UNDER THE CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES AND THE INSTITUTION RULES AND ARBITRATION RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT, AND CHAPTER 14 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

FINLEY RESOURCES, INC.
MWS MANAGEMENT, INC.
PRIZE PERMANENT HOLDINGS, LLC

Claimants

v.

THE UNITED MEXICAN STATES

Respondent

REQUEST FOR ARBITRATION

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ATTORNEYS FOR CLAIMANTS

March 25, 2021

I. INTRODUCTION

1. Finley Resources Inc. ("Finley"), MWS Management Inc. ("MWS"), and Prize Permanent Holdings, LLC ("Prize") (collectively, "Claimants") submit this Request for Arbitration for a dispute with the United Mexican States ("Mexico") under the North American Free Trade Agreement ("NAFTA") and the United States-Mexico-Canada Agreement ("USMCA").

2. Finley brings this arbitration under USMCA Article 14.C.1 and NAFTA Articles 1116(1) and 1120(1)(a).

3. MWS brings this arbitration under USMCA Articles 14.D.3(a) and 14.E.2(a).

4. Prize brings this arbitration under USMCA Articles 14.C.1, 14.D.3(a), and 14.E.2(a) and (b) and NAFTA Articles 1116(1), 1117(1), and 1120(1)(a).

5. This dispute further arises under Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention"), the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings ("ICSID Institution Rules"), and the Rules of Procedure for Arbitration Proceedings ("ICSID Arbitration Rules") of the International Centre for Settlement of Investment Disputes ("ICSID").

II. PARTIES TO THE ARBITRATION

6. Finley is a United States company.

Contact details: Finley Resources, Inc.
1308 Lake St.
Fort Worth, Texas

Finley asserts claims on its own behalf under NAFTA Article 1116(1).

7. MWS is a United States company.

Contact details: MWS Management, Inc.
1308 Lake St., Ste. 200
Fort Worth, Texas

MWS asserts claims on its own behalf under USMCA Article 14.E.2(a).

8. Prize is a United States company.

Contact details: Prize Permanent Holdings, LLC
182 E. Edgewood Place
San Antonio, Texas 78209

Prize asserts claims on its own behalf under NAFTA Article 1116(1). Prize also asserts claims on behalf of Drake-Mesa, S. de R.L. de C.V. ("Drake-Mesa"), a Mexican enterprise that Prize owns and/or controls under NAFTA Article 1117(1). Drake-Mesa can be contacted at:

Calle Durango # 602
Col. Minerva Tampico, Tamps. Mexico
C.P. 89120-89001

Prize further asserts claims on its own behalf pursuant to USMCA Article 14.E.2(a). Finally, Prize asserts claims on behalf of Bisell Construcciones e Ingeniería, S.A. de C.V. ("Bisell"), a Mexican enterprise that Prize owns and/or controls under USMCA Article 14.E.2(b). Bisell can be contacted at:

Calle Durango # 602
Col. Minerva Tampico, Tamps. Mexico
C.P. 89120-89001

9. Proof of Claimants' United States nationality is included with this Request.[1]

10. Claimants have taken all appropriate internal actions, including adopting resolutions, to authorize this Request.[2]

11. Claimants are represented in these proceedings by Thompson & Knight LLP. All correspondence and notices to Claimants should be addressed to counsel for Claimants at the following address:[3]

Andrew B. Derman
Andrew Melsheimer
Gabriel Ruiz
TJ Auner
Julia Segovia
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1722 Routh Street, Suite 1500
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[1] Exhibit 1.
[2] Exhibit 2.
[3] Executed Power of Attorney are enclosed as Exhibit 3.

12. Respondent is Mexico. Claimants understand that Mexico can be contacted at the following address:

Orlando Pérez Gárate
Director General de Consultoría Jurídica de Comercio Internacional
Subsecretaría de Comercio Exterior
orlando.perez@economia.gob.mx
Torre Ejecutiva
Pachuca #189, Col. Condesa, Cuauhtémoc, C.P. 06140, CDMX
(55) 57 29 91 34 y 35

III. FACTUAL BACKGROUND

13. Finley, MWS, and Prize are U.S. companies that conduct oilfield services to drill and complete oil and gas wells. These services include furnishing drilling rigs and other equipment and the labor necessary to perform such work. Between 2011 and 2014, Mexico, by and through its state-owned oil company Petróleos Mexicanos ("Pemex"), invited oilfield service companies like Finley, MWS, and Prize to participate in international tenders for service contracts to explore for and develop hydrocarbons for Pemex. This public tender process resulted in Claimants entering into three oilfield service contracts with Pemex and Claimants making significant investments in Mexico.

14. Pemex did not uphold its end of the bargain. Pemex suspended the performance of all three contracts due to budget constraints. Pemex also did not request the minimum agreed work under the contracts. On at least one occasion, Pemex requested work that required Claimants to engage third parties. However, Pemex did not pay, which exposed Claimants to litigation in the United States brought by those third parties.

15. Ultimately, Pemex's conduct forced Finley, MWS, and Prize to commence three lawsuits and endure years of litigation. Meanwhile, Pemex compromised with at least one similarly-situated oilfield service company owned by Mexican nationals. This arbitration is likely to reveal that Pemex reached other settlements with similarly-situated Mexican companies while Claimants were forced to endure delays of nearly five and a half years in the Mexican court system. Compounding the prejudice, NAFTA and the USMCA required Claimants to dismiss their pending lawsuits so they could bring their investment claims.

16. Worse, Pemex retaliated to one of Claimants' lawsuits. After that action commenced, Pemex designed a scheme to try to invoke a rescission provision under that contract. Pemex claimed

that it was rescinding the contract because of one purported unfulfilled work order; the contract only allows such a rescission when there are fifteen unfulfilled work orders. The Mexican court system disregarded this protection and upheld Pemex's unilateral, extra-contractual action.

17. Pemex's conduct affecting Claimants' investments occurred when NAFTA was in place and continued into the adoption of the USMCA. As such, Mexico violated both NAFTA and the USMCA, including NAFTA Articles 1102, 1103, and 1105 and USMCA Articles 14.4 and 14.6.[4] Finley, MWS, and Prize provide a brief overview of Mexico's conduct with respect to each of the three investments and Mexico's corresponding breaches of NAFTA and the USMCA.

A. Contract No. 421004821 (Finley and Prize)

18. Claimant's first investment that is subject of this arbitration is Contract No. 421004821 (the "821 Contract"). This is a contract between Pemex and the "Contractor" for the latter to drill oil and gas wells on behalf of Pemex in a certain region in Mexico. Finley is one of two private companies comprising the Contractor.

19. Drake-Mesa is the other entity comprising the Contractor. Drake-Mesa is a Mexican enterprise. Prize owns and/or controls Drake-Mesa. For purposes of this Request, Prize's interest in the 821 Contract will be called "Drake-Mesa."

20. The 821 Contract is a result of an international public tender (TLC number 18575088-542-13). For this tender, Mexico invited companies like Finley and Drake-Mesa to submit competitive bids based on Pemex's model contract to drill onshore oil and gas wells for Pemex in select geographic areas. Notably, the guidelines governing this bidding process promoted that investments under these contracts would be protected by Mexico's free trade agreements such as NAFTA. Finley and Drake-Mesa submitted a competitive bid, and on February 12, 2014, Pemex awarded them the 821 Contract.

21. Under the 821 Contract, Pemex agreed to request work from Finley and Drake-Mesa, including providing equipment and drilling oil and gas wells on behalf of Pemex. The minimum amount of work that Pemex agreed to request was the equivalent to US$ 169 million (Pemex also agreed to a maximum amount of US$ 418.3 million that it could request). Under

[4] NAFTA and the USMCA are enclosed as Exhibit 4 and Exhibit 5, respectively.

the contract, Finley and Drake-Mesa were required to deliver a financial guarantee to Pemex equivalent to 10% of the maximum amount, or approximately US $41 million. The work was to begin on March 1, 2014, and last for 1,402 days, terminating on December 31, 2017.

22. Pemex assured Finley and Drake-Mesa that it would have sufficient resources to request and pay for the agreed work to be performed. Pemex declared that "It has allocated the resources to carry out the Works under this Contract." Relying on Pemex's representation and its agreement to spend at least US$ 169 million, Finley and Prize invested significant amounts in Mexico to fulfill Pemex's work orders, including purchasing special drilling equipment to meet Pemex's specifications and importing such equipment into Mexico. They also provided the US$ 41 million security for the maximum amount of work that Pemex might request.

23. In response to Pemex's work orders, Finley and Drake-Mesa conducted and were paid for work worth approximately US$ 48 million. However, Pemex did not pay for all of the work orders that it issued. On one occasion, Pemex issued a work order for which Finley and Drake-Mesa had to engage a third-party contractor, Halliburton. Pemex never paid for this work, and Halliburton initiated litigation against Finley in the United States for this work. As a result, Finley paid for work that Pemex received and benefitted from.

24. Ultimately, Pemex did not comply with its obligation to request at least US$ 169 million of work. Instead, Pemex opted not to issue timely work orders that would allow Finley and Drake-Mesa to conduct the work and achieve the US$ 169 million minimum spending commitment before the contract's termination.

25. Despite the 821 Contract's plain language, Pemex contended that the contract did not obligate it to request the minimum amount of work from Finley and Drake-Mesa. Rather, Pemex claimed that its obligation to request work was optional, and it only had to pay for work if it issued a work order. As a result, Pemex did not issue work orders for, and thus did not pay Finley and Drake-Mesa for, approximately US$ 120.9 million of agreed work. Such conduct was not consistent with Pemex's contractual obligation to act in good faith and equitably and to cooperate with Finley and Drake-Mesa to fulfill the 821 Contract in a mutually beneficial manner.

26. In addition to not sending work orders for extended periods, Pemex also repeatedly suspended performance under the 821 Contract. Pemex admitted that the Mexican government had not

sufficiently funded Pemex's budget. For example, in September 2014, Pemex announced that service companies had drilled 21 of 26 scheduled wells and that Pemex did not expect additional funds for its budget to continue drilling wells between September and December 2014.

27. In November 2014, Pemex suspended performance under the 821 Contract. Using the excuse of suspension, Pemex suspended issuing work orders two additional times, totaling over 300 days. For Finley and Drake-Mesa, Pemex's suspensions cost approximately US$ 28 million in lost opportunity, i.e., fees that they could have earned by using their drilling equipment elsewhere. To date, Pemex has not paid these amounts to Finley and Drake-Mesa as contractually required.

28. Pemex's third suspension started on January 13, 2016. Previously, Pemex had suspended the contract for 108 days between November 2014 and March 2015 and for 98 days between August 2015 and November 2015. After 105 days of inactivity under Pemex's third suspension, Finley and Drake-Mesa became weary that Pemex was not going to issue any more work orders and fulfill its remaining US$ 120.9 million minimum commitment. In addition, Pemex was telling Finley and Drake-Mesa that Pemex was planning to cancel the 821 Contract (in addition to other similar service contracts) because the Mexican government was not providing sufficient funds to Pemex to meet its obligations. Consequently, on April 29, 2016, Finley and Drake-Mesa sought relief from a Mexican federal civil court. Ultimately, this lawsuit was dismissed because the arbitration clause under the 821 Contract applied to the asserted claims.

29. In response, Pemex retaliated by pursuing a strategy of rescinding the 821 Contract. Pemex claimed that it issued a new work order to Finley and Drake-Mesa in November 2016. This is ten months after Pemex had suspended its performance for the third time and seven months after Finley and Drake-Mesa had initiated their lawsuit. Pemex alleged that Finley and Drake-Mesa did not perform the work, and Finley and Drake-Mesa claimed that Pemex did not properly notify or send the work order to the proper person to receive a work order. Pemex then used this supposed unfulfilled work order to notify Finley and Drake-Mesa on June 26, 2017 that Pemex would be seeking rescission of the 821 Contract.

30. On July 31, 2017, Pemex purported to rescind the 821 Contract. Pemex made various allegations to rescind the contract based on the work order that Finley and Drake-Mesa did

not properly receive. However, Pemex did not mention the specific condition in the 821 Contract that applied to Pemex's work orders — that Pemex can only claim rescission after Finley and Drake-Mesa did not comply with fifteen (15) work orders.

31. Finley and Drake-Mesa challenged this decision before Mexico's Federal Court of Administrative Justice. In addition to raising contract claims, Finley and Drake-Mesa also asserted claims under NAFTA Articles 1101, 1104, and 1105.[5] In response, Pemex relied on general contractual provisions to rescind the 821 Contract even though a specific provision regarding work orders precludes Pemex from rescinding the contract unless and until Finley and Drake-Mesa do not fulfill fifteen (15) work orders. Notably, Pemex never proved that the Mexican government had provided Pemex the funds in its budget to pay for this purported work order.

32. On October 4, 2018, the court ignored the plain language of the 821 Contract that protects Finley and Drake-Mesa from having their contract rescinded unless and until there are fifteen (15) unfulfilled work orders. Instead, the court confirmed Pemex's rescission because of one work order that Finley and Drake-Mesa purportedly did not fulfill (because they did not receive it). Worse, the court did so without any evidence that Pemex could even pay for this work because of its previously-announced budgetary constraints. The court also did not rule on the asserted NAFTA claims.

33. Finley and Drake-Mesa appealed this decision with respect to its NAFTA claims. The first appellate court ruled that the Mexican Constitution was not the appropriate procedural mechanism for Finley and Drake-Mesa to invoke NAFTA claims. It made no ruling on the merits of any NAFTA claim. The Mexican Supreme Court denied Finley and Drake-Mesa's request for review. Accordingly, Mexico's court system endorsed Pemex's wrongful rescission of the 821 Contract, and consequently, Mexico failed to protect their investment.

34. Mexico did not treat Finley and Drake-Mesa similarly as it did with oilfield service companies owned by Mexican nationals. While Pemex forced Finley and Drake-Mesa to take legal action, Mexico compromised with and paid similarly-situated domestic companies. For example, Mexico entered into Contract No. 424043809 with Integradora de Perforaciones y Servicios,

[5] Finley and Drake-Mesa did not pursue a claim of fair and equitable treatment under NAFTA Article 1105 in Mexico's court system. Instead, they tried to assert a NAFTA Article 1105 claim via a provision of the Mexican Constitution regarding violations of human rights.

S.A. de C.V. and Zapata Internacional, S.A. de C.V. Finley and Prize understand Mexican nationals own both of these companies. Pemex did not fulfill its obligation to request at least US$ 24 million in work under this contract. Instead of suspending performance and seeking rescission like it did with the 821 Contract, on April 9, 2018, Pemex compromised with the Mexican nationals and paid them at least US$ 15 million. This is discriminatory and disparate treatment against U.S. investors in favor of Mexican nationals. Finley and Prize anticipate that Mexico's disclosures in this arbitration will reveal additional examples of such conduct that violates Mexico's obligations under NAFTA.

35. Mexico's actions with respect to Finley's and Prize's investment in Mexico breached its obligations to these U.S. investors under NAFTA. In particular, Mexico breached:

- NAFTA Article 1102 (National Treatment) by affording Mexican nationals better treatment with respect to similar investments.
- Its obligation to respect its contractual obligations under the 821 Contract with Finley, Prize, and Drake-Mesa, an obligation under the Mexico-Denmark bilateral investment treaty that Mexico incorporated under NAFTA Article 1103 (Most-Favored-Nation Treatment).
- NAFTA Article 1105 (Minimum Standard of Treatment) for failing to provide fair and equitable treatment by, *inter alia*, unjustifiably repudiating the 821 Contract, engaging in arbitrary conduct, discriminating against Finley, Prize, and Drake-Mesa, and denying justice to Finley, Prize, and Drake-Mesa through the conduct of Mexico's court system.

36. Moreover, Mexico's failure to provide justice to Finley, Prize, and Drake-Mesa and timely adjudicate their claims forced Finley and Prize to seek protection of their rights under NAFTA. To do this, NAFTA required Finley, Prize, and Drake-Mesa to dismiss their ongoing lawsuits against Pemex. This is a wholly prejudicial result, leaving this arbitration as the sole recourse for Finley and Prize against Mexico related to their investments.

37. Mexico's breaches have caused Finley and Prize to suffer damages related to, *inter alia*, lost profits; out of pocket losses, including those associated with importing equipment into Mexico to perform under the 821 Contract and dedicating skilled labor in anticipation of Pemex requesting work and the payments that Finley made to third-party contractors for work that

Pemex requested and benefitted from but never paid for; legal fees and expenses incurred in connection with litigating in the Mexican court system; and costs associated with posting a financial guarantee of US$ 41 million as required under the 821 Contract. Finley and Prize estimate their losses amount to approximately US $ 87 million. Finley and Prize reserve the right to amend and/or supplement their claims in all respects.

B. Contract No. 424042803 (MWS and Prize)

38. Claimants' second investment that is subject of this arbitration is Contract No. 424042803 (the "803 Contract"). This is a contract between Pemex and the Contractor for the latter to perform various oilfield services on behalf of Pemex in a certain region in Mexico. MWS is one of the two private companies comprising the Contractor.

39. Bisell is the other entity comprising the Contractor. Bisell is a Mexican enterprise. Prize owns and/or controls Bisell. For purposes of this Request, Prize's interest in the 803 Contract will be called "Bisell."

40. Under the 803 Contract, Pemex agreed to request work from MWS and Bisell, including providing equipment and performing well completions on behalf of Pemex. The work was scheduled to begin on February 20, 2012 and last until December 21, 2013.

41. Pemex agreed to request US$ 48 million of such work. Under the contract, MWS and Bisell were required to deliver a financial guarantee to Pemex equivalent to 10% of the value of the contract, or approximately US$ 4.8 million. Pemex assured MWS and Bisell that it "has allocated the resources to carry out the Works under this Contract." Relying on Pemex's representation and its agreement to spend at least US$ 48 million, MWS and Bisell invested significant amounts in Mexico to fulfill Pemex's work orders, including purchasing special drilling equipment to meet Pemex's specifications and importing such equipment into Mexico.

42. Despite assuring MWS and Bisell that it had sufficient resources to request the work, Pemex began to encounter financial problems. As a result, Pemex had to extend the duration of the contract from December 21, 2013 to June 30, 2014.

43. Thereafter, Pemex did not comply with its obligation to request the minimum US$ 48 million in work. Pemex only requested and paid for US$ 26.5 million worth of work. In October 2013, Pemex announced that it lacked the budget to request any more work under the 803 Contract. Two months later, on December 26, 2013, Pemex told MWS and Bisell that it would not be

issuing additional work orders. Thereafter, Pemex initiated a process to terminate the contract without requesting the remaining US$ 21.5 million in work from MWS and Bisell. Under the circumstances, MWS and Bisell had no choice but to agree to terminate the contract without payment and reserve their rights to pursue their legal remedies.

44. On October 13, 2015, MWS and Bisell initiated a civil lawsuit against Pemex in the federal district court in Veracruz for breach of its obligations under the 803 Contract. MWS and Bisell seek recovery of their damages, including among other things, approximately US$ 21.5 million that Pemex owes for work that it failed to request as agreed. Over five years later, the Mexican court has not rendered a decision.

45. Mexico did not treat MWS and Bisell similarly as it did with oilfield service companies owned by Mexican nationals. While Pemex forced MWS and Bisell to take legal action, Mexico compromised with and paid similarly-situated domestic companies. For example, Mexico entered into Contract No. 424043809 with Integradora de Perforaciones y Servicios, S.A. de C.V. and Zapata Internacional, S.A. de C.V. MWS and Bisell understand that Mexican nationals own both of these companies. Pemex did not fulfill its obligation to request at least US$ 24 million in work under this contract. Pemex did not suspend performance and then force these Mexican companies to endure more than five years of litigation trying to obtain judicial relief.

46. Instead, on April 9, 2018, Pemex compromised with these Mexican nationals and paid them at least US$ 15 million. This is discriminatory and disparate treatment against U.S. investors in favor of Mexican nationals. MWS and Prize anticipate that Mexico's disclosures in this arbitration will reveal additional examples of such conduct that violates Mexico's obligations under the USMCA.

47. Mexico's actions with respect to MWS's and Prize's investment in Mexico breached its obligations to these U.S. investors under Chapter 14 of the USMCA. In particular, Mexico breached:

- USMCA Article 14.4 (National Treatment) by affording Mexican nationals better treatment with respect to similar investments.
- USMCA Article 14.6 (Minimum Standard of Treatment) for failing to provide fair and equitable treatment by, *inter alia*, discriminating against MWS, Prize, and Bisell, and

denying justice to MWS, Prize, and Bisell through the conduct of Mexico's court system.

48. Moreover, Mexico's failure to provide justice to MWS, Prize, and Bisell and timely adjudicate their claims forced MWS and Prize to seek protection of their rights under the USMCA. To do this, the USMCA required MWS, Prize, and Bisell to dismiss their ongoing lawsuits against Pemex. This is a wholly prejudicial result, leaving this arbitration as the sole recourse for MWS and Prize against Mexico related to their investments.

49. Mexico's breaches have caused MWS and Prize to suffer damages related to, *inter alia*, lost profits; out of pocket losses, including those associated with importing equipment into Mexico to perform under the 803 Contract and dedicating skilled labor in anticipation of Pemex requesting work; legal fees and expenses incurred in connection with litigating in the Mexican court system; and costs associated with posting a financial guarantee of US$ 4.8 million as required under the 803 Contract. MWS and Prize estimate their losses amount to approximately US$ 28 million. MWS and Prize reserve the right to amend and/or supplement their claims in all respects.

C. Contract No. 424043804 (MWS and Prize)

50. Claimants' third investment that is subject of this arbitration is Contract No. 424043804 (the "804 Contract"). This is a contract between Pemex and the Contractor for the latter to drill wells on behalf of Pemex in a certain region in Mexico. MWS is one of the two private companies comprising the Contractor.

51. Bisell is the other entity comprising the Contractor. Bisell is a Mexican enterprise. Prize owns and/or controls Bisell. For purposes of this Request, Prize's interest in the 804 Contract will be called "Bisell."

52. Under the 804 Contract, Pemex agreed to request work from MWS and Bisell, including providing equipment and drilling oil and gas wells on behalf of Pemex. The work was to begin on March 20, 2013 and last until September 30, 2013.

53. The minimum amount of work that Pemex agreed to request was US$ 22 million, with the maximum being US$ 55 million. Under the contract, MWS and Bisell were required to deliver a financial guarantee to Pemex equivalent to 10% of the maximum amount of work that Pemex might request, or approximately US$ 5.5 million. Pemex assured MWS and Bisell that it "has

allocated the resources to carry out the Works under this Contract." Relying on Pemex's representation and its agreement to spend at least US$ 22 million, Finley and Prize invested significant amounts in Mexico to fulfill Pemex's work orders, including purchasing special drilling equipment to meet Pemex's specifications and importing such equipment into Mexico.

54. Despite assuring MWS and Bisell that it had sufficient resources to request the work, Pemex began to encounter financial problems. Consequently, Pemex had to extend the duration of the contract from September 30, 2013 to March 31, 2014.

55. On August 27, 2013, Pemex issued its first work orders for MWS and Bisell to drill two wells. MWS and Bisell arranged for the equipment and personnel to be on the locations of the wells as Pemex instructed. However, on September 2, 2013, Pemex notified MWS and Bisell that it was cancelling the work orders. A month later, in October 2013, Pemex announced that its deficient budget was requiring it to cease all work under the 804 Contract.

56. Pemex never issued another work order. Instead, it initiated a process to terminate the contract before its expiry in March 2014. Under the circumstances, MWS and Bisell had no choice but to agree to terminate the contract without payment and reserve their rights to pursue their legal remedies.

57. Consequently, on December 7, 2015, MWS and Bisell initiated a civil lawsuit against Pemex in the federal district court in Veracruz for breach of its obligations under the 804 Contract. MWS and Bisell seek recovery of their damages, including approximately US$ 22 million that Pemex owes for its minimum work obligations. Nearly five years later, the Mexican court has not rendered a decision.

58. Mexico did not treat MWS and Bisell similarly as it did with oilfield service companies owned by Mexican nationals. While Pemex forced MWS and Bisell to take legal action, Mexico compromised with and paid similarly-situated domestic companies. For example, Mexico entered into Contract No. 424043809 with Integradora de Perforaciones y Servicios, S.A. de C.V. and Zapata Internacional, S.A. de C.V. MWS, Prize, and Bisell understand that Mexican nationals own both of these. Pemex did not fulfill its obligation to request at least US$ 24 million in work under this contract. As best Claimants understand, Pemex did not initiate a process to terminate this contract nor did it force these Mexican companies to endure more than five years of litigation trying to obtain judicial relief. Instead, on April 9, 2018, Pemex

compromised with these Mexican nationals and paid them at least US$ 15 million. This is discriminatory and disparate treatment against U.S. investors in favor of Mexican nationals. MWS and Prize anticipate that Mexico's disclosures in this arbitration will reveal additional examples of such conduct that violates Mexico's obligations under USMCA.

59. Mexico's actions with respect to MWS's and Prize's investment in Mexico breached its obligations to these U.S. investors under Chapter 14 of the USMCA. In particular, Mexico breached its obligations under:

- USMCA Article 14.4 (National Treatment) by affording Mexican nationals better treatment with respect to similar investments.
- USMCA Article 14.6 (Minimum Standard of Treatment) for failing to provide fair and equitable treatment by, *inter alia*, discriminating against MWS, Prize, and Bisell, and denying justice to MWS, Prize, and Bisell through the conduct of Mexico's court system.

60. Moreover, Mexico's failure to provide justice to MWS, Prize, and Bisell and timely adjudicate their claims forced MWS and Prize to seek protection of their rights under the USMCA. To do this, the USMCA required MWS, Prize, and Bisell to dismiss their ongoing lawsuits against Pemex. This is a wholly prejudicial result, leaving this arbitration as the sole recourse for MWS and Prize against Mexico related to their investments.

61. Mexico's breaches have caused MWS and Prize to suffer damages related to, *inter alia*, lost profits; out of pocket losses, including those associated with importing equipment into Mexico to perform under the 804 Contract and dedicating skilled labor in anticipation of Pemex requesting work; legal fees and expenses incurred in connection with litigating in the Mexican court system; and costs associated with posting a financial guarantee of US$ 5.5 million as required under the 804 Contract. MWS and Prize estimate their losses amount to approximately US$ 33 million. MWS and Prize reserve the right to amend and/or supplement their claims in all respects.

IV. CONSTITUTION OF THE ARBITRAL TRIBUNAL

62. Claimants request the constitution of a Tribunal in accordance with Article 37 of the ICSID Convention. In accordance with NAFTA Article 1123 and USMCA Article 14.D.6, the Tribunal will be comprised of three arbitrators, with one arbitrator appointed by each

disputing party and the third, the presiding arbitrator, appointed by agreement of the parties. If the Tribunal is not constituted within 75 days from the date of the receipt of this Request by ICSID's Secretary-General,[6] Claimants request that the Secretary General promptly appoint any unnamed arbitrator under NAFTA Articles 1124(2) and (3) and USMCA Article 14.D.6.3.

63. Claimants appoint Dr. Franz X. Stirnimann Fuentes. His email is fxs@stirnimannfuentes.com, and his address is Route de Malagnou 6, PO Box 441, 1211 Geneva 12, Switzerland. His telephone number is 41 (22) 5520424.

V. JURISDICTION

64. ICSID has jurisdiction over this dispute under NAFTA Chapter 11, Section B; USMCA Chapter 14, Annexes C, D, and E; and Article 25 of the ICSID Convention.

A. Jurisdiction under NAFTA (Finley and Prize)

65. All jurisdictional requirements of NAFTA (via USMCA Chapter 14, Annex C) are met. Finley and Prize have also complied with all procedural requirements of NAFTA before submitting a claim to arbitration.

66. Finley and Prize are "investor[s] of a Party" authorized to submit a claim to arbitration under NAFTA Articles 1116(1) and 1117(1). NAFTA Article 1139 provides that an "investor of a Party" means "a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment." NAFTA Article 1139 further defines "enterprise of a Party" as including "an enterprise constituted or organized under the law of a Party. . . ." Finley and Prize are both enterprises of the United States because they are both constituted in and organized under the laws of the United States.

67. Finley and Prize have also made investments in Mexico. Claimants directly and indirectly own assets in Mexico that qualify as "investment(s)" under NAFTA Article 1139 subsections (a)-(h), including, enterprises; equity and other interests in enterprises; tangible and intangible property; contractual rights; equipment; and real estate acquisitions. Documentation evidencing ownership of these investments will be provided in due course.

[6] NAFTA Article 1124 provides, "[i]f a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed . . ." The relevant timeframe under USMCA Article 14.D.6 is 75 days. Claimants do not object to ICSID's application of either timeframe.

68. NAFTA Articles 1116(1) and 1117(1) permit an investor of a Party to commence arbitration alleging a breach of Chapter 11, Section A of NAFTA, and that the investor or the enterprise owned or controlled by the investor, "has incurred loss or damage by reason of, or arising out of, that breach." Finley's and Prize's claims concern breaches of Mexico's obligations under Chapter 11 of NAFTA. Finley and Prize, and Prize's Mexican enterprise (Drake-Mesa), have incurred loss or damage arising out of those breaches.

69. Finley and Prize's submission of their claims to arbitration is also timely under NAFTA Articles 1116(2), 1117(2), 1119, and 1120(1). NAFTA Article 1116(2) provides, "[a]n investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage." Similarly, NAFTA Article 1117(2) provides, "[a]n investor may not make a claim on behalf of an enterprise described in [NAFTA Article 1117(1)] if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage." Finley's and Prize's claims are timely under NAFTA Articles 1116(2) and 1117(2). No more than three years have elapsed since Finley and Prize, or their Mexican enterprise (Drake-Mesa) first acquired knowledge of the breaches and knowledge that they had incurred a loss.

70. Under NAFTA Article 1119, an investor must deliver to the disputing party a written Notice of Intent to Submit a Claim to Arbitration more than 90 days before commencing arbitration. Finley and Prize delivered their Notice of Intent to Mexico on July 29, 2020. They supplemented this notice on September 18, 2020, which is more than 90 days prior to the date of this Request.[7] Additionally, under NAFTA Article 1120(1), an investor may submit a claim to arbitration once six months have elapsed since the events giving rise to the claim. Finley's and Prize's NAFTA claims arise out of Pemex's alleged rescission of the 821 Contract, Mexico's court system upholding that rescission, and Pemex's decision to uphold its obligations with similarly situated oilfield services companies owned by Mexican nationals. All of these events took place more than six months before the date of this Request.

[7] Finley and Prize's Notice of Intent, as supplemented, is attached as Exhibit 6.

71. Finley and Prize have also satisfied the conditions precedent to the submission of a claim to arbitration under NAFTA. Finley, Prize, and Prize's Mexican enterprise (Drake-Mesa) consent to arbitration in NAFTA Article 1121(1) and (2). Finley, Prize, and Prize's Mexican enterprise (Drake-Mesa) also waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measures that are alleged to be a breach of NAFTA Articles 1116 or 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of Mexico. The written consents and waivers required by NAFTA Articles 1121 and 1125 are attached to this Request and will be delivered to Mexico.[8]

72. Furthermore, ICSID has jurisdiction under Article 1120(1)(a) of NAFTA, which allows a disputing investor to submit a claim to arbitration under the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the ICSID Convention. The United States and Mexico are both Contracting States to the ICSID Convention. Accordingly, under NAFTA Article 1120(1)(a), Finley and Prize may submit their claims to arbitration under the ICSID Convention.

73. Finally, Finley and Prize have sought to settle their claims by consultation or negotiation under NAFTA Article 1118.[9] Finley, Prize, and Mexico met via Web-Ex on October 15, 2020 for settlement negotiations. On December 21, Finley and Prize provided Mexico with information about their investments that Mexico had requested during the consultations. Finley and Prize also asked Mexico to confirm its availability for further consultations. Two weeks later, on January 4, 2021, Finley and Prize again expressed their intention to resolve the dispute amicably and asked Mexico for its availability. In response, Mexico stated that Pemex was investigating Finley's and Prize's claims. Once that investigation concluded, Mexico stated that it would be in a position to discuss further consultations. On January 8, Finley and Prize again encouraged Mexico to select a date for consultations and proposed a short phone call. Mexico agreed to have a call on January 18. On the call, Mexico explained that Pemex had not yet completed its internal investigation. As such, Mexico stated that it was not in a position to schedule further consultations. As is apparent, Finley and Prize have encouraged Mexico to

[8] Exhibit 7.
[9] Exhibit 8.

continue consultations for months now, but unfortunately, Mexico has not been able to commit to such. Thus, the parties have been unable to reach a settlement.

B. Jurisdiction under the USMCA (MWS and Prize)

74. All jurisdictional requirements of the USMCA are met. MWS and Prize have also complied with all procedural requirements of the USMCA for submitting a claim to arbitration.

75. MWS and Prize are "investor(s) of a Party" authorized to submit a claim to arbitration under USMCA, Articles 14.E.2(a) and (b). USMCA Article 14.1 defines an "investor of a Party" as "a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party." USMCA Article 14.1 further defines "enterprise of a Party" as including "an enterprise constituted or organized under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there." MWS and Prize are enterprises of the United States because MWS and Prize are both constituted in and organized under the laws of the United States.

76. MWS and Prize have also made investments in Mexico. MWS and Prize directly and indirectly own assets that qualify as Mexico investments under subsections (a)-(h) of the definition of "investment" under USMCA Article 14.1, including, *inter alia*, an enterprise; equity and other interests in an enterprise; tangible and intangible property; contractual rights; equipment; and real estate acquisitions. Documentation evidencing ownership of these investments will be provided in due course.

77. USMCA Articles 14.E.2(a) and (b) permit an investor of a Party to submit to arbitration a claim that another Party has breached an obligation under, *inter alia*, Chapter 14 of the USCMA, and that the investor (Article 14.E.2(a)) or an enterprise (Article 14.E.2(b)) "has incurred loss or damage by reason of, or arising out of, that breach." MWS's and Prize's claims concern breaches of Mexico's obligations under USMCA Chapter 14. Furthermore, Prize's Mexico enterprise (Bisell) has incurred loss or damage by reason of those breaches.

78. Claimants' submission of their claims to arbitration is also timely under USMCA Articles 14.E.4(a) and (b). Article 14.E.4(a) provides that an investor may submit a claim to arbitration only after six months have elapsed since the events giving rise to the claim. MWS and Prize's claims arise out of Pemex's decision to uphold its obligations with similarly situated oilfield

services companies owned by Mexican nationals and unreasonable delays by Mexico's court system. All of these events occurred more than six months before the date of this Request.

79. USMCA Article 14.E.4(b) provides, "No claim shall be submitted to arbitration under paragraph 2 if . . . more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the alleged breach under paragraph 2 and knowledge that the claimant (for claims brought under 2(a)) or the enterprise (for claims brought under paragraph 2(b)) has incurred loss or damage." MWS and Prize's claims are timely as no more than three years have elapsed since MWS, Prize, or Prize's Mexican enterprise (Bisell), first acquired knowledge of the breaches and knowledge that they had incurred damages.

80. Under USMCA Article 14.D.3.2, an investor must deliver to the disputing Party a written Notice of Intent to Submit a Claim to Arbitration more than 90 days before submitting the claim to arbitration. MWS and Prize delivered their Notices of Intent to Mexico on July 30, 2020. They supplemented these notices on August 14, 2020 and on September 18, 2020. This is more than 90 days before the date of this Request.[10]

81. Under USMCA Articles 14.D.4 and 14.D.5, MWS, Prize, and Prize's Mexican enterprise (Bisell) consent to arbitration in accordance with the procedures set out in the USMCA. MWS and Prize and Prize's Mexico enterprise (Bisell) also waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to Mexico's measures that are alleged to be a breach referred to in USMCA Articles 14.D.3.1(a) and 14.D.3.1(b), as modified by Article 14.E, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of Mexico. The written consents and waivers required by USMCA Article 14.D.5 are attached to this Request and will be delivered to Mexico.[11]

82. Furthermore, the exercise of the ICSID's jurisdiction is proper under USMCA Article 14.D.4, which allows a disputing investor to submit a claim to arbitration under the ICSID Convention, provided that both the disputing party and the party of the investor are parties

[10] Exhibit 9; Exhibit 10.
[11] Exhibit 7.

to the ICSID Convention. The United States and Mexico are both Contracting States to the ICSID Convention. Accordingly, under USMCA Article 14.D.4, MWS and Prize may properly submit their claims to arbitration under the ICSID Convention.

83. Finally, MWS and Prize have sought to settle their claims by consultation or negotiation, as directed by USMCA Article 14.D.2. MWS, Prize, and Mexico met via Web-Ex on October 15, 2020 for settlement negotiations. On December 21, MWS and Prize provided Mexico with information about their investments that Mexico had requested during the consultations. MWS and Prize also asked Mexico to confirm its availability for further consultations. Two weeks later, on January 4, 2021, MWS and Prize again expressed their intention to resolve the dispute amicably and asked Mexico for its availability. In response, Mexico stated that Pemex was investigating MWS's and Prize's claims. Once that investigation concluded, Mexico stated that it would be in a position to discuss further consultations. On January 8, MWS and Prize again encouraged Mexico to select a date for consultations and proposed a short phone call. Mexico agreed to have a call on January 18. On the call, Mexico explained that Pemex had not yet completed its internal investigation. As such, Mexico stated that it was not in a position to schedule further consultations. As is apparent, MWS and Prize have encouraged Mexico to continue consultations for months now, but unfortunately, Mexico has not been able to commit to such. Thus, the parties have been unable to reach a settlement.

C. Jurisdiction under the ICSID Convention

84. All jurisdictional requirements under the ICSID Convention are also met. Article 25(1) of the Convention states:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

85. This dispute involves "a Contracting State" and "national[s] of another Contracting State." The United States and Mexico are both Contracting States to the ICSID Convention. Article 25(2) states that "national of another Contracting State" means "any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration." Claimants are, and at all times have been, nationals of the United States because they are

juridical persons incorporated in the United States in accordance with United States law and have their primary place of business in the United States.

86. Claimants also have "investments" within the meaning of Article 25(1) of the Convention. Article 25 does not itself provide a definition of "investment." However, Claimants' interests in the 803, 804, and 821 Contracts, as well as direct and indirect ownership of assets including equity and other interests in enterprises; tangible and intangible property; contractual rights; equipment; and real estate acquisitions in Mexico constitute investments.

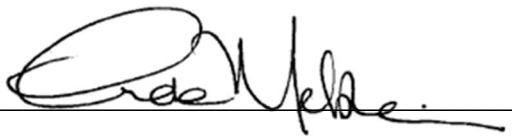
87. Furthermore, there is a legal dispute that arises directly out of Claimants' investments in Mexico as required under Article 25(1) of the ICSID Convention. See Section III above. The legal dispute described in this Request for Arbitration directly concerns Claimants' investments in Mexico.

88. Finally, the parties to the dispute have consented in writing to submit this dispute to arbitration before the Centre. Mexico's consent in writing to submit investment disputes to arbitration under the ICSID Convention is contained in NAFTA Article 1122(1), USMCA Article 14.C, and USMCA Article 14.D.4. Claimants attach their written consents to submit this dispute to arbitration under the ICSID Convention.[12] Accordingly, the date of consent under ICSID Institution Rule 2(3) is the date of this Request.

89. Thus, all procedural requirements of ICSID have been met. Claimants have provided the information required by ICSID Institution Rules 2 and 3. Under ICSID Institution Rule 2(1)(f), Claimants have taken all internal actions necessary to authorize this Request for Arbitration. Claimants have also paid the US $25,000 filing fee required under ICSID Administrative and Financial Regulation 16. Accordingly, all procedural requirements under the ICSID Convention and ICSID Institution Rules are met.

[12] Exhibit 7.

Respectfully submitted on behalf of Claimants,

BY: 

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