

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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Finley Resources Inc., MWS Management Inc., and Prize Permanent  
Holdings, LLC

v.

United Mexican States,

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**WITNESS STATEMENT OF RODRIGO LOUSTAUNAU MARTÍNEZ**

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**December 1, 2022**

**THE INFORMATION HEREIN PROVIDED IS STRICTLY CONFIDENTIAL**

**[COURTESY TRANSLATION]**

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### **A. General Information**

1. My name is Rodrigo Loustaunau Martínez, I am 32 years old, and I live in Mexico City. I have a law degree from Universidad Panamericana and postgraduate studies in Commercial Law and Amparo Law from the same university.
2. I joined Petróleos Mexicanos (“Pemex”) in July 2015. Since then, I have held the positions of advisor in the Contentious Legal Sub-Directorate and Contentious Legal Manager of Private Law. I am currently Contentious Legal Deputy Director of Pemex, a position I have held since May 1, 2020.
3. I am aware that in 2021 Finley Resources, Inc., MWS Management, Inc. and Prize Permanent Holdings, LLC. (“Claimants”) initiated an investment arbitration against the United Mexican States under the North American Free Trade Agreement and the United States-Mexico-Canada Agreement.
4. I am providing this witness statement at the request of the defense team of the United Mexican States, in charge of the Office of the General Counsel for International Trade of the Ministry of Economy (“CJCI”), due to the positions I have held within Pemex and my participation in the litigation brought by Drake, Finley, Bisell and MWS against Pemex Exploración y Producción (“PEP”) before Mexican courts and tribunals.
5. It is worth mentioning that I have only had access to the Statement of Claim that Claimants submitted before the Arbitral Tribunal, to the witness statement of Mr. Luis Dangeville Oseguera Kernion, to the Expert Report of Mr. Amézquita and Mr. Zamora, and to Exhibits C-0034 (Contract 821), C-0098 (November 2016 documents related to work Order 028-2016), C-0103 (Communication from Pemex dated May 8, 2017 subscribed by me), R-0014 (August 28, 2017 notice regarding the determination of the administrative rescission procedure of Contract 821), R-0041 (the Work Order 028-2016 issued on November 25, 2016 by PEP) and R-0043 (Final settlement of Contract 821).

### **B. Functions within Pemex**

6. In 2017 I was appointed as Contentious Legal Manager of Private Law, which is the internal area of Pemex that is in charge of attending the jurisdictional procedures in civil and commercial matters, in the scope of its competence that includes the state of Mexico and the federal entity

Mexico City, as well as jurisdictional procedures of an international nature, among others. At that time, one of my main functions was to propose and direct the strategies for an adequate defense in the lawsuits in such matters that Pemex and its Subsidiary Productive Companies (“EPS”) were facing.

7. In 2020 I was appointed as Contentious Legal Deputy Director, a position I currently hold. My main function is to exercise the institutional legal function in Pemex, its EPS and, where appropriate, its Subsidiaries, in relation to matters of a contentious nature before the various jurisdictional bodies, within the scope of its jurisdiction, which includes the state of Mexico and the federal entity Mexico City, and at the international level, as well as arbitration proceedings and alternative dispute resolution mechanisms, as well as coordinating and establishing the attention and contentious strategy in the proceedings in which Pemex, its EPS and Subsidiaries are parties, whether civil, tax, agrarian, industrial safety, environmental, constitutional, commercial, administrative, criminal and labor, before various Mexican and international jurisdictional bodies. This means that I also participate in the formulation of the legal strategy in arbitration proceedings and alternative dispute resolution mechanisms. Additionally, I provide legal advice on the legal risks that Pemex may face.

### **C. The administrative rescission of Contract 821**

8. The CJCI has informed me about Claimants’ allegations, in which they assert PEP’s alleged breaches, related to the failure to issue work orders under Contract 821.<sup>1</sup> In this regard, it should be pointed out that Contract 821 was entered into more than eight years ago by Finley Resources, Inc. (“Finley”), Drake Mesa, S. de R.L. de C.V. (“Drake-Mesa”) and Drake Finley, S. de R.L. de C.V. (“Drake-Finley”), as contractors, and to the best of my knowledge, it is one of many contracts that PEP has entered into to obtain certain services to meet its business goals.

9. Having reviewed the documents, I consider that there were no breaches as stated by Claimants regarding the lack of issuance of orders under Contract 821, since PEP issued multiple work orders, which were paid in accordance with the terms of Contract 821. It is important to point out that, according to the contractual framework, PEP was the one who had the autonomy to issue the work orders and Claimants had the obligation to execute them within the term indicated in the same order. Therefore, in no way was any breach incurred if orders were not issued for some time,

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<sup>1</sup> Statement of Claim, ¶¶ 189-190.

since Contract 821 did not establish any obligation for PEP with respect to how many work orders had to be issued, nor the time that had to elapse between the issuance of one and another. Likewise, the amount stipulated in Contract 821 was paid for work performed without any default of payment for the work performed by the contractors.

10. It is important to note that, if Contract 821 did not continue in force, it is due to its rescission for causes attributable to Claimants themselves. The work order with respect to which Claimants allege that its breach served as grounds for Pemex to “justifiably” rescind Contract 821 was issued as stipulated and within the contractual term.<sup>2</sup> Again, during the term of Contract 821, PEP was in a position to issue work orders and the supplier was obliged to comply with them, therefore there was no justification for not complying with service order 028-2016. I would also like to point out that the termination of Contract 821 was not only caused by the non-compliance with a work order, but also by other causes such as the non-compliance with the works of the Community and Environment Program (called “PACMA”), as well as the fact that the contractors did not previously notify PEP of the change of their domicile, in accordance with the provisions of Contract 821.<sup>3</sup>

11. Regarding the representations of Claimants and Mr. Oseguera Kernion that Contract 821 was terminated due to an alleged retaliation by Pemex that arose with the commencement of ordinary civil proceeding 200/2016 and that this is evidenced by an internal official letter signed by me, it is necessary to point out that such official letter was sent with the sole purpose of requesting a certified copy of the rescission of Contract 821, which was potentially to be exhibited as supervening evidence in the ordinary civil proceeding 200/2016, and with which it was intended to prove the breaches of Finley, Drake-Mesa and Drake-Finley. As a trial lawyer, I can point out that the exhibition of supervening evidence is normal practice in any litigation before domestic courts and a right to which all parties have access for the defense of their interests.

12. I consider that the official letter dated May 8, 2017 in no way proves that the rescission of Contract 821 was a retaliation for the initiation of the ordinary civil proceeding 200/2016, since PEP understands that Claimants only exercised their right to file the legal actions they deemed

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<sup>2</sup> November 2016 documents related to Work Order 028-2016, **C-0098**. PEP Work Order 028-2016, **R-0041**.

<sup>3</sup> August 28, 2017 notice regarding the determination of the administrative rescission procedure of Contract 821, **R-0014**.

appropriate to assert their claims, regardless of whether they were appropriate or not, and PEP exercised its right of defense in accordance with Mexican laws.

13. I consider totally inappropriate and out of context the statement that the ordinary civil proceeding 200/2016 was “one of Pemex’s top three legal priorities.”<sup>4</sup> One of my responsibilities as Contentious Legal Manager of Private Law was to provide an adequate defense in the litigation faced by Pemex and its EPS, and therefore it is normal to request from the internal areas in which the problem has arisen, or which are administrators of the contracts, all the documentation or means of proof that must be provided in the different lawsuits. This is due to the fact that the Management that I was in charge of, and in general all the contentious areas in Pemex, do not have that information and therefore all the pertinent documentation must be obtained in order to be able to carry out the defense of the company, activity that is carried out in all the proceedings in which Pemex and PEP participate as plaintiff or defendant.

14. What is certain is that the rescission of Contract 821 was in response to various breaches and clearly was not a retaliation for having initiated the ordinary civil proceeding 200/2016. So much so that after the commencement of civil proceeding 200/2016, Claimants exercised their right to sue for the administrative nullity of the rescission of Contract 821, however, the Federal Court of Administrative Justice (“TFJA”) ruled that the rescission of Contract 821 was legal.

15. It is important to point out that Pemex and its EPS are subject to special rules and to the scrutiny of several oversight bodies, i.e., PEP could not ignore Claimants’ breaches and continue with the contractual relationship, since this could be audited and result in a sanction to PEP’s employees who had failed to act in accordance with the provisions of the contract and the internal regulations.

#### **D. Alleged meeting held in the fall of 2018 in Mexico City**

16. When the nullity proceeding (contentious administrative proceeding) against the rescission of Contract 821 was initiated, I was the Contentious Legal Manager of Private Law, and therefore, one of my attributions was not to handle a lawsuit of such nature, since, according to the competence established in the Organic Statute of Pemex, its attention corresponded to the Contentious Administrative Legal Management, which is another management that integrates the

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<sup>4</sup> WT of Mr. Oseguera Kernion, ¶ 106.

Contentious Legal Sub-Directorate. This means that I did not have access to the file, nor was I aware of the details of this lawsuit, and I was only aware of general matters. What I do know is that, through the various civil and administrative jurisdictional instances, the claims of the Contractors were dismissed, and it was determined that the rescission of Contract 821 was legal.

17. Until 2020, the year in which I was appointed as Contentious Legal Deputy Director, I began to have greater knowledge of the lawsuits related to Contract 821, particularly about the amparo lawsuits before the Collegiate Circuit Courts and before the Supreme Court. Thanks to this, I am aware that in each instance the jurisdictional bodies resolved that the rescission of Contract 821 was legal and constitutional.

18. I want to make it clear that I do not recall having held a meeting with Mr. Luis Oseguera Kernion and Mr. Rob Keoseyan since the issue was not a matter of my competence at that time. In fact, I am not aware that Mr. Keoseyan ever worked at Pemex, nor do I recall him ever contacting me. Due to the roles I have played within Pemex I have met with hundreds of people, and the reality is that I do not recall having met Mr. Oseguera Kernion.<sup>5</sup>

19. Apparently, Claimants and their witness infer that I was appointed as “special representative,” and that I was assigned this capacity to help “handle” the contentious administrative proceeding of Contract 821, with the objective that Pemex could execute the guarantee of Contract 821, but this is false since as I have explained, it was not a matter within my competence.

**E. Alleged *ex parte* meetings with judges of the TFJA regarding the Nullity Lawsuit 20356/17**

20. In judicial practice in Mexico, it is common for lawyers in charge of a trial to go to the courts and/or tribunals to review their files, submit or file any procedural action, and attend meetings with clerks, judges and magistrates to present their position, which in legal jargon is known as “hearsay argument” (*alegato de oídas*). This type of communication constitutes a right to which both parties (whether plaintiff or defendant) have access through the fundamental human right known as

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<sup>5</sup> The defense of any litigation to which Pemex, its EPS or its Subsidiaries are a party is handled by the company’s own lawyers. Exceptionally, an external law firm may intervene; however, in order for this to happen, a public procurement procedure must be carried out, regulated by the Law of Petróleos Mexicanos and the General Procurement Provisions for Petróleos Mexicanos and its Subsidiary Productive Companies. However, the legal defense of such proceeding was in charge of Pemex’s own lawyers.

“guarantee to be heard” and does not constitute a matter of extraordinary or undue character that seeks to influence or obtain an advantage and/or receive preferential treatment by the public servants who are part of a judicial body. The seats of the various jurisdictional bodies are public, so that the representatives of the parties to the litigation before them may enter to consult or litigate their cases as long as they are authorized to do so. In addition, based on my experience, I have seen that litigants who have initiated lawsuits against Pemex have also exercised this right, and it is quite common for a litigant to seek a meeting with a judge or magistrate to orally explain his legal position.

21. Pemex, its EPS and Subsidiaries act as any subject of law and have no influence whatsoever on the decisions of the Mexican jurisdictional authorities. In this sense, Mexican law is designed so that the decisions of the judicial authorities are duly grounded and motivated, that is to say, their decision must be in accordance with the law and cannot be arbitrary. So much so that, like any other legal entity, Pemex has also had lawsuits dismissed and has been the subject of judgments against it, which makes it clear that Pemex has no influence whatsoever over the decisions made by the authorities.

22. I consider it totally false that Pemex had information regarding the sense of the judgment of the nullity proceeding of Contract 821 before it was made public and before the parties (i.e., the Contractors and PEP) had access to it. It is also false that I have participated in meetings with “the judge deciding whether to uphold Pemex’s administrative rescission.”<sup>6</sup> These types of assertion lack support, and apparently are only aimed at justifying the reasons why Pemex has sought to enforce the guarantee that the contractors granted to PEP under Contract 821. In clear terms, such guarantee (a bond) is sought to be executed for non-compliance by the contractors.

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I have made this declaration freely and voluntarily, and I declare that all information is true to the best of my knowledge and belief. Officials of the Office of the General Counsel for International Trade assisted me in the drafting of this declaration and provided me with access to certain documents related to the arbitration, which I have identified at the beginning of this declaration.

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<sup>6</sup> WS of Mr. Oseguera Kernion, ¶ 107.

This statement was prepared in Spanish and, in the event that I am called to appear before the Tribunal, I request to be examined and cross-examined in Spanish.

In Mexico City, December 1st, 2022.

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**Rodrigo Loustaunau Martínez**