UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SATYAM COMPUTER SERVICES, LTD., SECURITIES LITIGATION	No. 1:09-md-2027 (BSJ) (Consolidated Action)
This Document Applies to: All Cases	ECF Case

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FOR *FORUM NON CONVENIENS*

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Defendants PricewaterhouseCoopers Private Limited ("PwC Pvt. Ltd."), Price Waterhouse, and Lovelock & Lewes (collectively, "Defendants"), respectfully submit this Memorandum of Law in Support of their Motion to Dismiss the Consolidated Class Action Complaint ("Compl.") for *forum non conveniens*.

PRELIMINARY STATEMENT

This case belongs in India. Satyam's alleged billion dollar fraud, as well as the allegedly improper audit, took place in India. Virtually all of the defendants are India-domiciled companies or individuals. Dozens of crucial witnesses and years of financial and accounting documentary evidence are located in India. Over 80 percent of Satyam's shares traded on Indian stock exchanges. The resulting high-profile investigations into "India's Enron" have transfixed the Indian public since the discovery of the alleged fraud almost a year ago. These unprecedented proceedings, directly involving many of the parties to this litigation, have broken new ground in Indian securities regulation. The United States, by contrast, has no significant factual connection to the alleged India-based corporate and accounting fraud central to this case and relatively little interest in it.

The Indian government has demonstrated its strong interest in prioritizing resolution of Satyam-related legal matters in Indian courts, which have a history of expediting legal matters of national significance. By comparison, if this case is tried here, numerous critical witnesses in India could not be called to testify at trial, depriving the parties and the jury of their live testimony. Discovery of overseas witnesses and documents pursuant to international treaty or letters rogatory would be burdensome, unpredictable, and ultimately inadequate. Finally, enforcing a judgment of this Court would also be difficult and uncertain, potentially leaving Plaintiffs with no recourse but to re-litigate the matter in India.

Pursuant to the doctrine of *forum non conveniens*, *see, e.g.*, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), this Court should grant Defendants' motion to dismiss.

I. BACKGROUND

A. THE ALLEGED FRAUD AND COMPANY AUDIT TOOK PLACE IN INDIA

Plaintiffs allege that Satyam's founder and CEO, Ramalinga Raju, as well as Rama Raju and Vadlamani Srinivas, senior Satyam officers residing in India (collectively, the "Officer Defendants"), directed Srisailam Chetkuru, Assistant Manager of Satyam's finance department, to fabricate customer contracts, receivables, and sales invoices. *See* Compl. ¶¶ 3, 85. The Officer Defendants then allegedly concealed the fraud by arranging secret loans from entities that they controlled and mischaracterizing the proceeds. *See id.* ¶¶ 6, 86. Having inflated profits and Satyam's share price, the Rajus allegedly sold shares covertly through a series of Indian intermediaries, and secretly diverted Satyam funds for their own personal use. *See id.* ¶¶ 110-15. Plaintiffs further allege that Satyam's Indian auditor, Price Waterhouse, knew that Satyam's revenues were inflated but nevertheless issued unqualified opinions that Satyam's financial statements were free from material misrepresentation and fairly presented its financial position. *See id.* ¶¶ 40, 177. The principal act alleged to have taken place in the U.S. is the filing of Satyam's annual and quarterly reports with the U.S. Securities and Exchange Commission ("SEC") on Forms 20-F and 6-K. *See id.* ¶¶ 14, 176.

B. VIRTUALLY ALL OF THE DEFENDANTS ARE DOMICILED IN INDIA

Satyam is a public company headquartered in Hyderabad, India, and organized under the laws of the Republic of India. *See* Compl. ¶ 22. The Satyam "Officer Defendants" reside in India. *See id.* ¶¶ 25-29. Two entities controlled by the Raju family (the "Maytas" entities) are

Indian corporations with offices and real estate holdings in Hyderabad, India. *See id.* ¶¶ 31-32. Defendants Price Waterhouse, Lovelock & Lewes, and PwC Pvt. Ltd. operate in India. Declaration of Sharmila Abhay Karve ("Karve Decl.") ¶ 2 (Price Waterhouse and Lovelock & Lewes); Declaration of Deepak Kapoor ("Kapoor Decl.") ¶ 1 (PwC Pvt. Ltd.). The only defendants not domiciled in India are certain members of the audit committee (who are subject to service of process and jurisdiction in India), and PricewaterhouseCoopers International Limited, a London-based entity organized and operating under the laws of the United Kingdom that lacks any meaningful connection to the facts of this case.

C. THE EVIDENCE IS PRIMARILY LOCATED IN INDIA

India is home to the most important witnesses and documents in this case. Karve Decl. ¶¶ 2, 10, 13-16; Kapoor Decl. ¶¶ 1, 6, 11; Declaration of K. B. Iyappa ("Iyappa Decl.") ¶¶ 5, 6, 9, 18-19 (Satyam). Former Satyam senior personnel, including key officers and directors, are in India. Iyappa Decl. ¶¶ 5, 6, 9, 18-19. Indeed, a number of the most critical witnesses to the alleged conduct are presently incarcerated in India in connection with an ongoing criminal investigation of the alleged fraud. *See* Compl. ¶¶ 25-28, 58-64, 80; Iyappa Decl. ¶¶ 5, 6; Karve Decl. ¶ 16.

Similarly, Price Waterhouse and Lovelock & Lewes undertook their multi-year Satyam audit work in India, involving dozens of India-based audit employees over nearly a decade. Karve Decl. ¶¶ 10, 14-15. Thus, the relevant employees and former employees, documents, and facilities, and other resources of Price Waterhouse and Lovelock & Lewes are almost exclusively located in India. *See* Karve Decl. ¶¶ 13-16.

D. THE VAST MAJORITY OF SATYAM'S SHARES TRADED ON INDIAN EXCHANGES

At all times during the putative Class Period, over 80 percent of the shares of Satyam stock traded on Indian exchanges. *See* Compl. ¶ 24; http://www.bseindia.com (follow links); http://www.nse-india.com (follow links). As of March 31, 2008, Satyam had issued 670,479,293 shares, including 130,505,900 shares (19.46%) underlying American Depositary Shares ("ADSs") that traded on the New York Stock Exchange. Compl. ¶ 24.

E. THE LEAD PLAINTIFFS ARE SOPHISTICATED, PRIMARILY FOREIGN, INVESTORS

Lead Plaintiffs in this action, the Mineworkers Pension Scheme ("Mineworkers"), SKAGEN A/S ("SKAGEN"), Sampension KP Livsforsikring A/S ("Sampension"), and the Mississippi Public Employees' Retirement System ("MPERS") (collectively, "Plaintiffs"), are sophisticated institutional investors, three of which are foreign entities that have already chosen to engage in transnational litigation. *See* Order, No. 09-md-02027 (BSJ) (Doc. no. 8), at 1. SKAGEN is a mutual fund manager based in Stavanger, Norway that manages billions of dollars in assets. Compl. ¶ 19. Like SKAGEN, Sampension is a Scandinavian pension fund manager that manages billions of dollars in assets. *Id.* ¶ 20. For its part, Mineworkers, boasting more than 255,000 members, is based in the United Kingdom. *Id.* ¶ 18. Only MPERS, a significant public retirement system providing benefits to more than 250,000 people, is actually based in the U.S. *Id.* ¶ 17. None of MPERS' trades at issue, however, were conducted on U.S. exchanges; to the contrary, they were voluntarily conducted in India-registered stock listed on the Bombay Stock Exchange. *Id.* ¶ 17.

II. THE COMPLAINT SHOULD BE DISMISSED FOR *FORUM NON CONVENIENS*

The Second Circuit has a three-part inquiry to analyze motions to dismiss for *forum non conveniens*. *See Iragorri v. United Techs. Corp.*, 274 F.3d 65 (2d Cir. 2001) (*en banc*). A court must determine (1) whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute; (2) the degree of deference to be accorded the plaintiff's choice of forum; and (3) given the appropriate degree of deference, whether the balance of private and public interests implicated in the choice of forum supports the chosen or the proposed alternative forum. *See USHA (India), Ltd. v. Honeywell Int'l, Inc.*, 421 F.3d 129, 134 (2d Cir. 2005). Where the plaintiff's choice of forum is entitled to little or no deference, the case may be dismissed if the forum is also "shown to be genuinely inconvenient and the selected forum significantly preferable." *Iragorri*, 274 F.3d at 74-75.

A. THE COURTS OF INDIA ARE ADEQUATE AND AVAILABLE

India provides an "adequate alternative forum" to the Plaintiffs. Under Second Circuit precedent, an alternative forum is adequate if "(1) defendants are subject to service of process there, and (2) the forum permits litigation of the subject matter of the dispute." *Capital Currency Exch., N.V. v. Nat'l Westminster Bank PLC*, 155 F.3d 603, 609 (2d Cir. 1998) (internal quotation marks and citation omitted)). This test is easily satisfied here.

1. Defendants Submit to Jurisdiction and Service of Process in India, Where Adequate Legal Remedies Are Available

Each of Defendants is subject to or will stipulate to the jurisdiction of the applicable court in India.[1] *See* Iyappa Decl. ¶ 20; Karve Decl. ¶¶ 17-18; Kapoor Decl. ¶¶ 4-5. The first requirement for adequacy is thus satisfied. *See Capital Currency Exch.*, 155 F.3d at 609; *see also Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 75 (2d Cir. 2003) (affirming finding that England was an "adequate alternative forum" where defendant agreed to submit to English jurisdiction as condition of dismissal).

Second, Indian law permits litigation of the subject matter of the dispute. A plaintiff in India may bring an action based on securities fraud. *See* Declaration of the Honorable Aziz Mushabber Ahmadi, Chief Justice of the Indian Supreme Court (Ret.) ("Ahmadi Decl.")[2] ¶¶ 32-34. The elements of fraud in India are derived from the English common law: the plaintiff must prove (1) that defendant made an untrue statement; (2) that defendant knew the statement was untrue or was indifferent as to its truth; (3) that defendant intended to induce reliance upon the statement; and (4) that plaintiff suffered damages because of his reliance on the untrue statement. *See id.* ¶ 33. Indian law thus offers a remedy for Plaintiffs' allegations here.[3] *See id.* ¶ 36.

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[1] Satyam, PricewaterhouseCoopers Pvt. Ltd., Price Waterhouse, and Lovelock & Lewes will also each designate an agent for service of process in India. *See* Iyappa Decl. ¶ 20; Karve Decl. ¶¶ 17-18; Kapoor Decl. ¶¶ 4-5. PricewaterhouseCoopers International Limited has authorized the undersigned to state that, if the motion to dismiss for *forum non conveniens* is granted prior to the Court's consideration of PricewaterhouseCoopers International Limited's motion to dismiss the claims made against it in Counts VI and VII of the Consolidated Class Action Complaint, it will consent to jurisdiction over it in a case filed in India by the Plaintiffs to this action for the limited purpose of litigating the particular claims brought by Plaintiffs in this action.

[2] It is "'the well established practice in the Southern District of New York to decide [*forum non conveniens*] motions on affidavits.'" *Cavlam Bus. Ltd. v. Certain Underwriters at Lloyd's, London*, No. 08 Civ. 2225, 2009 WL 667272, at *1 n.1 (S.D.N.Y. Mar. 16, 2009) (quoting *Alcoa S.S. Co., Inc. v. M/V Nordic Regent*, 654 F.2d 147, 158 (2d Cir. 1980) (en banc)).

[3] Defendants do not concede, however, that Plaintiffs' allegations state a claim for securities fraud under the pleading standards applicable in the United States or India.

While the Second Circuit has held that the absence of a U.S.-style class action mechanism does not render an alternative forum inadequate, *see Aguinda v. Texaco, Inc.*, 303 F.3d 470, 478 (2d Cir. 2002), India in fact has a class action procedure. A person who was injured by relying upon a defendant's fraudulent statements may initiate a class action lawsuit on behalf of all those similarly situated with the permission of the Indian court. *See* Ahmadi Decl. ¶¶ 20-24 (citing Civil Procedure Code, 1908, Order I, Rule 8 (attached to the Declaration of Fraser L. Hunter, Jr. ("Hunter Decl.") as Exhibit 1)); Declaration of Arvind P. Datar in Support of Mot. to Dismiss by Def. Satyam Computer Services Ltd. ("Datar Decl.") ¶¶ 25-27, 29. The court will grant permission to proceed as a "class" provided that (1) the parties are "numerous," (2) have the "same interest" in the litigation, (3) notice of the class action is given to persons sharing the same interest in the litigation as prescribed by Indian law. *See* Ahmadi Decl. ¶¶ 20-21; Datar Decl. ¶¶ 26-27. As in the U.S., the outcome of the class action is binding on all class members. *See* Ahmadi Decl. ¶ 22; Datar Decl. ¶ 29.

India also has a securities fraud statute, enforced by the Securities and Exchange Board of India ("SEBI"), that closely tracks Section 10(b) of the Securities and Exchange Act.[4] SEBI regulations also expressly recognize and codify the fraud-on-the-market doctrine, providing that securities fraud includes, *inter alia*, the "act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price." Hunter Decl., Ex. 3, at 3 (Securities and Exchange Board of India (Prohibition of

[4] The Securities and Exchange Board of India Act, 1992 (as amended), provides that no person shall (a) "use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of [statute] or the regulations made thereunder," (b) "employ any device, scheme or artifice to defraud in connection with issue or dealing in securities," or (c) "engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with [securities]." Hunter Decl., Ex. 2, at 3-4 (SEBI Act § 12A).

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ¶ 2(1)(c)(9)). If SEBI determines that a party under its jurisdiction has violated the securities laws, it can order, either on its own or following a petition from affected investors, that compensation be paid to investors for losses arising from such violations. *See* Datar Decl. ¶¶ 31-33. India thus clearly furnishes an adequate remedy to Plaintiffs and the putative class, providing parallel legal claims and procedural vehicles to those available here. *See Piper Aircraft*, 454 U.S. at 250, 254-255 & n.22 (holding that legal remedy of alternative forum is adequate, even if less favorable than chosen forum, unless it "is so clearly inadequate or unsatisfactory that it is no remedy at all").[5]

2. Litigation of This Case in India Will Be Efficient and Without Undue Delay

"A litigant asserting inadequacy or delay must make a powerful showing." *Advanta Corp. v. Dialogic Corp.*, No. C 05-2895, 2006 WL 1156385, at *5 (N.D. Cal. May 2, 2006) (internal quotation marks and citation omitted)); *cf. Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009) ("Absent a showing of inadequacy by a *plaintiff*, 'considerations of comity preclude a court from adversely judging the quality of a foreign justice system.'" (quoting *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 73 (2d Cir. 1998) (emphasis added))). No such showing can be made here given India's strongly demonstrated interest in addressing the legal repercussions of the Satyam matter.

[5] Notably, perfect identity between Plaintiffs' U.S. causes of action and potential Indian causes of action is not required to show adequacy for *forum non conveniens* purposes. *See, e.g.*, *Yung v. Lee*, No. 00 Civ. 3965, 2002 WL 31008970, at *2 (S.D.N.Y. Sept. 5, 2002), *aff'd*, 160 F. App'x 37, 41 (2d Cir. 2005) (affirming district court's *forum non conveniens* dismissal in favor of Hong Kong forum even though "Hong Kong's laws afford only limited discovery, do not award exemplary damages, and disallow application of U.S. securities law"); *Capital Currency Exch.*, 155 F.3d at 611; *Alfadda v. Fenn*, 159 F.3d 41, 46 (2d Cir. 1998). Additionally, "[a] forum is not inadequate even if the foreign justice system differs from that of the United States." *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 73 (2d Cir. 1998).

This historic matter is very likely to proceed at an expedited pace in Indian courts. *See* Ahmadi Decl. ¶¶ 7, 37-39, 50; *see also, e.g., In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec. 1984*, 634 F. Supp. 842, 848 (S.D.N.Y. 1986) (noting India's passage of specific legislation to accelerate Bhopal disaster-related litigation timetable, given the scope and seriousness of the matter, and observing "other cases where special measures to expedite were taken by the Indian judiciary"), *aff'd as modified*, 809 F.2d 195 (2d Cir. 1987); *Krish v. Balasubramaniam*, No. 1:06-CV-01030, 2007 WL 1219281, at *2 (E.D. Cal. Apr. 25, 2007) (discussing 2003 legal amendments that provided district courts with civil jurisdiction and created "'fast track'" courts "to allow judges to try cases and reduce the number of pending cases");[6] Datar Decl. ¶ 10 ("In … the State of Andhra Pradesh, where Satyam has its registered office, 'Fast Track Courts' have been established to enable the speedy disposal of cases."). Indeed, the trial of Satyam's founder Raju has already been assigned to a "fast track" court. *See* Ahmadi Decl. ¶ 38; Hunter Decl., Exs. 11-13 (news articles on fast-tracking of Raju trial). Quite simply, what is arguably the highest profile legal matter in India will command the attention of the Indian judiciary and proceed swiftly. Moreover, the delay and uncertainty inherent in enforcing a judgment of this Court in India, *see infra* Part II.C.2, would offset any claimed advantage of litigating this India-focused dispute here.

B. PLAINTIFFS' CHOICE OF FORUM IS NOT ENTITLED TO DEFERENCE

Lead Plaintiffs' choice of forum should not be given any deference. Although a *forum non conveniens* analysis ordinarily begins with "a strong presumption in favor of the plaintiff's

[6] Amendments to the Indian Code of Civil Procedure in 1999 and 2002 will also facilitate the resolution of the matter once transferred to India. *See* Ahmadi Decl. ¶ 37; *see also USHA (India) Ltd.v. Honeywell Int'l, Inc.*, No. 03 Civ. 0494, 2004 WL 540441, at *4 (S.D.N.Y. Mar. 17, 2004) ("[T]he Indian Code of Civil Procedure has recently been amended in an effort to reduce delays and streamline case management."), *aff'd*, 421 F.3d 129, 134 (2d Cir. 2005); *Advanta Corp.*, No. C 05-2895, 2006 WL 1156385, at *4 (discussing 1999 and 2002 amendments to Indian Code of Civil Procedure to expedite resolution of civil cases).

choice of forum," *Murray v. British Broadcasting Corp.*, 81 F.3d 287, 290 (2d Cir. 1996) (citing *Piper Aircraft*, 454 U.S. at 255), that presumption does not apply in this case. Moreover, because Lead Plaintiffs are institutional investors that elected to bring suit in a forum far removed from the vast majority of the documents and witnesses, their choice of forum was not motivated by convenience, and is not entitled to deference for these additional reasons.

1. The presumption of deference does not apply

a) Three Lead Plaintiffs are foreign institutional investors

"[W]hen a foreign plaintiff sues in a United States forum such choice is entitled to less deference because one may not easily presume that choice is convenient." *Pollux Holding*, 329 F.3d at 71 (citing *Piper Aircraft*, 454 U.S. at 256). Indeed, in such cases, "it is more likely that forum-shopping for a higher damage award or for some other litigation advantage," rather than convenience, "was the motivation for plaintiff's selection." *Id.* "[B]ecause none of these plaintiffs is an American citizen, plaintiff's choice of the United States as a forum commands considerably less deference than it would if this country were their home," *In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000*, 499 F. Supp. 2d 437, 444-45 (S.D.N.Y. 2007) (internal quotation marks omitted); in light of the size and financial sophistication of Mineworkers, Skagen and Sampension, their choice of forum deserves no deference at all.

b) The U.S. Lead Plaintiff conducted its trades in India[7]

MPERS' choice of forum is also entitled to "diminished weight" because it voluntarily conducted all of its trades in India-registered stock listed on the Bombay Stock Exchange. *Carey v. Bayerische Hypo-Und Vereinsbank AG*, 370 F.3d 234, 237-38 (2d Cir. 2004) (internal

[7] Price Waterhouse, Lovelock & Lewes, and PwC Pvt. Ltd. do not agree that the Court has jurisdiction over claims arising from MPERS' trades in India and joins in Satyam's motion to dismiss these claims for lack of subject matter jurisdiction.

quotation marks omitted); *New Hampshire Ins. Co. v. Sphere Drake Ins. Ltd.*, No. 01 CIV. 3226, 2002 WL 1586962, at *6 (S.D.N.Y. July 17, 2002) (Jones, J.), *aff'd in relevant part*, 51 F. App'x 342 (2d Cir. 2005); *First Union Nat'l Bank v. Paribas*, 135 F. Supp. 2d 443, 448 (S.D.N.Y. 2001), *aff'd*, 48 F. App'x 801 (2d Cir. 2002). Indeed, courts have dismissed the complaints of individual investors—far less sophisticated and financially robust than the Lead Plaintiffs here—on the basis that these individuals willingly entered into foreign contracts.[8] MPERS should accordingly expect to litigate disputes arising from Indian securities transactions in India. *See DiRienzo v. Philip Servs. Corp*., 294 F.3d 21, 33 (2d Cir. 2002) ("[F]ederal securities laws are *not* meant to protect those who purchased their securities *abroad*." (emphasis in original) (citing *Howe v. Goldcorp Invs., Ltd.*, 946 F.2d 944, 953 (1st Cir. 1991) (Breyer, J.))).

c) This is a representative action

"Plaintiffs' choice of forum is … entitled to less deference where, as here, they are suing in a representative capacity." *Gilstrap v. Radianz Ltd.*, 443 F. Supp. 2d 474, 479 (S.D.N.Y. 2006) (citing, *inter alia*, *Koster v. (American) Lumbermens Mut. Cas. Co*., 330 U.S. 518, 524 (1947)), *aff'd*, 233 F. App'x 83 (2d Cir. 2007); *In re Livent, Inc. Sec. Litig.*, 78 F. Supp. 2d 194, 217 (S.D.N.Y. 1999) (same). In a class action, plaintiffs can often choose from among many fora, and their choice is more likely to reflect litigation strategy than convenience, especially given that plaintiffs "do not claim to be witnesses to anything other than their ownership of an interest in the dispute and their desire … to represent others similarly situated." *DeYoung v. Beddome*, 707 F. Supp. 132, 138 (S.D.N.Y. 1989) (citing *Koster*, 330 U.S. at 523-27).

[8] *See, e.g.*, *Carey*, 370 F.3d at 238 (affirming dismissal of complaint brought by individual plaintiff of modest means because she had "voluntarily entered into a contract" in a foreign country and it was reasonable to expect that related litigation would be conducted there); *see also Cortec Corp. v. Erste Bank Ber Oesterreichischen Sparkassen AG (Erste Bank)*, 535 F. Supp. 2d 403, 408 (S.D.N.Y. 2008) (dismissing individual American plaintiff's complaint for *forum non conveniens* where "business tort [arose] out of voluntary contractual relations").

2. The relevant documents and witnesses reside in India

The fact that relatively little documentary evidence and few witnesses are present in the United States demonstrates that convenience did not motivate plaintiffs' choice of forum. *See Banco de Seguros Del Estado v. J.P. Morgan Chase & Co.*, 500 F. Supp. 2d 251, 261 (S.D.N.Y. 2007) (holding that plaintiff's choice of forum merited "little, if any, deference" where "every event alleged in the Complaint either occurred in Uruguay, or involved a decision finalized in Uruguay" and "[v]arious other civil and criminal matters pertaining to the same alleged events and losses as this case have been proceeding in Uruguayan venues").[9] Satyam's alleged multi-year deception took place in India. Accordingly, the evidence and witnesses for this case—ranging from key Satyam officers and Price Waterhouse auditors to years of financial documents—is overwhelmingly located in India. *See* Iyappa Decl. ¶¶ 5-6; Karve Decl. ¶¶ 13-16; Kapoor Decl. ¶ 11. Under these circumstances it "is apparent that litigating [a] suit in New York would not be convenient for anyone," *Banco de Seguros Del Estado*, 500 F. Supp. 2d at 261, and therefore Lead Plaintiffs' decision to file suit in the U.S. was not motivated by convenience.

3. Lead Plaintiffs have substantial resources to litigate in India

Lead Plaintiffs' choice of forum is also entitled to less deference because they are "organization[s]—rather than an individual—that can easily handle the difficulties of engaging in litigation abroad." *Cortec Corp. v. Erste Bank Ber Oesterreichischen Sparkassen AG (Erste Bank)*, 535 F. Supp. 2d 403, 408 (S.D.N.Y. 2008); *see also Carey*, 370 F.3d at 238 (noting *forum non conveniens* dismissals where American plaintiffs "had sought business or made investments

[9] *See also Cortec*, 535 F. Supp. 2d at 408 (dismissing for *forum non conveniens* where "[n]one of the witnesses necessary to resolve [the] action resides in New York and . . . . [m]ost or all of the relevant documentary evidence is likewise situated abroad"); *LaSala v. Bank of Cyprus Pub. Co.*, 510 F. Supp. 2d 246, 259 (S.D.N.Y. 2007) (dismissing for *forum non conveniens* where "the overwhelming majority of witnesses resides in Cyprus"); *Paribas*, 135 F. Supp. 2d at 454 (dismissing for *forum non conveniens* where "[t]he proof all is in London or closer to London than New York").

abroad [and] were substantial business entities, easily capable of litigating the disputes that arose out of those ventures in the country where they occurred"). Each of Lead Plaintiffs is indisputably a sophisticated institutional investor "that manage[s] billions of dollars." Global Institutional Investors' Motion for Appointment of Lead Plaintiff, No. 09 Civ. 93 (BSJ) (Doc. no. 28) ("Global Motion"), at 9; *see also* Mineworkers' Motion for Appointment as Lead Plaintiff, No. 09 Civ. 93 (BSJ) (Doc. no. 24) ("Mineworkers' Motion"), at 9 (same), and Plaintiffs argued that they should represent the putative class precisely because of their substantial litigation resources.[10] *See* Global Motion at 2; Mineworkers' Motion at 9. Indeed, three of the four Lead Plaintiffs have already elected to engage in transnational litigation by coming to the U.S. from the United Kingdom, Norway, and Denmark.

C. THE PRIVATE INTEREST FACTORS SUPPORT DISMISSAL HERE

The private interest factors relate to the convenience of the litigants and include (1) "the relative ease of access to sources of proof"; (2) availability of compulsory process for the attendance of "unwilling" witnesses; (3) the cost of obtaining attendance of "willing" witnesses; (4) the enforceability of a judgment in the forum; (5) a defendant's ability to pursue contribution claims against potentially responsible co-defendants or third parties; and (6) all other practical problems that make trial of a case "easy, expeditious and inexpensive." *See Gulf Oil*, 330 U.S. at 508, 511; *Piper Aircraft*, 454 U.S. at 241 n.6; *Iragorri*, 274 F.3d at 73-74; *Scottish Air Int'l, Inc. v. British Caledonian Group, PLC*, 81 F.3d 1224, 1232 (2d Cir. 1996); *Allstate Life Ins. v. Linter Group Ltd.*, No. 91 Civ. 2873, 1992 WL 398446, at *5 (S.D.N.Y. Jan. 5, 1993) (as amended), *aff'd*, 994 F.2d 996 (2d Cir. 1993).

[10] For this reason, the unavailability of contingent fee arrangements in India also has little, if any, relevance to this case. *See Gilstrap*, 443 F. Supp. 2d at 488 (citing cases); *see also Murray*, 81 F.3d at 294 ("The decision to permit contingent fee arrangements [in the United States] was not designed to suck foreign parties disputing foreign claims over foreign events into American courts.").

All of the private interest factors weigh in favor of the India forum.

1. No compulsory process for key witnesses in the United States

Defendants have already identified several categories of witnesses that are likely to be central to their defense but for whom compulsory process for trial testimony will be unavailable in the U.S. *See* Iyappa Decl. ¶¶ 5-6, 18-19; Karve Decl. ¶¶ 14-16; Kapoor Decl. ¶ 11. Yet if the trial were held in India, the parties would be able to call all witnesses that are in India to appear at trial. *See* Ahmadi Decl. ¶¶ 15, 30, 47.

For example, Defendants will need to call former members of Satyam's senior management, Audit Committee, and personnel, virtually all of whom reside in India and are likely to be either unable or unwilling to testify at a trial in the U.S. *See* Iyappa Decl. ¶¶ 5, 6, 9, 18-19. Certain of these witnesses may be unwilling to testify because of ongoing criminal investigations in India. *See* Compl. ¶ 64 (alleging that "CBI is conducting an ongoing investigation"); *Duha v. Agrium, Inc.*, 448 F.3d 867, 877 (6th Cir. 2006) (observing that defendant can demonstrate that witnesses are unwilling to testify by adducing evidence of ongoing criminal investigation (citing *Paribas*, 135 F. Supp. 2d at 450)). Indeed, the most important witnesses, including B. Ramalinga Raju and five other senior Satyam officers and personnel, and the two Lovelock & Lewes partners alleged to be "primarily responsible for conducting Satyam's outside audits," are all incarcerated in India and could not be subpoenaed to appear in the U.S. in any event. *See* Compl. ¶¶ 25-28, 59-64, 80; Iyappa Decl. ¶¶ 5-6; Karve Decl. ¶ 16; *see also Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 1001 (2d Cir. 1993). By comparison, incarcerated persons can be ordered to testify in civil matters pending before Indian courts, either by commission or in person. *See* Ahmadi Decl. ¶ 30.

Additional important witnesses are no longer (or never were) employees of Defendants and thus cannot be made available at trial without compulsory process that would be available only in India. The absence of these unwilling witnesses would deprive the parties and the jury of "live testimony," which is especially important and "takes on added importance in this action because where, as here, [plaintiffs] have alleged fraud, live testimony of key witnesses is necessary so that the trier of fact can assess the witnesses' demeanor." *Alfadda v. Fenn*, 159 F.3d 41, 48 (2d Cir. 1998) (internal quotation marks and citation omitted); *Paribas*, 135 F. Supp. 2d at 450 ("The focus on the availability of compulsory process for unwilling witnesses reflects a strong preference for live trial testimony.").

Trying this case without any of Defendants' critical witnesses would impose an unfair burden on the defense because the alternatives are onerous, unpredictable, and inadequate. Defendants would necessarily seek transnational discovery under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Convention") or other letters rogatory process.[11] Courts have recognized that such transnational discovery is "cumbersome and time consuming." *Cortec*, 535 F. Supp. 2d at 412; *do Rosario Veiga v. World Meteorological Organisation*, 486 F. Supp. 2d 297, 306 (S.D.N.Y. 2007) (discussing "greater financial hardships" and "significant delays" in trial preparation involving foreign discovery under the Hague Convention); *Sphere Drake*, 2002 WL 1586962, at *8 (noting "limits to the effectiveness of [letters rogatory] procedures").[12] While Defendants may request a videotaped

[11] *See* Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature*, Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444, 8 I.L.M. 37 (1969), *reprinted at* 28 U.S.C. § 1781 note. The Convention entered into force in India in 2007. *See* Status Table for Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, http://www.hcch.net (follow links).

[12] *See also, e.g.*, *Vivendi S.A. v. T-Mobile USA, Inc.*, No. C06-1524JLR, 2008 WL 2345283, at *13 (W.D. Wash. June 5, 2008) (observing that "the letters rogatory process is anything but simple and accelerated"), *aff'd*, --F.3d--, 2009 WL 3525855 (9th Cir. Nov. 2, 2009); *cf. In re DaimlerChrysler AG Sec. Litig.*, 216 F.R.D. 395, 404

deposition before the commissioner, there can be no certainty that the Indian judicial authority will deem that procedure compatible with its law or practice.

Most importantly, deposition evidence obtained pursuant to transnational discovery methods would be a plainly inadequate substitute for live trial testimony. The absence of compulsory process to compel witnesses to testify in person at trial illustrates that the alternative forum is significantly preferable (regardless of whether videotaped deposition testimony might be a possibility). *See DiRienzo*, 294 F.3d at 30; *First Union Nat'l Bank v. Arab African Int'l Bank*, 48 F. App'x 801, 804 (2d Cir. 2002); *BlackRock, Inc. v. Schroders PLC*, No. 07 Civ. 3183, 2007 WL 1573933, at *9 (S.D.N.Y. May 30, 2007); *Strategic Value Master Fund, Ltd. v. Cargill Fin. Servs., Corp.*, 421 F. Supp. 2d 741, 769 (S.D.N.Y. 2006); *see also Martinez v. White*, 492 F. Supp. 2d 1186, 1191 (N.D. Cal. 2007). These courts and others "recognize that reading a deposition at trial—even a videotaped deposition—is no substitute for the advantages to the parties, the judge and the jury of having important witnesses appear live at trial." *Newegg, Inc. v. Telecomm. Sys.*, No. C 09-0982, 2009 WL 1814461, at *7 (N.D. Cal. June 23, 2009); *see also Kultur Int'l Films Ltd. v. Covent Garden Pioneer, FSP., Ltd.*, 860 F. Supp. 1055, 1067 (D.N.J. 1994) (holding that videotaped deposition is not adequate substitute for live testimony and would hinder defense). The "inimitable" conditions of trial, "where the witness must testify in a courtroom, on the witness stand, before a judge and a jury," give the factfinder the best opportunity to appraise the credibility of the witness. *Kultur Int'l Films*, 860 F. Supp. at 1067.

Defendants will surely suffer prejudice if they are forced to try this case to an American jury by a numbing and repetitive series of de-personalizing video or transcribed depositions. *See*

(E.D. Mich. 2003) (expressing "[n]o doubt [that] obtaining evidence under the Hague Convention is more difficult and more expensive than obtaining discovery within the United States"); *see also* Richard M. Dunn & Raquel M. Gonzalez, *The Thing about Non-U.S. Discovery for U.S. Litigation: It's Expensive and Complex*, 67 Def. Couns. J. 342 (1999).

Chazen v. Deloitte & Touche, LLP, 247 F. Supp. 2d 1259, 1268 (N.D. Ala. 2003) (acknowledging "disadvantage of presenting testimony even by video deposition and the adverse effect that … large number of depositions would have on jurors' attention spans"), *aff'd in relevant part*, No. 03-11472, 2003 WL 24892029 (11th Cir. Dec. 12, 2003). By comparison, Plaintiffs will not be harmed by litigation in India because only a few potential witnesses reside in the U.S. This factor weighs heavily in favor of *forum non conveniens* dismissal here because virtually all of the important witnesses live in India.[13]

2. Enforcing a U.S. judgment would be burdensome and uncertain

After engaging in extended U.S.-based litigation to obtain a judgment, the parties may have to relitigate the entire case in India—with the U.S. judgment serving only as one piece of evidence—to determine whether that judgment is enforceable in India.[14] *See* Ahmadi Decl. ¶¶ 40-44; Datar Decl. ¶¶ 37-38. By contrast, litigating this case in India would provide all parties with certainty about the enforceability of the ultimate judgment, a private interest factor that weighs substantially in favor of dismissal.[15] *See Gulf Oil*, 330 U.S. at 508 (listing "questions as to the enforcibility of a judgment if one is obtained"); *Scottish Air Int'l*, 81 F.3d at 1233

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[13] *See, e.g.*, *Sarandi v. Breu*, No. C 08-2118, 2009 WL 2871049, at *7, *9 (N.D. Cal. Sept. 2, 2009) (granting *forum non conveniens* motion where defendants, who were "the most important witnesses," resided abroad and not a single party resided in plaintiff's chosen forum of California). Those district courts declining to give this factor substantial weight have done so because important witnesses resided in both the chosen and the alternative forum. *See, e.g., Traver v. Officine Meccaniche Toshci SpA*, 233 F. Supp. 2d 404, 417 (N.D.N.Y 2002); *In re Livent, Inc. Sec. Litig.*, 78 F. Supp. 2d at 211.

[14] Indeed, investors in Satyam ADSs have known from the initial ADS offering that they may face considerable obstacles to enforcement in India of any U.S. judgment against Satyam. *See* Hunter Decl., Ex. 14 (Satyam's prospectus filed on SEC Form 424B4 (filed May 16, 2001), at 4 ("It may be difficult for you to enforce any judgment obtained in the United States against us or our affiliates. . . . [V]irtually all of our assets and the assets of many of [Satyam's directors and executive officers] are located outside the United States.")); *id.*, Ex. 15 (Satyam's prospectus filed on SEC Form 424B4 (filed May 11, 2005), at 4-6 (same).

[15] Conversely, a judgment awarded by an Indian court would likely be enforceable in the United States. *See, e.g., In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec. 1984*, 809 F.2d 195, 204 (2d Cir. 1987).

(affirming *forum non conveniens* dismissal where, *inter alia*, injunctive relief sought would be unenforceable in Great Britain and enforcement of any damages awards would require additional proceedings in British courts); *Great Northern Ins. Co. v. Constab Polymer-Chemie GmbH & Co.*, No. 5:01-CV-0882, 2007 WL 2891981, at *13 (N.D.N.Y. Sept. 28, 2007) ("Through further proceedings, the plaintiff may be successful in enforcing a judgment of this Court in Germany; however it is undisputed that plaintiff would have less difficulty enforcing a German judgment in Germany").

Although Section 44A of the Civil Procedure Code provides for direct enforcement of "decrees of any of the superior Courts of any reciprocating territory," the U.S. is *not* a "reciprocating territory." *See* Ahmadi Decl. ¶ 40; Datar Decl. ¶ 37. Thus, the only option available to a party seeking enforcement of a U.S. judgment in India is to file a new lawsuit in an Indian court. In such a follow-on enforcement suit, the U.S. judgment could only be offered as non-conclusive evidence in the second proceeding, and the adverse party could challenge the enforceability of a foreign judgment on six distinct grounds.[16] If the party opposing enforcement challenges it under Section 13(b) of the Civil Procedure Code, which provides that a foreign judgment is not conclusive if it was not rendered on the merits of the case, the resulting inquiry will often require the relitigation of many of the issues previously argued before the foreign court. *See* Ahmadi Decl. ¶ 44. To litigate those grounds, the parties would call and examine witnesses, produce and review documents, and brief the relevant legal issues. *See id.* ¶ 42. Indian enforcement suits are thus frequently contentious and time-consuming; an Indian court may even refuse to enforce the judgment at issue. *See id.* ¶ 44. The time required for the follow-on enforcement proceeding would only add to years of litigation in the U.S. *See id.*

[16] *See* Ahmadi Decl. ¶ 43 (quoting Civil Procedure Code § 13, attached to Hunter Declaration as Exhibit 4).

3. The cost and inconvenience of obtaining attendance of witnesses and transporting documents would be much greater here than in India

Rather than litigate where the bulk of the evidence is located, Plaintiffs would have Defendants bear the expense and inconvenience of conveying all of the India-based evidence and witnesses to the U.S. for trial. Transporting even willing witnesses to the U.S. "would be extremely inconvenient and would impose a prohibitive cost on [D]efendants." *Europe & Overseas Commodity Traders, S.A., v. Banque Paribas London*, 940 F. Supp. 528, 538 (S.D.N.Y. 1996) (Jones, J.), *aff'd*, 147 F.3d 1181 (2d Cir. 1998); *see also Allstate Life Ins. Co. v. Linter Group, Ltd.*, 994 F.2d 996, 1001 (2d Cir. 1993) (cost of transporting witnesses from Australia "would be prohibitive").[17] Conversely, the Indian forum is convenient and cost-effective for most witnesses.

4. Contribution claims against non-appearing defendants and third parties are not available in the United States

A defendant's inability to pursue contribution claims against potentially responsible co-defendants or third parties in the chosen forum is another factor favoring dismissal. *See Fitzgerald v. Texaco, Inc.*, 521 F.2d 448, 453 (2d Cir. 1975) (affirming *forum non conveniens* dismissal where court lacked jurisdiction over third parties (citing *Gulf Oil*, 330 U.S. at 511)); *see also Windt v. Qwest Commcn's Int'l, Inc.*, 529 F.3d 183, 195 (3d Cir. 2008) (citing *Piper Aircraft*, 454 U.S. at 259); *Allstate Life Ins. v. Linter Group Ltd.*, 1992 WL 398446, at *5.

If a participating defendant is held liable in a U.S.-based trial, that defendant may have a post-trial right to contribution from the absent officer defendants who allegedly masterminded and concealed the fraud. A defendant in this position would not be able to proceed against such absent defendants in the U.S. because those defendants are neither subject to compelled

[17] Although Defendants are "not individuals, but corporations that presumably have the financial resources to pay the costs associated with trial in this District, [that] does not mean that the Court should necessarily impose upon them the burden of litigating in an otherwise inconvenient forum." *Gilstrap*, 443 F. Supp. 2d at 489.

appearance at a trial in the U.S., nor have they accepted service or voluntarily appeared. Therefore, the defendant would be required to file a separate suit in India to pursue such contribution claims based on a judgment that may not even be enforceable in India, raising the specter of multiple litigations across fora and a serious risk of conflicting results. "It would be far more convenient, however, to resolve all claims in one trial." *Piper Aircraft*, 454 U.S. at 259. Only litigation in India presents this important advantage.

D. THE PUBLIC INTEREST FACTORS STRONGLY FAVOR INDIA

"In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach[.]" *Gulf Oil*, 330 U.S. at 509. This is precisely such a case—Satyam was India's preeminent business success story in recent years and a proud national symbol of India's rapid economic ascendancy. On January 7, 2009, Satyam suddenly became, instead, "'India's Enron.'" Compl. ¶ 75; *see also id.* ¶ 76; Hunter Decl., Exs. 5-10.[18] Its fate, and this case, should be heard and decided by India's courts and people, who have a deep national interest in these events that "far outweighs the public interest of the United States." *In re Union Carbide Corp. Gas Plant Disaster at Bhopal*, 634 F. Supp. at 865. Just as it is inconceivable that the Enron fraud-related litigation could have ever taken place abroad, this case, involving almost exclusively Indian companies and individuals, witnesses, and documents, multiple Indian regulators, a pending Indian criminal investigation, and over a billion dollars of apparently now-confessed fraud by Satyam's leaders, should not be litigated in the U.S. *See also Linter Group*, 994 F.2d at 1002 (holding that where pending liquidation was "one of the largest in Australian history and the actions undertaken by the Banks in furtherance of the alleged fraud were carried

[18] *See* Niraj Sheth *et al.*, *Corporate Scandal Shakes India*, WALL STREET J., Jan. 8, 2009, at A1 ("Satyam also was one of India's flagship technology companies that have come to define a new, modern Indian industry that compete on the world stage. … Immediate comparisons were drawn to … the Enron crisis[.]"); Heather Timmons *et al.*, *Board Tries to Chart Recovery for Scandal-Ridden Indian Firm*, N.Y. TIMES, Jan. 13, 2009, at B4 ("The fraud has been dubbed India's equivalent of the Enron scandal. It is one of the largest ever in India ….").

out in Australia by Australian corporations, there is a strong local interest" in litigating in Australia).

Moreover, as the country in which 80 percent of Satyam's shares are traded, India has the far stronger comparative public interest in adjudicating the securities law controversy. *See DiRienzo*, 294 F.3d at 33 (holding that a country's interest in adjudicating securities disputes is proportional to the percentage of the class that purchased securities on that country's markets). In *DiRienzo*, in which the Second Circuit reversed the district court's *forum non conveniens* dismissal, plaintiffs had alleged that 80 percent of the shares of the foreign corporation traded on *American* exchanges. *See* 294 F.3d at 31-32. Here, less than *twenty percent* of Satyam's shares traded on American exchanges during the Class Period,[19] and "federal securities laws are *not* meant to protect those who purchased their securities *abroad*." *Id.* at 33 (citing *Howe*, 946 F.2d at 953) (emphasis in original).[20] Courts in this district have applied *DiRienzo* in similar circumstances to conclude that the U.S. public interest was outweighed by the public interest of the alternative forum. *See In re Royal Group Techs. Sec. Litig.*, No. 04 Civ. 9809, 2005 WL 3105341, at *3 (S.D.N.Y. Nov. 21, 2005); *Yung v. Lee*, No. 00 Civ. 3965, 2002 WL 31008970, at *2 (S.D.N.Y. Sept. 5, 2002), *aff'd*, 160 F. App'x 37 (2d Cir. 2005).

In light of India's significantly greater interest, this Court should dismiss the case for *forum non conveniens* to allow it to be decided in the "view and reach" of the people of India.

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[19] During the Class Period, between 10.65 and 19.97 percent of Satyam shares traded as depositary shares on the New York Stock Exchange and other exchanges. *See* http://www.bseindia.com (follow links).

[20] In addition, courts have consistently ruled that America's public interest in enforcing its own securities laws is alone not enough to defeat a *forum non conveniens* motion. *See Alfadda*, 159 F.3d at 47; *Linter Group*, 994 F.2d at 1002.

CONCLUSION

For the reasons set forth above, this Court should dismiss the complaint for *forum non conveniens*.

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Respectfully submitted,

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