IN THE HIGH COURT OF JUSTICE CL-2017-000730

ADMIRALTY AND COMMERCIAL COURT

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA — Claimant

-and-

JP MORGAN CHASE BANK, N.A. ~~NATIONAL ASSOCIATION~~ — Defendant

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AMENDED PARTICULARS OF CLAIM

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1. The Claimant is the Sovereign state of the Federal Republic of Nigeria ["the FRN"].

2. The Defendant is J.P Morgan Chase Bank, N.A ~~National Association~~ ["JPMC" or the Defendant]. JPMC was at all material times a bank authorised and regulated by the Financial Conduct Authority ["FCA"] and its predecessor the Financial Services Authority ["FSA"]. JPMC was registered as an authorised firm on 1

December 2001 (registration number 124491), and therefore had at all relevant times permission to hold and/or control customer deposits and client money.

3. JPMC was not at the material time registered under the Money Laundering Regulations 2007; however, its registry entry with the FCA states that its anti-money laundering systems and controls are subject to FCA supervision as a Financial Services and Markets Act 2000 firm with Part 4A permission.

4. The address of its Depository Administration at the material time was 60 Victoria Embankment, London EC4Y OJP.

Other persons and legal entities

5. The Federal Government of Nigeria ["FGN"] consisting of elected and appointed officials charged with the responsibility of representing the interests of the FRN in accordance with the terms of the 1999 Constitution of the Federal Republic of Nigeria.

6. Chief Dan Etete ["Etete"], former Minister of Petroleum in the FGN.

7. Mohamad Sani Abacha, son of late General Abacha, former President of Nigeria.

8. Royal Dutch Shell ["Shell"] and Eni Corporation ["Eni"], who in consortium formed an alliance (including their Nigerian subsidiaries) for the purposes of acquiring the rights to develop the OLP 245 Oil Field.

9. Shell Nigeria Exploration and Production Company Nigeria ["SNEPCO"], a subsidiary of Shell in Nigeria.

10. Shell Nigeria Ultra Deep Limited ["SNUD"], another subsidiary of Shell.

11. The Nigerian National Petroleum Corporation ["NNPC"], a state company involved in transactional arrangements with SNUD.

12. Nigeria Agip Exploration Limited ["NAE"], a conduit for the funds in issue.

13. Malabu Oil & Gas Nigeria Ltd ["Malabu"], a company formed in Nigeria which was wrongfully granted the original licensing rights to OPL245 and was controlled by Etete, who had a significant shareholding.

14. International Legal Consulting Limited ["ILCL"], a company that purported to give consultancy services to Malabu to procure the impugned transaction.

15. Energy Venture Partnership Limited ["EVP"], another consulting entity that purported to give consultancy services to Malabu.

16. Mohammed Bello Adoke, former Attorney General and Minister of Justice of the FGN.

17. Olusegun O Aganga, former Minister of Finance of the FGN.

18. Dr Yerima Lawan Ngama, former Minister of State, Finance of the FGN.

19. Stefania Maulucci, Vice-President Escrow Services of the Defendant.

The Claim

20. This claim arises out of an abuse of the banking system and the manipulation of escrow arrangements to facilitate the transfer of funds to entities and persons who were not entitled to receive the funds. The funds should have been held by the Defendant for the benefit, and/or to the order, of the Claimant had the Defendant acted with the reasonable care and skill to be expected of a bank and in compliance with the laws of England and Wales.

21. As set out further below, the Defendant owed a duty of care to the Claimant (in contract and/or in tort), at all material times, to transact business for and on behalf of the Claimant in compliance with the laws and usages of the Claimant as well as in compliance with the regulatory and statutory requirements of the

jurisdiction of England and Wales. The Defendant also owed fiduciary duties to the same effect.

Background to the Claim

22. To contextualise this Claim, it is necessary to set out the background to the events which led in 2011 to the purchase of an oil exploration license known as OPL 245 by Eni and Shell which in turn resulted in funds being deposited with, and subsequently transferred by, JPMC.

23. On 29th April 1998, the FGN awarded full rights to exploit an oil field known as OPL 245 to Malabu, a Nigerian company which had been established as a corporate entity just five days earlier. At the time of the award one of Malabu's beneficial owners and its controlling mind was Etete the then Minister for Petroleum Resources in the government of the then military dictator General Abacha.

24. In effect Etete, who controlled Malabu, awarded the oil license to himself. This was an abuse of his office and contrary to Nigerian law, thus rendering the award of the contract illegal.

25. Following the return to civilian government in May 1999, the FGN rescinded the award to Malabu and instead granted the exploitation rights for OPL 245 to SNUD. This revocation led to a series of disputes between Malabu, Shell and the FGN, as the license was re-awarded to Malabu in 2001; and then re-awarded to Shell in 2002 (with a signature bonus lodged in an escrow account held by the Defendant); and then again further re-awarded to Malabu in 2006.

26. Between May 2009 and December 2010, Etete (who by now had been convicted and fined in France for money laundering in relation to unrelated unlawful conduct) sought to sell the OPL 245 rights directly to Shell and Eni, using two companies, EVP and ILCL, as middlemen.

27. In December 2010, negotiations were halted after Mohammed Abacha, the son of Nigeria's former military dictator, initiated a legal challenge alleging that he was a part owner of Malabu and that Etete had fraudulently taken control of the company.

28. Shell and Eni then agreed with the then Attorney General of Nigeria, Mohammed Bello Adoke, and others to a revised structure that would enable them to acquire the OPL 245 block from Malabu by transfer of the payment through the FGN.

29. This was achieved in April 2011 by an arrangement under which Shell and Eni acquired the rights to OPL 245 through a series of back-to-back agreements ["the Resolution Agreements"] involving the FGN as an intermediary.

30. The Resolution Agreements consisted of:

    a. A Block 245 Malabu Resolution Agreement as between Malabu and the FGN, whereby Malabu effectively surrendered the OPL Asset to the FGN and agreed to "settle and waive all claims" to any interest in OPL 245 in consideration of receiving compensation from the FGN in the sum of $1,092,040,000;

    b. The Block 245 Resolution Agreement between the FGN, NNPC, SNUD, SNEPCO and NAE, whereby, in return for payment by SNUD, on behalf of SNEPCO and NAE, to the FGN of a signature bonus of $207 million, and a payment from NAE, on behalf of SNEPCO and NAE, (the Consortium) of a further sum of $1,092,040,000, the FGN agreed to allocate the OPL 245 Assets and grant an oil prospecting license to SNEPCO and NAE; and

c. A separate "Settlement Agreement" as between Malabu on the one part and SNEPCO and SNUD, on the other part, to resolve the ongoing legal proceedings between them.

31. In order for this transaction to succeed it was necessary to involve the Defendant, who by its actions facilitated disbursement of the proceeds of the payment for the OPL rights from FGN to Malabu.

32. The Defendant should have been on notice that the Block 245 Malabu Resolution Agreement between Malabu and the FGN was merely a device by the then officials of FGN to deny to the Claimant the sums to which it was entitled and to perpetuate the sham of the award of the license to Malabu. The Block 245 Malabu Resolution Agreement (the purpose of which was to defraud the FRN of the value of OPL 245) was unlawful and void.

33. To facilitate this transaction, it was necessary for the Defendant to set up a number of accounts which in and of itself should have alerted the Defendant to the illicit movement of funds which it was to facilitate.

The JPMC Accounts

34. Pursuant to the "Block 245 Resolution Agreement" between the FGN and the Shell and Eni consortium, it was agreed that:

a. An escrow agent would be appointed by NAE (on behalf of NAE, SNEPCO and the FGN) for the purposes of paying US$1,092,040,000 to the FGN;

b. NAE and the FGN would enter into an escrow agreement ["Escrow Agreement No.2"] to set up an escrow account ["NAE-FGN Account"];

c. It was arranged that NAE would wire transfer US$1,092,040,000 ["the Deposited Amount"] to the NAE-FGN Account within five days of the grant and delivery of the OPL 245 license to SNEPCO and NAE.

d. On confirmation by FGN that all previous claims and disputes relating to OPL 245 had been resolved, NAE and SNEPCO would terminate the Escrow Agreement No.2 and agree to the transfer of the funds into a designated FGN Deposit Account.

35. The Defendant always considered the Claimant as the beneficiary of the Depository Account and should therefore have been aware of the provisions of the Constitution of Nigeria and the requirement to properly account for funds received to the credit of the Claimant in the consolidated fund.

36. The Defendant was appointed as the escrow agent.

37. On or about the 4th May 2011, the Escrow Account between NAE and FGN was opened by the Defendant and given the account number 0041429879. The Claimant itself (alternatively the Claimant through the FGN as agent) and the consortium through NAE entered into the Escrow Agreement no 2. The Defendant entered into this arrangement with the knowledge that the other party and beneficiary of the Settlement Agreement was Malabu. To facilitate the escrow agreement, the Defendant, as the fund holder, was under a duty to carry out proper and appropriate due diligence. If the Defendant had carried out such due diligence, the true beneficial ownership of Malabu would have been clear and in accordance with their legal obligations and in compliance with the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002 the Defendant would have made a suspicious transaction report and would have refused to carry out the arrangement.

38. Also on the 24th May 2011, the Deposited Amount was deposited by NAE and SNEPCO into the Escrow Account ("the Escrow Account"). This was, pending receipt of an Escrow Completion Notice directing the transfer of the Deposited Amount from the Escrow Account to a deposit account created by the Defendant ~~in the name of the FGN~~. This deposit was for the benefit of the Claimant and was the purchase monies for the Consortium to receive the benefit at that time of OPL245. The Claimant was never to benefit from the sums, which were deposited in its name.

39. On or about the 20th May 2011, the FGN Escrow Account (41451493), ("The FGN Depository account) was opened. This was the account to which the funds were to be transferred from the NAE-FGN escrow account under the terms of a depository agreement dated 20th ~~1st~~ May 2011 between the Claimant itself (alternatively the Claimant through the FGN as agent) and the Defendant ("the Depository Agreement").

The Depository Agreement and duties owed to the Claimant

40. The said Depository Agreement was apparently signed on behalf of JPMC by one Christopher Fasouletos, then Assistant Vice President, and based in New York, United States of America. In fact, the person with the apparent authority to oversee the arrangements in respect of this transaction was Faisal Ansari, an Executive Director in the Defendant's Escrow and Structured Accounts Department, and apparently according to the Defendant "head of J.P. Morgan's international escrow business". By the Depository Agreement, the Defendant had agreed to open a Deposit Account for the benefit of the FRN ~~and/or the FGN~~, which was to receive the Deposited Amount from the Escrow Account.

41. The first two recitals of the Depository Agreement refer to the Block 245 ~~Malabu~~ Resolution Agreement (referred to at sub-paragraph 30(b) above) and FGN's

obligations thereunder. It would or should ~~therefore~~ have been clear to the Defendant (by reason of at least the matters set out at paragraph 37 above) that the funds to be deposited into the Depository Account were intended for Malabu. JPMC should have undertaken appropriate due diligence on Malabu, (including its ownership and its original acquisition of the OPL 245).

42. By and/or on the proper construction of the Depository Agreement, the Defendant was only entitled to release the deposited funds upon satisfaction of the Depository Release Conditions, which included "*written instructions per the Release Notice enclosed in Schedule 2*". However, Schedule 2 to the Depository Agreement (which is described in the Depository Agreement as setting out the details of the beneficiaries to whom the funds are to be released) apparently never existed. In breach of the Depository Agreement, the funds were transferred without the Release Notice being completed.

43. On the proper construction of the Depository Agreement, alternatively by an implied term, the Defendant was obliged to comply with its internal compliance and due diligence processes and/or reasonable due diligence processes regarding money laundering and/or the proceeds of crime, and/or was under a duty to comply and/or take reasonable steps to comply with its obligations under applicable money laundering legislation, including the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002, and/or was under a duty to take reasonable care to ensure that the payments it made from the FGN Depository account were for the benefit of the Claimant and were not part of a scheme to defraud the Claimant. Further, on the proper construction of the Depository Agreement, alternatively by an implied term, the Defendant was obliged to comply with the relevant legal framework regarding the holding of funds of the FRN, including the Constitution of the FRN (addressed further below).

44. Further, or alternatively, at all material times the Defendant owed the Claimant an equivalent duty in tort.

45. Further, or alternatively, at all material times the Defendant owed the Claimant an equivalent fiduciary duty.

46. Further, or alternatively, if the Defendant did not have a contractual relationship with the Claimant, then it held the Deposited Amount on trust for the FRN, and owed the FRN the duties of a trustee (including the duties set out at paragraph 43 above).

47. In pre-action correspondence, the Defendant has referred to Clause 7.2 of the Depository Agreement which provided, in part, that "The [the Defendant] shall be under no duty to enquire into or investigate the validity, accuracy or content of any instructions or other communication." On its proper construction, this clause did not mean that the Defendant was relieved of its obligations to prevent money laundering and/or the obligations set out at paragraph 43 above. If that was its effect, then that provision is unenforceable as being inconsistent with the Defendant's legal and regulatory obligations to prevent money laundering.

The transfers and the Defendant's breaches of duty

48. On or about the 23rd May 2011, NAE confirmed to the Defendant that FGN had settled all claims and so instructed the Defendant, as escrow agent "to release the Escrow Amount, and irrevocably transfer the Escrow Amount to the FGN Escrow Account".

49. On the 24th May 2011, the sum of USD1,092,040,000 was deposited in the escrow account number 2; this was the money which had been received from the Shell/Eni Consortium.

50. On the same day, the said sum of USD1,092,040,000 was transferred from the said escrow account number 2 to the FGN Depository Account. The transfer was

authorized on behalf of the Defendant by Luke Edy, Charles Lander and Greg Campbell, and in signing off, these authorised signatories stated that there were no outstanding legal issues. As set out further below, as the Defendant should have been aware, the utilisation of the depository account was contrary to the Constitution of the Claimant.

51. On the 25th May 2011, apparently on the instructions of the Federal Minister of Finance Aganga, the Defendant was instructed to transfer US$1,092,040,000 to Petrol Service Co. Ltd at BSI Lugano in Switzerland IBAN: CH72P8465DODA209798AA SWIFT: BSILCH22, Account No: A209798AA 1//2. This should have raised a concern on the part of the Defendant since the intended recipient was not Malabu. If the Defendant had sought consent from the UK Authorities to carry out this transaction such consent could not have been sought with full disclosure to the UK Authorities, as it is clear that the intended transfer was against the laws of the Claimant and followed an unlawful transaction flowing from the award to Malabu of the OPL 245 concession and that therefore the likelihood was that the UK authorities would have declined to consent to the transaction which would then have been held up by operation of statute.

52. On the 31st May 2011, in accordance with the instruction, the funds were sent to the account of Petrol Services Co. Limited at BSI Lugano Bank.

53. Concerned about the legitimacy of the transaction, despite the funds emanating from an account at the Defendant, BSI rejected the funds and sent them back to the Defendant. It is to be inferred that the due diligence carried out by BSI was sufficient for them to have real concerns about the provenance of the funds and this concern of BSI is material upon which the Claimant will rely to show that a reasonably diligent banker would not have dispersed funds without further inquiry. Why the Defendant was not put on notice as to the legitimacy of the funds following the refusal of BSI to carry out the transaction is unclear.

54. Accordingly, BSI having refused to accept the funds returned them to the Defendant.

55. On the 8th July 2011, a freezing order was obtained in the USA by one of the companies that had allegedly brokered the transaction between Malabu and the consortium, namely ILCL, in the sum of USD74,695,936. EVP also sought the protection of the High Court in England in an action claiming commission for the transaction.

56. On the 8th July 2011, Oanladi Klfasi, purportedly the Permanent Secretary of the Federal Ministry of Finance of the FGN, instructed JPMC to transfer USD 877 million to an account this time held by Malabu itself at Banque Misr Liban sal. This attempt to move the funds in this way given the original instruction to Petrol Services Company Limited, which failed because of the concerns of the receiving bank, and the subsequent freezing order, would have put a reasonably diligent banker on notice and should have put the Defendant on notice that it needed to make further inquiries before it facilitated this transaction.

57. On or about the 13th July 2011, the Defendant did express some concern about the instruction, based on a procedural issue rather than any substantive underlying concerns about the purpose of the transfer or the source or destination of the funds.

58. By ~~On~~ the 14th July 2011, ~~Gloster J (as she then was) in *EVP v Malabu Oil and Gas Limited* [2013] EWHC 2118 was informed~~ the Defendant was aware of Etete's money laundering conviction. If the Defendant did not know that, it should have by reasonable and appropriate due diligence have known this at this stage.

59. From on or about the 14th July 2011, the Defendant would have known, or should reasonably have known or suspected that the funds, which were rightfully the funds of the Claimant might be misappropriated by acts of officials not acting in accordance with the law or constitution of the Claimant, and/or that parties or individuals other than the Claimant were seeking to misappropriate the funds held by the Defendant.

60. On the 15th July 2011, in a hearing relating to its application for a restraining order, in the USA, against Malabu and the Defendant, ILCL made clear that Etete was Malabu's principal and that Malabu was the intended recipient of the funds. The restraining order named Dan Etete a/k/a Dauzia Loya as Malabu's principal.

61. From this date, the Defendant was or should have been aware of Etete and/or his role, indeed it would have recognised by ordinary due diligence that this individual was a politically exposed person and would have further realised in accordance with the requirements of ordinary compliance that enhanced due diligence should be carried out in respect of Etete and the Malabu transaction which they were being invited to continue to facilitate.

62. Also on 15th July 2011, the Defendant received an email from Ismaila Alyu, describing himself as representing the Federal Ministry of Finance of the FGN. The email was addressed to Bayo Osolake an employee of the Defendant and gave yet a further set of instructions to transfer funds, this time the sum of US$802,040,000 from the FGN account to an account belonging to Malabu. The email was not sent from a Federal Ministry of Finance email account in Nigeria, but was sent from a private email account in the UK. This did not seem to raise any concern for the Defendant.

63. In summary at this juncture, had the Defendant acted with reasonable care and skill and/or conducted reasonable due diligence it would or should have known or at least suspected that it was being asked to facilitate the movement of a

significant amount of money from an account in the name of the FRN to an account of a company formed only days before a licence was awarded to that company by its beneficial owner, the then minister responsible, Etete, and/or would or should have known or suspected that it was being asked to transfer funds to third parties who were seeking to misappropriate the funds from the Claimant, and/or that there was a significant risk that this was the case.

64. On the 22nd July 2011, a letter was sent on behalf of the Defendant by Stefanla Maulucci, Vice President JPMorgan Escrow Services to Dr. Yermia Lawan Ngama, Minister of State for Finance, stating that customer checks were being initiated, and a meeting was requested. This was the first time that a face to face meeting was so requested, despite the nature of transaction. It is unknown whether such a face-to-face meeting took place. However, it appears that the reasoning for the meeting from the Defendant's perspective was its decision to increase its fees in respect of its role, apparently because it was to incur legal fees.

65. Also on the 22nd July 2011, a lawyer representing ILCL told the New York Court that Etete ("the main man of Malabu") was a money launderer and that OPL 245 "reeks" of fraud, money laundering and corruption. The Defendant was a party to the case and its lawyer, Robert Houck, would appear from the transcript to have been present during the hearing. ~~Also,~~ By this stage, the Defendant ~~acknowledged to the New York Court that it~~ knew the intended recipient of the funds from the Depository Account was Malabu. ~~Donald Houck Counsel for the Defendant, informed the court: "And so, you know, we - yesterday, counsel said that JPMorgan conceded in London in correspondence between lawyers that the Nigerian account was for the benefit of Malabu".~~

66. The Claimant will say that this knowledge ~~stance taken by the Defendant~~ should have triggered further diligence on Malabu, including the legality of the original award of OPL 245 to the company. Further, and in any event, in those

circumstances, no bank acting with reasonable care and skill should have transferred the money from the Depository Account.

67. Further on the 22nd July 2011, the Court in New York recognised ~~-ing~~ that Etete was Malabu's principal and that the account was for his benefit. The finding that Etete, not Malabu, was the beneficiary would have further put the Defendant on notice of the need to undertake further due diligence and even make a report to the UK authorities. The court also ruled that Etete had been the oil minister when Malabu was awarded OPL 245 and was also a convicted money launderer, and that the depository account in the name of the FGN, was not in fact for the FGN's own account but for the benefit of Malabu or Malabu's principal, Etete.

68. At this juncture to be compliant with its obligations to prevent money laundering, the Defendant should have frozen the Depository Account and/or terminated the Depository Agreement.

69. On the 25th July 2011, a letter was sent from Yerima Lawan Ngama Minister of Finance FGN and Otunla Jonah Ogunniyi the Accountant General of the Federation to the Defendant, instructing the Defendant to transfer the lesser sun of USD801,540,000 to Malabu's account with Banque Misr Liba Sal in Lebanon and USD215,000,000 to the account of Court Funds Office of England and Wales, in order, to secure compliance with the freezing order in respect of the litigation commenced by EVP.

70. On the 29th July 2011, Steel J in the High Court expressed concern that the court was about to become an aide to a money laundering exercise. He therefore ordered that the parties should draw the litigation to the attention of the current administration of the FGN and to express his concerns about the arrangements around the Resolution Agreements.

71. Steel J later received a letter addressed to him from the then Attorney General of Nigeria. This letter was summarised in the judgment and thereby entered the public domain. The Attorney General explained that the Resolution Agreements had been concluded with the full knowledge of the FGN which believed that they were in the public interest of the Nigerian people for reasons which he set out. They were patently not in the public interest of the Nigerian people, and those individuals in the FGN who were seeking to effect the transfer to Malabu were acting in clear breach of their fiduciary duties to the FRN.

72. Steel J observed (emphasis added):

> "I am comforted to receive that letter from the Attorney, **albeit the background circumstances of this particular case and the enormous sums of money at stake can, it seems to me, call for some degree of hesitation in taking any irrevocable step leading to the disposal of the monies**."

73. Despite the plain judicial concerns the Defendant did not put a hold on further disbursements but continued to act to disperse the funds.

74. On the 4th August 2011, a payment was again requested to be made to the Malabu account in Lebanon.

75. That transfer failed.

76. On the 10th August 2011, in a letter from Faisal Ansari Executive Director JPMorgan Escrow Services to Yerlma Lawan Ngama, Minister of Finance, he informed the FGN that the payment to Malabu had been rejected by the Lebanese bank, the Defendant also requested information as to the purpose of the transfer, justifying the relationship between the FGN and the final beneficiary.

77. On the same day, the Attorney General of Nigeria replied to the Defendant and set out the relationship between the FGN and Malabu and confirmed "the payments - due and payable to Malabu are legitimate and flow from the Settlement Agreement. The payments represent Malabu Oil and Gas Limited's consideration for relinquishing their interests in Block 245."

78. However, this does not afford the Defendant an answer to the claim given the matters set out above, in particular, (but not limited to) allegations of corruption and fraud that had been aired in the New York Court, the material relating to Etete, the concerns of Steel J and the then reputation of the officials in control of the FGN. The Defendant was obligated when dealing with these sovereign funds to conduct enhanced due diligence on the OPL245 transaction.

79. On the 16th August 2011, in a further letter from Yerima Lawan Ngama, Minister of Finance and Otunla Jonah Ogunniyl, Accountant General of the Federation the Defendant was asked to transfer US$401,540,000 to a Malabu account (number 2018288005) with First Bank of Nigeria plc in Nigeria and US$400,000,000 to a Malabu account (number 3610042472) with Keystone Bank Nigeria Limited in Nigeria. The Defendant should have appreciated that this was the fourth illegitimate attempt to transfer the funds out of the Defendant bank.

80. On the 23rd August 2011, without carrying out further due diligence and in the face of the plain evidence that this was a transaction to facilitate the transfer of criminal property in a transaction 'wreaking' of political corruption, the Defendant made the transfer to the two newly nominated Malabu accounts in Nigeria.

81. Having had two transfers rejected, the Defendant, without any real inquiry and merely relying on letters without further or enhanced due diligence, agreed to make transfers direct to these two newly nominated Malabu accounts in Nigeria.

82. On the 18th August 2013, the dispute between Malabu and ILC was resolved. At that time, the Defendant sought consent from the UK authorities to transfer the balance of $74,849,932.39 from the funds received for Malabu from the sale of OPL. Consent was refused and the funds appear to have remained with the Defendant.

83. On the 24th April 2014 and 8 September 2014, the Public Prosecutor of Millan (PPM) obtained external restraint orders [ERO's] from Switzerland and the United Kingdom restraining the sums of $110m and $85m respectively, which was part of the original Deposited Amount.

84. The apparent beneficiary of the Swiss funds was EVP whose sole director was Zubelum Chukwuemeka Obi ["Obi"] an agent of Malabu and/or Etete.

85. As previously referred to, EVP had sued Malabu in the High Court in England for commission or agency fees for procuring the sale of OPL245. Malabu had been ordered by the High Court to pay $215m into court in respect of EVP's claim.

86. EVP was awarded $110m by the High Court in respect of its claim.

87. Malabu therefore was likely to claim the balance of $85m, held in the Supreme Court Funds Account.

88. The grounds upon which the PPM applied for the ERO was that senior officers of Eni s.p.a (which is partly owned by the Italian state), Etete and his agent Obi were being investigated by the PPM in Italy for procuring and receiving reverse commissions (kick-backs) with regards to the acquisition of OPL245.

89. The PPM has concluded its investigation and has charged senior officers of Eni s.p.a, Royal Dutch Shell, Etete, and Obi.

90. It is the Claimant's case that the material available to the PPM is material which, if the Defendant had undertaken its banking activities in compliance with the Money Laundering Regulations 2007 and ordinary due diligence principles, the Defendant would have discovered. Further, had the Defendant carried out its banking activities in compliance with the Money Laundering Regulations 2007 and ordinary due diligence principles it would have discovered or suspected the underlying corrupt scheme and would have preserved the funds of the Claimant from disposal to Malabu, (which it would have known was owned by a politically exposed person and which was mired in a corrupt arrangement from the day of its formation).

Further Details of the Claim

91. The Escrow accounts were not lawful in Nigeria and by proper due diligence the Defendant should have appreciated that it was facilitating a transaction that was contrary to laws of the Claimant.

92. The Escrow Account was not part of the Consolidated Revenue Fund of the Claimant. As bankers to the FGN it was incumbent on the Defendant to know and understand the basic laws of its client. The Escrow Sum was not paid, as it should have been, into the Consolidated Revenue Fund of the Claimant. This violation of section 80(1) of the Constitution caused loss to the Claimant.

93. Following the failure of the Defendant to pay the said sum into the Consolidated Revenue Fund of the Claimant the Defendant then, with no proper or appropriate due diligence, dispersed the escrow funds for the benefit of a known PEP and convicted money launderer.

94. The Defendant found it difficult to disperse the funds and was on more than one occasion met with a refusal by the nominated receiving bank to accept the funds,

eventually the funds being sent to two banks in Nigeria, which were not connected to the FGN.

95. It is the Claimant's case that the sum of $801,540,000 (Eight Hundred and One Million, Five Hundred and Forty Thousand dollars) was improperly and without due regard to the governing mandate for the Deposit Account dispersed to persons who had no lawful right to the said sums.

96. Further, the Defendant, without any proper application or regard to its obligations (set out at paragraphs 42 to 46 above) permitted the Funds to be dispersed.

97. The Defendant as a banker to the FGN on behalf of the FRN and by accepting the Deposited Amount should have been cognisant of the provisions of Article 80(1) of the Nigerian Constitution and failed in its duty of care to the Claimant to carry out the ordinary inquiries of a diligent banker. Section 80(1) of the Claimant's Constitution 1998, Section E - Powers and Control over Public Funds, provides that:

> "All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and from one Consolidated Revenue Fund of the Federation."

98. Neither the Escrow nor the Deposit Account fall under the provision of Article 80(1).

99. The Defendant should, by ordinary diligence, have realised that the accounts were part of a scheme designed to siphon off funds from the Deposited Amount which belonged to the Claimant.

100. If the Defendant had diligently carried out its role as an escrow agent, and acted in accordance with its obligations as set out at paragraphs 42 to 46 above, as it should have done, it would have become aware of the issues surrounding the lawfulness of holding the FRN's funds in the Depository Account. The Defendant would then have realised that mere letter(s) from different Ministers and or Officials were insufficient to support a lawful transfer of the funds to an account other than the Consolidated Fund.

101. Further, had the Defendant carried out such inquires, it would have appreciated that Malabu, the ultimate beneficiary of the Deposited Amount and/or the Funds was a company controlled by Etete who was the petroleum minister of the FRN when OPL 245 was awarded to that company on the 29th April 1998. Further, at the time of the Malabu Resolution and Deposit Agreements, Etete was a convicted money launderer. A basic level of due diligence would have revealed these facts.

102. On 31st May 2013, the Deposit Account had a balance of $74,200,000.03, which was for the benefit to the Claimant. This was transferred by the Defendant to Keystone Bank in Nigeria on the 20 August 2013 without any or any proper regard to the obligations placed on a banker to understand, in circumstances as prevailed here, why the transfer was being requested.

103. In addition to opening the Deposit Account and receiving the Deposited Amount contrary to Article 80 of the Nigerian Constitution, the Defendant knowingly and by its conduct facilitated the distribution of the Deposited Amount and/or the Funds to corrupt government officials, corporations associated with these officials and persons connected with these officials. This included Etete who acquired the initial rights to OPL245, in breach of his fiduciary duty, while he was minister for petroleum in 1988.

104. The Defendant transferred the Deposited Amount from the Escrow Account No2 to the Deposit Account, which was approved by officers of the Defendant on 24th May 2011 at the same time as stating that there were no outstanding legal issues. This statement was incorrect in so far as the Deposit Account was opened contrary to Article 80 of the Claimant's Constitution, when if the Defendant had carried out its duties expected as a diligent banker it would have discovered this issue.

105. On 16th December 2016, the criminal charges of money laundering were brought against Etete and the former Attorney General Mohamed Adoke by the Claimant, in Nigeria, in connection with the Funds. The charges are that the former Attorney General and Etete committed the offence of money laundering by facilitating the payment of the Funds to Etete and Malabu Oil & Gas Limited through the Deposit Account.

106. The case against Adoke and Etete, who are at large, is still pending.

Legal Basis of the Claimant's Claim

107. The Defendant acted in breach of its duties and obligations (summarised at paragraphs 42 to 47 and 90 to 100 above), which were owed to the Claimant, by receiving and continuing to facilitate transactions relating to the Depository Account in circumstances where such arrangements involved the misappropriation of the Deposited Amount belonging to the Claimant which it could and should, by due diligence and/or using reasonable care and skill, have discovered. Insofar as is necessary, the Claimant will allege that the actions of the Defendant were grossly negligent.

108. But for the said breaches of duty, the Deposited Amount could not and would not have been debited from the Depository Account on the 24th August 2011 and would have remained there to be later remitted to the Consolidated Revenue Account of the Claimant and therefore for the benefit of the people of Nigeria.

109. Further, or alternatively, the Defendant received funds which were paid to it in furtherance of a corrupt arrangement, and in breach of trust and/or fiduciary duty. It (a) knew of circumstances which would put an honest and reasonable man on inquiry, (b) knew of circumstances which would have indicated the true facts to an honest and reasonable man, (c) ignored (whether recklessly or negligently) the numerous 'red flags' (pleaded above) which indicated that the FRN were being defrauded. In the premises, the Defendant is liable for knowing receipt of the Deposited Amount.

110. As a result, of the matters set out above Claimant has suffered loss and damage.

AND THE CLAIMANT CLAIMS:

(1) The sum of $875,740,000.03 (eighty hundred and seventy-five million, seven hundred and forty thousand and three US dollars).

(2) An account from the Defendant for the balance of $1,092,040,000 (one billion nine hundred and twenty million and forty thousand US dollars) being the Deposited Amount which represents the sums deposited in the Claimants account paid for the OPL 245 Block.

(3) Interest on the above under section 35A of the Senior Courts Act 1981.

(4) Costs.

(5) Further or other relief

Served this 4th day of July 2018 by Reynolds Porter Chamberlain LLP~~[ ] day of November 2017 by Verdant Solicitors~~, solicitors for the Claimant.

ANDREW MITCHELL QC

RICHARD POWER

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these Amended Particulars of Claim are true. I am duly authorised by the Claimant to sign this statement.

Full Name JONATHAN CARY Position PARTNER, REYNOLDS PORTER CHAMBERLAIN LLP

Signed.....