IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF ARBITRATION OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES – FREE TRADE AGREEMENT AND THE FOREIGN INVESTMENT LAW OF EL SALVADOR

PAC RIM CAYMAN LLC, Claimant, v. REPUBLIC OF EL SALVADOR, Respondent.	)	ICSID Case No. ARB/09/12

CLAIMANT PAC RIM CAYMAN LLC'S
PETITION FOR COSTS FOLLOWING RESPONDENT'S SECOND ROUND OF PRELIMINARY OBJECTIONS

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1. As directed by the Tribunal at the close of the hearing on the second set of preliminary objections, Claimant Pac Rim Cayman LLC, on its own behalf and on behalf of its enterprises (collectively, "Pac Rim Cayman" or "Claimant"), submits this petition for costs against Respondent, the Republic of El Salvador ("Respondent," "El Salvador," or the "Government").[1]

2. First, we will address the principles by which this petition should be decided. Second, we will explain why costs should be assessed against Respondent. Third, we will set forth Claimant's costs in arbitrating Respondent's two successive rounds of preliminary objections.

I. APPLICABLE PRINCIPLES

3. Both in its Counter-Memorial and Rejoinder on Respondent's Jurisdictional Objections (*i.e.*, its second set of preliminary objections), Claimant requested the Tribunal to order Respondent to bear the costs of this part of the proceeding.[2] In this section, we address (A) the basis for such an interim allocation of costs; and (B) the grounds properly considered in making a cost allocation at this stage of the arbitration.

A. Interim Allocation of Costs

4. An award or allocation of costs typically accompanies a final arbitral award. In addition, however, the ICSID Arbitration Rules also allow the Tribunal to make an interim determination of costs at any stage of the proceeding.[3]

5. Specifically, ICSID Arbitration Rule 28(1) provides:

> Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:
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> (a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the

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[1] *See* Transcript of 2-4 May 2011 Hearing on Jurisdiction (hereinafter "Hearing Tr."), pp. 764:19-765:1 (PRESIDENT VEEDER: "[W]e may have to address costs . . . . So I think we need a brief summary as regards both allocation and quantification of costs.").

[2] Claimant's Counter-Memorial in Response to Respondent's Objections to Jurisdiction, dated 31 December 2010, paras. 475-485; Claimant's Rejoinder on Respondent's Objections to Jurisdiction, dated 2 March 2011, paras. 357-366.

[3] In turn, CAFTA allows for the tribunal to award costs and attorney's fees in accordance with the applicable arbitration rules, CAFTA Art. 10.26 (**RL-1**).

> Tribunal and the charges for the use of the facilities of the Centre;
>
> (b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.

6. As Professor Schreuer has explained with respect to Rule 28(1):

> The apportionment of costs need not relate to the entire proceeding. The Tribunal may charge one party the costs or a major share of the costs of a particular part of the proceeding. Often this will be in reaction to undesirable conduct by a party in the proceedings.
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> * * * *
>
> A party whose conduct has necessitated a particular measure may have to bear the resulting costs.[4]

7. Following the hearing on Respondent's Jurisdictional Objections, it is apparent that Respondent should bear the costs for those objections, and that the Tribunal should proceed to allocate such costs in its interim decision on jurisdiction.[5]

B. The Appropriate Grounds for Allocating Costs

8. Other than CAFTA Article 10.20.6 – which provides that the Tribunal "shall" consider whether a party's positions were "frivolous" in exercising its discretion to award "reasonable costs and attorney's fees" following an objection made under Articles 10.20.4 or 10.20.5 – the cost provisions of CAFTA, the ICSID Convention, and the ICSID Arbitration Rules do not provide any particular standard for tribunals to use in determining how to allocate costs.

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[4] CHRISTOPH SCHREUER, THE ICSID CONVENTION: A COMMENTARY 1231 (2d ed. 2009), paras. 61:27-28 (hereafter, "SCHREUER") (**CL-41**).

[5] As the Tribunal is aware, CAFTA also specifically allows the tribunal to award the prevailing party its reasonable costs and attorney's fees incurred in the defense of objections submitted under Article 10.20.4 (CAFTA, Art. 10.20.6). In its Decision on the Preliminary Objections, the Tribunal reserved its powers to order costs under Article 10.20.6 to the "final stage" of the proceeding. (Decision on Preliminary Objections, para. 266(3)). Because there are no grounds for sustaining any of Respondent's Objections to Jurisdiction – let alone all of them – there is no reason for the Tribunal to consider a final award at this stage. Nevertheless, if the Tribunal makes an interim allocation of costs under Rule 28(1)(b) following this phase of the proceeding, Claimant respectfully requests that the Tribunal consider including Claimant's costs for *both* preliminary phases in that allocation.

9. However, both tribunals and commentators recognize that costs may be allocated against a party "as a sanction for procedural misconduct,"[6] or simply as a response – and, hopefully, a deterrent – to "undesirable conduct by a party in the proceedings."[7]

10. For example, tribunals have awarded costs against a respondent that delayed the arbitration and increased the costs of the proceeding by making multiple objections and motions[8]; against a respondent that had submitted its objections with considerable delay, leading to an "unnecessary escalation in the costs of the Claimant"[9]; and against a claimant whose characterization of the evidence had been unacceptably slanted, and whose positions had been without adequate foundation.[10]

11. In the specific context of ICSID Arbitration Rule 28(1)(b), tribunals have ordered parties to bear the costs of a specific part of a proceeding, where that part of the proceeding was requested or caused by the party against whom costs are assessed, and where the tribunal concluded that it would be unfair for both parties to share the costs of that part of the proceeding.

12. For example, in rejecting Claimant's Request for Supplementary Decisions and Rectification following the award in *Genin v. Estonia*, the tribunal observed:

> The Claimants had their "day in court." In fact, they had their week before the Tribunal. Not content with the result, they initiated further proceedings, as was their right, making the Request which the Tribunal hereby denies.[11]

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6 SCHREUER 1228, para. 61:17.

7 *Id*. at 1231, para. 61:27.

8 *Victor Pey Casado v. Republic of Chile*, ICSID Case No. ARB/98/2, Award (8 May 2008), paras. 728-730 (**CL-203**).

9 *Zhinvali v. Republic of Georgia*, ICSID Case No. ARB/00/1, Award (24 Jan. 2003), paras. 420-430, 433) (**RL-90**).

10 *Generation Ukraine v. Ukraine*, ICSID Case No. ARB/00/9, Award (16 Sept. 2003), paras. 24.2-24.8 (**CL-193**).

11 *Genin and ors v. Estonia*, ICSID Case No. ARB/99/2, Decision on Request for Supplementary Decisions and Rectification (4 Apr. 2002), para. 19 (hereinafter "*Genin*") (**CL-191**). *See also Compañia de Aguas del Aconquija AS and Vivendi Universal SA v. Argentina* , ICSID Case No. ARB/97/3, Decision on Request for Supplementation and Rectification of Decision Concerning Annulment of the Award (28 May 2003), paras, 20-21, 43 (**CL-192**) (ordering the respondent to pay the entirety of the fees and costs of the Annulment Committee where the Request consisted largely of attempts to reargue the substantive elements of the Committee's original Decision).

Accordingly, the tribunal in *Genin* ordered claimants to pay in full the expenses incurred by the parties as well as the fees and expenses of the members of the tribunal associated with the Request.[12]

13. As summarized below, an allocation of costs against Respondent is more than warranted here. Respondent has employed the full procedural arsenal to make the dual preliminary objections phases of this arbitration as long and expensive as possible. Respondent has raised every argument (factual and legal) that it could devise – regardless of its merit or even plausibility. And, Respondent has consistently lodged highly charged but utterly baseless allegations of "concealment," "deceit," and "bad faith" against Claimant and its counsel.

II. THE RECORD IN THIS CASE REQUIRES THAT COSTS BE ALLOCATED AGAINST RESPONDENT

14. As set out in subsection B, below, Claimant's request for an allocation of costs against Respondent is warranted even if the Tribunal limits its consideration to Respondent's conduct during the course of this phase of the proceedings. However, the Tribunal should consider the Respondent's conduct during both preliminary phases, particularly as its conduct in this phase has only underscored the improper tactical motivations that have underlain its handling of the case from the outset.

A. Respondent "Bifurcated" Its Objections To Impose Cost and Delay

15. Respondent quite obviously decided at the outset of this case that it would "bifurcate" its preliminary objections. Thus, on 4 January 2010, Respondent launched the Preliminary Objections under CAFTA Articles 10.20.4 and 10.20.5. Although objections under Article 10.20.4 must be made "as a matter of law" and assuming the "claimant's factual allegations" "to be true," Respondent made innumerable factual arguments that it plainly knew to be disputed. Indeed, those arguments necessitated the submission of 54 exhibits consisting of nearly 800 pages of material, notwithstanding that the Preliminary Objections were supposed to be based on the facts *as alleged by Claimant* in the Notice of Arbitration.[13]

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[12] *Genin*, para. 19 (**CL-191**).

[13] As the Tribunal will recall, Respondent held a large portion of this material, as well as the opinion of its legal expert (Prof. Reisman), in reserve, submitting them only with its Reply.

16. In the meantime, Respondent was plainly preparing its second set of objections even as the Preliminary Objections were still being briefed. For example, by 1 March 2010, Respondent had already carried out a full "investigation," which, Respondent told the United States Government, "conclusively" proved that it was entitled to deny Claimant the benefits of CAFTA.[14] When Respondent actually filed its Objections to Jurisdiction with the Tribunal on 3 August 2010 (literally within hours of the Tribunal's Decision on Preliminary Objections being issued), it based its arguments largely, if not entirely, on the same grounds that purportedly supported its 1 March 2010 letter. (Even so, Respondent failed to provide either Claimant or the Tribunal with its 1 March 2010 submission until a month after that, doing so only on 3 September 2010.[15])

17. Furthermore, given the nature of the two sets of objections, there is no legitimate reason why Respondent could not have asserted them together. Certainly, the arguments included in the Objections to Jurisdiction are no more fact-intensive than those that Respondent put forward in its first round of objections under Article 10.20.4. Thus, the "information" on which Respondent based its 1 March 2010 submission to the United States Government – as well as its subsequent denial of benefits objection – consists almost entirely of Claimant's public filings, or other information that Claimant made publicly available. In turn, Respondent's Objection to Jurisdiction based on abuse of process is largely based on the same underlying facts as the denial of benefits objection; the facts required to demonstrate that the Tribunal has jurisdiction *ratione temporis* (*i.e.,* the continued existence of a ban on mining in El Salvador) are not even contested by Respondent; and the issue of Respondent's consent to ICSID arbitration under the Investment Law is an issue of legal interpretation.

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[14] Letter from Vice Minister Mario Roger Hernandez to Assistant USTR for the Americas Everett Eissenstat, (1 Mar. 2010) (**R-111**).

[15] *See* Letter dated 3 September 2010 from Respondent's Counsel to the Tribunal (acknowledging that much of the "information" allegedly supporting the new objections "was included in the letter that the Government of El Salvador sent to the Government of the United States notifying about the denial of CAFTA benefits to Pac Rim Cayman). Respondent has failed to articulate *any* reason – much less a legitimate reason – why the 1 March 2010 submission to the United States Government was not made known to Claimant or the Tribunal until six months later (particularly in the context of dispute resolution procedures that are expressly meant to promote principles of transparency and fairness). That is because there is no legitimate reason for Respondent having done so. Respondent's withholding of the 1 March 2010 cannot be reconciled with the most basic notions of due process or fairness; but it is entirely consistent with ambush tactics used by Respondent throughout this case.

18. By contrast, the Preliminary Objections were based on, *inter alia*, numerous internal documents from El Salvador's regulatory agencies, which had never been provided to Claimant; numerous alleged communications between Claimant and Respondent (often alleged by Respondent without any evidentiary support, and certainly without any testimonial support); complex issues involving the application of Salvadoran mining and environmental laws and regulations to Claimant's applications for an environmental permit and exploitation concession; and various assertions concerning highly technical aspects of the applications and the project itself.

19. In sum, there is no legitimate reason for Respondent to have withheld the instant objections "in reserve" until after the Tribunal's Decision on the Preliminary Objections. Moreover, as Claimant argued at that stage of the proceeding, none of the objections submitted under CAFTA Article 10.20.4 – with the possible exception of the waiver issue under CAFTA Article 10.18.2, which the Tribunal correctly resolved – should even have been raised at the preliminary phase of the proceedings. It is clear that Respondent's decision to submit such inappropriately fact-intensive Preliminary Objections, even as it was already preparing its Jurisdictional Objections for later submission, was aimed solely at multiplying the phases of this proceeding, thereby delaying an adjudication of the merits and imposing additional costs on Claimant.

B. Respondent's Conduct of the Second Round of Objections In Itself Warrants Allocating Costs Against Respondent

20. Putting aside Respondent's "bifurcation" of its preliminary objections, its conduct at this particular stage of the proceedings, standing alone, more than merits an award on costs. The entire theme of Respondent's Objections to Jurisdiction is that Pac Rim Cayman secretly changed its nationality from that of the Cayman Islands to that of the United State; that Claimant "tried to conceal this abuse through misleading words and actions;[16] and that Respondent's objections "exposed Claimant's change of nationality."[17] Respondent persisted in its allegations that Claimant failed to disclose its change in nationality, even as it was pointed out to Respondent that Claimant had duly notified the Government of El Salvador of Pac Rim

[16] Respondent's Memorial on Objections to Jurisdiction dated 15 October 2010, para. 24.

[17] Respondent's Reply on Objections to Jurisdiction, dated 31 January 2011, para. 1.

Cayman's domestication to Nevada long before the commencement of this arbitration, and that the change in nationality from that of the Cayman Islands to that of the United States was again disclosed in the exhibits to the Notice of Arbitration.

21. In closing argument at the Hearing, Respondent – having repeatedly accused Claimant of "bad faith," "concealment," and "deceit" throughout the course of the present phase of the proceeding – effectively conceded that there was no evidence to support any of these inflammatory allegations. Instead, Respondent was reduced to arguing that Respondent did not have to show any bad faith on the part of Claimant, because bad faith is "inherent in this type of abuse."[18] That assertion is without any merit as a matter of law (given that good faith is always to be presumed) but, more important for present purposes is the fact that Respondent was forced to make it at all. Indeed, Respondent's attempt to "imply" bad faith into Claimant's conduct is illustrative of its tendency to make serious allegations against Claimant that are either contradicted by the record or that turn out to be completely unsupported.

22. On the other hand, even as it falsely accuses Claimant of "concealing" its change of nationality, Respondent has consistently denied the existence of the measure at issue in this case – the *de facto* ban on metallic mining activities – refusing to acknowledge much less address the numerous statements by Presidents Saca and Funes that no metallic mining permits would be issued in the country.[19] It is not Claimant that has tried to conceal or obscure the relevant facts for the determination of jurisdiction, but rather Respondent.

23. Moreover, Respondent has made numerous other arguments and assertions that quite obviously cannot be reconciled with the record evidence. For example, Respondent offered elaborate arguments that Claimant's El Dorado applications were presumptively denied in 2004 or, alternatively, in 2006. Those arguments cannot be reconciled with the record evidence concerning the Government's own course of conduct. Following the first alleged "presumptive

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[18] Hearing Tr., p. 578:4-5.

[19] *See, e.g.*, Hearing Tr., p. 51:3-4 (Respondent's Opening Argument) ("El Salvador's position, of course, is that there is no ban on mining"). Other than President Saca's March 2008 statement – which preceded the commencement of this arbitration by more than a year – Respondent never commented on or otherwise addressed any of the subsequent statements by President Saca or Funes, until closing argument, when Respondent's counsel merely stated that they were "irrelevant." *Id.*, p. 759:15-18. While consistently denying the existence of the ban, Respondent has complained that Claimant cannot identify with precision when the Government implemented it (but only when Claimant first had reason to know of its existence). Of course, the reason Claimant cannot identify the ban's commencement date with precision arises from the Government's efforts to conceal and deny it.

denial" in 2004, Respondent engaged in a protracted notice-and-comment and exchange-of-information period over the next two years. Following the second "alleged presumptive denial" in 2006, Respondent continued to request the enterprises to provide information about the applications, with the obvious intent of leading Claimant to believe that the applications could still be granted.[20] Faced with evidence that was irreconcilable with its arguments, Respondent proceeded to make the arguments anyway, and simply ignored the contradictory evidence.[21]

24. Many of the tactics employed by Respondent throughout this case – *e.g.*, the tendency to offer unacceptably distorted assertions of fact and law; to make accusations and insinuations that are utterly without support; and to hold various allegations or information in reserve until the last minute in an effort to ambush Claimant – were dramatically on display in the proffered testimony of Respondent's own arbitration counsel, Mr. Parada. Mr. Parada offered his witness statement only after the briefing on Respondent's Jurisdictional Objections was closed (even though he maintained that the "information" contained in his testimony was the basis for Respondent's discovery requests in September 2010).[22]

25. As Respondent's counsel (Mr. Badini) acknowledged as he began his direct examination of Mr. Parada, "it's quite extraordinary for a counsel for a Party to also put in a witness statement."[23] Indeed, not only it is extraordinary; it is also strongly discouraged, and often prohibited. The American Bar Association's Model Rules on Professional Responsibility specifically bar a lawyer from acting as an advocate in a trial in which the lawyer is also likely to be a witness, absent several limited exceptions inapplicable here:

> [a] lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and

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[20] *See, e.g.,* Letter from MARN (4 Dec. 2008) (**C-76**), requesting information about Claimant's application for an environmental permit at the El Dorado site, so that the application could be resolved.

[21] Similarly, as set forth in Claimant's other submissions, Respondent's position that the Investment Law does not provide consent to ICSID arbitration cannot be reconciled with the plain language of the Investment Law or with positions previously taken by El Salvador.

[22] Hearing Tr., p. 286:4-21

[23] *Id*., p. 285: 14-16.

> value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client.[24]

26. The United States Supreme Court observed long ago that "[i]n some cases it may be unseemly, especially if counsel is in a position to comment on his own testimony, and the practice [of being advocate and witness in the same case] may very properly be discouraged."[25] The reasons for such discouragement are numerous, including, for example, the danger of intruding upon the attorney-client privilege, and the fundamentally different roles to be played by advocates and witnesses (*i.e.*, advocates are supposed to be champions of their client's position, while witnesses are supposed to be objective). Mr. Parada's clashing roles of advocate and witness were evident, for example, when he asserted in his opening argument that he could definitively describe the position that El Salvador had taken in *Inceysa* – because he had worked at Arnold & Porter (the firm that represented El Salvador in that case)[26] – but then admitted as a witness on cross-examination that he had left Arnold & Porter before the jurisdictional objections in that case were even filed.[27]

27. Furthermore, Mr. Parada's testimony was marked by other glaring inconsistencies and patent absurdities. Thus, for example, Mr. Parada testified that during a recruiting breakfast in December 2007, two of Claimant's lawyers – Messrs. Ali. and de Gramont – told him of Claimant's plans to commence arbitration against El Salvador. According to Mr. Parada, Messrs. Ali and de Gramont divulged this confidential client information, even though Mr. Parada told them of his close and longstanding ties to the Salvadoran Government.[28] Mr. Parada further testified that Mr. Ali told him he had met the week before with President Saca to inform the President that Mr. Ali's client intended to initiate arbitration against El Salvador under CAFTA.[29] However, Mr. Parada testified that – despite Mr. Ali's alleged meeting the prior week

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[24] ABA Model Rules of Professional Conduct, Rule 3.7(a) (**CL- 204**).

[25] *French v. Hall*, 119 U.S. 152, 154 (1886) (**CL-205**). Other American courts have gone further. *See, e.g.*, *Ferraro v. Taylor*, 197 Minn. 5, 12, 265 N.W. 829, 833 (1936) ("[N]othing short of actual corruption can more surely discredit the profession" than a lawyer being both advocate and witness in the same case) (**CL-206**).

[26] Hearing Tr., p. 128:1-21 (Respondent's Opening Argument [Statement of Mr. Parada]).

[27] *Id*., pp. 309:22-310:14 (Cross-examination of Mr. Parada).

[28] *Id*., p. 311:6-17.

[29] *Id*., p. 327:2-7.

with President Saca – he concluded that the true purpose of the screening interview was that Crowell & Moring wanted Mr. Parada to inform El Salvador of Claimant's plans. ("I concluded that perhaps knowing my relationship with El Salvador, they were wanting me to relay that information to El Salvador so El Salvador would know that there was [an] international law firm already preparing an ICSID case against them, and therefore, [El Salvador] would try to avoid going to arbitration and give in to whatever the company wanted. That was my conclusion."). [30] Yet notwithstanding Mr. Parada's "conclusion" about the real reason for the screening interview, Mr. Parada also testified that Messrs. Ali and de Gramont "invited" him to join Crowell & Moring's international arbitration practice, even as they were planning to commence an ICSID arbitration against El Salvador on Claimant's behalf, and even though Mr. Parada told them that he "would be extremely uncomfortable working on an ICSID arbitration against El Salvador."[31]

28. Mr. Parada also testified that he had withheld from his witness statement certain "information" that Mr. Ali had conveyed to him during a recruiting breakfast concerning Mr. Ali's alleged meeting with President Saca the prior week. Nonetheless, Mr. Parada used the "withheld" information on the witness stand to suggest that Respondent was on the trail of evidence that would, in Mr. Parada's words, "completely undermine" Claimant's case. The Tribunal asked Mr. Parada:

> PRESIDENT VEEDER: . . . We understand, obviously, that you don't want to give information if you possibly can that hasn't been checked, but what is the difficulty in answering counsel's question as to what you say Mr. Ali told you?[32]

Mr. Parada answered:

> The difference, Mr. Chairman, is that it's very precise information that, if true, would completely undermine everything, and I would not like to prejudice the Tribunal with that information because everything I have been able to do so far to confirm it has not confirmed it, but we are still in the process of trying to obtain confirmation and, therefore, not only I will not want to prejudice the Tribunal with saying very specific information that is

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30 *Id*., pp. 314:20-315:5.

31 *Id*., p. 385:7-9.

32 *Id*., p. 324:3-7.

> unconfirmed, but also because I don't want to reveal what we are trying to do in the future.[33]

29. This is the type of sensational, but utterly unsupported accusation that Respondent has repeatedly made throughout this case. We submit that a lawyer appearing before this Tribunal (as counsel or as a witness) has an obligation to make sure that his assertions – especially assertions of such a serious nature – have some sort of basic foundation. The *modus operandi* of Respondent's counsel, however, has been to suggest or insinuate wrongdoing on the part of Claimant and its counsel without regard for whether such suggestions or insinuations have any foundation at all. We will observe that Respondent had retained Dewey & LeBoeuf for this case by April 2009 at the latest. Mr. Parada and his law firm had more than two years to "confirm" this "very precise information," which – according to Mr. Parada – would "completely undermine" Claimant's case, and which – according to Mr. Parada – Mr. Ali conveyed to him in December 2007 (*i.e.*, three and a half years ago). We submit that this supposed "evidence" is non-existent – and that Mr. Parada and his colleagues know full well that it is non-existent.[34]

30. Claimant submits that it correctly summarized Mr. Parada's testimony in closing argument. In summary, on cross-examination, Mr. Parada's testimony was shown to be the "stuff of conspiracy theories;" to be characterized by an utter "lack of credibility;" to be "fraught with internal inconsistencies, and . . . exceedingly far-fetched if not downright ridiculous."[35] The presentation of this testimony simply does not comport with the ethical standards that this Tribunal should expect of lawyers appearing before it, and this fact alone would warrant the assessment of costs against Respondent. Unfortunately, however, Respondent's presentation of this testimony was not aberrational. To the contrary, Respondent's defense of this case has been

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[33] *Id*., p. 324:8-18.

[34] Nonetheless, Claimant will repeat here its request to the Tribunal to "order Respondent to produce the results of Mr. Parada's investigation as soon as possible [. . .] If Respondent is unable to uncover this purported information, Claimant requests the Tribunal to order Respondent to write a letter of explanation, an apology to the Tribunal and Claimant for the insinuations and innuendos Mr. Parada offered" during his testimony. *Id*., pp. 667:16-668:1.

[35] *Id*., p. 658:18-19, p. 659:1-3, p. 664:4-7. The blame for Mr. Parada's testimony must lie equally – if not more so – with the two highly experienced partners leading Respondent's legal team, who surely must have recognized the utter implausibility and lack of credibility of Mr. Parada's testimony. They presumably made the decision to present this testimony to the Tribunal anyway.

largely characterized by the same tendency to make baseless and incendiary accusations; to elevate such inflammatory accusations over the confirmation of basic facts; and to make assertions of both fact and law with complete disregard for their accuracy or even plausibility.

31. If the Tribunal again declines to allocate costs against Respondent following this second round of objections (as it did following the first round), the Tribunal will have again rewarded Respondent for its conduct. Respondent will have succeeded (again) in delaying the merits phase of this case, and in imposing yet more expense on a claimant with limited resources. Moreover, a decision by the Tribunal not to assess costs against Respondent will ensure that Respondent will continue such conduct as the arbitration proceeds, and will strongly encourage other parties to engage in the same conduct in future proceedings. Indeed, Respondent will have created the "blueprint" for how all CAFTA respondents can double the length of the objections period and deplete the resources of all but the best-funded claimants.

32. To the extent that the Tribunal is to make any allocation of costs at this phase of the proceeding, then, for the reasons stated above, Claimant submits that all such costs should be allocated against Respondent.

III. CLAIMANT'S COSTS IN ARBITRATING RESPONDENT'S TWO SUCCESSIVE ROUNDS OF PRELIMINARY OBJECTIONS

33. According to the Interim Financial Statement as of 3 June 2011 issued by the ICSID Secretariat on today's date, the Centre's total disbursements as of that date totaled US $311,025.77, to which Claimant has contributed US $249,962.00. We understand that the Interim Financial Statement may not include all the disbursements resulting from the current phase of the proceedings and, at this point, the amounts set forth therein have not been allocated among the first and second phases of preliminary objections.

34. Given the ambiguity as to whether attorney's fees come within the scope of Rule 28(1)(b) – in addition to the fact that the Tribunal will at some stage be required to make an order for attorney's fees in any event – Claimant has included below a current statement of such fees, for the sake of completeness.

First Round of Objections

C&M Legal Fees	$1,791,297
C&M Disbursements	$72,566
Expert fees of Professor Don Wallace, Jr.	$35,625
Total C&M Fees and Disbursements for First Round:	$1,899,488

Second Round of Objections

C&M Legal Fees	$2,355,713
C&M Disbursements	$83,543
Total C&M Fees and Disbursements for Second Round:	$2,439,256
Total C&M Fees and Disbursement for Both Rounds:	**$4,338,744**

IV. CONCLUSION

35. For the reasons set out herein, Claimant hereby respectfully requests that the Tribunal issue an order allocating to Respondent all the costs of this proceeding to date.

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