). Indeed, SCC's real objection is not that Applicants will not use this evidence in foreign litigation, but that they *will* do so, and "file more lawsuits against the Mexican Companies." (Doc. 12 at 17.)

With regard to the pending *amparo* actions, a private litigant may use § 1782 to seek evidence in a foreign proceeding – irrespective of how likely it is that the court will find the evidence admissible. As Applicants previously explained and SCC does not dispute, this Court should neither "consider the *discoverability* of the evidence in the foreign proceeding," nor "the *admissibility* of evidence in the foreign proceeding in ruling on a section 1782 application." *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 77 (2d Cir. 2012); *see also In re Request for Judicial Assistance from Seoul Dist. Criminal Court*, 555 F.2d 720 (9th Cir. 1977) (courts considering § 1782 request should not "involve themselves in technical questions of foreign law relating to . . . admissibility before such tribunals of the testimony or material sought"). And while SCC implies that the absence of a "formal discovery request from a foreign government, government investigator, or judge" is somehow unusual, (Doc. 12 at 8), the Ninth Circuit has rejected any distinctions between applications made by "a private party" as opposed to a "foreign tribunal." *Advanced Micro Devices v. Intel Corp.*, 292 F.3d 664, 669 (9th Cir. 2002). Indeed, "[p]arties in foreign litigations are increasingly submitting Section 1782 requests" – successfully – and one company, Chevron Corp., has filed at least 23 such applications without any corresponding governmental requests.[1]

There is no serious question that the foreign proceedings are real. Applicants' Mexican attorney, Luis Miguel Cano, has provided both docket numbers and the location of the court in which the actions are pending. (Doc. 1-1, Ex. D ¶3.) The judges in those respective actions would accept evidence obtained through § 1782. Ex. A, ¶¶3-4. SCC's Mexican attorney, Bolaño Silva, does not dispute this. Nor does SCC present evidence refuting Applicants' showing that the information sought is relevant to the actions mentioned. Applicants have

[1] Gibson Dunn, "Obtaining U.S. Discovery to Litigate in Foreign or International Tribunals Pursuant to 28 U.S.C. § 1782," at http://www.gibsondunn.com/publications/Documents/WebcastSlides-Transnational-Litigation-01.29.2015.pdf.

demonstrated that the discovery is for use in the *amparo* actions.

Regarding the anticipated environmental lawsuit, Respondents again misstate both the record and the law. Two circuits have recently concluded that where, under the relevant foreign law, a party "must submit its evidence with the pleading at the time it commences the civil action," § 1782 discovery is appropriate before filing. *Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 747 F.3d 1262, 1271 (11th Cir. 2014); *see also Mees v. Buiter,* 793 F.3d 291, 298 (2d Cir. 2015). Courts also reject an interpretation of the "for use" prong that would force courts to engage in a "painstaking analysis not only of the evidence already available to the applicant, but also of the amount of evidence required to prevail in the foreign proceeding." *Mees,* 793 F.3d at 298.[2]

Regardless, Applicants have provided a clear analysis of the elements of the claim in the environmental lawsuit and their relationship to the evidence sought. (Doc. 1-1, Ex. D ¶¶7, 12.) Indeed, Respondent's Mexican attorney admits that, under the proposed environmental lawsuit, a Mexican judge will accept as admissible all evidence discovered prior to the filing of the lawsuit – including the information sought in Applicants' Requests for Production and Rule 30(b)(6) deposition. (Doc. 12-1 at 4 ¶¶15, 17.)

Finally, though not a requirement, Applicants' Mexican attorney also demonstrates that this is far from a "fishing expedition." (Doc. 12 at 8.) He has engaged in exhaustive research to seek tens of thousands of pages of documents through governmental sources and spent over $16,000 in environmental studies and mapping. Ex. A ¶¶14-16. These steps, along with the present Application, are necessary because the bulk of evidence, or at least knowledge of the location of said evidence, is required by the Mexican court upon filing. Ex. A ¶8. *See, e.g., Bravo Express Corp v. Total Petrochemicals & Refining U.S.,* 613 Fed. Appx. 319, 323 (5th Cir. 2015)

[2] SCC relies on *In re Mesa Power Group, LLC,* 878 F. Supp. 2d 1296, 1303 (S.D. Fla. 2012), decided before the 11th Circuit's decision in *Consorcio*. That case does not support SCC's "maturity" requirement. Instead, the court in *In re Mesa Power Group* ruled for the applicants, finding that foreign litigation was reasonably contemplated based on, among other factors, the presence of filing fees, but went on to clarify that "as mentioned before and explained by *Intel*, the proceedings are not required to have reached this point before relief under the statute may be sought." *Id.*

(finding that foreign litigation was "reasonably contemplated" where the applicants had engaged in a seven year investigation in a jurisdiction where sufficient evidence must be presented to the court upon filing). Applicants have amply demonstrated that they seek discovery "for use" in foreign proceedings.

Applicants have met the statutory prerequisites for a § 1782 application.

II. THE FACT THAT SOME DOCUMENTS MAY BE OUTSIDE THE U.S., OR HELD BY A SUBSIDIARY, IS NOT A BASIS FOR DENYING THE APPLICATION.

Applicants have sought documents and testimony from SCC – a U.S. corporation, incorporated in Delaware, and headquartered in Phoenix. SCC argues that discovery should be denied because Applicants are really seeking documents in the possession of a foreign subsidiary outside the U.S., and testimony of a Mexican national. This argument must fail, because there is no factual predicate for it, because there is no legal doctrine barring such discovery – and because, even if there were, the Court has discretion to fashion an order that would avoid any such problems. SCC's argument essentially boils down to the suggestion that while it is incorporated and headquartered in the U.S., it is not *really* a U.S. corporation.

First, SCC has failed to establish that the bulk of the documents Applicants seek are either outside the U.S. or in the hands of SCC's subsidiaries – namely, Operadora de Minas e Instalaciones Mineras, S.A. de C.V. (Operadora). Its only basis for this assertion is the declaration of its outside counsel, Gregory Evans. Evans's statement lacks both foundation and plausibility; it is based solely on his "knowledge of SCC's corporate structure." (Doc. 12-2.) Evans's declaration fails even to establish that he actually *has* any detailed knowledge of SCC's corporate structure, and in any event such knowledge would not be adequate to assess the location of specific documents.

The weight of authority establishes that: (1) there is no bar to discovery of documents located abroad – especially if they are accessible from the U.S. and merely *also* present in another country; and (2) requests for such discovery are rarely denied when the respondent is a U.S. company. Indeed, Applicants have found no cases that have denied discovery based on

such a thin evidentiary showing as SCC has made here, or that have denied discovery simply based on the notion that *most* responsive documents would be located abroad.

Contrary to SCC's suggestion, neither the Ninth Circuit nor any other Court of Appeals has ruled on this issue. In *Four Pillars Enters. Co. v. Avery Dennison Corp.*, 308 F.3d 1075 (9th Cir. 2002), a magistrate judge's order had *granted* some discovery, but denied documents located abroad, because the magistrate judge concluded that the foreign court was "well situated" to handle discovery of those documents. *Id.* at 1080. While the Ninth Circuit upheld this as an exercise of discretion, it expressly declined to rule that documents abroad were not subject to § 1782, *id.*; moreover, there was no suggestion that the documents at issue were accessible from the United States.

In *Astronics Advanced Elecs. Sys. Corp. v. Lufthansa Technik AG*, 561 Fed. Appx. 605, 606 (9th Cir. Mar. 7, 2014), the court again merely upheld the exercise of discretion. In that case, the respondent was actually a *foreign* company. *Id.* at 605. That was likewise the case in *In re Kreke Immobilien KG*, 13 Misc. 110, 2013 U.S. Dist. LEXIS 160283 (S.D.N.Y. Nov. 8, 2013). SCC mistakenly claims that *Kreke Immobilien* denied discovery of documents held abroad by "Deutsche Bank (US)," but the application sought discovery from Deutsche Bank AG, "a German bank with its official headquarters in Frankfurt am Main, Germany." *Id.* at *14. It was in that context – an attempt to obtain a foreign company's documents abroad – that the court decried the notion of U.S. courts as "'clearinghouses' for global litigation."[3] The situation may be different when the respondent is a U.S. company. For example, in *In re Application of Chevron Corp.*, No. 11-24599-CV, 2012 U.S. Dist. LEXIS 123315, *31 (S.D. Fla. June 11, 2012), the court allowed discovery of documents in the possession of an Ecuadorian affiliate of a Florida bank – for use in court proceedings in Ecuador. The court ruled that the bank "cannot expect

[3] Another case cited by SCC, *In re Grupo Unidos Por El Canal, S.A.*, No. 14-mc-00226, 2015 U.S. Dist. LEXIS 50910 (D. Colo. Apr. 17, 2015), is an outlier in suggesting that § 1782 jurisdiction does not extend to documents located abroad. That conclusion was *dicta*, since the court initially concluded that the application did not meet the "tribunal" requirement. *Id.* at *23. The court's conclusion was not well-supported; the court acknowledged that, "[o]n its face § 1782 does not limit its discovery power to documents located in the United States," *Id.* at *27, but then simply followed *Kreke* – which, as noted above, was a case in which the respondent was a foreign company, a very different circumstance.

to avail itself of the benefits of doing business here without accepting the concomitant obligations." *Id.* (internal punctuation omitted).

Other Southern District of New York cases disagree with *Kreke* regarding documents outside the U.S., holding that this is within the Court's discretion:

> [T]he Court rejects [the] suggestion that § 1782 assistance cannot extend to the production of documents located abroad. There is no such express restriction in the statute, and the Court is unwilling to engraft one onto it.
>
> Section 1782 requires only that the party from whom discovery is sought be "found" here; not that the documents be found here. 28 U.S.C. § 1782(a). For this Court to read an implicit document-locale requirement into § 1782 would be squarely at odds with the Supreme Court's instruction that § 1782 should not be construed to include requirements that are not plainly provided for in the text of the statute. *See Intel*, 542 U.S. at 260.

In re Gemeinshcaftspraxis Dr. Med. Schottdorf, No. Civ. M19-88, 2006 U.S. Dist. LEXIS 94161, *15-16 (S.D.N.Y. Dec. 29, 2006); *see also Chevron Corp.*, 2012 U.S. Dist. LEXIS 123315 at *31.

More recently, in *In re Bloomfield Investment Resources Corp.*, No. 15 Misc. 220, 2016 U.S. Dist. LEXIS 25821 (S.D.N.Y. Feb. 25, 2016), another judge in the Southern District of New York granted discovery when presented with a similar situation to the instant case. The respondents there had "not offered evidence showing that the [relevant] documents named in the subpoena are actually located in Russia, rather than in the United States or in electronic files readily accessed by Respondents." *Id.* at *7. Nonetheless, the court noted "that the location of documents abroad is not necessarily a bar to discovery." *Id.*

Bloomfield points to a likely scenario here – that many documents that are arguably "located" in Mexico are nonetheless easily accessed by SCC in Phoenix. In effect, these documents are really located in the U.S., even if they are also in Mexico. *In re Application of Hallmark Capital Corp.*, 534 F. Supp. 2d 951 (D. Minn. 2007), is also instructive. There, the court considered a request for production to assist with an Israeli proceeding, and discounted an argument that the documents might also be present in Israel. "Such documents must be produced if they are in either the possession, custody, or control of [the Respondent] and the fact that copies might exist in Israel does not relieve him of his obligation to produce those

over which he has such custody or control." *Id.*

SCC's argument that the documents might be held by its subsidiaries also fails. "A corporation must produce documents possessed by a subsidiary that the parent corporation owns or wholly controls." *United States v. Int'l Union of Petroleum & Industrial Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989); *see also Dietrich v. Bauer*, No. 95 Civ. 7051, 2000 U.S. Dist. LEXIS 11729, *8 (S.D.N.Y. Aug. 9, 2000) (collecting cases).[4] SCC relies on one case – *Norex Petroleum Ltd. v. Chubb Insurance Co.*, 384 F. Supp. 2d 45 (D.D.C. 2005) – in which the court denied discovery of documents held by the respondent's *parent* company, *id.* at 57, but it is commonplace that a parent may control a wholly-owned subsidiary and not the reverse. Nonetheless, if the Court has any qualms about production of documents held only by Operadora and not SCC itself, the Court has discretion to limit discovery in this fashion.

SCC also argues that Applicants seek "deposition testimony of a Mexican national." (Doc. 12 at 1.) Again, their only basis is Evans's "knowledge of SCC's corporate structure." (Doc. 12-2 ¶6.) To be clear, Applicants have requested a Rule 30(b)(6) deposition of a U.S. corporation. If SCC designates a Mexican national to testify, that is its prerogative, but that is no concern to Applicants or this Court. Applicants are entitled to use § 1782 to determine what SCC, *as a U.S. entity found in Phoenix*, knows. For these reasons, Respondent's position that § 1782 prohibits the production of documents and witnesses abroad must be rejected.[5]

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[4] The Ninth Circuit later elaborated that the formal test is "legal control," *In re Citric Acid Litig.*, 191 F.3d 1090, 1108 (9th Cir. 1999). But, in observing that a parent corporation must produce documents held by its subsidiary, the Ninth Circuit did not need to analyze "any specific contractual terms that might allow the parent to assert control over the documents owned by its subsidiary corporation." *St. Jude Med. S.C., Inc. v. Janssen-Counotte*, 104 F. Supp. 3d 1150, 1159 (D. Ore. 2015). Furthermore, "there are numerous cases that hold that a parent corporation has 'control' over documents owned by a wholly-owned subsidiary." *Id.* If there were any doubt about SCC's control of Operadora, its own public materials put that to rest – SCC characterizes Operadora as the "Buenavista Unit" of SCC and refers to the mine as part of "[o]ur Mexican operations," *see* http://www.southernperu.com/ENG/invrel/2014/AnnualReport/m2014.pdf; and refers to Buenavista as part of its "Integrated Operations," *see* http://www.southernperu.com/ENG/intope/Pages/PGIntOperation.aspx.

[5] Even if SCC's objections have merit, they cannot defeat the Application entirely. The Court has discretion to limit discovery if necessary – for example, as the district court in *Four Pillars* did, by limiting production to documents that are readily accessible to SCC employees

III. *INTEL* DISCRETIONARY FACTORS WEIGH IN APPLICANT'S FAVOR.

a. SCC will not be a party to the foreign proceedings.

The evidence demonstrates that SCC is not a party to the foreign proceedings. First, Applicants establish that all but two of the *amparo* actions include only governmental entities as defendants and none of the *amparo* actions involve Operadora de Minas e Instalaciones Mineras S.A. de C.V. Ex. A ¶2. None of the *amparo* actions include SCC as a party. *Id.* Additionally, it is impossible to include SCC as a party to the environmental litigation because the environmental responsibility law does not permit lawsuits against responsible entities' parent corporations. *Id.* at ¶12.

Respondent fails to establish otherwise. Respondent has the burden of proof as the party opposing discovery. *In re Chevron Corp. (Uhl, Baron, Rana & Associates),* 633 F.3d 153, 163 (3d Cir. 2011). Nonetheless, Respondent provides no evidence that SCC is a party to any of the Mexican proceedings or that its relationship to Operadora is so substantial that it would make SCC and Operadora the same "for all intents and purposes." (Doc. 12 at 12, citing *Schmitz v. Bernstein Liebhard & Lifshitz, LLP,* 376 F.3d 79, 85 (2d Cir. 2004)). Again, SCC relies solely on Evans's unsubstantiated representations that – without actually searching for the documentation – its subsidiary Operadora is in possession of "most or all" the documents sought. (Doc. 12-2.) He makes this statement without establishing any foundation for personal knowledge and without any supporting documentation. (*Id.*) Nor does he provide detail of the corporate relationship between SCC and Operadora that would support his contention that these two separate entities are functionally the same.

Again, SCC's reliance on *Kreke Immobilien* is misplaced. As noted above, the petitioner there sought documents from a foreign bank, located abroad in the hands of a foreign subsidiary, based solely on the bank's presence in New York. 2013 WL 5966916 at *5. Under those circumstances, the Court found that the evidence sought was fully within the "tribunal's jurisdictional reach." *Id.,* citing *In re Application of OOO Promnefstroy,* 2009 WL 3335608, at *5

in the United States. "[I]t is far preferable for a district court to reconcile whatever misgivings it may have . . . by issuing a closely tailored discovery order rather than by simply denying relief outright." *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1101 (2d Cir. 1995).

(S.D.N.Y. Oct. 15, 2009). The situation here is hardly similar. Applicants have initiated legal actions in various tribunals against numerous parties in Mexico, only a few of which are SCC subsidiaries. Ex. A ¶2. Furthermore, Applicants have established that they cannot sue Respondent abroad nor does Respondent have an office in Mexico. *Id.* at ¶¶10-12. In fact, Respondent's principal offices are located in this District. Nor is there any evidence that, at present, Applicants could obtain this evidence from SCC in Mexico.

Because SCC has not refuted that it is not and will not be a party to any of the foreign litigation, the first *Intel* factor weighs in favor of Applicants.

b. Although the Mexican courts will not assist in obtaining evidence from SCC's Mexican subsidiaries, they will receive evidence obtained here.

As Applicants' Mexican counsel attests, the Mexican courts will not assist in obtaining this evidence – but they will receive it. In the *amparo* actions, discovery is limited, despite the fact that the courts accept evidence developed through other means. Ex. A ¶¶3, 4, 7-8. Contrary to SCC's implication, these actions are in stages in which evidence can be submitted. *Id.* ¶¶3-4. And while limited discovery might be available after filing the environmental lawsuit, it is not available beforehand, despite the requirement of presenting substantial evidence at the outset. *Id.* ¶11.

In determining the receptivity of a foreign tribunal, "courts should err on the side of ordering discovery, since foreign courts can easily disregard material they do not wish to consider." *In re Gushlak*, 2011 U.S. Dist. LEXIS 91912, *12 (E.D.N.Y. Aug. 17, 2011). In the absence of "authoritative proof that a foreign tribunal would reject evidence obtained with the aid of section 1782" – which has certainly not been provided here – the Court should grant discovery. *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1100 (2d Cir. 1995).

c. Applicants are not circumventing foreign proof-gathering restrictions.

Section 1782 has two aims: (1) "providing assistance to participants in international litigation"; and (2) encouraging foreign countries by example to provide similar assistance to our courts." *Advanced Micro Devices, Inc. v. Intel Corp.*, 292 F.3d 664, 669 (9th Cir. 2002), *aff'd*, 542 U.S. 241 (2004). The Supreme Court in *Intel* was unequivocal that a requirement of foreign

discoverability would frustrate these aims. 542 U.S. at 252.

The "circumvention" factor does not focus on whether the foreign tribunal would prohibit or approve of this application. Rather, it is whether the applicants are seeking discovery in bad faith. *Chevron Corp. v. Shefftz,* 754 F. Supp. 2d 254, 262 (D. Mass. 2010). Where foreign discovery rules limit the ability to gather evidence abroad, but the same tribunal would accept as admissible evidence brought from other sources, there is no circumvention. *In re Chevron Corp. (Uhl),* 753 F.3d at 163.

Here, Applicants and SCC's Mexican attorney agree – though the evidence sought may not be accessible through judge-ordered discovery in Mexico, a judge will likely be receptive to admitting the evidence in the foreign proceedings even if it is obtained through other means. Ex. A ¶¶3, 4, 11; (Doc. 12-1 at 4 ¶¶15, 17.) Furthermore, SCC – which does not have an official presence in Mexico – is outside the jurisdiction of the Mexican court. (Doc. 1-1, Ex. C, ¶13.) Thus, the Court should conclude that this *Intel* factor weighs in Applicants' favor.

d. Respondent has failed to demonstrate that these requests are overly intrusive or unduly burdensome.

The final *Intel* factor requires an assessment of the burden of the requests as governed by the Federal Rules of Civil Procedure. Under Fed. R. Civ. P. 26, parties have broad abilities to seek discovery of information relevant to a case. Respondent has a burden to demonstrate – with evidence – that the request would pose an undue burden or expense. *Walker v. Wal-Mart Stores, Inc.,* No. CV-06-43, 2007 WL 1031576, at *5 (D. Mont. April 2, 2007).[6] Instead, SCC has provided only a bare declaration from the filing attorney who admits he has not sought the documents and provides no foundation for knowledge of where the documents are located, how many documents are responsive, or who would respond to the 30(b)(6) deposition. (Doc. 12-2.) This does not meet Respondent's burden.[7]

[6] When, as here, a "movant asserting undue burden seeks to prevent a deposition entirely his burden of proof is particularly great." *Miller v. York Risk Servs. Grp.*, No. 13-cv-1419, 2014 WL 4230783, at *2 (D. Ariz. Aug. 27, 2014) (internal punctuation omitted).

[7] Although SCC has not proven any burden, its suggestion that this application "far exceeds" the typical scope, (Doc. 12 at 15), is unsupported. In the *Intel* litigation, for example, prior to the case reaching the Supreme Court, Intel had argued that the request would require "a

Furthermore, a review of SCC's own attestations contradicts Evans' testimony. SCC is required by the Securities and Exchange Commission to compile information regarding the spill and disclose that information regularly to its U.S. investors. Since August 2014, SCC has provided information regarding the spills, the trust, consultation with communities, and legal actions against its subsidiaries with frequency and depth. *See, e.g.,* Doc. 1-1, Exs. D & E. Federal law also requires SCC, not Operadora, to maintain certain documentation relevant to this search. *See* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 165 Stat. 245; §§ 103-04 & 802. It is disingenuous to claim that all of the documentation upon which SCC relies and which it retains in compliance with federal securities laws are all in the possession of one of its many subsidiaries in Mexico.[8]

Therefore, because Respondent has not satisfied its burden that the discovery sought is burdensome or intrusive, this *Intel* factor should weigh in favor of Applicants.

Because Applicants have satisfied the statutory requirements, and because the *Intel* factors weigh in their favor, the requested discovery should be granted.

document-by-document review of some 500,000 pages." *Advanced Micro Devices, Inc., v. Intel Corp.*, No. C 01-7033 MISC, 2003 U.S. Dist. LEXIS 27477, *10 (N.D. Cal. Jan. 22, 2003); *see also In re Michael Wilson & Partners, Ltd.*, No. 06-cv-02575, 2012 U.S. Dist. LEXIS 72961, *2 (D. Colo. May 24, 2012) (respondents had produced over 15,000 documents after reviewing 325,000 documents; court denied taxation of costs on petitioner), *aff'd*, 520 Fed. Appx. 736 (10th Cir. 2013); *Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1187 (11th Cir. 2013) (respondent "produced approximately 94,000 pages of documents").

[8] Respondent muddies this point further claiming on the one hand that Operadora has *all* of the documents (Doc. 12-2, ¶4) while also claiming that the information is "in the files of several companies." (Doc. 12, p. 15.) Similarly, Respondent again contradicts itself by arguing that it is one and the same with its subsidiary Operadora when discussing the first *Intel* factor while now arguing that it is unduly burdensome to garner the cooperation of its corporate subsidiaries.

RESPECTFULLY SUBMITTED this 6th day of May, 2016.

/s/ Christopher Benoit

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