### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

*In Re Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings.

Case No.

# EX PARTE APPLICATION OF ENI S.P.A. FOR AN ORDER PURSUANT TO 28 U.S.C. § 1782 GRANTING LEAVE TO OBTAIN DISCOVERY FOR USE IN FOREIGN PROCEEDINGS

Based on the memorandum of law, declarations, and other supporting documents accompanying this application, Eni S.p.A. ("Eni") respectfully applies to this Court for an Order pursuant to 28 U.S.C. § 1782 ("Section 1782") and Federal Rules of Civil Procedure 26, 30, and 45 granting Eni leave to serve the following entities incorporated in Delaware with subpoenas for the production of documents and deposition testimony for use in Italian court proceedings and an international investor-state arbitration: Poplar Falls, LLC; Drumcliffe Partners I LLC; Drumcliffe Partners II LLC; Drumcliffe Partners III LLC; Drumcliffe Partners IV LLC; and Drumcliffe Partners IV SMA1, LLC (together, "Respondents").

Eni's application meets the requirements of Section 1782. Respondents are "found" within this district; the narrow discovery Eni requests is for use in proceedings before a foreign tribunal; Eni, as a party to the foreign proceedings, is an "interested person"; and the application does not require disclosure of privileged materials. The factors set out by the Supreme Court in *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), also weigh heavily in favor of Eni's limited discovery requests: (1) the evidence sought likely is unobtainable without this Court's assistance; (2) there is no indication that either the Italian court or the international arbitration tribunal will be unreceptive to the requested discovery; (3) Eni is not using this application to circumvent any

proof-gathering restrictions or policies; and (4) the targeted discovery Eni seeks is narrowly tailored and not unduly burdensome or intrusive.

Finally, as courts in this Circuit have recognized, Section 1782 applications made on an *ex parte* basis are properly filed and routinely granted. *See*, *e.g.*, *In re Mota*, 2020 WL 95493, at \*1 (D. Del. Jan. 8, 2020) ("Discovery applications under § 1782 are often granted *ex parte* because, *inter alia*, witnesses and other recipients can 'raise[] objections and [otherwise] exercise[] their due process rights by motions to quash."); *In re Ex parte Petition of Republic of Turkey for an Order Directing Discovery From Hamit Çiçek Pursuant to 28 U.S.C. § 1782, 2020 WL 2539232, at \*3 (D.N.J. May 18, 2020) ("'[An] <i>ex parte* application is an acceptable method for seeking discovery pursuant to Section 1782,' in part because the person subpoenaed may exercise their due process rights with a motion to quash."); *In re Ex Parte Application of Societe d'Etude de Realisation et d'Exploitation Pour le Traitement du Mais, 2013 WL 6164435, at \*2 (E.D. Pa. Nov. 22, 2013) ("Any fair interpretation of § 1782(a)'s plain language . . . should read it to encompass <i>ex parte* proceedings[.]"); *In re Platebright Ltd.*, 2014 WL 341568, at \*6 (D.V.I. Jan. 30, 2014) ("[I]t is common for parties to request and obtain [§ 1782] orders authorizing discovery *ex parte*[.]").

Eni therefore respectfully requests that this Court enter an Order granting this application.

Dated: October 6, 2020 LANDIS, RATH & COBB LLP

#### /s/ Rebecca L. Butcher

Daniel B. Rath (No. 3022) Rebecca L. Butcher (No. 3816) Jennifer L. Cree (No. 5919) 919 Market Street, Suite 1800 Wilmington, DE 19801 Telephone: (302) 467-4400 Facsimile: (302) 467-4450 Email: rath@lrclaw.com butcher@lrclaw.com

cree@lrclaw.com

Nicolas Bourtin (pro hac vice pending)
Beth D. Newton (pro hac vice pending)
Michele C. Materni (pro hac vice pending)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000
bourtinn@sullcrom.com
newtonb@sullcrom.com
maternim@sullcrom.com

Counsel for Applicants Eni S.p.A.

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

*In Re Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings.

Case No.

#### [PROPOSED] ORDER

Upon consideration of the *Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings filed by Eni S.p.A. ("Eni"), the Memorandum in Support of *Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings, and the Declaration of Nicolas Bourtin and exhibits attached thereto, and for good cause shown,

IT IS HEREBY ORDERED that the Application of Eni is GRANTED and Eni is authorized, pursuant to 28 U.S.C. § 1782 and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, to serve Poplar Falls, LLC, Drumcliffe Partners I LLC, Drumcliffe Partners II LLC, Drumcliffe Partners III LLC, Drumcliffe Partners IV LLC, and Drumcliffe Partners IV SMA1, LLC (collectively, "Respondents") with narrowly tailored subpoenas for production of documents and Rule 30(b)(6) deposition testimony regarding (1) the identities of Respondents' beneficial owners and/or ultimate stakeholders; (2) Respondents' relationship to current or former Federal Republic of Nigeria officials; and (3) any contractual and/or financial arrangements that Respondents have entered into with respect to proceedings

relating to a Nigerian oil prospecting license known as OPL 245. The deadline for Respondents to comply with the subpoena shall be thirty days from service of the subpoena.

IT IS FURTHER ORDERED that Respondents shall preserve relevant documents in their possession, custody or control.

Date:			
	United States District Court Judge		

JS 44 (Rev. 09/19)

### Case 1:20-mc-00334-UNA Document 1-2 Filed 10/06/20 Page 1 of 1 PageID #: 6

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil de	ocket sheet. (SEE INSTRUC	TIONS ON NEXT PAGE OF T	HIS FORM.)				
I. (a) PLAINTIFFS In re Ex Parte Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreig Proceedings.			DEFENDANTS				
(b) County of Residence of First Listed Plaintiff Italy			County of Residence	e of First Listed Defendant			
(EXCEPT IN U.S. PLAINTIFF CASES)				(IN U.S. PLAINTIFF CASES ONLY)			
			NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				
			THE TRAC	I OF LAND INVOLVED.			
(c) Attorneys (Firm Name, Landis Rath & Cobb LLP 19801, (302) 467-4400			Attorneys (If Known)	)			
II. BASIS OF JURISDI	ICTION (Place an "X" in C	One Box Only)	I. CITIZENSHIP OF F (For Diversity Cases Only)	PRINCIPAL PARTIES	(Place an "X" in One Box for Plaintif and One Box for Defendant)		
☐ 1 U.S. Government 🕱 3 Federal Question				PTF DEF	PTF DEF		
Plaintiff	(U.S. Government)	Not a Party)	Citizen of This State	☐ 1 Incorporated or Pr of Business In ☐			
				of Busiless III I	This State		
☐ 2 U.S. Government Defendant	☐ 4 Diversity	ip of Parties in Item III)	Citizen of Another State	☐ 2 Incorporated and I of Business In .			
Detelldant	(Indicate Cutzensn.	ip of rarites in tiem 111)		of Busiless III	Allouiei State		
			2	3 G 3 Foreign Nation			
IV. NATURE OF SUIT	[ (Place on "V" in One Por Or	(1)	Foreign Country	Click here for: Nature	of Suit Code Descriptions.		
CONTRACT		ORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
□ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act		
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury -	of Property 21 USC 881	☐ 423 Withdrawal	□ 376 Qui Tam (31 USC		
☐ 130 Miller Act ☐ 140 Negotiable Instrument	☐ 315 Airplane Product Liability	Product Liability  367 Health Care/	□ 690 Other	28 USC 157	3729(a)) ☐ 400 State Reapportionment		
☐ 150 Recovery of Overpayment	□ 320 Assault, Libel &	Pharmaceutical		PROPERTY RIGHTS	☐ 410 Antitrust		
& Enforcement of Judgment  151 Medicare Act	Slander  ☐ 330 Federal Employers'	Personal Injury Product Liability		☐ 820 Copyrights ☐ 830 Patent	☐ 430 Banks and Banking☐ 450 Commerce		
☐ 152 Recovery of Defaulted	Liability	☐ 368 Asbestos Personal		☐ 835 Patent - Abbreviated	☐ 460 Deportation		
Student Loans (Excludes Veterans)	☐ 340 Marine ☐ 345 Marine Product	Injury Product Liability		New Drug Application ☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations		
☐ 153 Recovery of Overpayment	Liability	PERSONAL PROPERTY		SOCIAL SECURITY	☐ 480 Consumer Credit		
of Veteran's Benefits  ☐ 160 Stockholders' Suits	☐ 350 Motor Vehicle	☐ 370 Other Fraud	☐ 710 Fair Labor Standards	☐ 861 HIA (1395ff)	(15 USC 1681 or 1692)		
☐ 190 Other Contract	☐ 355 Motor Vehicle Product Liability	☐ 371 Truth in Lending ☐ 380 Other Personal	Act ☐ 720 Labor/Management	☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g))	☐ 485 Telephone Consumer Protection Act		
☐ 195 Contract Product Liability	☐ 360 Other Personal	Property Damage	Relations	☐ 864 SSID Title XVI	490 Cable/Sat TV		
☐ 196 Franchise	Injury ☐ 362 Personal Injury -	☐ 385 Property Damage Product Liability	☐ 740 Railway Labor Act ☐ 751 Family and Medical	□ 865 RSI (405(g))	☐ 850 Securities/Commodities/ Exchange		
DE LA PROPERTY	Medical Malpractice	PRICONED RETURNAL	Leave Act	EEDED AT TEAT OFFICE	■ 890 Other Statutory Actions		
REAL PROPERTY  210 Land Condemnation	CIVIL RIGHTS  ☐ 440 Other Civil Rights	PRISONER PETITIONS Habeas Corpus:	☐ 790 Other Labor Litigation☐ 791 Employee Retirement	FEDERAL TAX SUITS  870 Taxes (U.S. Plaintiff	□ 891 Agricultural Acts □ 893 Environmental Matters		
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	Income Security Act	or Defendant)	☐ 895 Freedom of Information		
230 Rent Lease & Ejectment	442 Employment	☐ 510 Motions to Vacate		☐ 871 IRS—Third Party	Act ☐ 896 Arbitration		
☐ 240 Torts to Land ☐ 245 Tort Product Liability	☐ 443 Housing/ Accommodations	Sentence  530 General		26 USC 7609	☐ 899 Administrative Procedure		
☐ 290 All Other Real Property	☐ 445 Amer. w/Disabilities -	☐ 535 Death Penalty	IMMIGRATION		Act/Review or Appeal of		
	Employment  446 Amer. w/Disabilities -	Other:  540 Mandamus & Other	☐ 462 Naturalization Applicatio☐ 465 Other Immigration	n	Agency Decision  950 Constitutionality of		
	Other	☐ 550 Civil Rights	Actions		State Statutes		
	☐ 448 Education	☐ 555 Prison Condition ☐ 560 Civil Detainee -					
		Conditions of	ļ				
Ti objecti		Confinement			<u> </u>		
V. ORIGIN (Place an "X" is							
	ite Court	Appellate Court	Reopened Anoth (specify				
VI. CAUSE OF ACTIO	Cite the U.S. Civil Sta 28 U.S.C. § 1782 Brief description of ca		iling (Do not cite jurisdictional sta	atutes unless diversity):			
			or use in foreign proceed	ings.			
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	DEMAND \$	CHECK YES only JURY DEMAND	if demanded in complaint:		
VIII. RELATED CASI	E(S)						
IF ANY	(See instructions):	JUDGE		DOCKET NUMBER			
DATE 10/06/2020		SIGNATURE OF ATTOL					
10/06/2020 FOR OFFICE USE ONLY		/s/ Rebecca L. B	utoner				
	MOUNT	APPLYING IFP	JUDGE	MAG. JUI	OGE		
	-						