IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Securities and Exchange Commission, Plaintiff, v. Mark A. Jackson et al., Defendants.	Civil Action No. 4:12-cv-00563

DEFENDANT JAMES J. RUEHLEN'S REPLY MEMORANDUM IN FURTHER SUPPORT OF HIS MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM

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I. INTRODUCTION

Despite investigating this case for many years, the SEC concedes in its Opposition that the Complaint does not allege the basic facts of an FCPA claim:

- It does not identify any Nigerian official—by name or even by position—to whom bribes were paid, authorized, or intended.
- It does not identify any duty that was breached or any law that was violated by the unknown Nigerian official recipient(s).
- It does not state what the unknown Nigerian officials did in exchange for the bribes or how those actions were intended to assist Noble in obtaining or retaining business.

These structural flaws cannot be cured through discovery.

First, without alleging the identity of the officials, facts describing their duties and obligations under Nigerian law, and facts showing how Mr. Ruehlen allegedly intended to corrupt them, the SEC's conclusory claims only raise the "sheer possibility that the defendant has acted unlawfully," which is insufficient to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Second, because the plain language of the FCPA permits payments to foreign officials in order to secure routine governmental actions, 15 U.S.C. § 78dd-1(b), the Complaint only alleges conduct that is "not only compatible with, but indeed [is] more likely explained by, lawful . . . behavior." *Iqbal*, 556 U.S. at 680 (discussing *Twombly*, 550 U.S. at 567). "The court should not strain to find inferences favorable to the plaintiffs or accept conclusory allegations, unwarranted deductions, or legal conclusions." *Harvey v. Montgomery Cnty.*, No. 11-cv-1815, 2012 WL 1551337, at *5 (S.D. Tex. Apr. 30, 2012) (Ellison, J.) (internal quotation marks omitted).

Third, the Complaint does not meet the standards of notice pleading under Federal Rule of Civil Procedure 8. Mr. Ruehlen is left to guess who was allegedly bribed, the scope of that person's authority, and whether that person violated any Nigerian law. He must also guess

which Noble record he allegedly falsified and which control he allegedly evaded. Accordingly, the Complaint does not provide Mr. Ruehlen the requisite "fair notice of what the . . . claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)), rendering it impossible for him to answer the Complaint, seek discovery, or prepare his defense. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1160-63 (10th Cir. 2007) (noting that Federal Rule of Civil Procedure 8 is intended to "permit[] the defendant sufficient notice to begin preparing its defense").

II. ARGUMENT

A. The Complaint Fails To State A Claim Because The SEC Fails To Identify The Foreign Officials To Whom Bribes Were Allegedly Paid Or Authorized.

The SEC's Opposition ignores the plain language of the FCPA. Although the statute prohibits certain types of payments intended to obtain or retain business by inducing the recipient foreign official to violate his or her official duties or to secure an improper advantage, 15 U.S.C. § 78dd-1(a), it expressly allows payments made to secure a routine governmental action, *id*. § 78dd-1(b), known as the facilitation payment exception. The statute's broad definition of "routine governmental action" explicitly encompasses actions related to "obtaining *permits*, licenses or *other official documents*," "*processing governmental papers*," and "*actions of a similar nature*," *id*. § 78dd-1(f)(3)(A) (emphasis added), and only excludes payments related to "any decision by a foreign official whether, or on what terms to award new business or to continue business with a particular party," *id*. § 78dd-1(f)(3)(B). Thus, the SEC is required to prove that the payments at issue were made to assist in obtaining or retaining business and not to obtain permits or secure other "routine" actions. And to state a claim, therefore, the SEC must plead facts, which, if true, would prove that assertion.

The Complaint only asserts that the defendants authorized a third party to pay a bribe, which, standing alone, does not state an FCPA violation. *See* H.R. Rep. No. 95-640, at 4-5 (1977) (recognizing that the FCPA does not prohibit all "reprehensible" or "corrupt" payments).[1] Without alleging the identity of the foreign officials involved, one cannot know (a) the putative recipient's official responsibilities and duties, (b) how the payment was intended to influence the exercise of those duties, (c) whether the result of that intended influence even could assist Noble in obtaining or retaining business, and (d) whether the action sought was (or was not) a routine governmental action. The SEC's failure to identify any foreign officials is no mere oversight. In its initial written discovery, the SEC confirmed that it does not know the name or title of any Nigerian official to whom bribes were paid or authorized to obtain temporary importation permits ("TIPs") or TIP extensions. *See* Exhibit C, SEC's Response to Ruehlen's Requests for Admission Nos. 7-10. This shortcoming is fatal, because a payment made to a Nigerian official is not prohibited under the FCPA unless the SEC proves that it was made to corruptly influence that official to misuse his or her position in order to assist Noble in obtaining or retaining business and that it is not a facilitation payment.[2] Without basic factual allegations identifying the alleged recipients of bribes, the Court must speculate that they misused or even could misuse their official position to assist Noble in obtaining or retaining business. *Iqbal*, 556 U.S. at 678-79, and *Twombly*, 550 U.S. at 555, forbid such speculation.

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1 *See also* Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 37 I.L.M. 1, 9 (1998) (noting that facilitation payments are legal under the FCPA, even though they are "generally illegal in the foreign country concerned").

2 The Fifth Circuit case quoted by the SEC to define what constitutes routine governmental action underscores this point by noting that actions that fall within the FCPA's facilitation payment exception are often those "performed by *mid- or low-level foreign functionaries*." (Opp'n at 25 (quoting *United States v. Kay*, 359 F.3d 738, 751 (5th Cir. 2004)) (emphasis added).)

The SEC argues that it need not plead the identity of the recipient. It says that there are no cases "where a court has compelled the government to plead, let alone prove, the specific identity and characteristics of the foreign officials." (Opp'n at 15.) This ignores the *O'Shea* case cited in Mr. Ruehlen's opening brief (Opening Br. 8-9) in which Judge Hughes granted the defendant's motion for an acquittal in a recent FCPA case because the government failed " to connect the payment to *a particular official . . . who can be identified in some reasonable way*." Trial Tr. 248:18-24, *United States v. O'Shea*, No. 09-cr-629 (S.D. Tex. Jan. 16, 2012) (Hughes, J.) (emphasis added). The SEC dismisses this case as "unpersuasive" (Opp'n at 19 n.8) and denounces the Fifth Circuit's clear statement that the identity of the foreign official is an essential element as "dicta" (*id*. at 18 (discussing *United States v. Kay*, 359 F.3d 738, 760 (5th Cir. 2004))), but cannot cite a single instance in which a court has sustained a complaint when the Government failed to identify the foreign officials involved. Further, the SEC's argument is specious because, as detailed in Mr. Ruehlen's opening brief, the Government has specifically identified the involved foreign officials with precision in *every* FCPA enforcement action against an individual that was litigated to judgment. (Opening Br. 9-10 & Ex. B.) This consistent record belies the SEC's claim that it is simply too burdensome for the government to be required to identify the alleged bribe recipients and highlights that it is the SEC that is pursuing a novel and incorrect interpretation of the law. (*See* Opp'n at 18.)

The SEC argues that the FCPA's reference to "any foreign official" supports its claim that it need not identify any foreign official to whom bribes were paid or authorized. (Opp'n at 17.) But the phrase "any" is simply part of the definition of the covered officials. The SEC cites no authority that excuses the need to allege facts—including identity—that show that the official was able to assist Noble in obtaining or retaining business and was not providing routine

governmental services. Likewise, the SEC's reliance on cases interpreting U.S. domestic bribery statutes (*id.* at 17-18, 29 n.15) is misplaced because those statutes prohibit *all* payments to the defined officials, are not limited to payments made to obtain or retain business, and do not exclude corrupt payments made to secure "routine governmental action." *See*, *e.g.*, 18 U.S.C. § 201(b)(1) (prohibiting payments to any public official to influence an official act); § 666(a)(2) (prohibiting payments to state or local officials in connection with any business or transaction).

Similarly, the SEC's claim that it is sufficient to allege that payments were intended for officials of various Nigerian government agencies to improperly obtain TIPs and TIP extensions (Opp'n at 13, 19-21) is unreasonable. One cannot determine whether the actions taken by the unknown officials were a misuse of their positions that assisted Noble in obtaining or retaining business without knowing their identities, titles, level of seniority, lawful duties, or official responsibilities. The Complaint is bereft of such allegations, and, without them, it does not state a claim.

B. Because The Complaint Fails To Plead Facts Showing That The Conduct Is Outside The Facilitation Payment Exception, It Must Be Dismissed.

1. The SEC Must Plead Facts Showing That The Facilitation Payment Exception Does Not Apply.

Without citing any authority, the SEC asserts that the facilitation payment exception is an affirmative defense for which Mr. Ruehlen bears the burden. (Opp'n at 22-24.) This is contrary to the plain language of the FCPA.[3] If Congress had intended the facilitation payment exception to be an affirmative defense, it would have said so. Instead, it did the opposite, expressly codifying an "Exception" for payments to secure routine governmental action in 15 U.S.C.

[3] "When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (internal quotation marks omitted).

§ 78dd-1(b), while simultaneously codifying two "Affirmative defenses" for other types of payments in 15 U.S.C. § 78dd-1(c).[4] In essence, Congress used an exception that negates the prohibited purpose of certain payments to define the scope of conduct prohibited by the FCPA. Where, as here, an "exception is so incorporated with the substance . . . of the offense as to constitute [an element of] the offence . . . then it cannot be omitted in the pleading." *United States v. Cook*, 84 U.S. 168, 176 (1872); *see also United States v. Outler*, 659 F.2d 1306, 1309 (Former 5th Cir. 1981) (holding that an exception is an element of the offense when it "embodies the culpability of the offense").[5] The FCPA's facilitation payment exception falls squarely within this rule because, as described above, it distinguishes permissible bribes paid to secure routine governmental action from impermissible bribes paid to obtain or retain business.

"One who asserts a claim based upon a statute must negat[e], in pleadings and proofs, any *exceptions* in the provision on which the claim is based, whereas a matter in a *proviso* [an affirmative defense] can be left for the adversary as a defensive matter." 1A Sutherland Statutory Construction § 21:11 (7th ed. 2011). The cases cited by the SEC (*see* Opp'n at 23) are "proviso" cases that interpret statutes that—unlike the FCPA—were drafted without expressly differentiating between exceptions and affirmative defenses and instead have provisos whose

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[4] The Conference Report shows that the House originally sought to create an affirmative defense for facilitation payments, but ultimately agreed instead to the Senate's proposal to codify an exception for such payments. *See* H.R. Conf. Rep. No. 100-576, at 921 (1988), *reprinted in* U.S.C.C.A.N. 1547, 1954-55.

[5] In contrast, affirmative defenses provide "circumstances of justification, excuse or alleviation," but do not "serve to negative [a] fact[] of the crime." *Patterson v. New York*, 432 U.S. 197, 202, 207 (1977) (internal quotation marks omitted). In *SEC v. Ralston Purina Co.*, 346 U.S. 119 (1953), the Supreme Court did not create a new rule of pleading exceptions under the securities laws. It simply held that, because "the Securities Act *nowhere defines the scope* of § 4(1)'s private offering exemption," the defendant bears the burden of proving entitlement to the exception by showing that there was no public offering. *Id*. at 122, 126 (emphasis added).

application turns on facts that are within the knowledge of the defendant.[6] Because the facilitation payment exception defines the scope of the alleged claim, Congress clearly allocated to the SEC the burden of pleading facts showing that the exception does not apply. Thus, the SEC must plead facts to show that it is more plausible that the payments at issue are illegal bribes rather than permissible facilitation payments.

2. The SEC Fails To Plead Facts Showing That The Payments At Issue Are Outside The Facilitation Payment Exception.

The Complaint alleges that Mr. Ruehlen authorized payments to foreign officials to obtain permits. As noted, the FCPA expressly permits payments (i.e., bribes) to foreign officials for "obtaining permits," "processing governmental papers," and similar conduct. 15 U.S.C. § 78dd-1(f)(3)(A). On its face, the Complaint alleges conduct that is equally consistent with lawful behavior, and it therefore fails to state a claim as a matter of law. *Iqbal*, 556 U.S. at 680.

Notwithstanding the plain language of the statute, the SEC argues that the alleged conduct falls outside the facilitation payment exception because action unlawful under Nigerian law cannot be considered routine governmental action. (Opp'n at 19 n.9, 24-27.) But the exception is specifically intended to allow payments that are illegal under local law in order to secure routine governmental action. *See supra* note 1 and accompanying text. Accordingly, the SEC's unsupported assertion that the creation and processing of false paperwork is *per se* unlawful under Nigerian law (and for that reason is not a routine governmental action) (Opp'n at

[6] In *McKelvey v. United States*, 260 U.S. 353 (1922), the Supreme Court held that a statutory proviso requires a defendant who obstructs access to public land prove that he had a good faith claim of title to the land. Similarly, in *Rosen v. Brookhaven Capital Mgmt., Co., Ltd.*, 194 F. Supp. 2d 224 (S.D.N.Y. 2002), the court ruled that the defendant has the burden of proving that he was not a beneficial owner of stock under a statutory proviso exempting investment advisers who hold stock for the benefit of others with no purpose of influencing control of the issuer. *SEC v. Ralston Purina Co.* does not establish a general rule regarding statutory exceptions to securities laws. *See supra* note 5. In contrast, the FCPA's facilitation payment exception defines the scope of lawful conduct, and Congress specified what *other* conduct falls within the statute's two affirmative defenses.

19 n.9) is irrelevant. Further, nothing in the FCPA prohibits the use of false paperwork.[7] Moreover, the SEC fails to allege any *facts* regarding which Nigerian laws (if any) govern the issuance of TIPs and TIP extensions or any *facts* to support the conclusion that the unnamed officials violated those laws. In truth, the SEC does not know. *See* Exhibit C, SEC's Response to Ruehlen's Requests for Admission Nos. 9-10.

Likewise, the SEC's contention that *any* payment linked to *any* discretionary action falls outside the exception (Opp'n at 24-27) fails because it effectively reads the exception out of the statute. Every action taken by a foreign official involves *some* exercise of discretion.[8] In addition, Congress addressed the role of discretion when it codified the facilitation payment exception by excluding only those discretionary actions linked to "any *decision* by a foreign official . . . to award new business to or to continue business . . . or any action taken by a foreign official involved in the *decision-making process* to encourage a decision to award new business to or continue business." 15 U.S.C. § 78dd 1(f)(3)(B) (emphases added).[9] Even if the

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[7] Because the Complaint only alleges that Noble obtained certain TIPs (and none of the twenty-two TIP extensions described in the Complaint) with false paperwork, the SEC's argument, even if true, would only apply to a limited subset of the conduct alleged in the Complaint, and all claims based on transactions not supported by false paperwork should be dismissed.

[8] For example, a payment to facilitate police protection—a routine governmental action specified in the text of the statute, *see* 15 U.S.C. § 78dd-1(f)(3)—would necessarily be made to influence a police officer to stand on one corner versus another or to respond to one call for assistance before others. And Congress must have foreseen that a corrupt policeman performing a routine function might create false documents to conceal his conduct from his superiors.

[9] Because the language of the statute is clear, there is no need to resort to the legislative history. But even if such resort is necessary, the legislative history selectively quoted by the SEC (Opp'n at 26) supports this notion:

> The Conferees wish to make clear that "ordinarily and commonly performed" actions with respect to permits or licenses would not include those governmental approvals involving an exercise of discretion by a government official *where the actions are the functional equivalent of "obtaining or retaining business for or with, or directing business to, any person."*

H.R. Conf. Rep. No. 100-576, at 921 (1988), *reprinted in* U.S.C.C.A.N. at 1954 (emphasizing the text omitted by the SEC in its Opposition).

Complaint sufficiently alleges that the putative bribes were intended to assist Noble in obtaining or retaining business, nowhere does it allege that payments were made *to influence an official decision* regarding awarding new business to or continuing business with Noble.[10] Because the conduct alleged is equally consistent with that expressly allowed under the facilitation payment exception, the Complaint fails to state a claim. *See Iqbal*, 556 U.S. at 680.

C. The SEC's Application Of The Facilitation Payment Exception As Applied To Mr. Ruehlen Is Unconstitutionally Vague.

The SEC asserts that facilitation payments are allowed only if they are made to secure non-discretionary acts accompanied by accurate documents. But the statute says no such thing. Mr. Ruehlen could not have known that his conduct was prohibited by the FCPA under the SEC's theory, particularly in light of the SEC's allegations showing that Noble senior management either directed or ratified each of the alleged payments. (*See, e.g.*, Compl. ¶¶ 60, 82-83, 89, 93-94, 98, 103-04, 107, 115-16, 124, 127.) Allowing the SEC to proceed under such a novel theory "would result in precisely the kind of 'unfair surprise' against which [Supreme Court cases] have long warned." *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2159 (2012).

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[10] The Complaint makes conclusory assertions that that the payments helped Noble obtain profits, reduce costs, and retain business under existing drilling contracts (*see* Compl. ¶¶ 2, 32), but it alleges no facts to support those claims. *See United States v. Kay*, 359 F.3d at 756, 759-60 (interpreting the business nexus element of an FCPA claim to encompass certain payments, such as those which lead to a radical reduction in taxes or customs duties, under some—but not all—circumstances). This is in sharp contrast to the Bonny Island FCPA cases over which this Court presided, which arose out of a decade-long conspiracy to pay hundreds of millions of dollars to senior Nigerian officials in order to obtain approximately $6 billion worth of contracts. *See* Press Release, U.S. Dep't of Justice, Marubeni Corporation Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay a $54.6 Million Criminal Penalty (Jan. 17, 2012) (describing the series of Bonny Island enforcement actions).

D. The Complaint Fails To Plead Violations Of The FCPA's Accounting Provisions.

The SEC's Opposition studiously refuses to identify the allegedly falsified books and evaded controls. It argues that an unidentified person (but not Mr. Ruehlen) falsely recorded the alleged bribes as legitimate expenses somewhere (Opp'n at 38), but the Complaint fails to allege which written record of the issuer reflects this allegedly false characterization or Mr. Ruehlen's role (if any) in creating that record. Rather, the Complaint "simply re-state[s] the statutory language without supporting allegations," an inadequate form of pleading that leaves Mr. Ruehlen to guess to which document or control the SEC is referring. *See SEC v. BankAtlantic Bancorp, Inc.*, No. 12-cv-60082, 2012 WL 1936112, at *24 (S.D. Fla. May 29, 2012). Although the Complaint references purportedly false invoices received from third parties and allegedly false documentation submitted to others in TIP applications, it nowhere alleges that these were records of the issuer, as the law requires. *See* 15 U.S.C. § 78m(b)(2)(A).

Similarly, the SEC fails to allege that Mr. Ruehlen circumvented any specific internal controls. Merely alleging that he violated some corporate policy fails to show a violation, especially when the SEC also claims that Mr. Ruehlen executed transactions that were authorized or ratified by management (*see, e.g.*, Compl. ¶¶ 60, 82-83, 89, 93-94, 98, 103-04, 107, 115-16, 124, 127), *see* 15 U.S.C. § 78m(b)(2)(B)(i), (iii), and makes no claim that Noble's financial statements were not prepared accurately and in accordance with GAAP, *see* 15 U.S.C. § 78m(b)(2)(B)(ii), or that Noble's assets were not compared at reasonable intervals, *see* 15 U.S.C. § 78m(b)(2)(B)(iv).

E. The Majority Of The SEC's Allegations Fall Outside The Statute Of Limitations.

Mr. Ruehlen agrees with and hereby incorporates the arguments set forth in Section V of Defendant Mark A. Jackson's Reply Memorandum Of Law In Support Of His Motion To Dismiss.

DATED this 13th day of July, 2012.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MARK A. JACKSON and JAMES J. RUEHLEN, Defendants.	Case No. 4:12-cv-00563

PLAINTIFF'S RESPONSES AND OBJECTIONS TO DEFENDANT JAMES J. RUEHLEN'S FIRST REQUESTS FOR ADMISSION TO PLAINTIFF

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and LR26.2 of the United States District Court for the Southern District of Texas, plaintiff, the Securities and Exchange Commission ("SEC"), responds and objects to Defendant James J. Ruehlen's ("Defendant") First Requests for Admission ("First Requests to Admit") to Plaintiff as follows:

GENERAL RESPONSE AND OBJECTIONS

The following objections and qualifications are incorporated into the following responses to specific requests to admit and are deemed continuing as to each, applying to each and every request to admit. To the extent that the SEC responds individually to a request to admit below, with same, similar or additional objections, it does not waive these general objections nor limit them, nor concede that the admission requested or provided is relevant. These admissions, responses and objections are based on SEC counsels' current knowledge and reasonable belief, and the information known to counsel or that counsel can readily obtain. Additionally, discovery is ongoing. The SEC reserves the right, but does not assume the obligation, to amend,

Pages omitted

Government of Nigeria or any Nigerian Government office. Nor is evidence of the SEC's knowledge of the passing of money to foreign officials relevant to its claims. Subject to and without waiving these objections, the SEC responds that, after reasonable inquiry, it is unaware of any of its officials or employees having firsthand or other similar personal knowledge of "special handling" or "procurement" charges being passed to the Government of Nigeria or to any Nigerian Government officials by Integrated Cargo Network Limited. However, the SEC denies that it lacks evidence of "special handling" or "procurement" charges being passed to the Government of Nigeria or Nigerian Government officials by Integrated Cargo Network Limited.

Request for Admission No. 7:

Admit that the SEC cannot identify any particular foreign official that received any payments funded by the "special handling" charges or "procurement" charges described in the Complaint.

Response to Request for Admission No. 7:

The SEC specifically objects to this request to admit for the reasons stated in the SEC's General Objections 1 through 7, above. It further objects to this request on relevancy grounds, since the SEC is not required to prove its claims by identifying (presumably by name) any "particular" foreign official that received payments. Nor is evidence of the SEC's knowledge of the passing of money to foreign officials relevant to its claims. In addition, even assuming the relevancy of this subject, with discovery at an early stage, the SEC objects that seeking an admission of the SEC's ability at this stage to "identify" (presumably by name) any "particular" official is not reasonably calculated to lead to any admissible evidence or admission at trial. Subject to and without waiving these objections, the SEC responds that, based on reasonable

inquiry, the information that it currently knows or can readily obtain is insufficient to enable it to admit or deny that it cannot identify any particular foreign official described in this request.

Request for Admission No. 8:

Admit that the SEC cannot identify any foreign official by title that received any payments funded by the "special handling" charges or "procurement" charges described in the Complaint.

Response to Request for Admission No. 8:

The SEC specifically objects to this request to admit for the reasons stated in the SEC's General Objections 1 through 7, above. It further objects to this request on relevancy grounds, since the SEC is not required to prove its claims by identifying any foreign official "by title" that received any payments. Nor is evidence of the SEC's knowledge concerning the passing of money to foreign officials relevant to its claims. In addition, even assuming the relevancy of this subject, with discovery at an early stage, the SEC objects that seeking an admission of the SEC's ability at this stage to "identify" "by title" any foreign official that received payments is not reasonably calculated to lead to any admissible evidence or admission at trial. Subject to and without waiving these objections, the SEC responds that, based on reasonable inquiry, the information that it currently knows or can readily obtain is insufficient to enable it to admit or deny that it cannot identify by title any foreign official described in this request.

Request for Admission No. 9:

Admit that the SEC does not know to what extent NCS officials are able to exercise discretion to grant, deny, or delay TIPs

Response to Request for Admission No. 9:

The SEC specifically objects to this request to admit for the reasons stated in the SEC's General Objections 1 through 7, above. It further objects to this request on relevancy grounds. An admission or other evidence of the SEC's knowledge concerning this topic is not relevant to the claims or defense in this lawsuit, nor likely to lead to admissible evidence or an admissible admission for trial. The SEC also objects to the extent that this request seeks the SEC to confirm or deny protected legal analysis and attorney work product. Subject to and without waiving these objections, the SEC admits that, based on reasonable inquiry, it is unaware of any of its officials or employees having firsthand or similar personal knowledge of the extent to which NCS officials are able to exercise discretion to grant, deny, or delay TIPs. Otherwise, denied.

Request for Admission No. 10:

Admit that the SEC does not know to what extent NCS officials are able to exercise discretion to grant, deny, or delay TIP extensions

Response to Request for Admission No. 10:

The SEC specifically objects to this request to admit for the reasons stated in the SEC's General Objections 1 through 7, above. The SEC also restates and incorporates its objections to Admission No. 9. Subject to and without waiving these objections, the SEC admits that, based on reasonable inquiry, it is unaware of any of its officials or employees having firsthand or similar personal knowledge of the extent to which NCS officials are able to exercise discretion to grant, deny, or delay TIP extensions. Otherwise, denied.

Request for Admission No. 11:

Admit that SEC has no document in which any Noble employee refers to "special handling" or "procurement" charges as a "bribe" or as "bribes".

Pages omitted