INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID ARB. No. _____

CYRUS CAPITAL PARTNERS, L.P.
CONTRARIAN CAPITAL MANAGEMENT, LLC

Claimants

vs.

THE UNITED MEXICAN STATES

Respondent

REQUEST FOR ARBITRATION

June 30, 2023

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I. INTRODUCTION

1. Pursuant to Articles 25 and 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention"); Articles 1116 and 1120 of Chapter 11 of the North American Free Trade Agreement ("NAFTA"); and Annex 14-C of Chapter 14 of the United States-Mexico-Canada Agreement ("USMCA"); Cyrus Capital Partners, L.P. ("Cyrus") and Contrarian Capital Management, LLC ("Contrarian") (collectively, the "Claimants"), by and through their authorized representatives, hereby request the institution of arbitration proceedings against the United Mexican States ("Mexico").

2. The claims submitted by the Claimants in this arbitration arise under NAFTA, which was signed by the parties on December 17, 1992 and entered into force on January 1, 1994.[1] Through enterprises under their control, the Claimants control covered "investments," i.e., debt securities issued on August 9, 2017 by an entity organized under the laws of Mexico, TV Azteca, S.A.B. de C.V. ("TV Azteca") where the original maturity of the debt security is at least three years, here, 2024.

3. Because the claims pertain to the treatment of the Claimants by Mexico, and more specifically a Mexican court in a proceeding relating to and affecting the TV Azteca Notes (defined at Paragraph 22 below) under their control, which were established (i.e., issued) prior to the entry into force of the USMCA on July 1, 2020, the Claimants are entitled to bring their claims to arbitration against Mexico under Chapter 11 of NAFTA as "legacy investment" claims, consistent with Annex 14-C of the USMCA.

4. The claims here involve the extraordinary mistreatment of the Claimants by the Superior Court of Justice of Mexico City, which committed multiple brazen violations of the Claimants' due process rights in the proceedings before it, including denying the Claimants any notice or opportunity to be heard prior to issuing an injunction that serves as a bar on their ability to pursue relief as creditors of TV Azteca, which is owned and controlled by Ricardo Salinas Pliego. As reported by Mexican newspapers, the presiding judge in the Superior Court of Justice is a long-time "friend" of Grupo Salinas and TV Azteca.

5. The Claimants' mistreatment by the Superior Court of Justice of Mexico City amounts to a violation of Mexico's obligations to provide the Claimants, as U.S. investors, with the Minimum Standard of Treatment under Article of Chapter 11 of NAFTA, which requires it to accord "treatment in accordance with international law, including fair and equitable treatment" that requires Mexico not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world. As a result of those violations, the Claimants and other U.S. investors have suffered

[1] **Exhibit 1** (Text of Chapter of 11 of NAFTA).

significant loss on the Notes under their control, which is estimated to be not less than $219,050,000 million.

II. IDENTIFICATION OF THE PARTIES

A. The Claimants

6. Both Claimants are organized under the laws of the United States and have principal places of business in the United States.

7. Cyrus is a limited liability partnership organized under the laws of the State of Delaware.[2] The contact information and principal place of business for Cyrus and the Noteholder (defined below at Paragraph 43) under its control[3] is as follows:

   65 East 55th Street, 35th Floor
   New York, NY 10022
   United States of America

8. Contrarian is a limited liability company organized under the laws of the State of Delaware.[4] The contact information and principal place of business for Contrarian and the Noteholder under its control[5] is as follows:

   411 West Putnam Ave. #425
   Greenwich, CT 06830
   United States of America

9. The Claimants are represented in all matters related with this dispute by Akin Gump Strauss Hauer & Feld LLP ("Akin").[6] The contact details of Akin's lawyers are as follows:

   Mr. Jonathan C. Poling
   (jpoling@akingump.com)
   T: +1 202 887 4029
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[2] **Exhibit 2** (Cyrus State of Delaware and New York Registration Documents).

[3] Cyrus Opportunities Master Fund II, Ltd.

[4] **Exhibit 3** (Contrarian State of Connecticut Registration Certificate and 2023 Annual Report to Connecticut Secretary of the State).

[5] Sandpiper Limited.

[6] **Exhibits 4** (Cyrus Power of Attorney); **Exhibit 5**: (Power of Attorney for Contrarian).

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B. The Respondent

10. The Respondent is Mexico, a sovereign State Party to NAFTA and the USMCA. For purposes of this arbitration, to the Claimants' best knowledge, Mexico's addresses[7] are the following:

Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Pachuca #189, piso 19
Col. Condesa
Demarcación Territorial Cuauhtémoc
Ciudad de México
C.P. 06140
México

Dirección General de Inversión Extranjera
Secretaría de Economía
Insurgentes Sur 1940, piso 8
Col. Florida
México, D.F. 01030
México

[7] For purposes of completeness, the Claimants are using both the address provided by Mexico for official communications under NAFTA and the address provided for official communications under the USMCA.

11. To the Claimants' best knowledge, the division and officer of the Respondent who will be in charge of representing Mexico in this arbitration is:

Alan Bonfiglio Ríos
Director of the Consultoría Jurídica de Comercio Internacional of the Secretaría de Economía
(alan.bonfiglio@economia.gob.mx)
T: +52 55 57299100 ext. 15204

III. RELEVANT PROVISIONS EMBODYING THE AGREEMENT OF THE PARTIES TO REFER THE DISPUTE TO ARBITRATION

12. NAFTA provides, in relevant part, that:

Article 1116: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 1118: Settlement of a Claim through Consultation and Negotiation

The disputing parties should first attempt to settle a claim through consultation or negotiation.

Article 1119: Notice of Intent to Submit a Claim to Arbitration

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;

(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) the issues and the factual basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.

Article 1120: Submission of a Claim to Arbitration

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 1121: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.

Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;

(b) Article II of the New York Convention for an agreement in writing; and

(c) Article I of the InterAmerican Convention for an agreement.

13. The USMCA provides, in relevant part, as follows:

Annex 14-C. Legacy Investment Claims And Pending Claims

1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:

(a) Section A of Chapter 11 (Investment) of NAFTA 1994;

(b) Article 1503(2) (State Enterprises) of NAFTA 1994; and

(c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.[20][21]

2. The consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an "agreement in writing"; and

(c) Article I of the Inter-American Convention for an "agreement".

3. A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.

4. For greater certainty, an arbitration initiated pursuant to the submission of a claim under paragraph 1 may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the expiration of consent referenced in paragraph 3, and Article 1136 (Finality and Enforcement of an Award) of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

5. For greater certainty, an arbitration initiated pursuant to the submission of a claim under Section B of Chapter 11 (Investment) of NAFTA 1994 while NAFTA 1994 is in force may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the termination of NAFTA 1994, and Article 1136 of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.

6. For the purposes of this Annex:

(a) "legacy investment" means an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement;

(b) "investment", "investor", and "Tribunal" have the meanings accorded in Chapter 11 (Investment) of NAFTA 1994; and

(c) "ICSID Convention", "ICSID Additional Facility Rules", "New York Convention", and "Inter-American Convention" have the meanings accorded in Article 14.D.1 (Definitions).

[20] For greater certainty, the relevant provisions in Chapter 2 (General Definitions), Chapter 11 (Section A) (Investment), Chapter 14 (Financial Services), Chapter 15 (Competition Policy, Monopolies and State Enterprises), Chapter 17 (Intellectual Property), Chapter 21 (Exceptions), and Annexes I-VII (Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters) of NAFTA 1994 apply with respect to such a claim.

[21] Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).

14. The present Request complies with the Procedural Requirements set forth in NAFTA as further evidenced below.

A. The Parties' Consent to Arbitration

15. The Claimants refer to NAFTA Articles 1116, 1120, and 1122; and Annex 14-C of the USMCA as providing the basis for this submission to arbitration.

16. As required by NAFTA Article 1121, the Claimants consent to arbitration in accordance with the procedures set out in NAFTA by submitting herewith their NAFTA Article 1121 Consent to Arbitration and Waiver of Other Dispute Settlement Procedures.[8]

17. As further required by NAFTA Article 1121(3), the Claimants have included their consent and waiver in this Request for Arbitration, copies of which are being delivered to Respondent.

18. Mexico's consent to arbitration proceedings under the ICSID Convention is contained in NAFTA Article 1122(1), which states that "[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement." NAFTA Article 1122(2) further provides that the "consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of . . . Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute."

19. Under Annex 14-C of the USMCA, Mexico's consent to arbitrate claims with respect to "legacy investments" under NAFTA remains valid until July 1, 2023. As set forth in Annex 14-C, that consent remains valid as to arbitrations such as this one that are initiated pursuant to a submission of a claim to arbitration in accordance with Section

[8] **Exhibits 6** (Cyrus Waiver); **Exhibit 7** (Contrarian Waiver).

B of Chapter 11 (Investment) of NAFTA before that date and thus may proceed to its conclusion after that date.

20. Both the United States and Mexico are signatories to the ICSID Convention.

B. Cyrus and Contrarian Are Investors of a Party that Have Suffered a Loss or Damage by Reason of Mexico's Breach of Article 1105

21. As noted above, Cyrus is a limited partnership organized under the laws of the State of Delaware that, along with the Noteholder under its control, Cyrus Opportunities Master Fund II, Ltd., has a principal place of business in New York, New York. Contrarian is a limited liability company organized under the laws of the State of Delaware that, along with the Noteholder under its control, Sandpiper Limited, has a principal place of business in Greenwich, Connecticut. The Claimants, therefore, qualify as "enterprises of a Party" and "investors of a Party" under NAFTA Articles 201[9] and 1139.[10]

22. Through the Noteholders under their control, the Claimants control claims against TV Azteca, an enterprise organized under Mexican law, based upon their control of the 8.25% senior unsecured notes due 2024, issued by TV Azteca under that certain Indenture (defined below in Paragraph 42), dated as of August 9, 2017 (the "Notes").[11][12] The Notes held by the Noteholders under the Claimants' control qualify as "investments"[13] under NAFTA Article 1139.

23. Under Annex 14-C of the USMCA, a "legacy investment" means an investment of an Investor of a Party that was established or acquired between January 1, 1994 and July 1, 2020. The Notes at issue here were issued by TV Azteca, an enterprise of Mexico, on August 9, 2017, and thus were established prior to the entry into force of the USCMA.

24. The claims at issue are not eligible to be submitted to arbitration under Paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts) of the USMCA. Thus Mexico's consent to arbitrate the claims at issue here remains valid pursuant to Footnote 21 of Annex 14-C of the USMCA.

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[9] "Enterprise" means "any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; enterprise of a Party means an enterprise constituted or organized under the law of a Party."

[10] "Investor of a Party" means "a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment."

[11] **Exhibit 8a** (Excerpt from Amended Involuntary Petition in U.S. Bankruptcy Proceeding (Cyrus)).

[12] **Exhibit 8b** (Excerpt from Amended Involuntary Petition in U.S. Bankruptcy Proceeding (Contrarian)).

[13] "Investment" includes "(c) a debt security of an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise."

25. As described in further detail below, since February 2021, TV Azteca has failed to make its required semi-annual interest payments under the Notes, including those under Claimants' control, resulting in multiple default events and the subsequent acceleration of the debt. The Claimants' efforts to recover the owed principal and interest on the Notes under their control is directly jeopardized by the injunction barring such efforts, issued by the Mexican court, in flagrant disregard of the Claimants' due process rights and in violation of Mexico's obligations under Article 1105 not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

26. As a result of those actions, the Claimants face a total loss on the Notes under their control.

27. Therefore, the requirements of NAFTA Article 1116 have been satisfied.

C. Previous Settlement Attempts and Negotiations

28. On June 28, 2023, the Claimants submitted their Notice of Intent to arbitrate to Mr. Alan Bonfiglio Ríos, the Mexican official responsible for representing Mexico in this arbitration, in an attempt to initiate settlement discussions with Mexico. Given that the Claimants were only formally served with the Injunction that gives rise to the claims in this Request on June 28 and June 29, 2023 and given the necessity of initiating an arbitration under Chapter 11 of NAFTA prior to July 1, 2023, the Claimants are obliged to submit this Request for Arbitration prior to any further discussions taking place. Recognizing that his ability to negotiate and conclude a resolution of the claims that arise from the mistreatment of the Claimants by a separate branch of the Mexican government may be limited, the Claimants nevertheless intend to again contact Mr. Bonfiglio shortly following this submission to engage in settlement discussions and intend to continue those discussions during the requested 90-day suspension of this arbitration, which is described in more detail below in Paragraph 30.

D. Notice and Time Requirements

29. On June 28 and June 29, 2023, the Claimants notified Mexico of their intention to refer this dispute to arbitration under NAFTA Chapter 11. Copies of the Notice of Intent stamped as received by the Dirección General de Consultoría Jurídica de Comercio Internacional on June 28, 2023 and the Dirección General de Inversión Extranjera on June 29, 2023, respectively, are attached to this submission.[14]

30. Given that the Claimants were only served with the Mexican court's injunction on June 28 and June 29, 2023, the Claimants were unable to provide a notice of intent to arbitrate before April 1, 2023, i.e., 90 days prior to the expiration of Mexico's consent to arbitrate on July 1, 2023. To allow for time for settlement discussions and

[14] **Exhibit 9** (Stamped Notice of Intent).

consistent with NAFTA Article 1119, the Claimants hereby request the Secretary-General of ICSID to suspend the proceedings for 90 days under Rule 54(7) of the ICSID Arbitration Rules following the formal registration of this Request for Arbitration.

31. Article 1120 of NAFTA provides that an investor of a Party may submit a claim to arbitration "provided that six months have elapsed since the events giving rise to a claim." The claims here arise from the issuance of an injunction on September 27, 2022, by the Mexican court without providing the Claimants with any notice of the request or proceeding, or an opportunity to be heard on the request for an injunction. Accordingly, the Claimants have satisfied the requirements of Article 1120.

32. Article 1116 of NAFTA states that a claimant may not make a claim or make a claim on behalf of an enterprise "if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage." Less than three years have elapsed since the events giving rise to the violations claimed here.

33. In addition, consistent with the ICSID Rules and administrative requirements for lodging a request for arbitration, on June 29, 2023 the Claimants wired the $25,000 ICSID fee for lodging requests, per the instructions provided by ICSID on its website. A copy of that receipt is being submitted along with this submission.

34. Consistent with Article 36(3) of the ICSID Convention, on the basis of the information contained in this Request for Arbitration, it is respectfully submitted that the dispute is clearly within the jurisdiction of the International Centre for Settlement of Investment Disputes, and that the Secretary-General shall register this Request for Arbitration.

E. Waiver

35. Article 1121 of NAFTA requires that a claimant consent to the arbitration and waive (with limited exceptions) its right to "initiate or continue proceedings before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect *to the measure of the disputing Party that is alleged to be a breach* referred to in Article 1116." (emphasis added).

36. The Claimants have not initiated any proceedings before any administrative tribunal or court under the law of any Party, or any other dispute settlement procedures, against the presiding judge or any other official of the Superior Court of Justice of Mexico City that seeks any damages for the court's flagrant breaches of the Claimants' due process rights.

37. The Claimants consent to arbitration in accordance with the procedures set out in NAFTA, and – pursuant to the obligation provided by Article 1121 of NAFTA – herby waive their right to bring any claim against Judge Robles or other officials of the Superior Court of Justice of Mexico City that seeks any damages for that court's

breach of their due process rights. For avoidance of doubt, this waiver does not apply to any current or future proceedings in Mexico related to the underlying private dispute involving TV Azteca, i.e., the proceedings in which the breaches of due process occurred.

38. Pursuant to Article 1121(3), each Claimant has executed a consent and waiver as required by this Article and has included the consent and waiver as **Exhibits 6** and **7** to this submission, a copy of which will be delivered to the Government of Mexico.

IV. STATEMENT OF FACTS

39. As discussed in further detail below, the Claimants' mistreatment by the Superior Court of Justice of Mexico City amounts to a violation of Mexico's obligations to provide U.S. investors with the Minimum Standard of Treatment under Article 1105 of Chapter 11 of NAFTA, which requires it to accord "treatment in accordance with international law, including fair and equitable treatment."

40. Fair and equitable treatment includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

41. As demonstrated by the facts laid out below, the Mexican court committed multiple brazen violations of the Claimants' due process rights in the proceedings before it that were initiated by TV Azteca. Specifically, those breaches of due process by the Mexican court include denying the Claimants any notice or opportunity to be heard prior to issuing an injunction that has barred their ability to pursue relief against TV Azteca for its default on the Notes under the Claimants' control.

A. The Claimants Control Notes Issued by TV Azteca under an Indenture.

42. On August 9, 2017 TV Azteca entered into an indenture agreement (the "Indenture") with the Bank of New York Mellon ("BNYM" or "Trustee") as the trustee, the Bank of New York Mellon, London ("BNYML") as the principal paying agent, and a number of guarantors (the "Guarantors").[15] The Indenture provides that the Guarantors, which are subsidiaries of TV Azteca, fully guarantee the obligations of TV Azteca.

43. Also on August 9, 2017, TV Azteca issued $400 million in debt, i.e. the Notes, to certain noteholders (the "Noteholders") pursuant to the Indenture. Under the terms of the Indenture, TV Azteca is obligated to make semi-annual interest payments to the Noteholders, including the entities in the Claimants' respective control, at the rate of 8.250% per annum on the $400 million principal sum on August 9 and February 9 of each year during the term of the Indenture.

44. Each required interest payment is $16,500,000.

[15] **Exhibit 10** (TV Azteca Indenture (August 9, 2017)).

45. The maturity date of the Notes is August 9, 2024.

46. Through their control of specific Noteholders, specifically Cyrus Opportunities Master Fund II, Ltd., in the case of Cyrus, and Sandpiper Limited, in the case of Contrarian, the Claimants control claims against TV Azteca.

B. TV Azteca Stopped Making Required Interest Payments on the Notes

47. After making its first six required interest payments on the Notes, on February 9, 2021, TV Azteca publicly announced that it would "defer" the interest payment due on that date.[16]

48. After the expiration of the 30-day grace period for missed interest payments, on March 22, 2021, the Trustee sent TV Azteca a Notice of Event of Default pursuant to the Indenture, informing TV Azteca that it had not made the required February payment and had failed to cure the default within 30 days, and, as such, an Event of Default had occurred.[17]

49. TV Azteca has since failed to make all other required semi-annual interest payments under the Notes, including those controlled by the Claimants.

50. Following months of unsuccessful negotiations with TV Azteca to resolve its multiple and growing number of events of default, the Trustee, at the direction of the Claimants and other Noteholders, accelerated the debt on August 5, 2022 and August 8, 2022.[18]

51. TV Azteca acknowledged the acceleration in a press release, but made no efforts to comply with its obligations to satisfy all outstanding principal and interest payments under the Notes, including those controlled by the Claimants.[19]

52. After TV Azteca failed to comply with the terms of the Indenture and ignored the notices of acceleration, on August 26, 2022, the Trustee sued TV Azteca in New York State court seeking compensatory damages,[20] totaling the aggregate amount of accrued and unpaid interest based on TV Azteca's failure to make three interest payments, the full amount of the interest up to the date of acceleration on August 5, 2022, the redemption premium, and the full amount of the principal due under the Indenture at the time, collectively totaling $469,783,272.[21] At present, TV Azteca

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[16] **Exhibit 11** (Feb. 9, 2021 TV Azteca Press Release Announcing Deferred Payment).

[17] **Exhibit 12** (March 22, 2021 Notice of Event of Default).

[18] **Exhibit 13** (August 5, 2022 and August 8, 2022 Notices of Acceleration).

[19] **Exhibit 14** (August 8, 2022 TV Azteca Press Release Acknowledging Acceleration).

[20] The Notes are subject to New York law and included a consent to New York jurisdiction by all parties. Conversely, neither the Trustee nor the Noteholders have consented to any jurisdiction in Mexico involving the Notes.

[21] **Exhibit 15** (Motion for Summary Judgment in NY State Court Proceeding).

owes the Noteholders in excess of $488,623,510, of which not less than $219,050,000 million is owed to U.S. investors.

53. On September 23, 2022, TV Azteca removed that case to the U.S. District Court for the Southern District of New York, which has since been stayed as a result of the involuntary Chapter 11 proceeding against TV Azteca and the Guarantor initiated with the United States Bankruptcy Court for the Southern District of New York, which is discussed further below.

C. Mexican Court Violates Due Process Rights of the Claimants

54. In the meantime – and without providing any notice to the Claimants, other Noteholders, the Trustee, or the court presiding over the U.S. litigation – on September 22, 2022, just one day before removing the action pending in New York State court to the U.S. District Court of the Southern District of New York, TV Azteca initiated a secret proceeding in the Superior Court of Justice of Mexico City, Mexico (the "Mexican Court Proceeding") seeking to bar their recovery efforts under the Notes, to obstruct the resolution of the U.S. litigation, to prevent enforcement of the Notes, and to preclude any potential recovery by the Claimants and other Noteholders against TV Azteca.[22]

55. Specifically, TV Azteca sought a court decree that the COVID-19 pandemic constituted an Act of God or force majeure event that prevented TV Azteca from performing its obligations under the Indenture, and therefore TV Azteca should be entirely relieved from performing any obligations under the Notes, including making the required payments under the Notes held by the Claimants.

56. On September 27, 2022, just five days after the complaint was filed and without holding a hearing or providing the named defendants any notice or opportunity to be heard in opposition to the request for a decree, the court granted TV Azteca's request for an injunction (the "Injunction"). According to the presiding judge, Judge Miguel Angel Robles Villegas, who is known to be partial to TV Azteca and Grupo Salinas, the Injunction was warranted in order to "keep the current factual situation."

57. By its terms the Injunction relieves TV Azteca's obligations to continue making its required payments on the Notes; prohibits any proceedings to enforce rights and remedies in respect of the Notes; and deems the acceleration notices delivered to TV Azteca under the terms of the Indenture ineffective until the World Health Organization ("WHO") decrees the end of the COVID-19 pandemic.[23] The Injunction thus prevents the Claimants from commencing any action or proceeding involving TV Azteca in Mexico relating to the Notes and purports to stay any effects of the acceleration of the Notes in Mexico, including TV Azteca's default.

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[22] **Exhibit 16** (TV Azteca Complaint in Mexican Court Proceeding (filed September 22, 2022)).

[23] **Exhibit 17** (September 27, 2022 Injunction in Mexican Court Proceeding).

58. The Trustee only became aware of the secret Mexican Court Proceeding and the Injunction when it was served on February 21, 2023, approximately five months after the entry of the Injunction. The Claimants, however, were not formally served until June 28 and June 29, 2023.

59. To challenge the Injunction, on March 15, 2023, the Trustee, as the only defendant then served in the Mexican Court Proceeding, filed a separate Amparo (the "Amparo Proceeding") in Mexican federal court, seeking relief from the Injunction.[24] An amparo is relief available in Mexican courts to seek protection from acts that violate fundamental constitutional rights.

60. The Amparo argued that the Injunction violated the Constitution of Mexico by depriving the defendants of fundamental rights to due process. Specifically, the Trustee argued in the Amparo Proceeding that, while framed as "precautionary measures" to maintain the status quo, the Injunction issued in the Mexican Court Proceedings improperly granted TV Azteca final relief, i.e., indefinite relief from the obligations of the Indenture. Such final relief, however, should only be granted following a trial on the merits when defendants would have been afforded the opportunity to defend against the claims. The inability to mount a defense to the claims thus constituted a violation of the defendants' constitutional rights, including the right of access to justice.

61. The Amparo thus argued that the Injunction was improper because the defendants in the Mexican Court Proceeding had not been informed of the secret proceeding, let alone afforded an opportunity to mount a defense. In light of such clear constitutional defects, the Amparo sought a suspension of the Injunction.

62. On March 23, 2023, however, the Mexican federal court dismissed the Amparo without prejudice due to a failure to exhaust local remedies.[25] As a result, the Trustee subsequently filed an appeal challenging the Injunction, which remains pending.[26]

63. On March 27, 2023, as a last resort, certain Noteholders, including those under the Claimants' control, filed a petition for involuntary Chapter 11 bankruptcy in the Southern District of New York in an effort to seek relief from TV Azteca. The litigation before the U.S. District Court for the Southern District of New York is stayed as a result of the Chapter 11 proceeding.

D. The Mexican Court Continued to Violate the Claimants' Due Process Rights by Barring a Response to the Injunction on the Basis of Forged Court Records

64. When the Mexican court issued the Injunction, it left blank the relevant date block indicating when a response from the defendants was due. When TV Azteca filed its

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[24] **Exhibit 18 (**Amparo in Mexican Federal Court).

[25] **Exhibit 19** (March 23, 2023 Mexican Federal Court Order Dismissing the Amparo).

[26] **Exhibit 20** (March 30, 2023 Appeal of the Injunction).

proof of service of the order on the Trustee with the Mexican court, it included a copy of the Injunction order with that date block filled in as "32", thereby unlawfully modifying court records by inserting an incorrect deadline by which a response was required.

65. Relying on a blatantly incorrect interpretation of Mexican law to accept the response deadline unilaterally and unlawfully chosen by TV Azteca, on May 2, 2023, the Mexican court arbitrarily and capriciously dismissed as untimely the Trustee's April 20, 2023 response filing in the Mexican Court Proceeding.[27]

66. On May 8, 2023, the Trustee submitted a Motion for Reconsideration requesting the Mexican court to reconsider its ruling and declare the Trustee's April 20, 2023 response as timely filed. On May 15, 2023, the court reversed its decision and declared the response timely filed. However, by incorrectly refusing to accept the response as timely filed in the first instance on the basis of an unlawful deadline forged by TV Azteca, Judge Robles thus denied the Trustee's ability to contest the merits of the Injunction (another clear violation of their due process rights) and further forced the Trustee to undertake the unnecessary burden of seeking reconsideration of the ruling in order to make an appearance in the proceeding.

67. In the meantime, on May 5, 2023, the WHO issued a statement declaring "COVID-19 over as global health emergency."[28] On May 9, 2023, the Mexican President concurred with the WHO, issuing a decree that COVID-19 is no longer a health emergency in Mexico.[29]

68. Accordingly, on May 15, 2023, the Trustee filed a submission with the Mexican Superior Court requesting that the Injunction be vacated on the grounds that COVID-19 no longer constitutes a public health emergency.[30]

69. TV Azteca has stated publicly to the Mexican press that the Injunction will remain in force regardless of the statements by WHO and the Mexican President that the COVID-19 health emergency has ended. And indeed, the Trustee's motion to vacate remains pending before Judge Robles, despite the obvious lapse of the Injunction's underlying "justification", and there is no deadline by which the court is required to rule.

70. Finally, the Claimants understand that TV Azteca has initiated yet *another* secret, separate commercial litigation against the Trustee and Noteholders in Mexico for which service has not yet been effected. Neither the Claimants nor the Trustee have been formally served in connection with that proceeding and are only aware of its

[27] **Exhibit 21** (May 2, 2023 Order Finding Response to Complaint in Mexican Court Proceeding Untimely).

[28] **Exhibit 22** (May 5, 2023 WHO Statement on COVID-19).

[29] **Exhibit 23** (May 9, 2023 Mexican President Statement on COVID-19).

[30] **Exhibit 24** (Trustee's Motion to Vacate the Injunction (filed May 15, 2023)).

existence based on a footnote in a TV Azteca filing in the bankruptcy proceeding in the United States.

71. By failing to accord the Claimants any notice or opportunity to oppose TV Azteca's request for an injunction before it was issued in a secret proceeding – an Injunction that has the effect of barring any relief for Claimants on the Notes under their control against TV Azteca in Mexico, including the outcome of the U.S. bankruptcy proceedings – the Claimants were denied justice by the Mexican court contrary to the principle of due process embodied in the principal legal systems of the world.

E. Judge Robles is Known to Unfairly Favor TV Azteca and its Majority Owner, Grupo Salinas

72. Judge Robles, the presiding judge in the Mexican Court Proceedings, has a track record of unfairly favoring TV Azteca and Grupo Salinas in previous proceedings before him. For example, in a 2020 case brought by TV Azteca involving an ongoing contractual dispute occurring outside of Mexico between TV Azteca and Diamond Films over TV Azteca's failure to pay required content licensing fees, Judge Robles granted TV Azteca's request for an injunction to prevent Diamond Films from enforcing any remedies against TV Azteca for that breach of contract.[31]

73. In addition, according to a news article published on May 12, 2023, entitled, "TV Azteca has its 'friend judge,'" Judge Robles has "repeatedly favored Ricardo Salinas Pliego's companies."[32] In addition to noting the Injunction secretly issued against the Trustee and Noteholders in the Mexican Court Proceeding, the article also highlights, as an example of such favoritism, a 2010 lawsuit by Iusacell, owned at the time by Grupo Salinas, that led to a similar complaint against Judge Robles for abusing his powers for the benefit of Grupo Salinas.

74. To further demonstrate Judge Roble's overt partiality to TV Azteca, on May 9, 2023, Judge Robles issued yet another injunction at TV Azteca's request without providing the defendants notice or opportunity to be heard in a clear violation of Mexican law.[33] This latest injunction permits TV Azteca, to its benefit, to refrain from reporting financial information to the public until a final judgment in the Mexican Court Proceeding is issued.

75. Finally, rather than consider the Trustee's motion to vacate the Injunction in a timely fashion, Judge Robles has chosen to reserve a decision on that motion and thus the Injunction remains pending despite the fact that its underlying "justification" has very obviously lapsed. A news article titled "TV Azteca continues to be protected from its creditors despite the end of the pandemic" cites a Mexican bankruptcy expert, stating

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[31] **Exhibit 25** (Diamond Films August 2020 Mexican Court Injunction Order); **Exhibit 26** (Diamond Films Bankruptcy Petition Filing).

[32] **Exhibit 27** (May 12, 2023 Reforma Article: "TV Azteca Has its 'Judge Friend'").

[33] **Exhibit 28** (May 9, 2023 Injunction in Mexican Court Proceeding)

that the Injunction should no longer have any legal effect due to the statement from WHO.[34]

F. TV Azteca's Claims in the Secret Mexican Court Proceeding Were False and Claimants Could Have Demonstrated that to be the Case

76. TV Azteca's claim in the Mexican Court Proceeding that an injunction against its creditors was warranted because that it could not perform its obligations under the Indenture due to the COVID-19 pandemic, were provably false given the fact that TV Azteca made significant payments toward its local debt at the same time it was defaulting on its obligations to foreign creditors under the Notes.

77. In the same press release announcing that TV Azteca would "defer" payment under the Notes, TV Azteca announced that it would repay local, subordinate debt early. In particular, TV Azteca announced that it would amortize early up to $60 million of structurally subordinate and unsecured local debt instruments known as Certificados Bursatiles.[35] And, on March 5, 2021, TV Azteca finalized the purchase of $57 million[36] of its issued Certificados Bursatiles on the secondary market.

78. Moreover, on July 28, 2022, TV Azteca announced that it had purchased an additional $105 million worth of issued Certificados Bursatiles.[37]

79. Accordingly, from February 2021, at the time of its initial default on the Notes, to August 2022, when the Claimants and other Noteholders were forced to accelerate the debt and pursue their remedies in U.S. court, TV Azteca spent the equivalent of $165 million to purchase its outstanding local debt instruments that were not yet due, all the while refusing to make other required payments under the Notes, including those controlled by the Claimants.

80. Additionally, on July 28, 2022, only two months prior to initiating the secret Mexican Court Proceeding in order to obtain an injunction on the basis of the supposed hardship it was suffering due to the COVID-19 pandemic, TV Azteca announced improved net sales, net income, and EBITDA.[38] Upon information and belief, from the end of 2020 through the last twelve months of the 3rd Quarter 2022, TV Azteca grew EBITDA by over 140% while reducing total debt by over 25%.

81. Accordingly, at the time the Mexican court was secretly considering TV Azteca's claim in September 2022 that it was entitled to relief from its creditors due to the COVID-19 pandemic, the repayment of the Certificados Bursatiles and the improved

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[34] **Exhibit 29** (May 17 2023 Expansion Article: "TV Azteca Continues to be Protected from its Creditors Despite the End of the Pandemic").

[35] **Exhibit 11** (Feb. 9, 2021 TV Azteca Press Release Announcing Deferred Payment).

[36] Value of 1,211 million peso in U.S. dollars as of March 5, 2021.

[37] **Exhibit 30** (July 28, 2022 TV Azteca Press Release Announcing Additional Debt Purchases and Net Sales and EBITDA).

[38] *Id.*

financial performance of the company clearly demonstrated that TV Azteca's claims were false.

82. By denying the Claimants an opportunity to be heard prior to issuing the Injunction, the Mexican court unquestionably denied the Claimants fair and equitable treatment in accordance with the customary international law principles of due process, thus violating Mexico's obligations under the Minimum Standard of Treatment requirement of Article 1105.

V. MEXICO HAS BREACHED ITS OBLIGATIONS UNDER NAFTA

83. In summary, Mexico breached its obligations under Article 1105 (Minimum Standard of Treatment) of Chapter 11 of NAFTA.

84. As discussed in further detail below, the Claimants' mistreatment by the Superior Court of Justice of Mexico City amounts to a violation of Mexico's obligations to provide the Claimants, as U.S. investors, with the Minimum Standard of Treatment under Article 1105 of Chapter 11 of NAFTA, which requires it to accord "treatment in accordance with international law, including fair and equitable treatment."

85. Article 1105: Minimum Standard of Treatment of NAFTA provides as follows:

> *1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*
>
> *2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.*
>
> *3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).*

86. Pursuant to the international law minimum standard of treatment under Article 1105 of NAFTA, Mexico is obligated to refrain from acting in a manner that deprived the Claimants of substantive and procedural due process.

87. In the case at hand, the treatment accorded to the Claimants by the Mexican court amounts to a denial of justice in violation of Mexico's obligations under Article 1105. The Mexican court (1) denied the Claimants an opportunity to object to TV Azteca's request for an injunction prior to its issuance and (2) failed to require TV Azteca to provide timely notice of the complaint or resulting Injunction to any named defendant Noteholders, including Noteholders controlled by the Claimants. As a result, the Claimants' ability to obtain full and effective remedies in Mexico against TV Azteca for its default on the Notes under their control is seriously inhibited. Therefore, the

Mexican court's actions constitute a violation of the Claimants' substantive and procedural due process rights.

VI. PROCEDURE

A. Constitution of the Arbitral Panel

88. NAFTA Article 1123 states that "unless the disputing parties otherwise agree, 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." Since the Parties have not agreed otherwise concerning the appointment of arbitrators, this provision shall govern.

B. Place of Arbitration

89. NAFTA Article 1130 states that "[u]nless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with . . . the ICSID Convention."

90. The Claimants hereby propose that the arbitration proceedings be held in Washington, DC.

C. Language of the Proceedings

91. Pursuant to Rule 22 of the ICSID Rules of Procedure for Arbitration Proceedings, the Claimants hereby propose that the language of the arbitration and all proceedings be English.

VII. LOSSES AND DAMAGES

92. By reason of Mexico's breaches of Chapter 11 of NAFTA described above, the Claimants have suffered and continue to suffer substantial losses and damages. The amount of losses and damages suffered to date on the Notes controlled by the Claimants and other U.S. investors is currently estimated to be not less than $219,050,000 million.

VIII. REQUEST FOR RELIEF

93. Based on the foregoing, the Claimants intend to seek an arbitral award from a duly constituted Tribunal:

    a. Declaring Mexico to be in breach of its obligations under Article 1105 of Chapter 11 of NAFTA;

    b. Directing Mexico to pay damages to the Claimants in an amount currently estimated as being not less than $219,050,000 million;

    c. Awarding the Claimants pre-award and post-award interest at the applicable rate;

d. Directing Mexico to pay all of the Claimants' costs and expenses of the arbitral proceedings, inclusive of attorneys' fees; and

e. Awarding further relief that the Tribunal may consider just and proper.

DATED this 30 day of June 2023.

Respectfully submitted on behalf of Claimants,

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