

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

RESPONSE TO ICSID'S INQUIRIES OF APRIL 19, 2021

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April 30, 2021

1. On April 6, 2021, Mexico sent a letter to the Centre, claiming that the Request for Arbitration submitted by Finley Resources, Inc. (“Finley”), MWS Management, Inc. (“MWS”), Prize Permanent Holdings, LLC (“Prize”), Drake-Mesa, S. de R.L. de C.V. (“Drake-Mesa”), and Bisell Construcciones e Ingeniería, S.A. de C.V. (“Bisell”) contained claims that are “manifestly outside the jurisdiction of the Centre.” In reality, Mexico raised substantive defenses that a properly constituted tribunal should adjudicate.¹
2. On April 19, 2021, the Centre sent Claimants a letter asking Claimants to explain how certain provisions of NAFTA or the USMCA had been met. Claimants understand that these are requests for information that may not have been included, or alternatively not clearly explained, in the Request for Arbitration. As such, Claimants do not understand that the Centre was seeking for Claimants to submit arguments on the merits in response to Mexico’s April 6, 2021 letter. Doing so would be outside of the Centre’s authority under Article 36(3) of the ICSID Convention.
3. With this in mind, below Claimants provide the additional information as requested in the Centre’s April 19, 2021 letter.

I. FINLEY RESOURCES, INC.

A. How the requirements USMCA Annex 14-C.1 have been met, in particular, with regard to the definition of “legacy investment” in Annex 14-C.6(a).

4. Finley has a “legacy investment” in Mexico under USMCA Annex 14-C.6(a). Finley is a U.S. company, incorporated in the State of Texas (Request for Arbitration ¶¶ 6, 9). Finley made an investment in Mexico after 1994 by entering into Contract No. 421004821 (the “821 Contract”) with Petróleos Mexicanos (“Pemex”) in February 2014 (See Request for Arbitration ¶¶ 18, 20-22). This contract is an “investment” under NAFTA because it is an interest “arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as . . . turnkey, construction, management, production, concession, revenue-sharing, [or] other similar contracts.” Under this contract,

¹ Claimants refer to the following cases: *Alicia Grace and others v. United Mexican States* (ICSID Case No. UNCT/18/4) and *Kellogg, Brown and Root (KBR) v. Mexico*, ICSID Case. No. UNCT/14/1. These cases arise out of similar investments in Mexico and similar conduct by the government of Mexico as those present here. As best Claimants understand, the Centre registered both of these cases. Notably, in *Alicia Grace*, Mexico raised similar defenses to those raised in Mexico’s letter dated April 6, 2021. However, rather than raise them to the Centre, Mexico raised them to the arbitral tribunal. Given that Mexico’s defenses involved interpretations of NAFTA and possibly the merits of the dispute, Mexico appears to have appreciated that the arbitral tribunal was the proper body to decide those defenses.

Pemex agreed to request work from Finley to further Mexico's hydrocarbon sector, including providing equipment and drilling oil and gas wells on behalf of Pemex (Request for Arbitration ¶¶ 18, 20-21).

5. Finley made further investments in Mexico to perform under, and in performing under, the 821 Contract:
 - Finley established an enterprise of Mexico (Drake-Finley, S. de R.L. de C.V. ("Drake-Finley")). Finley "owns or controls directly or indirectly" Drake-Finley. Finley owns approximately 50% of the shares in the equity of Drake-Finley.
 - Finley acquired an interest in an enterprise of Mexico (Drake-Finley) that entitles Finley to share in income or profits of the enterprise.
 - Finley acquired tangible personal property (drilling equipment) in the expectation or used for the purpose of economic benefit. Finley imported that property into Mexico, where it remains today.
 - Finley acquired tangible personal property in Mexico (parts of drilling equipment) in the expectation or used for the purpose of economic benefit. This property remains in Mexico today.
 - Finley purchased real property and facilities in Mexico to store the equipment and to hire and train staff to perform work under the 821 Contract. Finley maintains this property in Mexico today.
 - Finley committed capital and tangible property in Mexico in order to conduct economic activities in Mexico under the 821 Contract, which includes sending capital to Drake-Mesa and importing drilling equipment into Mexico. The 821 Contract involves the presence of Finley's property in Mexico
 - Finley delivered a financial guarantee to Pemex for approximately US\$ 41 million to secure its performance of work under the 821 Contract.
6. Finley's investments in Mexico existed as of the date of entry into force of the USMCA and continue to exist today.

7. Finley understands that Footnote 21 in USMCA Annex 14-C requires Finley to submit its claims as “legacy investment claims” under NAFTA instead of submitting them directly under the USMCA. Footnote 21 does not allow Finley to assert a claim under the USMCA unless it is eligible to submit a claim under USMCA Annex 14-E. Finley understands that it is not allowed to submit a claim under USMCA Annex 14-E because USMCA Article 14.2.3 does not bind Mexico in relation to an act that took place before the date that the USMCA went into force. Mexico’s acts that are the subject of Finley’s claims all took place before the date that the USMCA went into force.
8. Finley alleges that Mexico breached its obligations under NAFTA Article 1102 (“National Treatment”), NAFTA Article 1103 (“Most Favored Nations Treatment”), and NAFTA Article 1105 (“Minimum Standard of Treatment”) with respect to its investments (Request for Arbitration ¶ 35).
9. The above explains how the requirements of USMCA Annex 14-C.1 have been met. Regardless, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-C.1.

B. How the requirements of NAFTA Article 1116(2) have been met.

10. Finley commenced this arbitration less than three years after it acquired, or should have acquired (1) knowledge of Mexico’s alleged breaches of NAFTA and (2) knowledge that Finley has incurred loss or damage.
11. April 9, 2018 was the earliest day that Finley’s claim under NAFTA Article 1102 arose. This is when Mexico afforded preferential treatment to two similarly situated oilfield services companies owned by Mexican nationals by compensating these companies (See Request for Arbitration ¶¶ 34-35) instead of treating these companies as they did with Finley — ignoring their obligations, refusing all compensation, and forcing Finley to endure years of litigation. This claim is within the time limits required by NAFTA Article 1116(2).
12. Finley claims that Mexico’s repudiation of the 821 Contract constitutes (a) arbitrary conduct and (b) a failure to afford fair and equitable treatment in violation of NAFTA Article 1105. October 4, 2018 was the earliest day that this claim arose. That is when Mexico’s court system manifestly disregarded Mexican law in an outcome-oriented decision designed to legitimize

Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).

13. Finley claims that Mexico breached NAFTA Article 1105 by engaging in discriminatory conduct (Request for Arbitration ¶¶ 34, 35). As explained above, Mexico compensated similarly situated companies owned by Mexican nationals on April 9, 2018. Yet, Mexico discriminated against Finley by ignoring its obligations, refusing all compensation, and forcing it to endure years of litigation. Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
14. Finley claims that Mexico denied it justice in breach of NAFTA Article 1105 (Request for Arbitration ¶¶ 32-33, 35). This claim arose, at the earliest, on October 4, 2018 when Mexico's court system manifestly disregarded Mexican law in an outcome-oriented decision designed to legitimize Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
15. Finally, Finley claims that Mexico breached a substantive obligation under the Mexico-Denmark bilateral investment treaty that Mexico incorporated under NAFTA Article 1103 (Request for Arbitration ¶ 35). The Mexico-Denmark bilateral investment treaty requires Mexico to respect its written contractual obligations. Here, Finley claims that Mexico failed to comply with its obligations under the 821 Contract by, *inter alia*, not fulfilling US\$ 120.9 million of its minimum work commitment and improperly attempting to terminate the contract (Request for Arbitration ¶¶ 28-30). Finley's claims arose, at the earliest, on October 4, 2018 when Mexico's court system manifestly disregarded Mexican law in an outcome-oriented decision designed to legitimize Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
16. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Article 1116(2).

C. How the requirements of NAFTA Annex 1120.1 have been met.

17. Finley has met the requirements of NAFTA Annex 1120.1. As explained in the Request for Arbitration, Finley commenced legal proceedings in the Mexican court system in 2017. Finley referenced NAFTA provisions in support of constitutional claims that it made. Finley did not

invoke or otherwise reference NAFTA Article 1102 in the domestic courts. Finley did not invoke or otherwise reference NAFTA Article 1103 in the domestic courts. Finley did not allege that Mexico failed to provide fair and equitable treatment in breach of NAFTA Article 1105 in the domestic courts as it does in this arbitration. Indeed, each of Finley's claims under NAFTA Article 1105 arose well after the commencement of the domestic proceedings.

18. Moreover, Finley took all necessary actions to dismiss any remaining proceedings in Mexico's court system before it commenced this arbitration.
19. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Annex 1120.1.

II. MWS MANAGEMENT INC.

A. How the requirements of USMCA Articles 14.2.1 and 14.2.3 have been met.

20. MWS is a U.S. company, incorporated in the State of Texas (Request for Arbitration ¶¶ 7, 9). MWS made investments by entering into two contracts with Pemex: Contract No. 424042803 (the "803 Contract") and Contract No. 424043804 (the "804 Contract") (Request for Arbitration ¶¶ 38, 40, 50, 52). These contracts are "investments" under the USMCA because they are "turnkey, construction, management, production, concession, revenue-sharing, [or] other similar contracts." Under these contracts, Pemex agreed to request work from MWS to further Mexico's hydrocarbon sector, including providing equipment and drilling oil and gas wells (See Request for Arbitration ¶¶ 40-41, 52-53).
21. MWS made further investments in Mexico to perform under, and in performing under, the 803 Contract and 804 Contract:
 - MWS acquired tangible personal property (drilling equipment) in the expectation or used for the purpose of economic benefit. MWS imported that property into Mexico, where it remains today.
 - MWS acquired tangible personal property in Mexico (parts of drilling equipment) in the expectation or used for the purpose of economic benefit. This property remains in Mexico today.

- MWS purchased real property and facilities to store the equipment and to hire and train staff to perform work under the 803 Contract and 804 Contract. MWS maintains this property today.
 - MWS committed capital and tangible property in Mexico in order to conduct economic activities in Mexico under the 803 Contract and 804 Contract, which includes the presence of MWS's property in Mexico.
 - MWS delivered financial guarantees to Pemex for approximately US\$ 5.5 million for the 803 Contract and US\$ 4.8 million for the 804 Contract.
22. MWS's investments existed as of the date of entry into force of the USMCA and continue to exist today.
23. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Article 14.2.1.
24. With respect to USMCA Article 14.2.3, MWS understands that its claims are not "legacy investment claims." MWS's claim for denial of justice under USMCA Article 14.6 arose after the date of entry into force of the USMCA. Delays of approximately five years in Mexico's court system to resolve a contract dispute gave rise to this claim after July 2020 (Request for Arbitration ¶¶ 44, 57). Similarly, MWS's claims for national treatment under USMCA Article 14.4 and discrimination under USMCA Article 14.6 arose because Mexico continued to force MWS to litigate its claims for nearly five years instead of compromising as it had with at least two similarly situated companies owned by Mexican nationals (Request for Arbitration ¶¶ 45-46, 58). This conduct was ongoing after July 2020. Thus, MWS has met the requirements of USMCA Article 14.2.3.
25. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Article 14.2.3.

B. How the requirements of USMCA Article 14.D.5.1(c) have been met.

26. It does not appear that this provision applies to this dispute. Footnote 32 in USMCA Annex 14-E states that "Article 14.D.5.1(a)-(c) does not apply to claims under" Paragraph 2 of Annex 14-E. MWS asserts its claims under Paragraph 2 of Annex 14-E. In any event, for the same reasons explained in Paragraph 24, MWS commenced this arbitration less than four years after

it acquired, or should have acquired (1) knowledge of Mexico's alleged breaches of the USMCA and (2) knowledge that MWS has incurred loss or damage.

27. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Article 14.D.5.1(c).

C. How the requirements of USMCA Appendix 3 to Annex 14-D have been met.

28. MWS has not alleged a violation of any provision of the USMCA or NAFTA before a court or administrative tribunal of Mexico.
29. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-D, Appendix 3.

D. How the requirements of USMCA Annex 14-E.2(a)(i)(A) have been met.

30. MWS is a party to both the 803 Contract and the 804 Contract (Request for Arbitration ¶¶ 38, 50). Both contracts are between a U.S. investor (MWS) and a national authority of the Mexican government (Pemex). The 803 Contract and 804 Contract grant rights to MWS in a "covered sector." Both contracts grant rights to MWS to perform oilfield services, such as providing equipment and drilling oil and gas wells on behalf of Pemex (Request for Arbitration ¶¶ 40, 53). As such, both contracts involve "activities with respect to oil and natural gas that a national authority of [Mexico] controls, such as exploration, extraction, refining, transportation, distribution, or sale." Thus, MWS is a party to two "covered government contracts" under USMCA Annex 14-E.2(a)(i)(A)(1).
31. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.2(a)(i)(A).

E. How the requirements of USMCA Annex 14-E.4(b) have been met.

32. For the same reasons explained in Paragraph 24, MWS commenced this arbitration less than three years after it acquired, or should have acquired (1) knowledge of Mexico's alleged breaches of the USMCA and (2) knowledge that MWS has incurred loss or damage.
33. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.4(b).

III. PRIZE PERMANENT HOLDINGS, LLC (ON ITS OWN BEHALF)

A. How the requirements of USMCA Annex 14-C.1 have been met, in particular, with regard to the definition of “legacy investment” in Annex 14-C.6(a).

34. Prize has a “legacy investment” under USMCA Annex 14-C.6(a). Prize is a U.S. company organized in the State of Texas (See Request for Arbitration ¶¶ 8, 9). Prize established an investment indirectly in Mexico after 1994 when its subsidiary, Drake-Mesa, entered into the 821 Contract with Pemex in 2014 (See Request for Arbitration ¶¶ 19-20). This contract is an “investment” under NAFTA because it is an interest “arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as . . . turnkey, construction, management, production, concession, revenue-sharing, [or] other similar contracts.” As further explained in the Request for Arbitration, Pemex agreed to request work from Prize to further Mexico’s hydrocarbon sector, including providing equipment and drilling oil and gas wells on behalf of Pemex (See Request for Arbitration ¶ 21).
35. Prize made further direct and indirect investments in Mexico to perform, and in performing under, the 821 Contract:
- Prize established two enterprises of Mexico (Drake-Mesa and Drake-Finley).
 - Prize owns an equity interest in two enterprises of Mexico (Drake-Mesa and Drake-Finley). Prize “owns or controls directly or indirectly” Drake-Finley. Prize owns approximately 50% of the shares in the equity of Drake-Finley. Prize’s ownership and control of Drake-Mesa is further explained in Paragraph 69 below.
 - Prize acquired an interest in two enterprises of Mexico (Drake-Mesa and Drake-Finley) that entitles Prize to share in income or profits of the enterprises.
 - Through Drake-Mesa and Drake-Finley, Prize acquired tangible personal property (drilling equipment) in the expectation or used for the purpose of economic benefit. That equipment was imported into Mexico, where it remains today.
 - Through Drake-Mesa and Drake-Finley, Prize acquired tangible personal property in Mexico (parts of drilling equipment) in the expectation or used for the purpose of economic benefit. This property remains in Mexico today.

- Through Drake-Mesa and Drake-Finley, Prize purchased real property and facilities to store the equipment and to hire and train staff to perform work under the 821 Contract. Prize maintains this property today.
 - Through Drake-Mesa and Drake-Finley, Prize committed capital and tangible property in Mexico in order to conduct economic activity in Mexico under the 821 Contract, which involves the presence of Prize’s property in Mexico.
 - Through Drake-Mesa and Drake-Finley, Prize delivered a financial guarantee to Pemex for approximately US\$ 41 million.
36. These investments existed as of the date of entry into force of the USMCA and continue to exist today.
37. Prize understands that Footnote 21 in USMCA Annex 14-C required it to submit its claims as “legacy investment claims” under NAFTA instead of submitting a claim directly under the USMCA. Footnote 21 does not allow Prize to assert a claim under the USMCA, unless it was eligible to submit a claim under USMCA Annex 14-E. Prize understands it is not allowed to submit a claim under USMCA Annex 14-E because USMCA Article 14.2.3 does not bind Mexico in relation to an act that took place before the date that the USMCA went into force. Mexico’s acts that are the subject of Prize’s claims all took place before the date that the USMCA went into force.
38. Prize claims that Mexico breached its obligations under NAFTA Article 1102 (“National Treatment), NAFTA Article 1103 (“Most Favored Nations Treatment”), and NAFTA Article 1105 (“Minimum Standard of Treatment”) with respect to its investments (Request for Arbitration ¶ 35).
39. The above explains how the requirements of USMCA Annex 14-C.1 have been met. Regardless, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-C.1.
- B. How the requirements of NAFTA Article 1116(2) have been met.**
40. Prize commenced this arbitration less than three years after it acquired, or should have acquired (1) knowledge of Mexico’s alleged breaches of NAFTA and (2) knowledge that Prize has incurred loss or damage.

41. April 9, 2018 was the earliest date when Prize's claim under NAFTA Article 1102 arose. This is when Mexico afforded preferential treatment to two similarly situated oilfield services companies owned by Mexican nationals by compromising with them (See Request for Arbitration ¶¶ 34-35) instead of treating these companies as they did with Prize — ignoring their obligations, refusing all compensation, and forcing Prize to endure years of litigation. Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
42. Prize claims that Mexico's repudiation of the 821 Contract constitutes (a) arbitrary conduct and (b) a failure to afford fair and equitable treatment in violation of NAFTA Article 1105. October 4, 2018 was the earliest day that this claim arose. That is when Mexico's court system manifestly disregarded Mexican law in an outcome-oriented decision designed to legitimize Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
43. Prize also claims that Mexico breached NAFTA Article 1105 by engaging in discriminatory conduct (Request for Arbitration ¶¶ 34, 35). As explained above, Mexico compensated similarly situated companies owned by Mexican nationals on April 9, 2018. Yet, Mexico discriminated against Prize by ignoring their obligations, refusing all compensation, and forcing Prize to endure years of litigation. Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
44. Prize claims that Mexico denied it justice in breach of NAFTA Article 1105 (Request for Arbitration ¶¶ 32-33, 35). This claim arose, at the earliest, on October 4, 2018 when Mexico's court system manifestly disregarded Mexican law in an outcome-oriented decision designed to legitimize Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).
45. Finally, Prize claims that Mexico breached an obligation under the Mexico-Denmark bilateral investment treaty that Mexico incorporated under NAFTA Article 1103 (Request for Arbitration ¶ 35). The Mexico-Denmark bilateral investment treaty requires Mexico to respect its written contractual obligations. Here, Prize claims that Mexico failed to comply with its obligations under the 821 Contract by, *inter alia*, not fulfilling US\$ 120.9 million of its minimum work commitment and improperly attempting to terminate the contract (Request for Arbitration ¶¶ 28-30). Prize's claims arose, at the earliest, on October 4, 2018 when Mexico's court system manifestly disregarded Mexican law in an outcome-oriented decision designed to

legitimize Mexico's repudiation of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1116(2).

46. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Article 1116(2).

C. How the requirements of NAFTA Annex 1120.1 have been met.

47. Prize has met the requirements of NAFTA Annex 1120.1. As explained in the Request for Arbitration, Prize (through Drake-Mesa) commenced legal proceedings in the Mexican court system in 2017. Prize referenced NAFTA provisions in support of constitutional claims that it made. Prize did not invoke or otherwise reference NAFTA Article 1102 in the domestic courts. Prize did not invoke or otherwise reference NAFTA Article 1103 in the domestic courts. Prize did not allege that Mexico failed to provide fair and equitable treatment in breach of NAFTA Article 1105 in the domestic courts as it does in this arbitration. Indeed, each of Prize's claims under NAFTA Article 1105 arose well after the commencement of the domestic proceedings.

48. Moreover, Prize (through Drake-Mesa) took all necessary actions to ensure that any remaining proceedings in Mexico's court system were dismissed before it commenced this arbitration.

49. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Annex 1120.1.

D. How the requirements of USMCA Annex 14-E.2(a)(i)(A) have been met.

50. Prize, through its ownership in Bisell, established an investment in Mexico when it, *inter alia*, entered into two contracts with Pemex: the 803 Contract and the 804 Contract (Request for Arbitration ¶¶ 38, 50). These contracts are "investments" under the USMCA because they are "turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts."

51. Prize made further investments in Mexico to perform, and in performing under, the 803 Contract and 804 Contract:

- Prize established an enterprise of Mexico (Bisell).
- Prize acquired an equity interest in an enterprise of Mexico (Bisell).

- Prize acquired an interest in an enterprise of Mexico (Bisell) that entitles Prize to share in income or profits of the enterprise.
- Through Bisell, Prize acquired tangible personal property (drilling equipment) in the expectation or used for the purpose of economic benefit. That equipment was imported into Mexico, where it remains today.
- Through Bisell, Prize acquired tangible personal property in Mexico (parts of drilling equipment) in the expectation or used for the purpose of economic benefit. This property remains in Mexico today.
- Through Bisell, Prize purchased real property and facilities to store the equipment and to hire and train staff to perform work under the 803 Contract and 804 Contract. Prize maintains this property today.
- Through Bisell, Prize committed capital and tangible property in Mexico in order to conduct economic activity in Mexico under the 803 Contract and 804 Contract, which involves the presence of Prize’s property in Mexico.
- Through Bisell, Prize delivered financial guarantees to Pemex for approximately US\$ 5.5 million for the 803 Contract and US\$ 4.8 million for the 804 Contract.

52. The 803 Contract and 804 Contract grant rights to Prize (through Bisell) in a “covered sector.” Both contracts grant rights to Prize (through Bisell) to perform oilfield services, such as providing equipment and drilling oil and gas wells on behalf of Pemex (Request for Arbitration ¶¶ 40, 53). As such, both contracts involve “activities with respect to oil and natural gas that a national authority of [Mexico] controls, such as exploration, extraction, refining, transportation, distribution, or sale.” Thus, both contracts are “covered government contracts.”

53. Under USMCA Annex 14-E.2(a)(i)(A)(2), Prize is engaged in activities in the same covered sector in the territory of Mexico through Bisell, in which Prize is an owner and over which Prize has control, and Bisell is a party to a covered government contract. As explained in Paragraph 59 below, Prize owns Bisell, which is an enterprise of Mexico and is a party to both the 803 Contract and the 804 Contract.

54. Prize alleges that Mexico breached obligations under USMCA Article 14.4 and 14.6 (Request for Arbitration ¶¶ 47, 59). Prize has incurred loss or damage by reason of, or arising out of, those breaches (Request for Arbitration ¶¶ 49, 61).
55. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.2(a)(i)(A).

E. How the requirements of USMCA Annex 14-E.4(b) have been met.

56. Prize’s claim for denial of justice under USMCA Article 14.6 arose after the date of entry into force of the USMCA. Prize did not know, or should not have known, that Mexico was denying Bisell justice in its court system under USMCA Article 14.6 until nearly five years had passed without a resolution. Delays of approximately five years in Mexico’s court system to resolve a contract dispute gave rise to this claim, which occurred after July 2020 when the USMCA came into force (Request for Arbitration ¶¶ 44, 47).
57. Similarly, Prize’s claims for national treatment under USMCA Article 14.4 and discrimination under USMCA Article 14.6 arose when Mexico was forcing Prize (through Bisell) to litigate claims in the Mexican legal system for nearly five years instead of compromising as it had done with at least two similarly situated companies owned by Mexican nationals (Request for Arbitration ¶¶ 45-47). This conduct was ongoing after July 2020 when the USMCA came into force. Thus, Prize meets the requirements of USMCA Annex 14-E.4(b).
58. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.4(b).

IV. PRIZE PERMANENT HOLDINGS, LLC, ON BEHALF OF BISELL CONSTRUCCIONES E INGENIERÍA, S.A. DE C.V.

A. How the requirements of USMCA Annex 14-E.2(b) have been met. In particular, explain how Prize Permanent Holdings, LLC “owns or controls directly or indirectly” Bisell Construcciones e Ingeniería, S.A. de C.V.

59. Prize “owns or controls directly or indirectly” Bisell. Prize owns approximately 50% of the shares in the equity of Bisell.² Additionally, Prize exercises control over Bisell because Prize’s managing member serves as chairman of the board of directors for Bisell.

² Exhibit 11.

60. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.2(b).

B. How the requirements of USMCA Annex 14-E.2(b)(i)(A) have been met.

61. As explained in the Request for Arbitration, Bisell is a party to both the 803 Contract and the 804 Contract (Request for Arbitration ¶¶ 39, 51). These are “covered government contracts” under USMCA Annex 14-E.2(b)(i)(A)(1). Both contracts are between a U.S. investment (Bisell) and a national authority of the Mexican government (Pemex). The 803 Contract and 804 Contract grant rights to Bisell in a “covered sector,” namely, to perform oilfield services such as providing equipment and drilling oil and gas wells on behalf of Pemex (Request for Arbitration ¶¶ 40, 53). Thus, both contracts involve “activities with respect to oil and natural gas that a national authority of [Mexico] controls, such as exploration, extraction, refining, transportation, distribution, or sale.”

62. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.2(b)(i)(A).

C. How the requirements of USMCA Annex 14-E.4(b), have been met.

63. Prize’s claim (on behalf of Bisell) for denial of justice under USMCA Article 14.6 arose after the date of entry into force of the USMCA (Request for Arbitration ¶ 44, 57). Bisell did not know, or should not have known, that Mexico was denying Bisell justice in its court system under USMCA Article 14.6 until nearly five years had passed without a resolution. Delays of approximately five years in Mexico’s court system to resolve a contract dispute gave rise to this claim, which occurred after July 2020 when the USMCA came into effect (Request for Arbitration ¶¶ 44, 47).

64. Similarly, Prize’s claims (on behalf of Bisell) for national treatment under USMCA Article 14.4 and discrimination under USMCA Article 14.6 arose when Mexico was forcing Bisell to litigate claims in the Mexican legal system for nearly five years instead of compromising as it had done with at least two similarly situated companies owned by Mexican nationals (Request for Arbitration ¶¶ 45-47). This conduct was ongoing after July 2020 when the USMCA came into force. Thus, Bisell meets the requirements of USMCA Annex 14-E.4(b).

65. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-E.4(b).

V. PRIZE PERMANENT HOLDINGS, LLC ON BEHALF OF DRAKE-MESA, S. DE R.L. DE C.V.

A. How the requirements of USMCA Annex 14-C.1 have been met, in particular, with regard to the definition of “legacy investment” in Annex 14-C.6(a).

66. Prize has a “legacy investment” in Mexico under USMCA Annex 14-C.6(a) because of its ownership interest in Drake-Mesa. Drake-Mesa is an enterprise organized in Mexico. Drake-Mesa, along with Finley, is a party to the 821 Contract with Pemex (See Request for Arbitration ¶¶ 18, 20-22).
67. Prize claims (on behalf of Drake-Mesa) that Mexico breached its obligations under NAFTA Article 1102 (“National Treatment”), NAFTA Article 1103 (“Most Favored Nations Treatment”), and NAFTA Article 1105 (“Minimum Standard of Treatment”) (Request for Arbitration ¶ 35). Thus, the requirements of USMCA Annex 14-C.1 have been met with respect to Drake-Mesa.
68. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under USMCA Annex 14-C.1.

B. How the requirements of NAFTA Article 1117(1) have been met. In particular, elaborate how Prize Permanent Holdings, LLC “owns or controls directly or indirectly” Drake-Mesa, S. de R.L. de C.V.

69. Prize “owns or controls directly or indirectly” Drake-Mesa. Prize owns 50% in the equity of Drake-Mesa.³ Additionally, Prize exercises control over Drake-Mesa because Prize’s managing member serves as president of the board of managers for Drake-Mesa.
70. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Article 1117(1).

C. How the requirements of NAFTA Article 1117(2) have been met.

71. Prize (on behalf of Drake-Mesa) commenced this arbitration less than three years after Drake-Mesa acquired, or should have acquired (1) knowledge of Mexico’s alleged breaches of the USMCA and (2) knowledge that Drake-Mesa has incurred loss or damage.
72. Prize’s claim (on behalf of Drake-Mesa) under NAFTA Article 1102 arose, at the earliest, on April 9, 2018 when Mexico compromised with similarly situated Mexico oilfield services

³ Exhibit 12.

companies owned by Mexican nationals (Request for Arbitration ¶¶ 34-35). Accordingly, this claim is within the time limits required by NAFTA Article 1117(2).

73. Prize's claim (on behalf of Drake-Mesa) under NAFTA Article 1105 for the unjustifiable repudiation of the 821 Contract arose, at the earliest on October 4, 2018 when Mexico's court system upheld Mexico's purported termination of the 821 Contract (Request for Arbitration ¶ 35). Accordingly, this claim is within the time limits required by NAFTA Article 1117(2).
74. Prize's claim (on behalf of Drake-Mesa) under NAFTA Article 1105 that Mexico engaged in arbitrary and discriminatory conduct arose, at the earliest, on April 9, 2018 when Mexico compromised with similarly situated companies owned by Mexican nationals (Request for Arbitration ¶¶ 34-35). Accordingly, this claim is within the time limits required by NAFTA Article 1117(2).
75. Prize's claim (on behalf of Drake-Mesa) under NAFTA Article 1105 for denial of justice arose, at the earliest, on October 4, 2018 when Mexico's court system upheld Mexico's purported termination of the 821 Contract after, *inter alia*, ignoring the plain language of the contract and key evidence (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1117(2).
76. Prize's claim (on behalf of Drake-Mesa) under NAFTA Article 1103 for Mexico's failure to respect its contractual obligations under the 821 Contract arose, at the earliest on October 4, 2018 when Mexico's court system upheld Mexico's purported termination of the 821 Contract (Request for Arbitration ¶¶ 32, 35). Accordingly, this claim is within the time limits required by NAFTA Article 1117(2).
77. Prize believes that an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Article 1117(2).

D. How the requirements of NAFTA Annex 1120.1.b have been met.

78. Drake-Mesa has met the requirements of NAFTA Annex 1120.1. As explained in the Request for Arbitration, Drake-Mesa commenced legal proceedings in the Mexican court system in 2017. Drake-Mesa referenced NAFTA provisions in support of constitutional claims that it made. Drake-Mesa did not invoke or otherwise reference NAFTA Article 1102 in the domestic courts. Drake-Mesa did not invoke or otherwise reference NAFTA Article 1103 in the domestic courts. Drake-Mesa did not allege that Mexico failed to provide fair and equitable

treatment in breach of NAFTA Article 1105 in the domestic courts as it does in this arbitration. Indeed, each of Drake-Mesa's claims under NAFTA Article 1105 arose well after the commencement of the domestic proceedings.

79. Moreover, Drake-Mesa took all necessary actions to ensure that any remaining proceedings in Mexico's court system were dismissed before it commenced this arbitration.
80. Ultimately, an arbitral tribunal is the proper entity to adjudicate the merits of any defenses that Mexico might assert under NAFTA Annex 1120.1.

VI. CONCLUSION

81. Ultimately, Mexico's April 6, 2021 letter and the Centre's April 19, 2021 letter largely raise questions about the interpretation and application of NAFTA and the USMCA. These are matters that Mexico agreed to have an arbitral tribunal resolve. All U.S. investors in Mexico deserve to know the resolution of these issues; they should not be cloaked in a registration process. Indeed, any resolution of these issues should be public so U.S. investors can know what Mexico is prepared to do to deny important protections to their investments.
82. This is particularly true here. Mexico agreed that two of the investments at issue — the 821 Contract and the 803 Contract — were to be protected by Mexico's investment treaties.⁴ Moreover, Mexico restricted participation in the bid rounds for the 821 Contract to only companies from countries with which Mexico had a free trade agreement.⁵ If Mexico seeks to renege on these promises, its position must be published to inform and alert all foreign investors who relied on these representations in making their investments in Mexico.
83. As explained above, Claimants' claims are not "manifestly outside the jurisdiction of the Centre." As such, we look forward to the Centre promptly registering this case so that an arbitral tribunal can be established. In this regard, we welcome the opportunity to provide any additional information that the Centre might need.

⁴ 821 Contract at Article 1.6 ("This Contract was awarded through International Public Bid TLC number 18575088-542-13, based on article 134 of the Political Constitution of the United Mexican States, in the Government Procurement Chapters of the Free Trade Agreements signed by Mexico. . ."); 803 Contract at Article 1.5 ("This contract was awarded through International Public Bid No. 18575051-582-11, which is carried out in accordance with the Free Trade Agreements signed by the United Mexican States.").

⁵ International Public Bidding TLC No. 18575088-542-13, at Section IV ("[I]t is established that foreign companies (suppliers or contractors) from countries with which the United Mexican States has not entered into a Free Trade Agreement may not participate in this contracting procedure.").

Respectfully submitted on behalf of Claimants,

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