

**IN AN INTERNATIONAL ARBITRATION UNDER
THE UNCITRAL 1976 RULES**

**MR. CARLOS ESTEBAN SASTRE,
MR. RENAUD JACQUET
MS. MARGARIDA OLIVEIRA AZEVEDO DE ABREU
MR. EDUARDO NUNO VAZ OSORIO DOS SANTOS SILVA
MR. GRAHAM ALEXANDER
MS. MÓNICA GALÁN RÍOS**
Claimants,

V.

THE UNITED MEXICAN STATES,
Respondent.

**AMENDED NOTICE OF ARBITRATION
AND APPOINTMENT OF ARBITRATOR**

14 June 2019



Carlos F. Concepción, Esq.
Humberto Ocariz, Esq.
Ricardo A. Ampudia, Esq.
Giovanni Angles, Esq.
SHOOK, HARDY & BACON L.L.P.
201 S. Biscayne Blvd.
Suite 3200
Miami, FL 33131
United States of America

Counsel for Claimants

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Name and address of the parties	2
A.	The Claimants	2
B.	The Respondent.....	5
III.	Facts	6
A.	Tulum’s Emergence as a Tropical Vacation Hotspot.....	6
1.	<i>Tierras del Sol</i>	8
2.	<i>Cabañas Hamaca Loca</i>	9
3.	<i>Behla Tulum</i>	10
4.	<i>Uno Astrolodge</i>	11
5.	<i>Hotel Parayso</i>	12
B.	Illegal Property Seizures by the Mexican Government	13
1.	Overview of Governor Borge’s Criminal Enterprise	13
2.	Seizures of <i>Tierras del Sol</i> and <i>Hamaca Loca</i>	15
3.	Borge’s Next Coup – the 2016 Hotel Seizures.....	17
4.	The Hotel Seizures Are Revealed to Be a Sham	18
5.	Claimants’ <i>Amparo</i> and Other Proceedings Seeking the Return of Their Properties; the Murder of Mr. Sastre’s Lawyer.....	19
6.	Mexican Officials Like Senator Luz María Beristain Acknowledge the Unlawful Hotel Seizures and Borge’s Criminal Conduct.....	21
7.	The Arrest and Indictment of Roberto Borge	22
IV.	Applicable law and jurisdiction	23
A.	Jurisdiction <i>Ratione Personae</i>	23
B.	Jurisdiction <i>Ratione Materiae</i>	25
C.	Jurisdiction <i>Ratione Temporis</i>	27
D.	Jurisdiction <i>Ratione Voluntatis</i>	27
V.	Violations of the Investment Treaties	28
A.	Fair and Equitable Treatment.....	28
1.	Arbitrary Treatment	29

2.	Failure to Respect Legitimate Expectations	29
3.	Lack of Transparency	30
4.	Bad Faith.....	31
5.	Denial of Justice	31
B.	Expropriation.....	32
C.	Full protection and security.....	33
D.	Arbitrary, unreasonable or discriminatory measures	34
VI.	Damages.....	35
VII.	Appointment of arbitrator, Consent, Waiver, and Procedural issues.....	35
VIII.	Conclusion	36

I. INTRODUCTION

1. This arbitration is about the violent and unlawful seizures by the Mexican government and its agents of high-value, beach-front hotels owned by foreign investors, in violation of Mexico's obligations contained in the NAFTA and various other bilateral investment treaties. The seizures were accomplished through illegal and bad-faith schemes involving the administration of the now-indicted former governor of Quintana Roo, local police, federal security agencies, and local and federal courts and constitute egregious violations of Mexico's international investment treaty obligations.

2. Claimants hereby request that this dispute be submitted to arbitration pursuant to UNCITRAL rules. The dispute is government by the NAFTA and the bilateral investment treaties ("**BITs**") between Mexico and (i) Argentina, (ii) France, and (iii) Portugal (collectively the "**Investment Treaties**"). Claimants also hereby amend their Notice of Arbitration of 29 December 2017, and nominate an arbitrator for these proceedings.

3. The facts of this case are particularly unsettling. In what can only be described as modern day piracy, Claimants lost their valuable property rights and investments under threat of violence from state-sanctioned, machete-wielding thugs. Victims of Mexico's fraudulent and corrupt scheme have now disappeared, been tortured, or lost their lives. The conduct by Mexican officials was so widespread and notorious that it made international headlines. An internationally-acclaimed Mexican journalist reported:

Tulum: Land of Ambitions

Aristegui Noticias, 7 September 2015

Enforced disappearances, homicide, persecutions, threats, extortion... this is how ejidatarios in the Riviera Maya can be dispossessed of their lands. The dispossession dynamics are a result of an open war between corrupt businessmen and *corrupt politicians, who have taken the agrarian courts as hostages, corrupting judges at times.* Tulum is a sample of what the country faces: A battle to disappear the ejidos in a context of institutional dispersion in which entrepreneurial ambition is imposed on the law and sustainable development plans.¹

The ouster of Claimants from their properties is described below.

II. NAME AND ADDRESS OF THE PARTIES

A. The Claimants

4. The Claimants in this case are hotel investors that have Argentine, French, Portuguese, and Canadian nationalities.

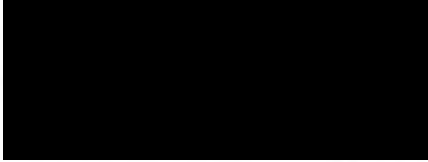
5. Mr. Carlos Esteban Sastre ("**Mr. Sastre**"), is the majority shareholder of Constructora Ecoturística S.A. de C.V. ("**CETSA**"), a Mexican company² which owned the hotel that operated as *Cabañas Tierras del Sol* ("**Tierras del Sol**"). Mr. Sastre also has the rights in Hamaca Loca S.A. de C.V. ("**HLSA**"), a Mexican company that owned the hotel that used to be known as

¹ Lydia Cacho, *Tulum: Land of Ambitions*, Aristegui Noticias (7 Sep. 2015), Exhibit C-0001 (certified translation), available at <https://aristeguinoticias.com/0709/mexico/tulum-tierra-de-ambiciones/>.

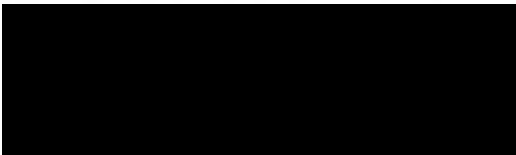
² Contrato de Sociedad CETSA (CETSA Partnership Agreement), Exhibit C-0002.

Cabañas Hamaca Loca (“**Hamaca Loca**”), and in the parcel where that hotel operated.³ Mr. Sastre is a citizen of the Argentine Republic.⁴

6. Mr. Sastre is currently domiciled at the following address:



7. Mr. Renaud Jacquet (“**Mr. Jacquet**”) owned the hotel that operated as *Behla Tulum*, and which also housed *La Tente Rose*, a specialty Mexican spirits shop. Mr. Jacquet also owned the rights to the parcels where these businesses operated. Mr. Jacquet is a citizen of the French Republic.⁵ He is currently domiciled at the following address:



8. Ms. Maria Margarida Oliveira Azevedo de Abreu (“**Ms. Abreu**”) is a shareholder in O.m del Caribe, S.A. de C.V. (“**OMDC**”), a Mexican company⁶ that operated the hotel *Uno Astrolodge*. Ms. Abreu also owned the rights to the parcel where *Uno Astrolodge* sat. Ms.

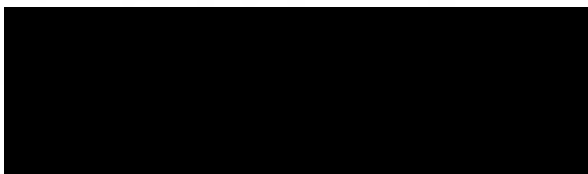
³ On June 12, 2017, Mr. Sastre acquired all rights and claims belonging to HLSA arising from the parcel where the Investment sat, including the rights held by Mr. Alvaro Antonio Urdiales Bonfiglioli, an Argentine national who held the right of possession to the Hamaca Loca parcel and was a shareholder in HLSA. *See* Cesión de Derechos Hamaca Loca y Resolución (Hamaca Loca Transfer of Rights and Resolution), Exhibit C-0003.

⁴ *See* passport of Mr. Carlos Sastre, Exhibit C-0004.

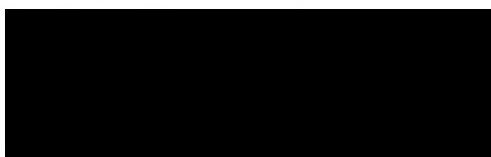
⁵ *See* passport of Mr. Jacquet, Exhibit C-0005.

⁶ Acta Constitutiva OMDC (OMDC Formation Document), Exhibit C-0006.

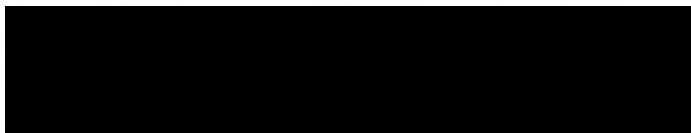
Abreu is a citizen of the Portuguese Republic.⁷ She is currently domiciled at the following address:



9. Mr. Eduardo Nuno Vaz Osorio dos Santos Silva (“**Mr. Silva**”) is a shareholder in OMDC. Mr. Silva is a citizen of the Portuguese Republic.⁸ He is currently domiciled at the following address:



10. Mr. Graham Alexander (“**Mr. Alexander**”) owns 50% of the Hotel Parayso Tulum (“**Hotel Parayso**”), and the corresponding parcel rights. Mr. Alexander is a citizen of Canada.⁹ He is currently domiciled at the following address:



11. Ms. Mónica Galán Ríos (“**Ms. Galán**”) owned the remaining 50% of Hotel Parayso and the corresponding parcel rights. Ms. Galán is a citizen of Canada.¹⁰ She is currently domiciled at the following address:



⁷ See Ms. Abreu’s passport, Exhibit C-0007.

⁸ See Mr. Silva’s passport, Exhibit C-0008.

⁹ See Mr. Alexander’s passport, Exhibit C-0009.

¹⁰ See Ms. Galan’s Canadian passport, Exhibit C-0010.

12. Together, all of the foregoing individuals will be referred to as the "**Claimants**" or the "**Investors**". All of the investment properties will be referred to as the "**Hotels**" or the "**Investments**".

13. Claimants request that any communication relating to this dispute be sent directly to their counsel,¹¹ whose address has changed and is now:

Carlos F. Concepción, Esq.
Humberto Ocariz, Esq.
Ricardo A. Ampudia, Esq.
Giovanni Angles, Esq.
SHOOK, HARDY & BACON, L.L.P.
201 S. Biscayne Blvd.
Suite 3200
Miami, FL 33131
United States of America
cconcepcion@shb.com
hocariz@shb.com
rampudia@shb.com
gangles@shb.com

14. Only the above address and email addresses should be used for any communications regarding this dispute, unless indicated otherwise by Claimants or their counsel.

B. The Respondent

15. The Respondent is The United Mexican States ("**Respondent**," "**Mexico**," or the "**Government**"), whose address for this litigation is, to the Claimants' understanding:

Dr. Graciela Márquez Colín
Secretary of Economy
graciela.marquez@economia.gob.mx
Mr. Orlando Pérez Gárate
Director of Legal Affairs, Under-Secretariat of Commerce
orlando.perez@economia.gob.mx

¹¹ See Powers of Attorney, Exhibit C-0011.

Mr. Alan Bonfiglio Ríos
Area Director
alan.bonfiglio@economia.gob.mx
Secretaría de Economía
Paseo de la Reforma 296, Piso 27
Col. Juárez, Del. Cuauhtémoc,
México D.F. 06600
United Mexican States

Oficialía de Partes, Dirección General de Inversión Extrajera
Avenida de los Insurgentes Sur 1940
Colonia La Florida
México D.F. 01030
United Mexican States

III. FACTS

16. The violent, bad faith, and illegal seizure of valuable oceanfront hotels by Mexican government and their agents were part of a corrupt scheme masterminded by the rogue, now-indicted former Governor of the State of Quintana Roo and affiliated individuals to steal these valuable properties from legitimate investors like Claimants for their own self-gain. As set forth below, the Mexican government's abuse of authority and criminal conduct toward Claimants violated numerous investment protection standards in the Investment Treaties as discussed below.

A. Tulum's Emergence as a Tropical Vacation Hotspot

17. On 8 October 1973, the Mexican government created the *Ejido José María Pino Suarez* (the "**Ejido**"), a communal farm shared among its members (*ejidatarios*) and governed internally by its own rules and governing bodies, including the Ejido Assembly (*La Asamblea Ejidal*), the Ejido Commissariat (*El Comisariado Ejidal*), and the Ejido Oversight Council (*El Consejo de Vigilancia*). The Ejido includes a secluded stretch of pristine beachfront land that has become among the most celebrated tourist destinations in Mexico. The parcels here had direct access to

the Caribbean Sea, and were nestled between Mayan archeological sites and federally-protected national parkland.

18. Beginning in the early 2000s, after observing the enormous tourism potential of Tulum as an alternative to the crowded Cancun and Playa del Carmen markets, each of the Claimants negotiated and secured rights with various *ejidatarios* of the *Ejido José María Pino Suarez* to develop and possess “ecotourism style” properties, as described in greater detail below.

19. By any measure, Claimants’ development of the Ejido parcels has been an unqualified success. In the years following the establishment of Claimants’ hotels, tourism activity in Tulum skyrocketed. International press reports celebrated Tulum’s new-found status as a world-class eco-tourism destination, which in turn attracted Hollywood actors, pop stars, fashion models, and other high-income tourists from all over the globe. The hotel properties—particularly the oceanfront parcels such as those developed and operated by Claimants—became highly valuable and spurred further expansion into ancillary ventures including restaurants, spas, yoga centers, and other services consistent with the eco-tourism ethos. From 2000 to the date of filing, Tulum’s tourism market capacity grew from approximately eight hotels to over 230 hotels and bed and breakfast inns today, attracting high-income tourists from mostly Europe and North America, and commanding significant nightly room rates.

20. Claimants’ Hotels in particular enjoyed a privileged location within Tulum itself. In addition to their direct beachfront access to the Caribbean, the Hotels were a short walk away from the Sian Ka’an Biosphere Reserve, a UNESCO World Heritage site comprising over 500,000 hectares of protected tropical forests, wetlands and marine areas that further complemented the Hotels’ ecotourism aesthetic. Claimants’ careful selection of the location for their Investments paid off handsomely. Little did Claimants know then that they also would

attract the attention of private and government actors, including officials within the Borge Administration, who would later abuse their authority by illegally seizing the Hotels for personal gain.

21. As demand and attention skyrocketed, so did the price of local real estate, as Tulum became an increasingly exclusive destination. Most of the area hotels adopted the “eco-chic” philosophy, which further differentiated the Tulum market from the more commercialized tourist attractions of Cancun and Playa del Carmen. The Investments sprouted multiple revenue streams in addition to the standard room bookings. For example, the Hotels attracted lucrative special events such as weddings and business retreats, which created spillover to the Hotels’ restaurants and spas.

1. *Tierras del Sol*

22. On August 25, 2000, Mr. Sastre and a minority partner created the Mexican Company Constructora Ecoturística S.A. de C.V. (“CETSA”). The company’s chief objective was the acquisition, development, operation, and commercialization of tourism or ecological facilities.¹²

23. A few months later, on October 12, 2000, CETSA acquired the rights to Lot 19-A in the Ejido José María Pino Suarez. The parcel rights obtained by CETSA consisted of one thousand eight hundred and seventy three square meters (1,873 m²) located on the ocean front in the municipality of Tulum.¹³

24. Mr. Sastre developed the property and built *Tierras del Sol*. The hotel eventually grew to contain four buildings that housed a total of eight private suites, a restaurant, a cellar, a

¹² See CETSA Partnership Agreement, Exhibit C-0002.

¹³ See Contrato de Cesión CETSA (CETSA Transfer of Rights Agreement), Exhibit C-0012.

warehouse, laundry facilities, and several common areas with ocean views. The *Tierras del Sol* property also housed a residence for the Hotel Manager (then Mr. Sastre) and his family.

25. The Tulum Municipality recognized CETSA's property interests in the *Tierras del Sol* property through government property assessments, operating licenses, and land use licenses during all relevant time periods.

2. *Cabañas Hamaca Loca*

26. On 2 February 2001, Swiss nationals Danila Marchetti, Dario Sartore, Reto Sartore, and Claudio Giobbi, created the company Hamaca Loca S.A. de C.V. ("**HLSA**") and Argentine national Alvaro Urdiales subsequently joined as a shareholder on 24 January 2008 (together, the "**HLSA Shareholders**").¹⁴

27. On 1 March 2001, HLSA executed a transfer of rights agreement with Mr. Lorenzo Novelo Pacheco, granting possessory rights to HLSA over 2,999 square meters of beachfront land within Lot 19.¹⁵ On 24 May 2006, the *Commisariado Ejidal* certified that Mr. Urdiales was the rightful holder of possession rights over the parcel.¹⁶ This lot was located a few meters away from *Tierras del Sol*.

28. Thereafter, HLSA developed the parcel and built *Hamaca Loca*. The hotel included 6 bungalows, a restaurant, a garden, a pool, and beachfront common areas.¹⁷ The hotel was solar

¹⁴ Protocolización Acta Asamblea HLSA (Notarized HLSA Assembly Act), Exhibit C-0013.

¹⁵ Contrato de Cesión de Derechos Hamaca Loca (Hamaca Loca Transfer of Rights Agreement), Exhibit C-0014.

¹⁶ Ejido Certificate of Possession in favor of Mr. Urdiales, Exhibit C-0015.

¹⁷ Hamaca Loca Property Photos, Exhibit C-0016.

powered and had its own water treatment facility. The property also included a house for the hotel administrator.

3. *Behla Tulum*

29. On 15 May 2007, Mr. Jacquet acquired property rights over a 1870-square-meter parcel of beachfront property in Tulum.¹⁸ On 10 January 2008, Mr. Jacquet expanded his parcel by executing a commodatum agreement (a possessory interest similar to a lease) over the adjacent 2565-square meter beachfront parcel.¹⁹

30. The lots were undeveloped, containing only trees and sand. Mr. Jacquet built a house on the combined property and in November 2005 relocated his family there. Mr. Jacquet completed construction of a villa of approximately 3,500 square feet on the property, including self-sustaining utilities (such as electricity generators, water tanks, and sewage tanks) because these services were not provided by the Tulum Municipality. In 2008, Mr. Jacquet further expanded, adding a second villa of approximately 2,500 square feet at the rear of the property. In 2011, Mr. Jacquet opened *La Tente Rose*, a specialty liquor store that sold wine and Mexican spirits, and received positive reviews in a travel feature in the New York Times.²⁰ Mr. Jacquet also built three additional villas and four buildings (including staff housing, a communal kitchen, a laundry room, and a generator room) on the combined lot.

31. By 2015, Mr. Jacquet had a luxury vacation property featuring 5 private villas with 13 bedrooms (11 of them oceanfront) situated on more than 1 acre of land with over 40 meters of

¹⁸ Purchase of Rights Agreement, dated 15 May 2007, Exhibit C-0017.

¹⁹ Commodatum Agreement, dated 10 Jan. 2008, Exhibit C-0018.

²⁰ Danielle Pergament, *36 Hours in Tulum*, New York Times, (5 Nov. 2014), Exhibit C-0019.

beachfront property. Demand was so high that he regularly rented out the entire property for \$4,000/night. That same year, Mr. Jacquet further enhanced *Behla Tulum* by constructing a swimming pool and adding walls to make his resort more private from the neighboring hotels.

32. The Tulum Municipality and the federal government acknowledged Jacquet's property interests in the *Behla Tulum* property through operating permits and land use licenses during all relevant time periods.

4. *Uno Astrolodge*

33. On 22 October 2003, Ms. Abreu negotiated a transfer of rights agreement for a 2,500-square-meter beachfront parcel in Tulum.²¹ On 28 November 2003, Ms. Abreu negotiated a transfer of rights agreement for the adjacent lot, also of 2,500 square meters of beachfront land.²² Thus, as of November 2003, Ms. Abreu held rights to 5,000 square meters of beachfront property in Tulum with a sandy beach 50-meters wide.

34. On 28 June 2003, Mr. Silva incorporated a Mexican company, O.m del caribe S.A. de C.V., to operate a hotel on the property. Mr. Silva owned 85% of the Mexican company and Ms. Abreu owned the remaining 15% interest.²³ In addition to the funds used to purchase the parcels, Mr. Silva also invested several hundred thousand euros to develop the combined properties.

35. In 2006, *Uno Astrolodge* began operations. By 2008, *Uno Astrolodge* was operating a hotel, restaurant, and a spa. At the time of its seizure, *Uno Astrolodge* featured twelve

²¹ Contrato de Cesión de Derechos (Transfer of Rights Agreement), (22 Oct. 2003) Exhibit C-0020.

²² Contrato de Cesión de Derechos (Transfer of Rights Agreement), (28 Nov. 2003), Exhibit C-0021.

²³ Constitución OMDC (OMDC Formation), Exhibit C-0006.

bungalows, a restaurant, a yoga center, a massage room, and a steam room. The resort had been named the top retreat in Tulum by Yogascapes Journal.²⁴

36. The Tulum Municipality and the state government recognized Mr. Silva and Ms. Abreu's property interests in the *Uno Astrolodge* property through operating licenses and land use licenses during its operation.

5. *Hotel Parayso*

37. On 28 April 2004, Ms. Galán purchased the possessory rights of 2,120 square meters of beachfront property in Tulum.²⁵ On 26 February 2005, Ms. Galán married Mr. Alexander, and on 17 September 2015, Ms. Galán and Mr. Alexander concluded a Separation Agreement in which they agreed, among other things, to divide the property equally.²⁶

38. *Hotel Parayso* opened for business on February 7, 2007. The Tulum Municipality and the state government recognized Ms. Galán and Mr. Alexander's property interests in the *Hotel Parayso* property through operating licenses and land use licenses during its operation.

39. At the time of its seizure, Ms. Galan and Mr. Alexander's combined properties contained a total of 24 rooms in the heart of Tulum. They had 11 oceanfront suites, a pool, 5 commercial spaces (which generated lease income), 2 restaurants, and a spa. The hotel had been operating profitably at that location for nearly a decade.

²⁴ See Ben Crosky, *Top 5 Retreat Centers in Tulum*, Yogascapes Journal (Dec. 18, 2014), Exhibit C-0022.

²⁵ Contrato de Cesión de Derechos (Transfer of Rights Agreement), 28 Apr. 2004, Exhibit C-0023.

²⁶ Galan and Alexander Separation Agreement (redacted), Exhibit C-0024.

B. Illegal Property Seizures by the Mexican Government

40. Claimants' vision and efforts were realized in a short period of time. From 2000 to 2011, Tulum transformed from a sleepy backwater town to the luxury eco-resort mecca described in *Town & Country* magazine as "diamonds and flip flops."²⁷ Unknown to them, Claimants' highly-prized beachfront hotels also attracted the interest of certain self-dealing Mexican government officials. Then newly-elected Governor Roberto Borge ("Borge") thereafter organized a cabal of government officials to seize thousands of acres of valuable property in Quintana Roo.

1. Overview of Governor Borge's Criminal Enterprise

41. The corruption scandals plaguing former Governor Borge's administration have been amply documented in numerous investigative pieces by the Mexican and international press.²⁸ Borge currently sits in a jail cell, indicted for money laundering and numerous other crimes relating to the illegal seizures of Tulum properties. But during his six-year reign as governor of the State of Quintana Roo, Borge's criminal enterprise reportedly seized at least 44 hotels and 19 other properties in Tulum besides those of the Claimants. All of these takings employed the same modus, were unlawful and many were violent. The scheme involved sham legal proceedings using a handpicked network of local magistrates, judges, actuaries, and other local officials who

²⁷ Alex Cuadros, *Inside the Turmoil in Tulum, Mexico's Hottest Beach Destination*, TOWN & COUNTRY (Mar. 7, 2017), Exhibit C-0025.

²⁸ See, e.g., Kirk Semple, *Evictions by Armed Men Rattle a Mexican Tourist Paradise*, N.Y. Times (Aug. 16, 2016), Exhibit C-0026; see also generally *Borge's Pirates*, Expansión (investigative series on the corruption scandals involving Borge and his associates) available at <https://expansion.mx/piratasdeborge>.

conspired with Borge.²⁹ But this illegal scheme did not stop with municipal or state actors. In at least one case, the seizure even involved federal agents and authorities.

42. The so-called “legal” proceedings typically commenced with a falsified petition presented to a conspiring judge. For example, a purported creditor would assert that he or she was owed money by a purported debtor, who in turn agreed to satisfy the debt with a parcel that the debtor claimed to own in Quintana Roo (the parcel where one of Claimants’ Investments were located). The creditor and the debtor were third parties completely unrelated to Claimants or their Investments. There was no debt owed by Claimants or their Investments. Nor was there formal notice to the hotels, let alone Claimants. In an alternative version of the scheme, fraudulent lease documents were created to show that possessory rights in Claimants’ beachfront properties purportedly belonged to a third party. In these cases, Claimants and other hotel owners likewise received no notice of these sham court proceedings, resulting in more “default judgments”.

43. To give the entire scheme the imprimatur of legitimacy, the baseless judicial seizure orders were then executed by complicit court representatives (*actuarios*), who were often accompanied by state or federal police officers and also dozens of private enforcers armed with high-caliber firearms, machetes, pepper spray, sticks, pipes and other weapons. Some of them covered their faces and wore riot gear. While the presence of the *actuario* provided the appearance of legality to legitimize the unlawful taking, the actual violent seizures carried out by

²⁹ See Article, *Owners of hotels illegally stripped in Tulum seek to recover them*, Yucatan Times (Feb. 8, 2017) (“Eddie Villa Real informed newspaper Reforma that among the officials who helped to dispossess properties with a total value of \$615 million dollars are the president of the Supreme Court of Justice of the State, Fidel Villanueva Rivero; the director of the Public Registry of Property, Carlos Lima Carbajal; the first civil judge of Playa del Carmen, Gustavo Efrain Chan Camaal; and the actuary María Elena Anaya Reyes.”), Exhibit C-0027.

police and their gang of criminals were plainly aimed at intimidating Claimants. The term “gang of criminals” is not hyperbolic. In fact, a local officer warned Ms. Galan during the seizure of her hotel that at least some of the “security guards” carrying out the seizures were in fact prison inmates that the government released and used to bolster the show of force being applied.

44. The seized hotels were later transferred for well below market value to a third party. Some hotels were either closed under armed guard, demolished, or reopened under the new ownership but using the same lodging facilities.

2. Seizures of *Tierras del Sol* and *Hamaca Loca*

45. On 19 October 2011, without *any* notice, approximately twenty masked and heavily-armed agents of the Federal Attorney General's Office (*Procuraduría General*) and Navy forces arrived at *Tierras del Sol*. Upon arriving at the hotel, they told Mr. Sastre that "there were irregularities with the premises" and that they had instructions to deliver possession of the parcels to a third-party named Carlos González Nuño, who was unknown to Mr. Sastre. The agents attempted to get Mr. Sastre to sign documents, but he refused. The agents then threatened to “take Mr. Sastre to the authorities” against his will, without specifying which authorities or the reason to detain him. Mr. Sastre repeatedly asked to see a court order or other written document justifying their presence and the attempt to seize the hotel. The agents would not produce any documents and ultimately left the premises.

46. A few days later, on October 31, 2011, approximately fifty public security agents (more than twice as many from the first unlawful entry) returned to *Tierras del Sol*. In addition to the heavy firearms used before, the agents now wielded shields and tear gas, which they used to disperse the rightful occupants and hotel guests who were there at the time.

47. About another thirty (30) individuals accompanied the armed agents. The entire invasion force was led by Luis Miguel Escobedo Pérez, a representative (*actuario*) of a local court in Quintana Roo (the *Juzgado de Playa del Carmen*).

48. The federal agents and Mr. Escobedo Perez told Mr. Sastre that they were there to seize the hotel property. Once again, Mr. Sastre asked the agents to provide an order or written justification for presence and seizure of his property. They refused.

49. Mr. Escobedo Perez, however, finally provided a verbal explanation different from the one provided during the attempted 19 October ouster. This time, he claimed that the hotel seizure was due to a court decision issued in a commercial trial. But Mr. Sastre was never made aware of, or participated in, any commercial trial involving *Tierras del Sol*, CETSA, or himself in his individual capacity.

50. Undeterred, the entire invasion force took control of the property and also seized the personal belongings of the Mr. Sastre and his customers, placing the property on the street. They did so over objection from Mr. Sastre. They also ignored Mr. Sastre's pleas for the safety of his family, especially his son [REDACTED] who has [REDACTED]. In response, several individuals threatened Mr. Sastre's wife indicating that the entire Sastre family would be physically removed off of the property.

51. Mr. Sastre immediately moved his family inside the hotel administrator's residence to protect them from the intimidating mob. He repeatedly warned the various individuals that his child had a [REDACTED]. The agents did not care. They broke the residence's windows and tore down the main door. They physically accosted Mr. Sastre, who suffered lacerations to his abdomen. They "arrested" Mr. Sastre, placing him in handcuffs and parading him in bloody

clothes in front of his family, hotel guests, and the rest of the Tulum community. Once the invaders secured control over the property, Mr. Sastre was released on the street.

52. That same night, concurrently with the taking of *Tierras del Sol*, another wave of armed government agents entered *Hamaca Loca* and sacked everything inside, including furniture, equipment, and the personal belongings of hotel guests. The *actuário* that directed the taking of *Tierras del Sol*, Luis Miguel Escobedo Pérez, also oversaw the seizure of Hamaca Loca. Both properties were taken under the same baseless legal grounds: an unspecified court decision arising from a commercial dispute, without notice or participation in any kind of court proceeding by any of the hotel owners, HLSA, or anyone connected to the hotel Investments themselves.

3. Borge's Next Coup – the 2016 Hotel Seizures

53. The fraudulent hotel seizures continued in waves over the next few years, engineered by Borge and his accomplices within the state and municipal governments. With a little over three months before the end of Borge's term as Governor, the Mexican government executed one last, audacious land grab that invited further contempt from the domestic and international press. Only then (and finally) did the Mexican government intervene to investigate Borge's abuses of power.

54. On the morning of 17 June 2016, once again several dozen men carrying guns, machetes, wood sticks, and pepper spray seized approximately *seventeen* hotel and tourism properties in the largest mass seizure that Tulum had ever seen. Three of the hotels taken by force on that day were *Behla Tulum*, *Hotel Parayso*, and *Uno Astrolodge*.

55. As before, many of the armed men wore black shirts labeled "Security" (in Spanish) and wore masks to conceal their faces. During the seizure of Hotel Parayso, one of the police

officers known to Ms. Galan approached her. He warned her that she should take her things and leave, as the “Security” forces were in fact prison inmates that the government had released to facilitate the seizure of the properties.

56. These government sponsored thugs—and this is exactly what they were—forcibly ousted everyone from the properties, including the hotel owners and tourists. As with the previous seizures, the men were led by a court representative (*actuario*) who claimed to be implementing orders from a local court.

57. After the seizures, Hotel Parayso was demolished in September 2017. *Uno Astrolodge* was reopened after light remodeling, and is currently in operation under new ownership and under a different name. Behla Tulum has not been demolished, but access to the property has been blocked by private guards.

4. The Hotel Seizures Are Revealed to Be a Sham

58. Claimants did not find out of the alleged reason for the hotel seizures until after they were already ousted from their respective properties. In each seizure, the court representative (*actuario*) that led the armed men claimed to be enforcing orders from local courts to turn over possession of the property to someone else and oust anyone located within.

59. Claimants’ investments were seized in the same manner reported in the Mexican and international press to be the modus used by Borge. The local court orders used to oust Claimants stemmed from alleged lawsuits between third parties – for example, an alleged debt or an alleged dispute between a landlord and a tenant – having nothing to do with Claimants. After entering an order of judgment, the court then ordered, through the *actuario*, that the judgment debtor to deliver possession of the parcels to the purported judgment creditor.

60. Besides the fraudulent basis of these court proceedings, there were numerous egregious defects in the way in which they were conducted. First, against all notions of fair play and due process, *none* of the parties to the sham proceedings were known to any of the Claimants. Nor did they have any connection to the Hotels. Second, and crucially, Claimants *never* received notification of these proceedings which ostensibly involved Claimants' rights in the properties. Third, the purported court orders are deficient on their face. Neither Claimants, nor their companies, nor the seized hotels, nor even their parcels of land are identified by name or legal description in *any* of the judgments. The orders are mere veneers "legitimized" by the *actuario* to perpetuate the violence and fraud masterminded by Borge and his judicial accomplices.

5. Claimants' Amparo and Other Proceedings Seeking the Return of Their Properties; the Murder of Mr. Sastre's Lawyer

61. Claimants filed several complaints before public safety authorities and submitted requests for Constitutional Protection (*amparo*).

62. On 22 November 2011, Mr. Sastre, CETSA, and HLSA filed an *amparo* before the Second District Court in Quintana Roo, a federal court in that state. Claimants asserted violations of their rights under articles 14 (due process) and 16 (right to receive an order written by a competent authority before being deprived of their property) of the Mexican Constitution. Claimants alleged these breaches were committed by (i) the Mexican local courts and (ii) the authorities who dispossessed Claimants of their rights.

63. On 17 May 2012, while the CETSA *amparo* was pending, one of Claimants' lawyers, Álvaro Lopez Joers, was shot dead in his office.³⁰ According to media coverage of his murder,

³⁰ See, Sicario Saluda, *arrodilla y ejecuta a abogado en Tulum* (Hitman Greets, Brings to his Knees, and Executes Attorney in Tulum), La Policiaca (18 May 2012), Exhibit C-0028.

officials from the Public Prosecutor's office in Quintana Roo suspected that the lawyer, who also represented other hotels in the same area, was apparently killed because of his representation Claimants and other holders of beachfront property rights.³¹

64. For nearly four years of *amparo* proceedings, the court did not address the merits, instead focusing on determining the whereabouts of Roberto López Chávez (one of the unknown and unrelated third parties) and repeatedly deferring constitutional and expert hearings. To make matters worse, the court file does not contain the required records showing Mr. Sastre, CETSA, or HLSA were properly notified of all court hearings.

65. After almost four years, on 2 October 2015, the *Juzgado Segundo de Distrito* in Quintana Roo dismissed the *amparo*. The court stated that "the parcels of the complainants [Claimants] and the parcels of the prejudiced third parties [the purported creditor in the Jalisco proceeding] are different" Yet it remarkably held that "[c]onsequently, it cannot be said that the official act that is complained of violates a right of the complainants."³² The court reached this conclusion despite the *actuario*'s sworn acknowledgement on the record that the Jalisco order served as the purported basis for the seizures of *Tierras del Sol* and *Hamaca Loca*.

66. In sum, the entire Mexican judicial system continually and utterly failed to provide justice to Claimants, from the illegal seizure of their Investments to the refusal to consider their claims or the evidence submitted, including the government's own admissions.

³¹ *Id.*

³² See *Sobreseimiento Juzgado Segundo de Distrito en Quintana Roo (Federal Court Dismissal)*, Exhibit C-0029.

6. **Mexican Officials Like Senator Luz María Beristain Acknowledge the Unlawful Hotel Seizures and Borge's Criminal Conduct**

67. On August 23, 2016, two months after the final wave of seizures, Mexican Senator Luz María Beristain held a press conference with a group of aggrieved hotel owners who were among the victims of Borge's unlawful taking. One of those victims appearing with Senator Beristain was Claimant Renaud Jacquet.

68. During the course of the 38-minute press conference, Senator Beristain (i) admitted that seizures were "brutal" acts of violence that "smelled bad", (ii) observed that the hotel property of one well-connected Mexican national, soap opera star Roberto Palazuelos, was left untouched by the armed men and the *actuario*, (iii) identified by name judicial officers involved in Borge's scheme; (iv) implored the Mexican President and the Mexican legislature to investigate fully the depth and breadth of Governor Borge's criminal activity, and (v) demanded that the displaced hotel owners have their rights restored immediately be compensated fully for their losses. Further, Senator Beristain arranged for the hotel owners to meet with the Comisión Nacional de los Derechos Humanos (CNDH) so that they could take the hotel owners' statements and further assist their pursuit of justice.³³ There are similar statements by other government officials, including Senator Daniel Ávila Ruiz and Mexico's former Secretary of Labor Alfonso Navarrete Prida.

69. The investigative reports, testimonials, and admissions by Mexico's own government officials present overwhelming evidence that the conduct against the Claimants is connected inextricably to Governor Borge's criminal enterprise.

³³ See Press Release, Beristain pide solución justa a demandas de despojados en Tulum (Beristain asks for a fair solution for complaints by land seizure victims in Tulum) (25 Aug. 2016), Exhibit C-0030.

7. The Arrest and Indictment of Roberto Borge

70. In December 2016, three months after Borge's term as governor ended, the Institutional Revolutionary Party (PRI) suspended him from the party.

71. On 31 May 2017, an arrest warrant was issued against the ex-governor. On June 4, 2017, Borge was arrested at the Tocumen International Airport in Panama, as he was about to board a plane to Paris.

72. Borge was later extradited for the illegal seizure and trafficking of valuable real estate parcels including several hotel lots in the Tulum area. Mexico has also indicted Borge for money laundering, abuse of power, public corruption, and embezzlement. Moreover, numerous investigative journalists have substantiated the existence of Borge's racketeering scheme under which he and his inner circle directed and benefited from the illegal expropriation of beachfront hotel parcels in Tulum, and Quintana Roo. As one such press report states:

Federal Judge Frustrates Another "Theft" by Roberto Borge

Diario Tiempo, 13 junio 2017

Accustomed to *dispossessing owners of valuable land via apocryphal labor lawsuits, former governor Roberto Borge Angulo* received a severe setback shortly after the end of his term in office, when a federal judge decreed the final protection injunction for the Martín Martínez family of Isla Mujeres for ownership of a property of 169 coastal hectares, located on the way to Isla Blanca in the continental zone of the island, and whose commercial value amounts to 300,000,000 dollars.

Via his front man Samuel Aguilar, who also was the person who headed the labor lawsuits in Tulum and which resulted in the adjudication by force of several hotels and coastal properties, and in complicity with Agapito Magaña Sánchez, former mayor of Isla Mujeres, they closed off a polygon area of the Fátima and

Francisco Javier developments, property of the aforementioned family, in order to award them.³⁴

73. As of today, the prosecution of Roberto Borge continues under seal.

IV. APPLICABLE LAW AND JURISDICTION

74. This arbitration is governed by the UNCITRAL Arbitration Rules of 1976, the NAFTA, and the Investment Treaties between Mexico and (i) Argentina, (ii) France, and (iii) Portugal. These Treaties require Mexico to respect the rights of investors from Canada, Argentina, France, and Portugal, in connection with their investments in Mexico. Each of the Claimants meets the jurisdictional requirements of their respective treaty, as set forth below.

A. *Jurisdiction Ratione Personae*

75. Article 1 of the BIT between Argentina and Mexico defines investment and investor as “every physical or legal person that makes or has made an investment and that, being a physical person, is a national of one of the Contracting Parties” or “being a legal person, is formed under the laws of a Contracting Party and is based in the territory of that Contracting Party.”³⁵

Likewise, the Annex to this BIT states that investors “can, on their own behalf or on behalf of an association, partnership, or company of the other Contracting Party that is a legal person that belongs to or is under the direct or indirect control of the Investor . . . submit a claim to arbitration” alleging breach of this BIT. Mr. Sastre is an Argentine national,³⁶ and thus a protected investor under the BIT between Argentina and Mexico and he may bring this

³⁴ *Juez Federal Frustra otro ‘Robo’ de Roberto Borge (Federal Judge Frustrates Another “Theft” by Roberto Borge)*, Diario Tiempo (Jun. 13, 2017), Exhibit C-0031.

³⁵ Argentina Mexico BIT, art. 1.

³⁶ See passport of Mr. Carlos Sastre, Exhibit C-0004.

arbitration "on his own account and on behalf of an association, society or company of [Mexico]" such as CETSA and HLSA, which is "under [...] direct or indirect control of" Mr. Sastre.

76. The France-Mexico BIT allows an "investor" of one Contracting Party to submit a claim to international arbitration against the other Contracting Party.³⁷ The BIT defines "investors" as "nationals, i.e. physical persons possessing the nationality of either Contracting Party."³⁸ Mr. Jacquet is a citizen of France.³⁹ He therefore is an "investor" of France eligible to submit a claim to international arbitration against the Government of Mexico.

77. The Portugal-Mexico BIT allows an "investor" of one Contracting Party to submit a claim to international arbitration against the other Contracting Party.⁴⁰ The BIT defines an "investor" as "natural persons having the nationality of either Contracting Party, in accordance with its laws and regulations."⁴¹ Ms. Abreu and Mr. Silva are citizens of Portugal.⁴² They therefore are each considered an "investor" of Portugal eligible to submit a claim to international arbitration against the Government of Mexico.

78. Finally, NAFTA allows an "investor of a Party" to submit a claim to international arbitration.⁴³ NAFTA defines an "investor of a Party" as "a national or an enterprise of such

³⁷ France-Mexico BIT, Art. 9.

³⁸ France-Mexico BIT, Art. 1(2).

³⁹ French passport of Mr. Jacquet, Exhibit C-0005.

⁴⁰ Portugal-Mexico BIT, Art. 9.

⁴¹ Portugal-Mexico BIT, Art. 1(3).

⁴² Portuguese passports of Ms. Abreu and Mr. Silva, Exhibits C-0007 and C-0008.

⁴³ NAFTA, Ch. 11, Art. 1116(1).

Party.”⁴⁴ NAFTA further defines a “national” as “a natural person who is a citizen or permanent resident of a Party.”⁴⁵ Ms. Galan Rios and Mr. Aguilar Alexander are citizens of Canada.⁴⁶ They therefore are each considered a “national” of Canada and hence an “investor of a [NAFTA] Party” eligible to submit a claim to international arbitration against the Government of Mexico.

B. Jurisdiction *Ratione Materiae*

79. The Argentina-Mexico BIT defines an “investment” to be “every type of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, according with the legislation of the latter. It includes in particular, but not exclusively . . . movable and immovable property, as well as other real property rights,” “shares . . . and any other type of participation in associations, partnerships, or companies,” and investments “made by associations, partnerships, or companies of one Contracting Party whose equity is majority owned by investors of the other Contracting Party.”⁴⁷ Mr. Sastre has invested in two companies (CETSA and HLSA) and two hotels (Tierras del Sol and Cabaña Hamaca Loca). The rights over the hotel parcels and all the assets contained within are “assets” and include “movable and immovable property, as well as other real estate rights”, and “shares”, among others, which are “majority owned by investors” from Argentina as defined under the treaty.

80. The France-Mexico BIT broadly defines “investment” as “every kind of asset, such as goods, rights and interest of whatever nature, including property rights, acquired or used for the

⁴⁴ NAFTA, Ch. 11, Art. 1139.

⁴⁵ NAFTA, Ch. 2, Art. 201(1).

⁴⁶ See Passports of Aguilar Alexander and Galan Ríos, Exhibits C-0009 and C-0010.

⁴⁷ Argentina Mexico BIT, art. 1.

purpose of economic benefit or other business purposes, and in particular though not exclusively . . . [m]ovable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights.”⁴⁸ Mr. Jacquet’s interests in the Behla Tulum and La Tente Rose properties and in Abodes Mexico S.A. de C.V. constitute an “investment” in accordance with the France-Mexico BIT. Mr. Jacquet had a commodatum agreement and possessory rights for the parcels where his investments were located. Mr. Jacquet invested his capital to purchase such rights and to develop the facilities within the parcel.

81. The Portugal-Mexico BIT defines an “investment” expansively as “every kind of asset and rights invested,” including “[m]ovable and immovable property, acquired or used for economic purposes, as well as any other rights in rem, such as mortgages, liens, pledges and similar rights.”⁴⁹ Ms. Abreu’s and Mr. Silva’s interests in the *Uno Astrolodge* property, and in O.m del Caribe S.A. de C.V. constitute an “investment” in accordance with the Portugal-Mexico BIT. Ms. Silva owned rights to the parcel where the hotel was located. Ms. Abreu and Mr. Silva committed significant resources for the hotel.

82. NAFTA defines an “investment” to include “real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes” and “interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory.”⁵⁰ Ms. Galan Rios’ and Mr. Alexander’s interest in the property and Hotel Parayso constitute an “investment” in accordance

⁴⁸ See France-Mexico BIT, Art. 1.1.

⁴⁹ Portugal-Mexico BIT, Art. 1(1).

⁵⁰ NAFTA, Ch. 11, Art. 1139.

with the NAFTA. Ms. Galan Rios and Mr. Alexander own rights to the parcel where Hotel Parayso was built, and committed significant capital and other resources to the development of the hotel.

C. Jurisdiction *Ratione Temporis*

83. All of the Investment Treaties were in force during all relevant time periods arising from each Claimant's investment, including (i) the initial transactions that initiated their Investments in Mexico, (ii) the acts committed by government officials that constitute violations of the international investment protection standards governed by the treaties, and (iii) the date of filing of the Notice of Arbitration, (iv) the year of the violations of the Treaties.⁵¹

Treaty	Date of Entry into Force	Year of Initial Investment	Years of Treaty Violations
Argentina-Mexico BIT	22 June 1998	2000, 2006	2011-2015
France-Mexico BIT	12 October 2000	2004	2016-present
Portugal-Mexico BIT	4 September 2000	2003	2016-present
NAFTA	1 January 1994	2004	2016-present

D. Jurisdiction *Ratione Voluntatis*

84. Following Mexico's continued violations of the Investment Treaties, on 15 June 2017 and on 6 September 2017, through his lawyer, Mr. Sastre sent in writing a notification of intent to submit this dispute to arbitration with respect to the *Tierras del Sol* and *Hamaca Loca* investments, respectively.⁵² Likewise, on 17 January 2019, the remaining Claimants sent in

⁵¹ Some treaty violations are still ongoing.

⁵² Sastre Notices of Intent, C-0032 and C-0033.

writing a notification of intent to submit this dispute to arbitration with respect to the *Behla Tulum*, *Uno Astrolodge*, and *Hotel Parayso* investments.⁵³

85. After waiting the requisite time period required by the Investment Treaties (from the notice of intent), during which Mr. Sastre sought to negotiate amicably in good faith, Mr. Sastre delivered the Notice of Arbitration under the UNCITRAL Arbitration Rules of 1976 for the *Tierras del Sol* and *Hamaca Loca* investments, which Claimants now amend to include the *Behla Tulum*, *Uno Astrolodge*, and *Hotel Parayso* investments according to the same rules of arbitration. Thus, Claimants have consented to this UNCITRAL arbitration.

86. Mexico has consented to UNCITRAL arbitration pursuant to each of the Investment Treaties.⁵⁴

V. VIOLATIONS OF THE INVESTMENT TREATIES

87. Mexico's conduct described above violates its treaty obligations contained in the NAFTA and in Mexico's obligations toward investors from Argentina, France, and Portugal as described below.

A. Fair and Equitable Treatment

88. The Investment Treaties require Mexico to provide fair and equitable treatment to investors and their investments.⁵⁵ International tribunals agree that to show a breach of this obligation it is not necessary to show bad faith on the part of the State, although such bad faith

⁵³ Abreu, Silva, Jacquet, Alexander, and Galán Notices of Intent to Arbitrate, C-0034.

⁵⁴ See Argentina-Mexico BIT at Art. 10; France-Mexico BIT at Art. 9; Portugal-Mexico BIT at Art. 10; NAFTA at Art. 1122.

⁵⁵ Argentina-Mexico BIT, art. 3; France-Mexico BIT Art. 4(1); Portugal-Mexico BIT Art. 2(1); NAFTA Art. 1105(1)

may be an important indicator of a violation. Violations of this obligation include arbitrary treatment, lack of stability or respect for legitimate or reasonable expectations, lack of transparency, abusive behavior by the government, and denial of justice, among others.

89. The Mexican state violated this obligation in numerous ways and over many years by conduct including:

1. Arbitrary Treatment

90. The Government was arbitrary toward the Claimants in multiple instances, including but not limited to the following. First, the Government, including its courts and security authorities arbitrarily ordered the expulsion of Claimants by force without prior notice and due process. Second, security authorities acted arbitrarily by not taking any actions, or at least answering, the Claimants' criminal complaints. Third, the *amparo* decision in 2015 was arbitrary in that the *amparo* action sought to identify whether the properties identified in the original eviction order matched the legal descriptions for, and concerned, *Tierras del Sol* and *Hamaca Loca*. The court arbitrarily found that they were *not* the same properties (a finding favorable to Claimants) and yet inexplicably dismissed the *amparo* proceedings on those grounds, leaving Claimants dispossessed.

2. Failure to Respect Legitimate Expectations

91. Mexico did not respect the legitimate expectations of investors on many occasions. First, Claimants had the legitimate expectation that the Government would respect and consistently handle their property interests—i.e., that the Presidential Decree that created the Ejido José María Pino Suárez would be respected by the Mexican government and its various agencies. Claimants also had the legitimate expectation that the *Ejido José María Pino Suárez* Authority's assurances and acknowledgements that Claimants were in rightful possession of the

land would be respected by the Mexican Government, which itself created and granted authority to the Ejido. This legal framework invited investments like those Claimants made along the Tulum beachfront in accordance with Mexican and *ejido* law. And despite the fact that numerous branches of the Government recognized the Claimants' property interests and benefitted by charging them for and issuing construction permits, state and municipal operating licenses, taxes, and municipal services invoices, their rights were ignored and their Investments were improperly seized.

92. Despite Claimants' legitimate expectations, Governor Borge, the Mexican judiciary, the police and their agents disregarded Claimants' property interests by orchestrating and adjudicating sham court proceedings, illegally ousting Claimants from their hotel properties, and blessing these wrongful takings with nonsensical judicial rulings.

93. Second, Claimants had the legitimate expectation that the Mexican courts would provide due process in accordance with Mexican and public international law. At a minimum, Claimants expected that the judiciary would notify them and provide an opportunity to be heard before expelling them from their properties. This never happened.

3. Lack of Transparency

94. The Government also acted with a complete lack of transparency. The local courts, their representatives, the police and agents acting on their behalf failed to ensure that Claimants were notified of the proceedings before rulings issued that led to Claimants' ouster.

95. Likewise, the Government was not transparent when it refused to answer Claimants' criminal complaints.

4. **Bad Faith**

96. The Government acted in bad faith by knowingly and intentionally seizing Claimants' properties under false pretenses for personal gain of government officials and their agents. First, the Borge administration intentionally used a fraudulent scheme to seize Claimants' investments. Second, the Mexican judicial system aided and abetted this fraudulent scheme by intentionally issuing orders dispossessing the Claimants under false pretenses. Third, Mexican security forces appeared at Claimants' properties in bad faith, not to enforce a legitimate order, but to force Claimants' acquiescence through intimidation. Fourth, the judiciary later rubber-stamped the scheme by failing to provide any relief to Claimants while other public authorities turned a blind eye to Claimants' legitimate criminal grievances.

5. **Denial of Justice**

97. The entire Mexican judicial system failed to provide justice to Claimants. The Mexican government's judicial proceedings, from the original sham rulings up to and including the 2015 ruling by the *Juzgado Segundo de Distrito* in Quintana Roo, amount to a denial of justice. The local court proceedings that served as a pretext to dispossess the Claimants were procured through judicial corruption. Each Claimant sought emergency equitable relief by filing *amparo* proceedings immediately after the unlawful takings. In the case involving Mr. Sastre, CETSA, and HLSA, the courts created innumerable delays until nearly four years later, when the *Juzgado Segundo de Distrito* in Quintana Roo rendered an illogical, unreasoned judgment that willfully ignored the evidence in the record and washed its hands of the machinations engineered by Governor Borge and his cohorts. With respect to the Claimants ousted by the 2016 seizures, the courts also failed to hear and adjudicate Claimants' petitions on the merits.

98. The *Juzgado Segundo de Distrito* in Quintana Roo also failed to address the claims of due process violations by Mexican security authorities and local courts. Moreover, the local and federal courts and their representatives repeatedly scheduled hearings and issued orders stripping Claimants of their rights without *any* notice or due process.

99. Additionally, the Claimants ousted in 2016 were denied justice by, among other things, the corrupt scheme devoid of due process perpetuated by the Mexican judicial system.

B. Expropriation

100. The Investment Treaties prohibit the illegal expropriation of Claimants' investments. In order for an expropriation to be legal, the Investment Treaties require a public purpose, non-discriminatory grounds, due process, and compensation.⁵⁶ The expropriation of the Investments in this case did not meet any of these requirements. It began with the forceful seizure of the Investments without due process and culminated through a series of acts by the Government over several years in which several government agencies participated, including security agencies, state and federal courts, and their representatives. Neither of the Claimants received any compensation for these takings, and none of these takings were conducted for a public purpose.

101. In the case of Mr. Sastre, Mexico engaged in judicial expropriation in its 2015 *Juzgado Segundo de Distrito* in Quintana Roo decision. That final judgment served to deprive Mr. Sastre of his investments in *Tierras del Sol* and *Hamaca Loca*, and declared that "it should be said that in the case there is no indication that the complaining party [Mr. Sastre] has a legitimate right to be protected." This decree has the direct effect of preventing Mr. Sastre from enjoying the

⁵⁶ Argentina-Mexico BIT, art. 5; France-Mexico BIT Art 5(1); Portugal-Mexico BIT Art. 4(1); NAFTA Art. 1110(1).

benefit of his investments, and thus meets the criteria established by investment treaty arbitral tribunals as an unlawful expropriation in violation of public international law.

102. In the case of Claimants from the 2016 seizures, the Mexican government unlawfully deprived Claimants of possession of their hotel properties. In addition to the lack of notice and due process concerning the court proceedings predating the armed seizures, Claimants were not afforded a hearing after-the-fact, nor offered *any* compensation for their property rights, or the businesses they built and operated for more than ten years. The taking was discriminatory, in that it targeted some hotel owners but not others, and it served no public purpose or accorded due process. The use of armed police and private security forces to eject the lawful Claimants from their investment properties constitutes a classic expropriation.

C. Full protection and security

103. The Investment Treaties require Mexico to provide full protection and security or safety to investors.⁵⁷ The “full protection and security” standard requires States to, among other things, take reasonable measures to prevent physical harm by third parties or Government agents to foreign investments. Also, several tribunals have indicated that this standard includes the obligation to provide a stable environment for investments, including legal security.

104. Mexico violated these obligations through its conduct on various occasions. First, Mexican authorities, led by a court representative, in the most violent and egregious manner possible, violated Claimants’ physical security. The armed men assaulted and physically injured Mr. Sastre, and intimidated his family while they were hiding in their home. The court-authorized armed police and mob invaded and destroyed portions of the Claimants’ properties,

⁵⁷ Argentina-Mexico BIT, art. 3; France BIT Article 4(3); Portugal BIT Art. 2(2); NAFTA Art. 1105(1).

and seized the hotels' management offices, including all financial and administrative files. These "enforcers" carried either firearms or machetes during the ousters. Claimants filed criminal complaints relating to these illegal seizures, but Mexican government authorities failed to provide full protection and security by ignoring, and continuing to ignore to this day, these criminal complaints in the years subsequent to the takings.

105. Relatedly, the Mexican judicial, administrative and security authorities failed to provide legal security by not implementing or using an orderly mechanism to resolve issues relating to ownership of immovable property. Consistent with the general lack of notice and due process, Mexican authorities did not bother to evaluate, or even request proof of the rights and titles held by Claimants before dispossessing them.

D. Arbitrary, unreasonable or discriminatory measures

106. The Investment Treaties also prohibit impairing "the management, maintenance, use, enjoyment or disposition" of investments of investors "through arbitrary or discriminatory measures."⁵⁸

107. Claimants re-allege their assertion pertaining to Mexico's violation of the fair and equitable treatment standard. The scheme against hotel owners in the Tulum area including Claimants, which according to reports and testimony is a campaign orchestrated and sustained to this day by Mexico through their security agents, courts, and other public agencies, constitutes a series of arbitrary and discriminatory measures against Claimants and their Investments.

⁵⁸ See, e.g., Argentina-Mexico BIT, art. 3; Portugal-Mexico BIT art. 2(3). This obligation can be imported into Mexico's obligations toward French and Canadian investors through Mexico's obligation to grant those investors with treatment no less favorable than investors from other nations (Most Favored Nation clause). See France-Mexico BIT, art. 4.2; NAFTA, art. 1103.

108. This scheme, by its very nature, is fraudulent and thus has no legitimate reason and is based on capricious reasons other than those put forward by the local courts. The takings were orchestrated by Governor Borge, public executive and judicial authorities, and private individuals aiding these government actors, to take illegitimate possession of valuable beachfront land.

109. Claimants have learned that other similarly-situated hotel owners in the area, including prominent Mexican national Roberto Palazuelos, have not been subjected to the same illegal treatment to which Claimants have been subjected.

VI. DAMAGES

110. The Investment Treaties require Mexico to compensate Claimants for violating their investment protection rights. Moreover, given the outrageous conduct of the scheme, including the hordes of armed thugs sent to effectuate the hotel seizures with physical violence, Mexico must also compensate Claimants for moral damages. Claimants underwent significant mental suffering, physical injury, damage to reputation, damage to goodwill, damage to credit, and loss of business opportunities. As a result of Mexico's unlawful conduct, Claimants suffered aggregate damages in excess of US \$80 million.

VII. APPOINTMENT OF ARBITRATOR, CONSENT, WAIVER, AND PROCEDURAL ISSUES

111. Claimants nominate Dr. Charles Poncet as Claimants' party-appointed neutral arbitrator, and in a three-member arbitral tribunal to serve in this proceeding.

112. Claimants propose that the arbitration be conducted in the English language, and that the seat and place of the arbitration be Washington, DC, United States.

113. Claimants propose designating the Permanent Court of Arbitration at the Hague as the institutional authority charged with the administration of this arbitral proceeding.

114. Claimants hereby reiterate their consent to this arbitration.

115. In accordance with the provisions of the Investment Treaties, Claimants waive their right to initiate or continue legal proceedings in Mexico only to the extent required by the Investment Treaties.

116. Claimants reserve the right to advance further arguments and produce additional evidence and legal authority as necessary to complete or supplement the presentation of their claims or to respond to any factual allegations or legal arguments that Mexico may advance. Claimants also reserve the right to produce further documentary evidence and proffer witness evidence to supplement and support the claims made in this Amended Notice of Arbitration.

VIII. CONCLUSION

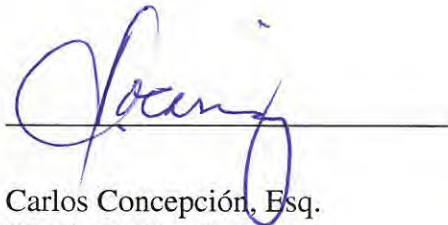
117. Therefore, and on the basis of those obligations contained in the Investment Treaties and the UNCITRAL Arbitration Rules of 1976, Claimants respectfully ask:

- a. That this dispute be submitted to arbitration;
- b. That Dr. Charles Poncet be appointed to the Tribunal to hear this dispute;
- c. That the Tribunal declare that the conduct of the United Mexican States, including its organs, officers, and agents, violated the obligations contained in the Investment Treaties;
- d. That the Tribunal grant the Claimants the compensation due to them as Investors in the approximate amount of US \$80,000,000.00 for the

violations described herein, and all costs and fees associated with this proceeding, including all professional fees and disbursements and an award of compound interest at a rate to be fixed by the Tribunal until the date of Mexico's final satisfaction of the award; and

- e. That the Tribunal grant Claimants any other remedy that the arbitral tribunal deems appropriate.

Respectfully submitted,



Carlos Concepción, Esq.
Humberto Ocariz, Esq.
Ricardo A. Ampudia, Esq.
Giovanni Angles, Esq.
SHOOK, HARDY & BACON L.L.P.
201 S. Biscayne Blvd.
Suite 3200
Miami, FL 33131
United States of America

Counsel for the Claimant