ARBITRATION INSTITUTE OF THE

STOCKHOLM CHAMBER OF COMMERCE

ANATOLIE STATI, GABRIEL STATI, ASCOM GROUP S.A.,

AND TERRA RAF TRANS TRAIDING LTD.

Claimants

v.

REPUBLIC OF KAZAKHSTAN,

Respondent

REQUEST FOR ARBITRATION

July 26, 2010

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Houston, Texas 77002
U.S.A.

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75008 Paris
France

BULBOACĂ & ASOCIAȚII
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Romania

Counsel for Claimants

1. Anatolie Stati, Gabriel Stati, Ascom Group S.A. ("Ascom"), and Terra Raf Trans Traiding Ltd. ("Terra Raf") (collectively, "Claimants") hereby request the initiation of an arbitration proceeding against the Republic of Kazakhstan ("Kazakhstan," "Government," or "State") under The Energy Charter Treaty ("ECT" or "Treaty").[1]

2. Claimants file this Request for Arbitration pursuant to Article 26(4)(c) of the ECT and Article 2 of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC Arbitration Rules").

I. PRELIMINARY STATEMENT

3. This investment dispute concerns Kazakhstan's illegal treatment and expropriation of significant investments made by Claimants in Kazakhstan's energy sector. Anatolie Stati and Gabriel Stati are the owners of Moldova-based Ascom and Gibraltar-based Terra Raf, which in turn own two large Kazakh energy companies: Kazpolmunay LLP ("KPM") and Tolkynneftegaz LLP ("TNG"). KPM and TNG had contracts with the Government for the exploration and/or extraction of hydrocarbons (the "Subsoil Use Contracts"). The KPM and TNG Subsoil Use Contracts covered the Borankol field, the Tolkyn field, and the Tabyl Block in the Pre-Caspian basin of western Kazakhstan. KPM operates the Borankol field, and TNG operates the Tolkyn field and Tabyl Block.

4. Over the past two years, Kazakhstan has engaged in a campaign of harassment and illegal acts against KPM and TNG that culminated on July 21, 2010 with the State's notice of unilateral termination of the companies' Subsoil Use Contracts, the illegal expropriation of Claimants' Kazakh investments, and the subsequent commandeering of KPM's and TNG's offices by personnel of State-owned KazMunaiGas and the Kazakh Ministry of Oil and Gas. The State's campaign against KPM and TNG clearly had expropriation as its ultimate goal, and it had the effect in the process of destroying both the market value and alienability of Claimants' investments.

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1 A copy of the Treaty is attached as Exhibit 1.

5. Claimants' exploration in the Borankol and Tolkyn fields began in 2000. By 2008, Claimants had approximately 100 operational wells in the two fields, with approximately 80 of those producing at any given time in the range of 62 thousand barrels oil equivalent per day on average. To support the wells and production, Claimants constructed an extensive infrastructure of gathering system pipelines, metering stations, oilfield processing facilities, and storage tanks.

6. Claimants also commenced in 2006 the development of an LPG (liquefied petroleum gas) processing facility that will have upon completion a capacity of 7 million cm/day (cubic meters per day). Claimants have invested more than USD 220 million in development and construction of the LPG plant to date, and upon its projected completion the plant will be one of the largest in Kazakhstan. In addition, Claimants have conducted initial exploratory work and well testing in the Tabyl Block, making significant gas and condensate finds in 2008-2009 in the Block's Munaibay and Bahyt structures. Since 2000, Claimants have invested more than USD 1 billion in exploration and development of the Borankol field, the Tolkyn field, and the Tabyl Block, and have paid to the government of Kazakhstan in the process more than USD 500 million in requisite fees and taxes. In addition, Claimants have contributed significant funds to a number of charitable causes and projects in the area, including building schools and hospitals, as well as training the local workforce. Moreover, Claimants, through TNG, have provided gas to the local population at below-market prices, subsidizing at its own cost the provision of gas to the inhabitants of the Mangystau Region.

7. Beginning in the fall of 2008, the government of Kazakhstan commenced a targeted campaign of unfair and inequitable actions against KPM and TNG. Those actions have included intrusive and unwarranted State-agency audits of the companies, baseless criminal and tax actions, reversal of the Government's express permission allowing Claimants' acquisition of TNG, reversal of the State's express waiver of its pre-emptive right to acquire 100% of the shares of TNG, a bad faith refusal to execute a contractually mandated extension of TNG's right to continue its exploration in the Tabyl Block, and ultimately a groundless termination of the KPM and TNG Subsoil Use

Contracts and illegal expropriation of Claimants' investments. In the course of this concerted campaign, the Government has:

- imposed on KPM and TNG more than USD 220 million in unfounded criminal fines and tax assessments;
- jailed KPM's general manager on trumped-up criminal charges;
- arrested the physical assets of KPM and TNG;
- seized Claimants' equity interests in KPM and TNG;
- seized the bank accounts of KPM and TNG;
- prevented TNG from continuing exploration and development in the Tabyl Block;
- frustrated Claimants' ability to conduct daily operations and maintain revenues;
- stalled completion of Claimants' LPG plant;
- interfered with Claimants' efforts to sell the investments, and ultimately stopped a negotiated sale of the KPM and TNG assets and equity interests;
- destroyed the fair market value of Claimants' investments in Kazakhstan;
- asserted spurious violations of Claimants' Subsoil Use Contracts;
- wrongfully revoked the KPM and TNG Subsoil Use Contracts; and
- seized operational control of Claimants' investments, turning those investments over to Kazakhstan's state-owned KazMunaiGas.

8. The Government's manifestly unfair and illegal acts toward KPM and TNG constitute serious violations of the Treaty. The ECT provides a number of guarantees and protections to investors such as Claimants, including: 1) fair and equitable treatment of investments; 2) a requirement to accord "the most constant protection and security" to investments; 3) a prohibition against unreasonable or discriminatory measures that impair the management, maintenance, use, enjoyment, or disposal of investments; 4) a prohibition against treatment less favorable than that required by international law, including treaty obligations; 5) a requirement to observe any obligations the state has entered into with an investment or an investor; 6) most-

favored nation treatment; 7) national treatment; 8) a requirement that the domestic legal system of the host state provide effective means for the assertion of claims and the enforcement of rights; 9) protections for key personnel; 10) the freedom to make financial transfers into and out of the host state; and 11) a prohibition against direct or indirect nationalization or expropriation, or measures having an equivalent effect, except where the measure is not discriminatory, carried out under due process, for a public purpose in the public interest, and against payment of prompt, adequate, and effective compensation.

9. The acts and omissions of Kazakhstan with respect to Claimants, KPM, and TNG violate each of those Treaty obligations and entitle Claimants to seek relief in an international arbitration proceeding pursuant to Article 26 of the ECT.

II. PARTIES

10. Claimant Anatolie Stati is a natural citizen of Moldova and Romania.[2] Mr. Stati resides at the following address:

20 Dragomirna Street
Chisinau
Republic of Moldova

11. Claimant Gabriel Stati is a natural citizen of Moldova and Romania.[3] Gabriel Stati resides at the following address:

1A Ghioceilor Street
Chisinau
Republic of Moldova

Gabriel Stati is the son of Anatolie Stati.

12. Claimant Ascom Group S.A. is a joint stock company incorporated under the laws of Moldova.[4] Its address is:

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2 Copies of Anatolie Stati's Moldovan and Romanian passports are attached as Exhibits 2 and 3, respectively.

3 Copies of Gabriel Stati's Moldovan and Romanian passports are attached as Exhibits 4 and 5, respectively.

4 Copies of Ascom Group S.A.'s Certificate of Incorporation and Articles of Association are attached as Exhibits 6 and 7, respectively.

75 A. Mateevici St.
Chisinau, MD-2009
Republic of Moldova

Anatolie Stati owns 100% of Ascom.[5] Ascom owns 100% of KPM.[6]

13. Claimant Terra Raf Trans Traiding Ltd. is a limited liability company incorporated under the laws of Gibraltar, an overseas territory of the United Kingdom. Its address is:

Don House, Suite 31
30-38 Main Street
Gibraltar

Anatolie Stati and Gabriel Stati each own 50% of Terra Raf.[7] Terra Raf owns 100% of TNG.[8]

14. Claimants are represented in this proceeding by King & Spalding and Bulboaca & Asociati. Contact information for Claimants' counsel is as follows:

KING & SPALDING

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5 *See* List of Shareholders attached as Exhibit 8.

6 *See* Articles of Association of Limited Liability Partnership "Kazpolmunay," listing Ascom as the sole participant of the KPM partnership, attached as Exhibit 9. KPM's Certificate of Incorporation is attached as Exhibit 10.

7 *See* Terra Raf Trans Traiding Ltd.'s Certificate of Incorporation, attached as Exhibit 11. A further certificate and Terra Raf's Memorandum of Association are attached as Exhibit 12.

8 *See* Articles of Association of Limited Liability Partnership "Tolkynneftegaz," listing Terra Raf as the sole participant of the TNG partnership, attached as Exhibit 13. TNG's Certificate of Incorporation is attached as Exhibit 14.

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15. Respondent is the Republic of Kazakhstan. The governmental authority likely to represent Kazakhstan in this proceeding is the Ministry of Justice, which is located at the following address:

Ministry of Justice of the
Republic of Kazakhstan
House of the Ministries
Entrance 13
010000 Astana
Kazakhstan
Tel. +7 7172 74 07 37
Fax +7 7172 74 09 54
Email: news@minjust.kz

III. SUMMARY OF THE DISPUTE

A. Claimants' Acquisition of their Ownership Interests in KPM and TNG and the State's Waiver of its Pre-Emptive Rights

16. KPM is a Kazakh company that owned the subsoil use rights to the Borankol field pursuant to Contract No. 305 on Exploration and Extraction of Hydrocarbons at the "Borankol" deposit (Mangystau Oblast), executed between the Agency of the Republic of Kazakhstan on Investments and KPM, and dated March 30,

1999 (the "KPM Subsoil Use Contract").[9] Contract No. 305 was issued pursuant to the License for the right to use subsoil, Series MG No. 309-D (oil) dated May 23, 1997, issued by the Government.

17. Ascom acquired a 62% interest in KPM and the KPM Subsoil Use Contract in 1999, and acquired the remaining 38% interest in 2004. By statute and by provision in the KPM Subsoil Use Contract, transfer or sale of the Subsoil Use Contract's rights and obligations to new parties, whether by direct transfer of the Contract or by assumption of the Contract through company share alienation, requires the consent of the State, except for transfer to a subsidiary or affiliate. Where a transfer to a new party is proposed, the State retains the right to disallow the transfer and to exercise a statutory pre-emptive right to purchase 100% of KPM. The State did not assert these rights in connection with Ascom's acquisition of its 62% and subsequent 38% interests in KPM. The State lodged no objections to those transactions.

18. TNG is a Kazakh company that owned the subsoil use rights to the Tolkyn field and the Tabyl Block pursuant to Contract Nos. 210 and 302 on Exploration and Extraction of Hydrocarbons at the "Tolkyn" deposit and the Tabyl Block (Mangystau Oblast), executed between the Agency of the Republic of Kazakhstan on Investments and TNG, and dated August 12 and July 31, 1998, respectively (the "TNG Subsoil Use Contracts").[10] Contract Nos. 210 and 302 were issued pursuant to the Licenses for the right to explore and/or exploit the hydrocarbons, Series MG No. 242-D (oil) and MG No. 243-D (oil) dated December 4, 1997, issued by the Government.

19. Claimants' interest in TNG and the TNG Subsoil Use Contracts began with Ascom's acquisition of a 75% interest in 2000. As with the KPM Subsoil Use Contract, the TNG Subsoil Use Contracts require the State's consent to a transfer of ownership, other than a transfer to a subsidiary or affiliate, providing the State with the

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9 Contract No. 305 on Exploration Extraction of Hydrocarbons at the "Borankol" deposit (Mangystau Oblast) between the Agency of the Republic of Kazakhstan on Investments and KPM dated March 30, 1999, attached as Exhibit 15.

10 Contract Nos. 210 and 302 on Exploration and Extraction of Hydrocarbons at the "Tolkyn" deposit and the Tabyl Block (Mangystau Oblast) between the Agency of the Republic of Kazakhstan on Investments and TNG dated August 12 and July 31, 1998 respectively, attached as Exhibits 16 and 17.

right to disallow a proposed transfer and to exercise a statutory pre-emptive right to purchase 100% of TNG. Ascom requested and received the State's consent for its purchase of a 75% interest in TNG. Indeed, the State took the position that its pre-emptive rights were wholly inapplicable to this transfer, stating that "the decision on modification of the structure of founding members is the responsibility of the general meeting of shareholders." Based on the State's acquiescence to Ascom's KPM and TNG interest acquisitions, which set clear precedents of non-interference and inapplicability of the State's pre-emptive rights, Ascom transferred its 75% interest in TNG to its subsidiary, Gheso S.A. ("Gheso") in 2002. Gheso also acquired the remaining 25% interest in TNG in 2002, bringing Gheso's ownership interest in TNG to 100%.

20. In May of 2003, Gheso transferred its 100% interest in TNG to Terra Raf. TNG was thereafter reorganized and transformed from an open joint stock company (OJSC) to a limited liability partnership (LLP) in May of 2005. Claimants notified Kazakhstan's Ministry of Energy and Mineral Resources ("MEMR") of this reorganization, and the change from TNG OJSC to TNG LLP was memorialized in State-executed 2006 Supplements to the TNG Subsoil Use Contracts.

21. In October of 2006, the State asked TNG whether Ascom had transferred any of its interest in TNG during the period of December 1, 2004 to October 19, 2006. TNG replied that Terra Raf was the sole interest holder in TNG and had been since the time of the 100% transfer from Gheso to Terra Raf in May of 2003. After receiving this information, on February 13, 2007, the State requested that TNG retroactively apply for permission for the 2003 ownership transfer to Terra Raf. TNG complied, and the State granted its permission for the transfer, accompanied by an explicit State ruling that the May 12, 2003 transfer of TNG ownership from Gheso to Terra Raf was proper and that the State's pre-emptive right was not applicable to that transfer.

22. On December 6, 2007, KPM and TNG both applied to the MEMR for permits to allow the potential transfer of their ownership interests to an affiliated entity for the purpose of conducting an IPO on the London Stock Exchange (a public offering that did not take place). By letters to KPM and TNG dated December 29, 2007, the

MEMR granted permission for these transfers as well, and in connection therewith the State specifically and expressly waived its pre-emptive rights to purchase 100% of KPM and TNG.[11]

B. The State's Commencement of its Abusive Campaign Against Claimants

23. On July 20, 2008, TNG discovered substantial gas and condensate deposits in the East Munaibay structure of the Tabyl Block. TNG first reported this discovery to the MEMR on July 24, 2008. From the totality of the events that followed this discovery, it is apparent that Claimants' significant gas and condensate find in the Tabyl Block (which would only be enhanced in value by the oilfield infrastructure already constructed by Claimants and by the pending completion of Claimants' LPG plant) was a motivating factor in the State's efforts to destroy the market value and alienability of Claimants' investments and ultimately illegally expropriate them.

24. Concurrent with their July 2008 discovery in the Tabyl Block, Claimants made an independent business decision to explore a sale of KPM and TNG. Claimants tested the market by inviting indicative offers, receiving seven in or around August of 2008. One of the offers was from Kazakhstan's state-owned KazMunaiGas, which tendered a low-ball bid for the properties in the range of USD 740-760 million, getting a free look at the KPM and TNG data rooms in the process. Because none of the offers met expectations, Claimants did not pursue them and made a decision in October of 2008 not to sell.

25. On October 6, 2008, just shortly before Claimants' decision not to sell, the former President of Moldova, Vladimir Voronin, wrote a letter to President Nursultan Nazarbayev of Kazakhstan making numerous false and defamatory personal accusations against Anatolie Stati.[12] Claimants did not view the letter at the time as particularly problematic. President Nazarbayev, on the other hand, clearly seized upon it as a pretext to launch a wide-ranging investigation of Claimants' Kazakh investments. On October 14, 2008, President Nazarbayev issued instructions to "thoroughly investigate" all of

11 Letters from the MEMR to TNG and KPM dated December 29, 2007, attached as Exhibits 18 and 19.

12 Former President Voronin's October 6, 2008 letter to President Nazarbayev, Exhibit 20.

Claimants' business activities in Kazakhstan.[13] Shortly thereafter, the Kazakh Financial Police ordered the MEMR and the Tax and Customs Committees to conduct global audits of KPM and TNG, which commenced on October 28, November 10, and November 18, 2008, respectively.

26. What followed was the State's abusive campaign of illegal conduct toward Claimants and their investments. Because TNG played an important public service role in its provision of below-market price gas to the inhabitants of the Mangystau Region, and because this service and the continued operation of TNG were essential to maintenance of public order in the region, the Kazakh authorities focused the majority of their harassment campaign on destroying the operational abilities of KPM, with a self-evident eye toward expropriation. The State's harassment campaign included an arbitrary "reversal" of the State's consent to Terra Raf's 2003 acquisition of TNG; another arbitrary "reversal" of the State's prior pre-emptive rights waiver; a trumped-up criminal case against KPM's in-country manager, which resulted in a criminal conviction against the manager and KPM itself (which had not been a party to the case); three other trumped-up criminal cases against TNG's in-country manager and two former in-country managers of KPM; four fabricated administrative cases against KPM and TNG following the criminal cases against their managers; harassing and unfounded tax, customs, and operational audits and inspections; the refusal of the State to execute the contractually mandated extension of TNG's exploratory rights in the Tabyl Block (exploration which would establish the proven reserves in the Block and thereby drive up the value, and hence the price, of Claimants' assets); assertion of trumped up violations of Claimants' Subsoil Use Contracts; and ultimately the outright illegal expropriation of KPM and TNG.

C. The State's Retroactive "Reversal" of its Pre-Emptive Rights Waiver

27. On December 18, 2008, while the audits ordered by the Kazakh Financial Police were underway, the MEMR informed TNG that it was "cancelling" the State's explicit ruling of February 20, 2007 that allowed the 2003 transfer of TNG from Gheso to

13 Letter from former President Voronin to President Nazarbayev with President Nazarbayev's investigation instructions dated October 14, 2008, attached as Exhibit 21.

Terra Raf.[14] The MEMR demanded that TNG submit a new application for permission allowing the transfer. The nonsensical pretext for the MEMR's "cancellation" of the State's February 2007 approval was that the transfer of TNG to Terra Raf actually occurred in 2005, when TNG became an LLP, and this 2005 transfer required a new application for State consent. The December 18, 2008 notice required TNG to submit all documentation regarding Terra Raf's ownership within 10 days, under threat that failure to do so would result in the MEMR unilaterally terminating TNG's Subsoil Use Contracts for the Tabyl Block and the Tolkyn field. TNG refused to submit the required application before the MEMR, and it lodged vigorous objections to the State's capricious reversal of its prior, explicit consent.

28. The State's response was to send TNG a new notice on February 27, 2009, stating that the transfer of TNG to Terra Raf had allegedly breached the State's statutory pre-emptive right to acquire TNG and renewing its threats to terminate TNG's Subsoil Use Contracts. The State demanded that TNG submit a new application for the transfer to allow the State to "re-evaluate" its February 2007 consent and waiver of its pre-emptive purchase right. Once again, the State threatened that failure to re-submit the application would result in the cancellation of TNG's Subsoil Use Contracts.

29. By letter dated March 18, 2009, TNG responded to the State's February 27, 2009 notice of breach and offered the State three alternatives: 1) revocation of the notice that purported to "reverse" the State's February 2007 decision; 2) TNG's reapplication for a transfer permit, if the State would agree to pay USD 1.347 billion in compensation if the permit was denied; or 3) referral of the dispute to the Arbitration Institute of the Stockholm Chamber of Commerce, and maintenance of TNG's *status quo* rights under the TNG Subsoil Use Contracts, pending a final, arbitral decision.[15]

30. The day after TNG sent its March 18, 2009 letter, a meeting was held at the MEMR offices. The meeting was chaired by the MEMR Executive Secretary, Mr. A. B. Batalov, and attended by representatives of Terra Raf, TNG, Ascom, and KPM.

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14 Notice of the MEMR to TNG dated December 18, 2008, attached as Exhibit 22.

15 Letter from TNG to the MEMR dated March 18, 2009, attached as Exhibit 23.

All of the State's abusive actions against Claimants since the time of Nazarbayev's October 14, 2008 investigative directive were discussed at the meeting, including foremost the State's purported "reversal" of its transfer consent and pre-emptive rights waiver and other acts discussed in sections below: the State's unfounded criminal proceedings against KPM's in-country manager, the State's campaign of tax harassment, and the State's refusal to execute the contractual extension of TNG's right to continue exploration in the Tabyl Block. MEMR Executive Secretary Batalov assured Claimants that all of these issues would be disposed of in favor of TNG and KPM, and that TNG's Subsoil Use Contracts would not be cancelled, if TNG simply submitted a new application for its transfer to Terra Raf and permitted the State to re-evaluate its prior consent.

31. Based on these assurances, a verbal agreement was reached pursuant to which TNG would submit a new application to the MEMR for a transfer permit. Mr. Batalov also stated that, because the size and value of TNG had changed since the 2003 transfer to Terra Raf, the State would require a new and contemporary evaluation of TNG's books and assets (as of February 2007) in order to properly re-evaluate the transfer. State-owned KazMunaiGas would conduct this new evaluation. Minutes of the meeting were taken by Claimants' representatives in attendance and were offered to Mr. Batalov for his signature, but he refused to sign.[16]

32. On March 24, 2009, based on the assurances made by Mr. Batalov and the verbal agreement reached at the March 19 meeting, TNG sent the State a request for a formal, written decision regarding the legitimacy of the State's prior waiver of its pre-emptive rights, and the legitimacy of the State's prior grant of the permit for transfer of TNG's ownership to Terra Raf. On March 25, 2009, TNG sent the State an additional request for another formal, written decision regarding the right of TNG to transfer Terra Raf's ownership interests to a prospective third party buyer, including KazMunaiGas, based upon a competitive bidding process and direct negotiations.

16 Draft Minutes of the meeting dated March 19, 2009, attached as Exhibit 24.

33. KazMunaiGas conducted its investigation of TNG's books and assets for the State from May to July 2009. TNG never received a response to its March 24 and 25, 2009 requests for formal decisions; the permit allowing transfer of TNG ownership to Terra Raf was never granted; and the State's illegal conduct against TNG continued unabated, culminating in expropriation. It is also worth noting that the State fired Mr. Batalov from his position as Executive Secretary of the MEMR.

34. For obvious reasons, this lingering State pre-emptive rights issue severely affected Claimants' ability to market KPM and TNG and their assets to prospective buyers, which was clearly the State's intention.

D. The State's Trumped-Up Criminal Actions against KPM and TNG

35. In addition to retroactively asserting its pre-emptive rights on spurious grounds, the State orchestrated a campaign of criminal indictments and convictions that resulted in the jailing of KPM's General Manager and the imposition of a USD 145 million fine against KPM. The Government's criminal campaign was based on its arbitrary "reclassification" of certain in-field pipelines of the KPM and TNG gathering systems as "main" or "trunk" pipelines (referred to hereafter as "main" pipelines), and on the failure of KPM and TNG to hold "main" pipeline licenses to operate these reclassified gathering lines.

36. Pursuant to Nazarbayev's October 2008 directive to thoroughly investigate Claimants' business activities, the Committee of Geology and Subsoil Resources Use of the MEMR commenced an audit of KPM's and TNG's compliance with their subsoil use licenses on October 28, 2008. On November 14, 2008, the Geology Committee found that KPM and TNG did not hold licenses for operating "main" oil and gas transmission pipelines. This finding was not particularly surprising, since neither KPM nor TNG have ever owned or operated a "main" pipeline. Main pipelines for the transport of blended product from multiple producers are defined by specific construction, safety, and operational standards under Kazakh law, and there are only a few companies in Kazakhstan that actually ***do*** hold such licenses, including JSC Intergas Central Asia and KazTransOil, both of which are subsidiaries of State-owned KazMunaiGas.

37. The subsoil use licenses actually held by KPM and TNG permitted the construction and operation of necessary gathering system pipelines for moving product from the wellhead ***to*** the main pipeline, and KPM and TNG constructed those allowed gathering systems for their wells in the Borankol and Tolkyn fields. The KPM and TNG gathering systems (i) deliver gas, oil and condensate from the Borankol and Tolkyn field wells to TNG's and KPM's processing facilities (which separate oil from water (KPM) and gas from condensate (TNG) as a necessary prerequisite for acceptance by the main pipelines), (ii) deliver gas directly from TNG's processing facility to the Central Asia-Center main gas pipeline, (iii) deliver oil and condensate from the processing facilities to TNG's storage tanks, and (iv) deliver oil and condensate from TNG's storage tanks to the Uzen-Atyrau-Samara main oil pipeline.

38. The Central Asia-Center and Uzen-Atyrau-Samara main pipelines are operated by JSC Intergas Central[17] and KazTransOil, respectively. From TNG's gas metering station, through an in-field pipeline, TNG has a direct connection for delivery into the Central Asia-Center main gas pipeline. KPM has a contract with KazTransOil for delivery into and transportation through the Uzen-Atyrau-Samara main oil pipeline.

39. In the absence of a main pipeline operated by either KPM or TNG, the imposition of criminal liability for lacking a main pipeline license should have been impossible. But it was not. The Government "solved" the problem, and manufactured a criminal case for each of the four former and current managers of KPM and TNG, by arbitrarily reclassifying isolated segments of the KPM and TNG gathering systems as "main" pipelines.

40. For the KPM gathering system, the segments that the State chose to reclassify extend from the principal joint where the KPM wellhead pipes converge to KPM's processing facility, and from the processing facility to TNG's storage tanks, where services are also provided to KPM. For the TNG gathering system, the segments that the State chose to reclassify extend from the principal joint where the TNG wellhead

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17 JSC Intergas Central claims to have a monopoly on main pipeline gas transport in Kazakhstan. *See* KazMunaiGas website, at http://lang.kmg.kz/page.php?page_id=1022&lang=2#id_349.

pipes converge to TNG's processing facility; from the processing facility directly to the Central Asia-Center main pipeline for gas; and from the processing facility to TNG's storage tanks for condensate.

41. To anyone familiar with the industry, the state's relabeling of those gathering systems as "main" pipelines was absurd. Underscoring the absurdity was the fact that the KPM and TNG gathering systems alone were subjected to "reclassifications," despite identical gathering systems being owned and operated by other oil and gas companies in the immediate vicinity – and indeed throughout Kazakhstan – none of which are classified as main/trunk pipelines requiring licensure.

42. Based on its spurious "finding" that Claimants lacked a main pipeline license to operate their relabeled gathering systems, the Kazakh Financial Police ordered a new audit of KPM and TNG on November 17, 2008, to determine the purported income from its main pipeline operations. On November 19, 2008, the Tax Committee, at the request of the Financial Police, determined that the amount of "illegal profit" from operation of the newly labeled "main" pipeline was 41.8 billion Tenge (approximately 348 million USD as of November 2008) for KPM, and 37.7 billion Tenge (approximately 314 million USD as of November 2008) for TNG. These were exceedingly crude calculations that simply amounted to all of KPM's and TNG's oil and gas production revenues from the Borankol and Tolkyn fields for the audited period 2005-2007.

43. On December 24, 2008, the Financial Police notified KPM that it was the subject of a criminal investigation for operating a main pipeline without a license, which the Financial Police classified as illegal entrepreneurial activity under Article 190(2)(b) of the Kazakh Criminal Code. During this investigation, criminal charges were brought against the three individuals who successively held the position of in-country manager of KPM in the period from 2002 to 2009. And on February 2, 2009, the Financial Police notified TNG that it, too, was the subject of a criminal investigation on the same basis, which led to criminal charges against the in-country manager of TNG from 2002 to 2009.

44. KPM's General Manager, Mr. Cornegruta, was subsequently arrested by the Financial Police on April 25, 2009 and taken in for interrogation. Mr. Cornegruta

was personally charged with having committed a crime of illegal entrepreneurial activity under Article 190(2)(b) for owning and operating a "main" pipeline without a license. The charge itself was a travesty. Putting aside the fact that there were no "main" or "trunk" pipelines in operation by KPM to begin with, Mr. Cornegruta does not own KPM, and he is not an entrepreneur. Under Kazakh law, an "entrepreneur" must register as such with the authorities and receive a certificate to engage in entrepreneurial activities, and entrepreneurs are subject to a discrete taxation regime. Mr. Cornegruta is clearly an employee of KPM. He has an employment contract with KPM, receives a salary from KPM, has never been registered with the State as an entrepreneur, and has never been subject to or paid entrepreneur taxes.

45. Between April 30 and May 15, 2009, the Financial Police seized (i) KPM's Subsoil Use Contract, oilfield pipelines, and vehicles; (ii) TNG's Subsoil Use Contracts, and oilfield gas and condensate pipelines; and (iii) Claimants' participatory interests in KPM and TNG. These asset and equity seizures were designed to prevent KPM and TNG from selling or transferring their interests during the course of the criminal proceeding against Mr. Cornegruta, although the assets could otherwise be used in normal business operations. On June 12, 2009, Terra Raf and Ascom filed petitions to lift these seizures. Their petitions were denied on June 27, 2009. On June 17, 2009, the Financial Police also issued a press release announcing that the investigative phase of the criminal action had ended and that the four former and current managers of KPM and TNG would be prosecuted for having realized an "illegal profit" of 147 billion Tenge (approximately USD 980 million as of June 2009).[18]

46. Under Kazakh law, business entities cannot be prosecuted for crimes, although civil actions ancillary to a criminal proceeding can be pursued against a business. The State therefore brought a criminal action against Mr. Cornegruta personally, but surprisingly, it did not file an ancillary civil action against KPM. Thus, KPM was never named or made a party to the criminal action for allegedly operating a

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18 Press release of the Financial Police dated June 17, 2009 entitled "Case investigation regarding the leadership of 'Kazpolmunay' and 'Tolkynneftegaz' accused of illegal conduct of business activities has been finalized in the Mangystau Region," attached as Exhibit 25.

"main" pipeline without a license, and KPM was consequently not represented by counsel during the criminal trial against Mr. Cornegruta.

47. At the criminal trial of Mr. Cornegruta, the State introduced as its principal evidence a so-called "confession" that consisted of a letter Mr. Cornegruta had written on June 13, 2008 to the State's Agency for Regulation of Natural Monopolies. In the letter, signed by Mr. Cornegruta, KPM asked whether a recently passed licensing statute required KPM to renew its license issued in 2005 under the old statute. In his letter, Mr. Cornegruta quoted verbatim a clause from the statute containing a laundry list of oilfield operations that should be included in a new potential license, namely "exploitation of mining, fire, dangerous explosive products, lifting equipment, as well as boilers, storage facilities and pipelines operating under pressure, oil and gas drilling works." The State contended that this statutory laundry list that Mr. Cornegruta quoted included a reference to "trunk" or "main" pipeline operations. Hence, the prosecutor argued, Mr. Cornegruta had "confessed" that KPM operated a "trunk" or "main" pipeline.

48. In his defense at trial, Mr. Cornegruta's counsel argued the obvious — that Mr. Cornegruta is not an entrepreneur, that he is an employee of KPM, that he does not own KPM, that his June 13, 2008 letter was not even remotely a "confession," and that the KPM gathering system pipelines are not "main" or "trunk" pipelines. Defense counsel introduced seven expert opinions explaining that the KPM gathering system pipelines are not "main" or "trunk" pipelines (two of which were subsequently withdrawn after the experts who rendered them received threatening letters from the Financial Police). The State, on the other hand, introduced a single expert opinion containing a conclusory statement that the KPM gathering system pipelines are "main" or "trunk" pipelines. The State's expert opinion was generated in one day by an employee of the Ministry of Justice who had no experience whatsoever in the oil and gas sector.

49. On September 18, 2009, the Aktau Town Court, operating under the implicit assumption that Mr. Cornegruta was an entrepreneur and the owner of KPM, rendered a guilty verdict against him for illegally engaging in entrepreneurial activities by

operating the relabeled KPM "main" or "trunk" pipelines without a license.[19] He was sentenced to four years in jail, where he remains as of the date of this Request for Arbitration.

50. Additionally, despite the fact that KPM was not criminally indicted, named, made a party, present in court, or represented at the trial of Mr. Cornegruta, and despite the fact that the State had not initiated an ancillary civil action against KPM, the Aktau Town Court also rendered a verdict against KPM, ordering KPM to pay the Government a fine of approximately USD 145 million (21,675,854,578 Tenge). This sum constituted all of KPM's oil and gas production profits from April 2007 to May 2008, profits on which KPM had already paid taxes to the State, and profits that bear no relationship whatsoever to the transportation fees that are the sole income source for "main" pipeline operations.

51. Although it had inexplicably rendered a verdict against the non-party KPM, assessing a patently unjustified and ruinous fine, the Aktau Town Court made no effort to formally serve the verdict on KPM or to even deliver it or provide notice of its content, by mail, fax, hand delivery, or electronic notification. The Aktau Town Court even ignored an explicit request made by KPM dated September 22, 2009 asking for an official copy of the verdict. It was only after the enforcement bailiff had commenced enforcement of the verdict against KPM's assets that KPM finally received an official copy of the verdict, on January 14, 2010.

52. Mr. Cornegruta filed an appeal of his verdict with the Mangystau Regional Court. Because KPM was not a party to the trial proceedings, KPM was also not a party to, or represented in, the appellate proceeding. Nevertheless, on November 12, 2009, the Regional Court affirmed the verdicts of the Aktau Town Court against both Mr. Cornegruta and the non-party KPM.

53. On January 25, 2010, once it had received official notice of the verdict against it, KPM filed an independent appeal of the Aktau Town Court verdict of September 18, 2009 with the Board of Appeals of the Mangystau Regional Court. On

19 Decision of the Aktau Town Court dated September 18, 2009, attached as Exhibit 26.

January 29, 2010, the Aktau Town Court denied KPM's right to appeal the verdict, holding that the appeal was made too late, despite the fact that its September 18, 2009 verdict against KPM was not delivered to the company until January 14, 2010 and the Court itself never officially notified KPM of the verdict.

54. Although the State initiated a criminal action against TNG and its manager based on the same trumped-up allegations that it used to convict Mr. Cornegruta and to confiscate KPM's profits, the State has suspended the criminal action against TNG. This is apparently because the TNG General Manager whom the State accused and indicted has fled Kazakhstan — for obvious good reason. Another apparent reason for the State's decision to delay the TNG criminal action is that TNG provides gas to the local population at below-market prices, thus providing a public service that the State cannot disrupt without risk of social unrest.

55. The legal absurdities and severe due process violations in the State's criminal proceedings against Mr. Corneguta and KPM are only highlighted by the fact that, after the MEMR conducted new and complete audits of KPM and TNG between January 25 and February 5, 2010 at the request of the Akim (Governor) of the Mangystau Region, the MEMR issued two detailed reports confirming that neither KPM nor TNG operated "main" or "trunk" pipelines. Despite these explicit findings, the State engaged in concerted and continuing efforts to enforce its fabricated USD 145 million fine against KPM, bringing to bear a myriad of execution measures. An order for enforcement of the verdict against KPM was first issued by the Aktau Town Court on December 29, 2009, which was re-affirmed and re-issued by the enforcement bailiff of the Mangystau Regional Court on January 5, 2010 when it commenced its enforcement against KPM. The State's enforcement efforts pursuant to this order and subsequent proceedings included:

- the rendering of collection orders on all of KPM's Kazakh bank accounts, and the seizure of those accounts and the cash within them;
- seizure of KPM's vehicles and placement of the vehicles in an impound yard;

- identification of KPM property and seizure of land administered by KPM in Beyneu district;
- seizure of KPM's oil pipeline from its processing and pumping unit to its Opornaya raw material resources base;
- seizure of KPM's accumulator oil tanks;
- prohibitions against transfer of oil from the oil accumulator tanks to the trunk pipeline system of KazTransOil;
- prohibitions against contracting for import and export of goods and property;
- allegations that "[u]nlicensed operation of trunk oil and gas pipelines [have] been admitted" by KPM and TNG, and that these "admissions" constitute violation of the KPM and TNG Subsoil Use Contracts;[20] and
- the use of the alleged "admissions" of unlicensed main pipeline operation as an excuse for revocation of the KPM and TNG Subsoil Use Contracts and expropriation of Claimants' investments.

56. The legal absurdities and severe due process violations surrounding the criminal proceedings and the accompanying enforcement measures constitute clear breaches of the ECT. They are dramatic denials of justice and raise serious questions about the rule of law in Kazakhstan. They drastically drove down the fair market value of Claimants' investments, destroyed Claimants' ability to market them, and were a principal cog in the State's concerted campaign to ultimately expropriate Claimants' investments.

E. The State's Refusal to Approve TNG's Contractual Right to Continue Exploration in the Tabyl Block

57. Claimants' discoveries in the Tabyl Block have shown that the Block contains significant potential gas and condensate deposits. Productivity testing of the exploratory well in the East Munaibay structure has demonstrated a commercial flow of 120,000 cm/day and 150,000 cm/day of rich gas in the Asselian and Artinskian strata, respectively, without any treatment for productivity enhancement, and 3D seismic

20 *See* Exhibits 33, 34, and 35, Notices from the State alleging violations of the KPM and TNG Subsoil Use Contracts.

interpretation of the structure is commensurate with a substantial find. Claimants first reported the East Munaibay find to the MEMR on July 24, 2008, and they filed with the MEMR a statement of their intention to start the evaluation stage of the structure on August 11, 2008. However, Claimants withdrew this statement of intention to begin evaluation on October 10, 2008, because they felt it was still too early in the exploration stage to commence evaluation. In October 2008, Claimants also commenced an exploratory well in the Tabyl Block's Bahyt structure, which has shown evidence of gas in the lower Triassic stratus. On October 14, 2008, Claimants notified the MEMR of their intention to exercise their contractual right to extend the exploration period in the Tabyl Block by two years.

58. On March 9, 2009, Claimants re-filed with the MEMR their notice of discovery in the East Munaibay structure, and concurrently filed a notice of discovery in the Bahyt structure. Claimants also notified the MEMR again of their intention to exercise their contractual right to extend the exploration period in the Tabyl Block by two years. On April 9, 2009, the MEMR agreed to execute the extension.[21] On April 30, 2009, TNG submitted Addendum No. 9 of TNG's Tabyl Block Subsoil Use Contract to the MEMR for execution. TNG never received the MEMR's signature to the addendum extending TNG's exploration rights.

59. The wrongful refusal to execute the addendum extending TNG's exploration rights in the Tabyl Block not only prevented Claimants from proving the Tabyl Block's reserves, and thereby establishing the full market value of their Kazakh investments, but it also played a principal role in the State's illegal expropriation scheme. On July 21, 2010, the State delivered to KPM and TNG two written notices terminating KPM Subsoil Use Contract No. 305 covering the Borankol field, and terminating TNG Subsoil Use Contract No. 210 covering the Tolkyn field.[22] The State did not deliver a specific written notice terminating TNG Subsoil Use Contract No. 302 covering the Tabyl Block, apparently now taking the position that the Contract terminated of its own

21 Letter from the MEMR to TNG dated April 9, 2009, attached as Exhibit 27.

22 *See* Exhibits 39 and 40, Notices from the State terminating Subsoil Use Contract Nos. 305 and 210.

accord upon the State's refusal to execute the required extension of TNG's Tabyl Block exploration rights.

F. The State's Campaign of Tax Harassment

1. The Global Tax Audits of KPM and TNG and the Improper Assessment of Retroactive Corporate Taxes

60. The November 10, 2008 global tax audits of KPM and TNG, which were ordered by the Financial Police on the heels of Nazarbayev's October 14, 2008 investigative directive, were unusual in both their genesis and scope. First, neither KPM nor TNG had ever been subject to a tax audit initiated at the request of the Financial Police. The Tax Committee from the Ministry of Finance had periodically audited the companies' books on discrete tax matters, but those audits had always been initiated by the Tax Committee itself in the course of its ordinary responsibilities. Second, while KPM had previously been the subject of a general audit by the Tax Committee for 2003-04, TNG had never been subjected to a general audit.

61. The global tax audits of KPM and TNG lasted until February 10, 2009. Because the audits were decidedly unsuccessful in turning up any legitimate tax compliance problems, the State once again resorted to creative invention. This time, it reclassified drilling activity costs incurred by KPM and TNG, retroactively changing the contractually agreed amortization rate for those costs, and assessing approximately USD 69 million in back corporate taxes and penalties against the companies for the years 2005 to 2007.

62. The contractually agreed amortization rates that the State retroactively changed are set out in detail in the KPM and TNG Subsoil Use Contracts. The contract provisions were agreed upon in connection with a new tax law introduced by the State on July 4, 2003, No. 457-II of the Tax Code.[23] This law contained two articles, 20 and 23, that facially contained certain conflicting rates for amortization of construction costs. Article 20 allowed amortization of construction costs for tangibles such as wells, storage, and pipelines at up to 100% within the year that the construction costs were incurred, and

23 Amending Law No. 2235 on Taxes and Other Obligatory Payments to the Budget dated April 24, 1995.

Article 23 allowed amortization of the same costs at up to 25% upon commencement of production. Claimants obtained opinions from tax experts and the Ministry of Justice regarding the applicability of Articles 20 and 23, and then negotiated with the State for Supplements to the Subsoil Use Contracts that explicitly designated the Article 20 amortization rate of 100% as applicable to oilfield construction costs, including drilling activities. The State executed the Supplements to the Subsoil Use Contracts on January 28 and February 9, 2004, and KPM and TNG thereafter used the Article 20 amortization rate without State objection in calculating their corporate income taxes.

63. At the conclusion of the global tax audits on February 10, 2009, the State sent notices to KPM and TNG that the Article 23 amortization rate, and not the contractually agreed Article 20 rate, was retroactively applicable to the companies' well drilling costs for the years 2005 to 2007, assessing against the companies approximately USD 69 million in back taxes and penalties. On February 27, 2009, KPM and TNG filed separate complaints before the Tax Committee requesting cancellation of the February 10, 2009 notices. The Tax Committee refused to consider the companies' complaints.

64. On June 23, 2009, KPM and TNG separately filed cases against the Tax Committee in the Astana Economic Court seeking cancellation of the February 10, 2009 notices. On September 8 and 9, 2009, the Court ruled against KPM and TNG, and found that the tax assessments were proper. KPM and TNG appealed the ruling, and the Civil Collegium of Astana Court reversed the Astana Economic Court's ruling on October 28, 2009, remanding it for a new hearing. The Astana Economic Court issued a new decision against KPM and TNG on December 25, 2009, and KPM and TNG appealed this decision on January 6, 2010.

65. Despite the appeal, on February 3, 2010, the Ministry of Finance served KPM with a bankruptcy notice dated January 26, 2010 for 3.8 billion Tenge, including interest.[24] The back taxes and penalties regarding the corporate income tax represent 85% of the amount claimed by the Ministry of Finance, or 3.25 billion Tenge (approximately USD 45 million). In connection with this bankruptcy proceeding, the

24 Bankruptcy Notice dated January 26, 2010, attached as Exhibit 28.

State filed a request with the Specialized Interdistrict Economic Court of Mangystau Region for external management of KPM (appointment of a bankruptcy administrator) on April 26, 2010.

66. KPM and TNG prevailed in their January 6, 2010 appeal, and the Appellate Board of the Astana City Court reversed the December 25, 2009 decision against KPM and TNG by the Astana Economic Court. Although the Tax Committee appealed this reversal on April 23, 2010, the appellate decision in favor of KPM and TNG was affirmed and the Tax Committee's appeal dismissed. In addition, the State's application to have a bankruptcy administrator appointed for KPM was dismissed by the Interdistrict Economic Court on procedural grounds, and a subsequent replacement request was withdrawn by the State.

67. The State's global tax audits and frivolous retroactive corporate tax assessments were clearly pursued for the sole purpose of harassing KPM and TNG and denigrating the market value and alienability of Claimants' investments. Such inequitable and harassing State actions are in and of themselves violations of the ECT, and were clearly undertaken as part and parcel of the State's scheme to ultimately expropriate Claimants' investments.

2. The Export Tax Audits and the State's Imposition of Illegal Export Taxes

68. In addition to the foregoing global tax audits, on the heels of Nazarbayev's October 14, 2008 investigative directive, the Financial Police ordered the Customs Committee to conduct an audit of KPM's and TNG's compliance with the export tax laws. Through this audit, the Financial Police became aware of a preexisting export tax action brought by KPM for the illegal imposition of Crude Oil Export Taxes.

69. This preexisting tax action arose as a consequence of the State's April 8, 2008 amendments to its 2005 laws regarding the payment of export taxes. Pursuant to the 2008 amendments, a 109.91 USD/ton duty was imposed on exported crude oil. However, these same 2008 amendments contained specific provisions pursuant to which no export tax would be applied to exported crude oil that had been extracted under

Contracts on Extraction of Hydrocarbons (Subsoil Use Contracts) containing specific exemptions from the Crude Oil Export Tax. The KPM Subsoil Use Contract no. 305 contained precisely such a contractual exemption, providing that "The Contractor shall not pay any export taxes for the export of any goods and products, including those previously imported."

70. To avoid improper imposition of export taxes, KPM duly notified the Customs Committee of its contractual exemption. Despite the explicit exemption, however, the Customs Committee notified KPM on July 3, 2008 that "Contract no. 305 contains no regulations as to the exemption from export tax and, thus, export tax shall be applicable to the crude oil exported under the foregoing contract." Pursuant to this notice from the Customs Committee, KPM was prohibited from exporting 22,000 tones of crude oil for August 2008 absent payment of the Crude Oil Export Tax. To avoid imperiling this export, and subsequent exports, KPM conditionally paid the wrongfully imposed export taxes, and concurrently commenced a legal action challenging imposition of the tax.

71. KPM's action on the illegal imposition of the Crude Oil Export Tax was heard in the court of first instance on November 19, 2008. During the course of KPM's action, the State revised its position taken in its July 3, 2008 notice, revoking it and stating in a letter to KPM and the Aktau territorial customs body dated October 2, 2008 that a governmental committee set up on July 29, 2008 had "decided to exempt KPM from payment of Crude Oil Export Tax for the quantities exported under Contract no. 305 as of March 30, 1999." Subsequently, on November 19, 2008, KPM won in the court of first instance, which ruled that the imposition on KPM of the Crude Oil Export Tax was illegal. Through the date of this court decision, KPM had already paid about 10 million USD in Crude Oil Export Taxes.

72. On November 20, 2008, the day after KPM received a favorable court decision, the Financial Police intervened, commencing an "investigation" concerning KPM's contractual export tax exemption. On December 23, 2008, the Board of Appeal of the Mangystau Regional Court accepted an appeal by the Aktau territorial customs

body of the November 19, 2008 court ruling in favor of KPM. The Mangystau Regional Court completely cancelled in cassation proceedings the November 19 ruling in favor of KPM, and KPM's subsequent appeals of this decision by the Mangystau Regional Court were dismissed. The implausible ruling by the appellate court was that oil did not constitute "goods" under the KPM contractual export exemption, or, as stated by the court, "the term of hydrocarbons is embedded in the term crude oil, but they still can not agree with the conclusion that crude oil constitutes goods."

73. Subsequent to this bizarre ruling, the State introduced a new tax provision effective January 1, 2009 pursuant to which crude oil export taxes were replaced by a Rent Tax for Export. To prevent (at least theoretically) imposition of a double tax on the same quantities of exported crude oil beginning in January 2009, the State also issued a December 24, 2008 decision stating that the Crude Oil Export Tax would not be applicable to crude oil exports subject to the Rent Tax starting on January 1, 2009.

74. On December 30, 2008, KPM submitted to the Aktau territorial customs body a declaration for the quantities of crude oil to be exported by it in January 2009 (in the amount of about 21,000 tons). Pursuant to the December 24, 2008 decision, KPM did not pay the Crude Oil Export Tax for these January 2009 exports, and instead, on December 30, 2008, paid the newly applicable Rent Tax for Export.

75. Once again, on September 30, 2009, the Financial Police intervened, ordering the Aktau territorial customs body to conduct a new audit of KPM based on its alleged failure to pay the explicitly inapplicable Crude Oil Export Tax for KPM's January 2009 exports. On November 3, 2009, to put pressure on KPM to pay this inapplicable Crude Oil Export Tax, the Financial Police interrogated and intimidated Mr. Cornegruta, who was then under arrest, and also interrogated and intimidated other employees of KPM. Not coincidentally, the Aktau territorial customs body also informed KPM that it was required to pay the inapplicable Crude Oil Export Tax for its January 2009 exports, amounting to 4 million USD. In January of 2010, KPM commenced a legal action concerning the illegal imposition of the Crude Oil Export Tax on its January 2009 exports. On March 3, 2010, the Interdistrict Economic Court of Mangystau Region

dismissed KPM's action, and subsequent appeals of this decision against KPM were also dismissed.

76. These abusive export tax audits and extortions of export tax payments are characteristic of the State's harassment campaign against KPM. The State's actions were designed to drive down the fair market value of Claimants' investments and to destroy Claimants' ability to market them, and were clearly undertaken as part and parcel of the State's scheme to ultimately expropriate Claimants' investments.

3. The Transfer Pricing Audit of KPM and TNG

77. In November 2008, the Tax Committee initiated another, targeted audit of KPM and TNG, at the request of the Financial Police, regarding transfer pricing by the companies. Under Kazakh law, the profits on oil and gas sales are not based on the contract price for which product is sold, but on a State-designated "market price" for the region in which the sale takes place. The State establishes this market price by consulting published average prices for a given region. If there is no average price for the delivery point, then the State artificially constructs one by taking an average price in an alternative region, and then deducting fictional expenses that would be incurred to transport the product from the actual delivery point to the selected, alternative region. By this rather convoluted process, contract sales that are below the State-designated "market price" are adjusted up for purposes of determining the taxable profit on a sale. Contract sales that are above the State-designated market price, however, are taxed at the actual contract price and not adjusted down to the State-designated price.

78. The Tax Committee transfer price audit lasted 13 months, ending in December of 2009. All of the sales invoices of KPM and TNG from January 1, 2004 to December 31, 2007 were disclosed to the State and audited in the process. At the end of this intrusive and lengthy audit, the State assessed approximately USD 6 million in back transfer price taxes and penalties. Although KPM and TNG filed legal actions contesting the State's assessment, those legal actions remained pending as of the date of the State's termination of the KPM and TNG Subsoil Use Contracts and illegal expropriation of Claimants' investments. As with all of the trumped up criminal, tax, and administrative

actions of the State against KPM and TNG, the transfer price audit was clearly undertaken as part and parcel of the State's scheme to ultimately expropriate Claimants' investments.

G. The State's Frustration of Claimants' Efforts to Sell Their Investments for Fair Market Value

79. KazMunaiGas and the President of Kazakhstan, Mr. Nazarbayev, had made clear their interest in acquiring Claimants' investments in Kazakhstan before Claimants' Tabyl Block discovery. Their interest had been expressed, for instance, on December 29, 2007, when the MEMR waived its pre-emptive rights to purchase 100% of KPM and TNG. The State indicated at that time that "taking into account the interest of KazMunaiGas in purchasing the consolidated assets of Tristan Oil within the IPO, … we consider necessary for Tristan Oil to provide KazMunaiGas with the due information in order to conduct its own assessment."[25]

80. It was not until the summer of 2008, however, that Claimants began to seriously explore a sale of their Kazakh investments as part of an overall business plan to focus on oil and gas interests in other countries. Following a period of due diligence, seven bidders made offers in the fall of 2008 ranging from USD 740-760 million to USD 1.5 billion. KazMunaiGas was among the low bidders. Because Claimants believed that the offers were not reflective of the true market value of the properties and therefore failed to match expectations, Claimants decided to hold off on a sale and conduct further assessment of their commercial discoveries in the Tabyl Block.

81. Claimants' announcement of the Tabyl Block find, however, provided the impetus for KazMunaiGas and the Nazarbayev family to vigorously pursue acquisition of Claimants' investments, and the October 2008 letter from the President of Moldova provided the excuse to commence the devaluation campaign and expropriation scheme outlined above. With the harassment campaign intensifying, Claimants decided in the spring of 2009 to revisit the sale of their investments. Claimants contacted the previous bidders from the fall of 2008, and a few of them conducted further due diligence. The

25 Letters from the MEMR to TNG and KPM dated December 29, 2007, attached as Exhibits 18 and 19.

harassment campaign was having its intended effect, however, and the offers that were generated in this second round were decidedly lower than the offers received just months before.

82. KazMunaiGas was, again, one of the interested bidders in the spring of 2009. On March 19, 2009, in connection with Claimants' efforts to resolve the pre-emptive rights issue with the State, the MEMR assigned KazMunaiGas the ostensible task of conducting a review of TNG to acquire for the State an updated valuation. KazMunaiGas — the proverbial fox in the henhouse — took full advantage of both this opportunity and the Claimants' ongoing market-sale inquiries to conduct a full due diligence of both TNG and KPM from May to July of 2009.

83. Based on these reviews, and on KazMunaiGas' insider knowledge of the State's devaluation campaign, KazMunaiGas made an offer in August of 2009 that placed a market value on the properties of zero, proposing to pay only the face value of Claimants' debt, a discounted sum to Claimants' bond holders, and USD 50 million for Claimants' equity interests.

84. Claimants continued to negotiate with the few remaining prospective bidders through January of 2010, but the criminal fines, the asset, equity, and account seizures, and the bogus tax assessments that the State had saddled the companies with effectively drove the offers to pennies on the dollar. During this same period, KazMunaiGas invited Claimants to a meeting in Amsterdam in September of 2009 to discuss a possible sale. Unbeknownst to Claimants, KazMunaiGas had also invited a principal group of Claimants' bondholders to Amsterdam, and without consulting or including Claimants, offered this group of bondholders 25 cents on the dollar for purchase of their interests. The bondholder group refused the offer, and at the subsequent meeting with Claimants KazMunaiGas offered a mere USD 20 million for Claimants' equity interests. Claimants refused the offer.

85. Subsequently, on February 2, 2010, Claimants were able to negotiate an agreement for the sale of 100% of the shares and participatory interests in KPM and TNG to Cliffson Company S.A. at a drastically reduced value. Among the conditions in the

agreement was the granting of permission for the sale by the Kazakh Ministry of Oil and Gas (successor to the MEMR). KPM and TNG presented the appropriate applications for permission to the Ministry of Oil and Gas (the "MOG"), along with a request that the State waive its preemptive right to acquire the companies. In response, the MOG stated that permission for the sale necessitated removal of the attachment orders by which the State had seized KPM and TNG assets, adding that, pursuant to the "seizure of assets of [KPM and TNG], including the subsoil use right and 100% participatory interest in the equity capital of the company, deals regarding the alienation of the subsoil use right are prohibited." The MOG also claimed that it was in need of information about the financial solvency of Cliffson Company as well as its technical and managerial capabilities, and the Ministry subsequently presented a list of additional materials to be submitted by KPM and TNG in order to determine the economic feasibility of the State's acquisition of the seized and seizable assets of KPM and TNG.

86. KPM and TNG presented the materials requested by the MOG. There was no reply from the Ministry. Claimants subsequently received confirmation that Cliffson Company submitted to the MOG a letter stating its refusal to purchase the interests in TNG and KPM under the February 2, 2010 agreement.

H. The State's Termination of the KPM and TNG Subsoil Use Contracts and Illegal Expropriation of Claimants' Investments

87. After its interference with, and nullification of, the sale to Cliffson Company, the State renewed its harassment campaign against KPM and TNG and accelerated its expropriation scheme. KPM and TNG received notice that a new round of inspections had been initiated by the State's General Prosecutor's Office, with unscheduled inspections to be undertaken by the Ministry of Oil and Gas, the Committee for Geology and Subsoil Use of the Ministry of Industry and New Technologies, the State Labor Inspector for the Mangystau Region, and the Mangystau Region branch of the Department of Ecology, each under the guidance of the Financial Police. And on June 9, 2010, the Court Execution Body of the Mangystau Region ruled that a public auction of KPM's tangible assets, including vehicles, land, and gathering systems, should be undertaken.

88. Thereafter, the MOG sent notices to KPM and TNG that the companies were in violation of their Subsoil Use Contracts. The notices from the MOG were dated July 14, 2010, but were not received by KPM and TNG until July 16, 2010. The notices listed 16 alleged violations of the Subsoil Use Contracts, and gave KPM and TNG until July 19, 2010 to "submit explanations on reasons of non-execution of contract terms and all necessary documents, ascertaining removal of the above-mentioned violations, as well as to inform [the MOG] on measures taken in order to avoid violation of contract terms."[26] The alleged violations in the notices included "admissions" by KPM and TNG that they had operated trunk (or main) oil and gas pipelines without a license, conveniently converting the State's trumped up criminal judgments and indictments into allegedly "admitted" violations of the companies' Subsoil Use Contracts, and 13 additional alleged violations for which the State had provided no prior notice to KPM or TNG. The notices further provided that "[i]n case of failure to comply with the request set forth in this Notice within the established time limit, the Competent Body is entitled to terminate the Contract[s]."[27]

89. Claimants complied with the requests for explanation contained in the July 14 MOG notices, and submitted on July 19, 2010 written answers and explanations concerning each alleged violation.[28] Nevertheless, by notices dated July 21, 2010, the MOG terminated the Subsoil Use Contracts of KPM and TNG, thereby expropriating Claimants' investments.[29]

90. On July 22, 2010, a group of thirteen people from the MOG and KazMunaiGas arrived in the Claimants' offices in Aktau, Kazakhstan. Claimants were informed that KazMunaiGas, obviously acting as an arm of the State and exercising the State's regulatory and police powers, was there to seize and take control of KPM's and TNG's assets and operations. Claimants were orally told that they had three options:

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26 *See* Exhibits 33, 34, and 35, Notices from the State regarding alleged violations of Subsoil Use Contract Nos. 305, 210, and 302, respectively.

27 *Id.*

28 *See* Exhibits 36, 37, and 38, Claimants' written responses to the notices from the Ministry of Oil and Gas, dated July 19, 2010.

29 *See* Exhibits 39 and 40, notices from the State that Subsoil Use Contract Nos. 305 and 210 were terminated. *See* Request for Arbitration, *supra,* ¶ 59, regarding the State's apparent termination of Subsoil Use Contract No. 302.

1) TNG and KPM sign an agreement by which the companies transfer their field infrastructure and operations to KazMunaiGas, with KazMunaiGas receiving the benefits from operation of the fields;

2) KazMunaiGas subcontracts the operation of the field infrastructure to KPM and TNG, but the economic benefits from operations go to KazMunaiGas and the State; or

3) If KPM and TNG disagree with the foregoing two options and refuse to transfer the field infrastructure and operations to KazMunaiGas, then the State and KazMunaiGas would obtain a court order and seize control of the infrastructure and operations the "hard way."

91. KazMunaiGas and the MOG refused to put these three "options" into writing. Subsequently, KazMunaiGas forwarded contracts to Claimants providing for the transfer of infrastructure, operations, and economic benefits to KazMunaiGas and the State — contracts that KazMunaiGas has already executed.[30] Claimants have notified the State that it views the actions of KazMunaiGas and the State as illegal takings of Claimants' rights and assets, and has protested the license revocations and illegal seizures in the strongest terms.[31]

IV. ARTICLE 26 OF THE ECT

92. Article 26 of the ECT grants Claimants the right to submit this dispute to international arbitration. Article 26 provides:

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.

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30 *See* Exhibit 41, Contracts executed by KazMunaiGas providing for the transfer of infrastructure, operations, and economic benefits to KazMunaiGas and the State.

31 *See* Exhibit 42, Claimants' letter to the State of July 24, 2010, protesting the actions of the State and KazMunaiGas.

(2) If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:

(a) to the courts or administrative tribunals of the Contracting Party to the dispute;

(b) in accordance with any applicable, previously agreed dispute settlement procedure; or

(c) in accordance with the following paragraphs of this Article.

(3) (a) Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2) (a) or (b).[32] …

(c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 10(1).[33]

(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2) (c), the Investor shall further provide its consent in writing for the dispute to be submitted to: …

(c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce. …

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32 Kazakhstan has submitted a statement under Annex ID of the ECT. However, as discussed below, Claimants have not previously submitted this dispute to the courts or administrative tribunals of Kazakhstan or in accordance with any previously agreed dispute settlement procedure. While this case partially relates to litigation in Kazakhstan, that litigation does not involve the same parties or claims at issue in this treaty dispute, which is based on Kazakhstan's violations of the Treaty. Consequently, Kazakhstan's statement under Annex ID is irrelevant.
Furthermore, and in any event, Kazakhstan's statement under Annex ID is restricted to situations where domestic court litigation involves "the same dispute between the same parties and the same subject," which is not the case here. *See* Statement of Kazakhstan under Annex ID, attached as Exhibit 1. Therefore, even if Kazakhstan's statement under Annex ID were relevant – which it is not – it would not prevent Claimants from bringing the current case based on violations of the ECT.

33 Kazakhstan is not listed under Annex IA. Consequently, Claimants are entitled to assert a claim based on the last sentence of Article 10(1), the ECT's "umbrella clause," which they do.

> (6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.

93. Each of the requirements of Article 26 is met in this case.

A. The Parties' Consent to Arbitration

94. Claimants hereby consent to arbitration under the ECT and elect to submit this dispute to the Arbitration Institute of the Stockholm Chamber of Commerce in accordance with Article 26(4)(c) of the ECT.

95. Kazakhstan consented to arbitration under the ECT by signing and ratifying the Treaty. The ECT entered into force for Kazakhstan on April 16, 1998.[34]

B. Claimants' Nationalities

96. Claimants are nationals of contracting parties to the ECT. Anatolie Stati and Gabriel Stati are dual citizens of Moldova and Romania, both of which are contracting parties to the ECT.[35] Claimant Ascom is incorporated under the laws of Moldova.[36] Claimant Terra Raf is incorporated under the laws of Gibraltar, an overseas territory of the United Kingdom.[37] The ECT applies provisionally to Gibraltar.[38]

97. Anatolie Stati owns 100% of Ascom, which in turn owns 100% of KPM.[39] Anatolie Stati and Gabriel Stati each own 50% of Terra Raf, which owns 100% of

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34 See Exhibit 29 regarding the date of the ECT's entry into force for Kazakhstan.

35 *See* copies of Anatolie Stati's Moldovan and Romanian passports and Gabriel Stati's Moldovan and Romanian passports are attached as Exhibits 2, 3, 4, and 5, respectively.

36 See Ascom's Certificate of Incorporation, attached as Exhibit 6.

37 *See* Terra Raf's Certificate of Incorporation, attached as Exhibit 11.

38 See the United Kingdom's declaration under Article 45(1) of the ECT regarding provisional application of the Treaty, attached as Exhibit 30. The issue of the ECT's provisional application to Gibraltar was also litigated in the case of *Petrobart (Gibraltar) v. The Kyrgyz Republic*, SCC Arbitration No. 126/2003. The *Petrobart* Tribunal concluded that the ECT applied provisionally to Gibraltar. *See* excerpt from the *Petrobart* Award of March 29, 2005, at Exhibit 31.

39 *See* List of Shareholders and Articles of Association of Limited Liability Partnership "Kazpolmunay," attached as Exhibits 10 and 9, respectively.

TNG.[40] Anatolie Stati and Gabriel Stati indirectly own and control all of the investments at issue in this case.

C. Dispute Concerning an "Investment"

98. "Investment" is defined very broadly in the ECT. Article 1(6) provides:

> "Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:
>
> > (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
> >
> > (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
> >
> > (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
> >
> > (d) Intellectual Property;
> >
> > (e) Returns;
> >
> > (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.
>
> A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the "Effective Date") provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.
>
> "Investment" refers to any investment associated with an Economic Activity in the Energy Sector.

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40 *See* Terra Raf's Certificate of Incorporation and Articles of Association of Limited Liability Partnership "Tolkynneftegaz," attached as Exhibits 11 and 12, respectively.

99. Under this definition, there are a number of different investments of Claimants involved in this case, including, but not limited to, Claimants' ownership of tangible and intangible property and property rights, Claimants' ownership of the shares of KPM and TNG, and the rights conferred by Kazakhstan to KPM and TNG under the contracts and licenses for the Borankol field, the Tolkyn field and the Tabyl Block.

100. All of the acts and omissions of Kazakhstan at issue in this case occurred well after the ECT entered into force for Moldova, Romania, and Kazakhstan on April 16, 1998.[41]

D. Dispute Relating to Part III of the ECT

101. The acts and omissions of Kazakhstan described above and to be developed further in the course of this proceeding violate a number of protections accorded to Claimants under Part III of the Treaty. Those protections include, but are not limited to, those found in Articles 10, 11, 13 and 14 of the Treaty.

102. Article 10 provides a number of guarantees and protections to Claimants and their investments, including: 1) fair and equitable treatment; 2) a requirement that the host state accord "the most constant protection and security" to investments; 3) a prohibition against unreasonable or discriminatory measures that impair the management, maintenance, use, enjoyment, or disposal of investments; 4) a prohibition against treatment less favorable than that required by international law, including treaty obligations; 5) a requirement to observe any obligations the host state has entered into with an investment or an investor; 6) most-favored nation treatment; 7) national treatment; and 8) a requirement that the domestic legal system of the host state provide effective means for the assertion of claims and the enforcement of rights.

103. Article 11 of the ECT provides guarantees in relation to key personnel and their ability "to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal" of investments.

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41 See Exhibit 29 regarding the date of the ECT's entry into force for Moldova, Romania, and Kazakhstan.

104. Article 13 of the Treaty prohibits Kazakhstan from taking measures of direct or indirect nationalization or expropriation, or measures having an equivalent effect, except where the measure is not discriminatory, carried out under due process, for a public purpose in the public interest, and against payment of prompt, adequate and effective compensation.

105. Article 14 of the ECT guarantees the freedom of financial transfers (into and out of the host state) in relation to investments, including capital, "Returns,"[42] payments under contract, unspent earnings, proceeds from sale, and other forms of payment. While there is an exception allowing a host state to ensure "satisfaction of judgments in civil, administrative and criminal adjudicatory proceedings," the exception only applies insofar as the proceedings are conducted "through the equitable, non-discriminatory, and good faith application of [the host state's] laws and regulations."

106. The acts and omissions of Kazakhstan with respect to Claimants, KPM, TNG, and Mr. Cornegruta violate each of the foregoing protections accorded to Claimants under Part III of the ECT.

E. Forum Selection

107. Claimants have not previously submitted this dispute to the courts or administrative tribunals of Kazakhstan or in accordance with any previously agreed dispute settlement procedure. While this case partially relates to litigation in Kazakhstan, that litigation does not involve the same parties or claims at issue in this treaty dispute. None of the Claimants in the present case have been parties to the Kazakh litigation, and that litigation does not concern the ECT or the violations of the Treaty's provisions at issue here. Consequently, Claimants are entitled to commence this international

42 "Returns" is defined under Article 1(9) of the ECT as "the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind." This definition encompasses all earnings and payments made to KPM and TNG, including, for example, earnings and payments made to KPM that the Government has seized and prevented transfer out of Kazakhstan.

arbitration proceeding under Articles 26(2)(c) and 26(4) of the ECT, and they hereby do so.

F. Notice of Dispute

108. Article 26(2) of the ECT provides for a three month notice period before the commencement of arbitration. That requirement is satisfied.

109. Claimants repeatedly notified the Kazakh officials of the present dispute and, in the absence of an amicable settlement, of their intention to submit the present dispute to international arbitration. For instance, on March 18, 2009, Claimants wrote to the MEMR offering to have the dispute arbitrated pursuant to the SCC Arbitration Rules.[43] The following day, Claimants attended a meeting with Kazakh authorities in order to pursue amicable settlement of the present dispute, but the meeting was fruitless.[44]

110. On May 7, 2009, Claimants wrote to the President of Kazakhstan, once again seeking an amicable settlement of the dispute and indicating their intention to submit the present dispute to international arbitration.[45] Despite Claimants' best efforts to meet with the Kazakh authorities since that date, no resolution of the present dispute was achieved.

V. PROCEDURAL MATTERS

111. Pursuant to Articles 12 and 13 of the SCC Arbitration Rules, and in view of the size and complexity of this case, the Tribunal should consist of three arbitrators.

112. Claimants hereby appoint David R. Haigh, QC, a national of Canada, as arbitrator. Mr. Haigh's contact details are as follows:

Burnet, Duckworth & Palmer LLP
1400, 350 - 7th Ave. S.W.
Calgary, Alberta T2P 3N9
Canada
Telephone: +1 403 260-0100
Fax: +1 403 260-0332

43 Letter from Claimants to the MEMR dated March 18, 2009, attached as Exhibit 23.
44 Draft Minutes of the meeting dated March 19, 2009, attached as Exhibit 24.
45 Letter from Claimants to the President of Kazakhstan dated May 7, 2009, attached as Exhibit 32.

Email: drh@bdplaw.com

113. With respect to selection of the Chairman of the Tribunal, in accordance with Article 13(1) of the SCC Arbitration Rules, Claimants propose to Kazakhstan that the Chairman be selected by the two party-appointed arbitrators. If Kazakhstan fails to appoint an arbitrator or if the two party-appointed arbitrators are unable to agree upon a Chairman, the SCC Board should make the necessary appointment(s) as provided in Article 13(3) of the SCC Arbitration Rules.

114. Claimants propose English as the procedural language for the arbitration and Paris, France, as the seat of arbitration.

115. This request is submitted in five (5) signed originals and is accompanied by payment of the registration fee.

VI. REQUEST FOR RELIEF

116. Claimants request an award granting them the following relief:

- a declaration that Kazakhstan has violated the Treaty and international law with respect to Claimants' investments;
- compensation to Claimants for all damages they have suffered, to be developed and quantified in the course of this proceeding but likely to include, without limitation, lost profits, the fair market value of KPM and TNG and their licenses and contracts prior to Kazakhstan's breaches of the Treaty and international law, sums invested by Claimants in relation to their Kazakh operations, and any compound interest to which Claimants may be entitled;
- all costs of this proceeding; and
- an award of compound interest until the date of Kazakhstan's final satisfaction of the award.

117. For the reasons set forth above, Claimants respectfully request that the Arbitration Institute of the Stockholm Chamber of Commerce register this arbitration against the Republic of Kazakhstan.

Dated: July 26, 2010

Respectfully submitted,

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