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May 12, 2020

Filed Via ECF

The Honorable Barbara Moses
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
New York, NY 10007

Re: *DoubleLine Capital, LP v. Odebrecht Finance, Ltd.*, No. 1:17-cv-4576-GHW-BCM

Dear Judge Moses:

We write pursuant to Local Civil Rule 37.2 and Section 2(b) and (d) of this Court’s Individual Rules of Practice to respectfully request a pre-motion conference regarding Plaintiffs’ contemplated motion requesting sanctions for spoliation against the Defendants related to certain evidence that they admittedly “intentionally destroyed.” The parties have met and conferred regarding Defendants’ inability or unwillingness to produce documents responsive to Plaintiffs’ First Requests for Production of Documents (which included a request for the documents at issue in this proposed motion) on several occasions over the past several months, including most recently by telephone conference on May 8, 2020, at 2:00 p.m. (Eastern) between myself and Defendants’ counsel, Thomas Kessler, Victor Hou and Luke Barefoot of Clearly Gottlieb Steen and Hamilton, in a call lasting approximately 30 minutes, and again between the same parties on May 11, 2020, at 6:15 p.m. (Eastern) for approximately ten minutes.

I. BACKGROUND INFORMATION

The central issues in this action relate to certain false disclosures and omissions by Defendants regarding their participation in a scheme to illicitly influence the award of large public-works construction contracts to the Defendants through the payment of more than \$3 billion in bribes to governmental officials in Brazil and at least 12 other countries (the “Bribery Scheme”). Defendants have pled guilty to criminal charges brought by the United States related to the Bribery Scheme.

The primary facts supporting Plaintiffs’ motion for an adverse inference have been admitted by the Defendants. In order to hide their Bribery Scheme from regulators and investors, Defendants “created and funded an elaborate, secret financial structure that operated to account for and disburse corrupt bribe payments” *Answer* ¶¶ 63-64.¹ This secret financial

¹ Defendants’ Answer to Plaintiffs’ Third Amended Complaint (the “*Answer*”), Dkt. # 106 (Jan. 14, 2020).

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structure ultimately became the Division of Structured Operations in 2006, which “effectively functioned as a bribe department within Odebrecht and its related entities.” *Id.* To conceal these massive illicit payments from the reported financial results of CNO and Odebrecht, the Division of Structured Operations did not enter these illicit bribery payments into the accounting systems of either CNO or Odebrecht. *Id.* ¶ 69. Instead, the Division of Structured Operations operated its own “shadow” accounting system known as the “MyWebDay” system, which was “used for making payment requests, processing payments, and generating and populating spreadsheets that tracked and internally accounted for” the massive level of bribery payments. *Id.* ¶ 68; *Def’s Admissions Nos. 1-2*.² Defendants concede that “the MyWebDay system contained evidence related to the Bribery Scheme.” *Def’s Admission No. 6*. However, this crucial evidence is unavailable to Plaintiffs due to the misconduct of the Defendants.

As Defendants admit, Odebrecht’s CEO and certain employees and executives involved in the Division of Structured Operations took steps to “conceal or destroy evidence of criminal activities,” including “a directive from” Marcelo Odebrecht to employees to “delete records that might reveal illegal activities.” *Answer* ¶ 82. Defendants also admit that they “*intentionally caused the destruction of the physical encryption keys needed to access the MyWebDay platform.*” *Id.*; *Def’s Admissions Nos. 3-5* (emphasis added). As a result, crucial evidence regarding the scope and nature of the Bribery Scheme is not available to Plaintiffs. *Def’s Admissions Nos. 7-8*.

II. ARGUMENT: PLAINTIFFS ARE ENTITLED TO AN ADVERSE INFERENCE AGAINST THE DEFENDANTS

The failure to preserve documents “for another’s use as evidence in pending or reasonably foreseeable litigation” constitutes spoliation of evidence and is sanctionable “under the Federal Rules of Civil Procedure and the court’s inherent powers” to protect its “integrity and prevent abuses of the judicial process.” *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 430 (S.D.N.Y. 2004). In the Second Circuit, the party seeking sanctions must demonstrate that the party having control over the evidence: (A) had an obligation to preserve the evidence; (B) acted with a culpable state of mind; and (C) that the spoliated evidence is relevant to the claims and defenses of the action such that a trier of fact could find that it supported the particular claim or defense of the moving party. *See, e.g., Residential Funding Corp. v. DeGeorge Financial Corp.*, 306 F.3d 99, 107 (2d Cir. 2002).

A. Defendants’ Duty to Preserve the MyWebDay Data

The duty to preserve evidence is triggered when the spoliating party “has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.” *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 436 (2d Cir.

² Defendants CNO S.A., Odebrecht Engenharia E Construção S.A. and Odebrecht S.A. – Em Recuperação Judicial’s Responses and Objections to Plaintiffs Doubleline Capital LP, Doubleline Income Solutions Fund, and Doubleline Funds Trust (on Behalf of its: 1) Doubleline Core Fixed Income Fund Series; 2) Doubleline Emerging Markets Fixed Income Fund Series; and 3) Doubleline Shiller Enhanced Cape® Series)’s First Set of Requests for Admission (“*Def’s Admissions*”), dated March 30, 2020. For the Court’s convenience, a copy is attached hereto as Exhibit A.

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2001). Here, prior to the date that they intentionally destroyed the MyWebDay data, Defendants were aware: 1) of their role in the Bribery Scheme; 2) of the wide-ranging Lava Jato investigation that was certain to ensnare them as the investigation developed; 3) that Marcelo Odebrecht had been arrested by Brazilian police for his role in the Bribery Scheme; 4) that the United States and Switzerland were also investigating the Bribery Scheme; and 5) that the news partially disclosing their Bribery Scheme had caused the price of the Odebrecht Finance Notes purchased by Plaintiffs to decline by more than 70%. TAC ¶ 266.³ Against this backdrop, Defendants “should have known” that the MyWebDay data would be highly relevant to future litigation that was highly likely to be brought by unhappy purchasers of their securities.

B. Defendants Admit Their Culpable State of Mind in Destroying the MyWebDay Data

Defendants admit that: “[I]n or about January 2016, after Lava Jato and investigations by United States and Swiss authorities were known to” the Defendants, they “*intentionally caused the destruction of the physical encryption keys needed to access the MyWebDay system*” *Def’s Admissions Nos. 3-5*. Intentional destruction of evidence plainly demonstrates the requisite culpable state of mind. *Residential Funding*, 306 F.3d at 108.

C. The MyWebDay Data is Relevant to Plaintiffs’ Claims

The party seeking spoliation sanctions is generally required to produce “some evidence” suggesting that the spoliated evidence would have been relevant to substantiating its claim, and that the destroyed evidence “would have been of the nature alleged by the party affected by its destruction.” *Slovin v. Target Corp.*, No. 12 CV 863 HB, 2013 WL 840865, at *5 (S.D.N.Y. Mar. 7, 2013) (citing *Byrnie v. Town of Cromwell, Bd. of Educ.*, 243 F.3d 93, 108 (2d Cir. 2001)). To the extent that the moving party asks a court to impose the sanction of an adverse inference instruction, the moving party must “adduce sufficient evidence from which a reasonable trier of fact could infer that the destroyed [or unavailable] evidence would have been of the nature alleged by the party affected by its destruction,” *i.e.*, that the destroyed evidence would have been helpful to the movant.” *Residential Funding*, 306 F.3d at 109. However, the moving party should not be held to “too strict a standard of proof regarding the likely contents of the destroyed or unavailable evidence, because doing so would subvert the purposes of the adverse inference and would allow the parties who have destroyed the evidence to profit from that destruction. *Id.* The TAC outlines that the Bribery Scheme consisted of more than \$3.3 billion in illicit payments from 2006 through 2014. TAC ¶¶ 72, 75-76. These allegations were based upon the sworn testimony of the former head of the Division of Structured Operations. *Id.*

There can be no dispute that the MyWebDay data is central to Plaintiffs’ claims in this action. For example, Plaintiffs’ claim for violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder will require them to prove at trial: 1) that Defendants made material misstatements or omissions; 2) scienter; 3) a connection between the misrepresentation or omission and the purchase of the security; 4) reliance upon the misstatement; 5) economic loss; and 6) loss causation. *DoubleLine Capital LP v. Odebrecht Fin., Ltd.*, 323 F. Supp. 3d 393, 434 (S.D.N.Y. 2018). Plaintiffs’ proposed motion will demonstrate that the intentionally

³ Third Amended Complaint (the “TAC”), Dkt. # 61 (Sept. 7, 2018).

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destroyed MyWebDay data is relevant to several of these elements, including: the materiality of the false statements and omissions; Defendants' scienter; reliance upon the misrepresentations; and loss causation. The intentionally destroyed data is similarly crucial to similar elements of Plaintiffs' state law claims.

III. CONCLUSION

This Court has broad discretion to sanction Defendants for spoliating evidence. *Residential Funding*, 306 F.3d at 107. Any sanction this Court imposes should be designed to: "(1) deter parties from engaging in spoliation; (2) place the risk of an erroneous judgment on the party who wrongfully created the risk; and (3) restore the prejudiced party to the same position [it] would have been in absent the wrongful destruction of evidence by the opposing party." *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999) (internal quotations omitted).

The MyWebData data was "intentionally destroyed" by the Defendants because it contained detailed information regarding the size and scope of the Bribery Scheme, information that is central to Plaintiffs' ability to prove their claims at trial in this action. Accordingly, the appropriate remedy is to put Plaintiffs in the position that they would have been absent Defendants' spoliation by granting an adverse inference against the Defendants regarding the information that they destroyed. Accordingly, Plaintiffs respectfully request leave to file a motion for sanctions against Defendants for spoliation, including an adverse inference related to the intentionally destroyed evidence.

Sincerely,



Karl P. Barth

cc: Steve W. Berman
Victor Hou (via ECF)
Luke A. Barefoot (via ECF)
Thomas Kessler (via ECF)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DOUBLELINE CAPITAL LP, DOUBLELINE
INCOME SOLUTIONS FUND, AND
DOUBLELINE FUNDS TRUST (ON BEHALF OF
ITS: 1) DOUBLELINE CORE FIXED INCOME
FUND SERIES; 2) DOUBLELINE EMERGING
MARKETS FIXED INCOME FUND SERIES; AND
3) DOUBLELINE SHILLER ENHANCED CAPE®
SERIES),

Plaintiffs,

-against-

CONSTRUTORA NORBERTO ODEBRECHT,
S.A., ODEBRECHT ENGENHARIA E
CONSTRUÇÃO S.A. AND ODEBRECHT S.A.,

Defendant.

1:17-cv-4576-GHW

**DEFENDANTS CNO S.A., ODEBRECHT ENGENHARIA E CONSTRUÇÃO S.A. AND
ODEBRECHT S.A. – EM RECUPERAÇÃO JUDICIAL’S RESPONSES AND
OBJECTIONS TO PLAINTIFFS DOUBLELINE CAPITAL LP, DOUBLELINE
INCOME SOLUTIONS FUND, AND DOUBLELINE FUNDS TRUST (ON BEHALF OF
ITS: 1) DOUBLELINE CORE FIXED INCOME FUND SERIES; 2) DOUBLELINE
EMERGING MARKETS FIXED INCOME FUND SERIES; AND 3) DOUBLELINE
SHILLER ENHANCED CAPE® SERIES)’S FIRST SET OF REQUESTS FOR
ADMISSION**

Defendants CNO S.A., Odebrecht Engenharia E Construção S.A. and Odebrecht S.A. –
Em Recuperação Judicial (“Defendants”) hereby respond pursuant to Rules 26 and 36 of the
Federal Rules of Civil Procedure to Plaintiff DoubleLine Capital LP, DoubleLine Income
Solutions Fund and DoubleLine Funds Trust (on behalf of its: 1) DoubleLine Core Fixed Income
Fund Series; 2) DoubleLine Emerging Markets Fixed Income Fund Series; and 3) DoubleLine

Shiller Enhanced Cape® Series) (“Plaintiffs”)’s First Set of Requests for Admission, dated February 28, 2020 (the “Requests”), as follows:

GENERAL OBJECTIONS

Defendants assert the following general objections (the “General Objections”) to the Requests. The General Objections are incorporated into each of the Specific Responses and Objections (each, a “Response” and together, the “Responses”) as set forth below and, therefore, any failure to repeat the General Objections in any Response shall not be deemed a waiver of any General Objection.

The Responses are made to the best of Defendants’ knowledge at the present time, and Defendants explicitly reserve the right to revise, amend, correct, supplement or clarify the Responses, including any objections to the Requests.

1. Defendants object to the Requests, including the Definitions and Instructions, to the extent they seek to impose obligations beyond those imposed by the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, this Court’s rules or orders or any other applicable law or rule (collectively, the “Governing Rules”). In responding to these Requests, Defendants will comply with the procedures and requirements of the Governing Rules.

2. Defendants object to the Requests, including the definitions and instructions, to the extent that they seek information already in Plaintiffs’ possession, custody or control, or which is otherwise already available to Plaintiffs.

3. Defendants object to the Requests to the extent they seek information previously admitted in the Rule 11 plea agreement with the United States of America, filed in the action *United States v. Odebrecht, S.A.*, No. 16-cr-643 (E.D.N.Y.) (the “Plea Agreement”), leniency or

similar agreements with other governmental authorities, and in Defendants' Answer to Plaintiffs' Third Amended Complaint (ECF No. 106, the "Answer").

4. Defendants object to the Requests to the extent they seek information subject to confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law.

5. Defendants object to the Requests as premature given that this action is still in its early stages, and to the extent the Requests seek information relating to issues that may be resolved through further discussions between the parties or through stipulations as have been proposed by Defendants.

6. Defendants object to the Requests to the extent they seek information that is not within Defendants' possession, custody or control.

7. Defendants object to the Requests to the extent they seek information that cannot be located by Defendants after reasonably diligent inquiry, are readily available from public sources, or are available to Plaintiffs from another source or the information they seek can be addressed by other means that are more convenient, more appropriate, less burdensome, or less expensive.

8. Except where Defendants expressly admit otherwise, Defendants reserve all objections, including, but not limited to, relevance, authenticity, competency, privilege, materiality, and admissibility, of any Document, information, or testimony related to the Requests.

OBJECTIONS TO DEFINITIONS

1. Defendants object to the Definitions to the extent they seek to impose obligations in excess of those required by the Governing Rules.

2. Defendants object to the definitions of “You” and “Your” to the extent that they purport to obligate Defendants to respond on behalf of their “subsidiaries, affiliates, parents, partners, holding companies, divisions, departments, operating units and other subdivisions; their present and former directors, officers, employees, agents, attorneys, consultants and representatives; and all [persons] either acting or purporting to act on behalf of the above.”

Defendants further object to the extent the definitions purport to obligate Defendants to respond on behalf of their attorneys to the extent such definition would seek to invade the attorney-client privilege, the attorney work-product immunity, or any other applicable privilege or protection from discovery. Defendants will define “You” and “Your” to mean only the Defendants named in this action.

OBJECTIONS TO INSTRUCTIONS

1. Defendants object to the Instructions to the extent they seek to impose obligations in excess of those required by the Governing Rules.

2. Defendants object to Instruction 4(a) regarding the construction of the terms “all” and “each” as overbroad, vague, ambiguous and unduly burdensome to the extent it imposes duties on Defendants that differ from or exceed those imposed by the Governing Rules. In responding to these Requests, Defendants will construe the terms “all” and “each” in their ordinary use as context requires.

3. Defendants object to Instruction 4(b) regarding the construction of the terms “and” and “or” as overbroad, vague, ambiguous and unduly burdensome to the extent it imposes

duties on Defendants that differ from or exceed those imposed by the Governing Rules. In responding to these Requests, Defendants will construe the terms “and” and “or” in their ordinary use as context requires.

4. Defendants object to Instruction 4(e) regarding the construction of singular and plural forms of words as overbroad, vague, ambiguous and unduly burdensome to the extent it imposes duties on Defendants that differ from or exceed those imposed by the Governing Rules. In responding to these Requests, Defendants will construe singular forms of words as singular, and plural forms of words as plural.

RESPONSES AND SPECIFIC OBJECTIONS

In addition to the foregoing General Objections, which Defendants incorporate in each of the objections and responses set forth below, Defendants make the following Responses:

REQUEST FOR ADMISSION NO. 1

ADMIT that the DIVISION OF STRUCTURED OPERATIONS kept track of payments made pursuant to the BRIBERY SCHEME through the use of the MyWebDay computer system.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs’ possession.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 2

ADMIT that the MyWebDay computer system was used for making payment requests, processing payments, and generating and populating spreadsheets that tracked and internally accounted for payments made pursuant to the BRIBERY SCHEME.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 3

ADMIT that, in or about January 2016, after Lava Jato and investigations by United States and Swiss authorities were known to Odebrecht, employees and/or agents of Odebrecht (or one of the other Defendants in this action) intentionally caused the destruction of the physical encryption keys needed to access the MyWebDay system.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession. Defendants also object to this Request on the basis that Plaintiffs' inclusion of the phrase "or one of the other Defendants" renders this Request vague, ambiguous and/or unintelligible in this context, and further renders this Request as entirely duplicative of Requests No. 4 and No. 5.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 4

ADMIT that, in or about January 2016, after Lava Jato and investigations by United States and Swiss authorities were known to CNO, employees and/or agents of CNO (or one of the other Defendants in this action) intentionally caused the destruction of the physical encryption keys needed to access the MyWebDay system.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession. Defendants also object to this Request on the basis that Plaintiffs' inclusion of the phrase "or one of the other Defendants" renders this Request vague, ambiguous and/or unintelligible in this context, and further renders this Request as entirely duplicative of Requests No. 3 and No. 5.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 5

ADMIT that, in or about January 2016, after Lava Jato and investigations by United States and Swiss authorities were known to OEC, employees and/or agents of OEC (or one of the other Defendants in this action) intentionally caused the destruction of the physical encryption keys needed to access the MyWebDay system.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of

facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession. Defendants also object to this Request on the basis that Plaintiffs' inclusion of the phrase "or one of the other Defendants" renders this Request vague, ambiguous and/or unintelligible in this context, and further renders this Request as entirely duplicative of Requests No. 3 and No. 4.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 6

ADMIT that the MyWebDay system contained evidence related to the BRIBERY SCHEME.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 7

ADMIT that, as the result of the actions ADMITTED in Requests for Admissions 3 through 5, above, significant evidence from the MyWebDay system was rendered inaccessible.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer and therefore is already in Plaintiffs' possession.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 8

ADMIT that, as the result of the actions ADMITTED in Requests for Admissions 3 through 5, above, significant evidence from the MyWebDay system cannot be produced to Plaintiffs in this action.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

In addition to the foregoing General Objections, Defendants object to this Request as duplicative and unduly burdensome insofar as it seeks information that is entirely duplicative of facts previously admitted in the Plea Agreement and the Answer therefore is already in Plaintiffs' possession. Defendants further object to this Request to the extent that it implies or assumes that any of the "significant evidence" referenced therein would be relevant or otherwise discoverable in this action.

Subject to and without waiving these Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 9

ADMIT that, prior to or during 2009, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 9

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 10

ADMIT that, prior to or during 2010, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 10

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 11

ADMIT that, prior to or during 2011, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 11

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 12

ADMIT that, prior to or during 2012, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 12

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 13

ADMIT that, prior to or during 2013, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 13

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 14

ADMIT that, prior to or during 2014, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 14

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 15

ADMIT that, prior to or during 2015, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 15

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 16

ADMIT that, prior to or during 2016, MASCARENHAS warned MARCELO ODEBRECHT that the escalating nature of the BRIBERY SCHEME posed significant risk to Odebrecht and/or CNO of discovery by Brazilian or foreign regulators.

RESPONSE TO REQUEST FOR ADMISSION NO. 16

In addition to the foregoing General Objections, Defendants object to this Request as it seeks information that is not within the possession, custody or control of Defendants.

Subject to and without waiving these Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 17

ADMIT that, in or about 2014, MARCELO ODEBRECHT and/or employees involved in the DIVISION OF STRUCTURED OPERATIONS took steps to destroy evidence of criminal activities.

RESPONSE TO REQUEST FOR ADMISSION NO. 17

Subject to and without waiving the foregoing General Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 18

ADMIT that, as the result of the conduct admitted pursuant to Request for Admission No. 17, above, this evidence is unavailable to Plaintiffs in this action.

RESPONSE TO REQUEST FOR ADMISSION NO. 18

In addition to the foregoing General Objections, Defendants object to this Request to the extent that it assumes the statement set forth in Request for Admission No. 17 is admitted to. Defendants further object to this Request on the basis that Plaintiffs' use of the term "this evidence" is vague, ambiguous and/or unintelligible in this context, and Defendants will accordingly respond with the understanding that "this evidence" means the unavailable "evidence of criminal activities" referenced in the prior Request No. 17. Defendants also object to this Request to the extent that it implies or assumes that any of the "evidence" referenced therein would be relevant or otherwise discoverable in this action.

Subject to and without waiving the foregoing Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 19

ADMIT that "Odebrecht Employee 1" referred to in the STATEMENT OF FACTS is MARCELO ODEBRECHT.

RESPONSE TO REQUEST FOR ADMISSION NO. 19

Subject to and without waiving the foregoing General Objections, Defendants state as follows: Admit.

REQUEST FOR ADMISSION NO. 20

ADMIT that the volume of bribes paid pursuant to the BRIBERY SCHEME from 2001 through 2016 was significantly in excess of \$800 million.

RESPONSE TO REQUEST FOR ADMISSION NO. 20

In addition to the foregoing General Objections, Defendants object to this Request on the basis that Plaintiffs' use of the term "significantly" is vague, ambiguous and/or unintelligible in this context. Defendants further object to this Request on the basis that it seeks information which may be addressed by alternative, less burdensome means, including, without limitation, the fact stipulation that Defendants have proposed to Plaintiffs regarding the volume of bribes. Defendants also object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants object to this Request to the extent it requires Defendants to take any position contrary to its admission in the Plea Agreement, paragraph 20 of the Statement of Facts, that "[d]uring the relevant time period, Odebrecht, together with its co-conspirators, paid approximately \$788 million in bribes in association with more than 100 projects in twelve countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela."

Subject to and without waiving the foregoing Objections, Defendants state as follows:
Deny.

REQUEST FOR ADMISSION NO. 21

ADMIT that the volume of bribes paid pursuant to the BRIBERY SCHEME from 2001 through 2016 was in excess of \$1 billion.

RESPONSE TO REQUEST FOR ADMISSION NO. 21

In addition to the foregoing General Objections, Defendants object to this Request on the basis that Plaintiffs' use of the term "significantly" is vague, ambiguous and/or unintelligible in this context. Defendants further object to this Request on the basis that it seeks information which may be addressed by alternative, less burdensome means, including, without limitation, the fact stipulation that Defendants have proposed to Plaintiffs regarding the volume of bribes. Defendants also object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants object to this Request to the extent it requires Defendants to take any position contrary to its admission in the Plea Agreement, paragraph 20 of the Statement of Facts, that "[d]uring the relevant time period, Odebrecht, together with its co-conspirators, paid approximately \$788 million in bribes in association with more than 100 projects in twelve countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela."

Subject to and without waiving the foregoing Objections, Defendants state as follows:
Deny.

REQUEST FOR ADMISSION NO. 22

ADMIT that the volume of bribes paid pursuant to the BRIBERY SCHEME from 2001 through 2016 was in excess of \$2 billion.

RESPONSE TO REQUEST FOR ADMISSION NO. 22

In addition to the foregoing General Objections, Defendants object to this Request on the basis that Plaintiffs' use of the term "significantly" is vague, ambiguous and/or unintelligible in this context. Defendants further object to this Request on the basis that it seeks information which may be addressed by alternative, less burdensome means, including, without limitation, the fact stipulation that Defendants have proposed to Plaintiffs regarding the volume of bribes. Defendants also object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants object to this Request to the extent it requires Defendants to take any position contrary to its admission in the Plea Agreement, paragraph 20 of the Statement of Facts, that "[d]uring the relevant time period, Odebrecht, together with its co-conspirators, paid approximately \$788 million in bribes in association with more than 100 projects in twelve countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela."

Subject to and without waiving the foregoing Objections, Defendants state as follows:
Deny.

REQUEST FOR ADMISSION NO. 23

ADMIT that the volume of bribes paid pursuant to the BRIBERY SCHEME from 2001 through 2016 was in excess of \$3 billion.

RESPONSE TO REQUEST FOR ADMISSION NO. 23

In addition to the foregoing General Objections, Defendants object to this Request on the basis that Plaintiffs' use of the term "significantly" is vague, ambiguous and/or unintelligible in this context. Defendants further object to this Request on the basis that it seeks information which may be addressed by alternative, less burdensome means, including, without limitation, the fact stipulation that Defendants have proposed to Plaintiffs regarding the volume of bribes. Defendants also object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants object to this Request to the extent it requires Defendants to take any position contrary to its admission in the Plea Agreement, paragraph 20 of the Statement of Facts, that "[d]uring the relevant time period, Odebrecht, together with its co-conspirators, paid approximately \$788 million in bribes in association with more than 100 projects in twelve countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela."

Subject to and without waiving the foregoing Objections, Defendants state as follows:
Deny.

REQUEST FOR ADMISSION NO. 24

ADMIT that the allegations regarding the bribes paid in paragraph 75 of the Third Amended Complaint in this action are accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 24

In addition to the foregoing General Objections, Defendants object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants further object to this Request to the extent it seeks information that is not within Defendants' possession, custody or control.

Subject to and without waiving the foregoing Objections, Defendants state as follows: Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

REQUEST FOR ADMISSION NO. 25

ADMIT that the allegations regarding the bribes paid in paragraph 76 of the Third Amended Complaint in this action are accurate.

RESPONSE TO REQUEST FOR ADMISSION NO. 25

In addition to the foregoing General Objections, Defendants object to this Request to the extent it would require Defendants to provide information in contravention of confidentiality restrictions or other limitation on its dissemination, including, without limitation, those imposed by applicable leniency or similar agreements with governmental authorities, and/or other applicable law. Defendants further object to this Request to the extent it seeks information that is not within Defendants' possession, custody or control.

Subject to and without waiving the foregoing Objections, Defendants state as follows:
Defendants lack knowledge or information sufficient to form a belief about the truth of this statement.

Dated: March 30, 2020
New York, New York

**CLEARY GOTTLIEB STEEN &
HAMILTON LLP**

/s/ Luke A. Barefoot _____

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