IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

OMEGA ENGINEERING LLC

AND

MR. OSCAR RIVERA

CLAIMANTS

v.

THE REPUBLIC OF PANAMA

RESPONDENT

THIRD WITNESS STATEMENT OF MR. OSCAR I. RIVERA RIVERA

Counsel for Claimants

JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
United States

Shook, Hardy & Bacon LLP
Citigroup Center
201 S. Biscayne Blvd., Suite 3200
Miami, FL 33131
United States of America

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TABLE OF CONTENTS

I. INTRODUCTION

1. I am the same Oscar I. Rivera Rivera who made witness statements dated 25 June 2018 ("**Rivera 1**" or "**First Witness Statement**") and 27 May 2019 ("**Rivera 2**" or "**Second Witness Statement**"). I re-affirm the testimony that I provided in my First and Second Witness Statements. Unless otherwise stated, capitalized terms in this witness statement have the same meaning as in Rivera 1 and Rivera 2.

2. I am submitting this third witness statement to address certain allegations and matters raised in Respondent's Reply in Support of Respondent's Objections to the Tribunal's Jurisdiction ("**Respondent's Reply**") dated 18 January 2019 and the witness statements and expert report associated with it. Although Panama makes many false and misleading statements in its Rejoinder on the Merits, which accompanies Respondent's Reply, I will limit this third witness statement to Panama's statements related to jurisdiction. If this witness statement does not address a particular matter raised by Respondent, its witnesses, or its experts, that does not mean I agree with it.

3. To the extent that any of the matters set out in this witness statement are not within my personal knowledge, I have identified the source of information on which I have relied. Otherwise, the facts and matters set out in this statement are within my personal knowledge and experience.

4. References to documents in this witness statement are to Claimants' exhibits (marked as "C-__") or to Respondent's exhibits (marked as "R-__") submitted in this arbitration. I was assisted in the administrative preparation of this witness statement by Jones Day and Shook, Hardy & Bacon LLP, counsel for Claimants in this arbitration.

II. THE LA CHORRERA CONTRACT WAS OBTAINED LEGITIMATELY

5. In a further effort to falsely accuse me of colluding with Justice Moncada Luna to rig the La Chorrera bid, Panama and Vielsa Ríos make a series of allegations and insinuations that are simply baseless.

6. *First*, Ms. Ríos, who I do not recall ever meeting, states that "on the first day in his office as president of the Supreme Court, Moncada Luna called [her] into his office and informed [her] that he operated differently and that from now on he would make all the decisions," that he "appointed the members of the Evaluation Commission for the tender of the La Chorrera Project," and that he would not take advantage of "financing from the Inter-American Development Bank (IDB)."[1] Although Ms. Ríos never says how that accusation relates to me, from the title of the section in her witness statement (*viz.* "Moncada Luna's Influence on the Selection of Omega as the Contractor for the La Chorrera Project")[2] I presume that she is implying that Justice Moncada Luna influenced the selection of the Omega Consortium as the winning bid for the La Chorrera Contract.[3] Ms. Ríos, however, never actually states in any of her witness statements or the declaration to Panamanian prosecutors produced by Panama that I obtained the La Chorrera contract—or any other contract—through corruption.[4] Yet, Panama makes this unfounded and false accusation.

7. I do not know how Justice Moncada Luna conducted himself in the fulfillment of his duties as President of the Supreme Court. Also, I have never met any of the three panelists of the evaluating commission, nor am I aware of who selected the panelists, and I have no knowledge of

[1] Second Witness Statement of Vielsa Ríos ("**Ríos 2**"), ¶¶ 5-6; *see also* Respondent's Reply in Support of Respondent's Objections to the Tribunal's Jurisdiction dated 18 January 2019 ("**Resp. Reply**"), ¶¶ 14-16.
[2] Ríos 2 at 1.
[3] Ríos 2 § II.
[4] *See, e.g.*, Rios 1; Rios 2; Declaration of Vielsa Rios to the National Assembly dated 2 Dec. 2014 (R-0127).

the decisions concerning the choice of funding of the La Chorrera Project. But what I *do* know is that we bid on the Project and won fairly on *all categories—including price*—and we were declared the best proposal by the La Chorrera evaluation commission.[5]

8. *Second*, Panama now alleges that Justice Moncada Luna controlled the Sarelan bank account.[6] Again, I did not (and still do not) have knowledge about this, and there was never a reason for me to know about it. Also, I have never made any payments to, or made any agreements with, Sarelan or any of that company's owners, beneficiaries, their relatives or associates. I have never intended for any of my payments for the legitimate purchase of the Tonosí land to go towards Sarelan or anyone else other than the seller of the land, who was a company called JR Bocas Investments, Inc., represented by Maria Gabriela Reyna.

9. *Third*, Panama alleges that I entered into an agreement with Justice Moncada Luna.[7] This is false. Like I said previously,[8] I have never entered into any agreement with Justice Moncada Luna besides the La Chorrera contract itself, which we won fairly and which was entered into by the Omega Consortium with the Judiciary and signed by Justice Moncada Luna as its representative.

10. As I have already stated, by the time we won the La Chorrera Contract in November 2012, my companies and my team were established in the Panamanian market. We had already won six significant projects, had delivered one of them (the Tocumen airport fuel and electricity infrastructure project), and were about to deliver another (the Tocumen airport security checkpoint project, which the owner finally accepted 9 months later in July 2013).[9] The Omega Consortium

[5] Report from the Vetting Commission dated 9 Oct. 2012 (C-0083 resubmitted).
[6] Resp. Reply ¶ 17.
[7] Resp. Reply ¶ 31.
[8] First Witness Statement of Oscar Rivera dated 25 June 2018 ("**Rivera 1**"), ¶ 85; Second Witness Statement of Oscar Rivera dated 27 May 2019 ("**Rivera 2**"), ¶ 10.
[9] Rivera 1 ¶¶ 23-45.

and my businesses were, at that time, solid market participants in the Panama construction sector.[10] Our bidding success rate had improved significantly. My team and I were growing in Panama. I did not need to bribe anyone, nor would I ever have done so.

11. *Fourth*, to support its claim of corruption against me, Panama also alleges that Justice Moncada Luna pled guilty to unjust enrichment and making false statements.[11] I have no knowledge of the conditions under which Justice Moncada Luna entered into a plea agreement with Panamanian prosecutors. What I do know, however, is that after *over five years* of investigating my companies and me, Panama has never found me guilty of either corruption or money laundering, and the reason for this is simple: I did not make an agreement with, nor did I pay any bribe to, Justice Moncada Luna (or anyone else) to secure the La Chorrera Contract or any other contract.

III. THE TONOSÍ LAND CONTRACT WAS LEGITIMATE

12. Panama also makes a series of criticisms regarding the Promise to Purchase and Sell Agreement for the land in Tonosí between Punela Development Corp. ("**Punela**") and JR Bocas Investments, Inc. ("**JR Bocas**") (the "**Promise to Purchase and Sell Agreement**" or the "**Promise Agreement**") in an effort to support its claim that the Promise Agreement was merely a "pretext" and a "sham."[12] Before I respond to Panama's criticisms, I want to emphasize that the Promise Agreement was not a sham deal. It was a legitimate purchase of land, in an area of Panama that was promising for development, and for a project that I considered, in my experience having done these types of developments numerous times in the past, to have great potential. Further, to make sure the deal was done properly, I secured Panamanian counsel, specifically the law firm of IGRA,

[10] Rivera 1 ¶ 35.
[11] Resp. Reply ¶ 30.
[12] *See, e.g.*, Respondent's Counter-Memorial dated 7 Jan. 2019, ¶¶ 24, 296; Resp. Reply § II.A.2.

which at the time was considered one of the most reputable law firms in Panama. IGRA advised not only on the preparation of the Promise Agreement, but also on how the transaction would work.

13. Nonetheless, Panama criticizes the land deal (and thus the work of one of its best law firms) by saying that the Promise Agreement "was never placed into the land record, and Mr. Rivera has admitted he never in fact took title to the land."[13] This is misleading. As I understood it then, and understand it now, the Promise Agreement is a "Promise to Purchase and Sell," and not the final contract for the purchase or sale of land. As such, the Promise Agreement did not need to be registered or notarized to be a valid contract. And, since I had no reason to doubt that the transaction would take place, my understanding was that there was no reason to take those additional steps as a preventive measure. Further, to my knowledge there were no disputes over the parcel involving third parties from which I would have had to seek protection. It is my understanding that my rights under the Promise Agreement were protected regardless of whether it was registered or notarized. Finally, that the title never passed to me was initially merely a consequence of the seller not fulfilling the obligations to unencumber the land and provide electricity and utility services, which caused me to withhold the final payment until such issues could be resolved. Later, however, Panama's arbitrary actions against me made it impossible for me to conduct business in Panama, as I have explained in my First and Second Witness Statements and as I explain in further detail below.

14. After first arguing that the "land development" deal did not exist at all, I note that Panama now argues instead that the "dramatic difference" between the price paid by JR Bocas to that paid by Punela "cast[s] doubt" on the legitimacy of the land purchase, and that the "circumstances surrounding Finca 35659 … were hardly ideal" because the property did not have electricity and

[13] Resp. Reply ¶¶ 35-36.

was only accessible by '"deteriorated' roads."[14] These allegations, too, are misleading for many reasons.

15. *First*, to my knowledge, the price I promised to pay was entirely consistent with market prices. Tito Chevalier, the owner of the Coldwell Banker franchise in Panama at the time, advised me on potential locations, prices, and the market in general. *Second*, I remember that at the time the properties in this area seemed to be rapidly increasing in price in great part because Panama was focusing on that area for tourism and real estate development. *Third*, although the property did not have electricity at the time of the agreement, JR Bocas was aware of this and agreed to ensure that the parcel received utilities service as a condition of the purchase.[15] *Fourth*, JR Bocas was required by the Promise Agreement to free the parcel of any liens encumbering the property as a condition of the purchase. *Fifth*, the property is located less than two miles from the beach, on a small hill with beautiful panoramic views to the ocean and other land formations. The weather is warm and the road that leads from Panama City to the parcel is not "deteriorated" as Panama says. It is a paved highway—only about two kilometers of the road that connects the parcel to the highway was a dirt road. Thus, the circumstances surrounding this parcel were far from "hardly ideal"—in fact, they were quite promising in my opinion.

16. Panama also claims that I "pompously announce[d]" that I intend to pursue my legal remedies regarding the Promise Agreement, and that since I am "well-represented [I] doubtless know[] [that I have] let the statute of limitations run on any claims" I might have.[16] I must reject Panama's allegations for the following reasons.

[14] Resp. Reply ¶ 37.
[15] *See, e.g.*, Extension to the Purchase-Sale Agreement for Tonosí Land dated 3 Sept. 2013 (C-0374), at 1; Email from Maria Gabriela Reyna to Frankie Lopez dated 28 Jan. 2015 (C-0210).
[16] Resp. Reply ¶ 41.

17. *First*, my Panamanian attorneys have advised me that the prescription period for me to pursue my rights expires in September 2020, and has therefore not "run" as Panama claims it has. *Second*, although it is true that I am fortunate to be represented by numerous lawyers, this has come at great expense to my businesses, my family, and me. Due to Panama's actions against me, I have lost practically everything that I had. For years, I was unable to find work. Only now, through the goodwill of others and the recognition of my abilities, have I been able to get a job and begin to get back on my feet again. In order to preserve scarce resources for my family and to focus on defending myself and my companies against Panama's attacks, I have been forced to forgo or delay many transactions, business opportunities, and potential disputes, including this one. *Third*, given everything that has happened to me, I had (and still have) a hard time trusting the Panamanian judicial system. I did not believe that Panamanian judges would be impartial, and I was afraid that defending my rights would prompt a fresh wave of attacks against me prompted by the Varela Administration.

18. In an attempt to support its baseless theory that the Promise to Purchase and Sell Agreement was not legitimate, Panama makes several additional misleading allegations.[17] As I indicated previously, the Promise Agreement was negotiated by my lawyers at IGRA and by Mr. Lopez. Nevertheless, to the extent that I have knowledge about these allegations, I respond to them below.

19. Panama claims that the signatures were not authenticated or authorized by corporate shareholders of the signing entities.[18] This is absurd. On the Punela side, I gave instruction to Mr. Lopez and my attorneys to finalize the Promise Agreement and to get the deal done. Mr. Montaño was thus authorized by IGRA to sign on Punela's behalf. From the JR Bocas side, their attorney and legal representative, Maria Gabriela Reyna, at all times represented that she had authority to

[17] Resp. Reply ¶¶ 42-46.
[18] *See, e.g.*, Resp. Reply ¶ 43; Expert Report of Adan Arjona dated 13 Nov. 2019 ("**Arjona**"), ¶¶ 14, 18.

negotiate and sign on JR Bocas' behalf. I understand from Mr. Lopez that, during one of the meetings with Ms. Reyna, she showed him the Power of Attorney giving her authority to negotiate and enter into the Promise Agreement on the seller's behalf. With respect to authentication, as I explained above, at the time of the Promise Agreement I had no reason to be suspicious of either Ms. Reyna or anything related to the transaction, so there was no need to authenticate the signatures through the use of a notary.

20. Panama claims that the Promise Agreement term has "expired," and that the proposed, unsigned addendum for an extension of the Promise Agreement "does not appear" to be significant, indicating that the Promise Agreement (and the land purchase) was a sham.[19] This, too, is misleading at best. As I indicated previously, the seller asked for an extension of time in which to cure its failure to comply with several of the agreed preconditions of the sale, which included paying the mortgage on the property.[20] The terms in the seller's proposed addendum for an extension were unacceptable to us because we did not think the addendum compensated us adequately for the time that had *already* elapsed without fulfillment of these conditions. And since I wanted to make the purchase of the land through my Panamanian businesses (if possible), I was not troubled by a further delay while the addendum was being negotiated, since a delay in making the final payment on the land purchase allowed my companies in Panama more time to gain greater liquidity.[21] Indeed, if I had signed the addendum at the moment it was presented by the seller, the seller's breach would have potentially been cured and I would have lost valuable leverage in the transaction. For these (entirely legitimate) reasons, I did not sign the proposed addendum. Thus, the fact that JR Bocas failed to comply with its obligations on time, and the fact

[19] Resp. Reply ¶ 43; Arjona ¶ 9(d)-(e).
[20] Rivera 1 ¶ 97.
[21] It should, of course, go without saying that had the Tonosí land deal progressed on time and with no issues, I would have paid the remaining balance under the Contract through the use of my funds in the United States.

that I refused to allow it to cure its breach without sufficient compensation, is not an indication that the agreement was fake. Quite to the contrary, it proves that the land deal was real, as I was taking every opportunity to negotiate terms that were more favorable to me in acquiring the land.

21. Panama also claims that the advance fee of 50% under the Contract was "[e]xorbitant" and "[u]nprecedented."[22] I am neither a Panamanian lawyer nor a real estate agent, and this was my first land transaction in Panama, so my ability to comment is somewhat limited. All I can do is reiterate that I hired reputable Panamanian counsel to advise on the transaction and to help draft the Promise Agreement, and at no point did my lawyers flag anything unusual about the transaction, including the payment terms. I, personally, was comfortable with the terms so long as the conditions were satisfied by the seller. To me, there was nothing exorbitant about the way the payments were negotiated.

22. Panama and its expert note that there is a mistake in the numeric amounts indicated in the Promise Agreement and claim that this "extreme lack of care is highly suggestive of a fictitious agreement."[23] I must reject these allegations. It is worth highlighting, again, that I was using the services of the IGRA law firm to help me structure this purchase and draft the Promise Agreement. While I do not know who is responsible for this typographical mistake—whether IGRA, Ms. Reyna, or someone else—it is just that—an inconsequential typographical error in the Promise Agreement. Neither party has ever contested the amounts, which are otherwise consistent.

23. Panama and its expert also claim that the Promise Agreement was suspicious because there was no land survey to "confirm the metes and bounds" of the property, and there was no topographical survey, which Panama claims was "essential to determining how much of the land

[22] Resp. Reply ¶ 43. Panama's expert describes it as "noteworthy and unusual." Arjona ¶ 16.
[23] Resp. Reply n.88.

is usable for development."[24] Once again, Panama is trying to mislead the Tribunal into believing that we did not know what we were buying. Nothing could be further from the truth. The Promise Agreement identified the specific parcel number (Finca 35659) and the related inscription document (Documento 1162972).[25] Accompanying the parcel's public registration document, we had access to a survey certificate for the property, including a map and a specific indication of the parcel's geographic coordinates and who were the previous owners.[26] Further, I personally saw and walked the property (along with leading realtor Tito Chevalier), which gave me a very good idea of the topographical terrain, as the parcel is free of trees and can be easily surveyed by foot. Thus, I knew what I was buying.

24. Finally, Panama and its expert allege that it is "especially odd" that there was no appraisal done in connection with the Promise Agreement given the size of the parcel and the amount of appreciation reflected in the price.[27] Again, I did not need to get an appraisal for the land because the prices were consistent with market prices, as confirmed by Mr. Chevalier and by my own research. More importantly, the margin of profit in comparison with the per-square-meter price of developed projects was quite attractive. As I have said many times before, this was a good deal with significant potential for development and profit.

IV. COMMENTS ON CERTAIN FALSEHOODS IN MR. POLLITT'S REPORT

25. I understand from reading Mr. Pollitt's Report and Respondent's Reply that they attempt to draw some connections between Mr. Corcione and myself, insinuating that this would somehow show evidence of wrongdoing on my part. In particular, Panama, through its expert, alleges that

[24] Resp. Reply ¶ 44; *see also* Arjona ¶¶ 64, 67.
[25] Sale and Purchase Agreement between JR Bocas Investments, Inc. and Punela Development Corp. dated Apr. 2013 (C-0078 resubmitted).
[26] Tonosí Land Registration Information dated 31 Jan. 2013 (C-0202).
[27] Resp. Reply ¶ 44; Arjona ¶ 66.

"an employee of that developer [Corcione] worked directly on the Omega project [in La Chorrera], evidencing the suspicions around the relationship between the two firms."[28] Neither Mr. Pollitt nor Panama ever explain who that individual is. But, after reading the cited exhibits, it seems they are referring to an engineer named Roberto Samaniego. I have heard of Mr. Samaniego before, as I believe he was an employee of Nicolas Corcione. Nicolas Corcione is one of the largest developers in Panama, and I met him soon after arriving in Panama. We bid as a joint venture on certain projects (which we did not win) and we remain friendly as many in the construction industry do. However, Mr. Corcione and I have never worked together on a project. As to Mr. Samaniego, he never worked for or with the Omega Consortium in any project, including the La Chorrera Project, and I have no knowledge of Mr. Samaniego ever working with or for the Judiciary in the La Chorrera Project. In short, if Panama's allegation is that Roberto Samaniego was working for Corcione on the La Chorrera Project with the Omega Consortium, this is entirely incorrect.

26. Panama's expert also alleges that PR Solutions S.A. ("**PR Solutions**") was a shell company because it had "little other economic activity."[29] This is also false. As I indicated previously, PR Solutions was a company that I used to test out new markets and new opportunities.[30] In fact, for being a company that had only been in operation for three years at the time of the Tonosí land purchase agreement, PR Solutions was a company that had undergone significant activity. It was the company I used to bid, win, and complete infrastructure work for Panama's Tocumen airport, when my team was beginning to penetrate the Panamanian market.[31] As an operating company, PR Solutions had bank accounts with significant activity (which Panama seized in 2015 and

[28] Expert Report of Roy Pollitt dated 15 Nov. 2019 ("**Pollitt**"), at 24; Resp. Reply ¶ 60.
[29] Pollitt at 18.
[30] Rivera 1 ¶ 22.
[31] Rivera 1 ¶¶ 22-24.

continues to hold frozen today), accounting books, and contractual obligations. Calling PR Solutions a shell company is simply disingenuous.

27. Mr. Pollitt also claims that the directors of PR Solutions had "no operating understanding of the company and signed the documentation as a favor to another Panamanian businessman, Juan Luis Chevalier."[32] Once again, this is a misstatement. Soon after I arrived in Panama I met Mr. Chevalier, who was commonly known as Tito. Mr. Chevalier, a well-seasoned businessman, and I became very good friends almost immediately. At the time, Mr. Chevalier had recently left a high-ranking position at a multinational insurance company to concentrate on managing his Coldwell Banker franchise in Panama and to venture into real estate development. During my time in Panama, Mr. Chevalier became a close ally and a personal confidant. I had discussed with Mr. Chevalier my interest in using a separate vehicle to make initial bids in Panama and thus protect the Omega brand name and its impeccable 30-year track record. Mr. Chevalier understood my concerns, and offered to hand over PR Solutions, a company he had originally registered, but for which he no longer had a use. Thus, I became the sole shareholder of PR Solutions. When I took control of PR Solutions, the company still had the original officers, such as the company president, that had been designated previously when the company was registered by Mr. Chevalier. As the sole shareholder, I had complete control of PR Solutions and its operations, including the ability to authorize members of my team to oversee the day-to-day operations of the company. Notwithstanding, shortly after taking control, on 25 November 2010 at my request PR Solutions issued a resolution in a public deed that changed the company's board of directors to my colleagues

[32] Pollitt at 18.

and myself.[33] Nevertheless, for reasons unknown to me, to this day Panama's Public Registry has not updated its records to reflect this decision.[34]

V. THE NATURE OF MY INVESTMENTS IN PANAMA

28. Panama claims that my investments in Panama were not "interdependent, interrelated, or inseparable" because they merely consisted of "stand-alone agreements" that have no bearing on any other project.[35] I disagree. From my point of view, my investment in Panama did not consist of a series of individual contracts, but rather a commitment of resources, including those held by Omega U.S., to create Omega Panama and make the Omega Consortium a leading participant in the Panamanian construction sector. I used Omega U.S.' intangible assets (for example, its reputation, its project track record, its bonding and financial capacity, and the know-how of its key personnel) in Panama to win public contracts for the Omega Consortium and thereby build up the competitive qualities of Omega Panama. I therefore employed the assets of Omega U.S. in Panama to win contracts for the Omega Consortium, and in the process I also transferred some of these intangible assets from Omega U.S. to Omega Panama. In doing so, those intangible assets were put at risk in Panama, but they were destroyed and rendered valueless as a result of Panama's actions against me and my companies. Indeed, I originally made the decision to invest in Panama to take advantage of the construction boom in Panama long term. My plan for Omega Panama did not end with the projects/agreements that are at issue in this case.

29. Panama alleges that I "comingled" funds and I treated funds from the Omega Consortium companies as "fungible" with mine.[36] I reject this. I kept strict records of my companies' accounts,

[33] Public Act Changing PR Solutions Board of Directors dated 25 Nov. 2010 (C-0946).
[34] *See* Current Status of PR Solutions, *available at* https://www.rp.gob.pa/InformacionRegistral/BusquedaFolios.aspx (last accessed 16 Jan. 2020) (showing that the modification submitted by PR Solutions is still pending) (C-0947).
[35] Resp. Reply ¶ 182.
[36] Resp. Reply ¶¶ 160, 163.

which were audited by third parties.[37] As one of Puerto Rico's largest contractors and as the company that completed some of Puerto Rico's most emblematic projects, my companies needed to demonstrate good governance and financial strength. If that were not the case, our bonding and financing capacity would not have been as strong as it was (before Panama destroyed it). As the owner of Omega U.S., Omega Panama, and PR Solutions, my companies paid distributions to me on a regular basis. All transactions involving any of my companies, including those between different entities owned by me, were properly registered and accounted for independently on each of the companies' separate accounting books. That I may have used the distributions from one company to invest in another making intercompany transactions does not mean that I was improperly comingling funds.

30. Panama similarly claims that the Omega companies and I were alter egos of each other because I was their sole owner, because I did not use separate accounts for each project and allegedly "funneled" funds "paid for public works projects" to private development projects, and because I purportedly used PR Solutions to "disguise" the Omega companies' activities from third parties.[38] This is ludicrous. *First*, the fact that I was the sole owner of my companies does not mean that they were my alter ego. These are separate companies, with separate personalities, with their own separate accounting and business purposes. *Second*, I maintained separate accounts for my companies and for my personal use. The fact that my companies paid distributions to me as sole owner, or that they did intercompany transactions, does not by any means signify that I commingled personal and company funds. *Third*, my companies often worked together and for

[37] *See, e.g.*, Consolidated Financial Statements with Supplementary Information and Independent Auditors' Report of Omega Engineering, LLC and Its Subsidiary for 28 February 2014 and 2013 (C-0386); Omega Engineering, Inc. Financial Statements and Supplementary Information as of 31 December 2013 and 2012 and Independent Auditors' Report (C-0136); Omega Engineering, Inc. Financial Statements and Supplementary Information as of 31 December 2012 and Independent Auditors' Report (C-0137).

[38] Resp. Reply ¶¶ 161-66.

each other. For example, Omega U.S. and Omega Panama worked together as part of the Omega Consortium in each of the Contracts. My companies also made intercompany loans to each other for special purposes and projects. The fact that some of my companies made payments to each other for particular purposes does not mean that any of these companies were alter egos of each other.

VI. THE PERSECUTION BY JUAN CARLOS VARELA AND HIS ADMINISTRATION

31. Panama alleges that the present dispute is simply contractual in nature, and that "[t]here is nothing inherently sovereign in the failure to timely pay invoices, deny requests for contract extensions or amendments, or terminate contracts."[39] Similarly, Mr. Varela in his witness statement denies that he did anything to cause the destruction of my investment in Panama.[40] I reject this. This is far more than just an ordinary commercial dispute.

32. It was clear to my team and me that Panama's coordinated attacks against us came from the top when they began in July 2014. As I have indicated previously, Panama's persecution of us began after I refused Mr. Varela's demand of USD 600,000 for his political campaign and he was subsequently elected President.[41] As soon as Mr. Varela was elected, we were attacked from every angle. Individual owner agencies refused to cooperate, the Comptroller General refused payments and endorsement of change orders on the barest of pretexts, and often the agencies and Comptroller General pointed fingers at each other.[42] The Ministry of Economy slashed funding for our largest project, the Ciudad de las Artes, which constituted over 25% of the value of all of our various contracts combined.[43] Prosecutors hit us with multiple investigations, account

[39] Resp. Reply ¶ 84.
[40] Witness Statement of Juan Carlos Varela dated 7 Oct. 2019, ¶ 7.
[41] Rivera 1 ¶¶ 66-68.
[42] *See, e.g.*, Rivera 1 § V; Rivera 2 § V.
[43] *See, e.g.*, Rivera 1 ¶¶ 119-20; Rivera 2 ¶ 6.

seizures, and a detention order and Interpol Red Notice based on nothing more than innuendo.[44] And after almost five years our case remains unresolved, our accounts remain frozen, and a "preventive" detention order against me is still outstanding.[45]

33. Panama tries to disguise its unscrupulous attacks by several government entities against my team and me as nothing more than commercial misunderstandings or normal procedure. For example, Panama disingenuously claims that the INAC's refusal to approve Certificates of Partial Payment ("**CPPs**") was nothing more than a misunderstanding because the INAC "understood that Omega had requested that payment of CPPs for the contract's full price be made in advance."[46] Panama's argument is absurd. Our payment applications were clearly for work performed under a particular period.[47] We presented our requests monthly, and even the name itself (certificate of *partial* payment) obviously implies that we were not asking for the "full price in advance." Further, documents from that time drafted by us and *even by third parties* show unequivocally that INAC was well aware that we were not asking for payment for the contract's full price in advance.[48]

34. For example, in a 20 January 2015 email in which I was copied, ASSA summarized a meeting with the INAC a few days earlier. In that email, ASSA noted that "the INAC is willing to authorize the *pending* CPPs for [redacted] [. . .] but they expressed that they understand that even if they do not approve the CPPs, the contractor cannot stop work. This point is concerning, but at least they expressed that they will liberate the *pending* CPPs."[49] Also in that email, ASSA

[44] Rivera 1 § V.B.
[45] *See, e.g.*, Rivera 1 ¶¶ 103, 110, 114; Rivera 2 ¶¶ 6-7.
[46] Resp. Reply ¶ 385.
[47] Account Payment Details for Contract No. 093-12 (C-0338 resubmitted), applications 12-19.
[48] *See, e.g.*, Meeting minutes between Omega and INAC representatives dated 23 Oct. 2014 (C-0595), at 1 (showing that Mr. Lopez asked about the approval of the [redacted] that has "accumulated for advance accounts").
[49] Email from ASSA to Nancy Cruz of Travelers dated 20 Jan. 2015 (C-0816).

noted that "the INAC has begun to move toward more reasonable positions, including [. . .] that they are willing to authorize the *pending* CPPs."[50]

35. In my experience as a builder, termination is always the last resort. The owner does not want it, the surety company and the banks do not want it, and the contractor obviously does not want it. And yet, despite our requests for progress payments described above, the INAC, under the Varela Administration, ignored our requests and instead did whatever it could to terminate us quickly and declare us in default. Indeed, I note that according to Mr. Ivan Zarak, Panama was contemplating terminating our contract as early as 10 September 2014, just two months after the Varela Administration came to power.[51]

36. Panama claims (to avoid responsibility) that the Omega Consortium was "overfunded."[52] This is incorrect. Under each of the various contracts we had with the Panamanian Government, we were entitled to receive two different kinds of payment: advance payments and progress payments. First, we were entitled to receive an advance payment to have sufficient funds to start the project, which, at the beginning, consists mostly of tasks related to non-physical work (*i.e.*, work not done at the site). Because of that, the physical work progresses more slowly in the beginning stages of a project. Thus, the other payments we were entitled to—the progress payments for work performed—tend to be smaller in the early stages of a project than they are later on in the project. This is how the industry functions in general, and how our contracts, in particular, were structured. Second, while I am not a Panamanian lawyer, it is my understanding that Law 22 requires the owner of the project (meaning the Government) to make the advance payment *in addition* to progress payments required under the contract independent of whether the

[50] *Id.*
[51] *See Identifican 'Proyectos de Alto Riesgo'*, La Prensa dated 10 Sept. 2014 (C-0231).
[52] Respondent's Counter-Memorial dated 7 Jan. 2019, ¶ 103.

owner believes the contractor is "overfunded" or not. We never received any payments to which we were not entitled under our contracts and Law 22. And had Panama, led by President Varela, not attacked all of our projects, we would have completed all of the Contracts.

37. More importantly, very quickly after Mr. Varela won the elections, it became clear to me and my team that something had changed in the Government because all of these issues started to occur and intensify at the same time. While it is not uncommon to have delays or other issues here and there in public contracts, never in my career have I seen so many problems across so many Contracts occurring all at the same time. It was unmistakable that something had changed in the entire Government's approach to the Omega Consortium and our projects. And, in addition to these simultaneous issues with all of the projects, Panama inexplicably linked me to Moncada Luna's alleged corruption scheme on nothing but the flimsiest of "evidence." There was most certainly nothing commercial about this abuse against me and my companies.

38. Panama claims that "it is quite remarkable" that I did not reach out to Ms. Medina after Mr. Varela's request for money.[53] What is remarkable is Panama's distortion of the truth. As I already indicated in my First Witness Statement, Ms. Medina, on behalf of Mr. Varela, insisted that I meet with Mr. Varela.[54] In fact, not only was she the one that set up the meeting—she was in attendance.[55] And as I indicated in my Second Witness Statement, I did in fact reach out to Ms. Medina to seek her assistance.[56]

39. Panama claims that Mr. Varela's Office of the Presidency hired his former lawyer, Mr. Saltarín, only to investigate "public officials (not contractors)."[57] Based on the details of Mr.

[53] Resp. Reply ¶ 198.
[54] Rivera 1 ¶¶ 66-67.
[55] *Id.*
[56] Rivera 2 ¶ 41.
[57] Resp. Reply ¶ 341.

Saltarín's contract, which were published in the Panamanian press, this is untrue. Moreover, I personally witnessed Mr. Saltarín engaging in deceptive conduct. On 13 January 2015, there was a meeting regarding the Ciudad de las Artes project between the INAC, the surety, the Ministry of Economy and Finance, and Omega representatives, including me. I remember that Mr. Saltarín arrived at that meeting a few minutes late, after everyone else had arrived. He was introduced as the "Presidency's representative on the issue of Ciudad de las Artes." I shook his hand and he confirmed to me that he had been sent by the President to help resolve the problems with the project, which at the time gave me a bit of hope. But Mr. Saltarín quite deceptively did not say at any point that he had been directly hired by the Presidency to build criminal cases, as I now have learned from the contract between Mr. Saltarín's law firm and the Office of the Presidency that was published.

40. The persecution by Mr. Varela and his administration was fierce, and contrary to what Panama misleadingly says, we did not "abandon" our projects.[58] When I mentioned in my previous declaration that we had eventually abandoned the projects, I obviously meant that we had stopped physical work on the Projects, not that we abandoned and fled Panama, as Respondent tries to claim.[59] And we stopped physical work only because Panama left us no choice and only until we could get things back on course (which, unfortunately, never happened). We were being attacked from all angles, and I (along with my companies) was being criminally persecuted. Despite this, I maintained my key team in Panama through mid- to late-2015 trying to work with the different Agencies to re-start work on the Projects, and I also maintained security personnel on site to ensure the physical integrity of each of the Projects. By late 2014, Panama's actions forced me to suspend physical work on the projects to stop the economic bleeding of the Omega Consortium, but we

[58] Resp. Reply ¶ 261.
[59] Rivera 1 ¶ 129.

remained committed to resume work as long as Panama cured its breaches. Despite countless efforts to compel Panama to comply with its obligations, by fall of 2015, Panama's attacks had escalated to the point that I and at least one other senior official of the Omega Consortium could not even return to Panama due to the baseless detention orders issued against us. At that point, I felt I was putting my personnel in danger by leaving them in Panama, and I became convinced that Mr. Varela was willing to arbitrarily use all the resources at his disposal against us and would stop at nothing to force us out of Panama. Naturally, by the fall of 2015, we had no choice but to abandon the projects, leave the country, and seek protection under international law. And even after we left the country, we continued our efforts to resolve our issues with Panama, including the possibility of resuming work in the Projects, unfortunately to no avail.

41. Panama even goes on to attempt to minimize the harm caused by its unscrupulous declaration of default in the Ciudad de las Artes Project, saying that I could simply "work out a process" with the bonding company "assum[ing] […] that the contractor is otherwise financially healthy and has not shown a pattern of performance issues over time."[60] Once again, this is simply untrue. Panama's wrongful actions were devastating to the Omega companies and prevented us from participating in further projects. In fact, Panama itself kept a list of companies that were banned from bidding on PanamaCompra and we became one of them.[61] In our case, Panama's economic strangulation caused us to lose not only our operations in Panama, but it also caused Omega U.S. and my other companies to lose opportunities elsewhere. Despite my best efforts, Panama's wrongful declaration of default was a lethal blow to the Omega Consortium both in Panama and in Puerto Rico because Panama was where the Omega Consortium had close to its

[60] Resp. Reply ¶ 545.
[61] PanamaCompra - List of Banned Companies (C-0443).

entire project backlog.[62] The devastating effects of a declaration of default are common knowledge in the construction industry. It is shocking to me that Panama denies that its irresponsible declaration of default played a role in this. And despite Panama's baffling claims to the contrary,[63] we have been exposed to a number of claims by third parties as a result of Panama's unlawful conduct, including claims from our financial partners like Credit Suisse, bonding companies, and subcontractors and partner contractors.[64]

[62] *See, e.g.*, Email from Travelers to AON dated 9 Feb. 2015 (C-0721).
[63] Resp. Reply ¶¶ 540-49.
[64] Acknowledgement Letter from Omega to Credit Suisse dated 13 Dec. 2016 (C-0817).

VII. STATEMENT OF TRUTH

42. Save where otherwise indicated, all facts and matters stated in this witness statement are derived from my own knowledge and belief. The facts stated in this witness statement are true and correct to the best of my knowledge and belief.

Signed: 

Oscar I. Rivera Rivera

Dated 17 January 2020