

October 24, 2025

VIA E-MAIL

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Re: Kashef et al. v. BNP Paribas, S.A.

Dear Counsel:

We are in receipt of your letter dated October 22, 2025 regarding BNP's public comment about this litigation. Your letter confirms that Plaintiffs' counsel are desperate to pressure BNP into settlement based on a jury verdict that has no basis in Swiss or U.S. law, and before that verdict can be reviewed by the Court of Appeals. The press interview that Ms. Boyd rushed to give hours after the verdict, in which she touted her novel legal theories and desire to settle, confirmed the same. Your letter was also transparently written to manipulate the public record, disclosing confidential communications by the Court and leaked to the media hours after it was sent to us. This is yet another instance of misconduct by Plaintiffs' lawyers—misconduct that you yourself have personally sworn to under oath, ECF Nos. 784, 784-1, and that the Court has said will be the subject of an upcoming evidentiary hearing concerning Plaintiffs' lawyers' alleged witness tampering and subornation of perjury. Because your letter presents a grossly distorted and misleading picture of this litigation and the implications of the jury's verdicts, we are compelled to respond.

First, you assert that BNP is incorrect in describing its banking services as “normal,” when it processed financial transactions involving Sudanese entities. But as the trial confirmed, the transactions that BNP facilitated in Sudan were the same types of financial transactions that banks process across the world every day in every country. Throughout this litigation, including at trial, Plaintiffs have never identified any role that BNP played in the atrocities committed by the Government of Sudan. Just the opposite: the trial confirmed that BNP never facilitated any transactions involving weapons or military equipment. Furthermore, the transactions that BNP facilitated fully complied with the laws of Europe and Switzerland, which permitted banking transactions in Sudan that did not involve military equipment. The jury did not hear that important evidence because BNP was improperly prevented from offering it at trial—one of many erroneous rulings that BNP intends to raise on appeal. The trial, much like your letter, offered a distorted and one-sided picture of BNP's conduct.

Second, you assert that BNP's jury verdict is based on its violation of U.S. sanctions. BNP has repeatedly acknowledged its responsibility for that violation and paid billions of dollars in forfeiture to the U.S. government as recompense. Unfortunately, the jury was never allowed to learn that information or the fact that the Department of Justice and the sentencing court acknowledged that the victim of that crime was the United States, not your clients. *See* ECF No. 796. In fact, BNP was not allowed to present, and the jury was not allowed to hear, extensive evidence explaining the distinction between a violation of United States criminal law and Swiss tort law. Again, both your letter and the trial put forward a grossly distorted and misleading picture.

Third, your assertion that liability for the class has been established by the trial of three individual plaintiffs is a blatant misrepresentation of the Court's orders. The Court could not have been clearer: "The fact of the matter is there are three individuals who are going to have their case tried without reference to a class." Sept. 3, 2025 Pre-Trial Conf. Tr. at 78:2–4; *see* Oct. 10, 2025 Charge Conf. Tr. at 1496:5–8 ("I'm not handling this case as a class case. I'm handling the three plaintiffs that they can resemble others, but I'm not looking at the class. I'm looking at these individuals."). Again and again, the Court rejected your efforts to inject classwide issues into this trial of three individual plaintiffs. Before trial, the Court granted BNP's motion to exclude any reference to the class at trial. At the end of trial, the Court rejected your proposed verdict form asking the jury to make the very classwide findings that you now say "the jury necessarily made." *See* ECF No. 995. And after trial, the Court confirmed that it will proceed to schedule a second trial of individual plaintiffs. If the trial proved anything, it is that individual plaintiffs were allegedly harmed at different times, in different places, in different ways, by different wrongdoers; Mr. DiCello confirmed as much in his summation. It is for that reason the Court repeatedly indicated that individual trials will be needed going forward.


Fourth, given the many legal and factual errors that infected the trial, BNP will pursue its appeal at the first opportunity. Your bluster about prior proceedings in the Second Circuit—at the pleading stage, more than five years ago, when Swiss law did not even apply to this case—does nothing more than telegraph your desperation to avoid appellate scrutiny. BNP will continue to vigorously defend itself against baseless claims and is confident that the verdict—based on a misapplication of Swiss law that the Federal Supreme Court of Switzerland, the Swiss Government, and the European Court of Human Rights have all expressly rejected—will be overturned.

Fifth, BNP's position is supported by the decisions of the Federal Supreme Court of Switzerland, a former Deputy Judge of the Swiss Supreme Court, and the Government of Switzerland. Plaintiffs' position, in contrast, is supported by a lone U.S. law professor. Despite years of litigation, you have never identified a single case in which a Swiss court has held a company liable for actions taken by a foreign government on foreign soil. There is a very simple reason for that: Swiss law does not recognize or allow the sweeping theories of causation or liability you erroneously encouraged the district court to adopt. We fully expect the Second Circuit will agree.

Finally, although your letter correctly confirms the next trial will be of additional individual plaintiffs and not classwide issues, you missed a step. You forget that the district court has repeatedly stated it will now hold a hearing on Plaintiffs' counsel's misconduct in this case. We know Plaintiffs' counsel decided it was in their collective self-interest to put aside the serious accusations of ethical misconduct they had made against one another in the months before trial. However, those accusations were made in sworn affidavits under penalty of perjury, and they still exist. ECF Nos. 784-1, 784-3. As you personally attested, for example, the Hecht firm engaged in attempted witness tampering and subornation of perjury. ECF No. 784 at 13–15. Publicly available evidence also confirms that the Hecht firm improperly inflated the size of the purported class by instructing people to opt in and to claim injuries without basis to know those claims were true. And the Zuckerman Spaeder firm represented to the Court that it could not ethically continue to work with the Hecht firm, *id.* at 2, and then proceeded to do just that. The sworn accusations of serious ethical misconduct that Plaintiffs' counsel have made about each other raise the serious prospect that the jury's verdict, and the trial-court proceedings, were infected by fraud on the court. You succeeded in delaying an evidentiary hearing on Plaintiffs' counsel's misconduct until after trial, but that misconduct cannot and will not be swept under the rug any longer.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP



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cc: Kathryn Boyd, Hecht Partners LLP
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