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June 15, 2016

VIA COURIER

SUBSECRETARIA DE COMERCIO EXTERIOR
17 JUN 2016
RECIBIDO
Dirección General de Consultoría Jurídica de Comercio Internacional

Lic. Carlos Véjar Borrego
Director General
Secretaría de Economía
Dirección General de Consultoría Jurídica de Comercio Internacional
Paseo de la Reforma 296,
Col. Juarez, Cuauhtemoc
Ciudad de México C.P. 06600
Estados Unidos Mexicanos

Re: **Request for Arbitration in the matter of B-Mex, LLC et al. v. United Mexican States**

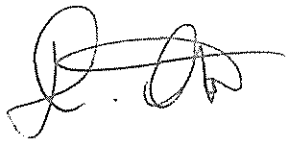
Dear Mr. Véjar:

We act for Gordon G. Burr, Erin J. Burr, John Conley, Neil Ayervais, Deana Anthone, Douglas Black, Howard Burns, Mark Burr, David Figueiredo, Louis Fohn, Deborah Lombardi, P. Scott Lowery, Thomas Malley, Ralph Pittman, Dan Rudden, Marjorie "Peg" Rudden, Robert E. Sawdon, Randall Taylor, James H. Watson, Jr., B-Mex, LLC, B-Mex II, LLC, Oaxaca Investments, LLC, Palmas South, LLC, B-Cabo, LLC, Colorado Cancún, LLC, Santa Fe Mexico Investments, LLC, Caddis Capital, LLC, Diamond Financial Group, Inc., EMI Consulting, LLC, Family Vacation Spending, LLC, Financial Visions, Inc., J. Johnson Consulting, LLC, J. Paul Consulting, Las KDL, LLC, Mathis Family Partners, Ltd., Palmas Holdings, Inc., Trude Fund II, LLC, Trude Fund III, LLC, and Victory Fund, LLC (collectively "Claimants"), all nationals of the United States of America.

Pursuant to Article 3 of the ICSID Additional Facility Rules, Claimants hereby file a Request for Arbitration against the United Mexican States under the North American Free Trade Agreement, signed December 17, 1992, in force January 1, 1994.

A hard copy of the Request for Arbitration in enclosed, together with accompanying exhibits.

Very truly yours,



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Counsel to the Claimants

Enclosures

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

ADDITIONAL FACILITY

BETWEEN:

Gordon G. Burr; Erin J. Burr; John Conley; Neil Ayervais; Deana Anthone; Douglas Black; Howard Burns; Mark Burr; David Figueiredo; Louis Fohn; Deborah Lombardi; P. Scott Lowery; Thomas Malley; Ralph Pittman; Daniel Rudden; Marjorie "Peg" Rudden; Robert E. Sawdon; Randall Taylor; James H. Watson, Jr.; B-Mex, LLC; B-Mex II, LLC; Oaxaca Investments, LLC; Palmas South, LLC; B-Cabo, LLC; Colorado Cancún, LLC; Santa Fe Mexico Investments, LLC; Caddis Capital, LLC; Diamond Financial Group, Inc.; EMI Consulting, LLC; Family Vacation Spending, LLC; Financial Visions, Inc.; J. Johnson Consulting, LLC; J. Paul Consulting; Las KDL, LLC; Mathis Family Partners, Ltd.; Palmas Holdings, Inc.; Trude Fund II, LLC; Trude Fund III, LLC; Victory Fund, LLC

Claimants

and

United Mexican States

Respondent

REQUEST FOR ARBITRATION

15 June 2016

QUINN EMANUEL URQUHART & SULLIVAN LLP
777 6TH STREET, N.W., 11TH FLOOR, WASHINGTON, D.C. 20001

TABLE OF CONTENTS

I. INTRODUCTION

1. Claimants file this Request for Arbitration pursuant to Articles 2(a) and 4 of the Additional Facility Rules of the International Centre for Settlement of Investment Disputes; Article 2 of the Arbitration (Additional Facility) Rules of the International Centre for Settlement of Investment Disputes (**Additional Facility Arbitration Rules**); and Articles 1116, 1117, 1120(1)(b), and 1137 of the North American Free Trade Agreement (the **NAFTA**).[1] Claimants Gordon G. Burr, Erin J. Burr, John Conley, Neil Ayervais, Deana Anthone, Douglas Black, Howard Burns, Mark Burr, David Figueiredo, Louis Fohn, Deborah Lombardi, P. Scott Lowery, Thomas Malley, Ralph Pittman, Daniel Rudden, Marjorie "Peg" Rudden, Robert E. Sawdon, Randall Taylor, James H. Watson, Jr., B-Mex, LLC, B-Mex II, LLC, Oaxaca Investments, LLC, Palmas South, LLC, B-Cabo, LLC, Colorado Cancún, LLC, Santa Fe Mexico Investments, LLC, Caddis Capital, LLC, Diamond Financial Group, Inc., EMI Consulting, LLC, Family Vacation Spending, LLC, Financial Visions, Inc., J. Johnson Consulting, LLC, J. Paul Consulting, Las KDL, LLC, Mathis Family Partners, Ltd., Palmas Holdings, Inc., Trude Fund II, LLC, Trude Fund III, LLC, and Victory Fund, LLC (collectively, **Claimants** or **Investors**), file this Request for Arbitration on their own behalf under Article 1116 of the NAFTA and on behalf of the following Mexican enterprises under Article 1117 of the NAFTA: Juegos de Video y Entretenimiento de México, S. de R.L. de C.V.; Juegos de Video y Entretenimiento del Sureste, S. de R.L. de C.V.; Juegos de Video y Entretenimiento del Centro, S. de R.L. de C.V.; Juegos de Video y Entretenimiento del D.F., S. de R.L. de C.V.; and Juegos y Videos de México, S. de R.L. de C.V.; Exciting Games, S. de R.L. de C.V.; Operadora Pesa, S. de R.L. de C.V.; Metrojuegos, S. de R.L. de C.V.; and Merca Gaming, S. de R.L. de C.V (collectively, the **Mexican Companies**). Claimants hereby respectfully request approval of access to the Additional Facility and institution of arbitration proceedings against the United Mexican States arising from its breaches of the NAFTA as stated more specifically in Section IV.A.5. below.

2. Pursuant to Article 3 of the Additional Facility Arbitration Rules, Claimants set forth below the contents of their Request for Arbitration.

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[1] North American Free Trade Agreement, CLA-1.

II. THE PARTIES

A. The Claimants

3. As mentioned above, the Claimants are Gordon G. Burr, Erin J. Burr, John Conley, Neil Ayervais, Deana Anthone, Douglas Black, Howard Burns, Mark Burr, David Figueiredo, Louis Fohn, Deborah Lombardi, P. Scott Lowery, Thomas Malley, Ralph Pittman, Daniel Rudden, Marjorie "Peg" Rudden, Robert E. Sawdon, Randall Taylor, James H. Watson, Jr., B-Mex, LLC, B-Mex II, LLC, Oaxaca Investments, LLC, Palmas South, LLC, B-Cabo, LLC, Colorado Cancún, LLC, Santa Fe Mexico Investments, LLC, Caddis Capital, LLC, Diamond Financial Group, Inc., EMI Consulting, LLC, Family Vacation Spending, LLC, Financial Visions, Inc., J. Johnson Consulting, LLC, J. Paul Consulting, Las KDL, LLC, Mathis Family Partners, Ltd., Palmas Holdings, Inc., Trude Fund II, LLC, Trude Fund III, LLC, and Victory Fund, LLC. Messrs. and Ms. Burr, Mr. Conley, Mr. Ayervais, Ms. Anthone, Mr. Black, Mr. Burns, Mr. Figueiredo, Mr. Fohn, Ms. Lombardi, Mr. Lowery, Mr. Malley, Mr. Pittman, Mr. and Ms. Rudden, Mr. Sawdon, Mr. Taylor, and Mr. Watson are nationals of the United States of America.[2] B-Mex, LLC, B-Mex II, LLC, Oaxaca Investments, LLC, Palmas South, LLC, B-Cabo, LLC, Colorado Cancún, LLC, and Santa Fe Mexico Investments, LLC (collectively the **B-Mex Companies**) are all companies organized and incorporated under the laws of the state of Colorado, United States of America.[3] Pursuant to Article 3(1)(e) of the Additional Facility Arbitration Rules, each of the B-Mex Companies has duly authorized the filing of this claim in accordance with its relevant internal procedures.[4] Caddis Capital, LLC, Diamond Financial Group, Inc., EMI Consulting, LLC, Family Vacation Spending, LLC, Financial Visions, Inc., J. Johnson Consulting, LLC, J. Paul Consulting, Las KDL, LLC, Mathis Family Partners, Ltd., Palmas Holdings, Inc., Trude Fund II, LLC, Trude Fund III, LLC, and Victory Fund, LLC are all corporate entities organized and incorporated under the laws of the state of Colorado, United States of America.[5] Pursuant to Article 3(1)(e) of the Additional

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2 *See* Claimant's U.S. Passports, C-1.

3 *See* Articles of Organization, C-2.

4 *See* Consent Resolutions for B-Mex, LLC, B-Mex II, LLC, and Palmas South, LLC (Feb. 25, 2016) and US Shareholder Consent Resolutions for Oaxaca Investments (dated May 19, 2016), B-Cabo (dated May 19, 2016), Colorado Cancun (dated May 19, 2016) and Santa Fe Mexico Investments (dated May 23, 2016), C-3.

5 *See* Articles of Organization, C-2.

Facility Arbitration Rules, each of these companies has duly authorized the filing of this claim in accordance with its relevant internal procedures.[6]

4. Claimants therefore are considered investors of a Party, the United States of America, for purposes of Articles 1139 of the NAFTA and have made investments in the Mexican Companies, all of which they own and control, directly or indirectly. Gordon G. Burr, Erin J. Burr, B-Mex, LLC, B-Mex II, LLC, Oaxaca Investments, LLC, Palmas South, LLC, B-Cabo, LLC, and Colorado Cancún, LLC's address is the following:

2630 W. Belleview Ave.,
Suite 220
Littleton, CO 80123
U.S.A.

John Conley and Santa Fe Mexico Investments, LLC's address is the following:

5151 Olive Court
Greenwood Village, CO 80121
U.S.A.

Deana Anthone's address is the following:

5155 W. Colgate Pl.
Denver, CO 80256
U.S.A.

Neil Ayervais's address is the following:

1563 West Dry Creek Road
Littleton, CO 80120
U.S.A.

Douglas Black's and E.M.I. Consulting, LLC's address is the following:

1777 Larimer Street, #2309
Denver, CO 90202
U.S.A.

---

[6] *See* US Shareholder Consent Resolutions for Caddis Capital, LLC (May 25, 2016), Diamond Financial Group, Inc. (May 23, 2016), EMI Consulting, LLC (May 31, 2016), Family Vacation Spending, LLC (May 26, 2016), Financial Visions, Inc. (May 26, 2016), J. Johnson Consulting, LLC (May 23, 2016), J. Paul Consulting (May 23, 2016), Las KDL, LLC (May 24, 2016), Mathis Family Partners, Ltd. (June 2, 2016), Palmas Holdings, Inc. (May 24, 2016), Trude Fund II, LLC (May 25, 2016), Trude Fund III, LLC (May 25, 2016), and Victory Fund, LLC (May 26, 2016), C-3.

Howard Burns' address is the following:

12576 E. Wesley Ave.
Aurora, CO 80014
U.S.A.

Mark Burr's address is the following:

10203 Bluffmond Drive
Lone Tree, CO 80124
U.S.A.

David Figueiredo's address is the following:

2779 Fickle Hill Road
Arcata, CA 95521
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Louis Fohn's address is the following:

5790 W. Coal Mine Avenue
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Deborah Lombardi's address is the following:

7703 East Jamison Dr.
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U.S.A.

P. Scott Lowery's address is the following:

15 Lynn Rd.
Cherry Hills Village, CO 80113
U.S.A.

Thomas Malley's address is the following:

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U.S.A.

Ralph Pittman's address is the following:

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U.S.A.

Daniel Rudden's, Family Vacation Spending, LLC's, Financial Visions, Inc.'s, and Victory Fund, LLC's address is the following:

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U.S.A.

Marjorie "Peg" Rudden's address is the following:

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Englewood, CO 80112
U.S.A.

Robert E. Sawdon's address is the following:

1140 Fall Creek Road
Lincoln, NE 68510
U.S.A.

Randall Taylor's address is the following:

1550 West Dry Creek Road
Littleton, CO 80120
U.S.A.

James H. Watson's address is the following:

1500 W. Hampden Ave., Ste 1C
Englewood, CO 80110
U.S.A.

Caddis Capital, LLC's, Trude Fund II, LLC's and Trude Fund III LLC's address is the following:

8321 South Sangre De Cristo Road, Suite 300
Littleton, CO 80127-6426
U.S.A.

Diamond Financial Group, Inc.'s address is the following:

1655 East Layton Drive
Englewood, CO 80113
U.S.A.

J. Johnson Consulting, LLC's address is the following:

22877 E. Long Drive
Aurora, CO 80016
U.S.A.

J. Paul Consulting's address is the following:

6222 S. Blackhawk Ct.
Centennial, CO 80111
U.S.A.

Las KDL, LLC's address is the following:

15 Lynn Rd.
Cherry Hills Village, CO 80113
U.S.A.

Mathis Family Partners, Ltd.'s address is the following:

5808 S. Rapp Street, Ste. 205
Littleton, CO 80120
U.S.A.

Palmas Holdings, Inc.'s address is the following:

902 Brooklawn Dr.
Boulder, CO 90303
U.S.A.

5. Claimants are represented in these proceedings by Quinn Emanuel Urquhart & Sullivan, LLP.[7] The contact details of the Claimants' representatives for all communications in relation to this matter are as follows:

Quinn Emanuel Urquhart & Sullivan, LLP
777 6th Street N.W., 11th Floor
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United States of America
Tel. +1 (202) 538-8100
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Daniel Salinas-Serrano

[7] *See* Power of Attorney, C-4.

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B. The Respondent

6. The Respondent is the United Mexican States (**Mexico** or **Government**). While Mexico will act in these proceedings through the authority designated by it, a copy of this Request for Arbitration has been served on the following officials:

Ángel Villalobos Rodríguez
Director General de Inversión Extranjera
Dirección General de Inversión Extranjera
Secretaría de Economía
Avenida de los Insurgentes Sur 1940
Colonia La Florida
Ciudad de México C.P. 01030
Estados Unidos Mexicanos

Lic. Carlos Véjar Borrego
Director General
Secretaría de Economía
Dirección General de Consultoría Jurídica de Comercio Internacional
Paseo de la Reforma 296,
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Ciudad de México C.P. 06600
Estados Unidos Mexicanos

Hon. Francisco Leopoldo de Rosenzwig Mendialdua
Subsecretario de Comercio Exterior
Subsecretaría de Comercio Exterior
Secretaría de Economía
Paseo de la Reforma 296,
Col. Juárez, Del. Cuauhtémoc,
Ciudad de México C.P. 06600
Estados Unidos Mexicanos

III. FACTUAL BACKGROUND

7. Mexico has, by its actions and omissions, and by the acts and omissions of persons, entities and agencies for which it is responsible under international and Mexican law, caused substantial damage to Claimants, in breach of Mexico's obligations under the NAFTA, other applicable Mexican laws, and applicable international law. It has destroyed a thriving gaming business and deprived Claimants of the fruits of eight years of hard work and substantial investments.

8. Claimants' investment in the Mexican gaming industry began in 2005 when Claimants started to make substantial investments, as defined by NAFTA, in the construction, development and operation of what eventually came to be five (5) dual-function gaming facilities in Mexico, each with remote gambling centers and lottery number rooms. Claimants also had the legally-secured expectation of opening at least four (4) more.[8] Claimants also obtained a substantial ownership interest in and control over the five (5) Mexican companies that were utilized to establish each of the dual-function casinos. The five initial casinos were located in the following Mexican cities: (1) Naucalpan, State of Mexico; (2) Villahermosa, State of Tabasco; (3) Puebla, State of Puebla; (4) Mexico City; and (5) Cuernavaca, State of Morelos (collectively the **Casinos**). Additionally, certain of the Claimants established, had a majority interests in, and directly and indirectly controlled the operations of, another Mexican company, Exciting Games, S. de R.L. de C.V. (**E-Games**), which was organized to act as the operator of and to manage the Claimants' investments in the Casinos. Claimants also formed B-Cabo, LLC to purse the opening of a gaming and hotel facility in Cabo San Lucas, Mexico, and Colorado Cancun, LLC to pursue the opening of a gaming and hotel facility in Cancun, Mexico. Lastly, certain of the Claimants directly and indirectly controlled three other Mexican companies, namely Operadora Pesa, S. de R.L. de C.V., Metrojuegos, S. de R.L. de C.V., and Merca Gaming, S. de R.L. de C.V., all of which provided indispensable services to the Casinos.

9. At all times since Claimants made their initial investments in Mexico, Claimants' Mexican Companies, including E-Games, operated their casino businesses in accordance with Mexican law and pursuant to valid authorizations and/or permits issued by the Government through its *Secretaría de Gobernación* (**SEGOB**), a Ministry of the Executive

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[8] Claimants had a valid permit to operate fourteen gaming facilities (7 remote gambling centers and 7 lottery number rooms). Pursuant to the permit, Claimants opened 5 casinos in Mexico, all of which provided both remote gambling centers and lottery number rooms in each facility, thereby utilizing a total of 10 of the 14 gaming facilities permitted pursuant to their permit.

Branch of the Government of Mexico. Claimants' investments in Mexico generated substantial profits until the Government adopted a series of arbitrary, discriminatory, and unlawful measures that destroyed Claimants' investments and deprived them of the specific benefits they reasonably expected to receive from them.

10. As will be detailed further in the sections that follow, following the defeat by Mexico's Institutional Revolutionary Party (**PRI**, by its Spanish acronym) of the ruling National Action Party (**PAN**, by its Spanish acronym), the Government engaged in a systematic, politically-motivated campaign against Claimants and their investments, which culminated in the final taking and destruction of the highly profitable casino businesses they had worked over approximately nine years to build. The Government's actions and omissions also laid to waste Claimants' plans to develop, or continue developing, a number of other casino projects as allowed under its valid permit, for which they had explored possible sites in several cities including Cabo San Lucas, Cancun, Queretaro, Puerto Vallarta, Guadalajara, Veracruz, a second facility in Mexico City, Coatzacualos, and Ciudad del Carmen. Of these potential sites, Claimants had made considerable progress and investment in the development of the two projects in Cabo San Lucas and Cancun, which Claimants were forced to cease developing once Mexico unlawfully cancelled Claimants' Casino permit.

11. The Government's unlawful measures included, without limitation, (i) the gaming authority's arbitrary, discriminatory and improper invalidation of a 25-year Casino permit that had been granted to Claimants in November 2012 notwithstanding that it has allowed Producciones Móviles, S.A. de C.V. (**Producciones Móviles**), a Mexican casino company that obtained its casino permit under identical circumstances, to continue to operate its Casinos; (ii) highly arbitrary and discriminatory judicial proceedings that resulted in the invalidation of Claimants' casino permit; (iii) the unlawful and permanent closure of all of Claimants' Casinos in April 2014 notwithstanding that the closure was contrary to and not authorized by Mexican law and in violation of a judicial order prohibiting SEGOB from taking any actions to close the Casinos; (iv) the temporary, illegal closure of the Mexico City Casino on June 19, 2013; (v) other illegal raids of the Casinos following the June 19, 2013 temporary closure; (vi) the implementation of unlawful, discriminatory and highly retaliatory tax measures aimed to harass Claimants and extract illegally profits to which they are entitled; (vii) a retaliatory and illegal criminal investigation and charges against E-Games; and, (viii) the subsequent illegal intervention into Claimants' efforts to ameliorate the impact of the

Government's measures by attempting to sell and/or transfer certain of their Casino assets to third parties.

A. CLAIMANTS' DECISION TO INVEST IN MEXICO

12. Beginning in or around 2004 and prior to Claimants' investment in Mexico, Mr. Gordon Burr, a successful businessman in the United States with experience on Wall Street and investment banking, was introduced to an investor and casino owner in Mexico—Mr. Lee Young—who had operated gaming facilities in the United States. He had obtained a gaming authorization to operate gaming facilities with skill gaming machines in Mexico under a validly-issued SEGOB Resolution issued to a Mexican company called Juegos de Entretenimiento y Video de Monterrey, S.A. de C.V. (**Monterrey**) that operated skill machines throughout Mexico. Monterrey's Resolution allowed for the installation and operation in Mexican territory of certain kinds of skill gaming machines. In addition, pursuant to Monterrey's Resolution, Monterrey's gaming activities were permitted because they were outside the scope of the Mexican gambling laws. Accordingly, these machines did not require a permit from SEGOB. SEGOB had inspected the machines beforehand to certify that they were skill machines and therefore not subject to its jurisdiction. Mr. Young suggested that Claimant Gordon Burr, a person with sophisticated business experience and acumen, put together a group of investors to develop, own, and operate multiple gaming facilities that ran skill machines in Mexico under Monterrey's valid Resolution. By this time, Mr. Young and his investment group already owned and operated two skill machine gaming facilities in Monterrey, Mexico, one called Bella Vista opened in October 2002 and another called Las Palmas opened October 15, 2004.

13. Around August 2004, Mr. Burr conducted several exploratory visits to Mexico, where he met with several of the key players in the Mexican gaming industry. During one of those visits, Mr. Burr was introduced to future investor and Claimant Mr. John Conley, a fellow businessman with over 20 years of business experience in Mexico. Mr. Burr quickly learned through his business trips that gaming operators were making substantial profits from their operations in Mexico. He concluded the industry was ripe for expansion. He decided that he would get involved more directly in the industry beyond just identifying and organizing investors.

14. At or around that time, Mexico was undergoing a comprehensive modernization of its gaming industry and the laws that governed it, which resulted in the enactment in

September 17, 2004 of an all-encompassing Regulation of the Games and Draws Federal Law (**Gaming Regulation**). The Gaming Regulation, among other things, was meant to provide more transparency and uniformity in the regulation of gaming as well as to expand the permissible scope of gaming activities in Mexico. Its purpose, upon information and belief, also was to formalize the gaming industry in Mexico, and to adequately regulate participants and promote competition within the Mexican gaming industry, attempting to eliminate the gaming monopoly established in favor of allies to the PRI by encouraging foreign and national corporations to invest formally in the Mexican gaming industry. The prior gaming law was from 1947 and prohibited most gaming activities, but the new Gaming Regulation changed Mexico's approach to oversight and regulation of gaming, opening up the country's industry to more investors, including foreign investors, and other forms of gaming that previously were not legal.

15. Under the newly enacted Gaming Regulation, SEGOB initially issued broad permits to several Mexican companies that allowed for more expansive gaming operations than the Resolution that authorized Monterrey's gaming activities. As it turns out, the Mexican principals behind Monterrey also were behind one of the Mexican companies that received this new broader type of permit. This company—Entretenimiento de Mexico (**E-Mex**)— received a permit from SEGOB, as amended, for the operation of 100 casino facilities (50 remote gambling centers and 50 lottery number rooms) for a period of 25 years, until 2030. The Mexican Supreme Court confirmed the legality and constitutionality of the new Gaming Regulation as well as the permits issued by SEGOB pursuant to it in January 2007.

16. From January 2005, and with the modernization of the Mexican gaming industry underway, Mr. Burr continued his due diligence visits to Mexico, visiting multiple casino locations in several Mexican States and conducting interviews with casino operators and other key players in the gaming industry. This due diligence confirmed Mr. Burr's initial impressions about the Mexican gaming industry's potential for substantial profit and expansion. He decided to invest directly, along with other investors, in the development and operation of the Casinos. As a key component to his due diligence and investment decision, Mr. Burr ensured himself that both from a Mexican law and US law perspective, the casino business and facilities that he was contemplating investing in within Mexico, were legal. He also ensured himself that he, his fellow investors and their investment vehicles would be entitled to protection of their investments under the NAFTA. Once he confirmed that the

prospects of investing in the gaming industry in Mexico were sound both in that they promised to be a profitable business venture and that they were legal under Mexican and US law, and that the investments would be protected under the NAFTA, Mr. Burr set out to recruit fellow investors for the development and operation of multiple casinos in Mexico.[9]

17. From May 2005 and well into the beginning of 2006, Mr. Burr and his daughter, Ms. Erin Burr, through counsel and with the involvement of accounting and other professionals and individuals, carried out all the necessary steps to incorporate B-MEX, B-MEX II, and Las Palmas South[10] as U.S. LLCs (the **B-Mex Companies**) in the United States as well as the Mexican Companies in Mexico. Once the B-Mex Companies and the Mexican Companies were duly incorporated and operational, the B-Mex Companies were able to secure approximately US$ 42.5 million in funds, of which approximately US$ 35 million were invested by US investors in the Mexican Companies and the Casinos.

18. The B-Mex Companies were formed, in part, to form, capitalize and control the Mexican Companies. Once formed and capitalized, these companies transferred the funds raised by them to the Mexican Companies for the construction and operation of the Casinos. The investments were used to, among other things: (i) lease facilities (none of which had previously been used for gaming), and then construct the physical plant of the casino facilities and completely refurbish the leased premises; (ii) purchase the machines to be installed in the Casinos; (iii) purchase ownership interests in the Mexican Companies to be used for their capital and operational needs; (iv) pay Monterrey a fee for the authority the Mexican Companies used to operate their businesses under the Monterrey Resolution (while retaining certain portions of that authority to be used for future entities or maintained as an asset of the Mexican Companies); (v) retain and compensate legal and other advisors to assure the legality and most tax-effective formation and operation of the Mexican Companies; and (vi) invest in the authorizations and permits necessary for the operation of the Casinos, as well as additional permits for the development of new casino projects.

19. As a result, Claimants collectively own majority ownership interests in, and directly and/or indirectly control the Mexican Companies and E-Games. The value of Claimants' ownership interest/investments in the Mexican Companies was tied to and partially

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9 *See* Las Palmas Investment Opportunity (May 04, 2005), C- 5.

10 Originally named B-Mex III, LLC, but subsequently renamed Las Palmas South, LLC.

dependent on the profitability of the Casinos. As such, Claimants stood to benefit from the capital gains generated by the successful operation of the Casinos. Moreover, Claimants had a valid 25-year permit that provided them the legally secured expectation of operating the 5 dual-function Casinos and opening at least four more gaming facilities (2 remote gambling centers and 2 lottery room numbers) and operating them for the life of the permit.

20. Claimants, collectively, also directly and/or indirectly control other Mexican Companies, namely Operadora Pesa, Metrojuegos, and Merca Gaming, which provided indispensable services for the successful operation of the Casinos and in which Claimants invested resources. Additionally, in carrying out their investments into the Casinos and casino business, certain of the Claimants (i) purchased personal property in Mexico related to the Casino operations; (ii) made investments in the form of loans to the Mexican Companies; (iii) invested in the provision of resources in the development and operation of the Casinos; (iv) invested considerable time and sweat equity in managing the casino project; and, (v) executed contracts and other agreements to allow them to operate the Casinos for which they gave valuable consideration. For example, Claimants entered into different types of agreements, including, but not limited to, joint-venture agreements, concession agreements, machine lease agreements, software licensing and services agreements, all of which entitled them to share in the income or profits of the Mexican Companies and the Casinos. Certain of the Claimants also made investments, including, but not limited to, loans to Medano Beach, S. de R.L. C.V. as well as other resources including time and sweat equity to develop the B-Cabo casino Project, including through the formation of B-Cabo, LLC and investment of funds into the B-Cabo in Cabo San Lucas Project through that entity, and formed Colorado Cancun LLC for purposes of exploring the development of a casino in Cancun.

21. Claimants also made additional capital investments in the Mexican Companies and the Casinos to improve the Casino facilities and expanding the scope of their operations. This additional capital was invested, among other things, in remodeling, enhancing and expanding the Casinos' facilities, and updating and purchasing new gaming machines, as well as the development of new opportunities, including internet gaming and new gaming and hospitality facilities in Los Cabos and Cancun. By way of example, Claimants constructed new rooms/areas for gaming activities; enhanced/constructed stages for live music and entertainment; enhanced/purchased/constructed buffets and other concession (food/beverage) areas; and, built exclusive VIP areas in the Casinos.

22. Overall, Claimants' made, *inter alia*, various types of investments encompassed within the definition of "investments" in Article 1139 of the NAFTA, including, without limitation, investments in:

a. an enterprise;

b. an equity security of an enterprise;

c. a loan to an enterprise;

d. an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

e. an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan defined in Article 1139 of the NAFTA;

f. real estate or other property, tangible and intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

g. interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or (ii) contracts where remuneration depends substantially on the production, revenue or profits of an enterprise.

B. CASINO OPERATIONS FROM 2005 TO 2009

23. Mexican law allows valid permit holders to transfer the management and operation of casinos under their permits to other entities interested in carrying out casino operations in Mexico.[11] As mentioned previously, Claimants initially undertook to operate its Casinos pursuant to Monterrey's Resolution, which SEGOB had issued on March 10, 2005. Accordingly, on June 13, 2005 and June 30, 2006, both later amended, the Mexican Companies

[11] *See* Article 30 of the Federal Gambling and Lottery Law Regulations (Sep. 17, 2004) "The license holder shall request the Secretary for permission to exploit its permit jointly with an operator through a joint venture, service provider agreement, or any other type of agreement," CLA-2.

entered into joint venture agreements with Monterrey to operate seven casinos pursuant to and under the authorization that SEGOB had granted to Monterrey.

24. In 2005, B-Mex, LLC invested US$ 10,500,000 in connection with one of the Mexican Companies, Juegos de Video y Entretenimiento de Mexico, S. de R.L. de C.V., for various investments related to the construction, operation and other costs necessary to establish and launch operation of the Casino in Naucalpan. Certain of the Claimants participated actively in the construction of this Casino which included routine discussions with the architects regarding the physical layout of the main hall, the entertainment areas and restaurants, and the layout of the exterior, including the main entrance. Claimants were able to commence operations in the Naucalpan Casino in December 2005.

25. B-Mex II, LLC, Palmas South, LLC, and certain Claimants invested approximately US$ 24,056,000 in the other Mexican Companies for various investments related to the construction, operation and others costs to establish and launch operation of the Casinos in Villahermosa, Puebla, Cuernavaca, and Mexico City, D.F. Construction of these Casinos moved quickly in the wake of the successful construction and commencement of operations at Naucalpan. These Casinos commenced operations from mid 2006 to mid 2008.

26. From the outset, most of Claimants' Casino operations were profitable. In fact, within the first few months of operations, most of the Casinos had become among the most profitable and fastest growing casino operations in Mexico. In 2008, given that Claimants had secured a strong foothold in the Mexican gaming industry and considering the legal certainty provided by the Mexican Supreme Court verdict that validated the Gambling Regulations that had been issued in 2004, Claimants decided it was time to expand the scope of their operations and, as such, explored various possibilities to obtain their own permit, including negotiating with other permit-holders like Eventos Festivos de Mexico to purchase their permit. Ultimately, Claimants decided to shift from Monterrey's authorization to E-Mex's permit because it offered Claimants the opportunity to manage all locations under the E-Mex permit, which would be jointly owned by the Claimants and billion dollar private equity companies that had approached Claimants to help with their initiative to acquire the E-Mex permit. These companies, which included Advent International and Blue Crest Capital, wanted to acquire E-Mex's permit to enter the Mexican casino market, and requested Claimants to be the managers of all of the casinos under the E-Mex permit (given Claimants' successful track record of operating the Casinos in Mexico) in addition to allowing Claimants to continue to operate

certain Casinos. Given these interesting opportunities, Claimants abandoned their negotiations with Eventos Festivos de Mexico and focused on pursuing rights under the E-Mex permit. Ultimately, the business opportunities being explored by the private equity companies did not materialize, but this was the impetus for Claimants' interest in, and eventual decision to operate under, E-Mex's casino permit.

27. On April 1, 2008, Claimants the B-Mex Companies entered into an agreement with Monterrey and E-Mex, through which the Mexican Companies terminated their previous joint venture agreements with Monterrey and agreed to operate the Casinos under E-Mex's permit.[12] As a result of this agreement, certain of the Claimants utilized the then-existing Mexican company that it had previously incorporated E-Games, a Mexican S. de R.L. de C.V. (a limited liability company in Mexico) to operate the gaming activities of the Casinos under E-Mex's permit. E-Games was majority owned by and directly and indirectly controlled in all of its operations, as described herein, by certain Claimants.

28. On November 1, 2008, E-Games and E-Mex entered into an Operating Agreement,[13] whereby E-Games acquired the rights and obligations to operate fourteen casino facilities under E-Mex's permit, as provided for and in accordance with the Gaming Regulation and other applicable Mexican laws. E-Games, in turn, committed to pay royalties to E-Mex arising from the operation of up to fourteen casino facilities (7 remote gambling centers and 7 lottery number rooms), or up to 7 dual-function gaming facilities, that Claimants were authorized to establish and operate under E-Mex's permit.

29. Through its actions SEGOB repeatedly and consistently recognized and authorized E-Games' status as a legal casino operator under E-Mex's permit. For example, on December 9, 2008, SEGOB authorized E-Mex to use an operator under its permit and recognized E-Games as said operator.[14] And on May 8, 2009, SEGOB again expressly recognized E-Games as an operator under E-Mex's permit.[15] Importantly, other than the permittee-operator relationship between E-Mex and E-Games, respectively, the two companies were independent of each other, had no investments or ownership in common, and Claimants

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12 *See* Transaction Agreement (Apr. 01, 2008), C-6.

13 *See* Operating Agreement (Nov. 01, 2008), C-7.

14 *See* SEGOB Resolution No. DGAJS/SCEV/00619/2008 (Dec. 09, 2008), C-8.

15 *See* SEGOB Resolution No. DGAJS/SCEV/0194/2009 (May 08, 2009), C-9.

had nothing whatsoever to do with E-Mex, or its operations, investments or corporate decisions.

30. While E-Games successfully operated the Casinos under E-Mex's permit and complied with all requirements under the Gaming Regulation, the relationship between E-Games and E-Mex soon soured over contractual disputes as well as business decisions by E-Mex that placed E-Mex's casino permit in legal and financial jeopardy and E-Games' good name and survival as an operator in the casino industry in peril.

31. E-Mex's business decisions placed E-Games' ability to continue acting as operator of the Casinos under E-Mex's permit at risk. Between December 2006 and September 2007, E-Mex obtained US$ 75 million in additional investments for its own operations from independent, foreign investors, namely Blue Crest Special Situations Master Fund Limited and Blue Crest Special Situations IBV (**Blue Crest**), which it did not repay. This was part of Blue Crest Capital's initiative to invest in and acquire E-Mex's permit. This very substantial investment by Blue Crest, and its acceptance by E-Mex, is partly why Claimants believed that the Blue Crest investment opportunity had good prospects of coming to fruition and one of the reasons why Claimants pursued the opportunity under the E-Mex permit, rather than some of the other opportunities they were exploring to transition out of the Monterrey Resolution. As noted, however, the Blue Crest opportunity did not in the end fully materialize, and fell apart in or around 2009 mostly because E-Mex would not agree to various terms after lengthy negotiations, and it ultimately defaulted on this debt to Blue Crest. In 2009, the negotiations with Advent International also began to fall apart.

32. Following E-Mex's default of its obligations to Blue Crest, Blue Crest, on September 24, 2009, filed a complaint to execute a promissory note against E-Mex in connection with Blue Crest's investment in E-Mex.[16] Given the size of the debt, Claimants were fully aware that Blue Crest could force E-Mex into bankruptcy and, as such, had to take measures to protect their investment. Not surprisingly, as E-Mex's operational difficulties intensified and it apparently became clear to Blue Crest that E-Mex would not repay the amount owed under the promissory note, Blue Crest initiated bankruptcy proceedings to declare E-Mex insolvent. A declaration of bankruptcy or insolvency, which appeared imminent in light of

[16] El gran estafador. (Sep. 17, 2011). Retrieved from http://www.proceso.com.mx/281668/el-gran-estafador-2, C-10.

Blue Crest's actions, would have allowed SEGOB to extinguish E-Mex's gaming permit under which E-Games acted as operator of the Casinos. This, in turn, would have had disastrous consequences for E-Games and the Claimants.

33. Additionally, as part of the bankruptcy proceedings pending against E-Mex, the court ordered E-Games to cease all royalty payments under the operating agreements to E-Mex and instead to deposit them in a court-controlled escrow account. Unhappy with the court's order and E-Games' compliance with it, E-Mex sent a notification attempting, albeit improperly, to unilaterally terminate the operating agreement with E-Games on December 23, 2009. This further soured E-Games' relationship with E-Mex. The relationship between E-Mex and E-Games worsened further when, on September 20, 2010, E-Mex filed a domestic arbitration in Mexico against E-Games seeking, among other things, (i) payment of additional royalties under the Operating Agreement; and, (ii) termination of the Operating Agreement.

34. Given all of these circumstances, Claimants understood that they had to become independent from E-Mex and its permit in order for Claimants to continue operating the Casinos in Mexico without placing their legal status for doing so in jeopardy. Claimants by this time had developed, constructed, operated and managed the Mexican Companies and five Casinos successfully, starting with the Naucalpan facility in December 2005, with SEGOB's continued seal of approval. Claimants did not want all of this investment to remain subject to the risks associated with operating under E-Mex's permit.

C. E-GAMES IS ALLOWED TO OPERATE INDEPENDENTLY FROM E-MEX'S PERMIT AND TO REPORT DIRECTLY TO SEGOB ON ITS CASINO OPERATIONS

35. The first step that Claimants took to liberate themselves from E-Mex's permit was to seek permission from SEGOB to continue operating the Casinos under E-Mex's permit but independent of E-Mex's permission. On May 18, 2009, E-Games requested that SEGOB formally recognize it as an independent operator of the Casinos under E-Mex's permit and that E-Games be allowed to continue to operate the Casinos based on rights it has acquired by virtue of its prior, proper and SEGOB-sanctioned operation of the Casinos in compliance with Mexican law.

36. Importantly, E-Games' legal strategy was based on a precedent from 2008, where SEGOB had recognized that an operator in a similar situation as E-Games had acquired certain rights and obligations in connection with a third party's permit, and was thus allowed

to continue operating gaming establishments independently from the permit holder, even when the permittee had lost the permit. Specifically, E-Games relied on a permit that SEGOB issued to Petolof, S.A. de C.V. (**Petolof**), a company that, to this day, upon information and belief, operates casinos without being a permit holder itself, without the intervention or separate authority of a permit holder, and through SEGOB's recognition of its acquired rights to operate its establishments under a pre-existing permit.

37. On May 27, 2009, SEGOB granted E-Games' request for administrative permission to operate autonomously its Casinos and issued Resolution DGAJS/SCEV/0260/2009-BIS. This officially approved E-Games' legal right to operate the Casinos independently of any permission from E-Mex. E-Games was also instructed to report directly to SEGOB all of the information that a permit holder itself is required to report to SEGOB under the Mexican gaming regulations.[17] Moreover, SEGOB held that E-Games had "acquired rights" under Mexican law to operate its Casino facilities within the scope of E-Mex's permit, having previously qualified as an operator and given its successful track record in complying with all requirements set forth in the Gaming Regulation to operate as such.[18] In so doing, SEGOB concluded that E-Games had at all times fulfilled the obligation to report revenue and pay participations directly to SEGOB as any other permit holder would have been required to do pursuant to Article 29 of the Gaming Regulation. Additionally, SEGOB's resolution noted that E-Games' status as an independent operator was not subject to E-Mex's discretion or permission, but instead was part of E-Games' acquired rights as an operator. Importantly, SEGOB further resolved that E-Games' right to continue to operate the Casinos was subject *only* to the terms of the permit and that such rights could *only be terminated* pursuant to SEGOB's right to terminate a permit-holder's right to exercise its casino permit pursuant to the Mexican Gaming Regulation and law (citing to articles 34, 149 and 151 of the Gaming Regulation).

38. Thus, through its May 27, 2009 Resolution, SEGOB recognized E-Games' independent status as a valid and autonomous operator of the Casinos further clarifying that from that moment on, E-Games would (1) report directly to SEGOB instead of to E-Mex regarding its operation of the Casinos; and (2) would no longer need to rely on E-Mex

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17 *See* SEGOB Resolution No. DGAJS/SCEV/0260/2009-BIS (May 27, 2009), C-11.

18 *See* SEGOB Resolution No. DGAJS/SCEV/0260/2009-BIS (May 27, 2009), C-11.

permission, including through the Operating Agreement, in order to operate its Casinos in Mexico.

39. Following SEGOB's ruling in its May 27, 2009 Resolution, on December 28, 2009, E-Games requested that SEGOB maintain in effect its resolutions recognizing E-Games' independent status as an operator under E-Mex's permit. It did so, in part, because it was concerned that E-Mex would cause SEGOB to close Claimants' Casinos in view of the dispute between E-Mex and E-Games over royalty payments and E-Games' rights under the Operating Agreement. SEGOB replied to E-Games' request on July 21, 2010, stating that E-Games remained validly authorized under the Gaming Regulations to operate the Casinos under E-Mex's permit and that it should submit documentation demonstrating its continued compliance with the reporting obligations required by the Gaming Regulation and other applicable Mexican law.[19]

40. E-Games complied with SEGOB's information requests by letter dated October 26, 2010, and requested that SEGOB issue a resolution declaring that E-Games could continue to operate "regardless of the consequences and effects that the restructuring/bankruptcy proceedings may have against [E-Mex]". On December 8, 2010, SEGOB informed E-Games that: (1) it had complied with the request made on July 21, 2010; (2) it was recognized as an independent operator under E-Mex's permit; and (3) *it could apply for an autonomous, independent permit under its own name if E-Mex's permit was revoked or threatened with revocation.*[20] SEGOB's December 8, 2010 Resolution thus not only reiterated and underscored E-Games' continued compliance with Mexican law and its status as an independent operator of the Casinos, but it also constituted SEGOB's formal invitation for E-Games to apply for its own, autonomous permit.

41. Following SEGOB's invitation, on February 22, 2011, E-Games applied with SEGOB for its own casino permit.[21] Although E-Games complied with all the requirements under Mexican law as requested by SEGOB, on November 18, 2011, SEGOB informed E-Games that SEGOB had to wait until E-Mex was formally declared insolvent by a Mexican

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19 *See* SEGOB Resolution No. DGAJS/SCEV/0321/2010 (July 21, 2010), C-12.

20 *See* SEGOB Resolution No. DGAJS/SCEV/0550/2010 (Dec. 8, 2010), C-13 (emphasis added).

21 *See* E-Games Permit Application (Feb. 22, 2011), C-14.

court before it could proceed to change E-Games' status and grant it an independent permit to operate the Casinos.

42. On June 14, 2012, E-Games informed SEGOB that on March 5, 2012, a Mexican court formally declared E-Mex insolvent and placed it in restructuring/liquidation proceedings. Pursuant to SEGOB's previous resolution from May 18, 2011, E-Games requested that its status be changed to an independent permittee as requested on February 22, 2011.

43. On August 13, 2012, SEGOB initiated an administrative proceeding against E-Mex following the Mexican court's declaration of E-Mex's bankruptcy in order to revoke E-Mex's permit.[22]

44. On August 15, 2012, SEGOB issued Resolution DGJS/SCEV/0827/2012, in which it recognized that E-Games was entitled to the rights and obligations under E-Mex's permit in its own name. SEGOB formally approved E-Games' change of status and recognized that it was entitled to the independent use and operation of the Casinos as established in E-Mex's permit, particularly since it verified at all times E-Games had complied with every requirement under the Gaming Regulation. SEGOB's resolution further declared that it had previously determined that E-Games must be allowed and guaranteed to continue operating the Casinos because E-Games enjoyed "acquired rights" for the use and operation of E-Mex's permit. Finally, and quite important, SEGOB's resolution recognized that E-Games' rights could not be modified, absent the presence of a cause for revoking a permit-holder's rights under the Gaming Regulation, and were independent of any previous contractual relationship E-Games may have had with E-Mex or any other entity. SEGOB's August 15, 2012 Resolution conferred upon E-Games the rights and obligations of an independent permit holder for purposes of continuing to operate the Casinos.

D. E-GAMES OBTAINS ITS OWN INDEPENDENT PERMIT

45. On November 7, 2012, E-Games requested SEGOB's Director General to correct the August 15, 2012 Resolution because SEGOB in its August 15, 2012 Resolution did not cite all legal provisions that entitled E-Games to its own permit. E-Games also requested that SEGOB grant E-Games its own independent permit with a permit number separate and

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[22] *See* SEGOB Resolution No. DGAJS/SAAJ/1227/2012 (Aug. 13, 2012), C-15.

distinct from E-Mex's permit. Finally, Claimants also made the November 7th request because the official who had issued the August 15, 2012 Resolution was the Sub-Director of the Director General's Office of the Gaming Authority, rather than the Director General, who was out of the office on other matters on the day in August when SEGOB issued its resolution. This concerned Claimants, who wanted their request for an independent and autonomous permit resolved by the highest and direct authority in the office to make that determination, the Director General.

46. On November 16, 2012, SEGOB issued Resolution DGJS/SCEV/1426/2012, granting E-Games its *own independent permit with its distinct permit number*: DGAJS/SCEVF/P-06/2005-BIS. E-Games' independent permit was subject to the same conditions and obligations as E-Mex's permit, meaning that, while it—and Claimants' ability to operate their Casinos—was no longer tied legally to E-Mex' permit, Claimants' new permit encompassed the same rights and obligations as E-Mex's permit, including, among other things, that the permit would remain valid until 2030 and that Claimants would have the right to operate up to fourteen gaming establishments (7 remote gambling centers and 7 lottery number rooms), or up to 7 dual-function gaming establishments.[23]

47. In issuing the November 16, 2012 Resolution, SEGOB confirmed that its August 15, 2012 Resolution complied with all material requirements under Mexican law and, as such, constituted a valid administrative act to the fullest extent of Mexican law. However, because E-Games requested that SEGOB grant it its own independent permit with a distinct permit number, SEGOB analyzed *de novo* E-Games' request for an independent and autonomous permit. In so doing, SEGOB issued a separate and distinct administrative resolution under Mexican law when it issued the November 16, 2012 Resolution. This administrative resolution was a standalone resolution issued pursuant to the Gaming Regulation and other applicable Mexican law and thus was not dependent on the August 15, 2012 Resolution or any prior SEGOB resolution regarding Claimants' right to operate the Casinos.

48. In its November 16, 2012 Resolution, SEGOB confirmed once more E-Games' legal entitlement under the Gaming Regulation to have its own valid, independent casino permit. Specifically, SEGOB underscored that it was issuing the November 16, 2012

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[23] *See* SEGOB Resolution No. DGJS/SCEV/1426/2012 (Nov. 16, 2012), C-16.

Resolution because E-Games requested a permit under its own name, had and established track record of having operated validly pursuant to—and scrupulously complying with—the Gaming Regulations, and because it had meticulously complied with all material requirements under the Mexican Gaming Regulation to have an independent and autonomous permit issued to it.[24]

E. THE NEW PRI ADMINISTRATION, GUIDED BY ITS POLITICAL AIMS, MOUNTS A CAMPAIGN AGAINST CLAIMANTS' CASINOS

49. Notwithstanding the numerous and repeated confirmations by SEGOB of Claimants' rights to operate the Casinos pursuant to the Gaming Regulation, including the recent granting of an autonomous permit through 2030 to Claimants, on January 27, 2013, PRI political appointee, Marcela González Salas, SEGOB's new director of its gaming department and PRI political appointee, Marcela González Salas, provided statements to a Mexican newspaper stating that E-Games' November 2012 permit was "illegal".[25] According to González Salas, E-Games' permit was granted at the 11th hour of President Calderón's six-year term without any legal basis.[26] President Enrique Peña Nieto, who assumed office on December 1, 2012, officially designated Ms. González Salas head of SEGOB's gaming department on January 15, 2013, a mere 12 days before making these public statements against Claimants and their Casinos. Other than this politically-motivated justification, Ms. González Salas, who had no prior experience in the gaming industry before her political appointment, did not provide any other basis in her public statement for declaring, without equivocation, that Claimants' Casino permit was "illegal." Rather, she simply alleged its illegality by linking Claimants' permit to the opposing PAN party. Ms. González Salas also attacked the original permit granted to E-Mex, which she alleged was granted during the last year of President Vicente Fox's term (another PAN member). Tellingly, Ms. Gonzalez Salas rebuked repeated attempts by Claimants' representatives to meet with her to discuss, *inter alia*, her false statements to the media about the legality of Claimants' permit and the status and future of Claimants' permit and casino business.[27]

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24 *See* SEGOB Resolution No. DGJS/SCEV/1426/2012 p. 6 (Nov. 16, 2012), C-16.

25 Ilegal, la resolución que otorgó dos permisos para casinos al final del sexenio de Calderón (Jan. 27, 2013) . Retrieved from http://www.jornada.unam.mx/2013/01/27/politica/013n1pol, C-17.

26 Ilegal, la resolución que otorgó dos permisos para casinos al final del sexenio de Calderón (Jan. 27, 2013) . Retrieved from http://www.jornada.unam.mx/2013/01/27/politica/013n1pol, C-17.

27 Ilegal, la resolución que otorgó dos permisos para casinos al final del sexenio de Calderón (Jan. 27, 2013). Retrieved from http://www.jornada.unam.mx/2013/01/27/politica/013n1pol C-17.

50. As can be evidenced from the interview given by Ms. González Salas in January 2013, the PRI's subsequent attack on E-Games' permit had as its genesis political justifications and a desire by the new administration of President Peña Nieto to call into question and subsequently undo the actions of his political nemesis. While these statements, themselves, are not being alleged by Claimants as measures that violate NAFTA, they demonstrate that the subsequent measures taken by the Peña Nieto administration against Claimants and their Casinos were politically and not legally motivated. Historically the PRI ruled the country for more than 70 years during which time, upon information and belief, it granted gaming permits only to close affiliates to the PRI. While very unfortunate, it therefore makes sense that the PRI would mount an attack against certain of the permits granted during the time in which PAN occupied the Mexican Presidency between 2000 and 2012.

F. E-MEX FILES AN *AMPARO* LAWSUIT AGAINST THE SEGOB RESOLUTION THAT ALLOWED IT TO OPERATE THE CASINOS INDEPENDENTLY

51. In 2011, E-Mex was in litigation with its financier, Blue Crest, in the middle of an arbitration with certain of the Claimants, and on the brink of losing its gaming permit due to its imminent insolvency. On December 30, 2011, E-Mex filed an *Amparo* proceeding[28] launching constitutional attacks against various different actions taken by SEGOB in relation to its permit, including eventually an attack on the May 27, 2009 SEGOB Resolution (**First Amparo**). That was the resolution that found that E-Games had "acquired rights" to operate independently the Casinos within the scope of E-Mex's permit and authorized E-Games to continue its status as an "independent operator" under E-Mex's casino permit, but without the continuing need for any valid permission from E-Mex. Specifically, on June 6, 2012, E-Mex filed an amended complaint against SEGOB's May 27, 2009 Resolution (DGAJS/SCEV/0260/2009-BIS). E-Mex sought to convince the *Amparo* judge to declare the resolution unconstitutional.

52. On January 30, 2013, the *Amparo* judge ruled that SEGOB's May 27, 2009 resolution was unconstitutional.[29] In short, the *Amparo* judge concluded that the Gaming

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[28] The writ of *Amparo* is a remedy for the protection of constitutional rights that every individual/entity has against virtually every exercise of governmental authority in Mexico. It serves a dual purpose: it protects the citizen and his basic rights, and safeguards the constitution itself by ensuring that its principles are not contravened by statutes or actions of the state.

[29] *See* Order of the *Juzgado Decimosexto de Distrito en Materia Administrativa en el Distrito Federal* (Jan. 30, 2013), C-18.

Regulation did not expressly recognize the figure of an "independent operator" and that an operator could not acquire that legal status through the doctrine of "acquired rights" because the Mexican gaming laws did not provide for it. The *Amparo* judge, however, did not declare the doctrine of "acquired rights" unconstitutional. The *Amparo* judge further concluded that the Mexican gaming laws do not allow for the transfer of permits. As a result, the *Amparo* judge ordered SEGOB to rescind the May 27, 2009 Resolution and to review again E-Games' request that led SEGOB to issue that resolution so as to issue a new resolution consistent with the judge's *Amparo* judgment. Claimants are not challenging this ruling, standing alone, as an illegal measure in this NAFTA proceeding, and this ruling, by itself, did not jeopardize Claimants' operations in Mexico. This is because Claimants were already operating under an autonomous casino permit at the time the ruling was rendered. This means Claimants did not need to have an "operator" status as of January 2013, as they were already by that time an independent permittee. But, as will be seen below, following this ruling, later in 2013 and following the conclusion of the appeal of this ruling in July 2013, the *Amparo* court adopted a series of measures that were highly irregular, violated Claimant's due process and other fundamental rights, lacked transparency and thus are being challenged as illegal government measures in this proceeding.

53. Importantly, SEGOB, while under the PAN administration, defended the legality and constitutionality of the May 27, 2009 Resolution during this *Amparo* proceeding.[30] As will be seen below, SEGOB in 2013, under the influence of the PRI administration, did an "about face" in relation to its own resolutions in regards to Claimants operations in Mexico. E-Games, E-Mex, and SEGOB appealed this *Amparo* judgment on different grounds, but the appellate court confirmed the *Amparo* judgment on July 10, 2013.[31]

54. Once the appellate court confirmed the *Amparo* judgment, the *Amparo* judge ordered SEGOB to comply with the *Amparo* judgment, which SEGOB did on July 19, 2013. As stated above, the *Amparo* judge had ordered SEGOB to rescind the May 27, 2009 Resolution (DGAJS/SCEV/0260/2009-BIS) *only* and to issue a new resolution consistent with the *Amparo* judgment. SEGOB's July 19, 2013 Resolution did just that. It rescinded the May 27, 2009 Resolution, and then resolved against E-Games request to become an "independent" operator under E-Mex's permit. As noted, this ruling did not have a negative effect on E-

30 *See* SEGOB Memorials in *Amparo* proceedings, C-19.

31 *See* Order of the *Séptimo Tribunal Colegiado en Materia Administrativa* (July 10, 2013), C-20.

Games or Claimants because E-Games had been issued an independent, autonomous casino permit on November 16, 2012 and thus no longer needed to be an "independent operator" under E-Mex's permit.

55. At this time the *Amparo* judgment was in the enforcement stage of the proceedings. To Claimants' surprise and dismay, the *Amparo* judge then took steps to improperly re-open the matter in order to expand the *Amparo* judgment and place it in lockstep with the Government's political agenda to undo the granting of SEGOB's November 16, 2012 autonomous permit to E-Games and Claimants. With unlawful measures by SEGOB, the appellate court, and the Mexican Supreme Court, the *Amparo* judge's re-opening of the matter paved the way for the unlawful taking of E-Games' November 2012 permit.

G. JUDICIAL IRREGULARITIES, UNLAWFUL EXECUTIVE INTROMISSIONS AND AN ARBITRARY AND DISCRIMINATORY REVERSAL OF SEGOB'S LEGAL STANCE RESULT IN THE ILLEGAL TAKING OF CLAIMANTS' INVESTMENTS

56. With the matter before the *Amparo* judge for execution, E-Mex, on August 22, 2013, argued that SEGOB had failed to comply with the court's *Amparo* judgment when it only rescinded the May 27, 2009 Resolution, and it moved the judge to rescind not only the May 27, 2009 Resolution—that originally was the *only* one directly involving E-Games at issue in the *Amparo* proceeding—but also all other orders/resolutions that flowed from that one.[32] E-Mex's motion to include other SEGOB resolutions within the scope of the *Amparo* judge's ruling was untimely, as it should have been presented during the normal course of the *Amparo* proceedings, not at the enforcement stage of the *Amparo* judgment. The Court's consideration of E-Mex's motion was highly irregular and created serious due process problems, as E-Games was not afforded an adequate opportunity to object to or raise arguments against E-Mex's motion to include other, as of yet not at issue, SEGOB resolutions within the ambit of the *Amparo* judge's ruling.

57. But most disturbing, a few days after the motion was filed, E-Mex's principals approached Claimant Gordon Burr through E-Games' management team in Mexico, and informed Mr. Burr that "they controlled" the *Amparo* judge and that, unless E-Games settled their claims at issue in the underlying arbitration between the parties, E-Mex would instruct the *Amparo* judge to issue an order requiring SEGOB to rescind all other administrative

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32 *See* E-Mex Motion to Rescind, C-21.

resolutions issued in favor of E-Games, even though these resolutions were not at issue in or challenged during the *Amparo* proceedings. This would include E-Games' November 16, 2012 autonomous permit.

58. In apparent support for E-Mex's threat to Claimants, on August 26, 2013, the *Amparo* judge issued a judgment ordering SEGOB to rescind all resolutions based on or derived from the May 27, 2009 Resolution (DGAJS/SCEV/0260/2009-BIS), without specifying which resolutions were to be rescinded.[33] The *Amparo* judge's August 26, 2013 mandate provided E-Mex with the ammunition to continue exerting its extortionist threat against Claimants to execute the settlement agreement using the Government's judiciary as a sword to accomplish its ends.

59. On August 28, 2013, SEGOB, apparently responding to the *Amparo* Judge's August 26, 2013 mandate, rescinded several resolutions, including, among others, the November 16, 2012 Resolution (DGJS/SCEV/1426/2012) that granted E-Games and Claimants the autonomous casino permit, allowing Claimants to operate their casino businesses in Mexico through 2030. In so doing, SEGOB employed a reasoning that departs from the order it received from the *Amparo* judge in his August 26, 2013 mandate, and, importantly, that squarely contradicts the language and reasoning employed by SEGOB when it issued the November 16, 2012 Resolution. In its August 28, 2013 Resolution, SEGOB essentially reasoned that (i) all of the resolutions that it issued after the May 27, 2009 Resolution were subsidiary to and based upon the May 27, 2009 Resolution and thus had to be rescinded; and (ii) that each of the subsequent resolutions were based on the "acquired rights" doctrine, which SEGOB argued has been ruled unconstitutional by the *Amparo* judge.

60. This, however, was not what the *Amparo* judge concluded in his January 13, 2013 judgment, nor what he ordered SEGOB to do in his August 26, 2013 mandate. Importantly, this action by SEGOB, and all those that followed, which destroyed Claimants' investments in Mexico, was taken by a SEGOB controlled by the PRI administration, which now sat in political judgment of actions taken by the prior administration controlled by the PAN, the PRI's main political opposition. This is significant and helps to explain how it is that SEGOB, now in August 2013, could employ reasoning that is nowhere to be found in the *Amparo* Judgment and that squarely contradicts what SEGOB said in its November 16, 2012

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[33] *See* Order of the *Juzgado Decimosexto de Distrito en Materia Administrativa* (Aug. 26, 2013), C-23.

Resolution granting E-Games its autonomous permit. In the November 16, 2012 Resolution, SEGOB expressly concluded that E-Games' independent permit was unrelated to and separate from E-Mex's permit, as well as from the May 27, 2009 Resolution, and that SEGOB's decision to grant E-Games its permit was based on E-Games' full compliance with all requirements contained in the Gaming Regulation for the issuance of a new permit. Now, in August 2013, the PRI-controlled SEGOB was arbitrarily ignoring and contradicting what the same executive agency had decided only eight months earlier.

61. Based on that flawed reasoning, SEGOB rescinded each and every resolution that it had issued in favor of E-Games following the May 27, 2009 Resolution. Importantly, this included the subsequent rescission of the additional resolutions, including the November 16, 2012 Resolution that granted E-Games the November 2012 Casino permit.

62. The harm caused to Claimants by this reversal of positions by SEGOB and repudiation of its prior resolutions and criteria granting Claimants their autonomous permit, was further exacerbated by the initial *Amparo* judge's instructions to SEGOB in the August 26, 2013 mandate. Unlike the initial January 2013 judgment, in which the *Amparo* judge ordered SEGOB to rescind the May 27, 2009 Resolution and issue a new resolution consistent with the *Amparo* judgment, the *Amparo* judge this time only ordered SEGOB to rescind all subsequent resolutions that were dependent upon the May 27, 2009 Resolution without also ordering it to issue new resolutions resolving the corresponding requests made by E-Games that led to the resolutions. The effect of this aspect of the *Amparo* judge's order is that it did not allow or require SEGOB to issue new resolutions answering the initial requests made by E-Games and thus limited improperly E-Games' rights to challenge the resulting administrative action. Therefore, in addition to being arbitrary and unlawful, the *Amparo* judge's August 26, 2013 mandate had the effect of depriving E-Games and Claimants of any appellate recourse against SEGOB's rescission of all subsequent resolutions involving E-Games.

63. On October 11, 2013, seeing that they had no other options but to settle the claims with E-Mex following its persistent and clear extortionist threats regarding its use of the Mexican judiciary and SEGOB to destroy Claimants' investments and businesses in Mexico, Claimants reluctantly, under coercion and not of its own volition entered into an agreement

with E-Mex to settle all outstanding disputes and other claims by E-Mex, including any outstanding litigation between them and an arbitration award which was pending appeal.[34]

64. On October 14, 2013, the *Amparo* judge ruled that SEGOB exceeded its authority in fulfilling the court's judgment following the court's August 26, 2013 mandate.[35] Specifically, the *Amparo* judge determined that, in addition to the permit to act as an independent operator, E-Games also had a permit that allowed it to operate as an autonomous permit holder, referencing the November 16, 2012 permit. The *Amparo* judge concluded that E-Games had been operating under its own permit as of November 16, 2012 as a result of SEGOB's Resolution DGAJS/SCEVF/P-06/2005-BIS, which the *Amparo* judge considered "totally independent and autonomous from the one declared unconstitutional."

65. This new ruling by the *Amparo* court, however, ultimately was a curate's egg of sorts because of what the *Amparo* judge chose to do next. Specifically, the most appropriate and straightforward way for the judge to have resolved his finding that SEGOB had improperly executed his Amparo judgment would have been for the *Amparo* judge to have issued an order requiring SEGOB to confirm that the November 16, 2012 Resolution—and any others that should not have been rescinded—should not have been rescinded by SEGOB in compliance with his judgment and ordering SEGOB to reinstate the SEGOB resolutions that were not within the scope of his *Amparo* judgment. Instead, the *Amparo* judge curiously took the circuitous, unnecessary and irregular route of initiating another type of enforcement proceedings (known in Mexico as an *incidente de inejecución*) against SEGOB. By initiating this action, the *Amparo* judge sent the matter directly to the appellate court for it to decide whether to sanction SEGOB for having exceeded its mandate in complying with the initial *Amparo* judgment. The Amparo judge thus washed his hands of this politically-charged case. As shown below, once the appellate court became involved, the ruling PRI inserted itself directly into the judicial process. What resulted was a highly unusual and improper decision by the appellate court confirming SEGOB's rescission of E-Games' November 16, 2012 permit and rejecting the *Amparo* judge's interpretation of his own *Amparo* judgment. The executive branch then interfered further to ensure that this improper appellate decision would stand,

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34 *See* Transaction Agreement (Oct. 11, 2013), C-22.

35 *See* order of the *Juzgado Decimosexto de Distrito en Materia Administrativa* (Oct. 14, 2013), C-24.

thereby limiting and effectively denying Claimants a meaningful opportunity for further appellate review of that improper decision.

66. Once the *incidente de inejecución* was underway, SEGOB filed a motion before the appellate court requesting that it: (i) confirm SEGOB's rescission of all resolutions, including SEGOB's November 16, 2012 Resolution; and (ii) determine that SEGOB's rescission of all resolutions was proper. SEGOB's submission was a total *volte face* from its previous stance, both in the underlying *Amparo* litigation and when, under the PAN administration, they issued the repeated administrative resolutions and ultimately an independent and autonomous permit confirming Claimants' right to operate the Casinos until at least 2030. Indeed, SEGOB, in its arguments to the underlying *Amparo* judge and to the appellate court, very curiously went beyond the scope of what the *Amparo* judge had ruled by: (i) arguing that all SEGOB resolutions that came after the May 27, 2009 Resolution were subsidiary to and dependent upon the May 27, 2009 Resolution (something that SEGOB itself did not assert when issuing many of the resolutions and that it in fact denied when issuing the November 16, 2012 Resolution); and (ii) arguing that the *Amparo* judgment had in fact struck down as unconstitutional the doctrine of "acquired rights", something the *Amparo* judge expressly said he did not rule. Additionally, SEGOB was attacking the legality of its own resolutions, which it had repeatedly upheld as valid and even defended vigorously during the initial *Amparo* proceedings. In hindsight, SEGOB's new stance was squarely in line with the PRI's political agenda to reverse, without precedent or legal basis, the granting of Claimants' November 16, 2012 permit by the PAN administration, and destroy their operations and investments in Mexico.

67. On February 19, 2014, in what can only be described as a politically motivated and influenced decision, the Mexican appellate court went out of its way to disagree with the *Amparo* judge regarding the meaning of the *Amparo* judgment that he issued, and ruled that SEGOB's rescission of various resolutions relating to E-Games was proper, resulting in the dismissal of the *incidente de inejecución*. The appellate court determined that SEGOB's compliance with the *Amparo* judgment was not excessive and in fact strangely agreed with SEGOB's new argument that the *Amparo* judgment struck down the doctrine of "acquired rights." It ruled this way even though the very *Amparo* judge that issued the *Amparo* judgment stated that this was not his ruling.

68. On March 10, 2014, on remand, the *Amparo* judge complied with the appellate court's ruling, thus accepting SEGOB's fulfillment of the *Amparo* judgment. This was a complete reversal of fortunes for Claimants. In one fell swoop the appellate court irregularly and unlawfully altered the terms and scope of the January 13, 2013 *Amparo* judgment, without giving Claimants the opportunity to address such claims, thereby depriving them completely of their due process rights under applicable law.

69. Shortly thereafter, E-Games filed writs to the *Tribunal Colegiado* and the Mexican Supreme Court on March 31, 2014 and April 23, 2014, respectively, known as a *recurso de inconformidad* attacking: (1) the appellate court's ruling; and (2) the *Amparo* court's acceptance of SEGOB's rescission of all permits issued to E-Games. The *recurso de inconformidad* thus was meant to challenge the appellate court's rulings and reasoning as well as the actual judgment that revoked Claimants' November 2012 permit.

70. On April 24, 2014, a day after E-Games filed its *recursos de inconformidad* to the Supreme Court, in a highly illegal move, while Claimants' appeal proceedings remained pending, SEGOB closed down all of Claimants' Casinos in a commando-style raid. The closures were a carefully orchestrated spectacle. SEGOB personnel, aided by Mexican federal police dressed in special operations SWAT gear and toting long guns, entered the Casinos and immediately blocked all entrances and exits, eventually allowing customers to leave but restricting employees to management's offices. Employees were also prevented from contacting attorneys. SEGOB personnel refused to provide a copy of the closure order to management. These closures happened despite that E-Games had sought and obtained an injunction barring the Government from impeding or otherwise hindering the Casinos' operations pending the final resolution of the *Amparo* proceedings, which were by then pending before the Supreme Court. Adding insult to injury, the Government failed to provide basic procedural rights to Claimants during the administrative review proceedings that followed the closures, flouting notice requirements and statutes of limitations, and barring E-Games from producing evidence, among other violations.

71. On May 6, 2014, the Mexican Supreme Court admitted and agreed to hear E-Games' *recurso de inconformidad*.[36] Upon admission of the request, the judge in charge of the case assigned it to a clerk (in Mexico known as a *proyectista* or *secretario de estudio y cuenta*,

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[36] *See* order of the *Suprema Corte de Justicia de la Nación* (May 6, 2014), C-25.

depending on the court) in charge of analyzing the matter and preparing a draft of the judgment which would be decided by the plenary session of the Supreme Court. Over the course of *four* months, Claimants' counsel in Mexico continually met with the *proyectista*, Ms. Irma Gómez, to go over questions and to submit memoranda on various issues, mainly regarding the substance and merits of the issues raised by Claimants on their appeal. From the time invested in the matter, the nature of the questions asked by the *proyectista*, and the *proyectista*'s remarks to Claimants' Mexican counsel, it was clear that the Court was considering the merits of the matter and that the *proyectista* was preparing a draft judgment to that effect.

72. One week before the plenary session, however, Claimants' Mexican counsel met with the Supreme Court judge in charge of the *recurso de inconformidad*. Just before they walked into his chambers, they crossed paths with President Peña Nieto's head lawyer, Mr. Humberto Castillejos, who was leaving the same judge's chambers. Oddly, during the meeting, the judge appeared strangely nervous and barely discussed the *recurso de inconformidad* with the attorneys.

73. One week after that meeting, on September 3, 2014, the Second Chamber of the Supreme Court reversed course and dismissed the appeal on procedural grounds, denying to hear the matter on the merits, and remanded the case to the same appellate court that had issued the decision that was the subject of the appeal to the Supreme Court to deal with E-Games' appeal against the *Amparo* judgment. This meant that Claimants were effectively and practically denied an appeal of this ruling, as the same appellate court that issued the decision on appeal would be reviewing the merits of E-Games' appeal of *its own decision*.[37]

74. The appellate court's handling of this issue on remand was also rife with politically-motivated irregularities. For example, when Claimants' Mexican counsel discussed the appeal with one of the judges in charge of this matter, Hon. José Luis Caballero, he informed Claimants' counsel that he feared for the safety of his job within the appellate court given the politically-charged nature of the case involving E-Games' permit. A few days later, Judge Caballero was transferred to a different court. Judge Caballero was soon replaced by an interim clerk.

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[37] *See* order of the *Suprema Corte de Justicia de la Nación* (Sep. 3, 2014), C-26.

75. Unsurprisingly, on January 29, 2015, the appellate court upheld its prior decision and thus upheld the *Amparo* court's affirmance of SEGOB's resolution rescinding *all* administrative resolutions issued to E-Games, including the November 16, 2012 Resolution that granted E-Games its casino permit. The appellate court determined, as it itself had decided when it initially reviewed the Amparo court's *recurso de inejecución*, that E-Games' permit, as granted in the November 16, 2012 Resolution, derived from and was a direct consequence of the May 27, 2009 Resolution, which the *Amparo* judge had ruled unconstitutional. E-Games' permit thus stood revoked, and Claimants having no other avenue for appeal saw their sizeable investments and Casino businesses effectively destroyed.

76. To date, all Casinos remain closed and Claimants are prohibited from entering the Casinos to remove their property and assets. Moreover, despite numerous attempts, Claimants were unable to obtain a meeting with Ms. González Salas, SEGOB's PRI-appointed Gaming Director, to discuss the Casinos' closures and the removal of their casino assets from the closed establishments.

77. Meanwhile, other Mexican casino companies and nationals that operate casinos in identical circumstances as Claimants remain open. In a striking example of SEGOB's arbitrary and discriminatory application of the Gaming Regulations, SEGOB, and the Mexican judiciary, have left essentially undisturbed the casino operations of Producciones Móviles, a company that sought and obtained its own, independent casino permit under almost identical legal arguments and factual circumstances as E-Games. Both were operating under E-Mex's permits as operators, and both sought independent casino permits given their track record of having complied with the Gaming Regulations and because E-Mex's casino permit was in jeopardy given the bankruptcy proceedings that has been initiated against it by its creditors. Producciones Móviles in fact received its independent permit in part by expressly asking that SEGOB apply the same administrative criteria it had applied in considering E-Games' request for, and that had led to the issuance to E-Games of, an independent permit (i.e., conditioning E-Games' ability to obtain its permit to its compliance with all legal requirements under the Gaming Regulation and to E-Mex's final insolvency). The permits were issued within days of each other. But while SEGOB has invalidated E-Games' November 16, 2012 permit, it has allowed Producciones Móviles to remain in business. The Mexican company, Petolof, is but another example of such an arbitrary and discriminatory application of the Gaming Regulations by SEGOB.

78. In all, Claimants operated their Casinos in Mexico, with SEGOB's knowledge, and/or administrative authorization for nine (9) years from 2005 until 2014. Only after the PRI party took power and sought to reverse some of the policies of its political opponents, did the Mexican Executive branch, its gaming authority and the Mexican judiciary seek to invalidate Claimants' rights to operate their Casinos within Mexico, leading to the complete destruction of Claimants' businesses and investments in the country. This happened even though Mexico left other Mexican Casino companies who were in like circumstances as Claimants in business, and even though it had accepted and benefitted from Claimants' operation of its Casinos in Mexico for years, including through the receipt of a roughly 2% monthly royalty (*participación*) that Claimants were required to pay to SEGOB under Mexican law while they operated their Casinos, as well as through receipt of special and regular tax payments as required by law.

H. MEXICO BLOCKS CLAIMANTS' ATTEMPTS TO SELL THE CASINOS' ASSETS AND MITIGATE DAMAGES

79. Shortly after SEGOB illegally closed the Casinos, it became apparent to Claimants that they would not be able to re-open the Casinos on their own. This became even more apparent given the irregular *Amparo* proceedings that were still pending, and which were then before the Mexican Supreme Court. Claimants therefore approached a series of high profile potential partners and purchasers, some with strong ties to the PRI administration of President Peña Nieto and with an even stronger presence institutionally in Mexico. Some of these potential partners and purchasers included, but were not limited to, Juan Cortina Gallardo, a prominent member of the family that controls, among other business interests, the bottling of all PepsiCo products in Mexico, CODERE and Cirsa, Spanish companies that operate casinos in Mexico through a Mexican subsidiary, Grand Odyssey, and Grupo Televisa. Ultimately, each of these companies expressed an interest in working with Claimants to reopen the Casinos and/or acquire Claimants' Casinos, but Claimants efforts to move forward with each were rebuffed by SEGOB.

80. Claimants also prepared thorough background information and projection documents to assist in any potential merger or asset sale, notwithstanding that Claimants had been deprived access to their Casinos by the Government, which meant that they could not access their book and records. Working with a very limited staff and without access to their books, Claimants, acting through Claimants Gordon and Erin Burr, were still able to prepare,

among other materials: (i) presentations; (ii) profit and loss statements for all five Casinos; (iii) a breakdown of corporate expenses and how these would look under a merger; and (iv) information on newer initiatives that they actively were developing prior to the closure of the Casinos, but which were hampered by the closure of the Casinos, such as online gaming operations and the development of additional Casinos and related hospitality operations in Cabo San Lucas and Cancun, including the work of US and Mexican counsel without compensation as well as the loss of US personnel. In anticipation of a possible asset sale, Claimants also prepared a list of all assets, including list of machines, purchase prices for these machines, revenue lists per machine, and lists outlining the number of customers and revenues per customer, among other materials.

81. As early as May 2014, Claimants approached Mr. Juan Cortina Gallardo. Mr. Cortina hired Credit Suisse to undertake the due diligence process. Claimants, through Claimants Gordon Burr and Erin Burr, communicated frequently with Mr. Cortina and Credit Suisse. Unfortunately, when Mr. Cortina met with SEGOB to discuss the approval of any potential purchase/joint venture with Claimants, SEGOB told them that "the timing was bad."

82. Claimants also approached Cirsa, a Spanish company that operates various casinos in Mexico through a Mexican subsidiary and that operates over 100 casinos world-wide. They were similarly interested in working with Claimants to reopen their Casinos, but they approached SEGOB with this possibility, who on information and belief told them that reopening the Casinos was not possible.

83. Claimants similarly engaged in lengthy discussions with Grand Odyssey, a company with gaming operations in Mexico, regarding a possible merger. But again, when Grand Odyssey met with SEGOB to discuss a potential merger, SEGOB again objected to any potential merger with Claimants, even reportedly telling the Grand Odyssey executives that the Casinos could never be reopened if the "gringos" remained involved in the management of the Casinos or Casino Companies.

84. Lastly, Claimants met on two occasions with Grupo Televisa, a well-known and established player in the entertainment and gaming industries in Mexico, to discuss the sale of the Casinos' assets. The first meeting occurred in May 2014, but yielded only a low-ball verbal offer that Claimant Gordon Burr, acting on behalf of Claimants, immediately rejected. Of concern, this low-ball offer was accompanied by a warning that Claimants were better off

selling their Casinos, even if for a low amount, as otherwise the Government would end up taking the operations from Claimants. After that meeting, Claimants became convinced that the Government was blocking every potential purchaser for reasons unknown to this date to Claimants. Grupo Televisa made a second offer in September 2015, which Claimant John Conley spearheaded through certain preliminary discussions, but which ultimately did not yield any results.

I. MEXICO WOULD NOT BE DERAILED FROM ITS GOAL OF ELIMINATING E-GAMES FROM THE MEXICAN GAMING INDUSTRY

85. On April 4, 2014, while the Amparo proceedings were still pending and shortly before SEGOB's unlawful closure of the Casinos on April 24, 2014, E-Games made a good faith attempt to fix the unravelling situation by requesting new and independent permits for the Casinos it had been operating since 2006 in addition to two new locations in Veracruz and Huixquilucan. E-Games again fully complied with all requirements set forth in the Gaming Regulation, despite that it had already obtained an independent permit on its own to operate the Casinos. E-Games, however, was interested in getting back on its feet and getting its Casinos operating again.

86. On August 15, 2014, SEGOB denied E-Games' request for the new permits relying on unsubstantiated and purely technical grounds, and without affording E-Games the opportunity to correct the alleged errors in its requests.[38] SEGOB based its denial of the permits on allegations that the facilities where it would operate (Claimants' five existing Casinos) were closed. This ground does not pass even the straight-face test, much less international standards for governmental conduct with respect to foreign investors. Not only were the Casinos closed because Mexico had ordered them shut (unlawfully and in breach of Claimants' rights as described above), but more important the existence of open, operating casinos is not a requirement for the granting of a permit under the Gaming Regulations and never has been a requirement for the issuance of permits, which are routinely requested and granted to companies before they had made the substantial investments required to build the casinos. On information and belief, SEGOB has granted casino permit requests made mostly

[38] SEGOB's denial of E-Games' requests (Aug. 15, 2015), C-27 – C-33.

by Mexican companies both before and after Claimants made this request to SEGOB in 2014 even though such companies did not have Casinos operating at the time the requests were made.

87. SEGOB's additional rationalizations were similarly specious. Specifically, SEGOB denied the new permits because one of the many documents E-Games submitted with its request–a certificate of good standing from the relevant municipalities—was supposedly outdated, did not comply with certain formalities and was originally tied to E-Mex's permit. In deploying these justifications, SEGOB not only rested on an insignificant technicality without affording E-Games the opportunity to rectify it, but also by associating yet again E-Games' certificate of good standing with E-Mex's permit, despite that the municipalities (Naucalpan, Puebla, Villahermosa, Cuernavaca, D.F., Veracruz, and Huixquilucán) had already transferred those certificates to E-Games since at least 2009. This certificate of good standing was a single document out of the voluminous set of documents that E-Games submitted with its requests and is one that could have been easily rectified had SEGOB acted in accordance with its Gaming Regulation and treated E-Games fairly and transparently. But it did not do so.

88. Far from basing it on legality and the principles of due process and fairness that Mexico is bound by international law and the NAFTA to observe, SEGOB's conduct with respect to E-Games' new permit applications was arbitrary, discriminatory and driven by the same animus that guided Mexico's conduct with respect to E-Games' pre-existing, valid permit: the PRI Government's agenda to wipe out E-Games from the Mexican gaming industry at any cost.

J. MEXICO SUBJECTS CLAIMANTS TO HARASSMENT AND RETALIATORY MEASURES

89. The PRI Government's systematic attack on Claimants was not limited to the total annihilation of their casino operations, but also included a pattern of harassment and retaliatory measures that caused them substantial harm, interfered with their ability to continue operating and benefiting from their investments in Mexico, and likely has as their aim to claw back illegally any damages awarded against Mexico in these proceedings. More specifically, the Government carried out unlawful, discriminatory and highly retaliatory tax measures against E-Games and conducted unwarranted criminal investigations against E-Games representatives that resulted in equally unsubstantiated criminal charges against them.

1. Mexico Uses Its Tax Authorities To Further Harass Claimants

90. Claimants always complied with all applicable tax legislation under Mexican law, so much so that they repeatedly sought advice from the Mexican tax ministry (**SAT by its Spanish acronym**) on E-Games' reporting obligations of the casino operations. In 2012, the SAT carried out a tax audit on E-Games' casino operations for 2011 and determined that E-Games was in compliance with all applicable tax legislation and, as such, had no observations on its tax returns.

91. In September of that same year, SAT commenced another audit related to E-Games' 2009 operations. Shortly thereafter, on December 1, 2012, the PRI took power and used that existing audit to further harass and retaliate against Claimants. Specifically, on February 28, 2014, the SAT issued a resolution finding that E-Games had not complied with its reporting obligations and ordering it to pay $170,475,625.02 (which on said date amounted to approximately US$ 12,796,600 and nowadays amounts to US$ 9,156,300) in back taxes. This resolution came as a complete surprise to Claimants, particularly since E-Games' had reported and accounted for its operations in the exact same manner as E-Games' tax returns for 2011, which were based on the SAT's responses to E-Games' prior inquiries. The possibility of additional, spurious tax claims by Mexico's SAT against Claimants remains a very real threat.

2. Mexico Also Has Harassed And Retaliated Against Claimants By Launching A Criminal Investigation And Filing Spurious Criminal Charges Against Claimants' Representatives In Mexico

92. In a similar vein, the PRI Government, and most notably SEGOB, used the Attorney General's office (**PGR by its Spanish acronym**) in an unlawful and arbitrary manner to trump up unwarranted criminal charges against E-Games' representatives. On information and belief, Claimants understand that SEGOB has alleged that E-Games illegally operated the Casinos since August 2013, when the *Amparo* judge ordered SEGOB to rescind all resolutions derived from the May 27, 2009 Resolution, until April 2014 when SEGOB closed down all of the Casinos. SEGOB has used the PGR to intimidate and harass Claimants' representatives in Mexico by exposing them to criminal fines and possible imprisonment.

93. Despite Claimants representatives' attempts to access the formal criminal complaint, the PGR has refused to share the file, leaving Claimants and their representatives in Mexico in the dark about the facts alleged against them and the identity of their accusers. On

information and belief, Mexico has resorted to these criminal investigation and prosecution in retaliation for Claimant's recourse to the dispute resolution mechanism offered to them under the NAFTA, as those measures came on the heels of Claimant's Notice of Intent dated May 23, 2014.

IV. MEXICO'S CONDUCT COMPLETELY DESTROYED CLAIMANTS' CASINO OPERATIONS

94. The Government's conduct led to the complete shutdown of Claimants' operations, as it not only revoked their permit through court proceedings and administrative action replete with irregularities, arbitrary government conduct, undue interference by Executive branch, and violations of due process, but also physically closed all Casinos depriving Claimants' of any access to them. These measures destroyed Claimants' investments and casino businesses in Mexico. Claimants were also subjected to a pattern of harassment and retaliatory measures by the Government, including unfounded and retaliatory tax measures and criminal investigations and charges, which caused them substantial damages.

95. Claimants' losses are aggravated by the Government's unjustified refusal to grant Claimants access to the Casinos, thus interfering with Claimants' efforts to mitigate damages by selling property and assets inside the Casinos. Moreover, Claimants have also sought to mitigate losses by exploring the possible sale of their investment, but the Government unlawfully interfered and prevented these transactions from developing.

V. MEXICO'S BREACHES OF THE NAFTA

A. MEXICO'S BREACHES OF THE NAFTA

96. In light of the evidence and reasons identified above and that will be elaborated upon during the course of these proceedings, Mexico has violated numerous provisions of Chapter 11 of the NAFTA. Claimants reserve the right to modify and expand upon these breaches as the case and evidence progresses and nothing mentioned herein should be construed as a waiver of any right or claim that it may have against Mexico.

1. Failure to Accord Claimants' National Treatment

97. Article 1102 of the NAFTA provides as follows:

> 1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the

> establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

98. Through its actions and omissions, Mexico treated Mexican investors in the gaming industry, and their investments in the casino industry, more favourably than Claimants by, among other concessions, allowing them to operate under identical circumstances as E-Games. For example, while the Government worked to shut down Claimants' casino operations, it did not take the same (or in fact any) action against a Mexican casino operator—Producciones Móviles—which had obtained its permit on virtually identical grounds and circumstances as E-Games. Similarly, Petolof, whose permit E-Games' relied upon when it sought to become an independent operator, remains in business as an independent operator today.

99. When Claimants attempted to counteract the unlawful government measures by requesting new casino permits to resume their casino operations with a clean slate in April 2014, Mexico denied Claimants' request on arbitrary and specious grounds, while at the same time granting permits at or around that time and subsequent to mostly Mexican companies, granting these Mexican companies and their investments more favorable treatment than that which it granted to Claimants. Mexico's more favorable treatment of similarly placed national investors, and their investments, violated Mexico's obligations under Article 1102 of the NAFTA.

2. Failure to Accord Claimants' Most Favored Nation Treatment

100. Article 1103 of the NAFTA provides as follows:

> 1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

101. Article 1103 of the NAFTA, as shown above, also provides for "most favored nation" treatment with respect non-Parties to the NAFTA. In this respect, there are provisions of BITs Mexico has entered into with NAFTA non-Parties that provide for substantive protections on which the Claimants may rely, beyond those explicitly included in the NAFTA.

102. Specifically, though not exclusively, through its action and omissions, Mexico breached its obligation contained in Article 11.3 of the Mexico–Central America Free Trade Agreement (CAFTA-Mexico), which provides that the parties to CAFTA-Mexico must "not deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world." This provision from the CAFTA-Mexico provides an express and more defined standard of Mexico's obligation not to deny Claimants' justice, which inures to the Claimants' benefit by operation of Article 1103 of the NAFTA, as do the substantive provisions of any other treaty signed by Mexico to the extent required to ensure that Claimants receive from Mexico treatment no less favorable than that accorded to other foreign investors. Claimants reserve their right to modify and/or expand upon their ability to avail themselves of additional provisions from other treaties adopted by Mexico during the course of the arbitration.

3. Failure to Accord Claimants Fair And Equitable Treatment and to Refrain From Adopting Unreasonable or Discriminatory Measures

103. Article 1105 of the NAFTA provides as follows:

> 1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

104. Mexico's treatment of Claimants' investment, including through the various governmental measures identified above, including, without limitation, (i) SEGOB's arbitrary and discriminatory application of its Gaming Regulations to revoke Claimants' November 16, 2012 casino permit and to deny Claimants' application for a further casino permit in August 2014; (ii) the arbitrary, non-transparent and discriminatory judicial proceedings that led to the revocation of Claimants' permit and authorizations to operate its Casinos in Mexico; (iii) the executive branch's unlawful, non-transparent and improper intromission in the judiciary's treatment of the judicial cases concerning Claimant's authorizations to operate their Casinos in Mexico; (iv) Mexico's illegal interference into Claimants' efforts to mitigate its damages by attempting to sell its Casinos and/or its Casino assets to third parties; (v) Mexico's retaliatory, arbitrary and illegal tax measures against Claimants; (vi) Mexico's retaliatory, arbitrary and

illegal criminal charges and measures against Claimants; (vii) Mexico's denial of justice to Claimants in the various judicial proceedings that led to the revocation of Claimants' permit and authorizations to operate their Casinos in Mexico. Each of these measures, and the others that Claimants allege and will prove in these proceedings all, individually and taken together, as described above, have been unreasonable, arbitrary, discriminatory and grossly unfair, in breach of Article 1102 of the NAFTA. Mexico's conduct also has been contrary to the specific legitimate expectations upon which Claimants relied when investing in Mexico.

4. The Unlawful Expropriation Of Claimants' Investments

105. Article 1110 of the NAFTA provides as follows:

> 1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
>
> (a) for a public purpose;
>
> (b) on a non-discriminatory basis;
>
> (c) in accordance with due process of law and Article 1105(1); and
>
> (d) on payment of compensation in accordance with paragraphs 2 through 6.
>
> 2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria as appropriate, to determine fair market value.
>
> 3. Compensation shall be paid without delay and be fully realizable.
>
> 4. If payment is made in G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.
>
> 5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate of that G7 currency from the date of expropriation until the date of payment.
>
> 6. On payment, compensation shall be freely transferable as provided in Article 1109.

106. Mexico's closure of the Casinos, particularly through SEGOB and the Mexican Judiciary, and other State entities, have resulted in the expropriation of Claimants' investments, including, but not limited to, the expropriation of the Mexican Companies and Claimants' ownership and other interest in them. Mexico has not provided just compensation to Claimants

in respect of these measures, which were discriminatory, arbitrary, not in the public interest, not in accordance with due process of law, and in breach of Mexico's undertakings under the NAFTA and international law.

VI. PROCEDURAL MATTERS

A. CONSENT TO ARBITRATION

1. Claimants are Entitled to the Protections of the NAFTA

107. The NAFTA protects investments made by an investor of a Party in the territory of another Party. Claimants and their investments in Mexico are entitled to protection under the NAFTA.

a. "Investor of a Party"

108. Article 1139 of the NAFTA defines the term "Investor of a Party" as "a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or had made an investment." In this regard, Article 201 of the NAFTA defines a "national" as "natural person who is a citizen or permanent resident of a Party or any other natural person referred to in Article 201.1." Likewise, Article 201 of the NAFTA defines an "enterprise" as virtually any "entity". Consequently, Claimants, advancing their claims on their own behalf (Article 1116) and on behalf of their enterprises (Article 1117), are investors of the United States under the NAFTA.

b. "Investment"

109. Article 1139 of the NAFTA defines the term "Investment" as follows:

> (a) an enterprise;
> (b) an equity security of an enterprise;
> (c) a debt security of an enterprise
> i. where the enterprise is an affiliate of the investor, or
> ii. where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity , of a state enterprise;
>
> (d) a loan to an enterprise
> i. where the enterprise is an affiliate of the investor, or
> ii. where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise.;
>
> (e) an interest in an enterprise that entitles the owner to share the income or profits of the enterprise;
>
> (f) am interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) 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

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

i. contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction
contracts, or concessions, or
ii. contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

i. claims to money that arise solely from
i. commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or
ii. the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

110. The present dispute arises out of the Claimants' investment in Mexico's gaming industry, including but not limited to: (i) the Mexican Companies; (ii) shares in the Mexican Companies which entitled plaintiffs to a share of the income and profits of the Mexican Companies and the Casinos; (iii) assets and property in the Casinos, including immovable property, equipment, vehicles, inventories, intellectual property and other intangible assets; (iv) amounts invested in the modernization of production equipment and in the production capacities of the Casinos' assets;[39] (v) loans made to the Mexican Companies, including without limitation loans made for the development of the B-Cabo project that were not fully repaid; (vi) capital expended for purchase of the permits for the Casinos and the B-Cabo and Colorado Cancun projects; (vii) non-capital resources expended to develop and manage operations of the Mexican Companies and the Casinos, and to develop new projects B-Cabo and Colorado Cancun; and (viii) the E-Games permit, which was valid for a period of 25 years and provided Claimants with the legally-secured expectation of opening at least 4 more gaming facilities (2 remote gambling centers and 2 lottery room numbers).

39 *See supra*, nn 6-7.

2. Prior Attempts at Amicable Settlement of This Dispute Have Failed

111. Despite Claimants' good faith efforts to settle this dispute amicably, and notwithstanding discussions to this effect with different Government entities and through various channels, the disputing parties have failed to resolve the issues in dispute.

3. Notice of Intent to Submit a Claim to Arbitration

112. Pursuant to and in accordance with Article 1119 of the NAFTA Treaty, on May 23, 2014, Claimants sent Mexico a Notice of Intent to Submit A Claim to Arbitration.[40]

4. Agreement to Submit Disputes Under the NAFTA to the Additional Facility

113. Article 1120(1)(b) of the NAFTA provides:

> Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:
>
> (a) ...
>
> (b) the Additional Facility Rules of ICSID, provided that either the disputing Party and the Party of the investor are parties to the Convention.

114. Moreover, Article 1122(1) of the NAFTA expressly recognizes the right to refer a dispute to arbitration under different procedures, including the Additional Facility Arbitration Rules.[41] In this regard, Mexico made a unilateral offer to submit to arbitration claims for breaches of a substantive obligation of the chapter. In addition, Article 1222(2) states that "[t]he consent given by Paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of ... the Additional Facility Rules for written consent of the parties." By this Request for Arbitration, Claimants accept Mexico's offer, and hereby submit the present dispute to arbitration under the Additional Facility Rules of ICSID.

115. Article 1121 of the NAFTA requires as a condition precedent to submission of a claim to arbitration that certain consents and waivers be provided by Claimants and their enterprises. Each of the requirements to establish an agreement to arbitration is met here.

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[40] Notice of Intent to Submit a Claim to Arbitration (May 23, 2014), C-34.

[41] Article 1122(1) of the NAFTA provides that "[e]ach [NAFTA] Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement."

116. *First*, the NAFTA entered into force on January 1, 1994 and remains in force between Mexico and the United States.

117. *Second*, more than six months have elapsed since Mexico's unjustified and wanton closure of the DF casino in June 2013, thus the temporal condition stated in Article 1120(1) is met. Additionally, more than 90 days have elapsed since Claimants submitted to Mexico their Notice of Intent dated May 23, 2014.[42] More importantly, however, Claimants submit this Request for Arbitration on June 15, 2016, within the three-year deadline contemplated by Articles 1116(2) and 1117(2) of the NAFTA.

118. *Third*, Claimants are either nationals of the United States or enterprises organized under the laws of the United States, and are therefore investors of the United States under the definition of an investor set forth in Article 1139 of the NAFTA. And while the United States is a Contracting State of the ICSID Convention, Mexico is not, thus meeting the requirement of jurisdiction *rationae personae* with respect to the Additional Facility Rules as set forth in Article 1120(1)(b) of the NAFTA.

119. *Fourth*, and lastly, Claimants and the Mexican Companies have provided the requisite consent to arbitration under the Additional Facility and waiver in the form contemplated by Article 1121 of the NAFTA.[43] Accordingly, Claimants have waived 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 of the disputing Party that are alleged to be a breach referred to in Articles 1116 and 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 the disputing Party.

5. Approval for Access to the Additional Facility

120. Article 4(2) of the Additional Facility Rules requires that the Secretary-General give her formal approval for the Parties to arbitrate under the Additional Facility Rules. Claimants hereby request such approval, as the requirements in Articles 2(a) and 4(2) of the Additional Facility Rules are met in this dispute.

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42 CITE Notice of Intent to Submit a Claim to Arbitration (May 23, 2014), C-34.

43 CITE Consent Waivers, C-4.

121. Pursuant to Article 2(1)(a), the Secretariat of the Centre is authorized to administer arbitration proceedings between a State and a national of another State "arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State . . .." As demonstrated throughout this Request, the dispute is a legal one arising out of Claimants' investment in the Mexican Companies and the Casinos. As stated above, while Claimants are either nationals or enterprises organized under the laws of a Contracting State Party to the ICSID Convention (the United States), and is thus an "enterprise" and "investor" of a Party pursuant to NAFTA Article 1139 and a "national of another State" within the meaning of the ICSID Convention, Mexico is not a Contracting State to the ICSID Convention. It is therefore appropriate to initiate arbitration proceedings under Rule 2(a) of the Additional Facility Rules.

122. For the avoidance of doubt, and in the unlikely event that Mexico were to ratify the ICSID Convention so that the jurisdictional requirements of Article 25 of the Convention are met at the time when proceedings are initiated, Claimants hereby consent to the jurisdiction of the Centre under Article 25 of the Convention.

B. FORMALITIES

1. Authorisation of Request

123. As stated in paragraph 3 above, Claimants have taken all necessary actions to authorize this Request for Arbitration. Claimants have also authorized Quinn Emanuel Urquhart & Sullivan, LLP to submit the Request on their behalf.[44]

2. Number of Arbitrators and Method for Appointment

124. Article 1123 of the NAFTA specified that "the Tribunal shall comprise of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties." The disputing parties have therefore agreed to NAFTA's provision on the number and method of appointment of the arbitrators. The disputing parties have moreover agreed, in accordance with Article 1125 of the NAFTA, that the limitations on the nationality of arbitrators in Article 7 of the Additional Facility Arbitration Rules shall not apply in these proceedings.

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[44] *See* Power of Attorney, C-4.

125. Pursuant to Article 1123 of the NAFTA and Article 11(1) of the Additional Facility Arbitration Rules, Claimants hereby notify the Secretary-General that they will soon make their appointment of an arbitrator.

3. Venue of the Arbitration Proceedings

126. Pursuant to Article 1130 of the NAFTA and Article 19 of the Additional Facility Arbitration Rules, Claimants propose that the arbitration proceedings be held in Washington, D.C., USA. Mexico is invited to confirm its agreement with this proposal within 20 days of the date of registration by the Secretary-General of this Request for Arbitration.

4. Language of the Proceedings

127. Claimants propose that the proceedings be conducted in English.

5. Copies of the Request for Arbitration and Payment of Fee

128. Pursuant to Article 3(3) of the Additional Facility Arbitration Rules, the original plus five signed copies of this Request are being provided to the Secretary-General of ICSID as well as the payment of the fee prescribed in Regulation 16 of the Administrative and Financial Regulation of the Centre.[45]

C. RESERVATION OF RIGHTS

129. Claimants reserve their right to modify or supplement the claims and prayer for relief stated in this Request for Arbitration, to advance further claims, arguments, and prayers for relief and to produce further evidence (whether factual or legal) as may be necessary to complete or supplement the presentation of those claims, or to respond to any arguments or allegations raised by Mexico.

VII. RELIEF SOUGHT

130. Mexico's violations of the NAFTA, other Mexican laws, and international law set out herein have destroyed Claimants' investments in Mexico. Under international law, the NAFTA, and applicable Mexican law, Claimants are entitled to be placed in the position they would have been in had their rights not been violated.

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[45] Claimants submit along with this Request for Arbitration a confirmation of the wire transfer of the fee.

131. Claimants will quantify and support the calculation of their losses during the course of this arbitration, but they currently estimate those losses to be in the hundreds of millions of US dollars.

132. For the foregoing reasons, Claimants shall seek from the Tribunal the following relief:

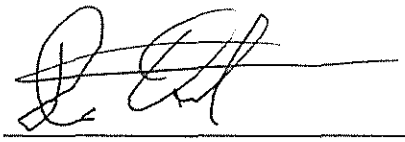
a. an order declaring that Mexico has violated Articles 1102, 1103, 1105, and 1110 of the NAFTA as well as obligations under international law;

b. an order directing Mexico to pay damages sufficient to wipe out the consequences of its wrongful actions and omissions in a sum to be proven throughout the course of these proceedings, but which the Claimants presently estimate to be in excess of one hundred million US dollars ($100,000,000), plus pre- and post-award interest thereon at a commercially reasonable rate, compounded;

c. an order directing Mexico to pay all costs incurred in connection with these arbitration proceedings, including the costs of the arbitrators and of the Additional Facility, as well as legal and other expenses incurred by Claimants including the fees of their legal counsel, experts and consultants, and those of Claimants' own employees, plus interest thereon at a reasonable rate from the date on which such costs were/are incurred to the date of payment; and

d. such other relief as the arbitral tribunal may deem just and proper.

Respectfully submitted,



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