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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 IN RE: REQUEST FOR INTERNATIONAL
8 JUDICIAL ASSISTANCE FROM THE
9 FIRST CIRCUIT COURT OF LOS
10 SANTOS, LOS SANTOS PROVINCE,
11 REPUBLIC OF PANAMA; MATTER OF
12 TESTATE SUCCESSION ELI ARGELIS
13 DIAZ (R.I.P.)

Case No. 13-mc-80173-JST

**ORDER GRANTING APPLICATION
FOR ORDER PURSUANT TO 28 U.S.C.
§ 1782**

Re: ECF No. 1

12 The United States petitions this Court for an order pursuant to 28 U.S.C. § 1782 appointing
13 Assistant United States Authority Neill T. Tseng as Commissioner and authorizing him to obtain
14 information from witnesses as requested in a letter rogatory from the First Circuit Court of Los
15 Santos, Los Santos Province, Republic of Panama (“the Panamanian Court”). ECF No. 1.

16 **I. BACKGROUND**

17 **A. Factual and Procedural Background**

18 The Panamanian Court is currently considering the Testate Succession Case of Eli Argeliz
19 Diaz, a.k.a. Elly Argelis McKenzie. Exh. A to Application for Order Pursuant to 28 U.S.C. §
20 1782, ECF No. 1. The Panamanian Court has issued a letter rogatory requesting that the United
21 States Attorney obtain information and documents from Northern California branches of Bank of
22 America and Citibank, in order to determine whether there are bank accounts registered in the
23 deceased’s name and to establish the amount and the account numbers of the same. *Id.* According
24 to the United States, Citibank has already voluntarily responded to the United States’ request for
25 information, but the United States now brings this application seeking an order necessary to obtain
26 information from the Bank of America branch at 2200 Chestnut Street, San Francisco, California
27 (“Bank of America branch”). Memorandum of Support of Application for Order Pursuant to 28
28 U.S.C. § 1782, ECF No. 2, at 2:26-3:1. “Letters Rogatory are customarily received and

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1 appropriate action taken with respect thereto ex parte,” In re Letters Rogatory from Tokyo Dist.,
2 Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976), but the United States has also provided
3 courtesy copies of the application and supporting papers to the Bank of America branch. Id., at
4 3:5-7. Bank of America has not appeared to object to the requested relief.

5 **B. Jurisdiction**

6 The district court has subject-matter jurisdiction over this matter specially conferred by
7 28 U.S.C. § 1782, and has personal jurisdiction over this case because the Bank of America
8 branch is located in the Northern District of California. See In re Letter Rogatory from Local
9 Court of Ludwigsburg, Fed. Republic of Germany in Matter of Smith, 154 F.R.D. 196, 199 (N.D.
10 Ill. 1994).

11 **C. Legal Standard**

12 “The district court of the district in which a person resides or is found may order him to
13 give his testimony or statement or to produce a document or other thing for use in a proceeding in
14 a foreign or international tribunal . . .” 28 U.S.C. §1782(a). Such order may be made “pursuant
15 to a letter rogatory issued, or request made, by a foreign or international tribunal . . . and may
16 direct that the testimony or statement be given, or the document or other thing be produced, before
17 a person appointed by the court.” Id.

18 However, “a district court is not required to grant a § 1782(a) discovery application simply
19 because it has the authority to do so.” Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241,
20 264 (2004). “In exercising its discretion, a district court should consider the following factors:
21 (1) whether the ‘person from whom discovery is sought is a participant in the foreign proceeding’;
22 (2) ‘the nature of the foreign tribunal, the character of the proceedings underway abroad, and the
23 receptivity of the foreign government or the court or agency abroad to U.S. federal court judicial
24 assistance’; (3) whether the request ‘conceals an attempt to circumvent foreign proof-gathering
25 restrictions or other policies of a foreign country or the United States’; and (4) whether the request
26 is ‘unduly intrusive or burdensome.’” Matter of Application of O2CNI Co., Ltd., Case No. 13-cv-
27 80125-CRB(LB), 2013 WL 4442288, at *5 (N.D. Cal. Aug. 15, 2013) (quoting Intel Corp., 542
28 U.S. at 264-65). “[D]istrict courts must exercise their discretion under § 1782 in light of the twin

1 aims of the statute: providing efficient means of assistance to participants in international litigation
2 in our federal courts and encouraging foreign countries by example to provide similar means of
3 assistance to our courts” Schmitz v. Bernstein Liebhard & Lifshitz, LLP., 376 F.3d 79, 84 (2d
4 Cir. 2004) (internal citations and quotations omitted).

5 **II. ANALYSIS**

6 “When considering an application for discovery pursuant to 28 U.S.C. § 1782, the court
7 considers first whether it has the authority to grant the request and then whether it should exercise
8 its discretion to do so.” O2CNI, 2013 WL 4442288, at *5.

9 **A. Statutory Authority**

10 The Bank of America branch is “found” within this judicial district, the information sought
11 is “for use” in the Panamanian Court’s proceedings, and the application is “made pursuant to a
12 letter rogatory issued . . . by a foreign . . . tribunal.” 28 U.S.C. § 1782(a). There is no reason at
13 this point to anticipate that the information requests will “compel[]” any person “to give his
14 testimony or statement or to produce a document or other thing in violation of any legally
15 applicable privilege.” Id. The Court therefore has the authority to grant the request.

16 **B. Discretion**

17 Applying the Intel factors, the Court finds that the application should be granted. Since the
18 Bank of America branch is a “nonparticipant[] in the foreign proceeding,” it “may be outside the
19 foreign tribunal’s jurisdictional reach; hence, [its] evidence, available in the United States, may be
20 unobtainable absent § 1782(a) aid.” Intel Corp., 542 U.S. at 264. Second, “the nature of the
21 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the
22 foreign government or the court or agency abroad to U.S. federal-court judicial assistance,” are all
23 factors which weigh in favor of granting the request, which comes from a foreign court that has
24 specifically requested American federal assistance with a currently pending proceeding. Id.
25 Third, there is no reason to suspect that “the § 1782(a) request conceals an attempt to circumvent
26 foreign proof-gathering restrictions or other policies of a foreign country or the United States.”
27 Id., 542 U.S. at 265.

28 Finally, while the United States’ application does not specify the precise document or

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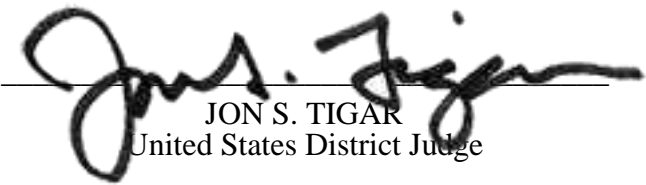
deposition requests it will make, the information sought in the letter rogatory should be obtainable without requiring any “unduly intrusive or burdensome” requests. Id.

III. CONCLUSION

Pursuant to 28 U.S.C. § 1782, the Court hereby ORDERS that Assistant U.S. Attorney Neill T. Tseng is appointed as Commissioner, that Mr. Tseng is authorized to issue subpoenas reasonably necessary to obtain the information sought in the letter rogatory (namely, whether there are bank accounts registered in the deceased’s name and to establish the amount and the account numbers of the same), and to take all steps reasonably necessary for the accomplishment of the letter rogatory.

IT IS SO ORDERED.

Dated: September 3, 2013



JON S. TIGAR
United States District Judge