

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARCIA GOLDBERG, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No.
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS
	:	
GRAÑA Y MONTERO S.A.A., MARIO ALVARADO PFLUCKER and MÓNICA MILOSLAVICH HART,	:	
	:	
Defendants.	:	
	:	
	:	<u>DEMAND FOR JURY TRIAL</u>

Plaintiff Marcia Goldberg (“Plaintiff”) alleges the following based upon the investigation of Plaintiff’s counsel, which included a review of U.S. Securities and Exchange Commission (“SEC”) filings by Graña y Montero S.A.A. (“Graña y Montero” or the “Company”), as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of all of those who purchased the American Depositary Shares (“ADSs”) of Graña y Montero between July 24, 2013 and February 24, 2017, inclusive (the “Class Period”) seeking to pursue remedies under the Securities Exchange Act of 1934 (“1934 Act”).

2. Graña y Montero is a Peruvian corporation that provides engineering and construction, infrastructure, real estate, and technical services in Latin America. Graña y Montero ADSs have traded on the New York Stock Exchange (“NYSE”) under the ticker symbol “GRAM” since the Company’s July 24, 2013 initial public offering (“IPO”).

3. Odebrecht S.A. (“Odebrecht”) is a global construction conglomerate based in Brazil. Between 2005 and 2011, one of the Company’s subsidiaries, GyM S.A., was part of a consortium led by Odebrecht that had a minority stake in the concessions for the Interoceanica Norte and Interoceanica Sur highways.

4. Between 2005 and 2014, Graña y Montero generated millions of dollars in revenues from various construction and real estate contracts which had been procured through the payment of bribes to a former Peruvian President by Odebrecht.

5. Throughout the Class Period, Graña y Montero concealed the illegal source of its revenues and, as a result, Graña y Montero ADSs traded at artificially inflated prices, reaching a Class Period high of more than \$22 per ADS by September 19, 2013. Based on defendants' deception, Graña y Montero was able to cash in, selling more than 22.4 million Graña y Montero ADSs in the July 24, 2013 IPO, generating approximately \$475 million in gross proceeds.

6. On December 21, 2016, the U.S. Department of Justice ("DOJ") announced that Odebrecht and Braskem S.A. ("Braskem"), a Brazilian petrochemical company, had pled guilty and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with U.S., Brazilian and Swiss authorities for paying millions of dollars in bribes to government officials around the world. According to a criminal information filed the same day by the Criminal Division's Fraud Section of the DOJ and the U.S. Attorney's Office for the Eastern District of New York, which charged Odebrecht with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA"), Odebrecht paid approximately \$29 million in bribes to Peruvian government officials to secure public works contracts between 2005 and 2014. Graña y Montero had been one of Odebrecht's most important Peruvian partners, working with it on half a dozen public works contracts worth more than \$10 billion. Graña y Montero was also one of Odebrecht's local partners on two sections of a project to pave a road from the Peruvian Amazon to Brazil.

7. On this news, the price of Graña y Montero ADSs began to decline precipitously, closing down at \$5.02 per ADS by January 11, 2017.

8. On January 12, 2017, Graña y Montero announced that it was withdrawing from its partnership with corruption plagued Odebrecht, calling the partnership a "mistake."

9. On this news, the price of Graña y Montero ADSs continued to decline, falling \$0.61 per ADS, or 12%, on January 12, 2017.

10. On January 20, 2017, *Reuters* reported that “[a] consortium controlled by Brazilian builder Odebrecht S.A. [would] miss a financing deadline . . . for a natural gas pipeline project in Peru” valued at \$5 billion in which Graña y Montero owned a 20% interest. According to *Reuters*, Odebrecht had “spent months trying to sell its 55 percent in the project as a condition from banks that would provide \$4.1 billion for construction,” but that “worries about liability for potential crimes committed ha[d] thwarted possible deals and the government ha[d] said it would not extend the financing deadline.”

11. On January 25, 2017, citing the loss of the Odebrecht partnership, Graña y Montero disclosed it would ask its Board of Directors to approve the sale of \$300 million in assets to help it meet its obligations after losing the Odebrecht partnership as a result of the graft scandal. Thereafter, on January 27, 2017, Graña y Montero reported its fourth quarter and fiscal 2016 financial results for the year ended December 31, 2016, reporting revenues of S/.6,055.3 million¹ for fiscal 2016, a 22.7% decrease compared to fiscal 2015.

12. On February 16, 2017, *Reuters* reported that an “ombudsman” had “called for prosecutors to investigate Peruvian builder Grana y Montero and other partners of Brazil’s construction conglomerate Odebrecht in a corruption probe that has already sunk Grana’s shares.”

13. On February 24, 2017, a local news magazine, *Hildebrandt en sus trece*, reported that Graña y Montero knew about the \$20 million in bribes paid to former President Alejandro Toledo by Odebrecht.

14. On this news, the price of Graña y Montero’s ADSs declined precipitously again, falling approximately 35%, from a close of \$5.09 per ADS on February 23, 2017, or \$1.77 per ADS,

¹ Peruvian Nuevos Soles (“S/.”).

to a close of \$3.32 per ADS on February 24, 2017, on unusually high trading volume of more than 1.9 million shares traded.

JURISDICTION AND VENUE

15. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the 1934 Act [15 U.S.C. §§78j(b) and 78t(a)] and SEC Rule 10b-5 [17 C.F.R. §240.10b-5]. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and §27 of the 1934 Act.

16. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because many of the acts and practices complained of herein occurred in substantial part in this District.

17. In connection with the acts and conduct alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails and interstate wire and telephone communications.

PARTIES

18. Plaintiff Marcia Goldberg acquired Graña y Montero ADSs, as set forth in the accompanying certification, and has been damaged thereby.

19. Defendant Graña y Montero is an engineering and construction, infrastructure, real estate, and technical services company. Graña y Montero's ADSs traded in an efficient market on the NYSE throughout the Class Period under the ticker symbol "GRAM."

20. Defendant Mario Alvarado Pflucker ("Pflucker") was, until March 2, 2017, Graña y Montero's Chief Executive Officer ("CEO") and a member of its Board of Directors.

21. Defendant Mónica Miloslavich Hart ("Hart") is and was, at all relevant times, the Chief Financial Officer ("CFO") of Graña y Montero.

22. Defendants Pflucker and Hart are referred to herein as the "Individual Defendants." Graña y Montero and the Individual Defendants are referred to herein, collectively, as "Defendants."

23. Defendants are liable for: (i) making false statements; or (ii) failing to disclose adverse facts known to them about Graña y Montero. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Graña y Montero ADSs was a success, as it: (i) deceived the investing public regarding Graña y Montero's prospects and business; (ii) artificially inflated the price of Graña y Montero ADSs; (iii) allowed Graña y Montero to cash out in the IPO; and (iv) caused Plaintiff and other members of the Class to purchase Graña y Montero ADSs at inflated prices.

BACKGROUND

24. Defendant Graña y Montero, together with its subsidiaries, provides engineering and construction, infrastructure, real estate, and technical services in Latin America. The Company engages in the civil construction, management, and implementation of housing development projects; mining contracting activities, such as mining, drilling, demolition, and other activity related to construction and electro mechanics; and architectural design and installation activities. It also provides electromechanical assemblies and services to energy, oil, gas, and mining sectors; advisory and consultancy services in engineering; and supplies equipment and material to design, build, assemble, operate, and maintain various mechanical engineering, instrumentation, and civil works. In addition, the Company offers concessions for constructing, operating, and maintaining the supply systems of compressed natural gas in certain provinces of Peru: Section 1 of the Southern Inter-oceanic road; the Ancón - Huacho - Pativilca section of the Panamericana Norte road; Canchaque road in Buenos Aires; and Via Expresa - Paseo de la República in Lima. Further, it provides concession of services for treating and selling oil, natural gas, and by-products, as well as for storing and dispatching fuel extracted from demonstrated feasible fields; operates the gas processing plant of Pisco Camisea; and develops and manages real estate projects. Additionally, the Company offers

information technology services and electrical and technological services for the power industry, as well as installs and maintains network and equipment for telecommunications.

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS
MADE DURING THE CLASS PERIOD**

25. The Class Period starts on July 24, 2013. On that day, Graña y Montero completed its IPO. In connection with the IPO, the Company filed a registration statement with the SEC, which was amended several times in response to comments from the SEC before being declared effective. (the "Registration Statement"). Graña y Montero sold 22,465,117 ADSs, representing 112,325,585 shares of its common stock, in the IPO for \$21.13 per ADS, generating approximately \$475 million in gross proceeds.

26. The Registration Statement, which was signed by both of the Individual Defendants represented that Graña y Montero had received revenues of more than S/.4.241 billion in fiscal 2011, more than S/.5.231 billion (\$2.02 billion) in fiscal 2012, and between S/.2.550 billion and S/.2.650 billion for the six months ended June 30, 2013. Concerning the Company's corporate governance and compliance with the law, the Registration Statement stated in pertinent part as follows:

With 80 years of operations, we have a long track record of successfully completing the engineering and construction of many of Peru's landmark private- and public-sector infrastructure projects, such as the Lima International Airport and the Peru LNG gas liquefaction plant, and we believe we have earned a reputation for operational excellence in our markets. We have developed a highly-experienced management team, a talented pool of more than 3,500 engineers and a skilled work force that share our core corporate values of quality, professionalism, reliability and efficiency. *As a company listed on the Lima Stock Exchange since 1997, we also abide by the highest corporate governance standards for listed companies in Peru.*

* * *

We have been listed on the Lima Stock Exchange since 1997. *We abide by the highest corporate governance standards in Peru, and we are one of only 17 companies in Latin America, and one of only three in Peru, that form part of the Company's Circle, which recognizes companies for their high corporate governance standards and is sponsored by the International Finance Corporation (IFC), the Organization for Economic Co-operation and Development (OECD)*

and the Global Corporate Governance Forum. In addition, we have developed a strong corporate culture based on principles of high-quality, professionalism, reliability and efficiency. We employ rigorous safety standards and procedures and emphasize environmental sustainability and social responsibility.

* * *

Our model of sustainable development is based upon building relationships of trust. In our projects we consider the needs of local communities with respect to generating employment; the expectations of our customers regarding the particular goals of the project; the demand of the state for a trained service provider; *and investors who wish to entrust their capital to a company that follows best practices in corporate governance and social responsibility.*

27. On April 30, 2014, April 30, 2015 and May 2, 2016, Graña y Montero filed its annual financial reports for its fiscal years ended, respectively, on December 31, 2013, December 31, 2014 and December 31, 2015, on Form 20-F with the SEC (the “20-Fs”). The 20-Fs were signed and certified pursuant to the SEC by both of the Individual Defendants. The 20-Fs reported that Graña y Montero had received revenues of more than \$2.1 billion in fiscal 2013, more than \$2.3 billion in fiscal 2014, and approximately \$2.3 billion during fiscal 2015. The 20-Fs contained representations similar to those identified above in ¶26 from the Registration Statement concerning the Company’s corporate governance and its compliance with the law.

28. The true facts, which were known by the Defendants but were concealed from the investing public during the Class Period, were as follows:

(a) that from 2005 through at least 2014, Graña y Montero had received millions of dollars in revenues derived from its partnership with Odebrecht;

(b) that the revenues derived from the Company’s partnership with Odebrecht were obtained through violations of both the law and the Company’s purportedly strong corporate governance standards; and

(c) that as a result, Defendants' statements about Graña y Montero's business, operations and prospects were materially false and misleading and/or lacked a reasonable basis at all relevant times.

29. On December 21, 2016, the DOJ announced that Odebrecht and Braskem had pled guilty and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with U.S., Brazilian and Swiss authorities for paying millions of dollars in bribes to government officials around the world. According to a criminal information filed the same day by the Criminal Division's Fraud Section of the DOJ and the U.S. Attorney's Office for the Eastern District of New York, which charged Odebrecht with conspiracy to violate the anti-bribery provisions of the FCPA, Odebrecht paid approximately \$29 million in bribes to Peruvian government officials to secure public works contracts between 2005 and 2014. Graña y Montero had been one of Odebrecht's most important Peruvian partners this century, working with it on half a dozen public works contracts worth more than \$10 billion. Graña y Montero was also one of Odebrecht's local partners on two sections of a project to pave a road from the Peruvian Amazon to Brazil.

30. On this news, the price of Graña y Montero ADSs began to decline precipitously, closing down at \$5.02 per ADS by January 11, 2017.

31. On January 12, 2017, Graña y Montero announced that it was withdrawing from its partnership with corruption plagued Odebrecht, calling the partnership a "mistake."

32. On this news, the price of Graña y Montero ADSs continued to decline, falling \$0.61 per share, or 12%, on January 12, 2017.

33. On January 20, 2017, *Reuters* reported that "[a] consortium controlled by Brazilian builder Odebrecht S.A. [would] miss a financing deadline . . . for a natural gas pipeline project in Peru" valued at \$5 billion in which Graña y Montero owned a 20% interest. According to *Reuters*,

Odebrecht had “spent months trying to sell its 55 percent in the project as a condition from banks that would provide \$4.1 billion for construction,” but that “worries about liability for potential crimes committed ha[d] thwarted possible deals and the government ha[d] said it would not extend the financing deadline.”

34. On January 25, 2017, citing the loss of the Odebrecht partnership, Graña y Montero disclosed it would ask its Board of Directors to approve the sale of \$300 million in assets to help it meet its obligations after losing the Odebrecht partnership as a result of the graft scandal. Thereafter, on January 27, 2017, Graña y Montero reported its fourth quarter and fiscal 2016 financial results for the year ended December 31, 2016, reporting revenues of S/. 6,055.3 million for fiscal 2016, a 22.7% decrease compared to fiscal 2015.

35. On February 16, 2017, *Reuters* reported that an “ombudsman” had “called for prosecutors to investigate Peruvian builder Grana y Montero and other partners of Brazil’s construction conglomerate Odebrecht in a corruption probe that has already sunk Grana’s shares.”

36. On February 24, 2017, a local news magazine, *Hildebrandt en sus trece*, reported that Graña y Montero knew about the \$20 million in bribes paid to former President Alejandro Toledo by Odebrecht.

37. On this news, the price of Graña y Montero’s ADSs declined precipitously again, falling approximately 35% from a close of \$5.09 per share on February 23, 2017, or \$1.77 per ADS, to a close of \$3.32 per ADS on February 24, 2017, on unusually high trading volume of more than 1.9 million shares traded.

ADDITIONAL SCIENTER ALLEGATIONS

38. As alleged herein, Graña y Montero and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be

issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Graña y Montero, their control over, and/or receipt and/or modification of Graña y Montero's allegedly materially misleading statements and/or their associations with the Company which made them privy to confidential proprietary information concerning Graña y Montero, participated in the fraudulent scheme alleged herein.

LOSS CAUSATION/ECONOMIC LOSS

39. During the Class Period, as detailed herein, Defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Graña y Montero ADSs and operated as a fraud or deceit on Class Period purchasers of Graña y Montero ADSs by misrepresenting the Company's business and prospects. Later, when Defendants' prior misrepresentations and fraudulent conduct became apparent to the market, the price of Graña y Montero ADSs fell precipitously, as the prior artificial inflation came out of the price over time. As a result of their purchases of Graña y Montero ADSs during the Class Period, Plaintiff and other members of the Class (as defined below) suffered economic loss, *i.e.*, damages, under the federal securities laws.

NO SAFE HARBOR

40. Graña y Montero's verbal "Safe Harbor" warnings accompanying its oral forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability.

41. Defendants are also liable for any false or misleading FLS pleaded because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and/or approved by an executive officer of Graña y Montero who knew that the FLS was

false. None of the historic or present tense statements made by Defendants were assumptions underlying or relating to any plan, projection or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by Defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all those who purchased Graña y Montero ADSs during the Class Period, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

43. The members of the Class are so numerous that joinder of all members is impracticable. Graña y Montero ADSs were actively traded. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Graña y Montero or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

44. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

45. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

46. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the 1934 Act was violated by Defendants' acts as alleged herein;
- (b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and operations of Graña y Montero; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

47. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

48. Plaintiff incorporates ¶¶1-47 by reference.

49. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

50. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- (a) employed devices, schemes and artifices to defraud;
- (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Graña y Montero ADSs during the Class Period.

51. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Graña y Montero ADSs. Plaintiff and the Class would not have purchased Graña y Montero ADSs at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

COUNT II

For Violation of §20(a) of the 1934 Act Against All Defendants

52. Plaintiff incorporates ¶¶1-51 by reference.

53. The Individual Defendants acted as controlling persons of Graña y Montero within the meaning of §20(a) of the 1934 Act. By reason of their positions with the Company, and their ownership of Graña y Montero shares, the Individual Defendants had the power and authority to cause Graña y Montero to engage in the wrongful conduct complained of herein. Graña y Montero controlled the Individual Defendants and all of its employees. By reason of such conduct, Defendants are liable pursuant to §20(a) of the 1934 Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Such equitable/injunctive or other relief as may be deemed appropriate by the Court.

JURY DEMAND

Plaintiff hereby demands a trial by jury

DATED: March 23, 2017

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
MARY K. BLASY

/s/ Samuel H. Rudman

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**CERTIFICATION OF NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS**

MARCIA GOLDBERG (“Plaintiff”) declares:

1. Plaintiff has reviewed a complaint and authorized its filing.
2. Plaintiff did not acquire the security that is the subject of this action at the direction of plaintiff’s counsel or in order to participate in this private action or any other litigation under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff has made the following transaction(s) during the Class Period in the securities that are the subject of this action:

Acquisitions:

Date Acquired	Number of Shares Acquired	Acquisition Price Per Share
12/17/16	1,500 shares	\$7.13

5. Plaintiff has not sought to serve or served as a representative party in a class action that was filed under the federal securities laws within the three-year period prior to the date of this Certification except as detailed below:

Gaynor, et al. v. Miller, et al., No. 3:15-cv-00545 (E.D. Tenn.)

6. The Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff’s pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this ____ day of March, 2017.



MARCIA GOLDBERG