

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE FROM THE
NATIONAL COURT OF ORIGINAL
JURISDICTION NO.18 IN BUENOS
AIRES, ARGENTINA; MATTER OF
GOTLIB RODOLFO SAUL V. VESUVIO
S.A., ET AL., NO. 12425/2015

Case No. [16-mc-80204-JSC](#)

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

Re: Dkt. No. 1

Petitioner United States of America filed an ex parte application to take discovery pursuant to 28 U.S.C. § 1782. (Dkt. No. 1.¹) That statute allows a district court to order a person residing or found within its district to produce documents or provide testimony for use in a foreign legal proceeding, unless the disclosure would violate a legal privilege. Upon consideration of the United States' application and the relevant legal authority, the Court GRANTS the application.

BACKGROUND

On behalf of the National Court of Original Jurisdiction No. 18 in Buenos Aires, Argentina, the Argentinian Ministry of Foreign Affairs and Worship requests that the United States Attorney's Office for the Northern District of California obtain information from Wells Fargo Bank ("Wells Fargo") at 1266 Market Street in San Francisco, California, which is located in this District. (Dkt. No. 1-2 at 8.) The Argentinian court seeks the information for use in a lawsuit brought by Plaintiff Rodolfo Saúl Gotlib against Defendants PCDA S.A., Vesuvio S.A.C.I.F. E I., and Juan Carlos Navarro Castex. (Id. at 9.) Specifically, the court requests the following information: "1) if Mr. Rodolfo Saúl Gotlib and/or the firm WIDECOMBE FINANCE

¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 S.A. is or was registered as a beneficiary of a bank account with [Wells Fargo]; 2) if so, determine
2 the amounts deposited between 2003 and 2014 and define which was the company that made such
3 deposits.” (Id. at 8.)

4 According to Assistant United States Attorney Wendy M. Garbers, she made attempts to
5 contact Wells Fargo through a letter dated August 25, 2016 and a phone call with Wells Fargo
6 Legal Order Processing on September 14, 2016. (Id. at 1-2.) To date, Wells Fargo has not
7 provided her with any response. (Id.)

8 The United States filed the pending application on September 27, 2016. (Dkt. No. 1.) It
9 asks the Court to grant the application and to appoint Ms. Garbers as Commissioner and authorize
10 her to obtain the requested information from Wells Fargo.

11 **LEGAL STANDARD**

12 Section 1782(a) provides, in pertinent part:

13 The district court of the district in which a person resides or is found
14 may order him to give his testimony or statement or to produce a
15 document or other thing for use in a proceeding in a foreign or
16 international tribunal, including criminal investigations conducted
17 before formal accusation. The order may be made pursuant to a
letter rogatory issued, or request made, by a foreign or international
tribunal or upon the application of any interested person and may
direct that the testimony or statement be given, or the document or
other thing be produced, before a person appointed by the court.

18 28 U.S.C. § 1782(a). A litigant in a foreign action qualifies as an “interested person” under
19 Section 1782. See *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 256 (2004). To
20 apply for discovery pursuant to Section 1782, a formal proceeding in the foreign jurisdiction need
21 not be currently pending, or even imminent. *Id.* at 258-59. Instead, all that is necessary is that a
22 “dispositive ruling” by the foreign adjudicative body is “within reasonable contemplation.” *Id.* at
23 259 (holding that discovery was proper under Section 1782 even though the applicant’s complaint
24 was still only in the investigative stage). Courts typically handle Section 1782 discovery requests
25 in the context of an ex parte application for an order appointing a commissioner to collect the
26 information. See *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th
27 Cir. 1976) (holding that the subpoenaed parties may object and exercise due process rights by
28 bringing motions to quash the subpoenas after the court issues a Section 1782 order); see, e.g., *In*

1 *re Request for Int’l Judicial Assistance from the Nat’l Court Admin. of the Republic of Korea*, No.
 2 C15-80069 MISC LB, 2015 WL 1064790, at *2 (N.D. Cal. Mar. 11, 2015) (granting ex parte
 3 application for a Section 1782 order); *In re Request for Int’l Judicial Assistance from the 16th*
 4 *Family Ct. of the Supreme Ct. of Justice of the Fed. Dist.*, No. 14-MC-80083-JST, 2014 WL
 5 1202545, at *1 (N.D. Cal. Mar. 19, 2014) (same).

6 The court retains wide discretion to grant discovery under Section 1782. See *Intel*, 542
 7 U.S. at 260-61. In exercising its discretion, the court considers the following factors: (1) whether
 8 the “person from whom discovery is sought is a participant in the foreign proceeding”; (2) “the
 9 nature of the foreign tribunal, the character of the proceedings underway abroad, and the
 10 receptivity of the foreign government or the court or agency abroad to U.S. federal court judicial
 11 assistance”; (3) whether the request “conceals an attempt to circumvent foreign proof-gathering
 12 restrictions or other policies of a foreign country or the United States”; and (4) whether the request
 13 is “unduly intrusive or burdensome.” *Id.* at 264-65; see also *In re Request for Judicial Assistance*
 14 *from the Seoul Dist. Crim. Ct.*, 555 F.2d 720, 723 (9th Cir. 1977) (citation omitted) (noting that
 15 the only requirements explicit in the statute are that the request be made by a foreign or
 16 international tribunal, and that the testimony or material requested be for use in a proceeding in
 17 such a tribunal, but also holding “that the investigation in connection with which the request is
 18 made must related to a judicial or quasi-judicial controversy”).

19 “A district court’s discretion is to be exercised in view of the twin aims of [Section] 1782:
 20 providing efficient assistance to participants in international litigation, and encouraging foreign
 21 countries by example to provide similar assistance to our courts.” *Nat’l Court Admin. of the*
 22 *Republic of Korea*, 2015 WL 1064790, at *2 (citing *Schmitz v. Bernstein Libehard & Liftshitz,*
 23 *LLP*, 376 F.3d 79, 85 (2d Cir. 2004)). The party seeking discovery need not establish that the
 24 information sought would be discoverable under the foreign court’s law or that the U.S. would
 25 permit the discovery in an analogous domestic proceeding. See *Intel*, 542 U.S. at 247, 261-63.

26 **DISCUSSION**

27 **A. Statutory Authority**

28 The United States’ application satisfies the minimum requirements of Section 1782: Wells

1 Fargo resides in San Francisco, California, which is in this District; the requested discovery is for
2 use in an Argentinian lawsuit, which is a proceeding before a foreign tribunal; the Argentinian
3 Ministry of Foreign Affairs and Worship made the request on behalf of the National Court of
4 Original Jurisdiction No. 18 in Buenos Aires, Argentina, a foreign tribunal; and the instant ex
5 parte application is an acceptable method of requested discovery under Section 1782. See Tokyo
6 Dist., Tokyo, Japan, 539 F.2d at 1219.

7 **B. Discretion**

8 The Court finds good cause to exercise its discretion to authorize the requested discovery.
9 Although Wells Fargo is not a litigant in the Argentinian lawsuit, Argentina requested the
10 information, which makes clear that the Argentinian court is receptive to this Court's assistance
11 and that the request is not an attempt to circumvent proof-gathering restrictions in either Argentina
12 or the United States. The requested information appears to be discrete and not unduly intrusive or
13 burdensome; the information also does not appear to be privileged. However, should Wells Fargo
14 disagree upon being served with the subpoena, it may file a motion to quash and raise any issues it
15 has at that time.

16 **CONCLUSION**

17 For the reasons stated above, the Court GRANTS the United States' application and
18 appoints Assistant United States Attorney Wendy M. Garbers as Commissioner and authorizes her
19 to obtain the requested discovery from Wells Fargo. Should Wells Fargo file a motion to quash,
20 this action shall automatically be reopened.

21 This Order disposes of Docket No. 1. The Clerk is directed to close the file.

22 **IT IS SO ORDERED.**

23 Dated: September 29, 2016

24
25 
26 JACQUELINE SCOTT CORLEY
27 United States Magistrate Judge
28