

**In the Arbitration under the Convention on the Settlement of Investment  
Disputes Between States and Nationals of Other States and the  
United States-Peru Trade Promotion Agreement**

**WORTH CAPITAL HOLDINGS 27 LLC**

Claimant

— v. —

**THE REPUBLIC OF PERU**

Respondent

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**CLAIMANT'S NOTICE OF ARBITRATION**

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Pursuant to Articles 10.16.1(a) and 10.16.3(a) of the United States–Peru Trade Promotion Agreement (the “Treaty”) and Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the “ICSID Convention”), Worth Capital Holdings 27 LLC (“Worth Capital” or “Claimant”), hereby submits this Notice of Arbitration against the Republic of Peru (“Peru” or the “Government”) for claims arising out of its investment in Maple Gas Corporation del Perú S.R.L. (“Maple”).

## **I. INTRODUCTION**

1. This dispute arises out of Peru’s arbitrary and confiscatory measures against Claimant’s investment in Maple, a company engaged in the extraction and refining of hydrocarbons in the remote Amazonian jungle region of Peru.
2. Maple’s operations in Peru were governed by a set of agreements between Maple and two oil companies wholly owned and controlled by the Government of Peru. Until Peru drove Maple out of business and forced it into liquidation, Maple operated the Pucallpa Refinery—a natural gasoline and crude oil processing facility and sales terminal that was originally built in the 1960s but that Maple upgraded in the 1990s—and held licenses to exploit liquid hydrocarbons in several adjacent oil fields.
3. Peru also granted its approval for Maple to take over the lucrative exploration and production license for the nearby Block 126 from a Canadian listed energy company Frontera Energy Corporation (“Frontera”). Block 126 was a unique and valuable opportunity for Maple. Even at a relatively early stage of development, Block 126 had total certified resources of over 200 million barrels of oil equivalent (“MMBoe”), and its production would have allowed the Refinery to operate at full capacity for years to come, including through an extension of the lease term. On the basis of the opportunity presented by Block 126, the Refinery, and Maple’s other licenses, Claimant invested over US\$62 million to acquire Maple in November 2016.
4. After Claimant’s investment however, Peru took adverse actions against Maple that sent Maple into a tailspin, thwarting Maple’s plan to take over Block 126

and culminating in the closure of the Refinery, the abandonment of Block 126, and the liquidation of Maple. Peru went to economically irrational lengths to deprive the Refinery of feedstock, arbitrarily withdrew the approval it had given for Maple to take over the Block 126 license, publicly disparaged Maple, forcibly took over the Refinery and Maple's oil fields, and ultimately terminated the lease and Maple's licenses. Rather than partner with Maple, Peru issued an unsuccessful request for bids and, after failing to attract other investors, declared Block 126 deserted, depriving the State of valuable revenues.

5. Peru's conduct constitutes, at a minimum, a failure to accord Claimant's investments the minimum standard of treatment in accordance with customary international law in breach of Article 10.5 of the Treaty and an unlawful expropriation of Claimant's investment in breach of Article 10.7 of the Treaty. Peru has caused Claimant significant damages.

## II. PARTIES

6. Claimant Worth Capital is a limited liability company incorporated in the State of Delaware in the United States.<sup>1</sup> Claimant is wholly owned by a United States national.<sup>2</sup> Claimant's address is:

Worth Capital Holdings 27 LLC  
16192 Coastal Highways  
Lewes, Delaware 19958  
United States of America

7. Correspondence with Claimant relating to this matter should be sent to the undersigned counsel of record at the address below.<sup>3</sup>

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<sup>1</sup> See **Ex. C-81**, Worth Capital Certificate of Good Standing, November 10, 2020 (“Worth Capital Holdings 27 LLC’ is duly formed under the laws of the State of Delaware”); see also **Ex. C-31**, Worth Capital Certificate of Formation, November 22, 2016.

<sup>2</sup> See **Ex. C-27**, Worth Capital Operating Agreement, June 10, 2016; see also **Ex. C-31**, Worth Capital Certificate of Formation, November 22, 2016.

<sup>3</sup> See **Ex. C-83**, Power of Attorney granted by Worth Capital to Debevoise & Plimpton LLP, November 20, 2020; **Ex. C-84**, Power of Attorney granted by Worth Capital to Dewey Pegno & Kramarsky LLP, November 20, 2020.

8. Peru is a Party to the Treaty. Pursuant to Annex 10-C of the Treaty, Peru shall be notified of claims arising under the Treaty at the following address:

Dirección General de Asuntos de Economía  
Internacional, Competencia e Inversión Privada  
Ministerio de Economía y Finanzas  
Jirón Lampa 277, piso 5  
Lima, Perú

### **III. FACTUAL BACKGROUND**

9. Claimant invested in Peru in November 2016, on the basis of not only Maple's portfolio of existing oil and gas licenses and the long-term Refinery lease granted by Peru, but also the confidence that Maple would be able to leverage these assets together with the valuable Block 126 license. Unfortunately, as detailed below, Peru engaged in a series of retaliatory actions against Maple that ultimately destroyed the value of Claimant's investment in its entirety.

#### **A. Maple Successfully Operated the Refinery and Adjacent Oil Fields for Two Decades.**

10. Maple's operation in Peru dates back to 1993, when U.S. company Maple Resources Corporation ("Maple Resources") won the tender for the Aguaytía Integrated Project, an oil and gas project spanning exploration and development activities in Lots 31-B, C, D and E, gas extraction, thermoelectric power, and a refinery in Pucallpa. The Aguaytía Integrated Project sought to bring development and infrastructure—along with liquid fuel and electricity—to the remote Ucayali region in the Peruvian Amazonian jungle region.
11. The Project was governed by a set of agreements between Maple Resources' Peruvian subsidiary, Maple, and Peru's two State-owned oil companies, *Petróleos del Perú S.A.* ("PETROPERÚ") and *PERUPETRO S.A.* ("PERUPETRO"). Both companies are controlled by the Peruvian Government and exercise governmental functions. All five members of the PERUPETRO Board represent either the Ministry of Energy and Mines or the Ministry of Economy and Finance, and all three members of its General Shareholders'

Committee are appointed by the Ministry of Energy and Mines.<sup>4</sup> PETROPERÚ's "supreme organ" consists of five members: the Minister of Energy and Mines and four others who are appointed directly by the President through a Supreme Decree.<sup>5</sup>

12. PERUPETRO concluded several license agreements with Maple that granted Maple the right to (i) develop the natural gas in the Aguaytía deposit and liquid hydrocarbons from the Maquía – Agua Caliente deposit and (ii) lease the Refinery ("1994 License Agreements").<sup>6</sup> PERUPETRO signed the 1994 License Agreements "in the name and in representation of the Peruvian State," and Maple Resources gave a parent company guarantee.<sup>7</sup>
13. In parallel, Maple and PETROPERÚ also signed an accompanying lease agreement specifically for the Pucallpa Refinery ("1994 Lease Agreement") that formed an integral part of the 1994 License Agreements.<sup>8</sup> The 1994 Lease Agreement was subsequently updated through a March 2014 lease agreement with the same expiration date (March 28, 2024) (the "2014 Lease Agreement").<sup>9</sup> The Lease Agreement also provided that it could be extended for an additional

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<sup>4</sup> See **Ex. C-03**, Law No. 26225, Articles 10-12.

<sup>5</sup> See **Ex. C-07**, Law No. 28840, Article 2; **Ex. C-01**, PETROPERÚ Bylaws, Articles 22-23, 47 (stating that five of the six members of PETROPERÚ's Board are appointed, in turn, by the General Shareholders Committee, i.e., PETROPERÚ's supreme organ).

<sup>6</sup> See **Ex. C-05**, License Agreement between PERUPETRO S.A. and Maple Gas Corporation Del Peru for Lot 31-C, with the participation of Maple Resources and the Central Bank of Peru, March 30, 1994, Preliminary Clause, General Provisions (noting that the Aguaytía Integrated Project comprised three components: (i) "exploitation of Natural Gas in the Aguaytía Field," (ii) "exploitation of Liquid Hydrocarbons in the Maquía-Agua Caliente Fields," and (iii) "lease of the Pucallpa Refinery and Sales Plant."); and **Ex. C-06**, License Agreement between PERUPETRO S.A. and Maple Gas Corporation Del Peru for Lots 31-B and D, with the participation of Maple Resources and the Central Bank of Peru, March 30, 1994, Preliminary Clause, General Provisions (same).

<sup>7</sup> See **Ex. C-05**, 1994 License Agreement for Lot 31-C, Preliminary Clause, Section (II), Annex D; and **Ex. C-06**, 1994 License Agreement for Lots 31-B and D, Preliminary Clause, Section (II), Annex D.

<sup>8</sup> See **Ex. C-04**, 1994 Lease Agreement between Maple Corporation del Perú S.R.L. and PETROPERÚ S.A. of March 29, 1994, Section 8.1(A) (stating that the Lease "forms part" of the "implementation of the 'Aguaytía Integrated Project'"); see also **Ex. C-02**, Bidding Bases for the Aguaytía Integrated Project, November 1992, Section 1.4 C-D.

<sup>9</sup> See **Ex. C-12**, Lease Agreement between Maple Corporation del Perú S.R.L. and PETROPERÚ S.A., March 29, 2014, Sections 1 and 4.1; see also *id.*, Section 3 (noting that the "OBJECT OF THE CONTRACT" is to lease the Refinery and other associated assets, which "will be destined to undertake refining activities and commercialization of hydrocarbons").

term through written agreement between the parties—just as the parties had done in the past and consistent with industry practice.<sup>10</sup>

14. The Aguaytía Integrated Project was later split into two separate operations: Maple retained the lease for the Refinery and the mature oil fields in Lots 31-B, D and E, while Aguaytía Energy del Perú S.A. (“Aguaytía”) retained the exploration and production facilities in Lot 31-C. Aguaytía was subsequently spun off outside Maple, but its facilities were physically connected to the Refinery and it processed its production there until 2017.
15. Maple invested US\$67 million in the oil fields, the Refinery, and associated facilities between 1994 and 2015, and it was entitled to operate the Refinery at least until the expiration of the Lease Agreement in 2024.

**B. Maple Suffered the Fallout from Former President PPK’s High-Profile Dispute with Maple’s Former Investor.**

16. More than 20 years into its investment, Maple unexpectedly became swept up in the fallout from several arbitration losses suffered by companies associated with former Peruvian President Pedro Pablo Kuczynski (“PPK”) at the hands of the Blue Oil Group (“Blue Oil”), a group of companies with interests in Peru.
17. The most high profile dispute was between Blue Oil Trading Ltd. (BVI) and Pure Biofuels del Perú S.A.C. (“Pure Biofuels”), a Peruvian company in the refined fuels wholesale and distribution sector, on whose Board of Directors PPK served.<sup>11</sup> In June 2014, in an embarrassing defeat, a tribunal constituted under the rules of the Lima Chamber of Commerce dismissed Pure Biofuels’ claims of breach of contract, held that Pure Biofuels had acted in bad faith and was liable in tort, and ordered Pure Biofuels to pay Blue Oil Trading over US\$45 million in damages, plus costs and interest.<sup>12</sup> It was the largest award of its kind ever issued under the Lima Chamber of Commerce Rules, and it

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<sup>10</sup> See **Ex. C-04**, 1994 Lease Agreement, Section 3.1; **Ex. C-12**, 2014 Lease Agreement, Sections 4.1, 4.3.

<sup>11</sup> See **Ex. C-11**, Businesswire, *Pure Biofuels del Perú, SAC appoints Pedro Pablo Kuczynski as Director*, June 14, 2012.

<sup>12</sup> See, e.g., **Ex. C-15**, Del País, *Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*, March 18, 2015; **Ex. C-20**, Del País, *Último minuto: Embargo millonario a empresa de PPK en el callao*, April 27, 2015.

received significant public attention.<sup>13</sup> PPK led Pure Biofuels' efforts to appeal, and then resist enforcement of, the multimillion-dollar award, and he was held publicly accountable for the loss and the subsequent non-compliance.<sup>14</sup> Referring to PPK's unsuccessful efforts to annul the award in the Lima courts, the press reported that "PPK appears to be using influences to 'flip' [the] arbitral award."<sup>15</sup> After drawn-out appeals in Lima and litigation in the United States, the award was eventually settled in May 2015.<sup>16</sup>

18. This embarrassment came at an inopportune time for PPK. By Spring 2015, PPK was one of the most powerful individuals in Peru and was considered by some as a viable candidate for the upcoming Presidential election. He had served as Prime Minister of Peru from 2005 to 2006, twice served as Minister of the Economy and Finance from 2004 to 2005 and 2001 to 2002, and served as Minister of Energy and Mines in the 1980s. After placing third in the 2011 presidential election, PPK formed an alliance with the winner of that election, President Ollanta Humala. During the Humala presidency, PPK used his political capital as a lobbyist on behalf of several international companies. In late 2015, he declared his candidacy for President and was elected President in June 2016. PPK resigned in Spring 2018 amid a vote-buying scandal and is currently in pretrial detention, facing various charges of corruption and money

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<sup>13</sup> See **Ex. C-15**, Del País, *Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*, March 18, 2015.

<sup>14</sup> See, e.g., **Ex. C-16**, Del País, *Emiten laudo millonario*, March 18, 2015; **Ex. C-15**, Del País, *Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*, March 18, 2015.

<sup>15</sup> See **Ex. C-17**, Gato Encerrado, *PPK Estaría Usando Influencias Para "Voltear" Decisión Arbitral*, March 20, 2015 (reposting an article from Del País).

<sup>16</sup> See **Ex. C-19**, Superior Court of Lima, *Pure Biofuels del Peru v. Blue Oil Trading*, April 17, 2015; **Ex. C-18**, *Blue Oil Trading Limited v. Pegasus Capital Advisors, L.P.*, Stipulation of Discontinuance, March 28, 2015, Index No. 651004/2015; **Ex. C-20**, Del País, *Último minuto: Embargo millonario a empresa de PPK en el callao*, April 27, 2015.



laundering.<sup>17</sup> Former President Humala has also served a preventive prison sentence for corruption charges.<sup>18</sup>

19. An opportunity for PPK to retaliate against Blue Oil came when, in 2015, Blue Oil joined an international consortium that later acquired control of Maple—making Maple an innocent target.<sup>19</sup> Largely coinciding with PPK’s rise to the Presidency but continuing thereafter, Peru undertook a series of coordinated measures to stifle Maple’s operations and ultimately drive it out of business—even after the Blue Oil group divested and Claimant acquired Maple.
20. In early 2016, PETROPERÚ started making various unrealistic demands of Maple, including demanding that it be permitted to use Maple’s terminal facilities while ensuring Maple was shut out of any access to new local sources of crude. At a February 2, 2016 meeting between the parties, the then-President of the Board of PETROPERÚ, Germán Velásquez Salazar, said that if Maple did not accede to PETROPERÚ’s demands, PETROPERÚ would simply take back the Refinery.<sup>20</sup>
21. Despite PETROPERÚ’s legal obligation not to frustrate Maple’s refining, Maple was *de facto* vulnerable to PETROPERÚ’s interference with the market for its feedstock. Production from Maple’s end-of-life oil fields in Lots 31-B, D and E was decreasing, as was the production of gas condensate from the original Aguaytía field, which meant that existing supply sources could not sustain the approximately 3,500-4,000 bpd capacity of the Refinery. At this time—before the Block 126 investment opportunity presented itself—there were only three ways Maple could access feedstock of the right quality and proximity to be processed in its Refinery: (i) purchasing from the Spanish company Compañía

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<sup>17</sup> See **Ex. C-54**, The New York Times, Peru’s President Offers Resignation Over Vote-Buying Scandal, March 21, 2018; **Ex. C-74**, Reuters, Peru ex-president Kuczynski ordered into pre-trial house arrest, April 28, 2019.

<sup>18</sup> See **Ex. C-39**, Reuters, Peru’s ex-President Humala jailed for up to 18 months before trial, July 13, 2017; **Ex. C-60**, El País, *Ollanta Humala y su esposa, Nadine Heredia, salen de la cárcel después de nueve meses*, May 1, 2018.

<sup>19</sup> See **Ex. C-23**, El Comercio, *Maple Resources retoma el control de refinería de Pucallpa*, October 21, 2015; **Ex. C-24**, El Comercio, *Maple Energy: Convocaremos a licitación para adquirir petróleo*, February 29, 2016.

<sup>20</sup> See **Ex. C-26**, Letter from Maple to PETROPERÚ, May 30, 2016, p. 2.

Española de Petróleos (“CEPSA”) (which extracts a sweet crude oil named Los Angeles crude); (ii) purchasing from Aguaytía (which produces natural gas condensate, referred to as natural gasoline, from its adjacent fields); and (iii) purchasing resale barrels from PETROPERÚ itself of some of its contractual barrels from CEPSA. Buoyed by its status as the State-owned oil major, PETROPERÚ used its considerable economic and political clout to prevent Maple from obtaining a sustainable supply of feedstock for the Refinery, such as by tying up virtually all of CEPSA’s production and precluding the possibility of resale, and eventually buying 100% of the Aguaytía production.

22. As described below, PETROPERÚ’s threat to take back the Refinery eventually came to pass.

**C. Block 126 Presents a Unique Opportunity for Claimant.**

23. In late July 2016, PPK was sworn in as President of Peru, having won the second round of a contested election to replace President Humala. In light of PPK’s election and the threat of further retaliation stemming from the Blue Oil arbitration, Maple’s controlling investors decided to divest from Maple and offered the Claimant’s principal—who had previously expressed an interest in becoming a co-investor—the opportunity to take over the investment in full.
24. Around that time, an investment in Maple became even more attractive because Maple’s investors had learned of a unique opportunity for Maple to take over the license for an oil-rich neighboring field, Block 126. Block 126 was not only an attractive investment proposition on its own terms, but also offered an independent source of feedstock for the Refinery that would help sustain it at capacity for decades while protecting Maple from PETROPERÚ’s anticompetitive behavior.
25. The then-license holder, Pacific Rubiales, later Pacific Energy, and later Frontera (hereinafter “Frontera”), and its predecessors had invested over US\$200 million in exploration and initial infrastructure (including roads, wells, and equipment) at Block 126, had obtained an environmental impact assessment (“EIA”) in 2014, and had extended the exploration phase until

December 2017.<sup>21</sup> Block 126 had immediate, proven, and easy-to-lift reserves of up to 6 million barrels of light, sweet crude; even at a relatively early stage of development, it had total certified resources of over 200 million barrels of oil equivalent (“MMboe”) in a local market that was hungry for oil.<sup>22</sup> With appropriate investment, Block 126’s production could reach approximately 3,300 b/d. However, Frontera was then in the throes of a comprehensive restructuring under bankruptcy protection, and could neither meet the investment commitments necessary to advance into the production phase, nor extend the exploration phase any longer. At the same time, Frontera had posted a US\$2.8 million performance bond against the License, and faced significant abandonment costs that it would have to pay if it was unable to transfer the License to a new assignee in time.

26. Maple was uniquely placed to take over the Block and accelerate production, which would also have been highly advantageous for Peru. The synergies between the Refinery and Block 126 were exceptional. Block 126’s exploration and production license was originally valid for a 30-year term.<sup>23</sup> Block 126’s production would have allowed the Refinery to operate at full capacity not only through the end of its current Lease term but also through an additional ten-year extension, which—with a successful royalty-generating operation—Maple would have had strong prospects of securing. But even if Peru declined to renew the Lease Agreement, Maple would have been able to sell the crude from Block 126 to whichever entity operated the Refinery thereafter.
27. Consolidating the assets of the Refinery and Block 126 under one entity would also have eliminated the unrecoverable IGV costs on feedstock that had put Maple at a significant economic disadvantage *vis-à-vis* PETROPERÚ ever since

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<sup>21</sup> See **Ex. C-14**, Modification of Exploration Phase in the License Contract for the Exploration and Exploitation of Hydrocarbons in Block 126, December 18, 2014; **Ex. C-13**, Approval of Environmental Impact Assessment, October 28, 2014; **Ex. C-28**, Block 126, Opportunity Teaser Presentation, Pacific, August 2016; **Ex. C-40**, Spreadsheet with Investments in Block 126, August 2017.

<sup>22</sup> See **Ex. C-28**, Block 126, Opportunity Teaser Presentation, Pacific, August 2016, p. 5.

<sup>23</sup> See **Ex. C-08**, 2007 License Agreement between PERUPETRO and True Energy Peru for the Exploration and Exploitation of Hydrocarbons in Block 126, October 23, 2007, Article 3.1.

Supreme Decree No. 266-2015 was issued in September 2015.<sup>24</sup> That decree allowed PETROPERÚ to offset its IGV payments from operations in the IGV-exempt Amazonian regions against its sales anywhere else in Peru,<sup>25</sup> but did not provide any relief to a regional oil company like Maple, which made the vast majority of its sales in the IGV-exempt Amazonian region and did not have significant sales elsewhere to use as an offset against its IGV payments.

28. Maple was unlikely to face serious competition for the Block 126 license. Oil prices were low and the Amazon pipeline was shut down, meaning that most oil companies in Peru were facing dire conditions and complete uncertainty about how to get their production to the market, and thus had little or any appetite for further investments in the Amazonian region. Maple, however, already had a Refinery just 100 miles downriver by barge that had ready capacity to process Block 126's production. Maple was also already qualified as an *Empresa Petrolera* under the relevant regulations, which would have been a requirement for any putative assignee of the license. Maple also expected to easily be able to finance the additional capital investment required, whether from Maple's own cash flows or by raising capital, as its management team had done for many other investments. Maple had ample drilling experience and available equipment, and had successfully undertaken much more complex challenges in the Peruvian Amazon.
29. Maple's alternative investment plan would also be economically beneficial for Peru. With the support of the Refinery, Maple could have accelerated production from the field (and therefore payment of royalties to the State) from several years to a matter of months. A deal with Maple was also much better than the alternative because if Frontera was unable to find an assignee to take over the license, it would likely be unable to fulfill its commitments and would forfeit the license, leaving Block 126 fallow.

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<sup>24</sup> See **Ex. C-21**, Supreme Decree No. 266-2015-EF.

<sup>25</sup> See **Ex. C-22**, PETROPERÚ, Q4 2015 Management Report, p. 1 (announcing that "starting October [2015], by virtue of Decree No. 266-2015-EF, it would be able to use all of the [IGV] credit" and that this had a positive impact of 106 million soles, which at the time amounted to around US\$32 million).

30. Due diligence on the Block 126 opportunity in early Fall 2016 confirmed that the marriage value of the Refinery and Block 126 presented a highly valuable investment opportunity. It provided any prospective buyer with excellent ongoing cash flow, and significant upside potential in the event of higher oil prices (which did materialize in the following years). Through market intelligence, Maple learned that Frontera would be willing to transfer the license to Maple for a low fee, if Maple committed to taking over Block 126's investment commitments and replacing Frontera's US\$2.8 million performance bond with PERUPETRO. Maple's advisers, including a former General Manager of PERUPETRO, Mr. José Cos, discussed the potential Block 126 license transfer under the amended production plan with senior PERUPETRO management and received very positive feedback. Maple understood that PERUPETRO expected swiftly to approve Maple's alternative investment plan, which took account of Maple's synergies with the Refinery and meaningfully accelerated production and revenue to the Peruvian State. Maple likewise took comfort in the fact that PERUPETRO had transferred the Block 126 License on two prior occasions with little difficulty.<sup>26</sup>
31. Accordingly, Claimant was formed in late November 2016 and, a few days later, indirectly acquired all but one share of Maple, investing US\$62 million—US\$15 million for the shares and US\$47 million in a parent company guarantee for Maple's secured outstanding debt.<sup>27</sup>
32. Over the course of 2017, Maple and Frontera negotiated the terms of the license assignment and exchanged detailed technical and legal information. Maple dedicated substantial efforts to study and develop this promising investment, including commissioning a geological evaluation of Block 126 from the

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<sup>26</sup> Cf. **Ex. C-36**, Farmout Agreement, May 23, 2017, Recitals; *see also* **Ex. C-09**, Transfer of License Contract, December 30, 2009; **Ex. C-10**, Transfer of License Contract, June 1, 2011.

<sup>27</sup> *See, e.g.*, **Ex. C-31**, Worth Capital Holdings 27 LLC Formation Document, November 22, 2016; **Ex. C-30**, Anotación de Inscripción de Aumento de Capital y Modificación de Estatuto, October 6, 2016; **Ex. C-32**, Parent Company Guarantee issued by Worth Capital for the benefit of Trilon Enterprises S.A., November 23, 2016; **Ex. C-33**, Agreement between Parsdome Holdings Ltd. and Worth Capital titled "Agreement relating to the sale and purchase of the whole of the issued outstanding share capital of Jancell Corporation," November 24, 2016; **Ex. C-38**, Jancell Corporation Register of Shares, June 15, 2017.

external consultant Dr. Seferino Yesquén, who subsequently became the head of PERUPETRO, a position he still holds today.<sup>28</sup> Maple likewise carefully evaluated the logistics, including the geography of Block 126 and the means for transporting the oil from Block 126 to the Refinery.

33. Maple and Frontera entered into a binding term sheet on March 13, 2017 and a Farmout Agreement on May 23, 2017 for the assignment of the Block 126 license to Maple, in exchange for cash consideration of US\$200,000 and Maple taking over Frontera's commitments under the license, including the performance bond of US\$2.8 million.<sup>29</sup> The deal was part of a broader divestiture process for Frontera, which assigned several other licenses and interests in Peru and other Latin American countries in H1 2017 as part of its new direction and restructuring.<sup>30</sup>
34. Frontera and Maple jointly submitted their agreement to transfer the license to PERUPETRO for approval on June 7, 2017.<sup>31</sup> Just over two months later, on August 11, 2017, PERUPETRO informed Maple that, after conducting "an evaluation of [Maple's] legal, technical, economical, and financial capacity," Maple "had been favorably approved as an *Empresa Petrolera* to assume 100% of Block 126."<sup>32</sup> Maple confirmed to PERUPETRO that it was willing to assume the resulting commitments under the license, including the necessary bank guarantees.<sup>33</sup>

#### **D. Peru's Eleventh-Hour Reversal Torpedoed the Frontera Deal.**

35. Maple's prospects would prove short-lived, however. Despite the benefits of the Frontera-Maple deal for all involved—including the State and the Peruvian

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<sup>28</sup> **Ex. C-34**, Evaluación Estructura SHESHEA Lote 126, Hidrocarburos Consulting, April 6, 2017; *see also* **Ex. C-86**, PERUPETRO Official Site, Directivos, November 2020.

<sup>29</sup> *See* **Ex. C-36**, Farmout Agreement, May 23, 2017, p. 6; **Ex. C-37**, Letter from Frontera and Maple to PERUPETRO, June 7, 2017.

<sup>30</sup> It was at this time that Pacific changed its name to Frontera. *See, e.g.*, **Ex. C-35**, Frontera Energy Corporation *Quarterly Report*, May 5, 2017; **Ex. C-41**, Frontera Management, Discussion & Analysis, August 8, 2017.

<sup>31</sup> *See* **Ex. C-37**, Letter from Frontera and Maple to PERUPETRO, June 7, 2017.

<sup>32</sup> **Ex. C-42**, Letter from PERUPETRO to Maple, August 11, 2017.

<sup>33</sup> *See* **Ex. C-43**, Letter from Maple to PERUPETRO, August 28, 2017.

people—PERUPETRO arbitrarily pulled the rug out from under Claimant’s feet.

36. As Frontera and Maple were ironing out the final details of the deal, and just weeks before Frontera’s exploration deadline was scheduled to expire, PERUPETRO purported to revoke Maple’s certification to assume operation of Block 126.<sup>34</sup> In an out-of-the-blue letter dated November 27, 2017, PERUPETRO took the inexplicable position that it had allegedly considered the wrong financial statements when issuing its August 2017 approval, and that according to Maple’s most recent financial statements, the company lacked the “minimum contractual capacity” required.<sup>35</sup>
37. Maple promptly requested that PERUPETRO reconsider its decision.<sup>36</sup> As Maple explained, under Peruvian law, Maple’s certification could only be nullified by the Board of Directors of PERUPETRO, and Maple had not been given any opportunity to comment or present additional evidence prior to the revocation. Nor had Maple been given the opportunity to seek financing or additional bank guarantees to reinforce its allegedly insufficient balance sheet.
38. PERUPETRO’s abrupt revocation prevented Frontera from transferring the license to Maple as planned. While Maple’s request was still pending, Frontera abandoned the license, PERUPETRO called on Frontera’s US\$2.8 million bank guarantee, and Frontera paid PERUPETRO abandonment costs of US\$10.3 million.<sup>37</sup> On December 18, 2017, PERUPETRO and Frontera

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<sup>34</sup> See **Ex. C-44**, Letter from PERUPETRO to Maple, November 27, 2017.

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

<sup>36</sup> See **Ex. C-45**, Letter from Maple to PERUPETRO, December 13, 2017, pp. 4-6.

<sup>37</sup> See **Ex. C-55**, Frontera Energy Corporation, Annual Information Form, March 27, 2018, p. 15 (“On March 13, 2017, the Company entered into a binding term sheet with Maple Gas Corporation del Peru SRL pursuant to which the Company agreed to transfer its participating interest in Lot 126 located in Peru for U.S.\$0.2 million. However, on November 27, 2017, Perupetro denied the transfer in accordance with the terms and conditions of the term sheet. On December 18, 2017, Perupetro and the Company agreed to terminate the licence agreement relating to Lot 126. As a consequence of relinquishing its interest in the block without fulfilling the agreed upon commitments, the Company paid Perupetro the aggregate amount of U.S.\$2.8 million and corresponding abandonment costs of U.S.\$10.3 million”); see also **Ex. C-56**, Frontera Energy Management Discussion & Analysis, March 27, 2018, p. 18.

terminated the Block 126 license.<sup>38</sup> Maple understood from Frontera that PERUPETRO had insisted that this was a political decision, which Maple's own advisors on PERUPETRO matters, including Mr. Cos, later confirmed.

39. Meanwhile, PETROPERÚ had locked up virtually all of Aguaytía's and CEPSA's production, going to commercially irrational lengths and violating its contractual duty of good faith in order to achieve its political ends.<sup>39</sup> For instance, at a time when there was a glut of crude in the Amazon region, because of a crude pipeline closure, PETROPERÚ bought up virtually all of CEPSA's production at an excessively high price, agreed to take all of CEPSA's production, and effectively prevented resale of that production to other operators like Maple—effectively disincentivizing CEPSA from doing business with anyone other than PETROPERÚ. Moreover, instead of selling the CEPSA feedstock to Maple to be processed in the Refinery, PETROPERÚ then shipped CEPSA's crude hundreds of miles away to PETROPERÚ's refinery in the port city of Iquitos, which is accessible only by river, using a makeshift terminal at great environmental risk.<sup>40</sup> This arrangement also made no commercial sense even for PETROPERÚ, which was forced to evacuate several hundred thousand barrels of excess residual fuel oil production from its Iquitos refinery by river barge, a journey of almost two thousand nautical miles along the Amazon river just to export to the Atlantic ocean, at great loss.
40. Aguaytía, in turn, had production facilities that are physically connected to Maple's Refinery; Aguaytía could not evacuate its production without using Maple's pipeline and storage facilities, and had been processing its gas in Maple's Refinery for almost 20 years. Maple learned that in July 2017, however, PETROPERÚ gave Aguaytía an attractive offtake promise that allowed Aguaytía to build its own processing facilities onsite and bypass the Refinery. PETROPERÚ committed to pay Aguaytía a price that was *almost*

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<sup>38</sup> *Id.*

<sup>39</sup> See **Ex. C-25**, Letter from Maple to PETROPERÚ, May 22, 2016; **Ex. C-26**, Letter from Maple to PETROPERÚ, May 30, 2016; **Ex. C-47**, Letter from Dewey, Pegno & Kramarsky LLP to PETROPERÚ, January 17, 2018; **Ex. C-48**, El Comercio, *Refinería de Pucallpa cierra operaciones*, January 22, 2018.

<sup>40</sup> See **Ex. C-29**, Letter from Maple to PETROPERÚ, August 31, 2016.



50% higher per barrel (after freight) than Aguaytía's long-term agreement with Maple—an extremely surprising price difference in an environment with no viable competitors. In addition to this extraordinarily high price, and again evidently in order to deny Maple's Refinery access to this feedstock, PETROPERÚ was sending Aguaytía's natural gasoline condensate to its refinery in Lima, which involves loading barrels of natural gasoline onto tanker trucks and crossing the Andes at high risk and on a days-long trip.

41. In addition to bidding up the prices of all available feedstocks, PETROPERÚ used its position to depress the benchmark price for oil products in the Pucallpa market, thereby creating a pincer movement designed to starve Maple of any prospect of profitability in its commercial activities.
42. Deprived of access to Block 126's production by PERUPETRO's abrupt and arbitrary reversal, and unable to compete with PETROPERÚ's economically irrational market interference, Maple was left with no supply to keep the Refinery running. By December 2017, the Refinery had exhausted its crude inventories and had no choice but to cease operations.<sup>41</sup> Maple explained that the closure was a result of PETROPERÚ's capture of all of the potential feedstock for the Refinery, which PETROPERÚ abruptly denied.<sup>42</sup>
43. As a result, Peru, through its two State-owned oil companies, sounded the death knell for Claimant's investment. PERUPETRO thwarted the premise on which Claimant had staked US\$62 million to invest in Maple, and PETROPERÚ's anticompetitive behavior placed a stranglehold on Maple's existing operations.

**E. Despite Claimant's Efforts to Resolve the Dispute Amicably, Peru Terminated Maple's Lease and Licenses and Forced Maple into Liquidation.**

44. On January 15, 2018, Maple received a two-page letter from PERUPETRO dated January 4, 2018, rejecting Maple's request for reconsideration of the

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<sup>41</sup> See e.g. **Ex. C-48**, *El Comercio*, *Refinería de Pucallpa cierra operaciones*, January 22, 2018.

<sup>42</sup> See e.g., **Ex. C-49**, PETROPERÚ, *Petroperú Contribuye Con El Desarrollo De Pucallpa*, January 23, 2018 (claiming that "Petroperú does not have any responsibility for the alleged lack of crude for the Pucallpa Refinery"); see also **Ex. C-50**, *El Comercio*, *Petro-perú entablará arbitraje contra Maple por refinería*, February 15, 2018.

November 27, 2017 reversal, denying that its November letter was an administrative act subject to appeal, and dismissing Maple's complaints as moot.<sup>43</sup> PERUPETRO argued among other things that, because Frontera had reverted the Block 126 license to the State, there were no longer any rights that could be assigned to Maple.<sup>44</sup> Maple challenged PERUPETRO's January 4, 2018 decision before the Peruvian courts, seeking annulment of the decision and monetary damages.<sup>45</sup>

45. In parallel, Maple continued its efforts on all fronts to rescue its business. Maple held various meetings with PERUPETRO, including proposing to operate Block 126 under a temporary services contract that would have allowed Maple to demonstrate the Block's commercial viability and rebid for the license.<sup>46</sup> As part of these efforts, and after Claimant had issued a Notice of Intent under the Treaty, Maple discontinued its court challenge in late May 2018.<sup>47</sup> Those discussions, however, went nowhere.
46. Similarly, in an effort to find an alternative use for the Refinery after it closed, Maple pursued potential deals with other refiners, importers, and wholesalers in Lima, which is well-served by two refineries and several ocean terminals. Maple had reached advanced discussions with Repsol, which owns the La Pampilla refinery in Callao, to set up a wholesaler in the jungle region to sell the Repsol refinery's production.<sup>48</sup> This would have allowed Maple to use the Refinery's installed physical and salesforce capacity to store and sell gasoline and diesel, in order to maintain a presence in the oil distribution sector while paying the bills.
47. This deal, too, was scuppered by PETROPERÚ. Having heard that Maple was close to reaching a new deal, in mid-February 2018, PETROPERÚ held a joint public press conference with Aguaytía at which PETROPERÚ falsely alleged

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<sup>43</sup> See **Ex. C-46**, PERUPETRO Appeal Decision, January 4, 2018.

<sup>44</sup> *Id.*

<sup>45</sup> See **Ex. C-57**, Maple's Challenge to January 4, 2018 Decision, April 12, 2018.

<sup>46</sup> See **Ex. C-64**, Letter from Maple to PERUPETRO, May 24, 2018.

<sup>47</sup> See **Ex. C-65**, Maple's Withdrawal of Court Challenge against PERUPETRO, May 25, 2018.

<sup>48</sup> See **Ex. C-48**, *El Comercio, Refinería de Pucallpa cierra operaciones*, January 22, 2018.

that Maple was not complying with its obligations towards PETROPERÚ, Aguaytía and CEPASA.<sup>49</sup> PETROPERÚ's Director for Corporate Management and Communications, Ms. Beatriz Alva Hart, claimed that Maple had breached the 2014 Lease Agreement by purportedly failing to allow PETROPERÚ to use the Refinery to sell its own products, and announced that PETROPERÚ intended to commence arbitration proceedings against Maple—an issue that the parties had discussed and put to rest almost two years earlier.<sup>50</sup> Ms. Hart further falsely claimed that Aguaytía and CEPASA had broken off relations with Maple because of Maple's failure to pay its invoices.<sup>51</sup>

48. The allegation that Maple had not paid CEPASA was false; CEPASA subsequently denied these allegations and confirmed Maple's good standing.<sup>52</sup> PETROPERÚ even published a correction in a letter to the editor of the region's main newspaper.<sup>53</sup> The damage, however, was already done. Repsol and other potential commercial partners (including longstanding clients with whom Maple was negotiating offtake agreements) decided to put the potential deals on hold, expressing unease about doing a deal with Maple in the wake of PETROPERÚ's threats of arbitration. Aguaytía, in turn, had clearly decided to align itself with PETROPERÚ and had by then commenced arbitration against Maple.
49. Compounding its persecution of Maple, shortly thereafter, PETROPERÚ invoked the dispute resolution procedure under the 2014 Lease Agreement and demanded payment of the second quarter's rent on the Refinery within weeks, evidently so as to trigger the "sudden death" clause and manufacture a basis to terminate the Lease Agreement altogether.<sup>54</sup> PETROPERÚ commenced

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<sup>49</sup> See **Ex. C-51**, Letter from Maple to PETROPERÚ, February 19, 2018.

<sup>50</sup> See **Ex. C-50**, *El Comercio, Petro-Perú entablará arbitraje contra Maple por refinería*, February 15, 2018; see also **Ex. C-51**, Letter from Maple to PETROPERÚ, February 19, 2018.

<sup>51</sup> *Id.*

<sup>52</sup> See e.g., **Ex. C-52**, *Semana Económica, Maple, de la refinería de Pucallpa, negó tener impagos con su proveedor*, February 19, 2018.

<sup>53</sup> See **Ex. C-53**, Letter from PETROPERÚ to Maple, March 1, 2018.

<sup>54</sup> See **Ex. C-58**, Letter from PETROPERÚ to Maple, April 24, 2018; **Ex. C-59**, Letter from PETROPERÚ to Maple, April 30, 2018; **Ex. C-61**, Letter from Maple to PETROPERÚ, May 14, 2018; **Ex. C-62**, Letter from Maple to PETROPERÚ, May 16, 2018.

arbitration against Maple in late May 2018, seeking termination of Maple’s lease over the Refinery and millions of dollars in damages.<sup>55</sup>

50. On May 18, 2018, Claimant sent Peru a Notice of Intent to Commence Arbitration pursuant to Article 10.16.2 of the Treaty.<sup>56</sup> Claimant stated its preference for “an amicable solution” and expressed its desire “to meet with Government representatives to explore solutions.”<sup>57</sup> In July 2018, Claimant’s representatives attended a meeting with Peru’s specially-appointed Commission for the resolution and defense of international claims, as well as PETROPERÚ and PERUPETRO, and reiterated Claimant’s willingness to reach a commercial solution in the interests of all involved. Peru, however, has not responded to Claimant’s overtures.
51. Instead, Peru has ignored Maple’s proposals for commercializing Block 126’s production and doubled down on its efforts to destroy Claimant’s investment—despite public acknowledgement from PERUPETRO officials that Block 126 holds significant potential, both on its own and together with Maple’s Refinery. In August 2018, PETROPERÚ served Maple with a notice of termination of the Lease.<sup>58</sup> In January 2019, PERUPETRO’s President, Dr. Seferino Yesquén—who had led Maple’s geological analysis of Block 126 in 2017—was quoted in the press as saying that “Sheshea [the formation under Block 126] is a project sought after by the Pucallpa population, and that’s the reason why we are preparing a block for bidding very soon.”<sup>59</sup> In an official press release, PERUPETRO added that Block 126 was “a project with an interesting potential,

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<sup>55</sup> **Ex. C-66**, PETROPERÚ’s Request for Arbitration, May 29, 2018.

<sup>56</sup> *See generally* **Ex. C-63**, Claimant’s Notice of Intent to Commence Arbitration under the United States-Peru Trade Promotion Agreement, May 18, 2018.

<sup>57</sup> *Id.* ¶ 59.

<sup>58</sup> *See* **Ex. C-69**, Letter from PETROPERÚ to Maple, August 17, 2018, p. 1 (stating that given that 15 days have passed “without Maple remedying its breach of contractual obligations, and pursuant to Provision No. 14.2 of the Lease Contract, such contract has been terminated . . .”); *see also* **Ex. C-67**, Letter from PETROPERÚ to Maple, July 30, 2018; **Ex. C-68**, Letter from Maple to PETROPERÚ, August 16, 2018. In June 2020, Maple ceased participating in the arbitral proceedings brought by PETROPERÚ under the Lease and withdrew its counterclaims, reserving all rights under the Treaty. *See* **Ex. C-80**, Letter from Maple to Arbitral Tribunal requesting withdrawal of arbitral proceedings, June 2, 2020. In mid-October 2020, the arbitral tribunal issued an award in PETROPERÚ’s favor.

<sup>59</sup> **Ex. C-71**, *El Comercio, Perú-Petro relanzará proyecto Sheshea*, January 16, 2019, p. 2.

due to its high quality crude . . . and the fact that its discoverer . . . came to produce 1,430 barrels per day of crude oil from a well that ‘today is idle.’”<sup>60</sup> Later that year, PERUPETRO renamed Block 126 as Block 201 and launched a new bidding round.<sup>61</sup> In a press interview in September 2019, Dr. Yesquén publicly acknowledged that Maple’s Refinery was the most logical place to refine Block 126’s oil. He was reported as saying that “given its location, Lot [126] could supply the Pucallpa Refinery” and that the Refinery could “reactivate” and “process between 3,000 and 4,000 barrels per day.”<sup>62</sup>

52. By that point, however, Maple was no longer in a position to bid for the license. In February 2019, Maple went into liquidation.<sup>63</sup> Peru used this as a pretext to take matters into its own hands, without waiting for the resolution of PETROPERÚ’s own arbitral claims and without heeding Claimant’s Notice of Intent. In February and March 2019, PERUPETRO terminated the License Agreements, on the basis of Maple’s insolvency and alleged failure to provide relevant insurance policies.<sup>64</sup> Soon thereafter, while still in the midst of the local arbitration proceedings it had initiated, PETROPERÚ began sending security personnel to the Refinery, set up a perimeter around the property, and started controlling the entry and exit of Maple’s maintenance and security personnel. In August 2019, PETROPERÚ wrested control of the Refinery from Maple.<sup>65</sup> Meanwhile, as Maple had anticipated, no other oil companies were in

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<sup>60</sup> **Ex. C-70**, PERUPETRO, Boletín de Prensa, January 14, 2019, p. 1.

<sup>61</sup> *See Ex. C-87*, PERUPETRO Official Page, Block 201.

<sup>62</sup> **Ex. C-78**, Diario Correo, *Lote petrolero cerca a frontera con Brasil demandará \$ 90 millones de inversión*, September 10, 2019.

<sup>63</sup> *See Ex. C-82*, Compilation of Public Record Documents related to Maple Gas Corporation del Peru S.R.L., November 13, 2020, p. 92.

<sup>64</sup> *See Ex. C-73*, Letter from PERUPETRO to Maple, March 25, 2019, (“Terminación del Contrato de pleno derecho – Lote 31-E”); and **Ex. C-72**, Letter from PERUPETRO to Maple, February 6, 2019 (“Terminación del Contrato por Incumplimiento Contractual – Lote 31-B y 31-D”).

<sup>65</sup> *See, e.g., Ex. C-75*, Letter from Maple to PETROPERÚ, August 1, 2019 (stating “[i]n light of the constant pressure and intimidation measures that have been carried out in a systematic way by security personnel hired by Petroperú and given [Petroperú’s] irruption into the [Refinery] with the excuse of its inspection . . . Maple has no choice but to accept the usurpation of the refinery by Petroperú . . . ”); **Ex. C-76**, Letter from PETROPERÚ to Maple, August 12, 2019, (rejecting Maple’s contentions and requesting Maple to attend a meeting on August 21, 2019 to formally hand over the Refinery to Petroperú); **Ex. C-77**, Letter from Maple to PETROPERÚ, August 19, 2019

a position to bid for Block 126 either. In January 2020, PERUPETRO announced that no offers were made during the public bidding round and that the Block would accordingly be declared deserted.<sup>66</sup>

53. As of the date of filing, Maple remains in liquidation proceedings, has lost its Lease over the Refinery and License Agreements over the oil fields, and has been prevented from developing Block 126. Peru retains physical control of both the Refinery and the oil fields, including equipment, facilities, and corporate records belonging to Maple, and has allowed Block 126 to remain vacant rather than reach a mutually beneficial deal with Maple.

#### **IV. PERU'S BREACHES CAUSED SIGNIFICANT LOSS**

54. Peru's arbitrary and confiscatory conduct has breached, at a minimum, Articles 10.5 and 10.7 of the Treaty.
55. *First*, Peru has breached Article 10.5 of the Treaty (Minimum Standard of Treatment). Article 10.5 provides, in pertinent part:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide . . . "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in

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(noting "we are surprised to be summoned for a formal handover, while it is public knowledge that Petroperú is already in possession of the [Refinery] . . .").

<sup>66</sup> See **Ex. C-79**, PERUPETRO Comunicado No. 4, Proceso de Selecccion Ordinario Lote 201, January 17, 2020.

accordance with the principle of due process embodied in the legal systems of the world . . . .<sup>67</sup>

56. The measures Peru took against Maple clearly fall below this minimum standard of conduct and are arbitrary, discriminatory, unfair, and inequitable: Peru sabotaged the Frontera deal on spurious grounds; went to economically irrational lengths to prevent Maple from being able to obtain feedstock to keep the Refinery running; publicly and falsely disparaged Maple; quashed Maple's attempts to find other avenues to salvage its business; and, after forcing Maple into liquidation, Peru terminated Maple's licenses and leases and taken over the Refinery and oil fields.

57. *Second*, Peru has breached Article 10.7 of the Treaty (Expropriation). Article 10.7 provides, in pertinent part:

No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation; and (d) in accordance with due process of law and Article 10.5.<sup>68</sup>

58. Peru's conduct (*i*) substantially destroyed the value of Claimant's investment in Maple, which was forced into liquidation; (*ii*) served no legitimate public purpose, and indeed was economically irrational; and (*iii*) Peru has not provided prompt, adequate, and effective compensation.

59. Peru's obligations under the Treaty apply to the conduct of its State-owned oil companies. Article 10.1.2 of the Treaty expressly states that Peru's obligations under the Treaty "shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges."<sup>69</sup>

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<sup>67</sup> **Ex. CA-01**, Treaty, Art. 10.5.

<sup>68</sup> **Ex. CA-01**, Treaty, Art. 10.7.

<sup>69</sup> **Ex. CA-01**, Treaty, Art. 10.1.2.

This is the case for each of PETROPERÚ and PERUPETRO, which exercise governmental authority in carrying out certain of their functions, and whose management is appointed by, and includes members of, the Peruvian central Government.

60. Peru's breaches of the Treaty have caused, and are continuing to cause, Claimant significant loss and damage and Claimant is entitled to full reparation for Peru's breaches of the Treaty, in an amount to be assessed at a later stage of this arbitration.

**V. THE TRIBUNAL AND THE CENTRE HAVE JURISDICTION, AND CLAIMANT HAS COMPLIED WITH THE REQUIREMENTS FOR SUBMISSION OF A CLAIM TO ARBITRATION.**

**A. Claimant Satisfies the Treaty's Jurisdictional Requirements.**

61. Claimant satisfies the Treaty's requirements for personal, material, and temporal jurisdiction.

62. *First*, Article 10.28 of the Treaty defines an "investor of a Party" to include "an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party."<sup>70</sup> Claimant qualifies as a covered investor because it is an enterprise of the United States, organized under the laws of the State of Delaware, and it made an investment in Maple.<sup>71</sup>

63. *Second*, Article 10.28 of the Treaty defines "investment" as "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment," and specifies that "[f]orms that an investment may take include" an enterprise; shares, stock, and other forms of equity participation; concessions and other similar contracts and rights under national law; and other tangible or

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<sup>70</sup> *Id.*, Art. 10.28.

<sup>71</sup> See **Ex. C-81**, Worth Capital Certificate of Good Standing, November 10, 2020; **Ex. C-31**, Worth Capital Holdings 27 LLC Formation Document, November 22, 2016; **Ex. C-30**, Anotación de Inscripción de Aumento de Capital y Modificación de Estatuto, October 6, 2016 (showing that Jancell Corporation owns all but one share in Maple); **Ex. C-33**, Agreement between Parsdome Holdings Ltd. and Worth Capital titled "Agreement relating to the sale and purchase of the whole of the issued outstanding share capital of Jancell Corporation," November 24, 2016; **Ex. C-38**, Jancell Corporation Register of Shares, June 15, 2017; **Ex. C-32**, Parent Company Guarantee issued by Worth Capital for the benefit of Trilon Enterprises S.A., November 23, 2016.



intangible property. Subject to Maple’s liquidation proceedings, Claimant “owns or controls” Maple, an “enterprise” constituted under the laws of Peru and whose business is located in Peru. Claimant likewise owns or controls “shares, stock, and other forms of equity participation in an enterprise,” “debt instruments,” “licenses, authorizations, permits, and similar rights conferred pursuant to domestic law” and “other tangible or intangible, movable or immovable property.”<sup>72</sup> Claimant’s ownership and control of Maple and its associated licenses, rights, and business qualifies as a covered investment in the territory of Peru.

64. *Finally*, Article 10.1.3 of the Treaty confirms the general rule of non-retroactivity to the effect that “for greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.”<sup>73</sup> The Treaty entered into force on February 1, 2009, and Claimant’s claims in this arbitration all arise from acts by Peru that took place after that date.<sup>74</sup>

**B. Both Parties Have Consented to Submit the Dispute to ICSID Arbitration.**

65. In addition, both Peru and Claimant have consented to submit their dispute to arbitration under the ICSID Convention. Article 25 of the ICSID Convention provides that the jurisdiction of the Centre shall extend to “any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.”
66. Peru consented in writing to submit the dispute to the Centre in the Treaty. Specifically, Article 10.16.3 of the Treaty provides that investors may submit claims “under the ICSID Convention and the ICSID Rules,” provided that both Peru and the United States are parties to the ICSID Convention, which Peru and

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<sup>72</sup> *Cf.* **Ex. CA-01**, Treaty, Art. 10.28 (definition of “investment”).

<sup>73</sup> *Id.*, Art. 10.1.3.

<sup>74</sup> **Ex. CA-02**, Decreto Supremo No. 009-2009-MINCETUR; **Ex. CA-03**, United Nations Conference on Trade and Development - Division of Investment and Enterprise, Table of Peru – Treaties with Investment Provisions, February 28, 2020.

the United States both are.<sup>75</sup> Article 10.17 further provides that Peru “consents to the submission of a claim to arbitration under this Section in accordance with” the Treaty and that such consent “shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre).”<sup>76</sup>

67. In turn, pursuant to Article 10.18.2(a) of the Treaty, Claimant consents to submit to the Centre the dispute that is the subject of this Notice of Arbitration in accordance with the procedures set out in the Treaty, including the procedures for the selection and appointment of arbitrators pursuant to Article 10.19.<sup>77</sup> Further, consistent with Rules 1, 2 and 5 of ICSID Institution Rules, Claimant has undertaken all necessary internal actions to authorize its agents, counsel, and advocates to file this Notice of Arbitration, and has paid the corresponding lodging fee.<sup>78</sup>

**C. Claimant Has Fulfilled All Other Treaty Requirements to Commence Arbitration.**

68. Claimant has also satisfied the Treaty’s additional, specific requirements for the submission of claims to arbitration.
69. *First*, consistent with Articles 10.15 and 10.16.2 of the Treaty, Worth Capital sought “to resolve the dispute through consultation and negotiation,”<sup>79</sup> sent Peru a Notice of Intent more than two years ago, and met with the Commission appointed by Peru to resolve the dispute, to no avail.<sup>80</sup>
70. *Second*, consistent with Articles 10.16.2 and 10.16.3 of the Treaty, “at least 90 days”<sup>81</sup> have passed since Claimant submitted its Notice of Intent, and more

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<sup>75</sup> **Ex. CA-01**, Treaty, Art. 10.16.3.

<sup>76</sup> *Id.*, Art. 10.17.

<sup>77</sup> **Ex. C-89**, Claimant’s Waiver and Consent, November 24, 2020.

<sup>78</sup> *See* **Ex. C-81**, Worth Capital Certificate of Good Standing, November 10, 2020; **Ex. C-83**, Power of Attorney granted by Worth Capital to Debevoise & Plimpton LLP, November 20, 2020; **Ex. C-84**, Power of Attorney granted by Worth Capital to Dewey Pegno & Kramarsky LLP, November 20, 2020; **Ex. C-85**, Worth Capital’s Officer’s Certificate, November 20, 2020; **Ex. C-88**, Proof of ICSID Lodging Fee Payment, November 23, 2020.

<sup>79</sup> **Ex. CA-01**, Treaty, Art. 10.15.

<sup>80</sup> *See* **Ex. C-63**, Claimant’s Notice of Intent to Commence Arbitration under the United States-Peru Trade Promotion Agreement, May 18, 2018.

<sup>81</sup> **Ex. CA-01**, Treaty, Art. 10.16.2.

than “six months have elapsed since the events giving rise to the claims” of Treaty breach.<sup>82</sup>

71. *Third*, consistent with Article 10.18.1 of the Treaty, not “more than three years have elapsed from the date on which the claimant first acquired, or should have acquired, knowledge of the breach alleged . . . and knowledge that the claimant . . . has incurred loss or damage”<sup>83</sup> until Claimant’s communication of the present Notice of Arbitration to the Centre’s Secretary-General. Claimant could not have acquired knowledge of breach and loss with respect to Peru’s violation of the minimum standard of treatment until, at the earliest, PERUPETRO’s January 4, 2018 confirmation that it would not reconsider its November 27, 2017 letter withdrawing the green light it had given Maple to take over the Block 126 license. Claimant could not have acquired knowledge that it had been expropriated until some time thereafter. The Refinery did not suspend operations until December 2017, and even then Maple continued looking for alternative business leads; Maple did not enter liquidation proceedings until February 2019; Peru took over control of Maple’s Refinery and oil fields by August 2019; and Peru terminated the Lease Agreement as of August 2018 and the Licenses in February and March 2019.
72. *Fourth*, consistent with Article 10.18.2(b)(i) of the Treaty, Claimant has waived “any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16” of the Treaty.<sup>84</sup>
73. *Finally*, consistent with Article 10.18.4(a) and Annex 10-G of the Treaty, neither Claimant nor Maple have initiated any other actions alleging breach of the Treaty, and they have not submitted any Treaty claims to Peru’s

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<sup>82</sup> *Id.*, Art. 10.16.3.

<sup>83</sup> *Id.*, Art. 10.18.1; *see also id.*, Art. 10.16.4 (“A claim shall be deemed submitted to arbitration under this Section when the claimant’s notice of or request for arbitration . . . (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General”).

<sup>84</sup> *Id.*, Art. 10.18.2(b)(i); **Ex. C-89**, Claimant’s Waiver and Consent, November 24, 2020.

administrative tribunals, courts, or any other applicable dispute settlement procedure.<sup>85</sup>

## **VI. CONSTITUTION OF THE TRIBUNAL**

74. Article 10.19 of the Treaty provides that “the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.”<sup>86</sup> Article 10.16.6(a) of the Treaty further provides that “the claimant shall provide with the notice of arbitration (a) the name of the arbitrator that the claimant appoints.”<sup>87</sup>
75. Claimant hereby appoints Dr. Horacio Grigera Naón as its party-appointed arbitrator. Dr. Grigera Naón’s contact details are as follows:

Professor Dr. Horacio Grigera Naón  
5224 Elliott Road  
Bethesda, Maryland 20816  
United States of America  
Email: hgnlaw@gmail.com  
Tel.: +1 (301) 229 1985; +1 (202) 436-4877

## **VII. REQUESTED RELIEF**

76. Claimant requests that the Tribunal issue an award:
- a. Declaring that Peru has breached Articles 10.5 and 10.7 of the Treaty;
  - b. Ordering Peru to pay full compensation for all damages and losses suffered by Claimant as a result of Peru’s breaches of the Treaty, in an amount to be determined in the course of this proceeding;
  - c. Ordering Peru to pay all the costs of the arbitration, as well as Claimant’s fees and expenses;
  - d. Ordering Peru to pay pre-award and post-award interest at a commercial rate to be determined in the course of this proceeding; and

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<sup>85</sup> **Ex. CA-01**, Treaty, Art. 10.18.4(a); *id.*, Annex 10-G.

<sup>86</sup> *Id.*, Art. 10.19.

<sup>87</sup> *Id.*, Art. 10.16.6(a).

- e. Ordering any other such relief as the Tribunal may deem just and appropriate in the circumstances.
77. Claimant reserves its rights to amend or supplement this Notice of Arbitration, including the requested relief and the amount claimed, and to seek relief for additional breaches arising from Peru's past, current, or future conduct.



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New York, New York, November 24, 2020