UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO: 21-20431-CIV-SCOLA/GOODMAN

DIEGO DAMIAN VERDEJO,
ETERTIN S.A., AND
IVEO LATINAMERICAN TRADING LLC,

Plaintiffs,

v.

HP INC.,
GONZALO GIAZITZIAN,
JUAN MANUEL CAMPOS,
CARLOS HUERGO,
JAVIER ALBERTO MAZZEO,
ERNESTO BLANCO,
and SERGIO VERNIER,

Defendants.
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PLAINTIFFS' RESPONSE TO JOINT MOTION TO DISMISS

Plaintiffs DIEGO DAMIAN VERDEJO, ETERTIN, S.A., AND IVEO LATINAMERICAN TRADING LLC ("Plaintiffs"), by and through the undersigned attorneys, hereby respond to Defendants' Joint Motion to Dismiss (DE 49). As part of a 2014 settlement with the Department of Justice and Securities and Exchange Commission relating to numerous acts of bribery and corruption committed by its foreign subsidiaries, Defendant HP, Inc. ("HP") agreed to pay $108 million in fines and publicly committed "to enhancing their compliance programs and internal controls." Cmplt. ¶¶ 2-5. Exh. "A," Non-Prosecution Agreement referenced in ¶ 5. Given this commitment, it is astonishing for Defendants to argue that HP did not know about the alleged widespread extortion scheme described in the Complaint. Rather, as Plaintiffs allege, HP not only knew about the scheme, but HP knowingly joined in it and benefited from it.

I. DEFENDANTS IMPROPERLY SUBSTITUTE THEIR OWN FACTS FOR THE FACTS ALLEGED IN THE COMPLAINT

Courts construe the complaint in the light most favorable to the plaintiff when evaluating a motion to dismiss and accept all factual allegations as true. *Cisneros v. Petland*, 972 F.3d 1204, 1210 (11th Cir. 2020). "In considering a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6), the Court's analysis is generally limited to the four corners of the complaint and the attached exhibits." *Nelson v. Purple Lotus S. Beach, LLC*, No. 18-21136-CIV, 2018 WL 3475105, at *1 (S.D. Fla. Jul. 18, 2018) (citing *Grossman v. Nationsbank*, 225 F.3d 1228, 1231 (11th Cir. 2000)).

Defendants do not limit themselves to the facts alleged; rather, they impermissibly seek to substitute their own facts. The most glaring example of this is Defendants' insinuation that Plaintiff Etertin's credit notes already diminished substantially even before Plaintiff Verdejo complained of the extortion scheme to Defendant Juan Manuel Campos, and Verdejo's complaint was "apparently in response" to the dwindling credit notes. Joint MTD (DE 49) at 4. Defendants also

falsely claim that the Complaint alleges Verdejo demanded that Campos restore the Etertin credit notes to earlier levels and, when they were not increased, Verdejo went to HP directly. *Id*.

As one of Plaintiffs' primary injuries was the withdrawal and withholding of millions of dollars' worth of credit notes, which forced Plaintiff Etertin to overpay HP Inc. in the United States for HP product, *see* Cmplt. ¶ 102, Defendants are hoping their "alternative facts" decouple the issuance of credit notes from the extortion scheme. But Defendants' version of the events contradict the facts alleged. First, the Complaint does *not* allege that Verdejo complained to Campos about diminishing credit note levels or asked Campos to restore the notes. *Compare* Cmplt. ¶¶ 17-18 to Joint MTD at 4. Rather, the Complaint alleges that Verdejo complained to Campos about the extortion payments, and that HP, Campos, and others retaliated by withdrawing and withholding the credit notes. Cmplt. ¶ 17. Second, Plaintiffs alleged that Campos caused HP Inc. to retaliate against Etertin by withholding the credit notes *after* Verdejo complained about the extortion, and that HP "had no reason to withhold the credit notes other than to retaliate for Verdejo's decision not to continue the extortion payments." *Id*. ¶¶ 80, 81. The value of credit notes issued to Etertin before and after the complaint starkly shows the cause and effect of Verdejo's complaint to Campos. *See id*. ¶¶ 96, 97. Plaintiffs have properly pled that Defendants' RICO violations caused the loss of credit notes.

Defendants next improperly claim that Plaintiffs alleged that HP was not notified of the kickback scheme until after the payments had ended in June 2017. Joint MTD at 16. First, Plaintiffs neither allege nor concede that the first time HP learned of the extortion was after Verdejo ended the extortion payments in June 2017. To the contrary, Plaintiffs alleged that HP knew about and benefited from the extortion scheme and allowed it to continue: "Defendant HP Inc. knowingly allowed HP Argentina and the Individual Defendants to use the credit notes that Argentine

distributors of HP's products, like Plaintiffs, needed to survive in the market, to exert control over them" and "HP Inc. benefited financially from the sale of HP products in Argentina and allowed the Individual Defendants to wield this authority over Plaintiffs any way they wanted, including extortion, as long as HP's products continued to be sold in Argentina." Cmplt. ¶ 108. Plaintiffs also alleged that five of the six Individual Defendants received extortion money from the sixth, Giazitzian, and "used their authority and power and agreed with HP Inc. to grant credit notes and other financial incentives to those distributors who would pay them kickbacks." *Id.* ¶ 111. Plaintiffs' allegations, which must at this stage be taken as true, underscore that HP not only knew about the extortion as it was happening, but also allowed it to continue because they stood to benefit from it, and did.

As Plaintiffs allege, HP agreed to "enhanc[e] their compliance programs and internal controls" after reaching a 2014 settlement with DOJ to ensure that their subsidiaries, such as HP Argentina, were not engaging in illegal activities such as extortion or bribery. *Id.* ¶¶ 2-7. Because HP's agreement with DOJ required it to enhance its compliance program and monitor the activities of its foreign subsidiaries from 2014 on, they undoubtedly detected the existence of the credit note/extortion scheme. Through the discovery process, Plaintiffs will seek to identify specific instances of HP executives' and employees' knowledge and acquiescence to the illicit scheme.

Defendants' other efforts to recast the facts to suit their arguments should be equally rejected. For example, in a footnote on page 4, Defendants contends that emails between Verdejo and Defendant Gonzalo Giazitzian do not include threats but "show that Verdejo was a willing participant" and that an email showing how another distributor did not receive credit notes do not support Plaintiffs' allegation of extortion. Joint MTD at 4, n.4. However, these emails do not undermine Plaintiffs' allegations that Giazitzian and others made extortive threats. Cordial

conversions are not inconsistent with extortion. *See, e.g.*, *United States v. Rivera Rangel*, 396 F.3d 476, 484 n.7 (1st Cir. 2005) (citing *United States v. Rastelli*, 551 F.2d 902, 905 (2d Cir. 1977)) ("[t]he fact that relations between the victims and the extorters were often cordial is not inconsistent with extortion"). All of HP's "alternative facts"[1] must be disregarded at this stage and, construing the allegations in the Complaint in the light most favorable to Plaintiffs, this Court should find that Plaintiffs have properly pled facts setting forth their causes of action.

Plaintiffs will address HP's legal issues in turn.

II. THE STATUTE OF LIMITATIONS BEGAN TO RUN ON FEBRUARY 10, 2017, WHEN PLAINTIFFS FIRST SUFFERED A DOMESTIC INJURY

Defendants argue that Plaintiffs did not file their Complaint within the four-year statute of limitations because the extortive conduct began in 2010. Defendants correctly point out that the statute of limitations begins to run "when the injury was or should have been discovered." Joint MTD at 10, quoting *Lehman v. Lucom,* 727 F.3d 1326, 1330 (11th Cir. 2013). And as Defendants point out in another section of their memorandum, a private RICO plaintiff must allege and prove a *domestic* injury to its business or property to have statutory standing. Joint MTD at 7. Statutes of limitations do not begin to run until plaintiffs acquire standing to sue. *See, e.g.*, *United States v. Dearborn Ref. Co.*, 777 F. Supp. 2d 1077, 1081 (E.D. Mich. 2011). Taken together, the four-year statute of limitations for a civil RICO claim begins to run when a plaintiff suffers a domestic injury and therefore obtains statutory standing to bring the RICO claim.

Plaintiffs allege that they did not suffer any domestic injury until February 10, 2017, when Defendant Giazitzian made an extortionate demand that Etertin send a payment to Giazitzian's

[1] Besides the "alternative facts" described above, Defendants also improperly assert that the kickback scheme lasted six years, Joint MTD at 1, even though the Complaint alleges that the scheme is ongoing as to other Argentine distributors. Cmplt. ¶¶ 101, 103, 109, 112.

bank account in the United States. Cmplt. ¶ 117. This was the first time Plaintiffs suffered an injury in the United States. Plaintiffs filed their Complaint on February 1, 2021, within the applicable four-year statute of limitations. Thus, the Complaint is not time-barred.

III. PLAINTIFFS ADEQUATELY PLED A PATTERN OF RACKEETERING ACTIVITY

Defendants next argue that the Complaint should be dismissed because Plaintiffs failed to allege that the defendants committed more than one predicate act. Joint MTD at 11–12. This is simply inaccurate. Plaintiffs have adequately alleged that the members of the RICO enterprise engaged in more than two predicate acts: multiple violations of the Hobbs Act (18 U.S.C. § 1951); Travel Act (18 U.S.C. § 1952); money laundering statutes (18 U.S.C. §§ 1956, 1957); and aiding and abetting the commission of these acts under 18 U.S.C. § 2. Cmplt. ¶¶ 116–124. Plaintiffs alleged that Defendant Campos committed multiple predicate acts including (1) money laundering, *id.* ¶¶ 54, 58, 74, 75, 119, 126; (2) extortion, *id.* ¶¶ 77–78, 80, 96, 119, 126;[2] (3) and aiding and abetting the commission of these acts[3] by counseling Defendant Giazitzian to continue making the

[2] Withdrawal and withholding of credit notes, whether intended to compel payment or in retaliation for refusal to meet the extortionate demands, constitutes extortion. *See, e.g.*, *United States v. Bagaric*, 706 F.2d 42, 57–58 (2d Cir. 1983) ("The core of the enterprise was the commission of more than fifty acts of the classic economic crime of extortion, and many of the violent crimes perpetrated were in aid of the extortion scheme. They were carried out either to compel payment *or in retaliation for refusal to meet appellants' extortionate demands."*) (emphasis added), *abrogated on other grounds by Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S. Ct. 798 (1994).

[3] *See, e.g.*, *United States v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 793 F. Supp. 1114, 1134 (E.D.N.Y. 1992) ("because Section 2 provides that an aider and abettor will be treated as a principal, '[a] defendant's aiding and abetting the commission of a predicate act listed in Section 1961(1)(B) may constitute a predicate act itself'"); *Muscletech Research & Dev., Inc. v. E. Coast Ingredients, LLC*, No. 00-CV-0753, 2004 WL 941815, at *21 (W.D.N.Y. Mar. 25, 2004) (aiding and abetting an indictable offense under Section 1961 constitutes a predicate act); *In re Trilegiant Corp., Inc.*, 11 F. Supp. 3d 132, 141 (D. Conn. 2014) (finding that because mail and wire fraud are indictable offenses, the aiding and abetting the commission of those acts are "by definition a racketeering activity under RICO.").

extortionate demands to receive his share of the payments, *id.*; *see also* ¶¶ 108, 120. Likewise, Defendant Huergo was alleged to have committed multiple acts including (1) extortion, *id.* ¶¶ 46, 110. 119, 126; (2) money laundering, *id.* ¶¶ 54, 58, 119, 126; and (3) aiding and abetting the commission of these acts in furtherance of the scheme alleged. *Id.* Defendant Blanco was similarly alleged to have committed (1) money laundering, *id.* ¶¶ 54, 58, 110, 119; and (2) aiding and abetting co-Defendants' predicate acts. *Id.* and ¶ 120.

Notably, Plaintiffs allege that HP retaliated more than just once: HP first withheld credit notes in 2017 after Verdejo complained about the extortion to Defendant Campos, HP then continued to withhold credit notes throughout 2017-2019 in repeated efforts to either "convince Plaintiffs to resume the extortionate payments or serve as an example for the remaining distributors," who did have credit notes at their disposal. Cmplt. ¶¶ 97, 100, 101, 103. Finally, Plaintiffs alleged that HP knowingly aided and abetted the Individual Defendants' predicate acts. *Id*. ¶ 120. Without HP's aiding and abetting of the Individual Defendants' conduct, the Individual Defendants would not have been able to extort money from Plaintiffs and share unlawful proceeds among themselves. *See Bank Brussels Lambert v. Credit Lyonnais (Suisse) S.A*., No. 93-CIV-6876, 2000 WL 1694322, at *5 (S.D.N.Y. Nov. 13, 2000) ("aiding and abetting the violation of § 1344 [an indictable predicate act under Section 1961(1)] is a cognizable predicate offense under RICO"). Thus, Defendants' position that "precious little is alleged with respect to the participation of the Defendants" is unavailing. Joint MTD at 12.

IV. PLAINTIFFS SUFFICIENTLY ALLEGE THAT DEFENDANTS' "OPERATED OR MANAGED" THE ENTERPRISE'S AFFAIRS

Defendants contend that Plaintiffs fail to allege that any of the Defendants had a role in directing or making decisions for the RICO enterprise's affairs. Joint MTD at 13. However, "RICO liability is not limited to those with primary responsibility for the enterprise's affairs," but also

extends to all persons who had "some part in directing the enterprise's affairs." *See Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993); *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1285 (11th Cir. 2006) *abrogated on other grounds as recognized* in *Simpson v. Sanderson Farms, Inc*., 744 F.3d 702, 714–15 (11th Cir. 2014) (finding that plaintiff sufficiently alleged that defendant had "some part in directing" the affairs of the enterprise). Each Defendant had some part in directing the enterprise's affairs. Defendant Huergo (along with co-Defendants Giazitzian and Mazzeo) initially demanded the extortionate payments. Cmplt. ¶ 46. Defendant HP, knowingly allowed the Individual Defendants to use the credit notes to exert control over distributors like Etertin, including through extortion, and authorized the withholding and withdrawal of the credit notes. *Id.* ¶¶ 103, 108. Defendant Campos caused Defendant HP to withhold the credit notes. *Id.* ¶¶ 77–80, Lastly, Defendant Blanco aided and abetted the extortive demands and played his part in directing the enterprise's affairs by his acceptance of extortion money. *Id.* ¶¶ 54, 58, 110–11.

V. PLAINTIFFS SUFFICIENTLY ALLEGE "DISTINCTIVENESS"

Defendants next posit that the Complaint fails the "distinctiveness" requirement because Plaintiffs alleged that all seven Defendants are both "persons" liable under the Act and collectively constitute the criminal "enterprise." Joint MTD at 14. While Defendants are correct that Section 1962(c) imposes a "distinctiveness" requirement under which the "person" and the "enterprise" must be separate and distinct entities, "the law is equally well-settled that a defendant can be both a person under RICO and also part of the RICO enterprise." *United States v. Goldin Industries, Inc.*, 219 F.3d 1271, 1276 (11th Cir. 2000). This is because a "*collective entity* is something more than the members of which it is comprised . . . even if the enterprise is made up solely of those defendants." *United States v. Nabors*, 45 F.3d 238, 240 (8th Cir. 1995).

Unlike the plaintiffs in *Fernau v. Enchante Beauty Products, Inc.*, No. 18-CV-20866, 2019 WL 5269427 (S.D. Fla. Sept. 17, 2019), Plaintiffs here have done more than just allege an

enterprise in conclusory fashion. First, Plaintiffs allege that Defendants "and *others* constituted an association-in-fact enterprise ("the Enterprise")." *See* Cmplt. ¶ 108 (emphasis added); ¶ 118 ("Defendant HP Inc., Campos, and others unknown at this time then retaliated against Plaintiffs). This type of pleading is permissible in this Circuit. *See, e.g.*, *First S. Farm Credit ACA v. Smith*, No. 7:10-CV-1408, 2010 WL 11562053, at *7 (N.D. Ala. Oct. 25, 2010), *report and recommendation adopted*, No. 7:10-CV-1408, 2011 WL 13229641 (N.D. Ala. Jan. 7, 2011) (finding that plaintiff properly alleged a RICO association-in-fact enterprise consisting of the defendants and others not yet named as defendants and that "the enterprise consisted of the defendants collectively, not individually," where, individually, the defendants were "each persons who ran and benefited from the enterprise."). Plaintiffs then allege that the named defendants are persons under RICO distinct from the Enterprise—consisting of Defendants and *others*—they form.

"A defendant can be both a person under RICO and also part of the RICO enterprise." *United States v. Goldin Industries, Inc.*, 219 F.3d 1271, 1276 (11th Cir. 2000) (finding distinctiveness, even though each corporation had been named as defendants and included in the name of the enterprise, where each corporation was incorporated in a separate state; had ongoing business with a separate customer base; and was free to act independently and advance its own interest contrary to the other); *State Farm Mut. Auto. Ins. Co. v. Lewin, D.C.*, No. 8:20-CV-2428, 2021 WL 1541087, at *11 (M.D. Fla. Apr. 20, 2021) (plaintiffs sufficiently alleged an association-in-fact enterprise distinct from the Defendants where enterprise consisted of same twenty-two named defendants who each played a role in the scheme for a common purpose).[4]

[4] *See also Chambers v. King Buick GMC, LLC*, 43 F. Supp. 3d 575, 590 (D. Md. 2014) (rejecting defendants' argument that the enterprise was "nothing more than the Defendants by a different name" because the plaintiff showed how each Defendant, who individually, had their

This is the case here: Defendants are separate and distinct entities, with each having separate and distinct roles in the Enterprise (consisting of Defendants and others) they formed. The Complaint specifically alleges how, individually, Defendant HP is a corporation that conducts its normal business operations in "personal computer device and imaging and printing products and services," Cmplt. ¶ 26, and how the individual defendants are either employees or former employees of Defendant HP's subsidiary,[5] *Id*. ¶¶ 29, 31-33. Collectively, when these Defendants and others come together to form the Enterprise, they take on a different identity that no longer operates in their normal business operations, but "for the common purpose of unlawfully obtaining money from Plaintiffs and other Argentine distributors of HP products with their consent induced by the wrongful use of threats that if Plaintiffs and other distributors did not pay, Plaintiffs or the other distributors would lose HP's business." *Id*. ¶ 108. As support, Plaintiffs allege how each RICO member had defined roles in the scheme. *Id*. ¶¶ 108, 110-11. Plaintiffs have therefore done more than just allege "solely in conclusory terms, that the Defendants "are culpable persons distinct from the association-in-fact enterprise." *See* Joint MTD at 15.

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own business operations, joined to form an association in fact enterprise that, collectively, took on a different persona for the common purpose of engaging in a fraudulent scheme).

[5] HP no longer appears to acknowledge that the six individual defendants were employed by Defendant HP's *indirect* subsidiary in Argentina as they did in their stricken motion to dismiss. That said, Defendants do acknowledge in their recent motion that the Complaint alleges that "at least two of the Defendants, Huergo and Mazzeo, had long since left HP" in 2017, and that a third of the six Individual Defendants, Giazitzian, "left HP Argentina in April 2016." Joint MTD at 4, 12; *see also* Cmplt, ¶¶ 30, 31 (Huergo at HP Argentina until July 2012, Mazzeo until April 2013). Even if HP no longer stands by its earlier claim that HP Argentina was an indirectly owned subsidiary of HP, the fact remains that, for most of the period of the RICO association-in-fact, three of the seven members were not employed by either HP or its subsidiary. These facts distinguish the case from *Viridis Corp.*, *v. TCA Global Credit Master Fund, LP*, 155 F. Supp. 3d 1344, 1359-60 (S.D.Fla. 2015) (finding complaint failed to establish distinctiveness requirement where individual defendants' acts are alleged to have occurred solely within the scope of their employment by corporation).

VI. PLAINTIFFS HAVE ADEQUATELY ALLEGED A COMMON PURPOSE SHARED WITH OTHER MEMBERS OF THE RICO ENTERPRISE

Defendants next argue that Plaintiffs have not adequately alleged a common criminal purpose that Defendant HP shared with other members of the RICO enterprise. The Complaint, however, alleges that HP and the Individual Defendants shared the purpose of enriching themselves through a "particular criminal course of conduct." *See Cisneros v. Petland*, 972 F.3d 1204, 1212 (11th Cir. 2020). The Complaint alleges that HP knowingly allowed HP Argentina and the Individual Defendants to use the credit notes that Argentine distributors like Plaintiffs needed to survive in the market to exert control over them, and that this control, which included the extortionate use and withholding of the credit notes, allowed HP to benefit financially from the sale of HP products in Argentina. Cmplt. ¶ 108. Even if HP obtained no portion of the extortionate payments, HP still benefited financially from the credit note and extortion scheme where it aided HP in exerting greater control over the distributors selling its product in Argentina. Plaintiffs also alleged that the steps HP took to deny Etertin credit notes was part of the common plan hatched between HP and the Individual Defendants. *Id*. ¶ 111 (Defendants used authority and power and agreed with HP to grant credit notes to distributors who would pay kickbacks and have HP withhold and withdraw credit notes to distributors who refused to pay kickbacks).

Defendants assert that Plaintiffs' allegations focus almost exclusively on Giazitzian as the person who demanded payments and collected funds. Joint MTD at 16. Yet the Complaint specifically alleges how each Defendant played a role in the enterprise: Defendants Huergo and Mazzeo made extortionate demands in 2010; all Individual Defendants received proceeds of the extortion and laundered the money in violation of 18 U.S.C. § 1956 and 1957; Defendant Campos caused Defendant HP Inc. to retaliate by withholding credit notes from Etertin after Plaintiff Verdejo asked Campos to stop the extortion requests at a June 2017 meeting; Defendant Venier

made an extortionate threat to Etertin following Verdejo's June 2017 meeting with Campos that if Etertin did not continue to pay, HP would cut off Etertin's line of credit. Defendant HP agreed with the Individual Defendants to grant credit notes to distributors who would pay kickbacks and have HP withhold and withdraw credit notes to distributors who refused to pay kickbacks, and withdrew and continued with withhold credit notes throughout 2017-2019 from Etertin in an effort to either force Etertin to resume payment or serve as an example for the remaining distributors, who continued to receive discounts that Etertin no longer received, that complaints about the Individual Defendants' illegal conduct would not be tolerated. Cmplt. ¶¶ 46, 77, 79, 80, 92, 95, 100, 101, 103, 111, 119.

Defendants state – incorrectly – that Plaintiffs allege HP was not notified of the kickback scheme until after the payments had ended in June 2017 and that Plaintiffs admitted that any knowledge HP had of the scheme was "after-the-fact," Joint MTD at 16. Plaintiffs made no such admission. Rather, the Complaint alleges that HP Inc. learned about the scheme "*at least as early* as July 2017, and further alleges that HP Inc. knew about the scheme all along. Cmplt. ¶ 108 (alleging HP Inc. knowingly allowed HP Argentina and the Individual Defendants to use the credit notes and allowed the Individual Defendants to use the credit notes, which HP Inc. knew Argentine distributors like Etertin needed to survive in the market, in any way the Individual Defendants wanted, including extortion). Plaintiffs also allege that HP Inc. was on notice at least as early as April 9, 2014 that their foreign subsidiaries were involved in illegal conduct and, as part of a non-prosecution agreement with the DOJ, HP committed to "enhancing their compliance programs and internal controls" to detect and prevent such conduct in the future. Cmplt. ¶¶ 2-6. Given its commitment to the DOJ and the history of criminal conduct by its subsidiaries, HP Inc.

unquestionably knew about the conduct of the Individual Defendants before learning about it from Plaintiffs, and discovery will uncover the precise date and extent of HP Inc.'s knowledge.

Plaintiffs next claim that the alternative inference for HP's withdrawal of the credit notes was to conform to company policy. Joint MTD at 17. But HP's explanation for its actions raises a factual issue not properly resolved at this stage of the proceedings. *See, e.g.*, *Green Lumens LLC v. Green Lumens NE LLC*, No. 16-CV-80576, 2016 WL 8808767, at *4 (S.D. Fla. Aug. 25, 2016) (parties' intent was factual inquiry not proper for motion to dismiss stage). Moreover, HP's proffered explanation conflicts with Plaintiffs' allegation that Etertin's competitors continued to receive credit notes after HP's retaliatory conduct. Cmplt. ¶ 101. If HP believed the issuance of credit notes was improper, it would have withheld credit notes and similar benefits from *all* HP distributors, not just Etertin. Accepting Plaintiffs allegations as true, and discounting HP's counter-allegations, as the Court should do at this stage, Plaintiffs have properly alleged a common purpose HP shared with the other members of the RICO enterprise.

VII. PLAINTIFFS HAVE ADEQUATELY PLED THAT PLAINTIFFS IVEO LATINAMERICAN TRADING LLC AND ETERTIN, S.A. HAVE SUFFERED A DOMESTIC INJURY

Defendants argued, in their stricken Motion to Dismiss, that Plaintiff Verdejo had no standing to allege any injury because of HP's actions. Initial Mot. to Dismiss (DE 24) at 17. Plaintiffs responded that Verdejo did not personally suffer any domestic injury and lacked standing to pursue RICO claims, and conceded that the motion to dismiss should be granted as to Plaintiff Verdejo. Initial Resp. to Mot. to Dismiss (DE 34) at 13. The Court eventually struck the motion to dismiss and related filings without prejudice to allow for a filing of a joint motion to dismiss. Order (DE 43). While they did not make the argument in their initial motion to dismiss, Defendants use the Court's "reset" to now argue that Plaintiff IVEO Latinamerican Trading LLC, a company that Plaintiffs properly pled had been controlled by the victim of the extortion scheme, Verdejo, has no

RICO standing because IVEO was not specifically targeted by the extortion scheme. *See* Joint MTD at 8, Cmplt. ¶ 24.

Defendants' position – that Verdejo cannot sue because the extortion payments came from a company (albeit one he controlled) and the company cannot sue because it was not specifically targeted by the extorters – is a classic "heads, I win, tails you lose" argument. Taken to its logical conclusion, Defendants' reasoning would allow RICO conspirators to escape liability for injuries caused to a victim's corporate accounts and foreclose recovery for parents of a kidnapping victim who pay a ransom from a company the parents control. Defendants' argument also happens to be undermined by the caselaw.

First, IVEO Latinamerican Trading is a proper plaintiff. Plaintiffs alleged that Giazitzian demanded payments from Verdejo in the United States and did so after visiting IVEO's offices in the United States and thereby knowing of its existence. Cmplt. ¶¶ 59-60, 67. Companies are often victims of extortion. *See, e.g.*, *United States v. Gallo,* No. 98 CR. 338, 1999 WL 9848, at *1 (S.D.N.Y. Jan. 11, 1999). If the extorter knows that the funds are flowing from the company, or that the funds will likely be derived from the company, then the extortion is directed at the company, not just the individuals to whom the extortion was directed. *United States v. Carpenter*, 611 F.2d 113, 114 (5th Cir. 1980)[6] (defendants' knowledge that parents worked at bank, had authority to direct the use of bank monies, and references to issues with bank's payment of ransom adequate proof that extortionate demands directed not only at parents but at bank). Here, Plaintiffs have pleaded that Giazitzian knew about IVEO's existence before making the demand of Verdejo to pay him in the United States. Moreover, even if he did not know that the first transfer based on

[6] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as binding precedent all decisions handed down by the former Fifth Circuit before October 1, 1981.

his extortionate demand would come from IVEO, Giazitzian certainly knew after receiving the first wire transfer from IVEO (not Verdejo personally) when making a demand of Verdejo for the next six extortionate demands for payment in the United States. Cmplt., ¶¶ 69-72. Under the facts pled, the extortionate demands were directed at IVEO and IVEO is a proper civil RICO plaintiff.

The caselaw indicates that Plaintiff Verdejo is also a proper plaintiff to recover for the extortionate payment by Plaintiff IVEO because the extortion was also directed at him. *See Carpenter*, 611 F.2d at 114. In one of the cases cited by Defendants, *Beck v. Prupis*, 162 F.3d 1090 (11th Cir. 1998), the Eleventh Circuit overturned the district court's finding that an individual plaintiff lacked standing to claim injuries based on his status as a creditor and stockholder, holding that an individual's status as a creditor or shareholder precludes RICO standing only where the claim hinges on acts of racketeering that target the corporation. *Beck*, 162 F.3d at 1096 n.10. However, where – as here – the acts of racketeering target the individual plaintiff, his status as a creditor or stakeholder does *not* preclude RICO standing. Indeed, the Eleventh Circuit found that the individual plaintiff did have standing to pursue his RICO claims for this very reason. *Id*. In *Warner v. Alexander Grant & Co.,* the Eleventh Circuit affirmed the dismissal of an individual plaintiff's complaint for failing to properly differentiate between injuries to himself and to a company for which he owned shares, but did find that certain allegations of injuries "that cannot properly be characterized as deriving solely from his status as a shareholder," such as the lack of access to "substantial deposits" as a savings bank he co-owned, would constitute a personal injury for which the individual plaintiff would have standing. *Warner v. Alexander Grant & Co.,* 828 F.2d 1528, 1530-31 (11th Cir. 1987).

Here, Plaintiffs have properly alleged that Plaintiff IVEO Latinamerican Trading LLC was a company that Plaintiff Verdejo controlled, and, after Giazitzian demanded extortionate payments

in the United States, Verdejo caused separate wire transfers, totaling $414,200, to be sent from IVEO's U.S.-based accounts to Giazitzian's U.S.-based accounts between February 10, 2017 and June 22, 2017. Cmplt., ¶¶ 68, 72-73. As Verdejo controlled the money in IVEO's accounts, his forced payment of $414,200 to Giazitzian caused a "lack of access to substantial deposits" at IVEO, therefore creating standing to pursue RICO claims based on this injury. *See Warner,* 828 F.2d at 1530, *Beck,* 162 F.3d at 1096 n.10.

Defendants next assert that the use of U.S. bank accounts to facilitate wrongdoing does not establish "domestic injury." Joint MTD at 9. But one of the cases Defendants cite establishes that wire transfers of money from U.S. accounts do constitute "domestic injuries" under RICO. In *Bascuñan v. Elsaca*, the Second Circuit analyzed whether similar wire transfer payments from a United States-based account to another United States-based account constituted a "domestic injury." *Bascuñan v. Elsaca*, 927 F.3d 108 (2d Cir. 2019). The defendant there argued that because he had transferred the funds alleged to have been stolen or misappropriated from a plaintiff's foreign bank accounts to the plaintiff's U.S. bank accounts before he transferred the funds to his own U.S. bank account, the injury was foreign, not domestic. The Second Circuit affirmed the district court's ruling that the funds had only been embezzled once defendant transferred the funds between the plaintiff's domestic account and his own. *Bascuñan*, 927 F.3d at 119. *Exeed Industries*, another case cited by Defendants, is easily distinguishable because in that case, the plaintiffs had no domestic presence in the United States, suffered no injury in the United States, and none of the RICO conduct occurred in the United States. *Exeed Indus., LLC v. Younis,* No. 15 C 14, 2016 WL 6599949, at *3 (N.D. Ill. Nov. 8, 2016). Here, by contrast, Plaintiffs have alleged that IVEO is a U.S. company that suffered a loss of $414,200, and that Defendant Giazitzian made extortive demands of Verdejo while in the United States. Plaintiffs have adequately pled that the

money transferred to Giazitzian's U.S.-based account was in the U.S.-based account of Plaintiff IVEO. Plaintiff IVEO had access to and control of the funds in the United States up and until Verdejo caused the money to be wired to Giazitzian's U.S.-based account. Thus, IVEO's injury caused by the extortionate conduct was domestic, not foreign.

The Complaint alleges domestic injury to Plaintiff Etertin because of the retaliatory withdrawal and withholding of credit notes. Defendants incorrectly claim that Plaintiffs seek damages for Etertin's bankruptcy in Argentina, but Plaintiffs allege that they were injured because they overpaid for HP products in the United States. Plaintiffs allege that without the credit notes to defray the cost of HP products, Etertin, paid HP in the United States – and took delivery in the United States – of overpriced HP goods. Cmplt. ¶ 118. Thus, Plaintiffs have adequately alleged that the geographic location of the injury was the United States and Plaintiff's injuries from the retaliatory withdrawal and withholding of credit notes were domestic injuries.

Plaintiffs allege that from 2012 until 2019, Etertin ordered HP products in the United States by placing an order on a computer portal maintained by HP in the United States, sent HP the money to purchase the products to accounts HP had in the United States (minus the value of the credit notes HP maintained in the United States), and HP would then ship product to Etertin, S.A. to warehouses in Miami-Dade County that Etertin paid to maintain. Cmplt. ¶¶ 42, 44. Plaintiffs also allege that Etertin was responsible for shipping the HP products it bought in the United States to Argentina. *Id.* ¶ 114. Plaintiffs claim that the withdrawal and withholding of credit notes caused domestic injury because it increased the amount Plaintiffs had to pay Defendant HP in the United States for HP product. *Id.* ¶ 118. The grossly inflated price Etertin had to pay HP in the United States to take delivery of HP products in the United States, an injury proximately caused by the retaliatory loss of credit notes, was an injury Etertin suffered in the United States.

In *Akishev v. Kapustin,* a district court in New Jersey rejected a similar argument by defendants that RICO injuries suffered by the plaintiff were foreign, not domestic. In that case, plaintiffs, residents of Russia, accessed a website that defendants maintained in the United States to purchase automobiles that defendants ultimately did not ship from the United States. *Akishev v. Kapustin*, Civ. Action No. 13-7152, 2016 WL 7165714, *7 (D.N.J. Dec. 8, 2016). Using the framework provided by the Supreme Court decision in *RJR Nabisco Inc. v. Eur. Comm.,* the district court found that the fact that the plaintiffs ordered and paid for products in the United States without physically visiting the country did not alter their injuries from domestic to foreign. *Id*. ("Plaintiffs' traveling by way of the internet to Kapustin's virtual United States-based car dealerships, where plaintiffs selected their car, paid for it through a wire transfer to Kapustin's U.S. bank, and arranged for shipping from the United States, should not change their injuries from domestic to foreign").

Under either formulation, the injury to Etertin S.A. caused by the withdrawal and withholding of credit notes occurred in the United States, where Etertin paid for the overpriced HP products and took delivery. Unlike the plaintiffs in *Akishev*, Etertin S.A. *did* maintain a physical presence in the United States to receive the products it bought in the United States from HP. If the *attempted* purchase of automobiles in the United States was enough to establish a domestic injury in the United States, then, even more so, Etertin's *actual* purchase and possession in the United States of overpriced HP products – overpriced because of the Enterprise's predicate acts – constitutes a domestic injury in the United States.

VIII. PLAINTIFFS HAVE ADEQUATELY PLED A RICO CONSPIRACY AND THAT HP AIDED AND ABETTED A RICO VIOLATION

Defendants assert that because Plaintiffs failed to allege the elements of a substantive RICO claim under § 1962(c), they cannot maintain a conspiracy action. As addressed above, Plaintiffs

have alleged the elements of a substantive RICO claim. And Plaintiffs have properly pled that the Defendants, including HP, agreed to the overall objective of the scheme. Plaintiffs have alleged that the Individual Defendants agreed with HP to "grant credit notes and other financial incentives to those distributors who would pay them kickbacks and have HP Inc. withhold and withdraw credit notes and other financial incentives to those distributors who refused to pay the kickbacks." Cmplt. ¶ 111. Plaintiffs have properly alleged that HP agreed to the objective of the scheme. *Kivisto v. Miller, Canfield, Paddock & Stone, PLC*, 413 F. App'x 136, 139 (11th Cir. 2011) ("A plaintiff can establish a RICO conspiracy claim in one of two ways: (1) by showing that the defendant agreed to the overall objective of the conspiracy; or (2) by showing that the defendant agreed to commit two predicate acts."). Because Plaintiffs have alleged a viable conspiracy, this Court has personal jurisdiction over all the Individual Defendants (including Huergo) as co-conspirators. Cmplt. ¶ 20.

HP asserts that Plaintiffs' aiding and abetting claims must fail because Plaintiffs failed to allege that "HP was in any way involved in, associated with, or even knew about, the alleged extortion until after it had concluded. HP's only alleged involvement came after the kickback scheme ended . . . in July 2017." Joint MTD at 19. Again, Plaintiffs *have* alleged that HP knew about the extortion scheme as it was occurring and agreed with the Individual Defendants to participate in it. Cmplt. ¶ 111. And Plaintiffs have alleged that HP withdrew and withheld credit notes from Etertin to either force Etertin to resume making the extortionate payments or to push Etertin out of the market and make an example out of Etertin to enforce compliance from other Argentine distributors. *Id*. ¶ 109. This conduct provided substantial assistance toward the commission of the scheme to extort payments from Plaintiffs and other Argentine distributors of

HP products under threat of losing the ability to distribute HP products in Argentina. *Id*. ¶¶ 132, 133. Plaintiffs have properly pled that HP aided and abetted a violation of 18 U.S.C. § 1962(c).

IX. PLAINTIFFS HAVE ADEQUATELY PLED THAT HP VIOLATED FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

HP claims that Plaintiffs cannot maintain their Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") claim against it because Plaintiffs have not alleged that HP committed any actions within the State of Florida. Joint MTD at 20.

Under Florida law, conduct does not have to occur entirely within Florida to be actionable under FDUTPA. See *Barnext Offshore, Ltd. v. Ferretti Grp. USA, Inc.*, No. 10-23869-CIV, 2012 WL 1570057, at *5-6 (S.D. Fla. May 2, 2012) ("[T]he Court finds nothing in *Millennium* suggests that the FDUTPA applies only when conduct occurs entirely within Florida. To the contrary, *Millennium* highlighted the broad statutory language used in the FDUTPA."). In *Barnext*, the district court held that a plaintiff foreign corporation could bring FDUTPA claims against Defendants, which included a domestic corporation and foreign entities, based on allegations that a vessel had been sold in Florida. *Id*. at *5. To determine whether a FDUTPA claim is properly brought, courts focus on the "effect on trade that must occur in Florida, not the actions giving rise to the effect on trade." *See, e.g.*, *Montgomery v. New Piper Aircraft, Inc.*, 209 F.R.D. 221, 228 (S.D. Fla. 2002), quoting *Océ Printing Sys. USA, Inc. v. Mailers Data Servs., Inc.*, 760 So. 2d 1037, 1041 (Fla. 2d DCA 2000); *Blaszkowski v. Natura Pet Prod., Inc.,* No. 07-21221-CIV, 2009 WL 10697757, at *2 n.1 (S.D. Fla. Jan. 26, 2009).

The district court in *Montgomery* found that the Commerce Clause precluded the application of FDUTPA to every putative class member's claim because, while the defendants' trade practice occurred in Florida, many plaintiffs had made purchases outside Florida and therefore suffered no injury in the state. *Montgomery*, 209 F.R.D. at 228 ("Thus far, there is no

record evidence that any particular putative class member purchased an airplane in Florida commerce and suffered injury in Florida commerce." The Florida Fourth District Court of Appeal in *Hutson v. Rexall Sundown, Inc*. contended with a similar issue relating to the proper situs of a FDUTPA claim and concluded that the alleged deceptive unfair trade practice – the nationwide sale of products with a misleading label – was "committed, and the damage done, at the site of the sale of appellees' products; that is, in the various states where members of the purported class made their purchases." *Hutson v. Rexall Sundown, Inc*., 837 So. 2d 1090, 1094 (Fla. 4 DCA 2003).

Here, Plaintiffs have alleged facts showing that the effect on trade by HP's unfair trade practices occurred in Florida. Plaintiffs have alleged that during the relevant period, HP was doing business in the State of Florida and Etertin's wire transfers for payment of product reflected HP's Miami-Dade County address. Cmplt. ¶ 140. Plaintiffs also alleged that Etertin bought and received HP products at warehouses Etertin maintained in Miami-Dade County, Florida. *Id.* ¶ 138. Plaintiffs have alleged that HP's unfair trade practices – the retaliatory withdrawal and withholding of credit notes – caused the products Etertin bought in Miami to be grossly inflated in price. *Id*. ¶¶ 142, 144. As a result, as in *Hutson*, the damage done to Etertin S.A. was in Florida, where it bought and obtained delivery of the HP products.

X. CONCLUSION

Given the foregoing, Plaintiffs urge that the Defendants' Joint Motion to Dismiss should be denied. Should the Court agree that the motion should be granted Plaintiffs seek permission to amend its Complaint to address any deficiencies. Leave to amend, freely given when justice so requires, should be liberally granted. *See Jennings v. BIC Corp.,* 181 F.3d 1250, 1258 (11th Cir.1999).

Dated: June 24, 2021

Respectfully submitted,

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Counsel for Plaintiffs Diego Damian Verdejo, Etertin, S.A., and IVEO Latinamerican Trading LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 24, 2021, the foregoing document was filed under seal with the Clerk of the Court.

/s/ Adam S. Fels

EXHIBIT “A”

U.S. Department of Justice

Criminal Division

April 9, 2014

F. Joseph Warin
John W.F. Chesley
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306

Re: Hewlett-Packard Mexico, S. de R.L. de C.V.

Dear Counsel:

On the understandings specified below, the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the Northern District of California (collectively, the "Department") will not criminally prosecute Hewlett-Packard Mexico, S. de R.L. de C.V. (the "Company"), a corporation organized under the laws of Mexico and headquartered in Mexico City, or any of its present or former parents, subsidiaries, or affiliates, for any crimes (except for criminal tax violations, as to which the Department does not make any agreement) relating to any of the conduct described in the Statement of Facts, attached as Attachment A, and any other conduct disclosed by the Company, Hewlett-Packard Co. ("HP Co."), or any of HP Co.'s direct or indirect affiliates or subsidiaries (collectively, other than the Company, "HP"), to the Department prior to December 1, 2013, except as provided herein and subject to related agreements between the Department and HP Co. or its subsidiaries concerning FCPA violations in Russia and Poland. The Department enters into this Non-Prosecution Agreement based on the individual facts and circumstances presented by this case and by the Company and its ultimate parent corporation, HP Co.. Among the facts considered were the following: (a) the Company's and HP Co.'s cooperation, including conducting an extensive internal investigation, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, and organizing voluminous evidence and information for the Department; (b) the Company and HP Co. have engaged in extensive remediation, including taking appropriate disciplinary action against culpable employees, enhancing their due diligence protocol for third-party agents and consultants, and enhancing their controls for payment of sales commissions to channel partners in Mexico; (c) the Company's and HP Co.'s continued commitment to enhancing their compliance programs and internal controls; and (d) the Company's and HP Co.'s agreement to continue to cooperate with the Department in any ongoing investigation of the conduct of the Company and its officers, directors, employees, agents, and consultants relating to violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, Title 15, United States Code, Section 78dd-1 *et seq*.

The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the facts described in Attachment A are true and accurate. The Company and HP Co. expressly agree that they shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company or HP Co., make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the Statement of Facts attached hereto as Attachment A.

The Company's obligations under this Agreement shall have a term of three (3) years from the date that this Agreement is executed. However, the Company shall continue to cooperate fully with the Department in any and all matters relating to the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department, subject to applicable law and regulations, until the date upon which all investigations and prosecutions arising out of the conduct described in this Agreement are concluded, whether or not those investigations are concluded within the term specified herein. At the request of the Department, the Company shall also cooperate fully with other domestic or foreign law enforcement authorities and agencies, as well as the Multilateral Development Banks ("MDBs"), in any investigation of the Company, its parent company or its affiliates, or any of its present and former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to this Agreement and Attachment A and other conduct under investigation by the Department. The Company agrees that its cooperation pursuant to this paragraph shall include, but is not limited to, the following:

a. The Company shall truthfully disclose, consistent with applicable law and regulations including data protection and privacy laws, all information not protected by a valid claim of privilege or work product doctrine with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants about which the Company has any knowledge or about which the Department may inquire. This obligation of truthful disclosure includes the obligation of the Company to provide to the Department, upon request, any document, records, or other tangible evidence about which the Department may inquire of the Company.

b. Upon request of the Department, with respect to any issue relevant to its investigation of corrupt payments in connection with the operations of the Company, or any of its present or former subsidiaries or affiliates, the Company shall designate knowledgeable employees, agents, or attorneys to provide to the Department the information and materials described in (a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Department, present or former officers, directors, employees, agents, and consultants of the Company. This obligation includes, but is not

limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records, or other materials provided to the Department pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, and the MDBs, of such materials as the Department, in its sole discretion, shall deem appropriate.

The Company and its parent, HP Co., represent that they have implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA and other applicable anti-corruption laws throughout their operations, including those of their affiliates, agents, and joint ventures, and those of their contractors and subcontractors whose responsibilities include interacting with foreign officials or other activities carrying a high risk of corruption.

The Company agrees to pay forfeiture in the amount of $2,527,750 to the United States Treasury on or before the twentieth (20) business day after the date of the entry of the judgment of conviction following ZAO Hewlett-Packard A.O.'s sentencing. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this $2,527,750 forfeiture.

The Department agrees, except as provided herein, that it will not bring any criminal or civil case against the Company or any of its present or former parents, subsidiaries, or affiliates relating to any of the conduct described in Attachment A hereto or any other conduct disclosed by the Company or HP to the Department prior to December 1, 2013, except as provided herein and subject to related agreements between the Department and HP Co. or its subsidiaries concerning FCPA violations in Russia and Poland. The Department, however, may use any information related to the conduct described in Attachment A against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code; provided that any such prosecution or other proceeding does not relate to any potentially obstructive conduct disclosed by the Company to the Department prior to the signing of this Agreement. This Paragraph does not provide any protection against prosecution for any future conduct by the Company. In addition, this Paragraph does not provide any protection against prosecution of any present or former officer, director, employee, shareholder, agent, consultant, contractor, or subcontractor of the Company for any violations committed by them.

If, during the term of this Agreement, the Department determines, in its sole discretion, that the Company has breached the agreement by (a) committing any felony under U.S. federal law subsequent to the signing of this Agreement, (b) at any time providing in connection with this Agreement deliberately false, incomplete, or misleading information, (c) failing to cooperate

as set forth in this Agreement, (d) committing acts that, had they occurred within the jurisdictional reach of the FCPA, would be a violation of the FCPA, or (e) otherwise failing specifically to perform or to fulfill completely each and every one of the Company's obligations under the Agreement, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge. Any such prosecution may be premised on information provided by the Company. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the term of this Agreement plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the term of this Agreement plus one year.

In the event that the Department determines that the Company has breached this Agreement, the Department agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Department shall consider in determining whether to institute a prosecution.

In the event that the Department determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Department or to the Court, including Attachment A, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that statements made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director or employee, or any person acting on behalf of, or at the direction of, the Company will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Department.

This Agreement is binding on the Company and the Department but specifically does not bind any other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Department will bring the cooperation and acts of remediation by the Company and HP Co., as well as the Company's compliance with its other obligations under this Agreement, to the attention of such agencies and authorities if requested to do so by the Company.

It is further understood that the Company and the Department may disclose this Agreement to the public.

This Agreement sets forth all the terms of the agreement between the Company and the Department. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the Department, the attorneys for the Company, and a duly authorized representative of the Company.

Sincerely,

Melinda Haag
United States Attorney

By: _____
Adam A. Reeves
Assistant United States Attorney

Jeffrey H. Knox
Chief, Fraud Section
Criminal Division
Department of Justice

By: _____
Ryan Rohlfsen
Jason Linder
Trial Attorneys, Fraud Section

AGREED AND CONSENTED TO:

Hewlett-Packard Mexico, S. de R.L. de C.V.

Date: 4/9/14

By: _____
Bruce Ives
Senior Vice President and
Deputy General Counsel
Hewlett-Packard Company
For Hewlett-Packard Mexico, S. de R.L. de C.V.

Date: 4/9/14

By: _____
F. Joseph Warin
John W.F. Chesley
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Hewlett-Packard Mexico, S. de R.L. de C.V.

ATTACHMENT A

STATEMENT OF FACTS

This Statement of Facts is incorporated by reference as part of the non-prosecution agreement, dated April 9, 2014, between the United States Department of Justice, Criminal Division, Fraud Section, the United States Attorney's Office for the Northern District of California (collectively, the "Department") and Hewlett-Packard Mexico, S. de R.L. de C.V. ("HP MEXICO"). The Department and HP MEXICO agree that the following facts are true and correct:

1. HP MEXICO admits, accepts, and acknowledges that it is responsible for the acts of its and its predecessor company's officers, employees, and agents as set forth below. Had this matter proceeded to trial, the Department would have proven beyond a reasonable doubt, by admissible evidence, the facts alleged below. This evidence would establish the following:

The Company

2. At all times relevant to this Statement of Facts, HP MEXICO was a wholly-owned subsidiary of Hewlett-Packard Company ("HP Co.") based in Mexico. HP Co. and all of its direct or indirect affiliates or subsidiaries (collectively, "HP"), was a technology company headquartered in Palo Alto, California, and incorporated in Delaware. HP was a global provider of personal computing devices, information technology infrastructure, and imaging and printing products and services. HP employed more than 300,000 employees worldwide.

3. At all times relevant to this Statement of Facts, HP Co. issued and maintained a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78*l*) and was required to file periodic reports with the Securities and Exchange Commission under the Securities and Exchange Act of 1934 (15 U.S.C. § 78m).

Accordingly, HP Co. was an "issuer" within the meaning of the Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, Title 15, United States Code, Section 78dd-1 *et seq*. From at least 2006 until the date of this agreement, HP Co.'s shares traded on the New York Stock Exchange under the symbol "HPQ."

HP Co.'s Internal Controls

4. At all times relevant to this Statement of Facts, HP Co. policies prohibited corruption, self-dealing, and other misconduct. HP Co.'s Standards of Business Conduct ("SBC") in effect during the relevant time specified company rules and regulations governing legal and ethical practices, preparation of accurate books and records, contracting, and approvals and engagement of third parties. The SBC applied to HP Co. business divisions and subsidiaries, including HP MEXICO. HP MEXICO employees received mandatory SBC training annually, among other training. The SBC was promulgated at HP Co.'s headquarters in the Northern District of California.

5. The SBC manuals specifically referenced the FCPA, and prohibited, among other items, bribes, corrupt practices, "side letters," "'off-the-books' arrangements," and "other express or implied agreements outside standard HP contracting processes." The SBC manuals in effect during this period further instructed employees of HP that they were not to "commit [the relevant HP business] to undertake any performance, payment or other obligation unless [the employee was] authorized under the appropriate HP [business] delegation of authority policies," and further required accurate accounting records and proper finance practices.

6. HP Co.'s policies permitted legitimate commission payments to channel partners. These policies required that the recipient of commissions enter into a written channel partner contract with an addendum permitting the payment of commissions, be pre-approved, subjected

to due diligence, and registered in HP Co.'s partner system. HP MEXICO's policy also required channel partner commissions to follow an approval matrix, with commissions exceeding a particular percentage of the transaction's total volume requiring additional approvals.

7. Although HP Co. had certain anti-corruption policies and controls in place during the relevant period, those polices and controls were not adequate to prevent the conduct described herein and were insufficiently implemented at HP MEXICO. This allowed HP MEXICO to circumvent HP Co.'s internal accounting controls and falsify its books and records as described herein.

Criminal Conduct

8. Beginning by at least mid-2008, HP MEXICO began presales activities and discussions with Petroleos Mexicanos, Mexico's state-owned petroleum company, commonly known as "Pemex," to sell to Pemex a suite of business technology optimization ("BTO") software, hardware, and licenses. BTO is a niche product that requires sophisticated knowledge to integrate with other software products. The contracts for this software sale (collectively, the "BTO Deal") were for approximately $6 million.

9. HP MEXICO sales managers on the BTO Deal ultimately decided that they could not win the business without working with, and making payments to, a Mexican information-technology consulting company (collectively, with its affiliated companies and agents, "CONSULTANT"). HP MEXICO sales managers knew that Pemex's Chief Operating Officer ("OFFICIAL A") was a former principal of CONSULTANT. HP MEXICO employees also knew that OFFICIAL A supervised Pemex's Chief Information Officer ("OFFICIAL B"), who was a key signatory on behalf of Pemex for the BTO Deal.

10. Although CONSULTANT had prior technical experience with Pemex's IT systems, HP MEXICO ultimately retained CONSULTANT in connection with HP MEXICO's bid for the sale to Pemex primarily because of CONSULTANT's connections to OFFICIAL A, OFFICIAL B, and other senior Pemex officials. As part of its agreement with CONSULTANT, HP MEXICO agreed to pay CONSULTANT a commission, which HP MEXICO also called an "influencer fee," equal to 25% of the licensing and support components of the BTO Deal.

11. HP MEXICO understood from the earliest days of its negotiations with Pemex that it had to retain CONSULTANT in order to win the Pemex contracts. In one instance, one of CONSULTANT's agents threatened to take the BTO Deal to one of HP MEXICO's competitors if HP MEXICO did not pay CONSULTANT the full commission it had requested. Notably, that same agent was a former HP MEXICO senior executive who, several months before, had supervised HP MEXICO's sales managers on the BTO Deal team.

12. CONSULTANT was not an approved HP MEXICO channel partner and had not entered into a written channel partner agreement as required by HP Co.'s internal controls and policies. In circumvention of these internal controls and policies, HP MEXICO executives pursuing the BTO Deal arranged for another entity ("INTERMEDIARY"), which was already an approved HP MEXICO channel partner, to join in the transaction. HP MEXICO's sales managers arranged for the INTERMEDIARY to receive commissions from HP MEXICO and then pass those monies along to CONSULTANT, after deducting a portion as a fee. Although INTERMEDIARY played no role in negotiating the BTO Deal, HP MEXICO executives recorded INTERMEDIARY as the deal partner in its internal tracking system.

13. Because HP MEXICO had already agreed to pay CONSULTANT an "influencer fee" equal to 25% of the licensing and support components of the BTO Deal—which was the

maximum permissible under HP's policies without seeking additional approvals—there was no money left over for the INTERMEDIARY's fee. On or about December 12, 2008, HP MEXICO executives involved in the BTO Deal sought permission from regional management to increase CONSULTANT's authorized deal commission by 1.5% to 26.5%. In support of their request, HP MEXICO executives sent an e-mail claiming that CONSULTANT deserved an increased commission primarily because it had put in extra work and successfully managed discounts with Pemex. The justification omitted any reference to the role of, or payments to, the INTERMEDIARY. With little or no additional review, HP regional officials approved the increased commission request on that same day.

14. On or about December 22, 2008, HP MEXICO signed the contracts with Pemex for the BTO Deal. OFFICIAL B, among others, signed on behalf of Pemex.

15. On or about January 20, 2009, HP MEXICO advised the INTERMEDIARY that it had received the INTERMEDIARY's payment request "for recommending an HP solution to your customer." Later that day, the INTERMEDIARY advised CONSULTANT of the expected payment schedule from HP MEXICO. On or about January 23, 2009, HP MEXICO informed the INTERMEDIARY that it had approved the payment request. HP MEXICO's records falsely reflect that the INTERMEDIARY was due a commission for the BTO Deal.

16. The INTERMEDIARY submitted two invoices—on or about January 28, 2009, and on or about February 5, 2009—to HP MEXICO totaling $1,663,503, purportedly for commissions on the BTO Deal.

17. HP MEXICO paid those two invoices on or about February 10 and 12, 2009. HP MEXICO made those payments via wire transfer in U.S. dollars through a correspondent bank account in the United States.

18. On or about February 11, 2009, the INTERMEDIARY transferred approximately $517,821 to CONSULTANT. On or about February 23, 2009, the INTERMEDIARY transferred an additional $892,493.23 to CONSULTANT. Together, these two transfers totaled approximately $1.41 million.

19. By arranging payments to be made through the INTERMEDIARY to CONSULTANT, HP MEXICO was able to circumvent HP Co.'s policies requiring pre-approval of channel partners and written agreements for third-party payments. HP MEXICO further circumvented HP Co.'s controls by failing to identify the role of INTERMEDIARY in the BTO Deal when seeking a 1.5% increase in the commission for CONSULTANT. In addition, HP MEXICO's books and records falsely reflected that the INTERMEDIARY was the deal partner and principal recipient of the commission from the BTO Deal, which ultimately caused certain HP Co. books and records to be falsified.

20. On or about March 2, 2009, within weeks of receiving its second commission payment from HP MEXICO through the INTERMEDIARY, CONSULTANT made a cash payment of approximately $30,000 to an entity controlled by OFFICIAL B. On or about March 30, 2009, CONSULTANT made three additional cash payments totaling approximately $95,000 to the OFFICIAL B-controlled entity.

21. In total, HP MEXICO received approximately $2,527,750 as its net benefit on the BTO Deal.