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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re Ex Parte Application of
15 SAM RAINSY, an individual residing in France,
16 Applicant,
17 For an Order Pursuant to 28 U.S.C. § 1782
18 Granting Leave to Obtain Discovery from
19 FACEBOOK, INC.,
20 Respondent,
21 For use in connection with Foreign Proceedings.

**ORIGINAL
FILED**

FEB 08 2018

**SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CV 18-80-024 Case No. **MISC** **SK**

**EX PARTE APPLICATION FOR
ORDER PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN
PROCEEDINGS; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

1 Applicant Sam Rainsy files this Application pursuant to 28 U.S.C. § 1782 seeking leave to
2 serve Facebook, Inc., a corporation located in the Northern District of California, with a subpoena
3 seeking discovery, or, in the alternative, for an Order to Show Cause as to why such discovery
4 should not be granted. This Application is supported by the accompanying Memorandum of Points
5 and Authorities, the Declaration of Applicant Sam Rainsy (the “Sam Decl.”), the Declaration of
6 counsel J. Noah Hagey (the “Hagey Decl.”), and all other papers and things in support thereof
7 and/or of which the Court might properly take judicial notice.

8 **SUMMARY OF REQUESTED RELIEF**

9 Applicant is a founder of the Cambodian National Rescue Party (“CNRP”), the leading
10 United Nations-recognized opposition party in Cambodia. For decades, Applicant has been
11 Cambodia’s most vocal political opposition figure and been subject to assassination attempts and
12 threats from Cambodia’s ruling authoritarian ruler and ex-Khmer Rouge commander, Hun Sen.

13 Applicant brings this Petition to obtain targeted discovery in Facebook’s possession
14 pursuant to Section 1782. The material is for use in connection with responding to criminal and
15 civil proceedings initiated against Applicant by Hun Sen and his regime. Hun and his agents have
16 misused Facebook to publish death threats against Applicant, spread false propaganda, and mislead
17 ordinary Cambodians about Hun’s alleged popularity.

18 The information in Facebook’s possession will help Applicant respond to Hun’s and his
19 regime’s charges and to establish their rampant funding and misuse of Facebook’s platform. In
20 Cambodia, like many countries, and especially repressive ones where traditional media is restrained
21 by the government and where mobile phones are ubiquitous, Facebook has become the main
22 platform for news and discourse. The site’s ability to broadly distribute information also has been
23 a source of well-publicized concern about its abuse by corrupt interests to instantaneously
24 manipulate the opinions of vast numbers of people. Facebook increasingly has embraced this
25 challenge, recognizing that it “ha[s] a moral duty to understand how these technologies are being
26 used and what can be done to make communities like Facebook as representative, civil and
27 trustworthy as possible.” (Hagey Decl., Ex. 3 (Samidh Chakrabarti, *Hard Questions: What Effect*
28 *Does Social Media Have on Democracy?* FACEBOOK NEWSROOM (Jan. 22, 2018) available at

1 <https://newsroom.fb.com/news/2018/01/effect-social-media-democracy/>.)

2 As detailed in the Application, there is significant evidence that Hun and his agents have
3 systematically misused Facebook's platform in violation of its policies, principles and community
4 standards. Hun's government has used the network to threaten violence against political opponents
5 and dissidents, disseminate false information, and manipulate his (and the regime's) supposed
6 popularity, thus seeking to foster an illusion of popular legitimacy.

7 As part of their effort to quell dissent and to mislead the public, Hun and his cohorts have
8 brought at least four pending legal proceedings against Applicant based on content he posted on
9 Facebook. *First*, on or about March 10, 2016, the government official in charge of Hun's
10 Facebook page filed civil defamation charges against Applicant for posting that millions of Hun's
11 Facebook "likes" were deceptively generated by "click farms." *Second*, on or about August 1,
12 2016, Hun commenced criminal defamation and "incitement" charges against Applicant for posting
13 on his Facebook page that the murder of respected human rights activist and journalist Dr. Kem
14 Ley was a government-ordered assassination. *Third*, on or about January 17, 2017, the government
15 initiated criminal defamation charges at the behest of a Cambodian celebrity with ties to the Hun
16 regime after Applicant posted information showing that the celebrity had been bribed by Hun's
17 associates (including members of Hun's family) to voice support for the government. *Fourth*, on or
18 about December 7, 2017, the Hun regime charged Applicant with criminal "incitement" based on
19 statements Applicant posted to his Facebook page urging Cambodia's military to cease use of
20 deadly force against peaceful protestors.

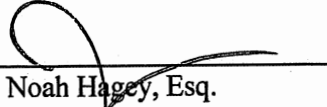
21 The requested discovery seeks documents and information that will allow Applicant to
22 defend against the foregoing proceedings, to reopen or seek appeal of those cases, as well as to file
23 related cases challenging Hun's abuses of power. Applicant's Subpoena and related document
24 requests and deposition categories are set forth as **Exhibit 1** to the Declaration of J. Noah Hagey
25 and are incorporated by reference herein as if set forth in their entirety.

26 This Application is based on the attached Memorandum of Point and Authorities, the
27 Declaration of Sam Rainsy and documents appended thereto, and the Declaration of J. Noah
28 Hagey, including the Subpoena appended as **Exhibit 1** thereto.

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Dated: February 8, 2018

BRAUNHAGEY & BORDEN LLP



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15 SAM RAINSY, an individual residing in France,
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17 For an Order Pursuant to 28 U.S.C. § 1782
18 Granting Leave to Obtain Discovery from
19 FACEBOOK, INC.,
20 Respondent,
21 For use in connection with Foreign Proceedings.

Case No.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF 28
U.S.C. § 1782 APPLICATION FOR
DISCOVERY FROM FACEBOOK, INC.**

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1 Applicant Sam Rainsy respectfully submits this Memorandum in support of his Application,
2 pursuant to 28 U.S.C. § 1782, for leave to serve discovery in aid of foreign proceedings.

3 INTRODUCTION

4 1. Applicant respectfully requests leave to serve Facebook, Inc., a local corporation,
5 with a Subpoena seeking targeted discovery in aid of foreign proceedings, or in the alternative, an
6 Order to Show Cause as to why such a Subpoena should not be issued. The Subpoena and
7 [Proposed Order] granting the requested relief are attached to this Application as **Exhibits 1 and 2**
8 to the Declaration of J. Noah Hagey (“Hagey Decl.”).

9 2. Applicant is a founder and leader of the Cambodian National Rescue Party
10 (“CNRP”), the only significant opposition party in Cambodia. For over 30 years, Cambodia has
11 been ruled by Hun Sen, a former Khmer Rouge commander, who has remained in power by
12 manipulating elections, censorship, extrajudicial killings, arbitrary arrests, and summary trials.
13 (Hagey Decl., **Ex. 6** (*30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia*,
14 HUMAN RIGHTS WATCH (Jan. 12, 2015), [https://www.hrw.org/report/2015/01/12/30-years-hun-](https://www.hrw.org/report/2015/01/12/30-years-hun-sen/violence-repression-and-corruption-cambodia)
15 [sen/violence-repression-and-corruption-cambodia](https://www.hrw.org/report/2015/01/12/30-years-hun-sen/violence-repression-and-corruption-cambodia) (“Human Rights Watch Report”)).

16 3. Hun has explained his political philosophy as follows: “I not only weaken the
17 opposition, I’m going to make them dead . . . and if anyone is strong enough to try to hold a
18 demonstration, I will beat all those dogs and put them in a cage.” (*Id.* at 1 (ellipses in original).) In
19 his longstanding rein, international organizations have documented the regime’s systematic
20 intimidation and murder of “hundreds of opposition figures, journalists, trade union leaders, and
21 others . . . in politically motivated attacks.” (*Id.* at 2.)

22 4. Hun has also maintained his power by initiating “legal proceedings” against his
23 opponents. (Declaration of Sam Rainsy (“Sam Decl.”) ¶¶ 3, 5-7, 11-12.) In 2016, at least 20
24 individuals aligned with the CNRP, including members of Cambodia’s Parliament and their
25 supporters, were arrested. (*Id.* ¶ 9.) Three are serving 20-year sentences. (*Id.*) In September
26 2017, the acting President of the CNRP was arrested. (*Id.* ¶ 10.) In November 2017, the
27 Cambodian Supreme Court held a summary trial that disbanded CNRP and banned 118 of its senior
28 officials from any political activity in Cambodia for five years. (Hagey Decl., **Ex. 7** (Ben Sokhean,

1 Mech Dara, & Ananth Baliga, *'Death of Democracy': CNRP Dissolved by Supreme Court Ruling*,
2 THE PHNOM PENH POST, Nov. 17, 2017, available at [http://www.phnompenhpost.com/national-
4 post-depth-politics/death-democracy-cnrp-dissolved-supreme-court-ruling](http://www.phnompenhpost.com/national-
3 post-depth-politics/death-democracy-cnrp-dissolved-supreme-court-ruling)).) The decision has
5 been widely condemned by prominent international human rights groups as well as the U.S.
6 Congress and the White House. (Hagey Decl., Ex. 8 (Press Release, White House Press Secretary,
7 Setbacks to Democracy in Cambodia, available at [https://www.whitehouse.gov/briefings-
9 statements/statement-press-secretary-setbacks-democracy-cambodia/](https://www.whitehouse.gov/briefings-
8 statements/statement-press-secretary-setbacks-democracy-cambodia/) (“White House Press
10 Release”)); *Id.*, Ex. 9 (S. Res. 279, 115th Cong. (2017), available at
11 <https://www.congress.gov/bill/115th-congress/senate-resolution/279/text> (“U.S. Senate Resolution
12 279”) (quoting Human Rights Watch Report)).)

11 5. Because he has not been able to capture or kill Applicant, Hun and his cronies have
12 initiated four legal actions against Applicant in Cambodia, even though he is currently living in
13 exile in France. (Sam Decl. ¶¶ 3, 5-7, 11-12.) In one proceeding, Applicant has been sued for
14 defamation for posting on his Facebook page that the “likes” on Hun’s Facebook page were
15 purchased from click farms. In another defamation case, Applicant was sued for posting on
16 Facebook that Hun bribed a social media star to support him. In a third defamation case, Applicant
17 has been sued for posting on his Facebook page that the assassination of political activist, Dr. Kem
18 Ley, was a government hit.¹ In a fourth proceeding, Applicant is being criminally prosecuted for
19 “incitement” based on statements he posted to Facebook urging Cambodia’s military not to use
20 deadly force against peaceful protestors. Applicant seeks the requested discovery to defend himself
21 in these proceedings, all of which are presently pending.

22 6. The Application satisfies § 1782’s three statutory requirements. First, it has been
23 filed in “the district in which [the] person resides” because Facebook is based in Menlo Park,
24

25 ¹ On January 11, 2018, Hin Vansreypov was sentenced to prison for “incitement to commit a
26 felony” for posting on Facebook that Hun’s regime was responsible for assassinating Dr. Ley, and
27 political analyst Kim Sok is also serving time over similar comments. (Hagey Decl., Ex. 10 (Niem
28 Chheng, *Woman Who Accused Hun Sen of Kem Ley Assassination on Facebook Sentenced*, THE
PHNOM PENH POST, Jan. 11, 2018, available at [http://www.phnompenhpost.com/national/woman-
who-accused-hun-sen-kem-ley-assassination-facebook-sentenced](http://www.phnompenhpost.com/national/woman-
who-accused-hun-sen-kem-ley-assassination-facebook-sentenced)
 (“Assassination Article”)).)

1 California. 28 U.S.C. § 1782(a). Second, Applicant seeks the requested discovery “for use in a
2 proceeding in a foreign ... tribunal” – in Cambodia’s domestic courts. (Sam Decl. ¶¶ 6-7, 11-12.)
3 Third, Applicant qualifies as an “interested person” in those foreign proceedings because he is a
4 defendant. (*Id.*) The Application also satisfies the four prudential *Intel* factors set forth by the
5 Supreme Court because (1) Facebook is not a party to any of the foreign proceedings, (2) the
6 information sought is highly relevant, (3) there are no applicable foreign discovery restrictions, (4)
7 Applicant’s requests are not unduly burdensome, and 5) granting the Application will promote
8 efficient discovery.

9 7. Facebook has stated its commitment to preventing political misuse of its valuable
10 platform. Prompt release of the targeted discovery requested in this Application would further that
11 goal. For these and other reasons, Applicant respectfully seeks prompt production of the requested
12 discovery.

13 **FACTUAL BACKGROUND**

14 **A. Hun’s Violent Rise to Power and Brutal Dictatorship in Cambodia**

15 8. Starting as a platoon-leader, Hun climbed through the ranks of the Khmer Rouge,
16 where units under his control committed crimes against humanity, including mass executions and
17 attacks on civilians. (Hagey Decl., Ex. 6 at 13-15, 18-20 (Human Rights Watch Report).) After
18 Vietnam invaded Cambodia in 1979, Hun was appointed foreign minister of the Vietnamese-
19 backed People’s Republic of Kampuchea (“PRK”), which ran the country as a police state. (*Id.*)²
20 He became prime minister in 1985, where he sought to eliminate political opposition and dissent
21 through “widespread and systematic violations of human rights in both conflict and non-conflict
22 settings, including large-scale prolonged arbitrary detention without charge or trial; unfair trials;
23 routine torture and other cruel, inhuman or degrading treatment of detainees; and extra-judicial
24 killings.” (*Id.* at 27.) Since 1985, Hun has ruled Cambodia with an iron fist.

25
26 ² Before becoming prime minister, Hun was instrumental in running the notorious K5 program,
27 which was a forced-labor project to build a wall between Cambodia and Thailand. As many as a
28 million citizens were forced to work without pay, with little food, without medical care, and often
without mosquito netting, resulting in numerous deaths from malaria. (*Id.* at 22-26.) Many others
were killed and disfigured by landmines. (*Id.*)

1 9. Applicant is the longstanding leader of Cambodia’s movement for reform and
2 democracy. After the killing of a journalist in 1996, Applicant began “staging regular protests over
3 labor rights, corruption, illegal logging, the environment, and the lack of political pluralism.” (*Id.*
4 at 37.) After the formation of Cambodia’s first labor unions in 1997, more protests ensued.
5 Applicant attended many of them. (*Id.*)

6 10. In 1997, a peaceful demonstration attended by Applicant was broken up by a
7 grenade attack. (*Id.*) “When the grenade-throwing was over, at least 16 people lay dead and dying.
8 More than 150 were injured.” (*Id.*) Human Rights Watch described the attack as follows:

9 The main target, Sam Rainsy, survived the attack. After the first
10 grenade exploded, Rainsy’s bodyguard, Han Muny, threw himself on
11 top of his leader. He took the full force of a subsequent grenade and
12 died at the scene. ... Body parts of other victims littered the area....
13 One photo shows a teenage girl with her legs blown off trying to
14 stand up. Cambodian police present not only did not help the injured,
15 but some tried to block bystanders from assisting victims.

16 (*Id.* at 37-38.) It further explained:

17 The attack was well-planned. Members of the personal bodyguard
18 unit of Hun Sen, Brigade 70, were deployed in full riot gear at the
19 rally. ... The elite military unit not only failed to prevent the attack,
20 but was seen by numerous witnesses opening up its lines to allow the
21 grenade-throwers to escape through a CPP-controlled [Cambodian
22 People’s Party] area of Phnom Penh, and then threatened to shoot
23 people trying to pursue the attackers.

24 (*Id.* at 38.)

25 11. “The March 30 grenade attack has cast a long shadow over Cambodian politics that
26 remains today.” (*Id.* at 39.) Since the time of the attack, Hun has maintained control of Cambodia
27 through violence and fear and has continued with his practice of extrajudicial killings, including the
28 assassination of Dr. Kem Ley one year ago. (*Id.* at 58.)

29 12. Both the United States Congress and the White House have condemned Hun for
30 “dissolution” of the political party opposing him – Applicant’s CNRP – as well as suppressing the
31 independent media and manipulating elections. (Hagey Decl., **Ex. 8** (White House Press Release);
32 *Id.*, **Ex. 9** (U.S. Senate Resolution 279).) Bringing legal proceedings against his enemies is also an
33 important way Hun has maintained his dictatorship. (*Id.*, **Ex. 9** (U.S. Senate Resolution 279

1 (“during the first 10 months of 2014, the Phnom Penh Municipal Court sentenced 55 people to
2 prison terms after unfair trials on charges such as ‘treacherously plotting’ to stage an armed
3 insurrection; instigating, inciting, or perpetrating violence; obstructing traffic; or engaging in
4 ‘violent resistance against a public official.’ In these proceedings, no credible evidence was
5 presented to support a guilty verdict”) (documenting imprisonment of “peaceful protesters” on
6 “charges of obstructing traffic and obstructing government authorities’ performance of their official
7 duties”)).)

8 **B. Hun’s Misuse of Facebook**

9 13. In 2016, Facebook became Cambodia’s most popular news source. (Hagey Decl.,
10 **Ex. 11** (Ben Paviour, *What a Facebook Experiment Did to News in Cambodia*, BBC NEWS (Oct.
11 31, 2017), available at <http://www.bbc.com/news/world-asia-41801071> (“Facebook Experiment
12 Article”)).) Facebook played a critical role in helping Applicant’s CNRP gain seats over Hun’s
13 Cambodian People’s Party (“CPP”) in the 2013 parliamentary election. (*Id.*) After his party lost
14 seats in the 2013 election to the opposition, Hun ramped up his presence on Facebook. (*Id.*) He
15 then began misusing the platform by artificially inflating the number of “likes” on his page to
16 create the appearance of popular support and spreading fake news.

17 **1. Hun’s Use of Click Farms to Generate Fake “Likes”**

18 14. Hun’s Facebook page was set up after his party, the Cambodian People’s Party
19 (“CPP”) lost more than 20 parliamentary seats to Applicant’s CNRP in the 2013 election. (Hagey
20 Decl., **Ex. 12** (Elaine Kurtenbach and Sopheng Cheang, *Cambodia Leaders Rev Up Facebook
21 Rivalry As Popularity Soars*, JAKARTA POST, Mar. 3, 2016, available at
22 [http://www.thejakartapost.com/news/2016/03/03/cambodia-leaders-rev-facebook-rivalry-
24 popularity-soars.html](http://www.thejakartapost.com/news/2016/03/03/cambodia-leaders-rev-facebook-rivalry-
23 popularity-soars.html))).) Since then, Hun has misused the platform to manipulate the Cambodian
25 public into thinking he enjoys widespread popular support. For example, even though Hun is
26 relatively new to Facebook, a study by public relations firm Burson-Marsteller ranked his page as
27 the eighth most popular in the world. (Hagey Decl., **Ex. 11** (Facebook Experiment Article).) This
28 is especially remarkable because Cambodia is the 71st most populous country in the world. (Hagey
Decl., **Ex. 13** (ranking countries by population size).)

1 15. Hun has achieved this level of “popularity” by utilizing “click farms”³ to artificially
2 bolster the number of “likes” on his page and posts, which explains why Hun’s Facebook page is
3 “liked” by nearly 9.4 million people even though only 4.8 million Cambodians use Facebook.
4 *Compare* Hagey Decl., **Ex. 14** (showing over 9 million “likes” on Hun Sen’s page) *with* Hagey
5 Decl., **Ex. 15** (Megha Rajagopalan, *This Country’s Democracy Has Fallen Apart – And it Played*
6 *Out to Millions on Facebook*, BUZZFEED NEWS (Jan. 21, 2018), *available at*
7 [https://www.buzzfeed.com/meghara/](https://www.buzzfeed.com/meghara/facebook-cambodia-democracy?utm_term=.uiKoXo3rBk#.btYv0v5m1b)
8 [facebook-cambodia-democracy?utm_term=.uiKoXo3rBk#.btYv0v5m1b](https://www.buzzfeed.com/meghara/facebook-cambodia-democracy?utm_term=.uiKoXo3rBk#.btYv0v5m1b) (“Democracy Has Fallen
9 Apart Article”) (“Cambodia has about 4.8 million Facebook users, according to a 2017
10 assessment.”)).

11 16. Millions of “likes” on Hun’s page, which is only available in Khmer, come from
12 India, the Philippines, Brazil, and Myanmar – countries where Khmer is not widely spoken and that
13 are well-known for operating click farms. (Sam Decl., **Ex. 1** (Daniel Nass & Shaun Turton, *Only*
14 *20 per cent of PM’s recent Facebook ‘likes’ from Cambodia*, THE PHNOM PENH POST, March 9,
15 2016, *available at* [http://www.phnompenhpost.com/national/only-20-cent-pms-recent-facebook-](http://www.phnompenhpost.com/national/only-20-cent-pms-recent-facebook-likes-cambodia)
16 [likes-cambodia](http://www.phnompenhpost.com/national/only-20-cent-pms-recent-facebook-likes-cambodia))).

17 17. Utilizing click farms to generate fake “likes” on Facebook pages and posts is a
18 direct violation of Facebook’s policies. (Hagey Decl., **Ex. 16** (*Facebook Pages: Keeping Activity*
19 *Authentic*, FACEBOOK, <https://www.facebook.com/business/a/page/fake-likes> (“Keeping Activity
20 Authentic Article”) (“We have a strong incentive to aggressively go after the bad actors behind
21 fake likes”)).)

22 2. Hun’s Use of Facebook to Spread Fake News

23 18. Hun also uses the Facebook platform to propagate fake news. “When Facebook first
24 came to Cambodia, many hoped it would help to usher in a new period of free speech, amplifying
25 voices that countered the narrative of the government-friendly traditional press. Instead, the
26

27 ³ Click farms employ “low paid workers” in developing countries like India and the Philippines to
28 create fake Facebook accounts and then artificially “bolster likes, followers, and views” on profiles
and posts to make them appear more popular than they really are. *See* Sam Decl., **Ex. 1**.

1 opposite has happened. Prime Minister Hun Sen is now using the platform to promote his message
2 while jailing his critics.” (Hagey Decl., Ex. 15 (Democracy Has Fallen Apart Article).)

3 In November 2017, *The Nation* reported:

4 In [the] past, Hun Sen has relied on more traditional strongman
5 tactics to maintain power. In 1997, Hun Sen removed his rivals in
6 a *coup d'état*, sending tanks and soldiers into the streets. But with
7 fake news, autocrats no longer need to resort to open violence or to
8 dispatch their special forces to capture radio and TV stations to
9 broadcast their messages. From Facebook, leaders can dream up
10 conspiracies, publish them on their own fake-news pages, use
11 targeted advertising to reach susceptible audiences, and *voilà* - they
12 have manufactured a new ruling mandate With declining
13 access to independent newspapers and radio broadcasts, *Facebook*
14 *seemed [Cambodians'] most trusted source of information*
15 *[Hun Sen's spreading of fake news on Facebook is] in many*
16 *ways . . . indicative of how despots seize power in the age of*
17 *Facebook.*

18 (Hagey Decl., Ex. 17 (Geoffrey Cain, *Fake News and the Death of Democracy in Cambodia*, THE
19 NATION (Nov. 21, 2017), available at [https://www.thenation.com/article/fake-news-and-the-death-](https://www.thenation.com/article/fake-news-and-the-death-of-democracy-in-cambodia/)
20 [of-democracy-in-cambodia/](https://www.thenation.com/article/fake-news-and-the-death-of-democracy-in-cambodia/) (emphasis added)).)

21 19. In addition to his own Facebook page and the government's Facebook page, Hun
22 promotes fake news through “independent” Facebook posts. For example, Lim Cheavutha, the
23 founder of Fresh News, Cambodia's equivalent of Breitbart, “says he's so close to Hun Sen that
24 they sometimes message about stories well past midnight.” (Hagey Decl., Ex. 15 (Democracy Has
25 Fallen Apart Article).)

26 20. One of the most egregious examples of Hun posting intentionally fabricated
27 misinformation on Facebook involves his treatment of former members of Applicant's opposition
28 party. Many CNRP members have fled to other countries in the wake of the regime's crack down
on dissidents and human rights activists.

29 21. On November 26, 2017, Hun used Facebook to lure those expatriates back to
30 Cambodia. During a live Facebook broadcast, he told dissidents that “no harm would come” to
31 those that returned to Cambodia. See <https://youtu.be/GLJ9pb6IWVA> (last visited 2-8-2018). See
32 also Yon Sineat, *PM warns former CNRP members in Thailand of deportation*, THE PHNOM PENH
33

1 POST, Nov. 28, 2017, available at <http://www.phnompenhpost.com/national-politics/pm-warns->
2 [former-cnrp-members-thailand-deportation](http://www.phnompenhpost.com/national-politics/pm-warns-former-cnrp-members-thailand-deportation) (last visited 2-8-2018). Hun expressly stated that he
3 would “not do anything” to them. *Id.*

4 22. Hun’s “news” and propaganda presented in the video – which was seen by hundreds
5 of thousands of viewers, was intentionally false. As dissidents returned to the country in reliance
6 on Hun’s messages, they were arrested. For example, former CNRP member Ysa Osman returned
7 to Cambodia from Thailand and was arrested by the government. *See Tina Zarya, Another*
8 *opposition candidate was arrested for sending workers overseas*, RADIO FREE ASIA (Feb. 7, 2018),
9 available at [https://www.rfa.org/khmer/news/politics/CNRP-mp-candidate-arrested-](https://www.rfa.org/khmer/news/politics/CNRP-mp-candidate-arrested-02072018090259.html)
10 [02072018090259.html](https://www.rfa.org/khmer/news/politics/CNRP-mp-candidate-arrested-02072018090259.html) (last visited 2-8-2018).

11 3. Hun’s Misuse of Facebook to Make Violent Threats

12 23. To maintain public fear and intimidate his enemies, Hun uses Facebook to make
13 threats against dissidents and against Applicant in particular. For example, most recently on
14 February 1, 2018, Hun posted a video of a recent speech in which he threatened to kill Applicant.
15 (Hagey Decl., Ex. 17A, available at [https://www.facebook.com/hunsencambodia/](https://www.facebook.com/hunsencambodia/videos/1594981950550296/)
16 [videos/1594981950550296/](https://www.facebook.com/hunsencambodia/videos/1594981950550296/).) From -41:50 to -38:00, Hun threatens to use Soviet-made multiple
17 rocket launchers BM-21 against Applicant and his supporters. (Hagey Decl. ¶ 19.) From -9:50 to -
18 8:10, Hun threatens to have Applicant illegally arrested (or abducted) if Applicant dares to come to
19 *any part of Asia*, i.e., including territories outside of Cambodia. (*Id.*)

20 4. Hun’s Funding of Massive Facebook Advertising to Help Dissiminate 21 Government Propaganda

22 24. In order to help dominate Facebook’s newsfeed in Cambodia, Hun and his agents
23 have purchased substantial advertising on the platform.

24 25. According to Hun’s own communications, Hun and/or his representatives have paid
25 Facebook up to \$15,000 *per day*, and over \$5,000,000 *per year*, in generating fake “likes” and
26 advertising on the network to help disseminate the regime’s propaganda and drown-out any
27 competing voices.
28

1 26. To put such figures in perspective, the average Cambodian makes less than \$153
2 USD *per month*, and less than \$2,000 USD *per year*. Hun’s annual Facebook advertising
3 expenditures thus represent the total annual income of over 2,500 Cambodian citizens.

4 **C. The Foreign Legal Proceedings against Applicant**

5 27. There are currently four proceedings that Hun and his agents have filed against
6 Applicant. (Sam Decl. ¶¶ 3, 5-7, 11-12.) In one proceeding, Applicant was sued for defamation by
7 Som Soeun, the government official in charge of Hun’s Khmer language Facebook page, for
8 posting that the majority of the “likes” on Hun’s page were purchased from “click farms.” (Sam
9 Decl. ¶ 6.) On November 8, 2016, Applicant was found guilty of defamation for his statements
10 regarding the legitimacy of the “likes” on Hun’s Facebook page. (Sam. Decl. ¶ 6.) The judgment
11 was summarily upheld in January 2017, and Applicant is appealing in Cambodia’s Supreme Court.
12 (*Id.*) Under Cambodian law, Applicant may submit evidence as part of his appeal. (Cambodian
13 Criminal Proceedings Code, Arts. 444-46; Sam Decl. ¶ 16; **Ex. 6.**)

14 28. Hun and his agents have also initiated a criminal defamation prosecution against
15 Applicant for stating on his Facebook page that the assassination of the political activist, Dr. Kem
16 Ley, was ordered by the Cambodian government. (Sam Decl. ¶ 7.) Applicant was convicted of
17 those charges on March 30, 2017, and is appealing that conviction. (*Id.*) At least two other people
18 have been sentenced to prison for similar speech. (Hagey Decl., **Ex. 10** (Assassination Article).)

19 29. In January 2017, Hun filed a defamation suit against Applicant based on a
20 Facebook post in which Applicant claimed that Cambodian social media celebrity (and former
21 CNRP supporter) Thy Sovantha accepted a \$1 million bribe from Hun to switch parties and speak
22 out against the CNRP. (Sam Decl. ¶ 12.) On December 28, 2017, Applicant was found guilty of
23 defamation, and ordered to pay a fine approximately equivalent to \$1 million USD. Applicant is
24 appealing this judgment as well. (*Id.*)

25 30. Most recently, on December 7, 2017, just weeks after the Cambodia Supreme Court
26 issued an internationally condemned decision disbanding the Applicant’s CNRP party and banning
27 118 of its members from participating in politics for five years, the Cambodian government
28 commenced a criminal prosecution against Applicant for criminal “incitement” based on statements

1 Applicant posted to Facebook urging Cambodia’s military not to use deadly force against peaceful
2 protestors. (*Id.* ¶ 11.)

3 **D. Hun Seeks to Manipulate Facebook to Mislead and Coerce Cambodians and**
4 **Undermine Legitimate Elections**

5 31. Hun’s misuse of Facebook is widespread and well known – and emulates some of
6 the issues encountered in other countries, including during the 2016 U.S. presidential election. In
7 the wake of these events, Facebook has become “embroiled in a larger debate over its role in
8 spreading fake news and misinformation aimed at influencing elections in the United States and
9 other nations.” (Hagey Decl., **Ex. 18** (Sheera Frenkel, Nicholas Casey, and Paul Mozur, *In Some*
10 *Countries, Facebook’s Fiddling Has Magnified Fake News*, N.Y. TIMES, Jan. 14, 2018, available at
11 <https://www.nytimes.com/2018/01/14/technology/facebook-news-feed-changes.html> (“Facebook
12 and Fake News Article”)).) Others have commented that the platform is now reckoning “with its
13 role in passively enabling human rights abuses.” (Hagey Decl., **Ex. 19** (Ingrid Burrington, *Could*
14 *Facebook Be Tried for Human-Rights Abuses?*, THE ATLANTIC (DEC. 20, 2017), available at
15 [https://www.theatlantic.com/technology/archive/2017/
16 12/could-facebook-be-tried-for-war-crimes/548639/](https://www.theatlantic.com/technology/archive/2017/12/could-facebook-be-tried-for-war-crimes/548639/) (Facebook “was accused of censoring activists
17 and journalists documenting incidents and posting about what the State Department has called
18 ethnic cleansing of the country’s Rohingya minority”)).)

19 32. In October 2017, Facebook began testing changes to its popular “News Feed” in six
20 post-conflict countries, including Cambodia (the “test countries”). (Hagey Decl., **Ex. 18** (Facebook
21 and Fake News Article).) In the test countries, Facebook moved news posts off its general News
22 Feed and onto a new section of the platform called “Explore Feed.” (*Id.*)

23 33. The Explore Feed has hampered ordinary citizens’ ability to spread independent
24 news in two ways. First, it moved news onto a page few Cambodians use, or even know about.
25 (Hagey Decl., **Ex. 11** (Facebook Experiment Article).) Second, it requires news sources to pay to
26 sponsor posts, something many of the NGOs and independent news sources reporting on Hun’s
27 dictatorial tactics are unable to do. (*E.g.*, Hagey Decl., **Ex. 20** (Thomas Beller, *The Devastating*
28 *Shutdown of the Cambodia Daily*, THE NEW YORKER (Sept. 12, 2017), available at

1 <https://www.newyorker.com/news/news-desk/the-devastating-shutdown-of-the-cambodia-daily>

2 (Cambodia’s premier independent newspaper *The Cambodian Daily* was forced to shut down after
3 the Cambodian government “presented the publishers with a spurious tax bill of over six million
4 dollars.”))

5 34. The change to Facebook’s News Feed in Cambodia was made at a particularly
6 inopportune time as “Cambodia is in the throes of its most severe government crackdown in years
7 ahead of a national election next July [2018] that could test the durability of Prime Minister Hun
8 Sen, one of the longest-serving heads of government in the world.” (Hagey Decl., **Ex. 11**
9 (Facebook Experiment Article).) In fact, Facebook became critically important as a source of
10 independent news in Cambodia after Hun and his corrupt regime shut down “more than a dozen
11 radio stations and the local offices of two independent media outlets, Radio Free Asia and The
12 Cambodia Daily.” (*Id.*) In October 2017, The *BBC* reported that Facebook has become “one of the
13 only places for dissent in a country ranked 132nd out of 180 countries in Reporters without Borders’
14 2017 World Press Freedom Index.” (*Id.*)

15 35. Though likely unintentional, Facebook’s recent initiative has given an even stronger
16 “competitive edge” to Hun’s “authoritarian and corrupt” regime – a regime that has been
17 condemned by prominent international human rights groups such as the United Nations as well as
18 the United States White House and Senate. (*See* Hagey Decl., **Ex. 21** (*UN rights chief voices*
19 *concern about Cambodia election after opposition ban*, UN NEWS CENTRE (Nov. 17, 2017),
20 *available at* <http://www.un.org/apps/news/story.asp?NewsID=58111#.WmJYh6inE2w>); *Id.*, **Ex. 6**
21 (Human Rights Watch Report); *Id.*, **Exs. 8-9** (White House Press Release; U.S. Senate Resolution
22 279).)

23 36. Additionally, on information and belief, Hun and/or the Cambodian government
24 have expended substantial sums, up to \$15,000 per day, on Facebook advertising to help drive
25 regime-positive content, including false news stories, to Cambodia’s citizens.

26
27
28

1 **E. Hun’s Misuse of Facebook Violates Facebook’s Terms of Use and Community**
2 **Standards**

3 **1. Facebook’s Policies**

4 37. Facebook has sought to prevent misuse of its platform, including through
5 prohibiting the very types of abuse engaged in by Hun. When a user signs up for Facebook, the
6 user must adhere to Facebook’s Terms and Policies, which are reflected in various terms and
7 statements on the company’s website, <https://www.facebook.com/policies> (the “Facebook
8 Policies”). The Facebook Policies incorporate its Data Policy and Principles and Community
9 Standards. (*Id.*, **Exs. 21A-21C.**)

10 The Statement of Rights and Responsibilities provides:

11 6. You will not bully, intimidate, or harass any user.

12 7. You will not post content that: is hate speech, threatening, or
13 pornographic; incites violence; or contains nudity or graphic or
14 gratuitous violence. ...

15 9. You will not use Facebook to do anything unlawful, misleading,
16 malicious, or discriminatory....

17 (Hagey Decl., **Ex. 26.**)

18 38. These rules are also discussed in Facebook’s Community Standards, which were
19 developed with the goal of helping “people ... feel safe when using Facebook.” (Hagey Decl., **Ex.**
20 **21B.**) The Community Standards explain that Facebook will “remove credible threats to public
21 figures” and prohibit the use of “misleading or inaccurate information to artificially collect likes,
22 followers, or shares.” (*Id.*)

23 39. The Facebook policies are based on the site’s foundational and guiding principle of
24 “mak[ing] the world more open and transparent” so as to “create greater understanding and
25 connection.” (Hagey Decl., **Ex. 21C** (Facebook, *Facebook Principles*,
26 <https://www.facebook.com/principles.php> (last visited Feb. 7, 2018)).)

27 40. Facebook also has come under public scrutiny and criticism around alleged abuses
28 committed through its site by malignant interests, which rose to a fever pitch following the 2016
U.S. election. In response, Facebook has repeatedly emphasized its commitment to shutting down
misuse of its platform.

 41. For example, on October 31, 2017, Facebook’s General Counsel, Colin Stretch,

1 testified before Congress that more than 126 million users potentially saw inflammatory political
2 ads bought by a Kremlin-linked company leading up to the 2016 U.S. presidential elections.
3 (Hagey Decl., **Ex. 22** (Cecilia Kang, Nicholas Fandos, & Mike Isaac, *Tech Executives Are Contrite*
4 *About Election Meddling, but Make Few Promises on Capitol Hill*, N.Y. TIMES, Oct. 31, 2017,
5 available at [https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-](https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-congress.html?mtrref=undefined)
6 [congress.html?mtrref=undefined](https://www.nytimes.com/2017/10/31/us/politics/facebook-twitter-google-hearings-congress.html?mtrref=undefined)).

7 42. Mr. Stretch’s opening remarks as General Counsel explained that misuse of the
8 platform to rig elections and mislead the public would no longer be tolerated:

9 The foreign interference we saw is reprehensible. **That foreign**
10 **actors, hiding behind safe accounts, abused our platform and**
11 **other Internet services to try to sow division and discord -- and**
12 **to try to undermine the election -- is an assault on democracy**
13 **that is directly contrary to our values and violates everything**
14 **Facebook stands for.**

15 *Id.* (emphasis added). Likewise, after rolling out modifications to Facebook’s News Feed in the
16 test countries, Mr. Mosseri, head of Facebook’s News Feed, issued a statement that the company
17 takes its role as a “global platform for information” seriously. (Hagey Decl., **Ex. 18** (Facebook and
18 Fake News Article).) “We have a responsibility to the people who read, watch, and share news on
19 Facebook, and every test is done with that responsibility in mind.” *Id.*

20 43. Messrs. Stretch and Mosseri’s statements are aligned with Mark Zuckerberg’s recent
21 public statements about misuse of Facebook’s platform. On January 4, 2018, Mark Zuckerberg
22 posted the following on his own Facebook page:

23 Facebook has a lot of work to do – whether it’s protecting our
24 community from abuse and hate, *defending against interference by*
25 *nation states*, or making sure that time spent on Facebook is well
26 spent. My personal challenge for 2018 is to focus on fixing these
27 important issues. We won’t prevent all mistakes or abuse, *but we*
28 *currently make too many errors enforcing our policies and*
preventing misuse of our tools. If we’re successful this year then
we’ll end 2018 on a much better trajectory These issues
touch on questions of history, civics, political philosophy, media,
government, and of course technology With the rise of a small
number of big tech companies – and governments using technology
to watch their citizens – *many people now believe technology only*
centralizes power rather than decentralizes it I’m looking
forward to learning from working to fix our issues together.

(Hagey Decl., **Ex. 23** (emphasis added).)

1 44. This message echoes the statements Mr. Zuckerberg made during Facebook’s
2 November 1, 2017 Third Quarter earnings call, during which he promised that Facebook would
3 make substantial investments to increase the “security and integrity” of its platform, with the aim
4 of, *inter alia*, stopping election meddling and removing false news and other problematic content.
5 (Hagey Decl., **Ex. 24** at 2.) On the call, Mr. Zuckerberg stressed to investors that Facebook is
6 prioritizing “protecting our community” over “maximizing our profits.” (*Id.*)

7 **2. Hun’s Misconduct Is Ongoing and – As of Yet – Unchecked by**
8 **Facebook**

9 45. Despite these well-intentioned pronouncements and terms, Hun’s account(s) remain
10 active, and he continues to misuse Facebook in a manner which overtly violates Facebook’s formal
11 Policies. In doing so, Hun and the Cambodian regime undermine the social media site’s goals of
12 facilitating valuable communication and generating meaningful connections.

13 46. Just days ago, Hun posted on his Facebook page a video of one of his “political”
14 speeches where he threatened to kill Applicant. (Hagey Decl., **Ex. 17A** (“Hun Sen delivered a fiery
15 speech yesterday, threatening to ‘attack’ members of the opposition with Soviet-era rocket
16 launchers, while also claiming he would arrest them anywhere in Asia.”).)

17 47. Hun stated: “‘Please, don’t have hope. I just want to tell you, don’t force someone to
18 put nails in your coffin. If it’s in the court’s hands, it’s another issue, but if it is a secession issue,
19 the BM-21 can be used to attack your area,’ ... referring to a Russian-made truck-mounted rocket
20 battery.” (*Id.*) Hun also personally threatened Applicant. (*Id.*) Such conduct is bullying,
21 intimidating, harassing, and threatening in violation of the Principles, Community Standards, and
22 Statement of Rights and Responsibilities Nos. 6 and 9. (Hagey Decl., **Exs. 21B-21C, 26.**)

23 48. Hun’s fake likes also violate Facebook Rule 9, which prohibits “misleading”
24 activities. The same conduct also violates the Pages Terms, which “apply to all pages on
25 Facebook,” and outlaw posting “false, misleading, fraudulent, or deceptive ... content.” (Hagey
26 Decl., **Ex. 24A** (Facebook, *Pages Terms* (last revised March 30, 2017), available at
27 https://www.facebook.com/page_guidelines.php).)

1 49. As Facebook has explained: “Likes created by fake accounts or people without real
2 intent are bad for people on Facebook, advertisers and Facebook itself.” (Hagey Decl., **Ex. 16**
3 (Keeping Activity Authentic Article).) Accordingly, Facebook has “increased [its] automated
4 efforts to remove Likes on Pages that may have been gained by means that violate [its] Terms,” and
5 is “aggressively go[ing] after the bad actors behind fake likes.” (Hagey Decl., **Ex. 24B** (Facebook,
6 *Improvements to Our Site Integrity Systems* (Aug. 31, 2012),
7 [https://www.facebook.com/notes/facebook-security/improvements-to-our-site-integrity-](https://www.facebook.com/notes/facebook-security/improvements-to-our-site-integrity-systems/10151005934870766)
8 [systems/10151005934870766](https://www.facebook.com/notes/facebook-security/improvements-to-our-site-integrity-systems/10151005934870766)); (Hagey Decl., **Ex. 16** (Keeping Activity Authentic Article).)

9 50. Similarly, Hun’s use of his Facebook account to spread false news also violates
10 Facebook Rule 9 against misleading conduct, as well as the core democratic ideals of Facebook.

11 51. To-date, Facebook has not taken any action to remediate or otherwise resolve the
12 misuse of its site by Hun or his representatives and agents.

13 ARGUMENT

14 **I. THE APPLICATION SATISFIES THE STATUTORY REQUIREMENTS OF SECTION 1782**

15 52. Title 28; United States Code, Section 1782 is “the product of congressional efforts,
16 over the span of nearly 150 years, to provide federal-court assistance in gathering evidence for use
17 in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004).
18 Over time, Congress has “substantially broadened the scope of assistance federal courts could
19 provide for foreign proceedings.” *Id.* at 247-49. Section 1782(a) provides in relevant part:

20
21 The district court of the district in which a person resides or is found
22 may order him to give his testimony or statement or to produce a
23 document or other thing for use in a proceeding in a foreign or
24 international tribunal The order may be made ... upon the
application of any interested person and may direct that the testimony
or statement may be given, or the document or other thing be
produced, before a person appointed by the court.

25 28 U.S.C. § 1782(a).

26 53. The statute sets forth three requirements: (1) the “person” from whom discovery is
27 sought must reside or be found in the district of the court to which the application is made, (2) the
28 request must be made “by a foreign or international tribunal or upon the application of any

1 interested person,” and (3) the document or thing sought must be “for use in a proceeding in a
2 foreign or international tribunal.” 28 U.S.C. § 1782(a).

3 54. The Application meets all three statutory requirements. First, the Application has
4 been filed in the Northern District of California. This is “the district in which [the] person
5 resides,” as Facebook is headquartered in Menlo Park, California. (Hagey Decl., **Ex. 25**.)
6 Although Facebook is a corporation, corporations are treated as persons under federal law. *Citizens*
7 *United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (corporations are persons under federal law).
8 Second, Applicant seeks the requested discovery “for use in a proceeding in a foreign ... tribunal,”
9 here, in Cambodia’s domestic courts. (Sam Decl. ¶¶ 6-7, 11-12.) Third, Applicant qualifies as an
10 “interested person” because he is a defendant in the foreign proceedings at issue. (*Id.*)

11 **A. Facebook Resides in the Northern District of California**

12 55. Facebook is a Delaware corporation with its principal place of business in Menlo
13 Park, California. (Hagey Decl., **Ex. 25**.) Further, Facebook’s terms of service specify that any
14 disputes with Facebook will be resolved “in the U.S. District Court for the Northern District of
15 California.” (*Id.*, **Ex. 26** at § 15(1).) Facebook’s terms of service also specify that its foreign users
16 “consent to having [their] personal data transferred to and processed in the United States.” *Id.*, **Ex.**
17 **26** at § 16.

18 56. Facebook is therefore “found” in the Northern District of California for purposes of
19 § 1782. *In re Ex Parte Application of Qualcomm Inc.*, 162 F. Supp. 3d 1029, 1035 (N.D. Cal.
20 2016) (“When considering a Section 1782 application . . . ‘found’ [when applied to corporations]
21 may safely be regarded as referring to judicial precedents that equate systematic and continuous
22 local activities with presence.”).

23 **B. Applicant is an “Interested Person” under § 1782**

24 57. Applicant is an “interested person” under § 1782. *Intel Corp.*, 542 U.S. at 256
25 (2004) (“No doubt litigants are included among, and may be the most common example of, the
26 ‘interested person[s]’ who may invoke § 1782...”). Applicant is a defendant and/or appellant in the
27 proceedings described above, and the requested documents are relevant to those foreign
28 proceedings and his ability to defend himself in those proceedings.

1 **C. Materials Are Sought for Use in Connection with Foreign Proceedings**

2 58. The requested materials will be used in connection with foreign proceedings,
3 including the Cambodian actions at issue. The burden to show that the evidence sought is for use
4 in a foreign proceeding is “de minimis.” *In re Veiga*, 746 F. Supp. 2d 8 (D.D.C. 2010) (granting
5 Chevron’s § 1782 application to obtain discovery from the plaintiffs’ Ecuadorian attorney Alberto
6 Wray based on the court’s “independent review of the Applicants’ prima facie showing and its
7 conclusion that the discovery sought in fact relates to claims and defenses they intend to assert in
8 good faith.”); *In re Republic of Ecuador*, No. 1:10-MC-00040 GSA, 2010 WL 4027740 (E.D. Cal.
9 Oct. 14, 2010) (granting a § 1782 application brought by the Republic of Ecuador where it made a
10 “prima facie showing that the information it seeks . . . has, generally speaking, some relevance” to
11 an international arbitration deciding alleged violations of Chevron’s due process rights in a
12 proceeding in Ecuador).

13 59. And courts increasingly grant § 1782 applications in all types of informal and non-
14 traditional proceedings including “investigating magistrates, administrative and arbitral tribunals,
15 and quasi-judicial agencies.” *Intel*, 542 U.S. at 258. Indeed, according to the Supreme Court, the
16 foreign proceeding at issue must just be “within reasonable contemplation,” not “pending” or
17 “imminent.” *Id.* at 247.

18 60. Here, there are four proceedings in Cambodian courts against Applicant, and the
19 requested discovery will be used to show that (i) the statements he has made on Facebook are true
20 and therefore cannot be defamatory, and (ii) that Hun and his cronies are colluding to suppress
21 Applicant’s lawful opposition activities, including through false legal proceedings. Applicant also
22 is actively contemplating to initiate additional proceedings against Hun and his regime related to its
23 numerous documented human rights abuses.

24 61. Thus, the requested discovery easily satisfies the third element of § 1782.

25 **II. THE SUPREME COURT’S INTEL FACTORS STRONGLY FAVOR
26 GRANTING THIS APPLICATION**

27 62. In addition to the three statutory factors, the Supreme Court has set forth five
28 additional factors – known as the *Intel* factors – to guide courts’ consideration of § 1782
applications. *Intel*, 542 U.S. at 264-66. Those factors are as follows: (a) the party from whom

1 discovery is sought is not a party to any of the foreign proceedings, (b) the information sought is
2 highly relevant to each of the proceedings, (c) there are no applicable foreign discovery restrictions,
3 (d) the applicant's discovery requests are not unduly burdensome, and (e) granting this discovery
4 would promote efficient discovery. These factors all weigh in favor of granting this Application.

5 **A. Facebook Is Not a Party to the Foreign Proceedings**

6 63. Facebook is not a party to any of the foreign proceedings at issue. (Sam Decl. ¶ 15.)

7 **B. The Applicant Seeks Highly Relevant Information That Will Assist the Foreign
8 Courts**

9 64. Applicant's targeted discovery requests are relevant to the claims and defenses in
10 the cases that have been brought against him. The requested discovery about Facebook's
11 investigations related to Hun and his cronies and complaints about Hun's account is likely to lead
12 to evidence regarding the validity of Hun's likes. That information is relevant to Applicant's truth
13 defense in the defamation proceeding against him for stating that many of Hun's likes are fake.

14 65. Applicant seeks discovery regarding Hun's communications with Som Soeun, who
15 has brought a suit against Applicant. (Sam Decl. ¶¶ 6-7, 11-12.) The evidence that he seeks
16 regarding the timing of Hun and Som's communications will show that they coordinated the case
17 Som filed against Applicant, and demonstrate bias.

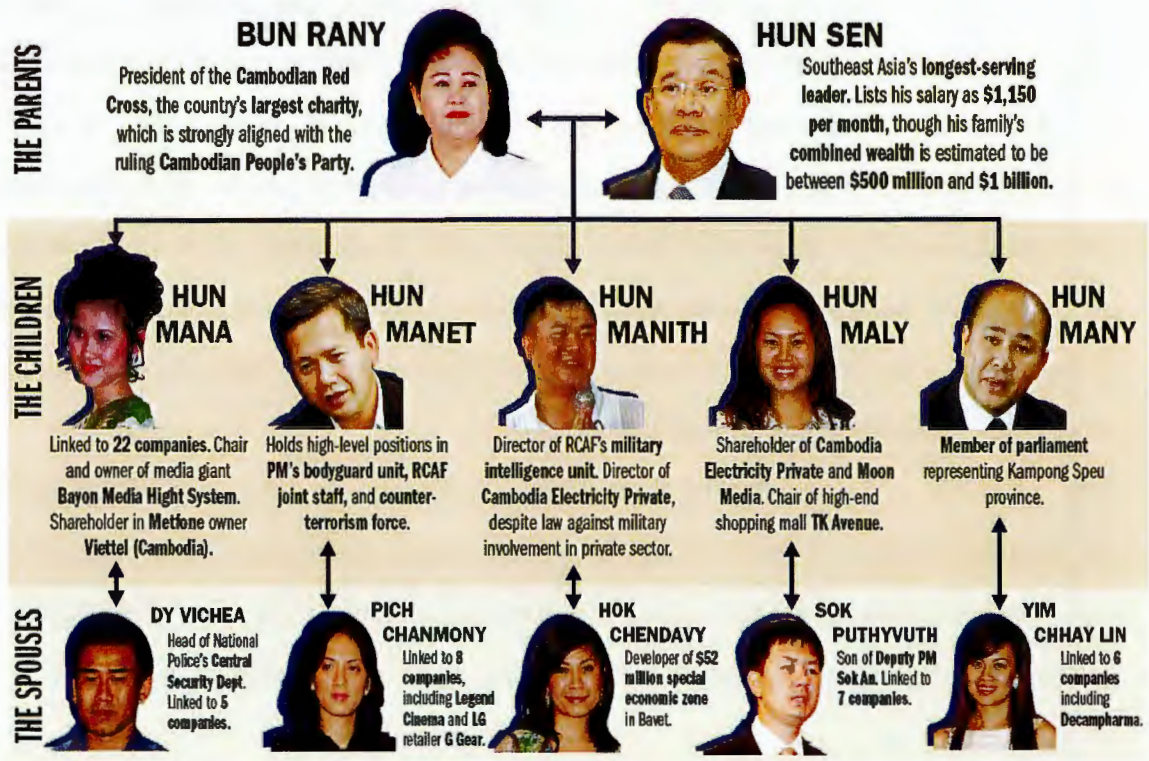
18 66. Similarly, Applicant seeks non-content evidence regarding Hun's communications
19 with Thy Sovantha, an individual Hun claims Applicant "defamed" when Applicant posted on
20 Facebook that she had accepted a \$1 million bribe to stop supporting the CNRP and instead support
21 Hun's regime. (*Id.* ¶ 12.) The requested discovery will show that Applicant's statements are true
22 and therefore cannot be defamatory as truth is a complete defense to defamation claims in
23 Cambodia. (*Id.* ¶ 17; Ex. 7.) It will also show that Sovantha coordinated her accusations against
24 Applicant with Hun and his regime.

25 67. Applicant's requested non-content discovery about communications between Hun
26 and his sons that are responsible for "security," "intelligence" and "policing" (Hun Manith, Hun
27 Manet and Dy Vichea) will show whether and when they were communicating among themselves
28 around the time that Dr. Kem Lay was assassinated. This evidence will show that Hun was

1 responsible for this murder, which is relevant to Applicant's truth defense in the proceeding against
 2 him, which asserts that he "defamed" Hun by noting that Hun was responsible for the assassination.

3 68. For the same reasons, the non-content discovery Applicant seeks regarding Hun
 4 and his cronies' communications regarding Applicant, the legal cases against Applicant, the CNRP,
 5 Kem Sokha, and Dr. Kem Lay is all relevant to their coordination around all those activities. The
 6 requested evidence helps show that Hun and his cohorts orchestrated the proceedings against
 7 Applicant in a continuation of their efforts to suppress opposition activities and political speech –
 8 just as they have done in the past, and as they recently did with Kem Sokha and other CNRP
 9 members.

10 69. Applicant also seeks non-content information about communications between Hun
 11 and his family members which are the source of the prosecutions against him and at the heart of the
 12 parties' disputes. Hun and his family members, including those identified in the Application, have a
 13 well-documented history of colluding to cement their control over Cambodia's public and private
 14 sectors resulting in "Hun Sen having near-total control over the country."



1 (Hagey Decl., **Ex. 4** (Shaun Turton and Phak Seangly, *Inside the Hun Family's Business Empire*,
2 PHNOM PENH POST, July 27, 2016, available at [http://www.phnompenhpost.com/national-post-
4 depth-politics/inside-hun-familys-business-empire](http://www.phnompenhpost.com/national-post-
3 depth-politics/inside-hun-familys-business-empire) (Hun Family's Business Empire Article); *Id.*,
5 **Ex. 5** (*Hostile Takeover*, GLOBAL WITNESS (July 7, 2016),
6 <https://www.globalwitness.org/en/reports/hostile-takeover/> (Global Witness Report)).)

7 70. Finally, Lim Cheavutha has publicly admitted that he messages with Hun to
8 coordinate fake news stories emanating from his "independent" website. (Hagey Decl., **Ex. 15**
9 (Democracy Has Fallen Apart Article).) Lim's articles are coordinated with Hun's false
10 prosecutions. (*Id.* ("On Sept. 3, about a week after Fresh News first accused the Kem family of
11 having ties to the CIA, dozens of police pushed through the gates of Kem Sokha's family home in
12 Phnom Penh and arrested him. He was charged with treason and faces up to 30 years in prison."))
13 And they would not be possible without a unified Facebook strategy. (*Id.* (quoting Lim as stating
14 "Facebook is an absolute necessity for my site.")) Such discovery is relevant to showing that the
15 prosecutions and press surrounding them are staged.⁴

15 **C. No Foreign Discovery Restrictions Bar Applicant's Requested Discovery**

16 71. A criminal defendant in a Cambodian litigation is entitled to seek discovery in aid
17 of his defense. (Sam Decl. ¶ 19; **Ex. 9**.) Cambodia's Code of Civil Procedure also allows for
18 discovery, including motions to compel production from third parties, akin to the discovery devices
19 used in the United States. (Sam Decl. ¶ 20; **Ex. 10**.) For example, section 150 establishes a "duty
20 to disclose" documents, and section 152 provides: "Where the court determines that sufficient
21 grounds for an order to produce documents exist, the court shall issue a ruling ordering the holder
22 of the documents to produce such documents."

23 72. Further, § 1782 can be used to seek discovery that is broader than that available in
24 the foreign forum. In *Intel*, the Supreme Court stressed that district courts may compel discovery
25 of materials that cannot be discovered in foreign jurisdictions. *Intel*, 542 U.S. at 259-63 ("Beyond
26 shielding material safeguarded by an applicable privilege . . . nothing in the text of § 1782 limits a
27

28 ⁴ Such evidence will also show that Hun has no regard for Facebook's policies. This tends to show
that Hun's "likes" are fake.

1 district court's production-order authority to materials that could be discovered in the foreign
2 jurisdiction if the materials were located there"). And there is no requirement to first seek
3 discovery from the foreign court or to otherwise exhaust other options before applying to a district
4 court. *In re Management Servs., Ltd.*, 2005 WL 1959702, at *3 (E.D.N.Y. Aug. 16, 2005) ("§ 1782
5 does not contain an exhaustion requirement that would impose upon an applicant a duty to first
6 seek the requested discovery from the foreign court") (citing *Application of Malev Hungarian*
7 *Airlines*, 964 F.2d 97, 100 (2d. Cir. 1992)).

8 **D. The Requested Discovery Is Targeted to Avoid Undue Burden**

9 73. The Applicant's discovery requests are targeted to documents and information
10 relevant to defending against the claims that have been asserted against him. *See Supra* at § II(B).

11 **E. Granting Applicant's § 1782 Request Would Promote Efficient Discovery**

12 74. The discovery Applicant seeks is relevant in four separate foreign proceedings, each
13 with their own procedural posture and timelines. An order compelling prompt disclosure of the
14 discovery sought would facilitate a prompt adjudication of these pending foreign proceedings.

15 **CONCLUSION**

16 For the reasons set forth above, Applicant respectfully requests that the Application be
17 granted.

18 Dated: February 8, 2018

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