

**INTERNATIONAL ARBITRATION UNDER THE RULES OF THE INTERNATIONAL  
CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)**

**OMEGA ENGINEERING LLC  
AND  
MR. OSCAR RIVERA  
*CLAIMANTS***

**v.**

**REPUBLIC OF PANAMA  
*DEFENDANT***

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**WITNESS STATEMENT OF FRANKIE J. LÓPEZ**

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**Translation**

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**MAY 27, 2019**

# Translation

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### I. INTRODUCTION

1. My name is Frankie López. I was born in San Juan, Puerto Rico, on [REDACTED]. I am a licensed engineer in Puerto Rico (License # [REDACTED]) and in the state of Florida, United States (License [REDACTED]). I have approximately 20 years of experience in the construction industry.

2. In 2000, I obtained a university degree in Civil Engineering from Universidad de Puerto Rico, graduating with honors *magna cum laude*. In 2004, I received a master's degree in Engineering from Universidad Politécnica de Puerto Rico. During my professional career, I have taken several engineering-related courses, including: “*Steel Design After College Seminar – CIAPR 2005*,” “*Corrosion Inhibitor of Steel Reinforced Concrete Seminar – CIAPR 2004*,” “*Helical Pier Foundation Seminar – CIAPR 2004*,” “*Structural Design with FRP Composite – CIAPR 2002*,” “*OSHA 300 – AGC 2002*.” Also, I am an active member of the Puerto Rican Association of Engineers and Surveyors.

3. Starting in 1997, before obtaining my civil engineering degree, I became involved in several construction projects. In the summers of 1997, 1998 and 1999, I actively participated in construction projects (*i.e.*, Education Department - Public Schools Improvements Office, Hato Rey, PR; Sani Plant, Inc. Trujillo Alto, PR; US Forest Service Humbolt Toiyabe Sparks, NV), particularly in the design and planning of the works, construction inspections, review of the plans, and preparation of the budget.

4. While I was finishing my civil engineering degree, I started actively searching for a job in Puerto Rico. As part of that process, I sent my resume to fifteen companies, including Omega Engineering LLC (“**Omega U.S.**”). During the selection process, I had the opportunity to meet Mr. Oscar Rivera (“**Oscar**”) in person, who interviewed me as part of the process. I also met Oscar's father, [REDACTED], who at the time was the President of the company and was actively working

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on several projects he oversaw directly. As a result of the hiring process, Oscar offered me a job at Omega U.S. Grateful to Oscar for the opportunity he was giving me, I accepted the offer and started working at the company immediately.

5. Since then, which was in 2000 to 2016, I worked closely with Oscar, mainly directing the operation of Omega U.S. and Omega Engineering Inc. (“**Omega Panama**”), in Puerto Rico and Panama. Although I never cut ties with the Puerto Rico operation, for the last few years, I was exclusively focused on the operation of Omega Panama. After the absurd, surprising and arbitrary destruction of the Omega Panama projects through the suspension, termination or abandonment of contracts by the Panamanian government (the “**Government**”), I had to leave Panama and return to Puerto Rico.

6. When I returned to Puerto Rico, I became the General Director of FL Consulting Group, PSC, a Puerto Rican company that provides engineering and construction management, budgeting, inspection, and claim review services, among others, mainly in Puerto Rico. Since September 2017, I have provided services to the construction company MCP Group LLC (“**MCP Group**”). I am in charge of seeking and developing business opportunities as well as preparing estimates for future projects during the preconstruction stage.

7. In turn, MCP Group has been in communication with Burke Construction Group (“**Burke**”), the company where Oscar worked from 2018 until April 2019, for the execution of projects in Puerto Rico. To date, we have jointly submitted two proposals for tendered projects for: (1) the renovation of the Roberto Clemente Walker baseball stadium in Carolina, Puerto Rico,<sup>1</sup> and

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<sup>1</sup> This was my first Project with Omega U.S. and started in 2000. *See infra* ¶ 10.

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(2) the public housing program (repair and construction of social housing) in January 2019. Currently, we are waiting on the decision to award these projects.

8. Any references to documents in this statement are to Claimants' documents (marked as "C - \_\_\_") or the Defendant's documents (marked as "R-\_\_\_"). Jones Day and Shook, Hardy & Bacon LLP, the law firms representing Claimants in this arbitration, assisted me in the administrative preparation of this statement.

## II. RELATIONSHIP WITH OSCAR RIVERA AND THE OMEGA COMPANIES

9. As I mentioned before, I met Oscar for the first time when he interviewed me in December 1999. I started working with Oscar on January 3, 2000, as a Project Engineer, and continued until February 2016, when the operation in Puerto Rico was forced to close.

10. The first project with Omega U.S. was the construction of the Roberto Clemente Walker baseball stadium in Carolina, Puerto Rico, between January 2000 and October 2002, a project for which I served as Project Engineer. The project consisted of the construction of a five-story stadium for 12,500 people, with 4,000 parking spaces. I was responsible for coordinating the project's field activities and supervising all subcontracted personnel. The value of this contract was almost US\$ 30 million.

11. Once the construction of the stadium was finished, I was assigned to the *Pabellones de Fortaleza* project in Puerto Rico, which, although it was smaller than the previous one, was entirely managed by me as a Project Director, reporting directly to Oscar. This project consisted of the restoration of five historic buildings in old San Juan. I was in charge of coordinating all the subcontractors, the contractual documents of the project, and billing and collection for the contract. This project was executed between November 2002 and September 2004.

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12. Later, I worked on the remodeling of Plaza de Diego, in Santurce, Puerto Rico between 2003 and 2005, also as Project Director. That time we had to remodel a 13-story building used for luxury apartments and commercial premises and build a new 7-story structure for parking. I was in charge of ensuring compliance with project deadlines and with the budget. As you can see, during my first years at Omega U.S. I was assigned to a project and, once it was finished, I was assigned to another. During that time, I was not involved in more than one project at a time.

13. In 2006 Oscar acquired Omega U.S. After this transaction, in that same year, Oscar promoted me to manage the estimates and procurement department, a position I held until 2010. My duties included reviewing contractual documents overseeing costs estimations and managing projects, , projecting estimates based on any plans and information collected, obtaining proposals from subcontractors, and managing the relationship with the client, among other aspects. Once the contract was awarded to Omega U.S., I was responsible for managing procurement and formalizing the subcontracts, as appropriate.

14. Out of the 16 years I worked with Oscar, for five years I was directly and personally in charge of the Panama operation as General Manager of Omega Panama. This was between 2011 and 2015. During these years, as I describe throughout this statement, I oversaw the day-to-day operations of all the Omega Panama Projects, which had an approximate value of US\$ [REDACTED]. I personally coordinated and supervised the project managers and was the company's representative before subcontractors and clients, that is to say, government entities. I was the person in charge of Omega Panama.

15. What happened in Panama was really frustrating to the extent of making me feel powerless against everything that happened, especially for Oscar. Oscar had decided to seek opportunities in Panama because, among other things, the Puerto Rican economy was going through

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a difficult moment. Being an entrepreneur and keen businessman with a long and successful career in construction, even without any previous experience and/or contacts in Panama, he managed to successfully enter the construction industry and submit several proposals for public works projects. His great potential and working capability were proven when, in only three years, he was able to assemble a team of professionals who amassed US\$ 150 million in contracts in Panama. Of those contracts, Oscar successfully completed two and came close to completing the others, when the unfair treatment by Panama towards him and his companies began, thus affecting operations and Oscar's business. What happened was unfair not only to Oscar and his companies, but also to myself. Oscar and I had discussed on various occasions about my future partnership in Omega U.S. Consequently, Panama's actions against Oscar and his companies have also affected me, as well as my professional career.

16. In addition to being a successful businessman, Oscar has always been an upright professional, with the highest ethical standards, as well as an honest, hard-working, enterprising and transparent person. For my part, I feel grateful to him and have only positive words for him, as he has set an example of personal and professional standards for me.

### **III. THE DECISION TO GEOGRAPHICALLY EXPAND THE OPERATION; CULMINATING IN THE DECISION TO ENTER THE PANAMANIAN MARKET**

17. As I mentioned before, Puerto Rico was going through difficult times in 2009. Oscar had always intended to look for opportunities abroad, and this seemed like the perfect time to look for alternatives in other jurisdictions and expand Omega U.S.' operations. Oscar's father had bought a piece of land in the Dominican Republic. We saw residential development opportunities in the Dominican Republic in the years 2007 and 2010. During that time, Oscar also traveled to Colombia, Peru and other Latin American countries looking for opportunities in other markets. On one of those business trips, during a stop in Panama City, Oscar became very interested in the Panamanian market

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and the similarities in the construction process. It was a very good time for the construction sector in the country, which was experiencing a construction “boom.”

18. At the end of 2010, Oscar asked me to move to Panama to direct the operations of Omega U.S. and Omega Panama in that country. For my professional career, it was an unparalleled opportunity and given my experience and knowledge of the company at that time, I was fully qualified to successfully do the job with which Oscar was entrusting me. So, I moved to Panama in early 2011. Sometime before the move, I made the transition with the person who took over my position in Puerto Rico. I trained my replacement as several major projects were still in progress in Puerto Rico. At the time, the construction of Kroc Center was starting and the negotiations with the Puerto Rican Government for the construction of four schools under the 21st Century Program were being finalized. In addition, we had the Los Altos project and development, which had been tendered publicly and won in 2007. We bid on that project as a consortium led by Oscar, who formed a corporation with other partners, Mr. Cardona (an architect) and Mr. Mercado. Mr. Mercado soon left the project and Oscar took over his share. Omega U.S. contributed engineering and construction services for the Los Altos project. The *Autoridad de Carreteras y Transporte* contract was formalized in 2008, but given that one of the participants challenged the bidding process, the start of the project was delayed. I provided continuing support to the Los Altos team on financial issues and on the engineering and construction costs. Even though I moved to Panama, I never completely cut ties with the Puerto Rico operation.

19. At the beginning, Omega Panama bid as a subcontractor in the private industry for projects such as creating a paint warehouse for LANCO enterprise, developing the electro-mechanic system of the AGORA office tower, and building a dialysis clinic for CETRESA, for all of which I prepared the economic proposals. Then, in 2010, Omega Panama expanded its horizons in order to achieve its main goal: obtaining public works contracts. That is how Omega U.S. and Omega Panama



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(together, the “**Omega Consortium**”) participated in their first group of tenders with the Ministry of Health (“**MINSA**”). The “package” consisted of 10 medical facilities open for tender, for which each company could present their offer on any or all. The tender process and scoring system was the same for all the facilities. On the first tranche of bids for medical facilities, the Omega Consortium was not awarded any projects. From this experience, we concluded that we needed to strengthen our expertise with medical equipment, as the scoring we obtained in that rubric did not favor us in the final evaluation of our tender. After that, in 2011, there was a second tranche of bidding for medical facilities from MINSA, in which the Omega Consortium was awarded three contracts. For our second set of bids, we added the Puerto Rican company Ciracet, a company that specialized in hospital equipment, to the Consortium. With the necessary arrangements in place, the second score obtained from the evaluating committee was much improved. As a result, we won three contracts on the second bidding round for MINSA. We also came to a better understanding of how the nuances of the “best value” bidding process works in Panama.

20. At the time, our Panama office had approximately [REDACTED], most of them expatriate professionals from Puerto Rico. A management team of approximately [REDACTED] was assembled for each of the projects. I was responsible for managing the day-to-day operation, and acted as the legal representative of the company.

21. Before describing the first projects in which Omega Panama bid, it is important to understand how the bidding process works in Panama.

### **A. Omega Panama’s Team for Tenders and the Nuances of the Tenders**

22. The organizational chart of Omega Panama included a team that was in charge of preparing bids for public works (those involving public projects of a government agency) and private

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tenders, when the service was requested by a company from the private sector.<sup>2</sup> For Government tenders, there was a website called “PanamaCompra,” where the entire bidding process was carried out. Any tenders offered by the Government were also published on this website.

23. Once we identified a project that, due to its magnitude and characteristics, matched our experience and technical and financial capacity, we started to analyze it. Oscar delegated the responsibility of leading bidding processes to [REDACTED], who would spend a few minutes a day reviewing bid publications on PanamaCompra in order to identify bids that could potentially interest us. He would share his recommendations with the team and we would decide whether we could meet the requirements of a potential bid. If we could meet the requirements, [REDACTED] would assign tasks to each department within the company to compete for the bid.

24. [REDACTED] managed all the required financial and insurance-related matters. [REDACTED] was also in charge of certifying the experience and recruiting suitable local personnel—the Panamanian Government carefully protects the local labor and human resources. Thus, it demands the involvement of a minimum number of nationals on the work team, and specialist professionals, who are called the “suitable personnel.” [REDACTED] was in charge of preparing the documents and technical reports, which would be presented to the institution. I, supported by the Department of Estimations, oversaw the economic proposals which, on some occasions, determined whether we could present an offer.

25. Usually, the construction projects announced on PanamaCompra were tendered under the modality of “design and construction.” In this case, the bidder was the one responsible for both

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<sup>2</sup> See Omega Panama’s Organizational Chart (C-0517).

<sup>3</sup> [REDACTED] was the Financing Director of the Omega Companies.

<sup>4</sup> [REDACTED] is an architect and, among other things, the person who identified the appropriate design and consulting firms for each project. For the the Omega U.S. private projects, he led the design group (subcontractor), serving as a link to pre-construction works.

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the design and construction. These bidding processes with the Government were not simple. On the one hand, they were quite long. There were no pre-qualification procedures, which implied that the Government received many offers. On top of that, the requirements to apply for each process were many and difficult to obtain. In order to be able to prepare the offer on time, we distributed the tasks to certify the experience, to apostille the documents, to demonstrate our financial capacity, and to validate the reference price, among many aspects.

26. To fully comply with the requirements set forth in the bid, Omega Panama and Omega U.S. applied as a consortium. On the one hand, Omega Panama was the company that supplied economic resources, as this was the best alternative for taxes and tariff purposes. On the other hand, Omega U.S. provided the consortium with previous experience and years of service. Occasionally, we had to select an additional external company to fulfil requirements that Omega U.S. and Omega Panama could not, for example, the requirement of having been established in Panama for more than 10 years and/or experience in some particular specialization (as I mentioned before regarding Ciracet)<sup>5</sup>.

27. Omega U.S. had more than 25 years of experience in the construction industry and dozens of highly trained technical personnel (often, expatriates from Puerto Rico)<sup>6</sup> to execute the projects through Omega Panama. This was a substantial difference between the Omega Consortium and the rest of the companies in the Panamanian market, because they did not have a combination of so many positive factors as did the Omega Consortium. Omega U.S. had astonishing experience in emblematic projects, highly trained personnel and, finally, solid economic capacity. For these

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<sup>5</sup> The external company never represented more than 1% of the Consortium.

<sup>6</sup> See Omega Panama's Organizational Chart (C-0517).

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reasons, when Oscar offered me the opportunity to develop Omega U.S. in Panama, I did not even think twice.

28. Even though the Omega Consortium had a clear advantage against many of the companies bidding in Panama, the bidding process in Panama had some particularities such as, for example, the different modalities of contracts. Because of the financing methods that these contracts applied, not all companies could be a part of the bid. One of the contract modalities was “turn-key” Contracts. In these cases, the Government assigned a budget line to make a unique payment at the completion of the work, and the project was funded by a private bank that the bidder would find. This method was used for the MINSA and the Institute of National Culture (“INAC”) contracts. Our financing work team entered into agreements with BBVA (BAC) and Credit Suisse. This method is very interesting for the banks, since the debt generated by public works contracts is sovereign debt. This method is also attractive for the Government, since they can build works without having to issue bonds. For the projects that were not “turn-key,” the government assigned a budget line with which they paid the contractors periodically. This was the method used for the Colón Public Market, the Panama Markets, the La Chorrera Judicial building, the Colón City Hall, and Tocumen Airport Contracts.

29. Another particularity in Panama’s bidding process related to the price of the project. Generally, we had to make sure that the proposal was not more than 10% over (considered onerous) or under (considered risky) the reference price pre-established by the Government in the statement of objections. If a bidder made an offer that exceeded more than 10% over or under, the company was disqualified, or was given an economic score of zero. Based on this experience in markets that have more stringent requirements, are very competitive, and where the margins are narrower, such as the United States, we had an advantage due to our relationship with sub-contractors and suppliers. Thus,

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we made sure we fixed an appropriate profit margin for these projects, corresponding to approximately a 20 % profit.

30. With regards to timing, public bids had specific time frames. From the moment in which the bid was published, until the initial opening, there were approximately 45 to 60 days. In some instances, competitors filed requests for additional time, or requests for clarification or to supplement their bids. From that moment, there were 30 to 90 days for the delivery date, but, on average, the process took between 45 and 50 days. Once a company has presented an offer, the evaluating committee could take between 15 and 30 days to evaluate the projects and assign a score to every offer. Typically, the company with the highest score was the one that the committee recommended for the bid. Some pre-requisites were non-negotiable. The make-up of the evaluating committee could differ depending on each entity, but it always had a team of engineers and lawyers, who were generally employed by the respective agency or ministry.

### **B. The First Projects in Panama**

31. After analyzing the business opportunities in Panama, two companies were constituted in Panama: PR Solutions and Omega Panama. The first public project that was awarded in Panama was Tocumen Airport, which was bid and executed by PR Solutions. I do not remember why the bid was made through PR Solutions, but to me that was irrelevant because the execution was going to be made by the same main team. I was never an employee of PR Solutions, but I was always working full time for Omega U.S. or for Omega Panama, and I provided PR Solutions sporadic support in administrative matters. At the time, we bid for public and private projects simultaneously.

32. The Tocumen Airport project's duration was eight months, and we finished it successfully, even though there were some delays.<sup>7</sup> The reason for the delay was that our project

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<sup>7</sup> Certificate of Final Acceptance of Contract No. 035/11 dated 31 Jul. 2013 (C-0007 resubmitted).

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primarily depended on other activities that were to be done by third parties that were not under our responsibility per the contract, and they had some logistic and coordination problems. However, the results of the project were very satisfactory and, by then, Oscar was already convinced that he would continue long-term operations in Panama. In addition, at the time, the Civil Aviation Authority publicly announced that it had the budget to refurbish all the national airports, which was an attractive situation to Oscar because it meant that new opportunities were right there.

33. In addition to this project, the Omega Consortium won nine more projects, one of which was also related to the Tocumen Airport. The Contract for the expansion of the terminal was signed on February 28, 2012. Just as with the other project at the Airport, this project was completed successfully in July 2013<sup>8</sup>. We also bid and won other projects between the end of 2010 and 2013. The following table describes eight projects we bid and won (the “**Projects**” or “**Contracts**”), and it includes the date in which the Comptroller endorsed each Contract:

Project	Adjudication date	Endorsement date
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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<sup>8</sup> See *supra* ¶ 32.

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34. Unfortunately, even though we were carrying out the Projects with best practices, the Omega Consortium's luck in Panama was broken when President Juan Carlos Varela came to power. As such, I will initially recount the first stage, before President Varela came to power, and then the subsequent period.

### IV. PROGRESS OF THE EIGHT PROJECTS UNTIL JULY 2014

35. Of our eight Projects, the first ones we won were the MINSA Contracts, called MINSA CAPSIS, which were in the villages of Río Sereno, Llano Carti (Kuna Yala) and Puerto Caimito. The Río Sereno Contract contemplated the study, plan development, construction and equipment of a 27,500 square foot medical facility, with emergency treatment and maternity rooms.<sup>9</sup> The Kuna Yala Contract contemplated the study, plan development, construction and equipment for a 39,000 square foot medical facility.<sup>10</sup> It would also have medical emergency, maternity and operating rooms. In the case of Puerto Caimito, the Contract contemplated the study, plan development, construction and equipment for a 32,500 square foot medical facility, including a medical emergency room and external clinics.<sup>11</sup>

36. In 2011, the Omega Consortium won a bid with the Ministry of the Presidency (the “MoP”) to build the Public Market in the Province of Colón. The Project consisted of the creation of a market of approximately 38,600 feet that would replace the old market, with new facilities in which farmers could sell their products to the public.<sup>12</sup> This Project would be administered by the Secretary of Cold Chain, an agency ascribed to the MoP.

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<sup>9</sup> Contract No. 077 (2011) dated 22 Sep. 2011 (C-0028 resubmitted).

<sup>10</sup> Contract No. 083 (2011) dated 22 Sep. 2011 (C-0030 resubmitted).

<sup>11</sup> Contract No. 085 (2011) dated 22 Sep. 2011 (C-0031 resubmitted).

<sup>12</sup> Contract No. 043 (2012) dated 17 Aug. 2012 (C-0034 resubmitted).

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37. After that, in 2012, the Omega Consortium won the bid for the Ciudad de las Artes project. This Contract was for the study, construction and financing of an educational institution in the village of Curundú, which would host (i) the national theater company, (ii) the national ballet, (iii) the national organization of music, (iv) the national center of audiovisual arts, and (v) the national symphony orchestra.<sup>13</sup> In addition, the Omega Consortium won the bid for the construction of a judicial building in the district of La Chorrera.<sup>14</sup>

38. In 2013, the Omega Consortium was awarded the contract for the design, demolition and construction of Colón City's Municipal Hall.<sup>15</sup> Later, in that same year, the Omega Consortium was awarded a contract from the Municipality of Panama for the design, construction and equipment of two markets in the villages of Juan Díaz and Pacora.<sup>16</sup>

39. As soon as a project was awarded, the Government agency contacted the company and informed us which documents were needed in order to formalize the contract. The signing of the contract was scheduled after collecting endorsements, records, and the respective certificates of good standing to be delivered to the Government agency. Once everything was ready, the Government agency sent the file to the Comptroller General's Office. The duration of this procedure fluctuated, since, on some occasions, the Comptroller General's Office requested rectifications to some parts of the contracts or annexes. The endorsement process before the Comptroller General's Office was the same for any payment application, change order request, and/or changes to the contract. Without the endorsement of the Comptroller General, a public contract signed between the parties is not valid. Practically, it is as if the obligation never existed.

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<sup>13</sup> Contract No. 093 (2012) dated 6 Jul. 2012 (C-0042 resubmitted).

<sup>14</sup> Contract No. 150/2012 dated 22 Nov. 2012 (C-0048 resubmitted).

<sup>15</sup> Contract No. 01-2013 dated 24 Jan. 2013 (C-0051 resubmitted).

<sup>16</sup> Contract No. 857 (2013) dated 10 Sep. 2013(C-0056 resubmitted).



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40. Before the electoral period in Panama, the Omega Consortium's Contracts, even with the relatively normal problems inherent in construction, and, as I said before, some delays associated with the approval of the Comptroller General's Office, were running smoothly and positively. In fact, both Tocumen Airport Contracts had been completed successfully and the client was highly satisfied with the work we did. However, once President Varela won the election in May 2014, dealing with the Administration became extremely slow and onerous. It is important to note that with respect to the Omega Consortium, there were never criticisms of mismanagement, defects and/or poor construction; what happened in Panama was not a matter of execution or performance of the Contracts, but rather I think it was some kind of retaliatory action or personal vendetta on the part of the Presidency.

### *1. MINSA CAPSI Contracts*

41. Before the change of Government, the Ministry of Health ("MINSA") Contracts had delays. Although none of them was attributable to the Omega Consortium, we nonetheless presented, together with MINSA, the costs associated with the additional works requested by the Government and the extended length of the Projects. On the other hand, MINSA usually delayed issuing the Certificates of No Objection (the "CNO"),<sup>17</sup> by which the Omega Consortium received partial payments, in accordance with the assignment agreement it had with the bank. Just as with any other project, when differences emerged with the client, in this case with MINSA, they were negotiated in

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<sup>17</sup> See, e.g., Email Chain between the Omega Consortium and the Ministry of Health dated 26 Oct. 2012 (C-0165) (listing the pending CNOs in the Kuna Yala and Rio Sereno Project); Email from Salvador Del Toro to Mr. Barsallo dated 6 Dec. 2012 (C-0166) (listing the pending CNOs in the different MINSA Projects). Occasionally, payments had some administrative problems, but these were minor compared to the inconsistencies in the requests, or certain bureaucratic approvals that were necessary, and we were confident they could be resolved. See Note No. 245-2013 from MINSA to BBVA dated 7 Jun. 2013 (C-0520) (returning a payment application due to repeated inconsistencies); Note 041-2014 from MINSA to Omega Consortium dated 4 Feb. 2014 (C-0521) (rejecting two payment accounts due to the lack of approval from the Architectural Department).

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good faith and, in the majority of cases, were solved by signing change orders to the Contracts, even though at times they were delayed.

42. The Río Sereno contract was modified four times to extend its duration, amend the list of medical equipment, and formalize the increased scope of work as requested by MINSA. In the third change order, the period was extended until December 30, 2013.<sup>18</sup> As I stated earlier, the events that caused delays were rain, strikes and bureaucratic delays in obtaining the respective approvals by MINSA.<sup>19</sup> When the Omega Consortium requested time extensions due to the aforementioned factors, we had to negotiate with the Government agency's personnel, even though these delays were not attributable to the Omega Consortium.<sup>20</sup> When we agreed with the Government on a certain amount of days (generally fewer than the original number), it was not because we admitted responsibility for the delays, but simply because the Omega Consortium wanted to continue working and finish the Contracts. Also, the increase in costs was caused by MINSA's request to finance the whole project, as well as changes to future work and to the medical equipment.<sup>21</sup>

43. After December 2013, the Omega Consortium required an additional extension due to delays, again for causes that were not attributable to the Omega Consortium, which was requested in

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<sup>18</sup> Change Order No. 2 to the Rio Sereno Contract dated 21 Feb. 2013 (C-0169) (extending the expiration date until 5 Aug. 2013 and obligating the Government to pay the cost related to the financing and re-financing of the Project due to the delays); Change Order No. 3 to the Rio Sereno Contract dated 13 Aug. 2014 (C-0170) (extending the expiration date until 30 Dec. 2013).

<sup>19</sup> Letter from the Omega Consortium to the Ministry of Health dated 27 Nov. 2012 (C-0154) (listing the events for which a time extension in the contract was requested: rain, lack of definition on medical equipment, and increase in the construction are upon settings review); Letter from the Omega Consortium to the Ministry of Health dated 6 Mar. 2013 (C-0155); Email from Arnaldo Martinez to Dr. Alex Gonzalez dated 19 Apr. 2013 (C-0667); Request for additional time and costs submitted by the Omega Consortium to the Ministry of Health and the Republic of Panama dated 19 July 2013 (C-0157); Letter from the Omega Consortium to the Ministry of Health dated 29 Jul. 2013 (C-0351).

<sup>20</sup> See Nessim Barsallo's First Witness Statement dated 7 Jan. 2019 ("Barsallo"), ¶¶ 26-27.

<sup>21</sup> See, e.g., Letter from the Omega Consortium to the Ministry of Health dated 6 Jul. 2012 (C-0158); Letter from the Omega Consortium to the Ministry of Health dated 14 Dec. 2012 (C-0159); Letter from the Omega Consortium to the Ministry of Health dated 22 Apr. 2013 (C-0160); Letter from the Omega Consortium to the Ministry of Health dated 24 Jun. 2013 (C-0357); Letter from the Omega Consortium to the Ministry of Health dated 30 Dec. 2013 (C-0358).

## Translation

April of 2014.<sup>22</sup> The absence of a valid contract was an operational problem because we could not submit advance payment accounts to issue CNOs.<sup>23</sup> Even without a valid Contract, the Omega Consortium continued to work closely with MINSA on the Projects with the understanding that, as soon as the change order was formalized and endorsed, the CNOs would be issued retroactively. At all times, I perceived good faith on the part of MINSA. I had daily communications with Nessim Barsallo and Karina Mirones, and I discussed with them the formalization of time extensions and the disbursement of the corresponding payments to the Omega Consortium. During that period, we could always work with MINSA and get things done, and at all times we were optimistic and willing to solve the problems that could arise, no matter their complexity. In May 2014, the Omega Consortium and MINSA jointly prepared a change order for the Río Sereno Contract, in which they extended the term of the Contract until September 27, 2014, and increased the price by US\$ 5 million.<sup>24</sup> Unfortunately, the Comptroller General's Office had no time to endorse the change order before the Varela administration came into power.

44. In general, the Kuna Yala Contract moved forward similarly to the Rio Sereno Contract. Construction delays had occurred as a result of the logistics in dealing with an indigenous community.<sup>25</sup> There was also a political problem in getting access to the Kuna Yala construction site. The residents demanded better roadways for the region in general from the Government, and the best way to put pressure on the Government was by preventing the Omega Consortium from accessing the

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<sup>22</sup> Letter No. MINSA-PC-47 from the Omega Consortium to the Ministry of Health dated 4 Apr. 2014 (C-0533).

<sup>23</sup> Letter No. MINSA-RS-54R from the Omega Consortium to the Ministry of Health dated 22 Sep. 2014 (C-0534).

<sup>24</sup> Change Order No. 4 to the Rio Sereno Contract dated 7 May 2014 (C-0106 resubmitted).

<sup>25</sup> Letter from the Omega Consortium to the Ministry of Health dated 6 Mar. 2013 (C-0155); Letter from the Omega Consortium to the Ministry of Health dated 28 Jun. 2013 (C-0352); Request for Time Extension and Additional Costs for Contract No. 083 (2011) dated 16 Oct. 2013 (C-0353); Letter from the Omega Consortium to the Ministry of Health dated 16 Feb. 2014 (C-0354); Letter from the Omega Consortium to the Ministry of Health dated 4 Apr. 2014 (C-0355).

## Translation

site. There were also increases in costs due to inflation and changes to the work plans.<sup>26</sup> But, in general terms, it was always possible to resolve any disputes related to delays and additional costs,<sup>27</sup> although sometimes it took more time than it should have. Both parties signed the change order on May 7, 2014, which extended the term of the Project until September 28, 2014 and would have added US\$ 2.4 million to the value of the Contract.<sup>28</sup> As with the change order to the Rio Sereno Contract, this change order was also awaiting approval of the Comptroller General's Office when the presidential administration changed.

45. The Puerto Caimito Contract was the Project that progressed the most among the MINSA Contracts. This was the Project with the least amount of changes requested by the Government. Nonetheless, as with any construction project, there were delays due to rain, labor strikes, and delays by MINSA in the review of the plans.<sup>29</sup> These problems were addressed in two change orders that extended the term of the Contract to December 30, 2013. The Omega Consortium requested an extension of the time and additional costs, so that the CNO's could be issued and the Contract would not expire. MINSA delivered a CNO to the Omega Consortium in June 2014, just before the change of administration. As with the other two MINSA Contracts, the Omega Consortium and MINSA signed a change order on May 7, 2014 extending the term of the Contract to September

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<sup>26</sup> Letter from the Omega Consortium to the Ministry of Health dated 24 Jun. 2013 (C-0357); Letter from the Omega Consortium to the Ministry of Health dated 4 Jul. 2013 (C-0359); Request for Time extension and additional costs for Contract No. 083 (2011) dated 16 Oct. 2013 (C-0353).

<sup>27</sup> Addendum No. 2 to Contract No. 083 (2011) date 18 Jul. 2013 (C-0263); Note No. 033-DAI-DIS-MINSA from MINSA to Leopoldo Vega dated 31 Oct. 2013 (C-0537).

<sup>28</sup> Addendum No. 3 to Contract No. 083 (2011) dated 7 May 2014 (C-0107).

<sup>29</sup> Time and Costs compensation request to MINSA dated 25 Jan. 2013 (C-0269); Letter from the Omega Consortium to the Ministry of Health dated 6 Mar. 2013 (C-0155); Letter from the Omega Consortium to the Ministry of Health dated 1 May 2013 (C-0356); Letter from the Omega Consortium to the Ministry of Health dated 24 Jun. 2013 (C-0357); Request for additional time and costs submitted by the Omega Consortium to the Ministry of Health and the Republic of Panama dated 19 Jul. 2013 (C-0157).

## Translation

27, 2014 and adding US\$ 2.4 million to the total cost.<sup>30</sup> However, once again, the Comptroller General's Office never endorsed the change order after the change in administration.

46. In his witness statement, Mr. Barsallo says some things that I would like to clarify. First, Mr. Barsallo says that MINSAs always worked with the Omega Consortium to ensure that the Omega Consortium had enough time to complete the Projects, although the negotiation and execution of the change orders sometimes took a while.<sup>31</sup> This is true; before the change of Administration, it was clear that not only did MINSAs work with us, but so did the Comptroller General's Office. However, as I will explain later, this all changed when President Varela took office. Second, in relation to the negotiation of the change order, Mr. Barsallo said that MINSAs "agreed to accommodate Omega."<sup>32</sup> This is not true. Under the Contracts, MINSAs was responsible for delays or additional costs that were not attributable to the Omega Consortium,<sup>33</sup> and thus MINSAs agreed to time extensions and costs. It was not because MINSAs was doing us any favors or making "accommodat[ions]."

### 2. *Colón Public Market*

47. On September 7, 2012, the Order to Proceed for the Colón Public Market Contract was signed. The MoP made the advance payment on October 25, 2012 in accordance with the Contract. The Omega Consortium started working on its required duties prior to the start of construction, including hiring personnel, awarding subcontracts and procuring material, as well as arranging

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<sup>30</sup> Addendum No. 4 to Contract No. 085 (2011) dated 7 May 2014 (C-0171).

<sup>31</sup> Barsallo ¶ 38.

<sup>32</sup> Barsallo ¶ 30.

<sup>33</sup> Contract No. 077 (2011) dated 22 Sep. 2011 (C-0028 resubmitted); Contract No. 083 (2011) dated 22 Sep. 2011 (C-0030 resubmitted); Contract No. 085 (2011) dated 22 Sep. 2011 (C-0031 resubmitted) (art. 64, Contractual Equilibrium).

## Translation

insurance and bonds. Under this Contract, the construction was to be done on the same site where the old market was located, so the existing structure would have to be demolished.

48. In December 2012, the MoP issued an order for the “temporary suspension of the physical work of the project,”<sup>34</sup> because it had not been possible to evict the vendors who were on the site. We did not worry because this was a temporary (not final) suspension, and it affected only the physical construction. For these reasons, this *temporary suspension* did not affect the other steps relevant to the Contract obligations, such as the development of the Health and Safety Manual, the Environmental Impact Study for the National Environmental Agency (“ANAM”), or the Quality Control Manual. Therefore, despite the suspension, the Omega Consortium was asked to continue drafting the documents and carrying out the pre-construction studies.<sup>35</sup> The Omega Consortium completed all the steps needed to obtain the demolition permit.

49. This temporary suspension seemed reasonable and, although the Government was responsible for the delay in the Contract, it did not seem like anything out of the ordinary. In the meantime, we held technical meetings to address several matters (*e.g.*, redesign of foundations, electrical tie-ins, construction systems and construction permits, etc.).

50. In fact, in November 2013, the MoP informed the Omega Consortium that the Project would be ready to start in January 2014 and that the new calculation of the Contract term would begin from that date; the Government granted 33 months from the Order to Proceed and explained that the time extension and the acknowledgment of expenses incurred during the suspension would be duly

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<sup>34</sup> Letter No. 691-SCF-2012 from the Ministry of Presidency to the Omega Consortium dated 31 Dec. 2012 (C-0363 resubmitted).

<sup>35</sup> *Id.*

## Translation

formalized in a change order.<sup>36</sup> The next day, the Omega Consortium replied to the MoP by accepting the proposed time extension and confirming that the acknowledgment of expenses would be requested later through a different process. The change order was in process during the early months of 2014,<sup>37</sup> but the Project could not start because the market had not been cleared out, and the construction drawings had not been corrected by the company contracted by the Secretary of Cold Chain. In April 2014, the MoP confirmed having received instructions to negotiate the change order, and in May the MoP confirmed that the time extension would be 41 months starting from the Order to Proceed.<sup>38</sup>

51. I had the opportunity to meet on several occasions with Engineer Fernando Duque (Director of the Secretary of the Cold Chain until mid-2014) with the concern of keeping the Contract valid during the suspension. After several efforts to define a possible start date, it was agreed to formalize the date with a change order for a time extension. Mr. Duque recognized that the Omega Consortium had done everything that had been requested, and prior to his departure, after the election, he attempted to finalize a change order and recognized the costs.

52. During the suspension, the Omega Consortium trusted that the Project would start, so we continued to hire specialists and teams dedicated to the Project, and we kept our insurance and bond in force, which included extending the bond until the beginning of 2016.<sup>39</sup> We believed that we would soon start the Project's physical construction.

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<sup>36</sup> Letter 659-CF-2013 from the Ministry of the Presidency to the Omega Consortium dated 25 Nov. 2013 (C-0063 resubmitted).

<sup>37</sup> Email chain between Jose Mandakaras, Maruquel Madrid and Frankie Lopez dated 13 May 2014 (C-0544).

<sup>38</sup> *Id.*; see also Addendum No. 1 to Contract No. 043 (2012) dated 2014 (C-0277).

<sup>39</sup> Endorsement Extension Validity Bond Compliance, Policy 86B63650-87B50311 dated 5 May 2014 (C-0545) (extending the bond for the Puerto Caimito Project for 170 days).

## Translation

### 3. *Ciudad de las Artes*

53. The Ciudad de las Artes Project was the largest project that the Omega Consortium had been awarded in Panama, although in Puerto Rico we had already had various contracts worth tens of millions. Moreover, we already had experience in Panama with tenders and project execution. When making the proposals, the Omega Consortium always conducted prior inquiries and identified reputable companies in the industry of the tendered contract, which added value to the Omega Consortium's already established competitiveness. That is how we decided to bring Mallol & Mallol<sup>40</sup> in for the Ciudad de las Artes Project, and we were awarded the Contract. This Project included all the components of a construction, design, engineering, and equipment project, among others. We had enough experience in the execution of each of the Contract's component parts that would allow us to execute all of them in the same project, without any problem.

54. The start of the Project was a bit complicated. INAC had no experience in leading construction projects of such magnitude and many of the things that were included in the Tender Documents were not regulated by law. INAC had to carry out an internal process that took approximately nine months. I understand that Panama acknowledges in this arbitration that, since this was the first "turn-key" project led by INAC, it did not have internal regulations to manage Certificates of Partial Payment ("CPP").<sup>41</sup> The problem was that those nine months of delay, which were in no way attributable to the Omega Consortium, took place after the first Order to Proceed had already been issued in September 2012,<sup>42</sup> which triggered the bonds, insurance, interest on financing, and charges related to hiring and maintaining employees. Although the physical construction had not

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<sup>40</sup> Mallol & Mallol is a very prestigious design firm in Panama and Latin America with a solid track record. It contributed to the Ciudad de las Artes project with its technical capacity in design and experience in previous educational projects. It is a firm that worked on several emblematic buildings.

<sup>41</sup> Resp.'s Counter-Mem. ¶ 87.

<sup>42</sup> Order to Proceed for Contract No. 093-12 dated 27 Sep. 2012 (C-0113).



## Translation

started yet, studies and designs had been carried out. After having internally resolved the impasse, INAC issued a new Order to Proceed. I understand that to this day, INAC has not recognized the amount of damages caused to the Omega Consortium by this delay.

55. After the second Order to Proceed was finally issued in April 2013,<sup>43</sup> the Project moved forward in a positive direction. In fact, at no time before President Varela took office, did Ms. Chen, or the Government, or the Project inspectors (*e.g.*, Sosa Arquitectos) ever say that the Omega Consortium was executing the Contract improperly. However, this Project was characterized by the substantial modifications that INAC wanted to make, compared to what had been included in the Tender Documents. INAC requested changes to the scope of work included in the Tender Documents, which were incorporated into the design as per such instructions. It was widely understood by the INAC staff and us that such changes envisaged an increase in square meters of construction, which naturally involved an increase of cost and time in the Contract. Once the drawings were approved by INAC, the Omega Consortium submitted its change order request including the impact in terms of cost and time.<sup>44</sup> But, around that time the Administration changed. The new INAC Administration retracted on the change of scope request previously submitted to the Omega Consortium and requested the drawings to be designed based on the minimum meters required in the Tender Documents. However, INAC refused to acknowledge the additional costs for redesign and the relevant additional time required.

56. Payments were received for the most part, but as with other Contracts during that time, sometimes the payments were late. Thus, by June 2014, INAC was behind in some payments, but

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<sup>43</sup> Order to Proceed No. 2 for Contract No. 093-12 dated 22 Apr. 2013 (C-0150).

<sup>44</sup> Letter No. SOSA-0-5-2014 from the Omega Consortium to Sosa dated 17 Sep. 2014 (C-0546).

## Translation

since everything was generally going well with INAC and the Project at the time, this did not represent a threat to the Project.

57. Just as with the other Projects, before Mr. Varela became President, we had no reason to doubt we would complete the Project successfully. In fact, INAC confirmed to us that their internal meetings were positive, but it was convenient to present the changes to the new INAC management<sup>45</sup> (namely the management appointed by the new President.)

### 4. *La Chorrera Judicial Unit*

58. In September 2012, the Judiciary published the Request for Proposals N°. 2012-0-30-0-08-AV-004833 for the construction of a new building for the La Chorrera Regional Judicial Unit.<sup>46</sup> As ██████ would do, he reviewed this RFP, assessed whether the Omega Consortium met the requirements, and circulated it around along with other RFPs. ██████ attended the *Reunion Previa de Homologación* (or the preliminary meeting) of the tender held on September 19, 2012.<sup>47</sup> At this meeting, as was customary in all such meetings, the representatives of the interested companies and of the evaluation committee were also present. Neither ██████ nor anyone in our management team knew any of the representatives of the evaluation committee. The Omega Consortium proposal was awarded the best score (100%), just like the Construcciones La Chorrera Consortium, but we won the tender because we received a higher score since we offered the best price.

59. Panama's accusations in this arbitration that the Omega Consortium obtained the Project unlawfully are totally false. In the over 15 years that I worked with Omega U.S. and in the almost 20 years that I have known Oscar, I can categorically say that I have never seen Oscar pay (or

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<sup>45</sup> Email from Luis Pacheco to Frankie Lopez dated 25 Jun. 2014 (C-0548).

<sup>46</sup> Request for Proposals No. 2012-0-30-0-08-AV-004833 "*Construcción de un Edificio para la Unidad Judicial Regional de La Chorrera*" dated 2012 (C-0024 resubmitted).

<sup>47</sup> Minutes of Previous Meeting and Approval Abbreviated Tender for Best Value No. 2012-0-30-0-08-AV-004833 dated 19 Sep. 2012 (C-0410).

## Translation

even consider paying) any bribe or illegal payment to obtain or benefit from the award of a contract. Such an insinuation is simply absurd.

60. The Contract was signed on November 22, 2012 and was endorsed by the Comptroller General's Office on December 27, 2013.<sup>48</sup> This Contract experienced delays as well, but they were also delays typical of large construction contracts. Furthermore, the Omega Consortium assisted the Judiciary in requesting permits and studies, which was not a contractual obligation. We had delays in obtaining environmental licenses, due to rain, design changes, lack of information, labor strikes and some delays in payments.<sup>49</sup> We had difficulties obtaining payment from the Judiciary, and in April 2014, we had to reduce the Project workforce due to payment defaults.<sup>50</sup> However, the following month the Judiciary paid most of the outstanding accounts and we thought that the problems with the payments were finally resolved, so that the Project could resume. In fact, the Judiciary approved our request for time extension,<sup>51</sup> and we reached an agreement in relation to Change Order No. 2 in May 2014, which extended the duration of the project to 800 days (by adding 260 days).<sup>52</sup> We believed this Change Order would be endorsed within the following two months. But the administration changed and this did not happen.

### 5. *Municipal Palace of Colón*

61. The Contract for the construction of the Municipality Palace was executed on January 24, 2013 and it was endorsed on July 2, 2013. For this Project, we were required to retrofit existing

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<sup>48</sup> Contract No. 150/2012 dated 22 Nov. 2012 (C-0048 resubmitted).

<sup>49</sup> Letter No. 2014 04 08- P007-037 from the Omega Consortium to the Judiciary dated 8 Apr. 2013 (C-0065 resubmitted); Letter No. 2014 05 15 – P007-045 from the Omega Consortium to the Judiciary (C-0066 resubmitted).

<sup>50</sup> Letter from the Omega Consortium to the Judicial Branch dated 16 Apr, 2014 (C-0164).

<sup>51</sup> Letter No. 2014 05 15 – P007-045 from the Omega Consortium to the Judiciary dated 15 May 2014 (C-0066 resubmitted).

<sup>52</sup> Letter from the Omega Consortium to the Judiciary dated 17 Dec. 2014 (C-0367); Letter from the Judiciary to the Omega Consortium dated 29 Dec. 2014 (C-0368).

## Translation

warehouses into temporary offices where the Municipality said it would relocate the employees working at the existing Municipality Palace, so that the Omega Consortium could then demolish the old Palace and build the new one on the same site.

62. Although it is true that the start of construction on this Project was delayed because the Omega Consortium did not obtain access to the site to begin the preliminary works on the agreed dates,<sup>53</sup> the Omega Consortium submitted and obtained the approval of the preliminary project, the design of the temporary facilities and the environmental impact study in 2013, and completed all the design work by April 2014.<sup>54</sup>

63. In terms of payments, the City of Colón made the advance payment, and was a bit delayed in submitting the invoices in May 2014. After that, the payment applications submitted under the new administration were never paid.

### 6. *Mercados Periféricos*

64. This Project was awarded to the Omega Consortium in September 2013, and the Order to Proceed was issued that same month. This Contract involved the design, construction and equipment of two public markets: the Pacora Market and the Juan Díaz Market. This Project started without any issues, and by May 2014 we were able to inform to the Municipality of Panama that we had made significant advances in both markets.<sup>55</sup> The next day, Johnathan Rodriguez, the Municipality of Panama Official who was in charge of the execution of this Project, confirmed all the advances and told Maria Serracin, engineer and inspector of the Municipality: “as soon as you have [the blueprint approval] we need URGENT support with the Comptroller General’s inspection – we

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<sup>53</sup> Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Mayor of the Municipality of Colon dated 19 Jun. 2015 (C-0180 resubmitted).

<sup>54</sup> Email from Omega to the City of Colón attaching Work Progress dated 7 Aug. 2014 (C-0551).

<sup>55</sup> Emails between the Omega Consortium to the City of Panama dated 15 May 2014 (C-0552).

## Translation

*have to back up the company; they're giving it all they have for the boss to inaugurate the project. Let us all go an extra mile.*"<sup>56</sup> That very same month, Ms. Serracin wrote to the Public Works and Construction Director to inform him that a change order for 30 more days to the Pacora Market and 90 more days to Juan Díaz Market needed to be drafted for events not attributable to the Omega Consortium,<sup>57</sup> and also for ASSA to request an extension to the security bond.<sup>58</sup> As in the other projects, everything changed when the new administration took over.

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65. We always worked as Mr. Rodriguez, from Municipality of Panama said: We always gave our projects everything we had! Our priority, thanks to Oscar's management, was to execute our projects in the best way possible so that the owner (that is to say, the Government agency) was satisfied. That is what we did in Puerto Rico, and in Panama. As I will later explain, it became impossible to work in the same manner in which we always did once President Varela took office.

### V. JUAN CARLOS VARELA'S PRESIDENTIAL CAMPAIGN AND THE MEETING AT LA TRONA

66. It was common knowledge that Juan Carlos Varela, who had been Vice-President during Ricardo Martinelli's Administration, wished to be President of the Republic. The strong disagreements between Vice-President Varela and President Martinelli were also known.

67. At the end of 2012 or the beginning of 2013, before the electoral campaign started, one of the lawyers for Omega U.S. and Omega Panama (whom I consider a friend), Ana Graciela Medina ("**Ana Graciela**") from the law firm Icaza, Gonzalez, Ruiz & Aleman ("**IGRA**"), told me that the current presidential candidate, Juan Carlos Varela, was interested in contacting Oscar. Oscar

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<sup>56</sup> *Id.*

<sup>57</sup> Letter No. DEYD-1220-84-14 from Ms. Serracin to the Director of Works and Constructions dated 23 May 2015 (C-0553).

<sup>58</sup> Letter No. DEYD-1220-92-14 from Maria Serracin to ASSA dated 28 May 2014 (C-0554).

## Translation

and I knew how close Ana Graciela and Vice president Varela were. In fact, one of the business partners from IGRA, Alvaro Aleman, was Mr. Varela's campaign director and later became part of President Varela's Cabinet as Minister of the Presidency. Since that had nothing to do with me directly, I paid no attention to the fact that Mr. Varela wanted to meet with Oscar.

68. Later, in 2012, Oscar told me that the then presidential candidate, Mr. Varela, wanted to meet with him in order to have a private conversation. I remember thinking that Oscar did not have to meet with a politician and expose himself to misunderstandings from a meeting of that nature. To my knowledge, Oscar had never met with a president or a candidate to the Presidency of Panama. In my opinion, since Oscar was very close with Ana Graciela, Oscar agreed to a meeting with Mr. Valera because she asked him to do so. My concern had nothing to do with Mr. Varela himself, but with his political position.

69. One day in the afternoon—I do not recall the exact date, but it was at the end of the year 2012 or beginning of 2013—I received a call from Oscar inviting me to go to a restaurant where he was. The restaurant was called La Trona, which is quite a fancy restaurant, and a very good one; I do not know if it is still in business. When I arrived, the meal was over. A group of friends were there; Ana Graciela and her husband, Jordi Velázquez; Rafa Flores' fiancée (an assistant close to Mr. Varela), but no officers of the candidate were present. The group was in conversation at tables close to a balcony. They ordered some finger food and then a woman, Oscar's girlfriend at the time, arrived. At that moment I noticed Oscar was a bit displeased; he was not acting like his usual self when spending time with people. Due to the dynamics of the meeting, we were not together for more than one hour. Oscar's daughter was coming to Panama, and he and his girlfriend needed to buy some linens, so Oscar excused himself and left. Oscar told me separately that we would speak in person later, and I could tell by his body language that something had happened, but it was not the time to talk about it. We did not have much time to talk that day, but I clearly understood something had

## **Translation**

happened, although I could not have imagined what he later told me. At some point during the meeting, the people there joked about Mr. Varela having been at the restaurant that day. Eventually, everyone left and I ended up taking care of the bill.

70. The encounter in La Trona happened at the end of the week, and the following Monday, Oscar told me that presidential candidate Juan Carlos Varela had requested financially significant support, in an intimidating manner, with the warning that there would be changes in the Government and that things could become difficult for Omega Consortium and its Contracts. Basically, the message was “you’re either in or out.” Our conversation, which took place at Oscar’s residence, lasted between 30 and 45 minutes, including discussion of other matters. I do not know if Oscar told anybody else about his conversation with Mr. Varela.

### **VI. PRESIDENT VARELA’S VENDETTA AGAINST OSCAR AND HIS COMPANIES**

71. After being a part of the history of the Omega companies for 16 years and, especially, of the Projects developed in Panama, things are clear enough for me to affirm my opinion that President Juan Carlos Varela has a personal vendetta against Oscar, his companies and his Projects. These are unpleasant matters for me, and I would rather not speak about them, but I feel it is necessary to do so.

72. As time went by, and once the election was over, there were many indications that an abnormal and worrying situation existed. I have mentioned some of these situations in this declaration regarding the Government’s arbitrary interference in the Projects and about the investigations still being conducted against Oscar, ██████████ Omega Panama and PR Solutions.

73. Another indication was the number of messages I got from people who know and like me, in which they noted that some kind of disagreement between President Varela and Oscar and the Omega Consortium clearly existed. One of these people was the Secretary General of Panama City

## Translation

Hall, Guillermo Bermudez, who informed me that he had instructions to wait for the result of the investigation of Judge Moncada Luna before allowing the Municipality to review our payment applications. More than once, public officials told me that the obstacles lining up against the Omega Consortium's Contracts were coming from "higher up." On one occasion, Colón's Mayor Federico Policani told me personally he had been directed by the Presidency to terminate the Contracts with the Omega Consortium because the other ministries were doing the same. On another occasion, an engineer working in the La Chorrera Judiciary told me the same thing. At one point, one of the Municipal Council of Colón's legal counsel told me: "they want to take the Palace of Colón away from you." He first mentioned that, during an activity, President Varela said they should forget about the Omega Consortium and that the Project should be taken away from us. Then, in November 2015, he explicitly told me that the President had said that the Contract should be terminated. To me it was (and still is) very clear that President Varela took Oscar's refusal to contribute to his campaign personally, and it negatively affected his opinion of Oscar.

74. My conclusion is further confirmed by all the people in Ministries and Government Agencies who told me that there was an intention on the part of the Government to act against Oscar and his companies, not to mention my experiences with the (sometimes indefinitely) delayed payments and approvals after Mr. Varela took office. One of the biggest blows they gave us was the unjustified termination of the Ciudad de las Artes Contract. The fatal blow to Oscar and his companies was the investigations and accusations for alleged corruption and money laundering, which, as far as I know, were never substantiated. It was as if an express order to personally attack the Omega Consortium's Contracts and Oscar had been given. It was evident that there was a new variable in the scenario for the Omega Consortium.

75. This was eventually confirmed in 2015 by [REDACTED]

[REDACTED]





## Translation

Office during that period. I verified this situation directly on the website dedicated to Government contracts (Document Control Follow-up, Access and Supervision System (SCAFiD as per Spanish acronym)).

78. In July 2014, we began to notice that everything was being returned to the Ministries, and nothing was being approved. This first occurred with the MINSA Projects, and then for all of the Projects. As I commented earlier, as soon as President Valera won the election, he publicly announced that he wanted the Comptroller General who served under Mr. Martinelli's Administration to resign from her position. In my opinion, this was a clear threat to the Comptroller General, aimed at not endorsing or expediting procedures for the projects that the new Administration did not want to continue. However, all the documents and collection procedures were eventually ratified by each of the Ministries and Mayors' Offices, except for INAC. In any case, totally suspending the performance of the Comptroller General's Office seriously affected the execution of the Contracts and the Omega Consortium's cash flow and financial stability. And, while the Comptroller General's Office was not endorsing payments or time extensions, strangling us financially, the Government was requiring us to have a Certificate of Good Standing (*paz y salvo*) in order to continue the operation. To me, all of this was a clear strategy from the Government aimed at strangling us financially.

79. When the situation was already becoming untenable, I mentioned it to [REDACTED] and [REDACTED] confirmed, in no uncertain terms, that [REDACTED] [REDACTED].<sup>61</sup> [REDACTED] [REDACTED].<sup>62</sup> This happened very early

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<sup>61</sup> [REDACTED]

<sup>62</sup> [REDACTED]

## Translation

in 2015, confirming what until then had been a suspicion: the actions against the Omega Consortium were part of a vendetta President Varela had against Oscar. Due to that, we had to dismiss almost all of our employees tens of construction workers in April 2015—close to [REDACTED]—and only those in essential roles remained (*i.e.*, [REDACTED] [REDACTED]).<sup>63</sup> I would like to clarify that the Government's allegations that Omega Panama and their personnel left or fled in October 2014 are totally inaccurate and false.

80. In relation to the Government officials with whom the Omega Consortium had been dealing, all sorts of things happened. Some stayed and others were removed. After the Administration change, I met with each and every Agency where the Omega Consortium had Projects to explain every Project and its current status to them. I received acceptance on good terms by most Agencies, except for the INAC, where the intention to hinder the execution of the Contract became evident from the start, as described below.

81. This whole situation was a limbo that caused delay in the Projects, from which numerous conflicts derived. The most delicate situation the Omega Consortium had to face due to the unjustified delay of the Comptroller General's Office, and the obstacles from some Government agencies, was having to continue executing construction without a valid Contract. As I mentioned above, before the Administration change, when there were difficulties or disagreements with the Contracts, the Omega Consortium tried to solve them commercially and directly with the Government agency, and in rare occasions and only when it was necessary the Omega Consortium decreased the labor personnel while the change orders were formalized or the course of action was defined. This

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<sup>63</sup> See Letter No. FL-06-015 from the Omega Consortium to the Director of Caja de Seguro Social dated 15 Jun. 2015 (C-0556) ("Due to the lack of payment by the State, OMEGA has been unable to comply with its contributions to the Social Security fund (see attached a list from the account statement) as of November 2014. We have even been forced to substantially reduce our staff to the minimum needed in order to concentrate exclusively on successfully making the payment of outstanding charges.").

## Translation

was not an issue, and in fact, as I explained above, agreements were reached on many occasions between the Omega Consortium team and the officers of the Government agency supervising the Project. But after the change of administration, even if an agreement reached with a Government agency was already formalized in a change order, difficulties arose because the Comptroller General's Office (i) seemingly unreasonably and arbitrarily took several months to review the documents submitted for endorsement and (ii) when it reviewed them, it would return the documents on mere technicalities based more on a whim of the Comptroller General's Office, than on a valid reason. Notwithstanding the above, and in order to avoid conflicts with our client, to make proper progress on construction and to avoid damages that might cause a suspension, we tried to keep working, although physical progress was slowed down at times, until the situation became untenable.

82. The situation became even worse in January 2015, when the new Comptroller General took over. At the time, it was evident to me that the Comptroller General's Office was rejecting the documents submitted by the Omega Consortium due to very minor and insignificant issues, that I thought were abusive and arbitrary. Its reasons were at the level of misplaced periods or commas. The situation was preposterous.

83. The Comptroller General's Office was trying to split hairs, as we say colloquially. Something was happening in this new Administration. Since it was in our interest to have the Contracts remain effective, I personally inquired as to the reasons why this situation was taking place, without ever obtaining a clear answer on the matter. It was evident that the Comptroller General's Office did not want to approve the requests; they wanted the Contracts to lapse to prevent collections from happening. It was very evident to me, in reading between the lines, that behind the Comptroller General's Office refusal to approve the change orders, there was a clear intention to hinder the Omega Consortium's Contracts. And this is not some unreasonable paranoia on our part; [REDACTED]

84. Of course, the problem is that as all the Contracts expired, the insurer was concerned about the accounts receivable and that the bonds could not be renewed. The insurer was obviously sensing instability, because the amount of the accounts receivable increased. And it was not just under one or two Contracts, but all of them! The inevitable consequence of this situation is that the Omega Consortium lost all its cash availability and was totally dismantled. Hereinafter I explain one by one how the Contracts were affected by this vendetta and the Government's resulting arbitrary and unjustified actions.

**B. The Government Initiated Criminal Investigations against Oscar and Omega Panama**

85. As if all that were not enough, in addition to all the problems that arose with the Contracts, the Government initiated investigations against Oscar, Omega Panama and PR Solutions, on the basis of an accusation of alleged corruption and/or money laundering related to Judge Moncada Luna. This is even more absurd.

86. The Moncada Luna matter was on the news at the national and international level. During our operation in Panama, only once were we at the same event as Mr. Moncada Luna, and it was at the inauguration ceremony for the La Chorrera Judiciary Contract. I was never aware of any alleged link between Oscar and/or the officers of Omega Panama and the investigation, until we were informed by means of a seizure of the Omega Panama bank accounts in January 2015.

87. I met María Gabriela Reyna by accident in the year 2011, in a restaurant located at a boutique hotel in Condominio Esplendor, in Obarrio. It was during a late lunch or happy hour, and

## Translation

we started talking as her office was near the building where the Omega Consortium had its offices. At that time, I heard María Gabriela Reyna was working with legal topics related to the real estate industry. The next time I saw her was one or two years later when Oscar asked me to contact her for the purchase of the property in the village of Cañas.

88. In addition to the construction company, Oscar, as a businessperson and personally, always had real estate development projects, focusing on residential development. Since he was young, Oscar was influenced by his father, who was a developer and property owner. Projects would start with the acquisition of the land, development, marketing and finally, funding by the bank. By the year 2005, he had a very successful project known as Plaza de Diego (where I was Project Manager), acquired jointly with his father—a contractor and an architect—to form Developer Group Diego. A different private project Oscar had, also successful, was Ridge Top Villas in Puerto Rico. Omega U.S. always acted as a general contractor for these projects. Oscar would buy the land, create the design, obtain all permits and funding, build it up and sell it. It is my understanding that he did all this using other corporate entities in order to protect the Omega name (for the latter project, he used Ridge Top Development). Usually, once the project was sold, and the terms of the bonds and other obligations were fulfilled, the corporate entity used would be dissolved.

89. When Oscar started doing business in Panama, he began searching for properties to develop. I know for a fact that when Oscar was interested in a piece of property, he would carry through with all formalities. On several occasions, apart from visiting, he would travel in a helicopter over the properties. One day, he told me he had finally found the perfect property to develop a project. I am no expert in the Panamanian real estate market, but I do know that the property was in an area with potential for development of summer resort projects. I understood that the owner of the property was American, and that she was represented by María Gabriela Reyna, and I was able to confirm it

## Translation

when I ran into María Gabriela Reyna again. That is when the negotiation process to acquire the property began.

90. Oscar had already instructed me to purchase the property. I remember he had already given me a price, and I wanted to negotiate a better price. Although I did not get it, I managed to obtain a little flexibility in the form of a payment. I was never at the property, but I did contact Ana Graciela for her to compose the purchase-sale promise as required and for her to legally advise us for the transaction.<sup>65</sup> We imposed a number of terms and conditions including that the owner had to make sure that the property was free of liens within six months, and that the Government began building the public works infrastructure (*i.e.*, electricity and water systems). In order to carry out the transaction, a corporation was organized under the name Punela Development, for which process Ana Graciela provided us with legal support.<sup>66</sup> It was no surprise to me that a corporation was created for the purchase of the Cañas property, or that it did not have a banking account. As I mentioned earlier, Oscar had already developed projects in the private market, and had behaved in much the same way as he was doing with the Cañas property. Oscar liked keeping his public works projects separate from his private developments. As I understand it, that is why the money for the payment of the first and second instalments of the purchase of the property was transferred from Omega Panama to PR Solutions. The Omega Panama account was used almost exclusively for matters related to the public works contracts.

91. Subsequently, an addendum to the purchase-sale promise agreement was signed, as after receiving the first two payments (50% of the cost of the property), the previous owner had not

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<sup>65</sup> Email chain between Frankie Lopez, Oscar Rivera, and Ana Graciela Medina dated 25 Apr. 2013 (C-0557); Invoice from IGRA for Preparation of the Purchase of Finca, Contract No. 35659 dated 1 May 2013 (C-0558).

<sup>66</sup> Invoice from IGRA in relation to Punela Development Corp. dated 1 May 2013 (C-0559).

## Translation

yet complied with the provisions in the agreement with respect to the utilities and the title of property.<sup>67</sup> We were in the middle of negotiating with María Gabriela Reyna due to the seller's noncompliance when we learned that Oscar and the Omega Consortium were being linked to the investigation of Judge Moncada Luna. As soon as we realized our bank accounts had been frozen, we contacted the bank. Initially, the bank refused to give us information. After insisting, we were informed that the freeze had been ordered by the National Assembly.

92. Days later, María Gabriela Reyna informed me of the existence of the investigation<sup>68</sup> and of Oscar's purported involvement. My best recollection is that all matters related to Judge Moncada Luna were under investigation, including all agreements executed by him during his term as President of the Supreme Court of Justice. Afterwards, in less than a week, Oscar was summoned by the prosecutor's office. When the summons was served, Oscar was not in Panama, so I appeared in my capacity as legal representative of Omega Panama. I met on two occasions with Representative Pedro Miguel Gonzalez (the "**Prosecutor**"). He was appointed by the National Assembly as Prosecutor. The Prosecutor questioned me as to how we had been awarded the La Chorrera Contract and about Messrs. Calvo and Corcione. He also mentioned the employees of the company Grupo Corcione and certain officers of the Judiciary.

93. I explained to him in those interviews that I was aware of the facts, and the Prosecutor explained to me the big picture of the investigation. In the first interview, he told me he would summon [REDACTED]. After interviewing both, he summoned me once more to clarify some doubts about accounting issues. On that occasion, I asked why we were being linked to this investigation. The Prosecutor insisted in understanding how Oscar's instructions were issued to buy

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<sup>67</sup> Email from Ricardo Ceballos to Ana Graciela Medina dated 7 Jul. 2015 (C-0203).

<sup>68</sup> Email from Maria Gabriela Reyna to Frankie Lopez dated 28 Jan. 2015 (C-0210).



## Translation

the property. He questioned me as to why the instructions for payment of disbursements came from PR Solutions. The Prosecutor found it strange that the business documents were not certified (i.e., the agreement had not been executed before a notary). In my view, this was unnecessary and, I believe, not a legal requirement.

94. At the end of the day, no links between Moncada Luna and Oscar, Omega Panama, PR Solutions and/or ██████ were found. In fact, at the final hearing, the Prosecutor himself publicly admitted he was not able to verify that there had been any type of relationship between these parties, and we were discharged from the investigation. Despite the foregoing, surprisingly, the judges decided that our bank accounts would remain frozen. Keeping the accounts frozen affected us, and I did not see a reason for having to go through that. Two additional investigations were continued and/or opened, based on the same facts against Oscar, ██████, Omega Panama, and PR Solutions. I am unaware of the current status and/or outcome of those investigations.

### **VII. THE GOVERNMENT OF PRESIDENT VARELA DESTROYED ALL THE PROJECTS AND TERMINATED, SUSPENDED OR SIMPLY ABANDONED THE CONTRACTS**

95. Each of the eight Projects of the Omega Consortium were fatally affected by the actions of the Government after the change in Administration.

#### *1. La Chorrera Judicial Unit*

96. I will begin with the La Chorrera Contract because I understand that the Republic of Panama has said that this Contract was obtained by the Omega Consortium through corruption. This is a very serious and irresponsible accusation by Panama, which in my opinion is unfounded. In fact, it is surprising that the Republic of Panama made such an accusation when the La Chorrera Contract has been the only one paid by the Government—even after Mr. Varela became President and after the removal of Judge Moncada Luna as President of the Supreme Court of Justice.

## Translation

97. I understand that the Government has said that the conduct of the Omega Consortium changed in October 2014, and that during the next two months, the Omega Consortium stopped all work on the Project and refused to resume working even though it had a valid Contract in place.<sup>69</sup> It is not true that the conduct of the Omega Consortium changed in October 2014. In fact, we signed (for a second time) a change order in October in order to extend the duration of the Project until March 2015.<sup>70</sup> Also, it is not true that there was a valid change order in place. While it is true that such a change order had been signed by the Judiciary and the Omega Consortium, it had never been endorsed by the Comptroller General. Thus, the La Chorrera Contract was not valid from July 10, 2014<sup>71</sup> (the final original date of the Contract) until December 23, 2014, the date on which the Comptroller General finally endorsed the change order.<sup>72</sup> This happened only after the Omega Consortium sent several letters and warned the Judiciary that, without the approved extension, the Omega Consortium would have to suspend work.<sup>73</sup> I also understand that the Government says that it was generous and tried to accommodate the Omega Consortium. This is not true. The contemporaneous documents show that the Government was not generous, and did not make accommodations for the Omega Consortium to ensure that the La Chorrera Project could be completed in the best way possible.<sup>74</sup> The only time the Judiciary issued an extension of time was through Change Order No. 2. This was motivated not by the Government's generosity, but by events not imputable to the Omega Consortium, such as: (1) additional documentation needed for approval of the Study of Environmental

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<sup>69</sup> Resp's Counter-Mem. ¶ 34.

<sup>70</sup> Letter No. 2014 08 18 – P007-051 from Omega to Magistrate Ayu dated 18 Aug. 2014 (C-0560); Contract No. 150/2012; Addendum No. 2 to Contract No. 150/2012 (R-0008).

<sup>71</sup> Contract No. 150/2012 dated 22 Nov. 2012 (C-0048 resubmitted).

<sup>72</sup> Note No. 1093/DALSA/2014 from the Judicial Authority to the Omega Consortium dated 23 Dec. 2014 (R-0079).

<sup>73</sup> Letter from the Omega Consortium to the Judiciary dated 27 Nov. 2014 (C-0366).

<sup>74</sup> Resp's Counter-Mem. ¶¶ 28-29.

## Translation

Impact by ANAM, (2) 18 days of rain, (3) the delay by the Government in handling payment of Account No. 6, (4) the modifications to the design of the AC system, (5) the national strike by SUNTRACS (one of the leading construction unions), and (6) the lack of full blueprints.<sup>75</sup> It was only reasonable that the Omega Consortium needed more time to complete the Project.

98. Although the Comptroller General validated the Change Order in December 2014, the Omega Consortium only received the signed Change Order in January 2015.<sup>76</sup> Since the Contract had not been valid from July 2014 through December 2014, progress on the work corresponding to this period in the amount of US\$ [REDACTED], was not accepted by the Judiciary until January 2015 because the Contract had expired. In any event, the Omega Consortium did not receive that payment, instead the Government used it to cover an alleged fiscal debt.<sup>77</sup> These exorbitant delays in the payments and in the approval of the extensions significantly delayed construction and contributed to the lack of liquidity the Omega Consortium was suffering at that time as a result of the lack of payment in each of the Contracts it had with the Government.

99. I understand that The Government also says that the Omega Consortium never resumed work after December 2014, but this is not true. In fact, in February 2015, we had employees and subcontractors on site.<sup>78</sup> In addition, the Contract was set to expire in March 2015 because the Comptroller General's Office had delayed the endorsement of Change Order No. 2 for over seven months, and, in the meantime, the Contract was expired—which precluded us from invoicing.<sup>79</sup> I

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<sup>75</sup> Letter No. 2014 05 15 – P007-045 from the Omega Consortium to the Judiciary dated 15 May 2014 (C-0066 resubmitted).

<sup>76</sup> Change Order No. 2 to Contract No. 150/2012 dated 13 Jan. 2015 (C-0562).

<sup>77</sup> Note 900-01-520-DT-DGP from the Ministry of Economy and Finance to the General Directorate of Income dated 12 Jun. 2015 (C-0563).

<sup>78</sup> Email chain between Genaro Matías and Frankie López dated 29 Jan. 2015 (C-0566).

<sup>79</sup> Ms. Ríos justified the endorsement time by saying that since Change Order No. 2 was “corrected” before it was endorsed, only 61 days went by. But, she omitted the fact that the so-called “correction” was a mere pretext from the

## Translation

understand that Mrs. Ríos now alleges that we made an “extraordinary request”<sup>80</sup> by requesting another extension. But, as I mentioned, we did so because the Contract was about to expire due to the unjustifiable delays by the Comptroller General. We had our hands tied. We could not apply for an additional extension of time, *i.e.*, a change order, because there cannot be two simultaneous change orders at the Comptroller General’s Office. Therefore, we had to wait for endorsement of Change Order No. 2 in order to request endorsement of the other change order. In the end, the Omega Consortium had not stopped work, but we did find ourselves strangled by the exorbitant lack of payment for this (and all other) Contracts, which is why we had to decrease personnel. It should be noted that as of August 2014, we sent a letter with issues that needed to be addressed by the Judiciary, but it *never* provided an answer.

100. Inexplicably, just over two months after finally receiving the endorsed Change Order No. 2, the Supreme Court of Justice unilaterally terminated the Contract because of supposed noncompliance by the Omega Consortium.<sup>81</sup> I felt truly disappointed. Nevertheless, the Omega Consortium answered on March 18, 2015, explaining why termination was not proper (because all delays were exclusively imputable to the Judiciary), and reiterating that the Omega Consortium’s intention was to complete the work under the Contract, so long as the Judiciary approved the blueprints, made all payments, and extended the term of the Contract for causes not imputable to Omega Consortium.<sup>82</sup>

101. It is false that the Omega Consortium simply responded by threatening the Judiciary with ICSID arbitration if the Contract was terminated. The Omega Consortium answered with a letter

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Comptroller General’s Office based on an alleged budget allocation, for which, of course, the Omega Consortium was not responsible.

<sup>80</sup> Ríos ¶ 30.

<sup>81</sup> Letter No. P.C.S.J.-604-2015 from Supreme Court of Justice to Omega dated 11 Mar. 2015 (R-0013).

<sup>82</sup> Letter No. P007-60 from Omega to the Judicial Authority dated 18 Mar. 2015 (R-0015 resubmitted).

## Translation

of more than 15 pages addressing the historical background of the Contract and the circumstances leading to the existing situation, such as the delays caused by the Panamanian Government, as well as its formal position with respect to the Project. Only on page 14, in the second to last paragraph, did the Omega Consortium raised the possibility of bringing the case before an ICSID tribunal and even then *only* “if a fair and equitable agreement cannot be reached.”<sup>83</sup>

102. After receiving our response, the Supreme Court of Justice decided to temporarily suspend its decision to terminate the Contract, and granted an extension.<sup>84</sup> The Republic of Panama alleges that the Judiciary granted the Omega Consortium a second chance and negotiated what they understood to be a good faith resolution.<sup>85</sup> That is not true. The Judiciary did not grant an extension to the Omega Consortium out of generosity, but because, after the Omega Consortium explained that terminating the Contract was totally arbitrary, the Director of General Services in Charge of the Judiciary, Mrs. Sonali Ríos, deemed our request for reconsideration valid.<sup>86</sup> The Director, along with Mrs. Vielsa Ríos and her legal advisor, acknowledged defaults by the Judiciary and concluded that reconsideration was appropriate. Some of these defaults were: (1) the lack of a full and approved set of blueprints as set forth in the Contract, (2) the lack of documentation to obtain a construction permit, (3) the lack of timely payments for work performed, (4) the lack of endorsement by the fire department (i.e., DINASEPT), and (5) the lack of approval of the Pre-Project.<sup>87</sup> This response by the Judiciary not only shows that the Omega Consortium had not breached or defaulted, and that our claims were correct, but that at no time had the Judiciary “graciously (given) Omega a second

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<sup>83</sup> *Id.*

<sup>84</sup> Letter from the Supreme Court to Omega Engineering, Inc. dated 25 Mar. 2015 (C-0248).

<sup>85</sup> Resp’s Counter-Mem. ¶ 41.

<sup>86</sup> Letter No. 366/DSG/2015 from General Services Dep’t to Chief Legal Officer of the Judicial Authority dated 17 Apr. 2015 (R-0016).

<sup>87</sup> *Id.*

## Translation

chance.”<sup>88</sup> In fact, as early as August 2014, we had submitted a letter anticipating the need for a third change order.

103. During the next few weeks, the Omega Consortium tried to resolve a number of pending issues with the Judiciary.<sup>89</sup> But the proposals by the Judiciary relating to extensions were unacceptable to the Omega Consortium because they did not address any of the existing budgetary, technical, or physical problems.<sup>90</sup> I understand that the Republic of Panama has said that the Omega Consortium refused to sign Change Order No. 3 for an extension of time, even though it had been presented to us several times between January 2015 and May 2015. This is not true. The Omega Consortium did not refuse the Change Order. In hope that the La Chorrera Project could develop effectively and could be completed per the schedule, it was necessary for the Judiciary to address all the issues that could cause problems in the Change Order. That was why the Omega Consortium wanted all issues to be addressed in a single change order.<sup>91</sup> The Judiciary turned a deaf ear to the Consortium’s requests, even though we had the technical know-how, and decided to simply forward the same Change Order on various occasions in an effort to resume the Contract without a final resolution of the various problems. The only modifications that the Judiciary made were to the number of days that the Contract would be extended. The amount of days was important, but at that time, there were many other problems that needed attention. If anything was rejected, it came from

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<sup>88</sup> Resp’s Counter-Mem. ¶ 41.

<sup>89</sup> Letter No. P007-062 from the Omega Consortium to the Judiciary dated 1 Apr. 2015 (C-0244); Letter from the Omega Consortium to the Judiciary dated 6 Apr. 2015 (C-0245); Letter No. P007-064 from the Omega Consortium to the Judiciary dated 10 Aug. 2015 (C-0246).

<sup>90</sup> Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sep. 2015 (C-0247).

<sup>91</sup> *Id.*

## Translation

the Judiciary and it was the Omega Consortium's concerns regarding Change Order No. 3 of the La Chorrera Contract.<sup>92</sup>

104. This is the reason why the Omega Consortium did not indicate it would sign Change Order No. 3, nor renew the security bonds.<sup>93</sup> The Omega Consortium only requested to be sent the draft of Change Order No. 3 "for revision before the Consortium's representative could sign."<sup>94</sup> The Omega Consortium never told the Judiciary it *would* sign the Change Order.<sup>95</sup> While the lawyers went over the draft, the insurer sent their requirements. By that time, the insurer was very worried about the debt owed to the Omega Consortium by the Government, which at that point was close to US\$ [REDACTED].

105. In August 2015, the Omega Consortium continued to inform the Judiciary of its concerns,<sup>96</sup> but these still were not addressed in the Change Order sent by the Judiciary in September 2015.<sup>97</sup> The Omega Consortium voiced its concerns again by late September 2015.<sup>98</sup> After that, the Judiciary responded to some of our letters and we met again in October 2015. After the meeting, the Judiciary requested that the Omega Consortium submit an itemized list detailing the prices for each one of the activities completed by the Omega Consortium, which we submitted at end of October

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<sup>92</sup> Letter from Omega to Judicial Authority in response to Nota: 2015 10 29-P007-067 Proposal of Addendum No. 3 dated 29 Oct. 2015 (R-0081); Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sep. 2015 (C-0247); Letter No. P007-064 from the Omega Consortium to the Judiciary dated 10 Aug. 2015 (C-0246).

<sup>93</sup> Resp's Counter-Mem. ¶ 44.

<sup>94</sup> Email Chain between Elena Jaen of the Judicial Authority and Francisco Feliu of Omega dated 7 May 2015 (R-0010); Email Chain between Elena Jaen of the Judicial Authority and Francisco Feliu of Omega dated 11 May 2015 (R-0022).

<sup>95</sup> *Id.*

<sup>96</sup> Letter No. P007-064 from Omega to the Judicial Authority dated 10 Aug. 2015 (C-0246).

<sup>97</sup> Letter No. 899/DALSA/2015 from the Judicial Authority to Omega dated 11 Sep. 2015 (C-0571).

<sup>98</sup> Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sep. 2015 (C-0247).

## Translation

2015.<sup>99</sup> Although at the end of 2015 it appeared that the Judiciary was finally coming around to our position, by then we were no longer able to formalize the Change Order because of the total uncertainty we had with respect to all the other Ministries.

106. At that point, the Government owed the Omega Consortium over US\$ [REDACTED] in completed work; as a result we had no liquidity. The last payments from the Judiciary had been seized by the Social Security Administration. On top of that, our bank accounts were frozen because of the investigation of Moncada Luna and we were facing lawsuits from suppliers, as well as from employees, who were requesting exorbitant severance pay packages and were filing lawsuits with the Ministry of Labor. To make matters worse, INAC had also administratively terminated the Ciudad de las Artes Contract, which precluded us from bidding on new projects.

### 2. *MINSA-CAPSI Contracts*

107. As mentioned above, before the change of administration, the Omega Consortium was waiting for the Comptroller General to approve a Change Order for each of the MINSA Contracts, granting the necessary time extensions and the payment of cost increases.<sup>100</sup> However, the approvals never came, which put the Omega Consortium in a difficult situation. The Contracts had expired and CNOs could not be issued so that the Omega Consortium could receive payments and could continue working. Thus, shortly after the Administration changed, on July 22, 2014, Omega met MINSA's architects in order to formally address and discuss pending matters important to advancing and completing the Projects.<sup>101</sup>

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<sup>99</sup> Letter from Omega to Judicial Authority in response to Nota: 2015 10 29-P007-067 Proposal of Addendum No. 3 dated 29 Oct. 2015 (R-0081).

<sup>100</sup> *See supra* ¶¶ 44-46.

<sup>101</sup> Letter No. MINSA-54 from the Omega Consortium to the Ministry of Health dated 31 Oct. 2014 (C-0173); *See also* Letter MINSA-50 from the Omega Consortium to Panama's Ministry of Health dated 29 Jul. 2014 (C-0069).



## Translation

108. But to us it was obvious that something had changed in the general attitude of the Government towards Oscar and his companies. What worried us the most was that the Comptroller General's Office would not endorse our various documents already in the Comptroller General's Office, and it did not seem like it was because MINSA did not have earmarked funds for the Projects, but instead it looked like it was deliberately against us. Later, in 2016, Nessim Barsallo (of MINSA) shared in a text conversation with me that he believed the Comptroller General's Office had orders not to endorse anything from Oscar or the Omega Consortium and that those orders came from the "Presidency,"<sup>102</sup> which confirmed my suspicions.

109. During the second half of 2014, we continued trying to obtain time extensions and resolve other issues that were blocking the development of the Projects.<sup>103</sup> By the end of October 2014, the Omega Consortium was already in a critical position vis-à-vis the MINSA Contracts, given that the Contracts were not valid and completed work was still unpaid.<sup>104</sup> As a consequence, the Omega Consortium was forced to reduce physical work on the Projects,<sup>105</sup> which had happened on a few occasions in the past when it was necessary, and which I understand Mr. Barsallo does not view as a problem.<sup>106</sup> MINSA acknowledged that it was responsible for some of the delays and it seemed willing to extend the term of the Contracts.<sup>107</sup> Even though the Contracts had legally expired, MINSA

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<sup>102</sup> WhatsApp Messages between Nessim Barsallo and Frankie Lopez dated 3 Mar. 2016 (C-0681).

<sup>103</sup> Letter MINSA-50 from the Omega Consortium to Panama's Ministry of Health dated 29 Jul 2014 (C-0069 resubmitted); Letter No. MINSA-KY-82 from Omega to MINSA dated 28 Oct. 2014 (C-0575); Letter No. MINSA-54 from the Omega Consortium to the Ministry of Health dated 31 Oct. 2014 (C-0173); Letter No. MINSA-RS-54R from Omega to MINSA dated 22 Sep. 2014 (C-0534).

<sup>104</sup> Letter No. MINSA-54 from the Omega Consortium to the Ministry of Health dated 31 Oct. 204 (C-0173).

<sup>105</sup> *Id.*

<sup>106</sup> *See e.g.*, Barsallo ¶ 27.

<sup>107</sup> *See* Technical Justification dated 1 Jul. 2014 (C-0577); Letter No. DIPRENA/DP/SEYS/GC/9087 from the Ministry of Economy and Finance to MINSA dated 20 Nov. 2014 (C-0578); Addendum No. 5 to Contract No. 085 (2011) dated 2014 (C-0257).

## Translation

requested a plan to complete the Projects from the Omega Consortium, which the Omega Consortium prepared and delivered, making clear that it was impossible to set any exact dates until a clear payment schedule and an extension of time for the Contracts had been established.<sup>108</sup> The Ministry seemed interested in fixing the situation at the beginning of the negotiation, but this did not last long. Between October and December 2014, we tried to reach MINSA on many occasions, all without success.<sup>109</sup>

110. The Republic of Panama alleges that in the Fall of 2014 the attitude of the Omega Consortium vis-à-vis the delays in the endorsement of change orders and payments changed.<sup>110</sup> It also says that the Omega Consortium stopped work on the MINSA Contracts in October 2014.<sup>111</sup> None of the assertions made by the Republic of Panama are true. The attitude of the Omega Consortium did not change in the Fall of 2014, and we did not stop working for no apparent reason in October 2014. The situation concerning the MINSA Projects became untenable because the Omega Consortium had worked without a valid Contract and without collecting any payments for months. MINSA was aware of the situation, and it was informed that this was the problem. In January 2015 we informed MINSA again about the debts owed to Omega Consortium and the invalidity of the Contracts.<sup>112</sup> In spite of there being no valid Contracts for the three MINSA projects, in October 2014 we signed a change order requested by MINSA with modifications to the medical equipment, but that did not alter the amount and duration of the Contract. We did this in good faith and with hope that we could to work with MINSA to solve the problems with the Projects.

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<sup>108</sup> Letter No. MINSA-PC-56 from Omega to MINSA dated 11 Sep. 2014 (C-0581); *see also* Barsallo ¶ 48.

<sup>109</sup> Letter No. MINSA-KY-82 from Omega to MINSA dated 28 Oct. 2014 (C-0575); Letter No. MINSA-RS-62ET from Omega to MINSA dated 28 Nov. 2014 (C-0584). Omega and MINSA formalized a change order to modify the medical requirements in the Rio Sereno facilities, but this was the only thing that could be formalized during that period. *See* Addendum No. 3 to Contract No. 083 (2011) dated 26 Dec. 2014 (C-0107).

<sup>110</sup> Resp's Counter-Mem. ¶ 77.

<sup>111</sup> *Id.*

<sup>112</sup> Letter No. MINSA-PC-56 from Omega to MINSA dated 11 Sep. 2014 (C-0581).

## Translation

111. It makes no sense for the Government to say that the Omega Consortium stopped all work on the MINSA Projects in October 2014. Concerning Río Sereno, in November 2014, we requested a change order for an extension of time for delays not attributable to the Omega Consortium, but it was never endorsed.<sup>113</sup> Subsequently, in January 2015, a schedule for execution of works was submitted, along with the breakdown for each activity, the projected cash flow and the last account submitted for the Río Sereno Project at MINSA's request.<sup>114</sup> The situation with Kuna Yala was similar. In September, we sent a letter to MINSA referring to a proposal concerning the Project's three-phase line. By October 2014, the Omega Consortium had not received any reply from MINSA.<sup>115</sup> In November 2014, we requested a change order for an extension of time, again for delays not attributable to the Omega Consortium, but it was never granted.<sup>116</sup> In December 2014, the Omega Consortium again informed MINSA that it did not have a valid Contract and that the Comptroller General had to start endorsing change orders immediately.<sup>117</sup> Likewise, the Omega Consortium continued working with MINSA even when it was not contemplated by the Contract. Puerto Caimito suffered the same fate. This shows that the Omega Consortium's attitude did not change in the Fall of 2014, and that the Omega Consortium continued working so that the MINSA Projects could be finished. This also reveals that what the Republic of Panama said about their generosity in giving the Omega Consortium extensions of time is false. After July 2014, the Omega Consortium could not obtain endorsements for any change orders for extensions of time for the MINSA Projects. Mr. Barsallo himself accepts and explains that we continued working and negotiating at least until January

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<sup>113</sup> Letter No. MINSA-RS-62ET from Omega to MINSA dated 28 Nov. 2014 (C-0584).

<sup>114</sup> Letter MINSA-RS-63 dated 16 Jan. 2015 (R-0096).

<sup>115</sup> Letter No. MINSA-KY-82 from Omega to MINSA dated 28 Oct. 2014 (C-0575).

<sup>116</sup> Letter No. MINSA-KY-83ET from the Omega Consortium to the Ministry of Health dated 28 Nov. 2014 (C-0175).

<sup>117</sup> Letter MINSA-55KY from Omega to the Ministry of Health dated 18 Dec. 2014 (R-0093).

## Translation

2015, when the Omega Consortium submitted an updated schedule indicating that, if Change Order No. 4 was endorsed, the Contracts would be completed in September 2015.<sup>118</sup>

112. To make things worse, around April 2015 the Comptroller General became more active with the MINSA Contracts and started to ask MINSA for documents related to the Omega Consortium relative to insurance, guarantees and a variety of corporate information regarding the foreign companies affiliated with the Consortium, even though all of this information, or at least most of it, had been submitted during the bidding processes.<sup>119</sup> That same day, the Comptroller General refused to endorse the change order extending the term of the Puerto Caimito Contract, unjustifiably stating that some formalities still had to be completed.<sup>120</sup> This was outrageous, because almost all the noted deficiencies were attributable to MINSA. For example, the Comptroller General contended that a certificate was missing, but this certificate had already been submitted during the bidding process and was a part of MINSA's file. Two weeks later, the Comptroller General again refused to endorse the change order which extended the duration of the Río Sereno Contract, and once again it was because of allegedly missing, but actually non-existing formalities. These types of unfounded requests from the Comptroller had never been made during the approval of the previous change orders.

113. Additionally, our problems regarding non-payment were still growing. At the end of 2014, the Comptroller General had approved some CNOs for the Kuna Yala Contract. However, the expiration date of several of them was less than six months from the date we received them, which

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<sup>118</sup> Barsallo ¶ 54 & n.65; *see also* Letter MINSA-RS-63 dated 16 Jan. 2015 (R-0096). In fact, at the end of January 2015, the Omega Consortium had to contact MINSA again to remind them of all the endorsements still pending before the Comptroller General. Letter No. MINSA-56 from Omega to MINSA dated 20 Jan. 2015 (C-0583).

<sup>119</sup> Letter No. 695-15-LEG-F.J.PREV. from the Comptroller-General to the Ministry of Health dated 17 Apr. 2015 (C-0176).

<sup>120</sup> *Id.*

## Translation

meant that the Omega Consortium could not cash the CNOs immediately because the bank reserved the right to refuse disbursement of CNOs if it deemed that the expiration date was too soon or expired. We continued to look for a way of obtaining payment for our work.<sup>121</sup> The Comptroller General started to systematically reject all payment requirements for mere formalities similar to those they used to reject the submitted change orders. As a result of the lack of payment, we had to stop all work, and we could not extend the bank guarantees. The insurer withdrew our endorsements because the Republic of Panama owed us more than US\$ [REDACTED] on all Contracts, including the MINSA CAPSIs. All guarantees eventually expired at the end of September 2015.

114. In October 2015, the Omega Consortium sent a breach notification to MINSA stating that more than US\$ [REDACTED] was outstanding on two of the Contracts.<sup>122</sup> The amount owed, however, was actually higher, given that Omega Consortium had not been able to issue some invoices because the Contract term could not be extended. The Omega Consortium had been forced to lay off workers because we did not receive any payment.<sup>123</sup> The Omega Consortium nonetheless maintained its physical presence in Panama until August 2015.

115. I understand that the Republic of Panama excuses its delays and lack of endorsements by suggesting that, in every change of Administration, the new Administration performs a complete audit of the ongoing projects before approving any change order or payment.<sup>124</sup> First of all, neither myself nor the Omega Consortium were ever officially informed about the alleged audit performed by the Comptroller General due to a change of Administration. With great effort we managed to make the new Ministers understand and sign the change orders already in process. But, it took six

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<sup>121</sup> See e.g. Letter from the Omega Consortium to the Ministry of Health dated 4 Jun. 2015 (C-0186).

<sup>122</sup> Letter No. MINSA-60 from Omega to MINSA dated 27 Oct. 2015 (C-0588).

<sup>123</sup> Letter from Omega to SUNTRACS dated 1 Nov. 2015 (C-0589).

<sup>124</sup> Resp's Counter-Mem. ¶ 71.

## Translation

months for the Comptroller General to even respond, and it did so with minor observations that did not justify the time elapsed with no answer. However, assuming that it is true that an audit is performed after every change of administration, I think this should be reasonable in terms of time and scope. What the Republic of Panama did was unreasonable, since, as I mentioned earlier, the Comptroller General never endorsed any change order extending time to the MINSA CAPSI Contracts, or any payments even if already approved by MINSA's technical staff and the Comptroller General's auditors. The Comptroller did not endorse any of the CNOs. By doing this, the Omega Consortium was strangled, without liquidity and without valid Contracts, which caused the loss of guarantees and resulted in dozens of lawsuits and claims by subcontractors and suppliers.

116. I understand that another argument used by the Republic of Panama is that the outgoing Comptroller General Gioconda Torres de Bianchini had terminal cancer which affected the speed with which the office could work.<sup>125</sup> The Omega Consortium never received a notification from the Comptroller General's Office informing us that the Comptroller General could not fulfill her duties due to her sickness. And, even though I feel uneasy about saying this, because I can imagine how hard that situation was for her and her family, there must be a reasonable amount of time for the Comptroller General as an agency to review and endorse change orders and payments, irrespective of the personal situation of the Comptroller General. In my opinion, it is not fair for a contractor that is working well to suffer what the Omega Consortium suffered due to the indefinite delays created by this situation.

117. In my opinion, the reality is that the MINSA contracts were unattended and obstructed by the Varela Government. As I mentioned earlier, having received no payment for the amounts due, and no extension of time, the Omega Consortium had no option other than to stop all work and let the

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<sup>125</sup> Resp's Counter-Mem. ¶ 72.

## Translation

guarantees expire. MINSA requested that the Omega Consortium renew the guarantees to sign another change order for extending the term of the Contract, but MINSA only intended to extend the time, without considering the additional expenses or paying the payment application, which was plainly insufficient. Therefore, the Omega Consortium could not resume work. These conversations were managed directly by IGRA with Temi Díaz (the President's advisor) at the Cabinet meetings. I had some informal exchanges with Mr. Barsallo on this subject where, as I said before, he confirmed that the Comptroller General's Office apparently had orders not to endorse anything from us and that those orders came from the Presidency.<sup>126</sup> In July 2016, MINSA requested a meeting with the Omega Consortium in order to resolve some issues related to these Contracts, and they seemed to be willing to complete the Projects.<sup>127</sup> But, according to [REDACTED]

[REDACTED].<sup>128</sup>

118. This is a real shame, not only for the Omega Consortium, but also for the communities where the Projects were located. Our work was quite advanced, and these clinics would have helped these communities a lot. At Río Sereno, we completed approximately 70% of the work; at Kuna Yala, we finished 57%, and at Puerto Caimito only 10% of the Project remained to be completed. All the Projects were more advanced than what the Republic of Panama had disbursed to us in payment.

### 3. *Ciudad de las Artes*

119. The new INAC Director, Mariana Nuñez, was appointed by President Varela when he took office. Since her appointment, in a very similar attitude to the one assumed by the Comptroller General's Office, she seems to have made it her mission to obstruct the Omega Consortium's Contract. The new INAC administration was simply paralyzed; it did not approve any plans submitted

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<sup>126</sup> See *supra* ¶ 110.

<sup>127</sup> Letter No. DAPE-109-2016 from MINSA to Omega dated 22 Jul. 2016 (C-0591).

<sup>128</sup> [REDACTED]

## Translation

by the Omega Consortium nor did it make the payments it was obliged to make. The excuse for not approving the payments was that the INAC was purportedly assessing the legal validity of the Contract, the CPPs, and the time extension requests. The INAC did this even though the Project's external inspector, Sosa, recommended the approval of payment accounts and the economical proposal for the additional works requested by the INAC, explaining that without getting paid, the Omega Consortium would have no liquidity<sup>129</sup>.

120. It was evident to me that the INAC was deliberately trying to get rid of the Omega Consortium's Contract, and I think this was the result of instructions given after President Varela assumed the Presidency because the INAC's attitude towards our Project changed completely when he took office. Prior to President Varela assuming power, the dynamic of the working team, comprised of inspectors and government officials, was transparent and precise. Afterwards, in my opinion, it became clear, even in their way of expressing and drafting letters, that the INAC had received an instruction to hinder or get rid of the Contract with the Omega Consortium.

121. In fact, after the Administration changed, the Omega Consortium requested a meeting with the new director to present the Project and to establish a line of communication<sup>130</sup>. Curiously, the external inspector Sosa did not participate in this meeting. During the meeting I informed the INAC of the pending issues, including the time extension and additional costs. The INAC agreed to give us an answer in 15 days.<sup>131</sup> Afterwards, we wrote a follow-up letter to the INAC requesting a determination of additional costs and time extension for reasons not attributable to the Omega Consortium.<sup>132</sup> The INAC responded two months later, accepting part of the time and costs but

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<sup>129</sup> See generally Letter No. SA-CDA-099-14 from Sosa to Omega dated 25 Sep. 2014 (C-0593).

<sup>130</sup> Letter No. INAC-11 from Omega to INAC dated 31 Jul. 2014 (C-0594).

<sup>131</sup> Meeting minutes between Omega and INAC representatives dated 23 Oct. 2014 (C-0595).

<sup>132</sup> Letter No. SOSA-0-5-2014 from the Omega Consortium to Sosa dated 17 Sep. 2014 (C-0546).



## Translation

rejecting a requested 180-day extension despite the substantial documentation and opinions from technical experts (*e.g.* Architect Espino from the INAC) substantiating it.<sup>133</sup> In October 2014, we insisted on having our extension request resolved, given that the Contract was going to expire in January 2015, and we were hoping to have this matter solved before then.<sup>134</sup> To the contrary, the INAC informed us that it was considering the issue and assessing the legality of the CPPs.<sup>135</sup>

122. At the same time, we were having problems with the collection of pending payments. Since Varela's Administration took power, the Omega Consortium never received a single payment corresponding to the Contract, and the amount owed was approximately US\$ [REDACTED]. It is my understanding that one of the explanations given by the Government to justify the lack of payment in this Project is that the INAC was auditing the Project, and that it referred to internal notes between Sosa and INAC<sup>136</sup> to justify issues that were not formally communicated to me nor to anyone from the Omega Consortium. I am aware that an *internal* list of so-called "high risk" projects the Administration wanted to re-evaluate was created by the Varela Administration and was leaked to the media. Our Project was on that list. It seems the Government wanted to change the Project's scope and, while it was deciding what to do, it refused to approve any advance payment applications or to make any decisions that would allow progress on the Project. This is how the Omega Consortium's liquidity problems began to worsen, since it was not only the INAC that was refusing to pay for the work performed, but also the other Government agencies with which we had Contracts. The INAC was allegedly assessing the legality of the CPPs, while MINSA and the Comptroller General's Office were not approving payments or time extensions, and, in addition, many Municipalities were waiting

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<sup>133</sup> Letter DG/107 from INAC to Omega dated 9 Sep. 2014 (C-0073 resubmitted).

<sup>134</sup> Letter No. INAC-N16-2014 from Omega to INAC dated 16 Oct. 2014 (C-0597).

<sup>135</sup> Letter DG/149 from INAC to the Omega Consortium dated 23 Oct. 2014 (C-0074 resubmitted).

<sup>136</sup> Resp's Counter-Mem. ¶ 105.

## Translation

for the outcome of the Moncada Luna investigation before making decisions on the Projects. That is why the Omega Consortium remained inoperative, and we were forced to dismiss part of our personnel, and suspend work.

123. I understand that the Republic of Panama said that on November 21, 2014, the Omega Consortium had abandoned the Ciudad de las Artes Project without the INAC's or Sosa's authorization. This is not true. The Omega Consortium did not abandon the Project at any time, neither did it breach the Contract. In fact, on that very day of 21 November 2014, the Omega Consortium sent the INAC a follow-up letter, in which we requested the formalization of a time extension change order.<sup>137</sup> By no means was the Project abandoned by the Omega Consortium, to the contrary, the Omega Consortium's intention had always been to finish it successfully. On December 22, 2014 we addressed and answered in detail each of Sosa's concerns, specifically those arguments that accused the Omega Consortium of breaching the Contract.<sup>138</sup> By the end of January 2015, as we wanted to move forward with the Ciudad de las Artes Project, the Omega Consortium requested an extension of time to address the delays, which were not attributable to it.<sup>139</sup> This is why the INAC's decision to terminate the Contract surprised us, and why the Omega Consortium requested a reconsideration of that decision.<sup>140</sup> The INAC wanted the Omega Consortium to work expeditiously, but, at the same time, the INAC was slow acting, taking over 120 days to reverse the work instructions given to the Omega Consortium by the previous Director. This series of events demonstrates that the Omega Consortium was actively working on the Ciudad de las Artes Project and that, under no circumstances,

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<sup>137</sup> Letter No. INAC-N18-2014 from Omega to INAC dated 21 Nov. 2014 (C-0599).

<sup>138</sup> Letter No. SOSA-07-D-2014 from Omega to Sosa dated 22 Dec. 2014 (C-0600).

<sup>139</sup> Letter No. SOSA-08-E-2015 from Omega to Sosa dated 23 Jan. 2015 (C-0598).

<sup>140</sup> Letter from the Omega Consortium to the National Institute of Culture dated 3 Feb. 2015 (C-0185).

## Translation

was the Project abandoned. The party that abandoned its responsibilities and obligations was the Republic of Panama.

124. Another problem that came up after the Administration change was the 2015 budget. The budget items requested and allocated to the INAC were not enough even to cover the payments owed to the Omega Consortium for its work already completed in the Ciudad de las Artes Project. But this budgetary issue had nothing to do with us or our performance of the Contract. Instead, this situation revealed the Republic of Panama's intention to terminate the Ciudad de las Artes Project—it cut the budget by more than 80%! This worried us tremendously.

125. As of 8 September 2014, the INAC already knew it was not going to have a budget allocation in the 2015 National Budget to cover the Ciudad de las Artes Contract obligations, but it did not inform either the Contractor, or the bonding company until January 2015. By 23 October 2014, the newspaper La Prensa explained that only US\$ 10 million would be committed to the Ciudad de las Artes Project, the cost of which exceeded US\$ 54 million. However, according to the Contract, the full payment of the Contract was already allocated in the 2014 National Budget.<sup>141</sup>

126. INAC, ASSA, and the Omega Consortium held a meeting on 13 January 2015 to discuss the situation regarding the Project, and, even though they expressed an interest in the Omega Consortium continuing with the Project, the INAC categorically and repeatedly informed the Omega Consortium that it was not going to pay the issued and assigned CPPs.

127. Despite the INAC's irrational attitude, we were able to set up another meeting with INAC, but this time we also included representatives from the Ministry of Economy and Finance. The Director of Public Credit, Katyuska Correa, attended the meeting on behalf of the Ministry of

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<sup>141</sup> Contract No. 093-12 dated 6 July 2012 (C-0042 resubmitted), cl. 35.

## Translation

Economy and Finance. After the meeting, she was able to understand the obligation that the Government had with Credit Suisse Bank and, as a result, the Government paid Credit Suisse Bank.<sup>142</sup> But the CPPs related to work completed, but not endorsed before the change in Administration, were never endorse and we were never able to receive payment.

128. Another situation that demonstrated the INAC's change in attitude was the role played by Sosa Arquitectos. As I explained before, Sosa was the INAC's external inspector in the Ciudad de las Artes Project. (The INAC was unlike MINSA, for example, which had an internal technical department.) Sosa joined the Project between six months to one year after the Contract had begun because the endorsement of its contract was delayed. At the beginning of the Contract, Sosa attended all of the project's meetings, as stated in the meeting minutes. Nevertheless, after the new INAC Director was appointed by the Varela Government, Sosa stopped attending the meetings, even though highly technical matters relevant to the project were being discussed. I do not know if the INAC requested that Sosa stop attending these meetings or if Sosa simply did not want to attend. In any case, there were disagreements on many issues between Sosa and the INAC's new management. For example, Sosa recommended the granting of a time extension for the Omega Consortium but the INAC disregarded it.

129. Sosa's attitude change after the Varela Administration came to power was unmistakable: Sosa started a daily practice of sending letters—a practice that had not existed in the previous 16 months of work. More specifically, starting in August 2014, Sosa began sending frequent letters to the Omega Consortium and the INAC raising supposed problems with the Project, often referring to problems that the Omega Consortium had *already* solved or it was in the process of

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<sup>142</sup> Letter No. INAC-022 from Omega to INAC dated 16 Mar. 2015 (C-0605).

## Translation

resolving, but that were ordinary in construction work. I was also surprised to see that, suddenly, Sosa's letters went from being technical to focusing on legal issues relating to the Contract, but they were technical inspectors, not lawyers.<sup>143</sup>

130. Finally, on December 3, 2014, INAC unilaterally decided to terminate the Contract, alleging that the Omega Consortium had not complied with its obligations, even though the INAC had already implicitly admitted that it was responsible for the payment delays that had led to the work stoppage.<sup>144</sup> The INAC had chosen not to process the required payments, to indefinitely question the legality of the CPPs, and not to approve the Project plans. Yet according to the INAC, none of these problems of its own making gave the Omega Consortium grounds for suspending work on the Project.<sup>145</sup> I understand that the Government of Panama argues that the Omega Consortium had enough cash flow to move forward with the Project despite the INAC's failure to pay. This is not true. The Government of Panama had ceased paying on all of our Contracts, so the Omega Consortium lacked liquidity at that moment. The fact that the Contract had an advance payment clause did not imply, by any means, a waiver of the Government's main obligation in a public works contract, which is to pay the contractor as the Contract moves forward. Again, it was obvious that the Government was not acting in good faith.

131. The Omega Consortium was never properly notified of the termination of the Contract. On January 27, 2015 INAC posted a notification on our office door.<sup>146</sup> In response to the INAC's

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<sup>143</sup> See, e.g., Letter from Sosa to Omega dated 2 Sept. 2014 (R-0044); Letter No. SA-CDA-099-14 from Sosa to INAC dated 21 Aug. 2014 (C-0592) (citing clause 45(1), (7) of the contract); Letter from Sosa to INAC dated 10 Dec. 2014 (R-0051) at 2; Letter from Sosa to INAC dated 16 Dec. 2014, ¶ 9 (C-0717).

<sup>144</sup> Letter No. 212-D6 from INAC to ASSA dated 18 Dec. 2014 (C-0603); Resolution No. 391-14 DG-DAJ dated 23 Dec. 2014 (C-0230 resubmitted).

<sup>145</sup> Resolution No. 391-14 DG-DAJ dated 23 Dec. 2014 (C-0230 resubmitted).

<sup>146</sup> Letter from the Omega Consortium to the National Institute of Culture dated 3 Feb. 2015 (C-0185).

## Translation

abrupt decision to terminate the Contract, the Omega Consortium presented a letter addressing the termination decision on February 3, 2015.<sup>147</sup> I understand Panama claims that it attempted to notify the Omega Consortium of the INAC's termination resolution by delivering notice to our offices, but that they were abandoned and nobody was present to receive the notification.<sup>148</sup> This is simply false. By January 27, 2015, the Omega Panama office was neither abandoned, nor did it lack staff. At that moment we had personnel in the Omega Panama offices, including: Pancho, Salvador del Toro, Jose Mandarakas, secretaries, administrative staff and myself.

132. Afterwards, on February 6, 2015, in an attempt to resolve the dispute, the Omega Consortium communicated to INAC its intention of assigning the Contract. Even though we did not want to do it, we felt we had to assign the Contract because it was obvious that the INAC did not want us in the Project.<sup>149</sup> The INAC did not reply to our letter and [REDACTED].<sup>150</sup> The Omega Consortium sent the INAC another letter requesting a meeting to formalize an agreement to resolve the dispute<sup>151</sup> but the INAC ignored us once again and insisted on terminating the Contract. In my opinion, the termination of the Contract was baseless, and demonstrated the change in attitude the Varela Government had caused towards the Omega Consortium and its Projects.

#### 4. *Mercados Perifericos*

133. As I explained before, this Project was progressing really well. In fact, the Municipality of Panama's representatives had openly confirmed that the Omega Consortium was

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<sup>147</sup> *Id.*

<sup>148</sup> Resp's Counter-Mem. ¶ 110.

<sup>149</sup> Letter from Frankie Lopez to INAC dated 6 Feb. 2015 (C-0604).

<sup>150</sup> *See* [REDACTED]

<sup>151</sup> Letter No. INAC-022 from Omega to INAC dated 16 Mar. 2015 (C-0605).

## Translation

giving its all<sup>152</sup> and therefore they were supporting us with the plans and the change order.<sup>153</sup> Nevertheless, this positive attitude towards us changed from one day to the next after the 2014 election took place. A few weeks after the Varela Administration took office, we sent a letter to the Subdirector of Work and Construction, as we heard that nothing had been done by the Ministry of Public Works regarding the plan's approval, which at the time surprised us.

134. I understand that Mr. Eric Díaz, Panama's witness in this arbitration, claims that the designs made by the Omega Consortium had defects.<sup>154</sup> I do not know Mr. Diaz as he apparently started working in the Municipality of Panama in August 2016, well after most of the Municipality's arbitrary actions had taken place, but what he says is absurd or he simply does not know the content of the Contracts.

135. For example, regarding the Juan Díaz Market, Mr. Díaz explains that the Municipality did not own the Market's neighboring lands and attributes to the Omega Consortium the responsibility for finding access to the Market, suggesting that the Omega Consortium should have obtained a transit easement.<sup>155</sup> This is the first time I heard about this alleged responsibility on our part, and this is definitely not true. Mr. Díaz's statement makes no sense, considering that the Government is the one that has the ability and legal authority to request and negotiate such an easement. Of course, gaining access to the Market was the Government's responsibility and not the Omega Consortium's.

136. In the end, this did not matter since on September 2, 2014, the Municipality of Panama informed the Omega Consortium of the suspension of the Juan Díaz Market, under the guise of

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<sup>152</sup> *See supra* ¶ 65.

<sup>153</sup> *Id.*

<sup>154</sup> First Witness Statement of Eric Díaz dated 7 Jan. 2019 (“Díaz”) § IV.

<sup>155</sup> Díaz ¶ 13.

## Translation

performing “a complete analysis of the project for the compliance with the terms and conditions stated in Contract No. 857-2013.”<sup>156</sup> At that moment, the Mayor’s “public policies” were not in line with the location of the market. By the time the Municipality of Panama had suspended work on the Juan Díaz Market, the Omega Consortium had already completed 50% of the work. We complied with instructions, halting construction and demobilizing the staff, even as we reaffirmed our willingness to cooperate in order to find solutions.<sup>157</sup>

137. In July 2014, the new Mayor of Panama City, José Isabel Blandón took office. One of his closest friends, the Municipality’s Secretary General, told me that Mayor Blandón “did not want” these Public Market Projects. Afterwards, I had the opportunity to meet with Mayor Blandón, and he personally told me that he did not like the Project. Apparently, Mr. Blandón did not want a market in Juan Diaz, preferring a storehouse instead, but the Panamanian Public Contracting law does not allow changes in the purpose of a public contract. At any rate, we presented him with options but, as of today, we have not received revised terms or conditions from the Government of Panama regarding the Juan Díaz Market. In my opinion, regardless of the community’s needs, Mayor Blandón apparently considered the Project as a continuation of the past Administration. In fact, there are articles in the press quoting the Mayor as criticizing the Markets.<sup>158</sup>

138. Even with Juan Díaz Market suspended, the Omega Consortium continued working on the Pacora Market. However, we also had to face several difficulties with that Project. First, the

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<sup>156</sup> Letter No. S.G.-087-from the Municipality of Panama to the Omega Consortium dated 2 Sep. 2014 (C-0058 resubmitted).

<sup>157</sup> See e.g., Letter No. MAP-5-09-14 from the Omega Consortium to Panama’s Office of the Mayor dated 5 Sep. 2014 (C-0071 resubmitted).

<sup>158</sup> *Blandon Stops Construction in 6 of the Mercados Perifericos*, EL SIGLO dated 6 Nov. 2014 (C-0608); See Rosalía Simmons, *Stop and Cancel Markets* dated 31 Oct. 2014 (C-0607);; See also Rafael Pérez, *Mayor Blandón resigns contract for market design in Juan Diaz* dated 30 Nov. 2017 (C-0609).



## Translation

Omega Consortium needed the Municipality's help to obtain some permits,<sup>159</sup> but the Municipality never addressed our requests. Similarly, we asked the Municipality to approve the construction plans, but the Municipality did not do so.<sup>160</sup> Even more importantly, we needed the Municipality to extend the term of the Contract, since work was delayed due to the missing permits and plan approvals, as well as other typical issues such as labor strikes.<sup>161</sup> In a letter of September 2, 2014, the Mayor's office acknowledged that the Contract had expired, but still requested that the Omega Consortium continue working on the Pacora Market;<sup>162</sup> the Omega Consortium duly complied with this request. Although we temporarily stopped construction while we waited for the Comptroller General's Office's endorsement of the requested time extension and the payment applications, other work such as the equipment purchases continued to be carried out. The Omega Consortium sent numerous letters to resolve all of these problems, but we did not receive any answer.<sup>163</sup> Furthermore, the Municipality never paid us for completed work. As of April 2015, there were 11 invoices pending for over US\$ [REDACTED]. And the Comptroller General never endorsed the Change Order.

139. Regarding the permits for the development of the Pacora Market that I mentioned above, there was the Certificate of Soil Use, which was supposed to be issued by the Ministry of Housing. Since the Government provided the Omega Consortium the land where it had to build the Project, the Consortium had no knowledge at all that this particular land supposedly lacked the required certificate, or that the site allegedly did not comply with zoning regulations. Providing land appropriate for the specified use was the *Municipality's* responsibility. The Omega Consortium could

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<sup>159</sup> Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2015 (C-0184).

<sup>160</sup> Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2015 (C-0184).

<sup>161</sup> Letter No. MUPA-5-09-14 from the Omega Consortium to City Hall dated 15 Sep. 2014 (C-0235).

<sup>162</sup> Letter No. S.G.-087-from the Municipality of Panama to the Omega Consortium dated 2 Sep. 2014 (C-0058 resubmitted).

<sup>163</sup> Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2015 (C-0184).

## Translation

never obtain the Certificate, even after our best efforts to comply with all the requirements, if the land itself apparently was not appropriate for the Contract's designated use.

140. I understand Panama claims that the Omega Consortium was contractually responsible for the delays in the Pacora Market Project related to the receipt of permits and certificates.<sup>164</sup> The Omega Consortium was not deficient in obtaining the Certificate of Soil Use from the Ministry of Housing. As the Panamanian Government has indicated, this certificate was properly requested by the Omega Consortium in June 2014. Three months after the request, the Omega Consortium warned the Secretary General of the Mayor's Office of the lack of progress with the Certificate and requested its assistance.<sup>165</sup> Thus, in September 2014, the Omega Consortium had requested an extension of time on the Contract, 200 days of which were attributable to the Ministry of Housing's failure to issue the Certificate of Soil Use.<sup>166</sup> Later, in January 2015, the Omega Consortium had a meeting with the Mayor's Office of Panama City, where we expressed our concerns about the lack of Certificate of Soil Use. This meeting was followed by a letter on February 20 requesting that the issues with the Certificate be addressed. Due to the lack of any reply from the Ministry of Housing, the Omega Consortium sent a letter on April 8, 2015, once again requesting the issuance of the Certificate.<sup>167</sup> The Omega Consortium did not receive a response to this letter either even though it wrote several follow-up letters to the Municipality of Panama City on April 14, April 23, April 30, May 8, May 20 and June 1, 2015<sup>168</sup>.

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<sup>164</sup> Resp's Counter-Mem. ¶¶ 137, 150.

<sup>165</sup> Letter No. MAP-5-09-14 from the Omega Consortium to Panama's Office of the Mayor dated 5 Sep. 2014 (C-0071 resubmitted).

<sup>166</sup> Letter No. MUPA-5-09-14 from the Omega Consortium to City Hall dated 15 Sep. 2014 (C-0235).

<sup>167</sup> Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2014 (C-0184).

<sup>168</sup> Follow-up to Letter No. P010 – 2015 4 08 – 010 dated 1 Jun. 2015 (C-0612).

## Translation

141. I strongly disagree with the Republic of Panama's assertion that the Omega Consortium was inefficient in their designs due to the lack of a Certificate of Soil Use. It was a Panamanian Government agency, the Ministry of Housing, which had a duty to issue such certificate. Despite repeated efforts, the Omega Consortium was unable to make any progress in obtaining the Certificate, and the Municipality of Panama—which presumably could have prompted the Ministry of Housing to act—failed follow up on the Certificate's progress. All the Omega Consortium could do was submit the required documentation as required by the applicable laws, which it did. But only the Ministry of Housing, in discussions with the Municipality, could make any decision with respect to zoning regulations. This was beyond the Omega Consortium's control.

142. The lack of the Certificate prevented the ANAM from endorsing the plans for the Pacora market, which in turn blocked endorsement of payments by the Comptroller General's Office—at least that was the excuse we were given for the Government's failure to pay us for the work we had performed. Certainly, the Omega Consortium had done everything in its power to obtain the Certificate.

143. I understand that the Republic of Panama has also stated that it assisted the Omega Consortium and cooperated beyond what it was contractually required to do in order to acquire the Certificate of Soil Use. This was not the case. As I have already stated, the Municipality should have been able to obtain the Certificate, but it made no effort to do so. Basically, if the Municipality wanted the Omega Consortium to finish the Project, it was the Municipality's duty to obtain the Certificate of Soil Use since it was the Municipality that provided the land where the Market had to be built. Clearly, there was no interest in obtaining the Certificate for the Omega Consortium.

144. Compliance with the Contract became difficult due to the Municipality's refusal to approve the project plans and payments. However, the Omega Consortium did not abandon the

## Translation

Project in April 2014 as the Republic of Panama states. The Consortium sent a letter and several follow-ups to the Municipality on April 8, 14, 23 and 30 and May 8, 20 and June 1, 2015 requesting: (1) that the plans be approved by ANAM, (2) that payment of 11 payment applications be approved, (3) that recommendations related to requests sent to the Municipality regarding Contract deliverables be issued, and; (4) that Change Order No. 2 be signed, so that the contractual execution term would be extended. We never received a response to any of these seven letters.<sup>169</sup> The Municipality instead responded by putting the Contract in default, but the Contract was already expired because the requested time extension had not been granted. In addition, the Government never paid any of the payment applications we submitted.

145. After that, in August 2016, the Mayor of the City of Panama expressed his intention to terminate the Contract claiming an alleged breach by the Omega Consortium in terms of the purpose and the execution term of the Contract.<sup>170</sup> This event took place almost immediately after July 29, 2016 when the Panamanian Government was notified of the Omega Consortium's intention to initiate this arbitration. And then, the Municipality of Panama terminated the Contract by Administrative Resolution on 11 January 2017, for alleged breach of the Contract.<sup>171</sup>

### 5. *Municipal Palace of Colón*

146. As previously discussed, the purpose of this Contract was the construction of a new Municipal Palace in the city of Colón. In order to develop this Project, we had to first retrofit existing warehouses into temporary facilities designated by the Municipality as temporary offices, where the Mayor's Office's employees would be transferred while we constructed the final Palace. These facilities were permitted for occupancy and are currently being used by the Municipality of Colon,

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<sup>169</sup> Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2015 (C-0184).

<sup>170</sup> Letter from City Hall for the District of Panama to the Omega Consortium dated 19 Aug. 2016 (C-0237).

<sup>171</sup> Resolution No. C-10-2017 dated 11 Jan. 2017 (C-0234).

## Translation

evidencing they were functional to the Municipality. For this reason, I am surprised to learn that the Government of Panama is now claiming that the temporary facilities constructed by the Omega Consortium were flawed.

147. Regarding the new Palace, construction never began. In July 2014, the city notified us that it wanted to change the Project site. Designs and studies for this Project at the original site had been 100% complete since early 2014.<sup>172</sup> On October 2, 2014, we requested the Mayor of the Municipality of Colón to formally confirm his intention to change the Project site.<sup>173</sup> The following month, we submitted a new proposal, including preliminary designs and costs for the change of location and we requested the Municipality's authorization to proceed.<sup>174</sup> The Omega Consortium tried to obtain approval of the change order on several occasions, without success.<sup>175</sup> Finally, in November 2014, we met with the Municipality's consultant, who told us they were considering *not* changing the location after all. However, for months thereafter, the Omega Consortium could not obtain clarity or an answer to this matter.<sup>176</sup>

148. In January 2015, a meeting was held and it was agreed that the Municipality was going to confirm the Project location, but this never happened. Consequently, in February 2015, the Omega Consortium sent a letter to the Mayor requesting confirmation of the new construction site, as the Project had been ongoing for 18 months, and the Municipality had not reached a decision on its location.

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<sup>172</sup> Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Municipality of Colón dated 19 Jun. 2015 (C-0070 resubmitted).

<sup>173</sup> Letter from the Omega Consortium to the Mayor of the Municipality of Colón dated 2 Oct. 2014 (C-0178).

<sup>174</sup> Email chain between Frankie Lopez and Federico Herrera dated 15 Nov. 2014 (C-0614); New Proposal for the Municipal Palace dated 1 Aug. 2014 (C-0669).

<sup>175</sup> Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Mayor of the Municipality of Colón dated 19 Jun. 2015 (C-0180).

<sup>176</sup> Letter from Omega to the Mayor of the Municipality of Colón dated 16 Dec. 2014 (C-0616); Letter from the Omega Consortium to the Mayor of the Municipality of Colón dated 5 Feb. 2015 (C-0179).

## Translation

149. In March 2015, the Mayor's Office sent us a letter stating that it was interested in changing the construction site and that the change order to the Contract had to be formalized. The Omega Consortium needed a valid Contract with an extended time period and approval of costs related to the change of site and delays in approvals. Despite the Omega Consortium's efforts to get a new change order signed, the Mayor's Office did not cooperate with us, and it did not reply to our requests. Regarding the payment applications for work already completed, they were approved by the Municipality, but they were never signed by the Comptroller General's Office. Also, the Municipality's consultant did not seem to be in line with the Mayor, since in June 2015, he asked us whether the Omega Consortium was going to construct in the original location.<sup>177</sup> For this reason, on June 19, 2015, we sent a letter to the Municipality requesting a work plan to formalize and resolve all problems related to the Project, as well as execution of the change order.<sup>178</sup>

150. I now understand that a different contractor, called Administración e Inversiones del Istmo S.A.,<sup>179</sup> through a new bid and with a new Contract (CD-045-17),<sup>180</sup> is constructing the Municipal Palace on the original construction site where the Omega Consortium was told not to construct.<sup>181</sup> Moreover, the Municipality of Colón is still using the temporary facilities retrofitted by Omega Consortium 5 years ago. To me, this shows that Panama simply did not want the Omega Consortium to carry out the Project, and that the alleged relocation was just a pretext. Further, the Municipality never communicated any dissatisfaction with the temporary facilities until the Omega Consortium submitted this dispute to arbitration.

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<sup>177</sup> Letter No. 101-01-149 from the City Council of Colón to the Omega Consortium dated 25 Jun. 2015 (C-0181).

<sup>178</sup> Letter No. 2015 19 06 P08-013 from the Omega Consortium to the Mayor of the Municipality of Colón dated 19 Jun. 2015 (C-0180 resubmitted).

<sup>179</sup> SCAFID Status of the Contract No. C5-045-17 (C-0619).

<sup>180</sup> Construction Poster of the Municipality of Colón, undated (C-0620).

<sup>181</sup> Photographs of the Temporary Facilities, undated (C-0621).

## Translation

### 6. Colon Public Market

151. Once President Varela took office in 2014, we contacted the Secretary of Cold Chain, which is the agency within the Ministry of the Presidency (“**MoP**”) handling this Project, with the intention of presenting the Project and discussing technical issues that required attention. But it was not until late 2014 that the Director of the Secretary of Cold Chain, Andrés Camargo (who was appointed after the Administration changed) agreed to meet with us. It was at that moment that we learned that he had no knowledge about the status of the Project. By that time, the Varela Administration had already removed all the technical employees of the Secretary of Cold Chain with whom we had dealt before the Administration change. As a result, no one in the Government was addressing our problems, including the fact that the Contract was suspended and the Government had not yet relocated the vendors that were occupying the site where the market was to be built.

152. The eviction of the vendors from the existing Market had been temporarily suspended, which meant the Project was also suspended, but I continued to sporadically monitor the technical issues of the Project, so that once the MoP moved the vendors, everything would be ready to go. In June 2015, I met with the Director of the Secretary of Cold Chain in order to negotiate the resumption of our work.<sup>182</sup> The Omega Consortium was committed to resume work, as long as some terms of the Contract were modified to recover the economic equilibrium of the Contract, including the disbursement of expenses incurred to keep the staff during the suspension and an unconditional commitment that the MoP would approve the Project plans on time.<sup>183</sup>

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<sup>182</sup> Letter 2015 06 19 P004-62 from the Omega Consortium to the Ministry of the Presidency dated 19 Jun. 2015 (C-0064 resubmitted).

<sup>183</sup> *Id.*; See also Email Chain between Onelia Delis, Andres Camargo and Francisco Feliu dated 27 May 2015 (C-0622).

## Translation

153. At that moment, even though a long time had passed, we kept trying, and we sent a letter explaining what we needed to resume work.<sup>184</sup> But, the following month, the Agency threatened to terminate the Contract for breach if the Omega Consortium did not renew the Project bonds,<sup>185</sup> which after so much time had passed were getting close to their expiration date. We did not understand why MoP made this threat. Later we learned that the new administration never returned to the Comptroller General's Office the change order signed by MoP and the Omega Consortium in May 2014, even though we had submitted all the documentation required for such change order. Without a change order, it was unreasonable to presume the Omega Consortium would be willing to extend the bonds. I believe that, as a result, ASSA then decided to assess the status of all of the Omega Consortium Projects.

154. This Project was essentially neglected by the Government and I understand that it has now been awarded to Odebrecht.<sup>186</sup> To me, this shows that everything the Omega Consortium had to face were mere excuses to hide that the Government did not want the Omega Consortium to finish the Project.

### **VIII. OMEGA HAS NEVER ABANDONED THE CONTRACTS WITH THE PANAMANIAN GOVERNMENT**

155. I understand that the Government alleges that Oscar and the Omega Consortium abandoned all the Projects and fled Panama due to Judge Moncada Luna's investigation in October 2014.<sup>187</sup> As I have already noted, this is not only ridiculous, but also false.

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<sup>184</sup> *Id.*

<sup>185</sup> Note No. 12031-15-ING-UFOGOE from the Comptroller General's Office to ASSA dated 27 Jul. 2015 (C-0623).

<sup>186</sup> Construction Poster of the Colon Public Market, undated (C-0579).

<sup>187</sup> Resp's Counter-Mem. § II.D.



## Translation

156. First, I remembered that Oscar moved to Miami for personal reasons in June 2014. This decision was already planned a long time ago and definitely before Judge Moncada Luna's investigation began and therefore, it had nothing to do with that investigation. Even though Oscar changed his domicile, he continued managing the Contracts and his companies from Miami and he regularly travelled to Panama.

157. Second, from October 2014 to at least June 2015, several key Omega officers, such as myself, [REDACTED] lived in Panama and were actively working to solve the problems created by the Government in each of the Projects. I stayed in Panama until August 2015 and Salvador del Toro until the end of 2016. Then, when I came back to Puerto Rico in mid-2015, I continued working to see if the Contracts could be resumed and the impasses solved.

158. Third, the Omega Consortium has never abandoned any of the Contracts entered into with different agencies of the Panamanian Government. It is indubitably clear that on several occasions we tried to reach out to the Government in order to overcome the problems, but there was never good faith on the part of Republic of Panama once President Varela assumed office, preventing the Omega Consortium from being successful in its country and from finishing all Contracts legally awarded through the bid processes. Even with the expired Contracts and unpaid accounts, the Omega Consortium always had the intention to solve the various problems and get back to work. This intention was expressly communicated through at least 13 letters and innumerable emails sent to different agencies of the Panamanian Government.<sup>188</sup>

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<sup>188</sup> Letter No. INAC-N18-2014 from Omega to INAC dated 21 Nov. 2014 (C-0599); Letter from the Omega Consortium to City Hall of Panama dated 8 Apr. 2015 (C-0184); Letter No. P007-064 from the Omega Consortium to the Judiciary dated 10 Aug. 2015 (C-0246); Letter No. P007-066 from the Omega Consortium to the Judiciary dated 28 Sep. 2015 (C-0247); Letter from Omega to Judicial Authority in response to Nota: 2015 10 29-P007-067 Proposal of Addendum No. 3 dated 29 Oct. 2015 (R-0081).

## Translation

159. Neither Oscar nor the key staff of the Omega Consortium had abandoned their Projects at *any time*. We tried to solve problems and get back to work, but our efforts were blocked. Now, knowing what I know and with the advantage of hindsight, I am convinced that the reason why the Projects could never be resumed is that President Varela had a personal vendetta against Oscar and his companies.

### **IX. CONSEQUENCES OF THE ACTIONS OF THE GOVERNMENT**

160. The combined actions taken by the Varela Administration destroyed Omega in Panama and this, of course, caused a highly negative impact on Oscar and Omega U.S.' operations in other places, such as in Puerto Rico where the Senate initiated an investigation. In other words, the actions of the Government destroyed Oscar's companies.

161. Personally, Panama's actions have caused big losses to my career. After over 15 years working for a stable and successful company such as Omega U.S., the plan was that I could finally be a partner at Omega U.S. But that will never be, as a consequence of the Panamanian Government's arbitrary and unjustified actions.

162. Currently, I am not working for Oscar or for any company linked to Oscar, and I am not receiving any kind of incentive or compensation to render this statement. My story transparently and clearly reflects what I personally experienced during my professional practice at Omega U.S. It is very unfortunate to see companies disappear, after so much hard work. However, looking back, there was not much to do when it is the Government itself, at its highest level, who wants to end someone and the operation of his companies.

## Translation

### X. STATEMENT OF TRUTH

Unless otherwise expressed, all facts and issues declared in this Statement are derived from my own knowledge and belief. The facts stated in this Statement are true and correct.

Signed by: \_\_\_\_\_

[a signature]

Frankie López

On May 27, 2019