

IN THE MATTER OF AN ARBITRATION UNDER
THE RULES OF THE INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/23/24

BETWEEN:

SILVER BULL RESOURCES, INC.

Claimant

-and-

UNITED MEXICAN STATES

Respondent

CLAIMANT'S MEMORIAL

17 JUNE 2024

BSF

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1. INTRODUCTION

- 1.1 Silver Bull Resources, Inc. (“**SVB**” or the “**Claimant**”), on its own behalf and on behalf of Minera Metalín S.A. de D.V. (“**Minera Metalín**”), submits this Memorial in support of its claims against the United Mexican States (“**Mexico**” or the “**Respondent**”) under the Agreement between the United States of America, Mexico and Canada (the “**USMCA**”)¹, and the North American Free Trade Agreement (the “**NAFTA**”)² in accordance with the procedural calendar established by the Tribunal.³
- 1.2 This dispute arises from Mexico’s arbitrary and unreasonable failure to protect the Claimant’s investment in the Sierra Mojada silver, zinc and lead project (the “**Project**”) from a lawless 2019 blockade instituted by a local mining cooperative that ultimately led to the Claimant’s loss of its entire investment in Mexico.
- 1.3 That loss did not have to happen.
- 1.4 Indeed, when the local mining cooperative installed a similar blockade in 2016, Mexico’s response was to swiftly restore law and order to protect the Claimant’s investment. But a change of government in 2018 and a harsh turn towards resource nationalism meant that by 2019, when the same cooperative blockaded the mine again, Mexican authorities turned their collective backs on the Claimant’s investment, notwithstanding Mexico’s clear obligations under NAFTA Articles 1102, 1103, 1105, and 1110.
- 1.5 That blockade, first established on 8 September 2019, remains in place to this very day. For three years, the Claimant beseeched the Mexican Government from the municipal to the State to the Federal levels to remove the blockade, all with the same result. After making vague promises of potential assistance, the Mexican authorities took no action.
- 1.6 On the contrary, a local Mexican politician threw his support – and that of the MORENA party that promulgated Mexico’s resource nationalist agenda – behind the blockaders. After three

¹ Agreement between the United States of America, the United Mexican States, and Canada, signed on 18 November 2018, entered into force on 1 July 2020, Annex 14-C (the “**USMCA**”), at **CL-0044**.

² North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, signed on 17 December 1992, entered into force on 1 January 1994 (the “**NAFTA**”), relevant extracts at **CL-0004**, Chapter 11.

³ Procedural Order No. 1, Annex B.

years of having its considerable investment in a potentially regionally transformative mining project blockaded, on 31 August 2022, the Claimant lost the financial backing of its development partner, the Australian miner South32, marking the end of the Project and leaving the Claimant with no option but to bring these proceedings.

- 1.7 The Claimant provides below a description of the factual background to its claims in Section 2. Section 3 sets out why this Tribunal has jurisdiction to hear the Claimant's claims under the NAFTA and USMCA. In Section 4 the Claimant explains how Mexico's acts and omissions breached its obligations under the NAFTA. Section 5 sets out the quantum of the Claimant's loss, and Section 6 sets out the Claimant's request for relief.
- 1.8 This Memorial is accompanied by the witness statements of Messrs. Timothy Barry, Brian Edgar, Juan Manuel López Ramírez, and Matthew Melynk. Further, the Claimant appends the expert report of Mr. Santiago Dellepiane of Berkeley Research Group ("BRG"). Finally, this Memorial is accompanied by factual exhibits **C-0072 to C-0151** and by legal authorities **CL-0046 to CL-0118**, listed in the attached Indices of Factual Exhibits and Legal Authorities.

2. FACTUAL BACKGROUND

(A) SVB is a U.S. company focused on the exploration and development of precious and base metal projects

- 2.1 The entity that is now SVB was originally incorporated on 8 November 1993 in Nevada, United States of America as Cadgie Company for the purpose of acquiring and developing mineral properties.⁴ On 28 June 1996, Cadgie Company changed its name to Metalline Mining Company (“**Metalline**”).⁵ The following month, Metalline incorporated Minera Metalín in Mexico as a special purpose vehicle to carry out exploration activities in the country.⁶
- 2.2 Metalline, through Minera Metalín, acquired multiple mining concessions from various mineral exploration companies and local mining cooperatives in the Sierra Mojada historical high grade silver, lead, and zinc mining district located in the Mexican State of Coahuila.⁷ Mining activity in the Sierra Mojada mining district dates back to 1879 and today comprises two mineralised sections: a silver-rich zone (the “**Shallow Silver Zone**”) and a zinc-rich zone (the “**Zinc Zone**”), which also contains significant amounts of lead and copper.⁸
- 2.3 Current SVB executives, Brian Edgar and Timothy Barry, first learned of Metalline’s investment activities at Sierra Mojada while at Dome Ventures Corporation (“**Dome**”).⁹ Dome was a mineral exploration company that invested in mineral exploration activities in Gabon and Nigeria between 2005 and 2010.¹⁰ Mr. Edgar was the President and CEO of Dome at that

⁴ SVB’s 26 January 2023 10-K exhibit 21.1, **C-0127**; First Witness Statement of Brian D. Edgar, 8 June 2024 (“**Edgar WS**”), para. 4.1. See also Certificate of SVB’s existence with status in good standing dated 19 January 2023, **C-0050**.

⁵ Edgar WS, para. 4.1.

⁶ Minera Star Morning, S.A. de C.V. was constituted through Public Deed No. 37,150 granted on 10 July 1996 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District and registered under number 211349 in the Book of Commercial Companies of the Public Registry of Property of Mexico D.F., 22 August 1996, **C-0005**. See also Public Deed No. 09031450 granted on 22 September 1997 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District, confirming the change of name of Minera Star Morning, S.A. de C.V. to Minera Metalín, S.A. de C.V., **C-0068**.

⁷ Edgar WS, paras. 4.1-4.2, 5.7; First Witness Statement of Tim Barry, 17 June 2024 (“**Barry WS**”), paras. 3.8, 4.4-4.7.

⁸ Edgar WS, paras. 4.1-4.2, 4.5, 5.6; Barry WS, paras. 3.8, 4.14, 4.16.

⁹ Edgar WS, paras. 5.1-5.2; Barry WS, paras. 3.1-3.3.

¹⁰ Edgar WS, paras. 5.1-5.2.

time.¹¹ Mr. Barry was the Country Manager and Chief Geologist at Dome where he brought his significant exploration experience to Dome's activities. In Mr. Barry's words:

*During my time at Dome, I established subsidiaries in three separate countries, Gabon, Nigeria, and Guinea. I hired staff, established procedures for compliance of local laws and regulation, and successfully applied for and received mineral licences in each country. I also planned several successful exploration programmes and negotiated a major joint venture agreement with AngloGold Ashanti, one of the largest gold miners in the world. This joint venture was AngloGold's largest exploration program in the world at the time and covered over 22,000 square kilometres in area. During this time, I also provided geological and jurisdictional assessments for other projects in other African countries and Europe.*¹²

2.4 After conducting extensive due diligence at the Sierra Mojada Project, Messrs. Edgar and Barry understood that the Sierra Mojada region, including the concession areas, had significant mineral potential and were well-connected to critical infrastructure necessary to operate a producing mine successfully.¹³ Based on this assessment and the other findings at the due diligence stage of Dome's interest in the Project, Messrs. Edgar and Barry recommended that Dome invest in Sierra Mojada through a reverse merger.¹⁴

2.5 Dome made its investment by merging with Metalline to provide the capital needed to continue Metalline's exploration activities at Sierra Mojada.¹⁵ Specifically, on 16 April 2010, Metalline, its subsidiary Metalline Mining Delaware Inc. ("**Metalline Delaware**"), and Dome entered into an Agreement and Plan of Merger and Reorganization by which Metalline

¹¹ Edgar WS, para. 5.1.

¹² Barry WS, para. 2.7.

¹³ Barry WS, paras. 3.8-3.12; Edgar WS, paras. 5.3-5.22.

¹⁴ Barry WS, paras. 3.8-3.12; Edgar WS, paras. 5.21-5.22.

¹⁵ Edgar WS, paras. 5.22-5.23; Barry WS, para. 3.2.

Delaware was merged into Dome in exchange for Dome providing significant working capital to continue Metalline's exploration activities.¹⁶

2.6 As a result of this merger, Mr. Edgar became Chairman of Metalline's Board and acquired control of Metalline's Mexican subsidiary, Minera Metalín, which, as noted above, owned the concessions comprising the Sierra Mojada Project.¹⁷ Approximately one year later, on 21 April 2011, Metalline changed its name to Silver Bull Resources, Inc. to reflect the Company's initial focus on developing Sierra Mojada's silver resources.¹⁸

2.7 SVB remains the controlling shareholder of Minera Metalín, which directly owns the Sierra Mojada Project.¹⁹ SVB owns (directly and indirectly through SVB's wholly owned subsidiary, Metalline, Inc.) 100% of Minera Metalín's shares.²⁰ Below is a diagram of the current structure of the Claimant's holding in Minera Metalín:

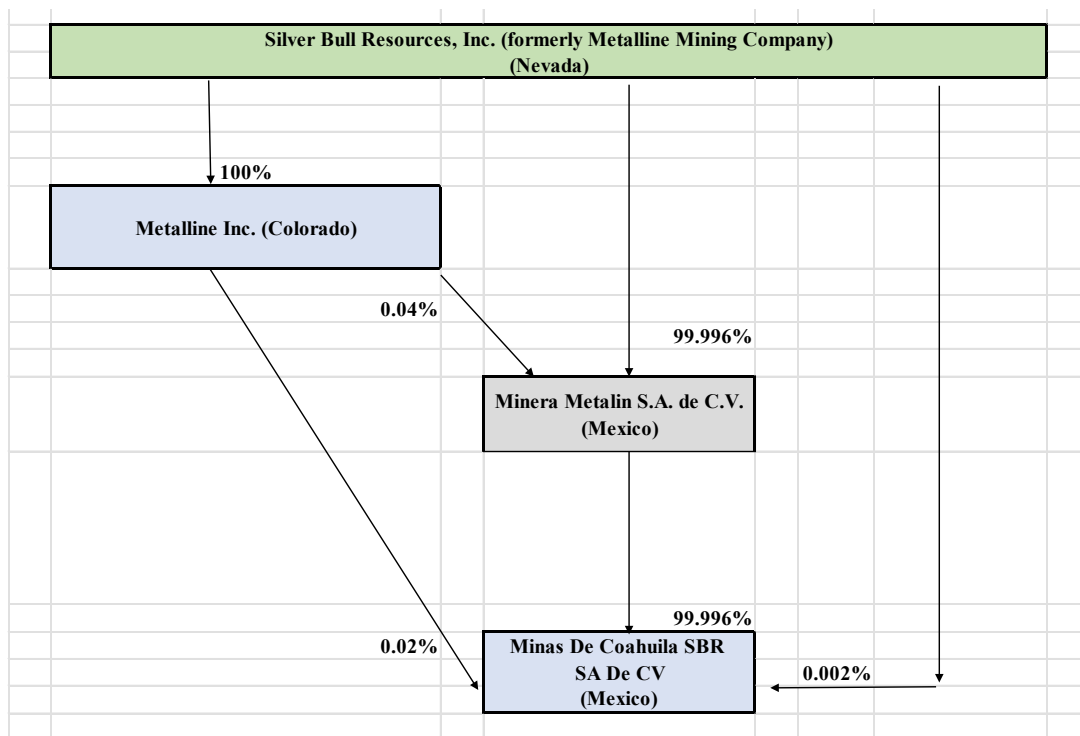
¹⁶ SVB News Release, Metalline and Dome Close Merger Transaction, 16 April 2010, **C-0075**; see also Barry WS, para. 3.2; Edgar WS, paras. 5.22-5.23.

¹⁷ Edgar WS, para. 5.23.

¹⁸ Restated Articles of Incorporation for Metalline Mining Company, 21 April 2011, **C-0017**; Barry WS, para. 3.3; Edgar WS, para. 5.24.

¹⁹ See SVB SEC Form 10-K, 26 January 2023 (reflecting ownership structure as of 31 October 2022), **C-0052**, exhibit 21.1 p. 63; SVB SEC Form 10-K, 29 January 2024 (reflecting ownership structure as of 31 October 2023), **C-0137**, exhibit 21.1 p. 89.

²⁰ SVB's 2022 Annual Report, 26 January 2023, p. 64, **C-0052**; see also Minera Metalín share certificates nos. 007, 008, and 009, 1 April 2014, **C-0024**.



Project Structure

2.8 The Sierra Mojada Project and SVB’s approach to developing and derisking the Project are further described below.

(B) SVB acquired, explored, and developed the Sierra Mojada Project, one of the largest undeveloped silver-zinc projects in Mexico

2.9 As mentioned briefly above, in the 1990s, Metalline identified the Sierra Mojada silver-zinc deposit in Coahuila, Mexico and its potentially significant undeveloped silver and zinc mineral resources.²¹ To explore and develop the deposit, Metalline established Minera Metalin in 1996 and Metalline acquired multiple mining concessions totaling 9,530.4 hectares in the Sierra Mojada mining district, as well as the surface rights to five lots.²²

2.10 The sections below describe SVB’s acquisition, exploration and development of the Sierra Mojada deposit as a world-class silver-zinc deposit: **Section (i)** describes the long history and

²¹ Edgar WS, paras. 4.2, 4.6; Barry WS, para. 3.1.

²² Maps and appraisals in relation to Minera Metalin’s titles to the surface rights totalling 126.95 hectares in the Project Area, each dated 8 August 2014, at **Exhibit C-067**; see also S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, pp. 32-33, at **Exhibit C-051**.

tradition of silver and zinc mining in Sierra Mojada, **Section (ii)** discusses SVB’s identification of the Sierra Mojada silver-zinc deposit and acquisition of Minera Metalín to explore and develop the deposit, **Section (iii)** describes the significant investments SVB made to develop in the Sierra Mojada silver-zinc deposit through targeted additional drilling and a series of technical and economic studies, and **Section (iv)** discusses the features of the Sierra Mojada Project as developed by SVB, as well as the ways in which it was poised to be a success not only for SVB, but also for the Sierra Mojada region.

(i) Sierra Mojada has a long history and tradition of mining silver and zinc

2.11 The Sierra Mojada Project is located in the northwestern part of Coahuila, Mexico, close to the border with Chihuahua, in the heart of the mineral-rich Sierra Mojada region.



Sierra Mojada Project location²³

2.12 The Sierra Mojada region is dominated by three sets of geological structures, each of which have a distinct influence on the mineralization of the area. These structures – which include

²³ SVB SEC Form 10-K, 14 January 2022, p. 106, C-0124.

the Jurassic era San Marcos fault – present a “dense” geological architecture to host the style of mineralization present in Sierra Mojada’s polymetallic district.²⁴

Location of the Project – Well Known Mineral Belt

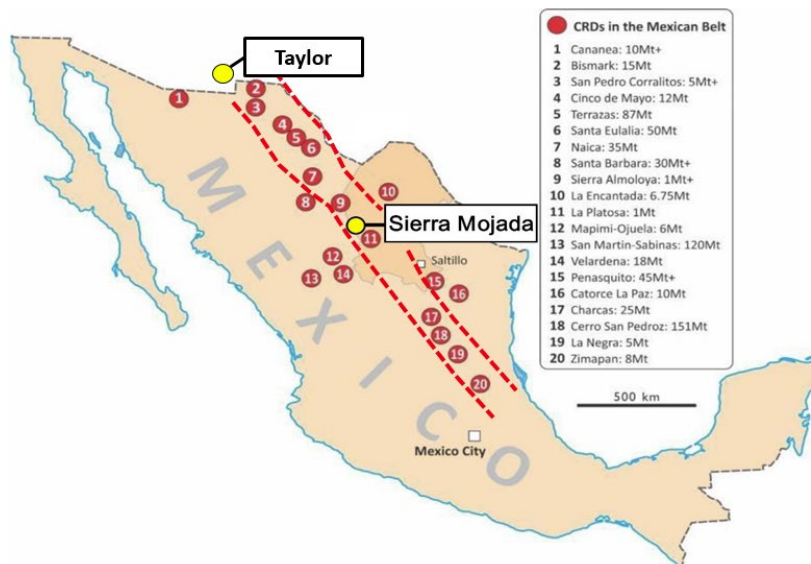


Image of the Sierra Mojada Project’s location within the well-known Sierra Mojada region mineral belt (2024)²⁵

2.13 For over a century, the Sierra Mojada region has been a storied source of high-grade silver, zinc, and other metal and mineral deposits.²⁶ In 1879, a foraging party first discovered silver and lead in Sierra Mojada.²⁷ Between 1879 and 1886, silver, silver chloride and lead carbonate ores were mined in Sierra Mojada.²⁸ After 1886, artisanal mining efforts began to produce silver-lead-zinc-copper sulphate ores within limestone and sandstone units.²⁹ By the 1920s, exploration efforts in the district included diamond drilling, and from the 1930s until the

²⁴ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, pp. 7-10, 8-1.

²⁵ Silver Bull Work Summary and Resource Comparison, Silver Bull Resources, January 2024.

²⁶ See Barry WS, paras. 3.8, 3.12, 4.4; Edgar WS, paras. 5.6-5.8.

²⁷ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, **C-0051**, p. 14.

²⁸ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, **C-0051**, p. 14.

²⁹ S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, **C-0051**, p. 14.

1990s, drill programs at Sierra Mojada expanded to include underground diamond core and long hole percussion drilling.³⁰

2.14 Throughout the 20th century, artisanal miners, including mining cooperatives, extracted substantial amounts of valuable minerals from the Sierra Mojada region with minimal capital investment and significant manual labor, selling those minerals for export globally.³¹

Figure 6-1: Historic Mining



Photo: Courtesy of Juan Manuel Lopez Ramirez – (Minera Metalin S.A. de C.V.).

*Historic mining at Sierra Mojada*³²

³⁰ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, C-0088, p. 9-1.

³¹ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, C-0088, p. 6-2.

³² JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, C-0088, p. 6-1.



Remains of a historical lead smelter in Sierra Mojada (2013).³³

- 2.15 Beginning in 1956, Sociedad Cooperativa de Exploración Minera Mineros Norteños, S.C. (“**Mineros Norteños**”), a Mexican for-profit cooperative mining association,³⁴ mined the Sierra Mojada area and operated the San Salvador, Encantada, Fronteriza, Esmeralda, and Parrena mines.³⁵ Mineros Norteños shipped oxide zinc ore to a smelter owned by a company named Zinc National in Monterrey, while copper and silver ore were shipped to smelters in other regions of Mexico and the United States.³⁶
- 2.16 During this time, Mineros Norteños acquired mining concessions and surface rights for several lots in the Sierra Mojada mining district.³⁷ As a Preliminary Economic Assessment (“**PEA**”) carried out by JDS Energy & Mining in 2013 explained, “[t]he workings operated by the Nortenos Cooperativa in the Zinc Manto allow access to the entire Zinc Manto in the San

³³ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 4-9.

³⁴ Under Mexican law, a *sociedad cooperativa* is an “association to work together in the production of goods or services” that is “constituted by 10-20% of the returns obtained by the cooperative society in each year.” (<https://e.economia.gob.mx/guias/sociedad-cooperativa/>).

³⁵ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 6-2.

³⁶ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 6-2.

³⁷ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 6-2; S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, **C-0051**, p. 40.

Salvador, Encantada, and Fronteriza mine operations.”³⁸ Still, the relatively crude technology available to historical mining efforts failed to exploit the deposits’ full potential.³⁹



*Known Historic Mine Shafts Spread over the Project Area (2013).*⁴⁰

- 2.17 In 1992, Mexico enacted a new Mining Law (the “**1992 Mining Law**”) which, among other things, opened the mining sector up to foreign investment by providing that all mining companies, whether carrying out exploration work or exploitation work, could be 100% foreign-owned.⁴¹ Shortly after the enactment of the 1992 Mining Law, foreign investors began to take an interest in the mineral potential of the Sierra Mojada region.⁴²
- 2.18 Consequently, and as noted above, between 1998 and 2000, Metalline, through Minera Metalín, acquired mining concessions in the region – both from smaller mineral exploration companies as well as local mining cooperatives – including two concessions from Mineros

³⁸ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 6-2.

³⁹ Barry WS, paras. 3.11, 4.4, 4.12.

⁴⁰ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 6-4.

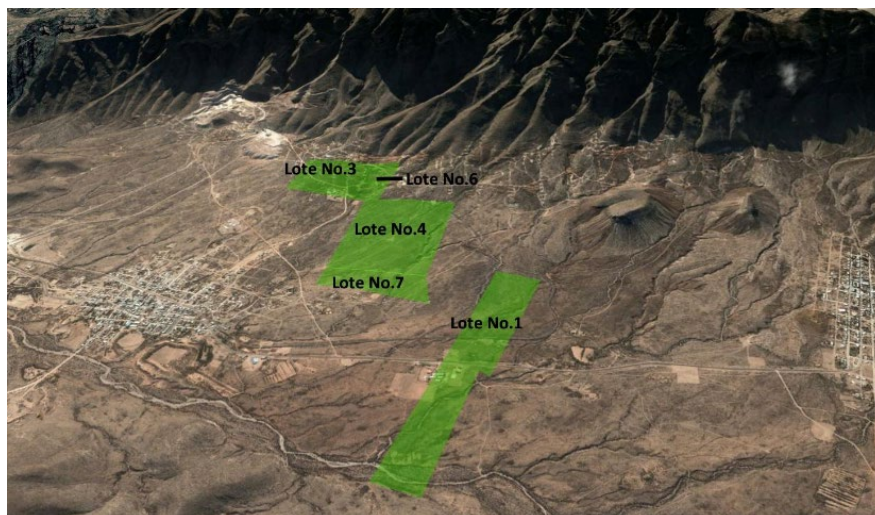
⁴¹ Mining Law, Congress of the United Mexican States, 26 June 1992, **C-0072**.

⁴² Mexico Mining Forum, *Evolution of the Mining Law and Industry Governance*, 21 October 2013, **C-150** (available at mexicobusiness.news/mining/news/evolution-mining-law-and-industry-governance).

Norteños.⁴³ Those two concessions contained a mineral system consisting of the two distinct zones noted above: the Shallow Silver Zone and the Zinc Zone.⁴⁴

2.19 Under the 2000 Concession Agreement between Mineros Norteños and Minera Metalín (the “**2000 Agreement**”), Minera Metalín agreed to pay a flat fee of US\$ 3,600,000 for the two concessions, as well as a royalty in respect of production up to a maximum of US\$ 6,875,000 when the Project went into production.⁴⁵

2.20 As noted, on 18 December 2002, Metalline also acquired surface rights to five lots in Sierra Mojada and associated buildings on these lots from Mineros Norteños.⁴⁶ Additionally, Metalline acquired buildings on these lots providing an office and accommodation from which to base its activities in the area.⁴⁷ With these concessions, buildings and surface rights, Metalline developed an exploration project at Sierra Mojada.⁴⁸



*Five Lots to Which Metalline Acquired Surface Rights at Sierra Mojada, 2013.*⁴⁹

⁴³ Maps and appraisals in relation to Minera Metalín’s titles to the surface rights totalling 126.95 hectares in the Project Area, each dated 8 August 2014, at **Exhibit C-067**; see also S-K1300 Summary Technical Report on the Resources of the Silver-zinc Sierra Mojada Project Coahuila, Mexico, 24 January 2023, pp. 32-33, at **Exhibit C-051**.

⁴⁴ Edgar WS, para. 4.5.

⁴⁵ Agreement between Mineros Norteños and Minera Metalín, 30 August 2000, **C-0009**, pp. 2-3.

⁴⁶ SVB SEC Form 10-K, 29 January 2024 (reflecting ownership structure as of 31 October 2023), **C-0137**, p. 12.

⁴⁷ Barry WS, para. 4.6.

⁴⁸ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 20-4.

⁴⁹ Edgar WS, para. 4.4.

- 2.21 Between 2000 and 2010, Metalline, with the collaboration of joint venture partners, such as North Limited (now Rio Tinto) and Industrias Peñoles, conducted underground channel sampling and surface drilling focused primarily on the Zinc Zone at Sierra Mojada.⁵⁰
- (ii) SVB identified significant potential for silver and zinc mineralization in the historic Sierra Mojada mining district and acquired Metalline in 2010 to explore and develop mining projects in the area
- 2.22 In 2009, Metalline was running out of funds to continue its exploration program as it had not had a joint venture partner since 2003.⁵¹ Additionally, Metalline was at that time managed by aging mining executives based in the United States who were growing increasingly unable to oversee the day-to-day operations of a mineral exploration project thousands of miles away.⁵² Metalline had begun scaling down its exploration operations and cutting administrative costs while it tried to secure additional capital for the Sierra Mojada Project.⁵³
- 2.23 At that same time, Mr. Edgar and Dome were interested in expanding Dome’s operations to a different mining geography and were looking for merger opportunities in Latin America and elsewhere.⁵⁴ Mr. Edgar was assisted in this search by his colleague Tim Barry.⁵⁵
- 2.24 In 2009, Mr. Edgar learned from a friend that “Metalline was looking for additional capital to support its mineral exploration program at the Sierra Mojada Project.”⁵⁶ Mr. Edgar was intrigued and began to investigate the Sierra Mojada Project, “quickly not[ing] its potential for success.”⁵⁷

⁵⁰ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, C-0088, p. 6-2.

⁵¹ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, C-0088, p. 6-2; Edgar WS, para. 5.2.

⁵² Barry WS, para. 3.4.

⁵³ Edgar WS, para. 4.7.

⁵⁴ Edgar WS, para. 5.1; Barry WS, paras. 3.8, 4.9.

⁵⁵ Barry WS, paras. 3.8, 4.9.

⁵⁶ Edgar WS, para. 5.2.

⁵⁷ Edgar WS, para. 5.2.

2.25 As noted above, Mr. Edgar is a mining professional with decades of experience managing successful mining and mineral exploration projects around the world.⁵⁸ In evaluating projects for potential investment, Mr. Edgar looked for the following characteristics, which he knew, from his experience, tend to serve as accurate predictors of success:

*(A) indicia of mineral potential in the region in which the Sierra Mojada Project was located as well as on the concessions owned by Metalline; (B) the degree to which the project was connected to important infrastructure like power lines, paved roads, rail lines, water, and workforce availability; and (C) the government's support for, and protection of, mineral exploration projects.*⁵⁹

2.26 In evaluating the Sierra Mojada Project, Mr. Edgar hired several experts and consultants to examine the Project and assess its merits.⁶⁰ Based on the reports of these experts and consultants, Messrs. Edgar and Barry came to believe that the Sierra Mojada Project was a valuable asset with significant potential for the reasons set out below.⁶¹

2.27 First, as noted above, the Sierra Mojada region had significant mineral potential as it is located within a well-known mineral belt with a robust history of silver, zinc, lead, and copper mining.⁶² A pre-merger technical report indicated a 400-million-ounce silver deposit sitting in the Sierra Mojada Project's concessions.⁶³ Further, in 2009, Mexico was booming as a destination for silver projects. As Mr. Edgar explains:

Over the past few decades, Mexico has been home to a number of notable silver mining and mineral exploration projects which have caught the attention of major players in the mining industry. These include the Fresnillo Mine in Zacatecas and the Los Gatos Mine in

⁵⁸ Edgar WS, s. 3.

⁵⁹ Edgar WS, para. 5.3.

⁶⁰ Edgar WS, para. 5.4.

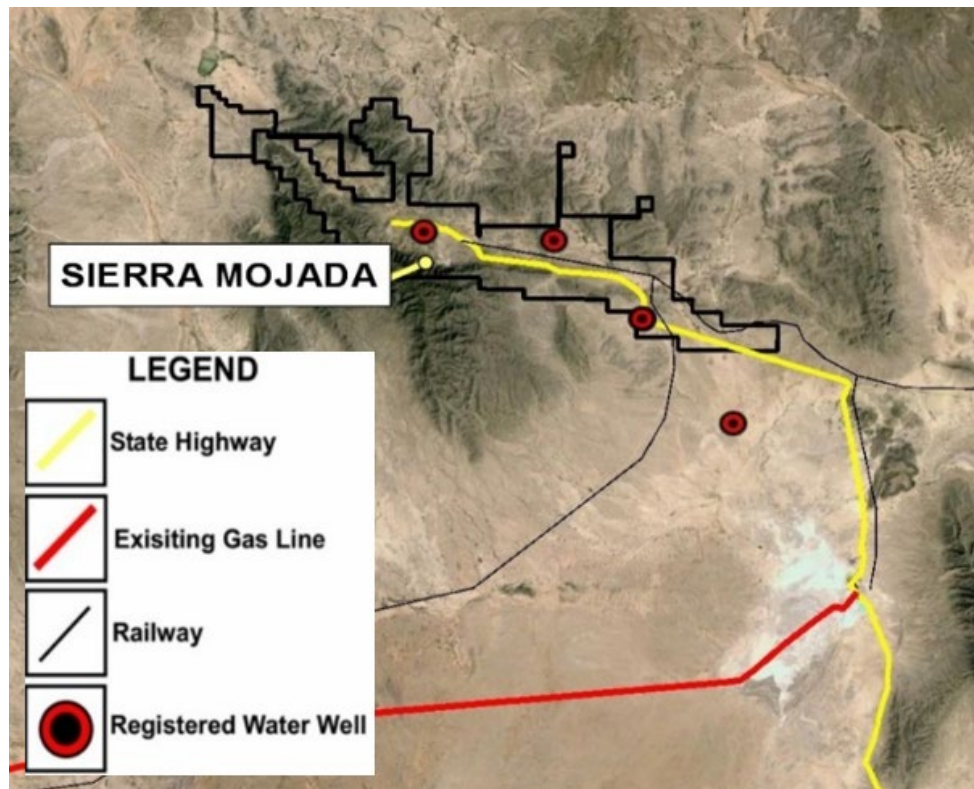
⁶¹ Edgar WS, paras. 5.5-5.10; Barry WS, paras. 3.8-3.12.

⁶² Edgar WS, para. 5.6.

⁶³ Barry WS, para. 4.11.

*Chihuahua, among many others. Mexico is the world's largest silver producer and ninth largest zinc producer. The geology favours Mexico.*⁶⁴

2.28 Second, the Sierra Mojada Project was connected to important infrastructure critical to the success of a mining project. For example, there was a rail line to the Project site, which would have facilitated the transportation of ore and concentrates to the nearest major smelter in North America or to a shipping port, and thus to a smelter anywhere in the world.⁶⁵ There was a State Highway connecting the Project site with the city of Torreón, which has an international airport and is just a three-hour drive from the Project site.⁶⁶ Also, as Mr. Edgar explains, the Project was served by grid power sufficient for exploration activities, and there was easy connectivity to power and gas lines.⁶⁷



Map of Infrastructure Connected to the Sierra Mojada Project Site

⁶⁴ Edgar WS, para. 5.5.

⁶⁵ Edgar WS, paras. 5.3, 5.11; Barry WS, para. 3.9.

⁶⁶ Edgar WS, para. 5.12.

⁶⁷ Edgar WS, para. 5.13.

- 2.29 Further, as Mr. Barry explains, “[t]he Project is located north of Torreon and is accessed by . . . a three-hour drive north on the paved highway of 230 kilometres which leads directly to the Sierra Mojada Project site” and easements along the highway meant that power to the Project site could easily be upgraded without having to negotiate with nearby landowners.⁶⁸ There were also permitted, company-owned water wells on the site.⁶⁹ Adjacent to the Project, there was a dolomite quarry, which is operated by Magnelec S.A. de C.V., Industrias Peñoles, a significant Mexican minerals company.⁷⁰ For its mining project, Industrias Peñoles had invested in substantial infrastructure in the region.⁷¹ The presence of other mining projects near a project is highly beneficial to a project’s prospects.
- 2.30 Additionally, there was a skilled labor force in the Sierra Mojada mining district because many people had been trained at the Peñoles mine or were members of local mining cooperatives. Finally, the Sierra Mojada Project was located very close to the towns of Sierra Mojada and La Esmeralda, which have schools, healthcare providers, and other essential services, which are important for attracting a stable, committed workforce.⁷²
- 2.31 For all of these reasons, Messrs. Edgar and Barry believed that the Sierra Mojada Project had enormous potential, and that substantial resources likely remained undiscovered within the concessions.⁷³ Above all, they were impressed by the encouraging geological indications on the concessions, the promise of which was supported by the surrounding region’s long history of mineral exploration.⁷⁴ As Mr. Edgar remarks, the Sierra Mojada Project “ranks among the projects that I have been most optimistic about in my career working in the mining and mineral exploration sector.”⁷⁵ Indeed, he “believed that the [Sierra Mojada] Project was Mexico’s next big silver story.”⁷⁶

⁶⁸ Barry WS, paras. 3.9-3.10.

⁶⁹ Barry WS, para. 3.10.

⁷⁰ Edgar WS, para. 5.7.

⁷¹ Edgar WS, para. 5.7; Barry WS, para. 4.23.

⁷² Edgar WS, para. 5.16.

⁷³ Edgar WS, para. 5.21; Barry WS, paras. 3.12, 4.13.

⁷⁴ Edgar WS, paras. 5.6, 5.21.

⁷⁵ Edgar WS, para. 5.21.

⁷⁶ Edgar WS at, para. 5.24.

2.32 Dome therefore decided to proceed with the reverse merger described above. As Mr. Edgar explains:

*A condition of the transaction was that Dome would arrange financing of US\$16 million prior to completing the private placement in Metalline. I was confident that we could arrange that financing given the clear potential of the Sierra Mojada Project, and, in fact, we did raise that financing in a short time.*⁷⁷

2.33 As noted above, on 21 April 2011, the Board of Metalline, including Mr. Edgar, voted to change the name of the company to Silver Bull Resources, Inc. to reflect the Company's commitment to developing the Project's significant Silver Zone, which Metalline had left largely unexplored.⁷⁸

(iii) SVB made significant investments in exploring and developing the Sierra Mojada silver-zinc deposit

2.34 Following its acquisition of the rights to the Sierra Mojada Project, SVB invested substantially in developing the Project and maximizing its potential for success. As one of its first steps, SVB appointed Tim Barry to serve as Vice President of Exploration.⁷⁹ Mr. Barry is a geologist and mining professional with more than 25 years of experience in mining and mineral exploration.⁸⁰ His extensive experience includes "planning and implementing mining strategies and activities, including drill programs; geological mapping, sampling, spotting, and logging; evaluating projects and developing resources."⁸¹ Mr. Barry has overseen and developed several successful projects worldwide, including in Gabon, Nigeria, Guinea and Mongolia.⁸² He also had extensive experience in Mexico.⁸³

⁷⁷ Edgar WS, para. 5.22.

⁷⁸ Restated Articles of Incorporation for Metalline Mining Company, 21 April 2011, C-0017; Barry WS, para. 3.3; Edgar WS, para. 5.24.

⁷⁹ Barry WS, paras. 3.4, 4.10.

⁸⁰ Barry WS, paras. 2.1-2.10.

⁸¹ Barry WS, para. 2.3.

⁸² Barry WS, paras. 2.6-2.7.

⁸³ Barry WS, para. 2.5.

- 2.35 When Mr. Barry was appointed as Vice President of Exploration, he moved his family from Africa to Canada to be closer to the Sierra Mojada Project and took on the significant task of modernizing and restructuring the Project's geology program.⁸⁴ As noted above, Metalline was an outdated operation that had not fully realized the potential of the Project.⁸⁵
- 2.36 SVB first revisited the existing geological data and historical reports to determine an improved strategy for exploration.⁸⁶ The data collected previously by Metalline overlooked several areas and provided SVB with an opportunity to invest in exploring areas wider than the previous confines of the Project.⁸⁷ Accordingly, in order to remodel the Project and bring it up to contemporary standards, Mr. Barry set about reinterpreting the Project's geological model, remapping the site, resurveying mineral titles and surface rights, and retraining staff in contemporary methods of geological work.⁸⁸ As Mr. Barry explains, "he quickly realised the significant potential of the Project and the contrasting deficiencies of geological understanding by the owners," which meant that the Project was undervalued.⁸⁹
- 2.37 In April 2011, SVB commissioned a NI-43 101 report, which provided a complete analysis of the at-surface silver oxide mineralization, called the "Shallow Silver Zone" on the Project deposits.⁹⁰ As Mr. Barry explains, this report was required to revise the resource estimates and identify opportunities for exploration of the Project as the prior work conducted by Metalline was disorganized and overlooked key elements.⁹¹
- 2.38 The NI 43-101 report, produced by Geosim Services Inc and Nilsson Mine Services Ltd, provided indicated and inferred resource estimate using 274 drill holes in the immediate area

⁸⁴ Barry WS, para. 3.4, 4.9.

⁸⁵ See para. 2.22.

⁸⁶ Barry WS, paras. 4.11-4.13.

⁸⁷ Barry WS, para. 4.13.

⁸⁸ Barry WS, paras. 3.5, 4.13.

⁸⁹ Barry WS, para. 4.9.

⁹⁰ Geosim Services Inc. and Nilsson Mine Services Limited, *Technical Report on the "Shallow Silver Zone" Silver Zinc Deposit*, 18 April 2011, **C-0077**; SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 25 November 2011, **C-0080**.

⁹¹ Barry WS, para. 4.12.

of the silver oxide mineralization of the Shallow Silver Zone.⁹² The results of this NI 43-101 report included an approximate total of 24.5 million tons of silver with a 20g/t cutoff grade, comprising 9.235 million tons of indicated resource with an average grade of 56.4 g/t and 15.258 million tons of inferred resource with an average grade of 49.9 g/t.⁹³

2.39 Although SVB knew this NI 43-101 report did not include the known zinc oxide mineralization that had previously been the focus of Metalline, and strongly believed the deposit to be greater than the results of the 2011 NI 43-101 Report, the Company used the conservative estimates to plan its next steps.⁹⁴ The Report also found that the deposit remained open to the east and west, and recommended additional drilling, testing, and studies to further define the nature of the Shallow Silver Zone.⁹⁵ Such recommendations were key in creating SVB's initial exploration plan which, as Mr. Barry explains, focused on three main areas:

- (a) Drilling surface silver oxide mineralization located above the high-grade zinc or along trend to the west;
- (b) Reconfirming the significant drilling done in the high-grade zinc oxide zone located at depth directly underneath the Shallow Silver Zone by "twinning" 88 drill holes and comparing the lab results; and
- (c) Commencing typical studies needed to put a mine into production, such as metallurgical studies, water and power studies, acquisition of surface rights, and market analysis of commodities.⁹⁶

2.40 Subsequently, SVB commissioned a series of technical reports and economic studies to assess the mineral resources at the Sierra Mojada Project. The results of these reports and studies

⁹² Geosim Services Inc. and Nilsson Mine Services Limited, *Technical Report on the "Shallow Silver Zone" Silver Zinc Deposit*, 18 April 2011, **C-0077**.

⁹³ Geosim Services Inc. and Nilsson Mine Services Limited, *Technical Report on the "Shallow Silver Zone" Silver Zinc Deposit*, 18 April 2011, **C-0077**.

⁹⁴ Barry WS, para. 4.13.

⁹⁵ SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 25 November 2011, **C-0080**, p. 76; SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 5 July 2012, **C-0081**, p. 80; Barry WS, para. 4.17.

⁹⁶ Barry WS, para. 4.16.

were continuously promising. From 2011 through 2013, SVB discovered that their silver and zinc deposits were more important than it had initially believed.⁹⁷

2.41 For instance, a 25 November 2011 technical report, prepared by SRK Consulting (Canada) Inc., updated the earlier estimate to over 28 million tons of raw mineral resources with 51 grams of silver per ton (or approximately 50 million ounces of silver) and 0.97% zinc content (or approximately 270,000 tons of zinc) in the Project's "Shallow Silver Zone."⁹⁸ By this time, as the technical report reflects, the investments made in exploration were "sufficiently well understood to support resource estimation".⁹⁹

2.42 In 2012, SVB's investment in exploration and development continued to show promising results, eventually improving the initial results for indicated and inferred estimates to the inclusion of measured mineral deposits in the area.¹⁰⁰ A report conducted on 5 July 2012 by the same firm indicated higher figures: over 45 million tons of mineral resources with 40 grams of silver per ton (or approximately 63 million ounces of silver) and a 0.67% zinc content (or approximately 300,000 tons of zinc), again in the Shallow Silver Zone.¹⁰¹

2.43 Given the nature of the Project, SVB also invested in studies to ensure that the area had the required natural resources to sustain its potential expansion. For that reason, in 2012, SVB commissioned a hydrological study of the area.¹⁰² As Mr. Barry explains, "[w]ater is required to separate minerals, cool machinery, control dust at a mine site and provide hydration for employees working in the area."¹⁰³ The hydrological study completed on 20 November 2012, and estimated over 6.4 million cubic meters of annual water flow in local aquifers.¹⁰⁴ This amount was more than double the required amount to maintain the Project's operations.¹⁰⁵

⁹⁷ Barry WS, paras. 4.17-4.18.

⁹⁸ SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 25 November 2011, **C-0080**, p. vii.

⁹⁹ SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 5 July 2012, **C-0081**, p. 8.

¹⁰⁰ SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 5 July 2012, **C-0081**, p. 8.

¹⁰¹ SRK Consulting, *Technical Report on the Sierra Mojada Silver Project, Coahuila State, Mexico*, 5 July 2012, **C-0081**, p. vii.

¹⁰² Hidrolab Consultants, *Evaluation Report of General Hydrological Characteristics of the Area*, 20 November 2012, **C-0084**; Barry WS, para. 3.10.

¹⁰³ Barry WS, para. 3.10.

¹⁰⁴ Hidrolab Consultants, *Evaluation Report of General Hydrological Characteristics of the Area*, 20 November 2012, **C-0084**, p. 21.

¹⁰⁵ Barry WS, para. 3.10.

- 2.44 As SVB compiled more reports, it used this developing broader understanding of the value of the Project to further advance its exploration plan. During this time Mr. Barry also worked on revamping the Sierra Mojada Project's disorganized geological database and planning new drilling programs.¹⁰⁶
- 2.45 A further technical report, prepared by JDS Energy & Mining Inc in 2013, significantly increased the indicated resources of the Project.¹⁰⁷ The 2013 Report showed a total of approximately 73 million tons of mineral resources with 69.5 grams of silver per tonne (or approximately 170 million ounces of silver) and a 1.5% zinc content (or approximately 1 million tons of zinc).¹⁰⁸ In sum, the size of the resource was far bigger than Messrs. Edgar and Barry had at first anticipated.
- 2.46 As SVB recognized the growing potential of the Project, it progressed the Project to the next milestone of its exploration, the PEA. Following the recommendations of the 2013 report,¹⁰⁹ SVB commissioned the PEA, which JDS Energy & Mining Inc produced on 30 September 2013 by.¹¹⁰ Although the PEA focused mainly on the silver deposits, it revealed positive economics and warranted advancement to a pre-feasibility study.¹¹¹ As a result of these studies, in October 2013, SVB invested in acquiring surface rights to four additional areas totaling 755 hectares, for further expansion of the Project.¹¹²
- 2.47 By 2013, SVB's investment in its exploration program also paid off in the independent analyst coverage it attracted. Various analysts, who recognized the value of the Project, produced reports recommending SVB as a worthwhile investment. The Project was described as having a "sizeable deposit with zinc kicker",¹¹³ and complimented for its "robust management team",

¹⁰⁶ Barry WS, paras. 4.10-4.14.

¹⁰⁷ JDS Energy & Mining Inc, *Technical Report on the Resources of the Silver-Zinc Sierra Mojada Project, Coahuila State, Mexico*, 18 March 2013, **C-0085**.

¹⁰⁸ JDS Energy & Mining Inc, *Technical Report on the Resources of the Silver-Zinc Sierra Mojada Project, Coahuila State, Mexico*, 18 March 2013, **C-0085**, p. 14-34; Barry WS, paras. 4.17-4.18.

¹⁰⁹ JDS Energy & Mining Inc, *Technical Report on the Resources of the Silver-Zinc Sierra Mojada Project, Coahuila State, Mexico*, 18 March 2013, **C-0085**, p. 180.

¹¹⁰ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**.

¹¹¹ JDS Energy & Mining Inc, *Preliminary Economic Assessment NI 43-101 technical report*, 30 September 2013, **C-0088**, p. 255.

¹¹² Sierra Mojada surface rights acquired by SVB, 12-16 October 2013, **C-0089**.

¹¹³ Mackie Research Capital Corp., *A Sizeable Silver Deposit with Zinc Kicker: Site Visit*, 2 December 2010, **C-0076**.

“growing silver deposit” and “major zinc resource.”¹¹⁴ Financial institutions such as Roth Capital Partners and Global Hunter Securities published buy ratings for SVB¹¹⁵, and interviews with the Gold Report praised the “very high silver grade” at the Project.¹¹⁶ Through these various reports and resource statements, the management of SVB grew confident in the data and published the discoveries from their exploration program.¹¹⁷

- 2.48 In 2014 and 2015, while the price of silver and zinc fell, SVB reduced its exploration activities, focusing instead on mapping the 140-kilometer underground workings in further detail and sampling untested areas for high grade mineralization.¹¹⁸ During this time, SVB made a significant effort to firm up underground workings to make them safe to access. This was an important step in the Project’s history as these workings allowed SVB to track underground for 1.4 kilometers in an east-west trending direction.¹¹⁹ This revised exploration program led to the discovery of a large area named the Sulphide Zone, with sulphide mineralization up to 10 meters thick and grading up to 690 grams per ton of silver, 15.25% zinc, 4.8% lead, and 1% copper.¹²⁰ Sulphide minerals are highly desirable as they are easier and less expensive to process.¹²¹
- 2.49 These positive findings allowed SVB to raise approximately US\$4 million in private placements between 2016 and 2017 to successfully drill the Sulphide Zone.¹²² Up until 2019, SVB continued to advance its exploration program which produced significant highlights, including:

¹¹⁴ Global Hunter Securities, *Silver Bull Resources*, 30 June 2011, **C-0078**, pp. 1-10.

¹¹⁵ Global Hunter Securities, *Silver Bull Resources*, 30 June 2011, **C-0078**, pp. 1-10; Roth Capital Partners, *Silver Bull Resources Inc.*, 19 July 2012, pp. 1-2, **C-0082**; Roth Capital Partners, *Bullish on Silver Bull’s Sierra Mojada Project*, 5 September 2012, **C-0083**.

¹¹⁶ Streetwise Reports, *U.S. Global Investors’ Secret: ‘Keep Calm and Invest On,’* 24 July 2013, **C-0086**.

¹¹⁷ Edgar WS, paras. 5.25-5.28; Barry WS, paras. 4.17-4.18.

¹¹⁸ Barry WS, para. 4.19; Updated NI 43-101 Technical Report on the Resources of the Sierra Mojada Silver Project, Coahuila State, Mexico, prepared by Tuun Consulting Inc. and AKF Mining Services Inc. dated 8 June 2015 (revised 30 June 2015) p. 194 at **Exhibit C-0090**.

¹¹⁹ Silver Bull Resources News Release dated 17 June 2015, at **Exhibit C-0091**.

¹²⁰ SVB News Release, *Silver Bull Identifies New Massive Sulphide Mineralization Grading 690g/t Silver, 1% Copper, 4.8% Lead and 15.25% Zinc at the Sierra Mojada Project, Coahuila, Mexico*, 17 June 2015, **C-0091**; Barry WS, paras. 4.29-4.30.

¹²¹ Barry WS, para. 4.30.

¹²² Barry WS, para 4.31.

- (a) 25.5 meters of sulphide mineralization grading 294g/t Silver and 0.96% Copper, including 4 Meters at 966g/t Silver and 2.0% Copper;¹²³
- (b) 17 meters of sulphide mineralization grading 301g/t Silver & 1.75% Copper, including 4 Meters at 502g/t Silver and 2.14% Copper;¹²⁴
- (c) 16 meters of sulphide mineralization grading 396g/t Silver & 1.61% Copper, including 6 meters Grading 610g/t Silver & 1.12% Copper;¹²⁵
- (d) 9 meters of sulphide mineralization grading 20.7% Zinc, 1% Lead and 98g/t Silver;¹²⁶ and
- (e) 6 meters of sulphide mineralization grading 802g/t Silver, 5.87% Zinc, & 3.3% Copper.¹²⁷

2.50 During this time, SVB continued investing in technical reports to track the progress of its exploration works. Technical reports in 2015 and 2018 recommended the continued drilling program of 5,000 meters.¹²⁸ Up until the start of the Continuing Blockade in 2019, SVB's investments in exploration continued to result in significant new discoveries. These included the first drill holes from an 8,000 meter drilling program of 13.25 meters of sulphide grading 9.05% zinc, 2.12% lead and 16 g/t of silver and 5.85 meters grading 11.93% zinc, 2.83% lead and 24 g/t of silver in a new zone called Palomas Negros, located nine kilometers from the

¹²³ SVB News Release, *Silver Bull intersects 294G/T Silver and 0.96% Copper over 25.5 meters on the Sierra Mojada Project, Coahuila, Mexico*, 12 October 2017, **C-0093**.

¹²⁴ SVB News Release, *Silver Bull intersects 17 meters of sulphide mineralization on the Sierra Mojada Project, Coahuila, Mexico*, 31 January 2018, **C-0097**.

¹²⁵ SVB News Release, *Silver Bull intersects 16 meters of sulphide mineralisation grading 396g/t Silver & 1.61% Copper on the Sierra Mojada Project, Coahuila, Mexico*, 14 November 2017, **C-0094**.

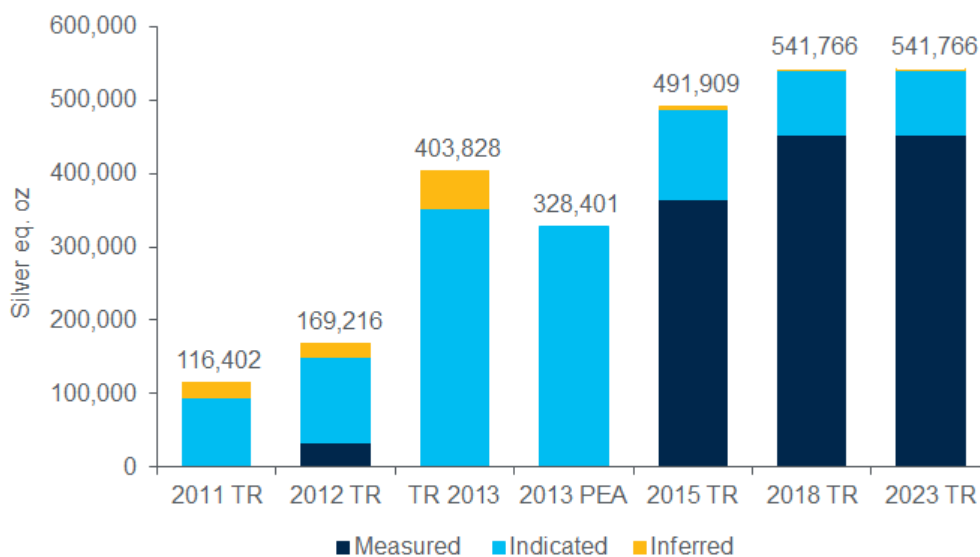
¹²⁶ SVB News Release, *Silver Bull intersects 9 metres of sulphide mineralisation grading 20.7% Zinc, 1% Lead and 98g/t Silver on the Sierra Mojada Project, Coahuila, Mexico*, 20 November 2017, **C-0095**.

¹²⁷ SVB News Release, *Silver Bull intersects 6 metres of sulphide mineralisation grading 802g/t Silver, 5.87% Zinc, & 3.3% Copper on the Sierra Mojada Project, Coahuila, Mexico*, 21 February 2018, **C-0098**.

¹²⁸ Updated NI 43-101 Technical Report on the Resources of the Sierra Mojada Silver Project, Coahuila State, Mexico, prepared by Tuun Consulting Inc. and AKF Mining Services Inc. dated 8 June 2015 (revised 30 June 2015) p. 194 at Exhibit **C-0090**; see *Dumala, M. and Barry, T, Technical Report on the Resources of the Silver-Zinc Sierra Mojada Project Coahuila, Mexico*, 30 October 2018, **C-0103**.

main Sierra Mojada Deposit.¹²⁹ This new discovery highlighted the potential of other deposits in the district, beyond just the Sierra Mojada Project.

2.51 As a result of SVB’s hard work from 2011 to 2019, and its investments in modernizing a dated geological model and establishing a targeted drilling program, SVB was on track to developing a successful, high value mining project. The overall development of the Project’s exploration program is demonstrated below.¹³⁰



Representation of development of Sierra Mojada Project exploration program between 2011 and 2019.¹³¹

(iv) As a result of SVB’s investments, the Sierra Mojada Project was poised to be a successful and potentially transformative Mining Project for the region

2.52 As a result of SVB’s investments and extensive exploration works, the Sierra Mojada Project was poised to be a successful, sustainable and economical mining project, which would have brought significant and potentially transformative benefits to the local communities surrounding Sierra Mojada.

¹²⁹ SVB News Release, *Silver Bull Makes New Discovery and Intercepts 13.25 Meters of Massive Sulphide Grading 9.05% Zinc, 2.12% Lead and 16g/t Silver*, 29 June 2019, C-0110; Barry WS, para. 6.3

¹³⁰ BRG Expert Report, p. 15.

¹³¹ BRG Expert Report, p. 17.

- 2.53 As part of its exploration and development efforts described above, in 2011, SVB, through its Mexican subsidiary Minera Metalín, has, over the years, hired hundreds of people to work at the Sierra Mojada Project site. Roughly 85% of these employees were from the local towns of Sierra Mojada, La Esmeralda and Hercules.¹³² More than half of these employees were members of the local mining cooperative, Mineros Norteños.¹³³
- 2.54 SVB developed a good relationship with its stakeholders, including Mineros Norteños. As Mr. Barry explains, in 2011, on his first visit to the Project site, he arranged a meeting with Mineros Norteños to introduce himself and outline SVB’s plan for the Project.¹³⁴ During his time at the Project, Mr. Barry met with Mineros Norteños two to three times a year, giving 15-minute presentations to approximately 20 Mineros Norteños members and, at times, their spouses.¹³⁵
- 2.55 During these meetings, Mr. Barry explained SVB’s plan to target the at-surface silver oxide mineralization first before mining the zinc oxide at depth and updated them on SVB’s progress and findings.¹³⁶ When metal prices fell and market conditions worsened, Mr. Barry spent much of his time explaining the consequences of these circumstances on SVB’s decision-making and how it affected the Project.¹³⁷ He provided adequate opportunity for questions to be answered and outside of these meetings kept an open-door policy for Mineros Norteños members to ask anything when he was on site.¹³⁸ As noted, Mineros Norteños was well represented and integrated in the Project, which also provided them with real time access to information regarding the progress of SVB’s explorations.¹³⁹
- 2.56 SVB also sponsored internships for geology students from Mexican universities at the Sierra Mojada Project where they could obtain school credit, learn about mining geology, and

¹³² First Witness Statement of Juan Manuel López Ramírez (“**López Ramírez WS**”), para. 3.1.

¹³³ López Ramírez WS, para. 3.1.

¹³⁴ Barry WS, para. 4.26.

¹³⁵ Barry WS, para. 4.26

¹³⁶ Barry WS, para. 4.26.

¹³⁷ Barry WS, para 4.26.

¹³⁸ Barry WS, para. 4.26.

¹³⁹ López Ramírez WS, para. 3.1; Barry WS, para. 4.27.

prepare for a career in the mining sector.¹⁴⁰ SVB took pride in being a major employer of people in the Sierra Mojada region.



Minera Metalín Employees Operating a Termite Drill During the 2012-2013 Drill Program (2013)

2.57 The Sierra Mojada Project also brought significant benefits to the Sierra Mojada community. As Brian Edgar explains:

[W]e invested in, and built relationships with, the local community. For example, during the COVID-19 pandemic, Juan Manuel [López Ramírez, SVB's country manager], told me that the town of Sierra Mojada did not have adequate medical supplies, so Silver Bull sent masks, gloves, and other protective equipment, as well as oxygen tanks, to the town. We also threw big parties in town annually for the holidays, and we shared meals with the local community.¹⁴¹

¹⁴⁰ Melnyk WS, para. 3.3; López Ramírez WS, para. 8.37.

¹⁴¹ Edgar WS, para. 7.10.

2.58 Furthermore, Mr. Barry and SVB focused significant effort on forming a positive relationship with the communities in Sierra Mojada and La Esmeralda. For example, Mr. Barry met with the Mayor of Sierra Mojada, as well as the local priest, two or three times a year to discuss SVB's progress on the Project, access to water and surface rights.¹⁴² As Mr. Barry explains, "[t]hrough these meetings I cultivated community support for the Project".¹⁴³

2.59 Notwithstanding these efforts and the significant benefits, the Sierra Mojada Project promised to bring to the local communities surrounding Sierra Mojada, including much needed local employment and training, Mineros Norteños began in 2014 to demand immediate royalty payments from Minera Metalín to which it was not legally entitled, as detailed below.

(C) In May 2014, Mineros Norteños brought a baseless and ultimately unsuccessful legal action against Minera Metalín asserting breach of the 2000 Agreement

2.60 On 20 May 2014, in an effort to obtain immediate royalty payments from Minera Metalín, Mineros Norteños brought a lawsuit in the First Civil Court in the Judicial District of Morelos in the State of Chihuahua against Minera Metalín, asserting that Minera Metalín had breached the 2000 Agreement by allegedly failing to pay royalties.¹⁴⁴ Mineros Norteños also sought the payment of wages by Minera Metalín to all members of Mineros Norteños, regardless of whether they were hired by, or worked for, Minera Metalín.¹⁴⁵

2.61 Minera Metalín strongly opposed Mineros Norteños's claims, which did not have any legal basis. This was for several reasons.

2.62 First, Mineros Norteños's claims were time-barred because Mineros Norteños had brought the claims outside of the 10-year limitations period for breach of contract claims.¹⁴⁶

¹⁴² Barry WS, para. 4.28.

¹⁴³ Barry WS, para. 4.28.

¹⁴⁴ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, p. 11, **C-0040**.

¹⁴⁵ Decision of the Eighth District Court accepting jurisdiction, 23 January 2015, **C-0025**, p. 2.

¹⁴⁶ Decision of the Eighth District Court accepting jurisdiction, 23 January 2015, **C-0025**, p. 2.

- 2.63 Second, even if the claims were not time barred, Minera Metalín did not yet owe Mineros Norteños any royalties under the 2000 Agreement because no exploitation had taken place, and no extracted minerals had been sold to any third party.¹⁴⁷ As Minera Metalín underscored in its pleadings to the Court, the 2000 Agreement provided that Minera Metalín would be obligated to pay Mineros Norteños a royalty based on the “net amount of the smelting settlements or invoices of sales of the minerals extracted from the mining properties”.¹⁴⁸ As the Sierra Mojada Project was in 2014 still in the exploration phase and no minerals had yet been extracted from the mining properties and sold, Minera Metalín was not under any obligation to make any royalty payments to Mineros Norteños.¹⁴⁹
- 2.64 Specifically, Clause Seven of the 2000 Agreement states that Minera Metalín “undertakes to deliver” to Mineros Norteños “as a royalty and discovery premium” two-percent of the “net amount of the smelting settlements or invoices of sales of the minerals extracted from the mining properties”.¹⁵⁰ Stated differently, the 2000 Agreement provides that Mineros Norteños would be entitled to 2% of the proceeds of the sales of minerals to third parties (up to a maximum of US \$6,875,000).¹⁵¹ Mineros Norteños thus was not entitled to any royalty payments before minerals were extracted and sold as such.
- 2.65 This type of agreement is common in the mining sector and is known as a net smelter return royalty agreement. A net smelter return royalty is characterised by royalty payments that represent a certain percentage of the sales price that the mining operator receives from the sale of the property’s mineral resources.¹⁵² A net smelter return royalty is not, and by definition cannot be, a royalty paid by the mining operator to the mineral property owner before the commencement of commercial production.
- 2.66 Having bought and sold concessions several times before, Mineros Norteños was presumably familiar with this form of royalty agreement and understood its terms. Likewise, when Dome

¹⁴⁷ Barry WS, paras. 4.5, 4.7, 5.2, 5.4.

¹⁴⁸ Agreement between Mineros Norteños and Minera Metalín, 30 August 2000, C-0009, p. 3, cl. 7.

¹⁴⁹ Edgar WS, paras. 5.26-5.28; Barry WS, paras. 4.5, 4.7, 5.2, 5.4.

¹⁵⁰ Agreement between Mineros Norteños and Minera Metalín, 30 August 2000, C-0009, p. 3, cl. 7.

¹⁵¹ Agreement between Mineros Norteños and Minera Metalín, 30 August 2000, C-0009, p. 3, cl. 7.

¹⁵² Investing News Network, *The Value of Net Smelter Royalty Returns*, Investing News Network, 23 November 2017, C-0096 (available at investingnews.com/daily/resource-investing/base-metals-investing/copper-investing/investing-net-smelter-royalty-returns/).

and Metalline merged in 2010, there is no evidence that either party had any doubt about the obligations owed by Minera Metalín under the 2000 Agreement.

- 2.67 As the record reflects, the First Civil Court in Morelos declined jurisdiction over the case on 27 November 2014 and referred it to the Eighth District Court in the State of Chihuahua, which assumed jurisdiction on 23 January 2015.¹⁵³
- 2.68 Knowing that their lawsuit was going poorly, Mineros Norteños decided in 2016 to take the law into its own hands and instituted the first blockade of the Project, which SVB returns to below in Section 2(D).¹⁵⁴ Unlike the 2019 events forming the basis for this claim, in 2016, the Mexican authorities acted swiftly to end that blockade and to return the Project site to SVB within one day.¹⁵⁵ Ultimately, it was clear why Mineros Norteños took the law into its own hands, as the Mexican courts dismissed their legal claims at each instance.
- 2.69 On 4 October 2017, the Eighth District Court dismissed Mineros Norteños’s claims based on Minera Metalín’s statute of limitations defense.¹⁵⁶ On 18 October 2017, Mineros Norteños appealed the District Court’s decision.¹⁵⁷ On 31 July 2019, the Second Unitary Tribunal of the Seventeenth Circuit affirmed the District Court’s decision, also finding that the limitations period for the breach of contract claims had expired.¹⁵⁸ Thus, courts at every level of the Mexican judicial system determined that Mineros Norteños’s claims could not be brought.
- 2.70 In parallel, Mineros Norteños baselessly accused Mr. Barry and other persons associated with SVB and Minera Metalín of fraudulently misleading SVB’s investors in the United States and Canada by misrepresenting the nature of the Option Agreement with Mineros Norteños and accusing them of never intending to develop the Sierra Mojada Project.¹⁵⁹ These baseless proceedings resulted in the local District Attorney summoning Minera Metalín employees to

¹⁵³ Judgment of Regional Chamber of the Superior District Court of the State, 1 October 2017, **C-0029**.

¹⁵⁴ Lopez Rodriguez WS, paras. 6.1-6.24.

¹⁵⁵ Lopez Rodriguez WS, paras. 6.13-6.24.

¹⁵⁶ Judgment of Regional Chamber of the Superior District Court of the State, 1 October 2017, **C-0029**.

¹⁵⁷ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, **C-0040**, pp 17-18, para. 12.

¹⁵⁸ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, **C-0040**, p. 18, para. 14.

¹⁵⁹ See, e.g., Summons in the criminal complaint no. 042/2014 addressed to T. Barry, 3 February 2015, **C-0026**.

question them about their “true intentions” for the Project.¹⁶⁰ Needless to say, Mineros Norteños’s criminal complaints were without merit and designed to create yet another point of leverage in its attempt to force royalties they were not owed from Minera Metalín.

2.71 On 3 August 2020, Mineros Norteños proceeded to file an *amparo* action – a constitutional challenge of Government action – requesting relief from the Second Unitary Tribunal’s decision and asserting that this decision was improper. On 11 March 2021, the Third Collegiate Court in Civil and Labor Matters of the Seventeenth Circuit issued Direct Amparo Ruling 375/2020, declining to provide constitutional protection from the Second Unitary Tribunal’s decision.¹⁶¹ The Third Collegiate Court found that that decision did not violate Mineros Norteños’s rights and observed, consistent with the prior three courts to consider the issue, that Mineros Norteños’s claims were time barred.¹⁶²

(D) In January 2016, while its baseless lawsuit was pending, Mineros Norteños illegally blockaded the Sierra Mojada Project, which the Mexican authorities ended swiftly

2.72 As noted above, in January 2016, while Mineros Norteños’s baseless lawsuit against Minera Metalín remained pending before the District Court in Chihuahua, Mineros Norteños decided to take matters into its own hands and to extort the alleged royalties from Minera Metalín directly by illegally blockading the Project site (the “**Initial Blockade**”).

2.73 Specifically, on 31 January 2016, Mineros Norteños held a meeting in Sierra Mojada with all of their members.¹⁶³ At the meeting, they discussed a plan to blockade the Project on 4 February 2016 to extort payment of the alleged royalties from Minera Metalín.¹⁶⁴

2.74 Minera Metalín’s country manager, Juan Manuel López Ramírez, learned about this planned blockade on 2 February 2016 from two employees with connections to Mineros Norteños: Enrique Hernández and Carlos Luna. In anticipation of the blockade, Mr. López Ramírez

¹⁶⁰ Lopez Rodríguez WS, para. 7.1.

¹⁶¹ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, **C-0040**.

¹⁶² Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, **C-0040**.

¹⁶³ López Ramírez WS, para. 6.1.

¹⁶⁴ López Ramírez WS, para. 6.1.

prepared the camp at the Project site, securing valuable items and important paperwork and locking the gates to the camp.¹⁶⁵ Mr. López Ramírez also instructed Minera Metalín’s employees not to come to work on the day of the planned blockade, but two employees, Messrs. Hernández and Luna, opted to stay in camp to assist Mr. López Ramírez.¹⁶⁶

2.75 On 3 February 2016, Mr. López Ramírez also delivered a letter to the Mayor of Sierra Mojada, Fernando Villalobos, outlining Minera Metalín’s concerns regarding the planned blockade. The letter formally requested the Mayor’s intervention and the support of the local police “in order to prevent the commission of unlawful acts”.¹⁶⁷ Minera Metalín’s counsel, Jorge Sanchez, also mailed copies of the letter to the Governor of the State of Coahuila, the Secretary of the Interior of the State of Coahuila, the Secretary of Economy of the State of Coahuila, and the Chief of Police in Sierra Mojada, Manuel Puerta Valenzuela.¹⁶⁸

2.76 That day, Mr. López Ramírez also had a meeting with the Mayor Villalobos and Chief Valenzuela.¹⁶⁹ Chief Valenzuela told Mr. López Ramírez that he would come to the Sierra Mojada Project Site the following day, when the blockade was set to take place, to ensure that any conflict did not escalate into violence.¹⁷⁰

2.77 On 4 February 2016, Mineros Norteños members began arriving at the Project site at 8:00 a.m., led by their President, Lorenzo Fraire Hernández.¹⁷¹ By 10:00 a.m., roughly 50 people had gathered outside the camp.¹⁷² Messrs. López Ramírez, Hernández and Luna remained in the security booth adjacent to the front gate.¹⁷³ Around 11:00 a.m., Mineros Norteños tried to enter the camp by pulling on the locked front gate and attempting to pry it open.¹⁷⁴ Mr. López Ramírez stepped out of the booth, walked to the front gate, and tried to encourage

¹⁶⁵ López Ramírez WS, paras. 6.3-6.4.

¹⁶⁶ López Ramírez WS, paras. 6.11-6.12.

¹⁶⁷ López Ramírez WS, para. 6.7; Letter from Minera Metalín to the President of the Municipality of Sierra Mojada, 3 February 2016, **C-0070**.

¹⁶⁸ López Ramírez WS, para. 6.8.

¹⁶⁹ López Ramírez WS, para. 6.10.

¹⁷⁰ López Ramírez WS, para. 6.10.

¹⁷¹ López Ramírez WS, para. 6.13.

¹⁷² López Ramírez WS, para. 6.13.

¹⁷³ López Ramírez WS, para. 6.15.

¹⁷⁴ Lopez Ramires WS, para. 6.15.

Mineros Norteños to leave the camp.¹⁷⁵ Mineros Norteños refused to speak with Mr. López Ramírez, asserting that they would only speak with Tim Barry, whom, they alleged, owed them money.¹⁷⁶

2.78 Mr. López Ramírez called the Public Prosecutor’s Office in Química del Rey, the Citizen Attention Service for the State of Coahuila, and the Office of the Director of Public Security and the Department of Citizen Attention in the City of Saltillo to report Mineros Norteños’ actions.¹⁷⁷ Each of these entities told Mr. López Ramírez that it was aware of the blockade, but that it was unable to immediately address the situation.¹⁷⁸

2.79 Around 12:00 p.m., an administrative official from the Mayor’s Office and the Chief Valenzuela met with Mineros Norteños and tried to get its members to leave the Project.¹⁷⁹ Mineros Norteños refused to move, however, and insisted that they were waiting for the arrival of a Public Prosecutor.¹⁸⁰ The mood in the blockade then shifted. As Mr. López Ramírez explains: “[a]s the blockade continued over the next few hours, it was clear that Mineros Norteños were getting increasingly frustrated that we were not acceding to their demands to let them come into the camp and that Tim Barry was not present to talk to them”.¹⁸¹

2.80 At 4:30 p.m., two leaders of Mineros Norteños put chains and locks on the front gates to the Sierra Mojada camp, while other members put chains and locks on the emergency exit at the back of the camp.¹⁸² Mineros Norteños’s clear goal was to prevent Mr. López Ramírez and the two other Minera Metalín employees inside the camp from leaving. Messrs López Ramírez, Hernández, and Luna were then held hostage inside the camp, effectively serving as collateral for Minera Metalín’s purported debt to Mineros Norteños under the 2000 Agreement.¹⁸³

¹⁷⁵ López Ramírez WS, para. 6.15.

¹⁷⁶ López Ramírez WS, para. 6.15.

¹⁷⁷ López Ramírez WS, paras. 6.16-6.17.

¹⁷⁸ López Ramírez WS, paras. .16-6.17.

¹⁷⁹ López Ramírez WS, para. 6.18.

¹⁸⁰ López Ramírez WS, para. 6.18.

¹⁸¹ López Ramírez WS, para. 6.19.

¹⁸² López Ramírez WS, para. 6.20.

¹⁸³ López Ramírez WS, paras. 6.20-6.21.

2.81 Mr. López Ramírez attempted to speak to Mr. Fraire, the President of Mineros Norteños, again, but he was hostile and unreceptive. As Mr. López Ramírez notes:

He told me that “if there is any tragedy, you will be responsible, and if they have to die there, they will die there.” I found Lorenzo’s words disturbing. It was clear at that point that he wanted to hold us hostage in the camp, irrespective of the consequences, in order to pressure Minera Metalín to pay Mineros Norteños the royalty payments.¹⁸⁴

2.82 As Mr. López Ramírez further notes, Mineros Norteños stated that “they would only leave if they could talk to Minera Metalín’s ‘true’ representatives, not its Mexican representatives, so they could learn the company’s ‘true’ intentions”.¹⁸⁵

2.83 That evening, Mineros Norteños began setting up camp and preparing to spend the night at the Sierra Mojada Project site.¹⁸⁶ Mr. López Ramírez continued calling various Public Prosecutor’s offices in the State of Coahuila in the hope that some law enforcement official would be willing and able to intervene that night. Locked behind the camp’s gates, with a mob of angry men screaming at him and demanding money, Mr. López Ramírez was eager to get law enforcement out to the site to disperse Mineros Norteños as soon as possible.¹⁸⁷

2.84 Finally, at around 10:00 p.m., two Public Prosecutors from Monclova, Coahuila, Lic. Sergio López Reyna and Lic. Anayanci Serrano arrived, along with two Monclova police officers.¹⁸⁸ Lic. Serrano told Mineros Norteños that they were breaking the law and trespassing on private property, and she told them that they had to leave or they would be arrested.¹⁸⁹ Lic. Serrano then directed police officers to cut the locks and remove the chains from the front and back gates. Heeding Lic. Serrano’s commands, Mineros Norteños then started to pack up and leave the Project site.

¹⁸⁴ López Ramírez WS, para. 6.21.

¹⁸⁵ López Ramírez WS, para. 6.22.

¹⁸⁶ López Ramírez WS, para. 6.23.

¹⁸⁷ López Ramírez WS, para. 6.23.

¹⁸⁸ López Ramírez WS, para. 6.24.

¹⁸⁹ López Ramírez WS, para. 6.24.

- 2.85 Messrs. López Ramírez, Hernández and Luna remained at the camp that night and kept the gates locked in case any of the remaining members of Mineros Norteños decided to return once the Public Prosecutors left.¹⁹⁰ By the following morning, the camp at the Sierra Mojada Project was cleared out and Minera Metalín's operations returned to normal.¹⁹¹
- 2.86 The Initial Blockade, while a stressful ordeal for Messrs. López Ramírez, Hernández and Luna, demonstrates the capabilities and resources of Mexican law enforcement agencies when they are committed to enforcing the law. The Public Prosecutors from Monclova drove more than 150 kilometers to Sierra Mojada to intervene and put an end to the illegal Initial Blockade. They immediately identified the unlawfulness of Mineros Norteños's conduct – including trespass and false imprisonment – and they successfully ordered Mineros Norteños to disperse in a matter of hours.¹⁹² Most importantly, they protected Messrs. López Ramírez, Hernández, and Luna from harm and set them free.
- 2.87 As a result of Mexico's swift intervention, just one day after the Initial Blockade began, Minera Metalín was able to resume work at the Sierra Mojada Project.¹⁹³

(E) SVB secured critical additional financing to take the Sierra Mojada Project forward to production through an option agreement with Australian mining major South32

- 2.88 Following the end of the Initial Blockade and after investing significant time and resources into discovering the Shallow Silver Zone and defining the mineral resources at the Project, SVB sought critical additional financing from a mining major to take the Sierra Mojada Project forward to production.¹⁹⁴ This is a standard step in the progression of a mining project from exploration to extraction, and one that SVB's management had done successfully with a number of other development projects.¹⁹⁵
- 2.89 As Mr. Barry explains, in 2017, he presented the Sierra Mojada Project, as developed by SVB, to several mining companies, explaining the Project's risks and significant upside, particularly

¹⁹⁰ López Ramírez WS, para. 6.24.

¹⁹¹ López Ramírez WS, para. 7.1; Edgar WS, paras. 7.3-7.4; Barry WS, para. 5.9.

¹⁹² López Ramírez WS, para. 6.24.

¹⁹³ López Ramírez WS, para. 7.1; Edgar WS, paras. 7.3-7.4; Barry WS, para. 5.9.

¹⁹⁴ Barry WS, paras. 4.22-4.29.

¹⁹⁵ Barry WS, paras. 4.22-4.29.

the high grade Shallow Silver Zone SVB had discovered.¹⁹⁶ The Project attracted the interest of several mining companies, including PanAmerican Silver, Americas Silver, Fortuna Silver, and South32 International Investment Holdings Pty Ltd (“**South32**”), a subsidiary of Australian mining major South32.¹⁹⁷

2.90 South32 – a spin-off of BHP Billiton (the largest mining company in the world) and a leading global mining and metals group with operations in Australia, Southern Africa, and North and South America¹⁹⁸ – was interested in investing in the Project, as it had geology and a style of mineralization that was similar to South32’s Hermosa Project located in the Patagonia Mountains of Southern Arizona.¹⁹⁹

2.91 Specifically, as Mr. Barry explains, unlike other interested mining companies, South32 approached the SVB team directly based on a recommendation from Arizona Mining, South32’s development partner in the Hermosa Project.²⁰⁰ The Hermosa Project, like the Sierra Mojada Project, is located in a historic mining district comprised of polymetallic sulphide deposits, including zinc, lead and silver.²⁰¹ South32 initially made a small investment in the Hermosa Project, acquiring approximately 15% of Arizona Mining’s shares with the option for further investment.²⁰² As Arizona Mining made significant additional mineral discoveries, the company went from a US\$ 40 million market capitalization to an eventual US\$ 1.6 billion takeover by South32.²⁰³

2.92 Don Taylor, the then CEO of Arizona Mining recommended the Sierra Mojada Project to South32 based on his own visit to the Project site.²⁰⁴ South32 conducted three site visits, including due diligence checks and technical assessments based on a data room SVB

¹⁹⁶ Barry WS, paras. 4.22-4.29; Edgar WS, para. 6.1.

¹⁹⁷ Barry WS, paras. 4.25-4.30; Edgar WS, paras. 6.1-6.3.

¹⁹⁸ Edgar WS, para. 6.2; see South32 Annual Report 2022, **C-0064**.

¹⁹⁹ Edgar WS, para. 6.3.

²⁰⁰ Barry WS, para. 4.26; Edgar WS, para. 6.3.

²⁰¹ South32 News Release, *South32 Announces Historic \$2.16 Billion Investment in Southern Arizona Hermosa Project*, 14 February 2024, **C-0138**.

²⁰² South32 Media Release, *South32 Closes Strategic Investment in Arizona Mining*, 16 May 2017, **C-0092**.

²⁰³ South32 News Release, *South32 Announces Historic \$2.16 Billion Investment in Southern Arizona Hermosa Project*, 14 February 2024, **C-0138**.

²⁰⁴ Barry WS, para. 4.52; Edgar WS, para. 6.5.

established for this purpose.²⁰⁵ The combination of the large, near surface silver and zinc oxide resource, coupled with a transition to sulphide mineralization extending to depth, was similar to the Hermosa deposit and suggested to South32 that the Sierra Mojada deposit was part of a much larger mineralized system with significant upside.²⁰⁶ On this basis, South32 agreed to partner with Silver Bull on the Sierra Mojada Project.²⁰⁷

2.93 Accordingly, on 1 June 2018, SVB, Minera Metalín, and Contratistas entered into an Option Agreement with South32 (the “**Option Agreement**”), pursuant to which SVB granted South32 an option to form a 70/30 joint venture for the Project.²⁰⁸ Specifically, South32 agreed to contribute a minimum of US\$ 10 million to fund exploration at the Project over four years in exchange for an option to purchase 70% of all of the issued and outstanding shares of Minera Metalín for US\$ 100 million, less the funding contributed by South32 during the option period.²⁰⁹ Initial targets of the exploration program included extensions of the high grade silver sulphide zones.²¹⁰ As Mr. Barry noted in SVB’s press release at the time:

*This [transaction] validates the significant success we have had in identifying high grade sulphide zones at the Sierra Mojada project. South32 is a globally diversified metals and mining company that will bring funding and significant technical expertise to the project. We believe this agreement recognizes the significant potential at the Sierra Mojada project.*²¹¹

2.94 The value of the equity option, however, did not reflect the actual value of the Sierra Mojada Project at that time.²¹² As Mr. Edgar explains, South32, as a mining major, is in the business

²⁰⁵ Barry WS, para. 4.52; Edgar WS, para. 6.5.

²⁰⁶ Barry WS, para. 4.22; Edgar WS, para. 6.3.

²⁰⁷ Barry WS, para. 4.26; Edgar WS, paras. 6.3-6.6.

²⁰⁸ Barry WS, para. 4.28; Edgar WS, paras. 6.6-6.7.

²⁰⁹ Barry WS, para. 4.29; Edgar WS, paras. 6.6-6.7.

²¹⁰ Barry WS, paras. 4.22, 4.29-4.31.

²¹¹ SVB News Release, *Silver Bull grants an option entitling South32 to form a 70/30 joint venture in the Sierra Mojada project for an aggregate investment of US\$100 million*, 4 June 2018, C-0099.

²¹² Barry WS, para. 4.29; Edgar WS, para. 6.7.

of making significant profits from investments in mineral exploration projects.²¹³ To make such profits, South32 does not pursue equity options at a price they believe to be close to or reflective of the actual value of its equity stake in the project.²¹⁴ Instead, South32 – like all other mining majors – aim to acquire equity stakes in promising projects at the most discounted rate possible to maximize returns when the mine goes into production.²¹⁵ Thus, while SVB were pleased with South32’s investment, as both SVB and South32 expected the Project to yield significant returns, SVB felt that the price South32 paid for the option was a bargain because 70% of the Project far exceeded US\$ 100 million in value.²¹⁶

2.95 Mr. Barry likewise explains that SVB needed financial assistance to pursue further drilling programs at Sierra Mojada, particularly in view of the difficult market conditions at that time. Those conditions included a continued depressed silver and zinc prices and Minero Norteños’s continuing frivolous lawsuit against Minera Metalín (which, as noted above, every level of the Mexican judiciary ultimately rejected).²¹⁷ In the circumstances, SVB therefore decided to accept the joint venture option at this price, with the mutual understanding that the additional investment from South32 would yield additional value for both parties far beyond the amounts invested by each in development of the Project.²¹⁸

2.96 On 4 June 2018, South32 funded an initial US\$ 3 million for exploration works at the Sierra Mojada Project.²¹⁹ Additionally, in August 2018, SVB closed a two-tranche private placement for cumulative gross proceeds of US\$ 3,788,000, further ensuring that SVB was in a strong financial position.²²⁰

2.97 Shortly after executing the Option Agreement, SVB commissioned Archer Cathro & Associates Ltd, an independent geological consulting company, to undertake a further independent

²¹³ Edgar WS, paras. 6.4, 6.7.

²¹⁴ Edgar WS, para. 6.7.

²¹⁵ Edgar WS, para. 6.7.

²¹⁶ Edgar WS, para. 6.7.

²¹⁷ Barry WS, para. 4.54, 4.29.

²¹⁸ Barry WS, para. 4.27-4.30.

²¹⁹ SVB News Release, Silver Bull announces private placement of US\$3 million, 26 June 2018, **C-0100**; Barry WS, para. 4.56.

²²⁰ SVB News Release, *Silver Bull announces closing of second tranche of private placement for cumulative gross proceeds of usd\$3,788,443*, 21 August 2018, **C-0102**.

third-party resource assessment at the Project.²²¹ The technical report, published in October 2018, revealed that the measured and indicated silver resource at the Sierra Mojada Project were 87.4 million ounces and that the measured and indicated zinc resource was 5.35 billion pounds, an increase of nearly one billion pounds from the 2015 Report.²²² As Mr. Edgar explains, although the 2018 Report reflected that the silver resource had decreased slightly, this decrease was due to the need to apply a higher cutoff grade for silver because of the continuing depressed silver price compared to the 2015 Report.²²³

2.98 Additionally, SVB undertook with South32 a significant work program to outline drill targets across a series of prospects in the area. This included:

- (a) a 5,297 line kilometer helicopter-borne Versatile Time Domain Electro Magnetic and Magnetic Geophysical Survey to aid in re-interpretating and targeting the drill holes for the drill program;
- (b) a full remapping and reinterpretation of the geology on the property; and
- (c) a program to survey, map and sample all historical underground workings spread over four separate prospects, providing invaluable information of the potential geometry of mineralization in these areas.²²⁴

2.99 Further, as noted above, in early April 2019, SVB and South32 commenced an 8,000 meter surface drill program targeting a series of the sulphide extensions at depth to the main deposit, as well as a series of four historic mining areas located along the Sierra Mojada Fault within the concession area, three of which had never been drilled previously.²²⁵ Shortly

²²¹ Barry WS, para. 4.57; Edgar WS, para. 6.9; Archer Cathro & Associates Ltd, *Technical report on the resources of the Silver-Zinc Sierra Mojada Project at Coahuila, Mexico*, 30 October 2018, **C-0104**.

²²² Edgar WS, para. 6.9; Archer Cathro & Associates Ltd, *Technical report on the resources of the Silver-Zinc Sierra Mojada Project at Coahuila, Mexico*, 30 October 2018, **C-0104**, p. 19.

²²³ Edgar WS, para. 6.9; Archer Cathro & Associates Ltd, *Technical report on the resources of the Silver-Zinc Sierra Mojada Project at Coahuila, Mexico*, 30 October 2018, **C-0104**, p. 19.

²²⁴ SVB News Release, *Silver Bull completes a 5,297 line kilometer airborne geophysical survey on the Sierra Mojada project, Coahuila, Mexico*, 20 November 2018, **C-0105**.

²²⁵ SVB News Release, *Silver Bull Receives Drill Permits and Announces the Start of an Initial 8,000 Meter Drill Program on the Sierra Mojada Project, Coahuila, Mexico*, 8 April 2019, **C-0108**.

thereafter, on 1 May 2019, South32 notified SVB that it wished to maintain its option on the Sierra Mojada Project by funding an additional US\$ 3 million in exploration.²²⁶

- 2.100 On 29 July 2019, SVB announced that it had made a new discovery at Sierra Mojada through its drill program with South32 and intercepted 13.25 meters of massive sulphide mineralization in the Palomas Negros area, a historical mining area that had never been assessed with modern exploration techniques.²²⁷ As Mr. Barry reported at the time, “to get a high grade intercept over 13.25 meters in a first pass drill pass drill program is very encouraging, especially so close to surface”.²²⁸
- 2.101 SVB and South32 geologists advanced this drill program through August 2019, which continued to return positive results. Indeed, on 20 August 2019, just days before Mineros Norteños illegally blockaded the Project site for a second time, a geologist from South32 advised SVB that the results of one of the daily geology studies were “very encouraging”.²²⁹
- 2.102 Despite these “very encouraging” results at the Project, and as explained further below, SVB and South32 were forced to terminate the Option Agreement in August 2022 as result of Mexico’s failures to take any reasonable action to end Mineros Norteños’s second illegal blockade.

(F) AMLO’s victory in the 2018 elections ushered in a new wave of resource nationalism in Mexico

- 2.103 For years, SVB had maintained high confidence in doing business in Mexico due to its increasing warmth towards foreign investment in the energy sector and commitment to upholding its obligations under free trade agreements.²³⁰ As Mr. Edgar explains:

²²⁶ SVB News Release, *South32 Maintains Option On The Sierra Mojada Project*, 1 May 2019, **C-0109**.

²²⁷ SVB News Release, *Silver Bull Makes New Discovery and Intercepts 13.25 Meters of Massive Sulphide Grading 9.05% Zinc, 2.12% Lead and 16g/t Silver in Coahuila, Mexico*, 29 July 2019, **C-0110**.

²²⁸ SVB News Release, *Silver Bull Makes New Discovery and Intercepts 13.25 Meters of Massive Sulphide Grading 9.05% Zinc, 2.12% Lead and 16g/t Silver in Coahuila, Mexico*, 29 July 2019, **C-0110**.

²²⁹ Email from Mike Roberts to Tim Barry, Matthew Dumala et al, 19 August 2019, **C-0111**.

²³⁰ Global Alliance of SMEs, *Overview of Foreign Direct Investment in Mexico*, last accessed 17 June 2024, **C-0143** (available at: www.globalsmes.org/news/index.php?func=detail&detailid=1028&catalog=39).

*At the time I was evaluating the [Sierra Mojada] Project, I felt comfortable about doing business in Mexico due to reports of the country's increasing warmth towards foreign investment in the energy sector and commitment to free trade in the post-NAFTA era. Specifically, in 2009, when President Felipe Calderón was in office, I understood that foreign investment – particularly investment from US and Canadian companies – was welcomed.*²³¹

- 2.104 To that end, in 2013, the then Mexican President Enrique Peña Nieto passed sweeping energy reforms that reversed decades of resource nationalism by abolishing State monopolies, increased transparency in permitting decisions, and made the oil and gas and mining sectors in Mexico more competitive.²³²
- 2.105 Mexico's attitude towards foreign investment changed dramatically, however, with the election of President Andres Manuel López Obrador ("**AMLO**") on 1 December 2018. AMLO's election brought a reversal of the pro-free trade policies put in place by former Presidents Peña Nieto and Felipe Calderón, which AMLO called "looting," "pillaging," and "a calamity" for Mexico, as well as a "neoliberal regime."²³³ AMLO frequently referred to foreign investment as "neo-colonialism"²³⁴ and touted policies of "energy sovereignty" and "taking back Mexico's energy" via State monopolies in the oil and gas and mining sectors.²³⁵

²³¹ Edgar WS, paras. 5.17-5.18.

²³² Elisabeth Malkin, *In Move for Economy, Mexican President Seeks Foreign Investment in Energy*, New York Times, 12 August 2013, **C-0087** (available at www.nytimes.com/2013/08/13/world/americas/mexican-president-invites-foreign-investment-in-energy.html).

²³³ Kirk Semple & Oscar Lopez, *Mexico Set to Reshape Power Sector to Favor the State*, New York Times, 7 March 2021, **C-0120** (available at www.nytimes.com/2021/03/07/world/americas/mexico-energy-sector-privatization.html); Jude Webber, *Mexico's Lopez Obrador Vows to End Neo-Liberalism in Inauguration*, Financial Times, 2 December 2018, **C-0106** (available at www.ft.com/content/fdb0c912-f3a6-11e8-ae55-df4bf40f9d0d).

²³⁴ Jorge Galindo, *Un 62% de los mexicanos creen que Lopez Obrador utiliza la Conquista para hacer politica*, El Pais, 18 July 2021, **C-0121** (available at www.elpais.com/mexico/2021-07-18/los-mexicanos-creen-que-lopez-obrador-utiliza-la-conquista-para-hacer-politica-y-no-ven-necesidad-de-que-espana-pida-disculpas.html).

²³⁵ Martin Rodriguez Rodriguez, *An Alternative to Mexico's Resource Nationalism* Yale Journal of International Affairs, 29 April 2022, **C-0125** (available at www.yalejournal.org/publications/an-alternative-to-mexicos-resource-nationalism); Samantha Gross, *AMLO Reverses Positive Trends in Mexico's Energy Industry* Brookings Institute, 20 December 2019, **C-0113** (available at www.brookings.edu/articles/amlo-reverses-positive-trends-in-mexicos-energy-industry/).

- 2.106 With respect to mining, AMLO quickly went about effecting a number of aggressive resource nationalist policies, such as nationalizing Mexico’s lithium industry.²³⁶ As Lourdes Melgar, a top energy official under Peña Nieto explained, “[AMLO] has had a very nationalistic view of how to utilize energy resources” and “he wants to bring private producers to their knees, and we are seeing that in the most absurd ways.”²³⁷
- 2.107 Additionally, on 28 March 2023, AMLO issued a sweeping Mining Reform Act,²³⁸ which reversed the former “free land, first applicant” means of applying for and receiving mining concessions so that such concessions are not granted until numerous environmental, social, and economic permits are obtained.²³⁹ Further, the terms of concessions were cut nearly in half from 50 years to 30 years.²⁴⁰ Mining activities are no longer considered preferential, and mining concessions cannot be transferred without prior Government approval.²⁴¹
- 2.108 Perhaps most notably, since AMLO’s election in 2018, Mexico has not issued any new mining concessions²⁴² and has arbitrarily legislated countless new regulations under which mining concessions can be terminated by the government.²⁴³ In doing so, AMLO has made Mexico a hostile environment for the mining industry, stifling competition, eroding transparency, and favoring state-run companies over foreign investors, such as SVB. Indeed, between 2019 and

²³⁶ Carolina Pulice and Nelson Bocanegra, *Mexico’s Lopez Obrador Orders Ministry to Step Up Lithium Nationalization*, Reuters, 18 February 2023, **C-0054** (available at www.reuters.com/world/americas/mexicos-lopez-obrador-orders-ministry-step-up-lithium-nationalization-2023-02-19/).

²³⁷ Kirk Semple & Oscar Lopez, *Mexico Set to Reshape Power Sector to Favor the State*, New York Times (7 March 2021), available at <https://www.nytimes.com/2021/03/07/world/americas/mexico-energy-sector-privatization.html>, at **Exhibit C-0120**.

²³⁸ David Alire Garcia et al., *Mexican President Proposes Tougher Mining Laws, Shorter Concessions* Reuters, 29 March 2023, **C-0129** (available at www.reuters.com/world/americas/mexican-president-proposes-tougher-mining-laws-shorter-concessions-2023-03-29/).

²³⁹ Ley de Minería (Última reforma publicada DOF 08-05-2023), at **Exhibit C-0132**.

²⁴⁰ D. Trevedan & H. González, *Major Overhaul to Mexico’s Mining Regulation*, Norton Rose Fulbright, May 2023, **C-0130** (available at www.nortonrosefulbright.com/en/knowledge/publications/04715af1/major-overhaul-to-mexicos-mining-regulation).

²⁴¹ D. Trevedan & H. González, *Major Overhaul to Mexico’s Mining Regulation*, Norton Rose Fulbright, May 2023, **C-0130** (available at www.nortonrosefulbright.com/en/knowledge/publications/04715af1/major-overhaul-to-mexicos-mining-regulation).

²⁴² D. B. Solomon & D. Rajagopal, *Mexican Mining Sector Balks at Plan to Ban Open-Pit Mines*, Reuters, 15 February 2024, **C-0130** (available at www.reuters.com/markets/commodities/mexican-mining-sector-balks-plan-ban-open-pit-mines-2024-02-15/).

²⁴³ H. Burnett et al., *Mexico Enacts New Legal regime for Mining Concessions*, King & Spalding, 12 May 2023, **C-0133** (available at www.kslaw.com/news-and-insights/mexico-enacts-new-legal-regime-for-mining-concessions).

2023, Mexico's ranking in the Fraser Institute's Investment Attractiveness Index for the Mining Sector dropped precipitously from 38th out of 76 to 74th out of 86.²⁴⁴

- 2.109 The political party with which AMLO is affiliated – MORENA – has made anti-mining policies a fundamental tenet of the party's platform.²⁴⁵ In 2018, MORENA swept to victory across nearly every state in Mexico, including in Coahuila.²⁴⁶ In District 2 in Coahuila, which covers the Sierra Mojada Project, Francisco Javier Borrego Adame ("**Deputy Borrego**") was re-elected to Mexico's Congress as a Federal Deputy after switching his political affiliation MORENA, effectively riding the nationwide wave of MORENA support.²⁴⁷
- 2.110 As detailed below, after having raised no issue with the Sierra Mojada Project or with any other mining project in Sierra Mojada during the prior term in which he served in Mexico's Congress, Deputy Borrego adopted MORENA's anti-mining and anti-foreign investment positions and made it his mission to advance Mineros Nortesños's unlawful campaign to extort royalty payments from Minera Metalín.

(G) Mexico failed to take any reasonable action to protect the Sierra Mojada Project from a second illegal blockade imposed by Mineros Nortesños in September 2019

- 2.111 As explained below, following the election of AMLO in December 2018 and the adoption of MORENA's anti-mining and anti-foreign investment agenda, Deputy Borrego held a meeting with Mineros Nortesños in early September 2019 to encourage and incite the mining cooperative to blockade the Sierra Mojada Project once again. Eager to obtain by force what it had been unable to obtain lawfully through the Mexican courts and emboldened by Deputy Borrego's support, Mineros Nortesños proceeded to impose a second blockade at the Project beginning on 8 September 2019, reasserting its baseless demand for royalty payments. True to Deputy Borrego's word, unlike in 2016, the Mexican authorities in 2019 failed to take any

²⁴⁴ Fraser Institute, *Annual Survey of Mining Companies 2023*, p. 14, Table 1, **C-0142** (available at www.fraserinstitute.org/sites/default/files/2023-annual-survey-of-mining-companies.pdf).

²⁴⁵ P. Duran, *Sheinbaum's Stance on Mining: Continuity with AMLO's Policies?* Mexico Business New, 4 June 2024, **C-0140** (available at mexicobusiness.news/mining/news/sheinbaums-stance-mining-continuity-amlos-policies).

²⁴⁶ A. Tanco, *Infographic | 2018 Mexican Presidential Results*, 10 July 2018, **C-0101** (available at <https://www.wilsoncenter.org/article/infographic-2018-mexican-presidential-election-results>).

²⁴⁷ Dip. Francisco Javier Borrego Adame, Cámara de Diputados, H. Congreso de la Unión, last accessed 17 June 2024, **C-0144** (available at sitl.diputados.gob.mx/LXIV_leg/curricula.php?dipt=41).

genuine action to disperse the blockade, protect SVB's investments, personnel or property, or sanction those responsible. As a result of Mexico's refusal to end the unlawful blockade despite SVB's and Minera Metalín's repeated pleas for assistance, Mineros Nortesños continues to blockade, occupy, use and exploit the Project site to this day with total impunity (the "**Continuing Blockade**").

- (i) Deputy Borrego encouraged Mineros Nortesños to impose a second illegal blockade, assuring Mineros Nortesños that his "allies" would protect them

2.112 Frustrated by its failure to obtain payment of alleged royalties through the Mexican courts, Mineros Nortesños once again decided to take matters into its own hands and to extort payment from Minera Metalín by illegally blockading the Project for a second time.

2.113 Specifically, on 3 September 2019, Mineros Nortesños held a meeting in Sierra Mojada to discuss the status of their efforts to obtain royalty payments following the dismissal of their legal claims against Minera Metalín.²⁴⁸ At the meeting, Deputy Borrego spoke to the Mineros Nortesños members and encouraged them to initiate a protest action.²⁴⁹ As noted above, Deputy Borrego, a member of the MORENA party, had recently been re-elected to serve another term representing Coahuila District 2.²⁵⁰

2.114 Mr. López Ramírez learned about the meeting between Deputy Borrego and Mineros Nortenos years later, on 5 January 2024, when he spoke with Lorenzo Fraire, the leader of Mineros Nortenos about the blockade. As Mr. Fraire told Mr. López Ramírez, Deputy Borrego promised Mineros Nortesños that if they initiated another blockade of the Sierra Mojada Project, he would support them by speaking at the protest and inviting television and newspaper reporters to provide coverage.²⁵¹ Mineros Nortesños's leader, Mr. Fraire, and the individual holding Mineros Nortesños' power of attorney, Miguel Enriquez, told Deputy Borrego that they were unsure about staging another blockade because the last one had not been successful, and law enforcement had broken it up within a few hours.²⁵²

²⁴⁸ López Ramírez WS, para. 8.2.

²⁴⁹ López Ramírez WS, para. 8.6.

²⁵⁰ See para. 2.109.

²⁵¹ López Ramírez WS, para. 8.5.

²⁵² López Ramírez WS, para. 8.6.

2.115 Miguel Enriquez added that it was risky for Mineros Norteños to stage a blockade because Public Prosecutors had already warned them that it was illegal.²⁵³ Deputy Borrego brushed aside these concerns, telling Mineros Norteños that he was on Mineros Norteños’s side and that he had good lawyers who would be Mineros Norteños’s allies.²⁵⁴ A blockade, Deputy Borrego insisted, was the best way to put pressure on Minera Metalín in a public way that would attract the support of communities throughout Coahuila and perhaps throughout the entire country.²⁵⁵ Further, Deputy Borrego said that he hoped the next blockade would result in monetary distributions to Mineros Norteños’ membership, “enough for everyone.”²⁵⁶



Deputy Francisco Javier Borrego Adame, member of Mexico’s MORENA Party (2018).

2.116 On 4 September 2019, Mr. López Ramírez spoke with a cook at the Sierra Mojada camp, Lorena Betancourt, who revealed that she knew from her father, a member of Mineros Norteños, that Mineros Norteños’s members still were not sure of the logistics of the blockade; they only knew that Deputy Borrego had encouraged them to take action, and they were going to follow his instructions.²⁵⁷

²⁵³ López Ramírez WS, para. 8.6.

²⁵⁴ López Ramírez WS, para. 8.6.

²⁵⁵ López Ramírez WS, para. 8.6.

²⁵⁶ López Ramírez WS, para. 8.7.

²⁵⁷ López Ramírez WS, paras. 8.4-8.5, 8.7.

2.117 It is worth pausing here to acknowledge the significance of a sitting member of Mexico’s Congress encouraging an illegal blockade, which even *Mineros Nortesños’s* own advisor warned against. Deputy Borrego agitated for a protest action that was a *clear* violation of SVB and Minera Metalín’s rights simply for professional gain.

(ii) Although Minera Metalín warned multiple law enforcement agencies of the impending illegal blockade, no law enforcement officials took action

2.118 Immediately upon learning about *Mineros Nortesños’s* plan to initiate a second blockade, Mr. López Ramírez emailed Mr. Barry, Mr. Sanchez, and Sean Fallis, Minera Metalín’s CFO at the time.²⁵⁸ Mr. López Ramírez also contacted the Citizen Attention Service for the State of Coahuila and the Public Prosecutor from Química del Rey, as he had done during the prior blockade.²⁵⁹ He also contacted a relative, Andrés Hernández Márquez, who was an officer in Fuerza Coahuila, a specialized state police force, which works to prevent narcotrafficking and police corruption.²⁶⁰ Officer Hernández is based in Torreón, but he offered to come to Sierra Mojada, in his personal capacity, to try to prevent potential *Mineros Nortesños* violence.²⁶¹

2.119 On 5 September 2019, Mr. López Ramírez travelled to Química del Rey to speak with the Public Prosecutor about the impending blockade.²⁶² The Public Prosecutor assured Mr. López Ramírez that he would speak with *Mineros Nortesños* and attempt to dissuade it from taking action.²⁶³

2.120 The following day, however, when the Public Prosecutor spoke to *Mineros Nortesños* and alerted them that a blockade would be illegal, *Mineros Nortesños* ignored the Prosecutor’s warning, saying that Deputy Borrego supported them and that his lawyers had advised them that their proposed conduct could be considered lawful.²⁶⁴ *Mineros Nortesños* told the Prosecutor that Deputy Borrego would be attending the blockade and that if Deputy Borrego

²⁵⁸ Lopez Ramires WS, para. 8.3.

²⁵⁹ López Ramírez WS, para. 8.3.

²⁶⁰ López Ramírez WS, para. 8.3.

²⁶¹ López Ramírez WS, para. 8.3.

²⁶² López Ramírez WS, para. 8.8.

²⁶³ López Ramírez WS, para. 8.8.

²⁶⁴ López Ramírez WS, para. 8.9.

said it was okay to “take the camp,” Mineros Norteños would initiate the blockade. The Public Prosecutor was therefore unable to convince Mineros Norteños to abandon their plans.²⁶⁵ Sensing that a second blockade was inevitable, Mr. López Ramírez spent the rest of 6 September 2019 making preparations for the next blockade.

2.121 On 7 September 2019, Mr. López Ramírez called Mr. Marquez, in Coahuila, and he assured Mr. López Ramírez that he would come to Sierra Mojada and help Minera Metalín the following day. Mr. Marquez believed that the police would restrict Mineros Norteños from trespassing beyond the property line.²⁶⁶



Map of the camp and surrounding areas at the Sierra Mojada Project Site, (2019).²⁶⁷

²⁶⁵ López Ramírez WS, para. 8.9.

²⁶⁶ López Ramírez WS, para. 8.12.

²⁶⁷ Melnyk WS, para. 3.6.

- 2.122 On the morning of 8 September 2019, there were eight Minera Metalín employees working inside the camp at the Sierra Mojada Project: (1) Mr. López Ramírez, the Camp Manager; (2) Victor Chavarría Chairez, a water truck driver from a third party contracting company; (3) Carlos Luna, a general camp assistant; (4) Jose Velázquez, a Mexican geologist; (5) Matt Melnyk, an American geologist; (6) Oscar Olague, Mr. López Ramírez’s assistant; (7) Baltasar Gastélum, a driller from a third party contracting company; and (8) Ruben Navidad, a geology student at the University of Sonora who was interning at the Sierra Mojada Project.²⁶⁸ Everyone at the camp was focused on their work.
- 2.123 At 10:00 a.m., roughly ten local police officers from Sierra Mojada arrived at the Project site and parked at the property line waiting for Mineros Norteños.²⁶⁹ At around 12:30 p.m., the first members of Mineros Norteños began to arrive at the property line.²⁷⁰ The police officers attempted to keep them there, but Mineros Norteños were agitated and pushed to go straight to the camp. One of the officers called Mr. López Ramírez and told him to come to the property line to speak with Mineros Norteños.
- 2.124 Mr. López Ramírez walked to the property line and brought his assistant, Mr. Olague, with him to take photos and videos of the encounter. Mr. López Ramírez then attempted to engage with Mineros Norteños in good faith, but they told him they only wanted to speak with Tim Barry. Mr. López Ramírez told Mineros Norteños that their conduct was illegal, but Mineros Norteños said that the Mayor of Sierra Mojada was on their side, as was Deputy Borrego, so they were not concerned. More than 50 members of Mineros Norteños stood at the property line, far outnumbering the ten police officers, so Mineros Norteños began to push past them and walk up to the camp.

²⁶⁸ López Ramírez WS, paras. 8.13, 8.20, 8.22.

²⁶⁹ López Ramírez WS, para. 8.13.

²⁷⁰ López Ramírez WS, para. 8.14.



Members of Mineros Norteños crossing the property line and ignoring law enforcement, 8 September 2019²⁷¹

- 2.125 The police officers made no attempt to stop them. A little after 1:00 p.m., more than 120 members of Mineros Norteños, including their supporters, had made it to the front gates to the camp and were gathered outside shouting and demanding payments from Minera Metalín. The local police did nothing to respond to the surge of people or to redirect them from trespassing on Minera Metalín’s private property.²⁷²
- 2.126 Messrs. López Ramírez and Olague accepted a ride into town from Mr. Marquez, in Fuerza Coahuila, so that they could direct operations in the camp from Mr. López Ramírez’s home.²⁷³ As soon as he arrived home, Mr. López Ramírez began calling every Public Prosecutor’s Office that he could reach imploring them to come to the Sierra Mojada Project.²⁷⁴
- 2.127 At the same time, Deputy Borrego and his staff drove up to the Sierra Mojada Project and parked in front of the camp.²⁷⁵ The television and newspaper reporters that he had summoned were already waiting for him to arrive. Deputy Borrego proceeded to give a

²⁷¹ López Ramírez WS, para. 8.18.

²⁷² López Ramírez WS, paras. 8.18-8.19.

²⁷³ López Ramírez WS, paras. 8.20.

²⁷⁴ López Ramírez WS, para. 8.21.

²⁷⁵ López Ramírez WS, para. 8.23.

speech to the gathered members of *Mineros Norteños*.²⁷⁶ Mr. Navidad called Mr. López Ramírez during Deputy Borrego’s speech and told him everything Deputy Borrego said.



Press interviewing member of Mineros Norteños; Deputy Borrego on the far left, in blue polo shirt, 8 September 2019²⁷⁷

2.128 In his speech, Deputy Borrego condemned *Minera Metalín* for not paying *Mineros Norteños*, stating that SVB’s investments in Mexico were a classic example of foreign mining companies pouring money into Mexico and ripping off local people while they pillage Mexican resources.²⁷⁸ Deputy Borrego incited the crowd and told them to stay in front of the camp until *Minera Metalín* paid. Deputy Borrego and the reporters then left.²⁷⁹ At that point, there were between 120 and 150 members of *Mineros Norteños* outside the camp,²⁸⁰ and six *Minera Metalín* employees inside: Mr. Melnyk, Mr. Velázquez, Mr. Chairez, Mr. Navidad, Mr. Luna, and Mr. Gastélum.²⁸¹

²⁷⁶ López Ramírez WS, para. 8.23.

²⁷⁷ López Ramírez WS, para. 8.23.

²⁷⁸ López Ramírez WS, para. 8.23.

²⁷⁹ López Ramírez WS, para. 8.24.

²⁸⁰ Lopez Ramires WS, para. 8.23.

²⁸¹ López Ramírez WS, para. 8.26.

- 2.129 Later that evening, Mineros Norteños began to set up sleeping arrangements, cook food, and make plans to spend the night at the Project.²⁸² Back in town, Mr. López Ramírez began to make arrangements so that the six people trapped in camp had access to sufficient food and water and could ultimately escape.²⁸³
- 2.130 By the next afternoon, Mr. López Ramírez still had not heard back from any Public Prosecutor's office.²⁸⁴ The Public Prosecutor in Química del Rey who had promised that he would come to the Sierra Mojada Project to assist Minera Metalín was apparently out of town, and Mr. López Ramírez was unable to reach him or his staff.²⁸⁵ Meanwhile, the Office of the Coordinator of Prosecutors in the State of Coahuila informed Mr. López Ramírez that he was checking to see if any Public Prosecutors were available to come to the site.²⁸⁶
- 2.131 Later that afternoon, local police officers in Sierra Mojada called Mr. López Ramírez and informed him that they had learned that Mineros Norteños had summoned reinforcements from the local communities. Later, Mr. Fraire told Mr. López Ramírez that it was Deputy Borrego's idea to summon people from the surrounding communities as reinforcement.²⁸⁷
- 2.132 In view of the potential escalation of the conflict and the continued lack of any reasonable response from the Mexican authorities, SVB determined that it was critical to ensure the escape of its personnel who had been effectively kidnapped and locked inside the camp.

(iii) SVB's personnel escaped the blockaded camp under cover of night

- 2.133 After speaking with everyone in the camp, Mr. López Ramírez decided that the first of the six people to be extracted from the blockaded camp would be Messrs. Melnyk and Velázquez, the two geologists.²⁸⁸ Mr. Melnyk had radioed Mr. López Ramírez expressing significant discomfort at the situation, and once Mr. Velázquez learned Mr. Melnyk was leaving, Mr.

²⁸² López Ramírez WS, para. 8.25.

²⁸³ López Ramírez WS, para. 8.26.

²⁸⁴ Lopez Ramirez WS, para. 8.28.

²⁸⁵ López Ramírez WS, para. 8.27, 8.28.

²⁸⁶ López Ramírez WS, para. 8.27.

²⁸⁷ López Ramírez WS, para. 8.7.

²⁸⁸ López Ramírez WS, para. 8.30.

Velázquez wanted to leave as well.²⁸⁹ As Mr. Melnyk explains, “[a]ll of us remaining in the camp met in the dining hall and decided that we should leave Sierra Mojada, because we were concerned about supplies and the atmosphere felt tense and uncertain”.²⁹⁰

2.134 Messrs. López Ramírez, Olague, Melnyk and Velázquez devised an escape plan whereby Messrs. Melnyk and Velázquez would sneak out of the camp’s back gate at night and walk a few kilometers to the nearest road where Mr. Olague would be waiting to pick them up in his pickup truck.²⁹¹

2.135 Late on the night of 9 September 2019, Mr. Melnyk and Mr. Velázquez successfully escaped the blockaded camp.²⁹² As Mr. Melnyk explains:

*Close to midnight, we grabbed our bags and skirted the camp to the southeast corner of the camp site. In that area, there was lots of dark vegetation, thorny bushes, trees, and cactuses. We went out through the back gate, and traversed across rugged terrain until we reached a path that would take us to the access road where Oscar was waiting.*²⁹³

Mr. Olague then drove Messrs. Melnyk and Velázquez three hours to Torreon, Coahuila.²⁹⁴ They arrived between 3:00 and 4:00 a.m., and Messrs. Melnyk and Velázquez caught flights out of the city later that day, on 10 September 2019.²⁹⁵

2.136 At around noon on 10 September 2019, Mr. López Ramírez again called the Chief Prosecutor of the district where the Sierra Mojada Project is located. The Prosecutor, however, told Mr. López Ramírez that he could not come to the site to intervene unless Mineros Norteños committed some act of violence, and he would not come to the site just to tell Mineros

²⁸⁹ López Ramírez WS, para. 8.30; Melnyk WS, paras. 4.15-4.16.

²⁹⁰ Melnyk WS, para. 4.22.

²⁹¹ López Ramírez WS, para. 8.30.

²⁹² López Ramírez WS, para. 8.30, 8.31, 8.32.

²⁹³ Melnyk WS, para. 4.27.

²⁹⁴ López Ramírez WS, para. 8.31.

²⁹⁵ Melnyk WS, para. 4.30; López Ramírez WS, para. 8.32

Norteños that their conduct was improper.²⁹⁶ The Prosecutor added that he would meet with Mr. López Ramírez the following day at 3:00 p.m. in San Pedro, Coahuila, some 232 kilometers from Sierra Mojada, if he wanted to discuss the issue further.²⁹⁷ The rest of the day passed without any prosecutorial intervention.²⁹⁸

- 2.137 On 11 September 2019, Mineros Norteños remained outside the front gate.²⁹⁹ Still, no Public Prosecutors – or any other Government official – came to the Sierra Mojada Project Site or made any other effort at intervention.³⁰⁰ In light of the fact that three days had passed without any Government action, Mr. López Ramírez decided that the remaining Minera Metalín employees trapped in the camp would need to escape as soon as possible because “[i]t was growing increasingly clear that we would need to shut down the camp until law enforcement officials came to remove Mineros Norteños, and we did not know how long that would take”.³⁰¹
- 2.138 On 12 September 2019, Mr. Chavarría Chairez, Mr. Gastélum and Mr. Navidad escaped from the blockaded camp.³⁰² Because Mr. Chavarría Chairez and Mr. Gastélum were contract workers unaffiliated with Minera Metalín, and Mr. Navidad was a student intern, they assumed that they could walk out of the front gate without any problem.³⁰³ As they tried to walk out, however, Mineros Norteños stopped them and told them they could not leave until Tim Barry arrived.³⁰⁴ Shockingly, Mineros Norteños were once again attempting to use Minera Metalín employees as human bargaining chips and did so with impunity.
- 2.139 Messrs. Chavarría Chairez and Gastélum emphasized to Mineros Norteños that they were leaving the camp with Mr. Navidad, a student who was only 19 years old, and they just wanted

²⁹⁶ López Ramírez WS, para. 8.33

²⁹⁷ López Ramírez WS, para. 8.33.

²⁹⁸ López Ramírez WS, para. 8.33, 8.34, 8.35.

²⁹⁹ López Ramírez WS, para. 8.35.

³⁰⁰ López Ramírez WS, para. 8.35.

³⁰¹ López Ramírez WS, para. 8.35.

³⁰² López Ramírez WS, para. 8.36.

³⁰³ López Ramírez WS, para. 8.36.

³⁰⁴ López Ramírez WS, para. 8.36.

to get him home.³⁰⁵ Mr. Fraire, Mineros Norteños's leader, considered the situation and ultimately allowed the three men to leave, but not before warning them that they would never be allowed to return to the camp again and that their work at the Sierra Mojada Project was finished.³⁰⁶

2.140 By 13 September 2019, the only person remaining in the camp was Mr. Luna.³⁰⁷ Mr. López Ramírez instructed Mr. Luna to shut everything in the camp down, hide valuable items, and lock up buildings and vehicles.³⁰⁸ At least 60 Mineros Norteños members were still camped outside of the front gate.³⁰⁹

2.141 On the afternoon of 13 September 2019, Mr. López Ramírez learned from a friend whose father was a member of Mineros Norteños that Edgar Taváres, the Mayor of Sierra Mojada, was providing gasoline to Mineros Norteños during the blockade, while Deputy Borrego was providing Mineros Norteños with food.³¹⁰ Mr. López Ramírez also learned that Deputy Borrego had encouraged Mineros Norteños to maintain their blockade for as long as necessary and told them "la lucha continua" or "the fight continues."³¹¹ Deputy Borrego also posted commands to local people to come to support Mineros Norteños on his official Facebook page.

2.142 Around 1:00 p.m., a local Public Prosecutor called Mr. López Ramírez and told him that she had been assigned to prosecute the case. Mr. López Ramírez asked her to come to the Project site as soon as possible, but she said that she could not visit the site for four days.³¹²

2.143 The following day, 14 September 2019, Mr. Luna discovered that Mineros Norteños had put chains on the camp's back emergency exit door.³¹³ It was clear to Mr. Luna that Mineros Norteños had learned that the first two employees had escaped through that exit, and

³⁰⁵ López Ramírez WS, para. 8.36.

³⁰⁶ López Ramírez WS, para. 8.36.

³⁰⁷ López Ramírez WS, para. 8.38.

³⁰⁸ López Ramírez WS, para. 8.38.

³⁰⁹ López Ramírez WS, para. 8.38.

³¹⁰ Email from Juan Manuel López Ramírez to Tim Barry et al, 13 September 2019, **JMLR-022**.

³¹¹ López Ramírez WS, para. 8.40.

³¹² López Ramírez WS, para. 8.41.

³¹³ López Ramírez WS, para. 8.42.

Mineros Norteños did not want Mr. Luna to leave.³¹⁴ Mr. Luna called Mr. López Ramírez in a panic. As Mr. López Ramírez explains: “Carlos was worried because he believed that now, the only way that he was going to be able to get out of the camp was through the front gate where dozens of Mineros Norteños members were gathered”.³¹⁵

2.144 On 16 September 2019, Mineros Norteños yelled through the gates to Mr. Luna that they would wait only another eight days for payment of the royalties from Minera Metalín, and if they did not receive payments by that deadline, Mineros Norteños would open up the camp and start working the mine.³¹⁶

2.145 The following day, 17 September 2019, the day the Public Prosecutor had stated that she would come to the camp, the Public Prosecutor did not show.³¹⁷ On 18 September 2019, Mr. López Ramírez called the Public Prosecutor and begged her to come to the Sierra Mojada Project site. She agreed, and within a few hours, she was at the site.³¹⁸

2.146 The Public Prosecutor toured the camp, interviewed Mr. López Ramírez and Mr. Olague, and when she left for the evening, she told Mr. López Ramírez that she believed she had obtained sufficient proof to be able to prosecute the case.³¹⁹ The Public Prosecutor, however, took no action. She did not tell Mineros Norteños that they had to leave the Project site or that their conduct was against the law. She did not tell Mineros Norteños that they needed to disperse. This approach was in stark contrast to that of the Public Prosecutors who came to the Sierra Mojada Project during the Initial Blockade and immediately ordered Mineros Norteños to leave the site or face arrest.

2.147 While Mineros Norteños was upset that the Public Prosecutor had come to Sierra Mojada and probed the legality of their actions, not the legality of the 2000 Agreement,³²⁰ Messrs. Barry and López Ramírez began to worry that Mineros Norteños might escalate matters further.

³¹⁴ López Ramírez WS, para. 8.42.

³¹⁵ López Ramírez WS, para. 8.42.

³¹⁶ López Ramírez WS, para. 8.43.

³¹⁷ López Ramírez WS, para. 8.43.

³¹⁸ López Ramírez WS, para. 8.44.

³¹⁹ López Ramírez WS, para. 8.45.

³²⁰ López Ramírez WS, para. 8.45.

2.148 On 18 September 2019, after speaking with Mr. Barry, Mr. López Ramírez told Mr. Luna that he had to leave the camp.³²¹ Mr. Luna was afraid and did not want to walk out the front gates because he feared Mineros Norteños would be hostile to him, but he could not walk out through the back gate because the gate was locked shut.³²²

2.149 Ultimately, after several panicked phone calls to Mr. López Ramírez, Mr. Luna climbed over the back fence out of sight of Mineros Norteños, crawled through the bushes, and escaped into town.³²³

2.150 Mr. López Ramírez spent the rest of the day trying to contact the Public Prosecutor's office to see if there was an update on the case. At 4:00 p.m., Mr. López Ramírez received a call saying that two Public Prosecutors – Lic. Socorro and Lic. Acosta – would be prosecuting the case.³²⁴ As Mr. López Ramírez explains, "I thanked them and was relieved that someone would be taking action, but still, roughly 50 people from Mineros Norteños remained outside the front gates of the camp, blockading the project and halting all operations."³²⁵ As explained below, however, despite this call, no criminal charges were ever brought against Mineros Norteños.

(iv) Mineros Norteños made multiple attempts to strongarm Minera Metalín into settlement negotiations during the Continuing Blockade

2.151 On 24 September 2019, Mr. Fraire, the leader of Mineros Norteños, came to Mr. López Ramírez's house and asked to arrange a meeting between Mineros Norteños and a representative of Minera Metalín.³²⁶ Mr. López Ramírez agreed, and the following day, Mr. López Ramírez attended a meeting with ten members of Mineros Norteños.³²⁷ At that meeting, Mineros Norteños stated that they would not recognize the decision of the Federal

³²¹ López Ramírez WS, para. 8.47.

³²² López Ramírez WS, para. 8.47.

³²³ López Ramírez WS, para. 8.48.

³²⁴ López Ramírez WS, para. 8.48.

³²⁵ López Ramírez WS, para. 8.49.

³²⁶ López Ramírez WS, para. 9.1.

³²⁷ López Ramírez WS, para. 9.2.

Court of Appeals in Chihuahua dismissing its case against Minera Metalín.³²⁸ They also requested a meeting with Mr. Barry, provided that Mr. Barry agreed to present a cash offer.

2.152 On 25 September 2019, the Public Prosecutor in San Pedro summoned Mineros Norteños for a meeting, but representatives from Mineros Norteños failed to appear.³²⁹ The Prosecutor said that he would drive to Sierra Mojada to speak with Mineros Norteños to ensure their compliance.

2.153 On 9 October 2019, more than two weeks later, the Public Prosecutor still had not come to Sierra Mojada, so Fabian Landeros, Minera Metalín's legal representative, and Mr. López Ramírez drove to San Pedro to meet with the Public Prosecutor in person.³³⁰ The Prosecutor told Messrs. Landeros and López Ramírez that in two days the state police would drive to Sierra Mojada to inform Mineros Norteños that they had to appear in San Pedro the following week.

2.154 That Friday, 11 October 2019, the police came to Sierra Mojada and notified Mineros Norteños' principal members that they had to be in San Pedro the following Tuesday, 15 October 2019 for a meeting with the Public Prosecutor in San Pedro. As Mr. López Ramírez explains:

*Tuesday came and went, though, and members of Mineros Norteños never left the gates of the Sierra Mojada Project or showed up to the meeting. No one from the Prosecutor's Office seemed to care about their absence at the meeting. I tried to reach the Prosecutor's Office several times, but no one answered. Despite my repeated attempts at contacting them, I was unable to get in touch with the Prosecutor's Office for the next month.*³³¹

2.155 On 18 November 2019, Mr. López Ramírez again met with Mineros Norteños, at Mineros Norteños's request. At that meeting Mineros Norteños told Mr. López Ramírez that they

³²⁸ López Ramírez WS, para. 9.2.

³²⁹ López Ramírez WS, para. 9.3.

³³⁰ López Ramírez WS, para. 9.4.

³³¹ López Ramírez WS, paras. 9.5-9.6.

wanted to have a meeting with Mr. Barry where Deputy Borrego would act as a “mediator”.³³² They threatened that if Minera Metalín was not able to attend such a meeting by 8 December 2019, Minera Metalín would “take other actions.” Mr. López Ramírez and Mr. Barry were worried about what those other actions might be – and considered that they might include mining the project themselves or destroying or otherwise damaging the camp.

- 2.156 On 5 December 2019, Mr. Barry sent a letter to deliver to various authorities warning them of Mineros Norteños’ proposed escalation and seeking further assistance. In the letter, Mr. Barry described how SVB employees had been held captive against their own will and how we were being illegally prevented from accessing the Project site.³³³ He demanded that investigations be conducted and criminal charges filed against those responsible.³³⁴ He further underscored that Mineros Norteños had refused attempts to disband the blockade and to resolve the conflict concerning their misguided claims for outstanding royalties.³³⁵
- 2.157 The letter further stated that “[w]e fear there may be an attempt to destroy or damage our camp and we urge Mexican authorities to immediately contact Minera Norteños with a stern warning of harsh consequences should they enter upon and damage in any way, our private property,” and that “we feel certain that pre-emptive action taken now by Mexican Authorities will be effective to avert further illegal Mineros Norteños action that will have negative consequences for all involved”.³³⁶
- 2.158 On 5 December 2019, Mr. López Ramírez delivered the letter to Edgar Tavárez, the Mayor of Sierra Mojada, and the local police in Sierra Mojada, while Mr. Sanchez delivered the letter to the Governor of Coahuila, the U.S. Embassy, the Office of the Directorate General of Mines (“DGM”), and the Public Mining Registry. Mr. Landeros also delivered the letter to the Public Prosecutor in San Pedro, and Mr. Barry delivered the letter to the Canadian Embassy.
- 2.159 Minera Metalín did not meet with Mineros Norteños on 8 December 2019. None of the authorities contacted by Minera Metalín staff members, except Ms. Dompierre, First

³³² López Ramírez WS, para. 9.7; Email from Juan Manuel López Ramírez to Tim Barry et al, 18 September 2019, **JMLR-023**.

³³³ Letter from Minera Metalín to Embassy of Canada in Mexico, 5 December 2019, **C-0036**.

³³⁴ Letter from Minera Metalín to Embassy of Canada in Mexico, 5 December 2019, **C-0036**.

³³⁵ Barry WS, para. 7.4.

³³⁶ Letter from Minera Metalín to Embassy of Canada in Mexico, 5 December 2019, **C-0036**.

Secretary and Trade Commissioner at the Embassy of Canada in Mexico, responded to the letter drafted by Mr. Barry. As Mr. Barry explains, “On 5 December 2019, Ms Dompierre emailed me stating that she had not heard back from the Mexican Ministry of Economy but would follow up with it regarding arranging a meeting.”³³⁷ The Canadian Embassy stated that it would arrange a meeting between Minera Metalín and the DGM at Mexico’s Ministry of Economy to take place on 13 December 2019.³³⁸

2.160 On 13 December 2019, Messrs. Barry, Sanchez and López Ramírez went to Mexico City to participate in the meeting with DGM. As Mr. López Ramírez explains, “[w]e were all optimistic that this meeting would lead to an end in the blockade. I believed that once government officials learned about all the violations that Mineros Norteños was committing at the Sierra Mojada Project, they would be alarmed and would take action.”³³⁹

2.161 At this meeting, Messrs. Barry, Sanchez and López Ramírez met with the Undersecretary of Mining, Francisco Quiroga, his colleague, Leonardo Suárez Mejía, and the Director General of Mining Development, Jose Rafael Jabalera Batista. As Mr. Barry explains:

*At the meeting we discussed the frivolous lawsuit brought by Mineros Norteños and the need for Government assistance in ending the Continuing Blockade and gaining access to the Project site. Both officials promised to end the Continuing Blockade. Despite their promise, they took no action, nor am I aware of them taking any action to date.*³⁴⁰

2.162 Undersecretary Quiroga promised Minera Metalín that he would ensure that steps were taken to clear the blockade and that he would outline “a work plan that can address the issues” which Minera Metalín raised at the meeting.³⁴¹ Despite these promises, DGM did not

³³⁷ See emails between T. Barry of SVB and G. Dompierre, First Secretary and Trade Commissioner at the Embassy of Canada in Mexico, 26 November 2019-9 December 2019, **C-0046**.

³³⁸ See emails between T. Barry of SVB and G. Dompierre, First Secretary and Trade Commissioner at the Embassy of Canada in Mexico, 26 November 2019-9 December 2019, **C-0046**.

³³⁹ López Ramírez WS, para. 9.12.

³⁴⁰ Barry WS, para. 7.7.

³⁴¹ Emails between Tim Barry and Antonio Leonardo Suárez Mejía of the Mexican Ministry of Economy, 15 December 2019 to 8 January 2020, **C-0037**.

dispatch any law enforcement authorities to the Sierra Mojada Project site. Mr. Barry continued to follow up with Leonardo Suárez Mejía, but DGM took no steps to disperse the blockade or protect SVB's property. To this day, DGM has not followed through on any of the promises it made during the 13 December 2019 meeting in Mexico City.

- 2.163 On 30 December 2019, Mineros Norteños and its lawyer held a meeting with Deputy Borrego and his staff, including Deputy Borrego's personal friend, Jesús Carrillo.³⁴² At the meeting, Deputy Borrego said that negotiations "with the Canadians" – meaning the Canadian Embassy – are "very advanced" and that he would have a meeting with them in one to two weeks.³⁴³ Deputy Borrego proposed to Mineros Norteños that it give Jesús Carrillo power of attorney so that he could continue negotiations with "the Canadians."³⁴⁴
- 2.164 As Mr. López Ramírez explains, "I found it strange that Deputy Borrego was so involved in this dispute between a private company and a mining cooperative."³⁴⁵
- 2.165 On 15 March 2020, Mineros Norteños held a meeting amongst its members to decide which lawyers it would hire to continue its lawsuit against Minera Metalín. The meeting was very tense as Miguel Enriquez argued with Deputy Borrego's friend, Jesús Carrillo. After Mr. Carrillo, who was well connected to the Government, contended that Mineros Norteños's lawsuit was doomed, he convinced Mineros Norteños to fire Miguel Enriquez and give him power of attorney to engage in further negotiations with Minera Metalín.
- 2.166 On 18 June 2020, Deputy Borrego visited the blockade at the Sierra Mojada Project and met with members of Mineros Norteños. Deputy Borrego brought a new lawyer with him to speak with Mineros Norteños.³⁴⁶ Deputy Borrego encouraged Mineros Norteños to go to Mexico City and protest at the Zócalo in Mexico City – a public square where people commonly go to raise political issues and garner attention from politicians and the media. Deputy Borrego also

³⁴² López Ramírez WS, para. 10.1.

³⁴³ Email from Tim Barry to Juan Manuel López Ramírez et al, **JMLR-025**, 31 December 2019.

³⁴⁴ López Ramírez WS, para. 10.3.

³⁴⁵ López Ramírez WS, para. 10.2.

³⁴⁶ Email from Juan Manuel López Ramírez to Tim Barry et al, 23 June 2020, **C-0116**.

brought food for the Mineros Norteños blockaders and promised them that he would schedule a meeting for them with the Canadian Embassy soon.³⁴⁷

2.167 As Mr. López Ramírez explains, “this meeting took place nearly a year after Mineros Norteños first initiated the continuing blockade in September, 2019, so I was surprised that Deputy Borrego remained so supportive of the blockade so long after it had begun.”³⁴⁸

2.168 In late June 2020, two employees of Minera Metalín went to the camp site at the Sierra Mojada Project to check on the status of the camp and discovered that someone had cut a hole in the back fence, and it appeared that items had been stolen from the camp.³⁴⁹



Image of the hole (circled in red) cut in the back fence at the Sierra Mojada Project Camp Site, June 2020.

2.169 Specifically, the employees noted that hundreds of liters of diesel had been siphoned out of the trucks parked in the camp, and the stereos in those trucks had been stolen.³⁵⁰ A week before the 2019 blockade, Minera Metalín had purchased around 17,000 liters of diesel,

³⁴⁷ Email from Juan Manuel López Ramírez to Tim Barry et al, 19 June 2020, C-0115.

³⁴⁸ López Ramírez WS, para. 11.1.

³⁴⁹ Email from Juan Manuel López Ramírez to Tim Barry et al, 29 June 2020, C-0145.

³⁵⁰ Email from Juan Manuel López Ramírez to Tim Barry et al., 21 July 2020, C-00149.

which was all missing. Two other trucks, owned by Major Drilling, a third-party contractor used by Minera Metalín, had also been ransacked with their stereos removed.³⁵¹

2.170 As Mr. López Ramírez explained:

*I do not know for sure, but I presume that Mineros Norteños were the ones who stole these items because its members were camped out 24/7 at the Sierra Mojada Project Camp Site. I do not know anyone else who spent time at the camp or had reason to spend time at the camp, which is a roughly 20-minute walk up a hill from the edge of town. Also, I later learned that Lorenzo Fraire was selling diesel in water bottles and other makeshift vessels to people in town, and I assumed that this was the diesel he had taken from the trucks.*³⁵²

2.171 Shortly thereafter, on 9 July 2020, Ms. Dompierre, who worked at the Canadian Embassy and had assisted Minera Metalín in meeting with DGM, wrote to Mr. Barry expressing her surprise that the blockade remained ongoing ten months after it had begun. Ms. Dompierre requested a meeting with Mr. Barry to meet to discuss further options.³⁵³

2.172 On 11 August 2020, Mr. López Ramírez received a letter from Mineros Norteños requesting a meeting the following day.³⁵⁴ Mr. Barry instructed Mr. López Ramírez to attend the meeting and told him to “listen to what they have to say” and let Mineros Norteños know that “we are very open to finding a way to figure this out and want to find a way forward but until now their demands have been wholly unreasonable and have left us with nowhere to go”.³⁵⁵

2.173 On 12 August 2020, Mr. López Ramírez met with Mineros Norteños who presented Mr. López Ramírez with a signed and stamped letter listing five negotiating points in which it: (1) demanded an advance payment of USD \$2,000,000; (2) demanded USD \$50,000 payments for each Mineros Norteños member who had worked at the Sierra Mojada Project in the past

³⁵¹ López Ramírez WS, para. 12.2, 12.3.

³⁵² López Ramírez WS, para. 12.4.

³⁵³ Barry WS, para. 7.8.

³⁵⁴ Email from Juan Manuel López Ramírez to Tim Barry et al, 10 August 2020, C-0117.

³⁵⁵ Email from Tim Barry to Juan Manuel López Ramírez et al, 10 August 2020, C-0118.

but could no longer work – the “graduates” as they called them; (3) committed to withdraw the claims that it had against Minera Metalín; (4) committed to assist in the exploration of the Sierra Mojada Project; and (5) queried whether Minera Metalín had any proposals “that would be convenient for both parties”.³⁵⁶

2.174 Minera Metalín rejected these proposals given that the US\$ 2 million payment proposed was *double* the payment that Mineros Norteños had requested in the negotiations held in March 2016 after the Initial Blockade. Put another way, despite the fact that their lawsuit had been rejected by three courts, Mineros Norteños had somehow increased the sum they sought to be paid under the 2000 Agreement. Minera Metalín could not agree to that unjustified increase, and thus, negotiations ended.³⁵⁷

2.175 For the next several months, Mineros Norteños and Minera Metalín were not in contact, but a group of Mineros Norteños members remained camped out outside of the front gates of the Project Site.³⁵⁸

2.176 Minera Metalín’s lawyers regularly contacted the Public Prosecutor in San Pedro and tried to get updates on the criminal complaint that Minera Metalín had filed against Mineros Norteños after the blockade.³⁵⁹ By January 2021, however, the Public Prosecutor still had not obtained a court order injunctioning Mineros Norteños from trespassing on Minera Metalín’s property. Minera Metalín spent the spring of 2021 waiting for the Public Prosecutor in San Pedro to act.³⁶⁰

2.177 As noted above, on 11 March 2021, the Third Collegiate Court in Civil and Labor Matters of the Seventeenth Circuit issued Direct Amparo Ruling 375/2020, declining to provide constitutional protection from the Second Unitary Tribunal’s determination that Mineros

³⁵⁶ Mineros Norteños Board of Directors Proposal to Minera Metalín, 11 August 2020, **C-0119**.

³⁵⁷ López Ramírez WS, para. 13.3.

³⁵⁸ López Ramírez WS, para. 14.1.

³⁵⁹ López Ramírez WS, para. 14.2.

³⁶⁰ López Ramírez WS, para. 14.2.

Norteños's claims were time-barred.³⁶¹ This decision ended once and for all the baseless seven-year legal action Mineros Norteños had pursued under the 2000 Agreement.

2.178 Despite the clear, unanimous and final ruling from every level of the Mexican judiciary that Mineros Norteños's claims were meritless, Mineros Norteños maintained the blockade, unimpeded by any Mexican law enforcement agency.

2.179 On 3 August 2021, Mr. Barry drafted a letter to Mineros Norteños requesting access to the Sierra Mojada Project for a week during August so that he could inspect the premises.³⁶² Mr. López Ramírez sent this letter to Mr. Fraire.³⁶³ On 6 August 2021, Mineros Norteños responded that it would not grant anyone from Minera Metalín access to the Project.³⁶⁴

2.180 This letter, which was signed by Jesús Carrillo – Deputy Borrego's friend to whom Mineros Norteños had given power of attorney – was highly combative. Among other things, the letter said to Mr. Barry, "I also remind you that your presence here in our country is ILLEGAL (NOT welcome), by virtue of the fact that we have sent a request for expulsion from our country." And, "instead of making a good proposal you are asking us for access, which we do not agree to provide you, due to your string of lies and abuses and violations . . . well as the application of CORRUPTION to achieve their own interests, with prejudice to the Mexican Society and our Country, among others."³⁶⁵

2.181 As Mr. López Ramírez explains, "In light of this aggressive letter, we determined that it was not smart or safe for Tim to come down to the Sierra Mojada Project to visit the camp, and we abandoned this plan."³⁶⁶

2.182 On 23 August 2021, Mr. Barry sent further emails to Undersecretary Jabalera alerting him that the two-year anniversary of the continuing blockade was approaching, and that still, no

³⁶¹ Direct Amparo Ruling 375/2020 of the Third Collegiate Court in Civil and Labour Matters of the Seventeenth Circuit, 11 March 2021, **C-0040**.

³⁶² López Ramírez WS, para. 14.4.

³⁶³ López Ramírez WS, para. 14.4.

³⁶⁴ López Ramírez WS, para. 14.4.

³⁶⁵ Letter from Mineros Nortenos to Tim Barry, Minera Metalin, 6 August 2011, **C-0079** (emphasis in original).

³⁶⁶ López Ramírez WS, para. 14.5.

action had been taken by the Mexican authorities.³⁶⁷ On 26 August 2021, Mr. Barry emailed Undersecretary Jabalera again explaining, in effect, that, “the Continuing Blockade had become equivalent to extortion and that, without access to the Project site, Silver Bull was unable to advance the Project or attract further investment.”³⁶⁸ As Mr. Barry describes, he also wrote that:

Minera Metalín had obtained a judgment in its favour for the case brought by Mineros Norteños. I also explained that the judgment found that Minera Metalín was not liable and did not owe any of the payments alleged by Mineros Norteños. The judgment affirmed Silver Bull’s position that Minera Metalín was not required to make any payments until the mine went into production. I also explained that the Coahuila District Attorney agreed Mineros Norteños’ actions were illegal and had filed criminal charges against the group.³⁶⁹ The Mexican government still did not take any action against Mineros Norteños and the Continuing Blockade thus remained.³⁷⁰

2.183 Mr. Jabalera did not respond.³⁷¹

2.184 Over the next several months, negotiations between Minera Metalín and Mineros Norteños remained at an impasse. Mexican authorities refused to take any action. The site remained blockaded by no less than a dozen members of Mineros Norteños throughout this period.³⁷²

2.185 On 11 May 2022, Minera Metalín wrote to Mr. Fraire, the leader of Mineros Norteños, requesting that Mineros Norteños appoint a representative for the purpose of settlement discussions, provide a statement on whether Mineros Norteños was interested in a

³⁶⁷ Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade, 26 August 2021, **C-0044**.

³⁶⁸ Barry WS, para. 7.13.

³⁶⁹ Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade, 26 August 2021, **C-0044**.

³⁷⁰ Email from T. Barry to J. Jabalera seeking assistance with the Continuing Blockade, 26 August 2021, **C-0044**.

³⁷¹ Barry WS, para. 7.13.

³⁷² López Ramírez WS, para. 14.1, 14.3.

reasonable resolution, and confirm whether Mineros Norteños still sought payment for the full amount of post-production royalties.³⁷³

2.186 On 17 May 2022, Mineros Norteños responded to the letter reiterating its demand for the full amount of royalty payments owed under the 2000 Agreement. Mineros Norteños made no other attempt to negotiate.³⁷⁴ As Mr. Barry explains, “I found this to be a very frustrating process given the Mexican courts had already ruled that the alleged sums were not owed.”³⁷⁵

2.187 Over the next year, Mineros Norteños and Minera Metalin exchanged letters regarding their respective positions on the Continuing Blockade. Lawyers for Minera Metalin continued to reach out to law enforcement officials and officials from DGM requesting intervention and assistance, but none took place.

2.188 Finally, on 2 March 2023, SVB submitted its Notice of Intent to Submit a Claim to Arbitration.³⁷⁶ In May 2023, Mr. López Ramírez observed from a hill near the Sierra Mojada Project that Mineros Norteños had moved the Continuing Blockade from the front gates of the camp to the property line at the crossroads. Mineros Norteños had learned about the Notice of Intent and chose to move its members away from the camp in case any authorities came to investigate. Within a few months, however, Mineros Norteños had relocated the Continuing Blockade back to the front gates and installed a makeshift shelter for its guards.

(v) Mexico has taken no reasonable action to end the Continuing Blockade or to prosecute those responsible.

2.189 As of the submission of this Memorial, the blockade which Mineros Norteños began in September 2019 remains in place. Mineros Norteños has built a small shelter out of wood and corrugated tin around the front gate to the camp site.³⁷⁷ They maintain vigilance over the front gate 24 hours a day, 7 days a week, 365 days a year.³⁷⁸ Mineros Nortenos also continue

³⁷³ Barry WS, para. 7.14.

³⁷⁴ Barry WS, para. 7.15.

³⁷⁵ Barry WS, para. 7.15.

³⁷⁶ Notice of Intent to Submit a Claim to Arbitration, *Silver Bull Resources, Inc. v. The United Mexican States*, 2 March 2023.

³⁷⁷ López Ramírez WS, para. 15.2.

³⁷⁸ López Ramírez WS, para. 15.2.

to steal items from the camp, including thousands of liters of diesel, household items from camp buildings, and car and truck tires and stereo systems.³⁷⁹

- 2.190 No law enforcement officials have ordered *Mineros Nortesños* to leave SVB's and *Minera Metalín's* private property or to stop interfering with the operations of the Sierra Mojada Project. As noted above, *Minera Metalín* has contacted multiple law enforcement agencies and other State authorities since the 2019 Continuing Blockade began, including the (1) Citizen Attention Service for the State of Coahuila; (2) Public Prosecutor from Quimica del Rey; (3) *Fuerza Coahuila*; (4) Local Police in Sierra Mojada; (5) Coahuila State Police; (6) Coordinator of all Prosecutors in the State of Coahuila; (7) Public Prosecutor from Torreon; (8) Public Prosecutor from Saltillo; and (9) Chief Prosecutor for Coahuila District 2, based in San Pedro.³⁸⁰ None of these agencies has made any effort to intervene in or put an end to the Continuing Blockade and *Mineros Nortesños's* unlawful actions.
- 2.191 The Public Prosecutor from Saltillo who came to the Sierra Mojada Project on 18 September 2019 is the *only* Public Prosecutor who has ever visited the Project site since the Continuing Blockade began on 8 September 2019. However, despite her promise, no criminal prosecution of *Mineros Nortesños* has been initiated.
- 2.192 Despite meetings with representatives of DGM, DGM likewise has also taken no steps to end the Continuing Blockade, even when made aware of the fact that the Mexican courts have unanimously ruled against *Mineros Nortesños's* lawsuit seeking post-production royalties.
- 2.193 The failure of the Mexican authorities to act is notable in comparison with their swift response to *Mineros Nortesños's* Initial Blockade, as detailed above. It is even more notable when compared to the swift action taken by the Mexican authorities against other blockades imposed on other mining projects in Mexico during this same time period. These include:
- (a) *Minera Penmont's* mining operation at La Herradura located in Sonora in 2023;³⁸¹

³⁷⁹ López Ramírez WS, para. 15.6, 12.2.

³⁸⁰ *See supra.*

³⁸¹ *See Mexico Business News, Authorities Lift Blockade at Herradura, 17 May 2023, C-0134, at mexicobusiness.news/mining/news/authorities-lift-blockade-herradura.*

(b) the Los Filos mine in Guerrero in 2021;³⁸²

(c) Americas Gold and Silver's San Rafael mine in Sinaloa in 2021;³⁸³ and

(d) Pan American Silver's La Colorada mine in Zacatecas in 2023.³⁸⁴

In each of these instances, the Mexican authorities intervened and ended the blockades at the mining projects, allowing the owners to continue their mining operations.

2.194 As these circumstances show, the Mexican authorities have the ability and the resources to intervene in and end unlawful blockades, but simply chose not to do so in this case. Moreover, as the Mexican authorities have, time and time again, abdicated their duty to enforce the law and protect private property at Sierra Mojada, Mineros Norteños has become more brazen in its efforts to operate and exploit the Sierra Mojada Project as if it were its own.

2.195 Recently, in April 2024, Mr. López Ramírez visited the Sierra Mojada Project site to check on the status of the Continuing Blockade. When he arrived at the site, he observed that two men were guarding the front gate. One of those men was Andres García Najera, who goes by "Chito". Chito is a senior leader in Mineros Norteños who serves as Director of Mineros Norteños's Oversight Committee.³⁸⁵

2.196 As Mr. López Ramírez explains:

I noticed that they had built a small shelter out of corrugated tin around the front gate. In that shelter, I saw two women cooking and sitting on beds. It seemed as though Mineros Norteños had essentially moved into the Sierra Mojada Project. The members of Mineros Norteños whom I spoke to assured me that they never went into the camp, but I could see several places in the fence to the camp

³⁸² See Mexico Business News, *Blockade Lifted At Equinox Gold's Los Filos Mine*, 2 August 2021, **C-0122**, at mexicobusiness.news/mining/news/blockade-lifted-equinox-golds-los-filos-mine.

³⁸³ See Mexico Business News, *San Rafael Mine is No Longer Blocked*, 15 September 2021, **C-0123**, at mexicobusiness.news/mining/news/san-rafael-mine-no-longer-blocked?tag=blockade.

³⁸⁴ See LatinUS, *Zacatecas government promises protection to Canadian miner that suspended operations after organised crime robberies*, 7 October 2023, **C-0136**, latinus.us/2023/10/07/gobierno-de-zacatecas-promete-proteccion-a-minera-canadiense-que-suspendio-operaciones-tras-robos-del-crimen-organizado/#lngrnual3ziq3cwvd2k.

³⁸⁵ López Ramírez WS, para. 15.1.

*where someone had cut a hole big enough for a person to squeeze through. I also noted that it was possible to go through the shelter into the camp by slipping through a tarp hanging in the back.*³⁸⁶



Image of the tin structure which Mineros Norteños built outside of the Sierra Mojada Project camp in order to shelter its members whilst they continued their blockade of the camp, May, 2024.

- 2.197 Mr. López Ramírez walked the perimeter of the camp and noticed that several items seemed to be missing. As he explains, “[t]ires had been stripped off of vehicles, furniture was removed from buildings, and, in general, things seemed to be in disarray.”³⁸⁷
- 2.198 Mr. López Ramírez asked the members of Mineros Norteños why they were still camped out after all these years, and they said that they wanted to prevent the owners of the Project

³⁸⁶ López Ramírez WS, para. 15.2.

³⁸⁷ López Ramírez WS, para. 15.3.

from taking the Project back if they returned.³⁸⁸ They added that they would like to sell the Sierra Mojada Project to new owners, but they did not have the proper paperwork to do so.³⁸⁹

2.199 Mineros Norteños also stated they were mining the waste dump and selling minerals extracted from the waste.³⁹⁰ Later, Mr. López Ramírez received confirmation from Mr. Hernández that Mineros Norteños had mined and sold roughly 40 tons of minerals that had been left outside of one of the Project's shafts.³⁹¹ Apparently, Mineros Norteños has sought to comfort concerned customers about the legality of the sales of these minerals by saying that Minera Metalín has lost control of its concessions in light of the Continuing Blockade.³⁹²



Image of the material that Mineros Norteños sold in May 2024.

2.200 As Mr. López Ramírez explains:

To this day, no Public Prosecutor or any other law enforcement authority has taken any action to remove the continuing blockade. I am extremely disappointed at the failure of the Mexican Government to take action to protect the Sierra Mojada Project from Mineros Norteños' interference. Mineros Norteños continues to treat the Sierra Mojada Project as if it was its own, its members taking whatever items they please, guarding it so that its true

³⁸⁸ López Ramírez WS, para. 15.4.

³⁸⁹ López Ramírez WS, para. 15.4.

³⁹⁰ López Ramírez WS, para. 15.5.

³⁹¹ López Ramírez WS, para. 15.5.

³⁹² López Ramírez WS, para. 15.5.

*owners cannot re-enter the property, and even mining the project themselves.*³⁹³

2.201 In sum, Mexico's failure to take any reasonable action within its power to protect the Project site and end the Continuing Blockade jeopardized the safety and well-being of multiple SVB and Minera Metalín employees who were held hostage at the Project site, forced the complete cessation of operations at the Sierra Mojada Project, and, as explained below, ultimately destroyed the value of SVB's investments in the Project in their entirety.

(H) Mexico's unlawful failure to take any reasonable action to end the continuing blockade caused South32 to terminate the Option Agreement, marking the end of the Project and the loss of SVB's entire investment

2.202 As elaborated above, despite SVB and Minera Metalín's repeated pleas to the Mexican authorities to end Mineros Norteños's Continuing Blockade and to sanction those responsible, Mexico still did not take any reasonable action to protect the Project site or to return it to SVB. Accordingly, as Mr. Barry explains, on 11 October 2019, one month after the imposition of the Continuing Blockade by Mineros Norteños, he had no choice but to notify South32 of an event of *force majeure* under the Option Agreement.³⁹⁴

2.203 As the *force majeure* letter reflects, SVB notified South32 that that the Continuing Blockade had made it impossible for SVB to progress the Project or to continue the drilling program, due to its total lack of access to the property and the equipment on site, and that Minera Metalín had shut down the exploration program for safety reasons.³⁹⁵ Specifically, Mr. Barry explained in his letter as follows:

Reason for Force Majeure: Since the start of the blockade

- *MN effectively and illegally imprisoned 4 of our employees for 12 days until they escaped camp.*

³⁹³ López Ramírez WS, para. 15.6.

³⁹⁴ Letter from SVB to South32, 11 October 2019, C-0035.

³⁹⁵ Letter from SVB to South32, 11 October 2019, C-0035, pp. 2-3.

- *MN has illegally blocked our access to our property and interrupted our lawful business.*
- *MN has illegally blocked Major Drilling, our drilling contractor, from access to its equipment that is worth hundreds of thousands of dollars.*
- *MN have refused all attempts by us to meet in Torreon to try and resolve this. We have offered to pay for all transportation, hotel, and meal expenses in order to present a negotiated solution.*³⁹⁶

2.204 Mr. Barry also offset out the actions SVB had taken to end the Continuing Blockade, including the various forms of assistance sought through the Mexican authorities, to no avail:

Measures and Remedies undertaken to date:

- 1. We have shut down the work program and removed all staff from site in the interests of safety.*
- 2. We have alerted the appropriate authorities including the State Prosecutor, local and state police, the Coahuila state government, and the Mexican mining department. We have filed criminal charges against the leaders of MN with the State Prosecutor of Coahuila.*
- 3. We have informed the Canadian Embassy and the Mexican Chamber of mines of the situation and asked for their support.*
- 4. We have reached out MN both directly and indirectly in an attempt to meet and start a dialogue to resolve the situation.*³⁹⁷

³⁹⁶ Letter from SVB to South32, 11 October 2019, p. 2, **C-0035**, p. 2; Barry WS, para. 8.2.

³⁹⁷ Letter from SVB to South32, 11 October 2019, p. 2, **C-0035**, p. 2; Barry WS, para. 8.3.

- 2.205 Despite the declaration of *force majeure*, SVB sought in good faith to maintain its critical partnership with South32, in the hope of resolving the Mineros Norteños conflict and resuming Project development.³⁹⁸
- 2.206 As Mr. Barry explains, from 11 October 2019 until 5 July 2022, *force majeure* remained in place while SVB continued to seek the end of the Continuing Blockade.³⁹⁹ In an attempt to maintain South32's interest in the Project, SVB agreed to cover all expenses during the *force majeure* period with the intention that South32 would continue its investment after SVB and Minera Metalín regained access to the Project site.⁴⁰⁰ Although SVB intended to continue its partnership with South32, by July 2022, South32 had understandably lost patience given the inaction of the Mexican Government, the Continuing Blockade, and the inability to access the Project site and progress the works for nearly three years.⁴⁰¹
- 2.207 On 5 July 2022, Mr. Barry had a call with Mirek Wozga, Manager at South32, where Mr. Wozga expressed South32's desire to exit the Project.⁴⁰² Following the call, Mr. Barry emailed South32 conveying SVB's strong preference for South32 to remain on the Project but acknowledged South32's desire to move on and therefore agreed to work on a mutually beneficial exit.⁴⁰³
- 2.208 As Mr. Barry explains and as the record reflects, from 5 July until 15 August 2022, he exchanged several emails with the team at South32 addressing the gravity of the situation and negotiating South32's exit.⁴⁰⁴ On 31 August 2022, the parties entered into a mutual termination of the Option Agreement ("**Termination Agreement**").⁴⁰⁵

³⁹⁸ Barry WS, para. 8.4.

³⁹⁹ Barry WS, paras. 8.4.

⁴⁰⁰ Barry WS, para. 8.4.

⁴⁰¹ Barry WS, para. 8.4.

⁴⁰² Barry WS, para. 8.5.

⁴⁰³ See Emails between T. Barry, A. Roy, D. Klinck, W. Mirek, B. Edgar and C. Richards, 5 July 2022 to 15 August 2022, **C-0126**.

⁴⁰⁴ See Emails between T. Barry, A. Roy, D. Klinck, W. Mirek, B. Edgar and C. Richards, 5 July 2022 to 15 August 2022, **C-0126**.

⁴⁰⁵ Termination Agreement between SVB Resources, Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd., 31 August 2022, **C-0048**.

- 2.209 As the Termination Agreement reflects, South32 agreed to pay SVB a sum of US\$ 518,000.⁴⁰⁶ This figure represented US\$ 175,000 for rehabilitation of the Project site and environmental reporting, and US\$ 343,000 for reimbursement of direct Project-related expenditures.⁴⁰⁷ With the execution of the Termination Agreement and the loss of SVB's critical financing and development partner for the Project, SVB understood that it would not be able to progress the Project further. This was because no reasonable investor would be interested in a mining project illegally blockaded for nearly three years with no hope of any Government intervention.⁴⁰⁸
- 2.210 As Messrs. Barry and Edgar note, the Termination Agreement marked the end of the Sierra Mojada Project, culminating in SVB's loss of its entire investment in the Project as a direct result of Mexico's actions and failures to act.⁴⁰⁹
- 2.211 As Mr. Barry explains, he spoke with SVB's existing shareholders and investors, and they all agreed that there was no hope for the Project and that SVB thus should move to pursue other opportunities elsewhere.⁴¹⁰ In view of the Continuing Blockade encouraged by Mexico, Mexico's continued failure to take any reasonable action to end the Continuing Blockade, and the hostile attitude of the AMLO Government to foreign mining companies, SVB had no choice but to exit Mexico and seek a new project elsewhere. In so doing, SVB suffered the total loss of its significant investments in the Project, as detailed below.

⁴⁰⁶ Termination Agreement between SVB Resources, Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd., 31 August 2022, **C-0048**.

⁴⁰⁷ Termination Agreement between SVB Resources, Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd., 31 August 2022, **C-0048**.

⁴⁰⁸ Barry WS, para. 8.7; Edgar WS, para. 7.8.

⁴⁰⁹ Barry WS, para. 8.8.

⁴¹⁰ Barry WS, para. 8.7.

3. THE TRIBUNAL HAS JURISDICTION OVER THIS DISPUTE

3.1 SVB has commenced this arbitration pursuant to Article 1 of Annex 14-C of the USMCA, under which Mexico consented “with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex”.⁴¹¹ As elaborated below, SVB has met the jurisdictional requirements of the USMCA, the NAFTA and the ICSID Convention.

(A) The Tribunal has jurisdiction *ratione personae*

(vi) SVB is a covered investor under the USMCA and the NAFTA

3.2 Article 6(b) of USMCA Annex 14-C states that the term “investor” has “the meaning [...] accorded in Chapter 11 (Investment) of NAFTA 1994”.⁴¹²

3.3 NAFTA Article 1139 defines an “investor of a Party” as “a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making, or has made an investment”.⁴¹³ NAFTA Article 1139 further defines “enterprise of a Party” to include “an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there”.⁴¹⁴

3.4 An “enterprise” is defined in NAFTA Article 201 as “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association”.⁴¹⁵

3.5 SVB is an enterprise of the United States, because it is, and at all times has been, a United States company organized and existing under the laws of Nevada, United States of America.⁴¹⁶ SVB was incorporated in the State of Nevada on 8 November 1993 as the Cadgie Company

⁴¹¹ USMCA, **CL-0044**, Annex 14-C, para. 1.

⁴¹² USMCA, **CL-0044**, Annex 14-C, para. 6(b).

⁴¹³ NAFTA, **CL-0004**, Art. 1139.

⁴¹⁴ NAFTA, **CL-0004**, Art. 1139.

⁴¹⁵ NAFTA, **CL-0004**, Art. 201.

⁴¹⁶ Certificate of SVB’s existence with status in good standing dated 19 Jan. 2023, at **C-0050**.

for the purpose of acquiring and developing mineral properties.⁴¹⁷ On 28 June 1996, the Company changed its name to Metalline Mining Company and on 21 April 2011, the Company subsequently changed its name to Silver Bull Resources, Inc.⁴¹⁸ SVB is listed on the Toronto Stock Exchange and trades on the OTCQB over-the-counter market.⁴¹⁹

3.6 As explained below, SVB made several investments in Mexico that qualify as investments in the territory of Mexico under NAFTA Article 1139.

3.7 In this arbitration, SVB brings claims on its own behalf and on behalf of its Mexican enterprise, Minera Metalín. Minera Metalín is a Mexican company organized and existing under Mexican law.⁴²⁰ Minera Metalín is directly and indirectly owned and controlled by SVB.⁴²¹

3.8 As explained above, Minera Metalín holds the mining concessions for the Sierra Mojada Project.⁴²² Minera Metalín also carried out extensive mining exploration and drilling activities in the Project area.⁴²³ Accordingly, Minera Metalín is both an enterprise and an investment of SVB under NAFTA Articles 201 and 1139.

(vii) SVB is also a covered investor under the ICSID Convention

3.9 Article 25(1) of the ICSID Convention requires that the non-State party to the dispute be “a national of another Contracting State” to the ICSID Convention.⁴²⁴ Article 25(2)(b) defines a “national of another Contracting State” to include “any juridical person which had the

⁴¹⁷ Certificate of SVB’s existence with status in good standing dated 19 January 2023, **C-0050**; SVB’s 2022 Annual Report, 26 January 2023, p. 23, **C-0052**.

⁴¹⁸ Restated Articles of Incorporation of Metalline Mining Company dated 22 June 2010, **C-0015**; Certificate of Amendment to Articles of Incorporation of Metalline Mining Company confirming the change of name, 21 April 2011, **C-0017**.

⁴¹⁹ SVB Resources, Inc. SEDAR profile, accessed on 17 June 2023, at **C-0063**.

⁴²⁰ Minera Star Morning, S.A. de C.V. was constituted through Public Deed No. 37,150 granted on 10 July 1996 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District and registered under number 211349 in the Book of Commercial Companies of the Public Registry of Property of Mexico D.F., 22 August 1996, **C-0005**; *see also* Public Deed No. 09031450 granted on 22 September 1997 before Mr Adrian R Iturbide Galindo, Notary Public number 139 of the Federal District, confirming the change of name of Minera Star Morning, S.A. de C.V. to Minera Metalín, S.A. de C.V., **C-0068**.

⁴²¹ Certificate of SVB’s existence with status in good standing, 19 January 2023, **C-0050**; Minera Metalín’s share certificates bearing nos. 007, 008, and 009, each dated 1 April 2014 showing SVB and Metalline Inc.’s respective shareholdings, **C-0024**.

⁴²² *See* Section 2.

⁴²³ *See* Section 2.

⁴²⁴ ICSID Convention, **CL-0080**, Art. 25(1).

nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to [...] arbitration".⁴²⁵

3.10 This dispute has arisen between SVB, a national of the United States⁴²⁶, on the one hand, and Mexico, on the other hand. As the United States and Mexico are both Contracting States to the ICSID Convention⁴²⁷, the present dispute is "between a Contracting State and a National of another Contracting State", as required by ICSID Convention Article 25(1).

(B) The Tribunal has jurisdiction *ratione materiae*

(i) The claims relate to legacy investments under USMCA Annex 14-C

3.11 Article 6 of USMCA Annex 14-C defines a "legacy investment" as "an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement".⁴²⁸ Article 6(b) further states that the term "investment" has "the meaning [...] accorded in Chapter 11 (Investment) of NAFTA 1994".⁴²⁹

3.12 NAFTA Article 1139 defines "investment" broadly to include:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

⁴²⁵ ICSID Convention, **CL-0080**, Art. 25(2)(b).

⁴²⁶ For the sake of completeness, SVB declares that it does not have, or ever had Mexican nationality.

⁴²⁷ ICSID, List of Contracting States and Other Signatories of the Convention (as of October 25, 2022), ICSID/3, **C-0061**.

⁴²⁸ USMCA, **CL-0044**, Annex 14-C, Art. 6.

⁴²⁹ USMCA, **CL-0044**, Annex 14-C, Art. 6(b).

- (d) a loan to an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years,but does not include a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under
- (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
- (j) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise.⁴³⁰

3.13 As detailed above, SVB made several qualifying investments in Mexico, including:

- (a) SVB's direct and indirect shareholding in Minera Metalín;
- (b) SVB's indirect ownership of Minera Metalín's assets and Minera Metalín's direct ownership of those assets, including (without limitation) 20 registered mining concessions and surface rights in relation to various land plots at Sierra Mojada;

⁴³⁰ NAFTA, CL-0004, Art. 1139.

- (c) funds that SVB provided to Minera Metalín to finance exploration works, including (without limitation) drilling, assaying, and metallurgical tests;
- (d) SVB’s and Minera Metalín’s interests arising from commercial arrangements entered into with third parties subject to production operations, including, amongst other things, the Option Agreement; and
- (e) Minera Metalín’s equipment and infrastructure, including, amongst other things, movable and immovable as well as tangible and intangible property.⁴³¹

3.14 SVB made these qualifying investments in Mexico between 2000 and 2022, *i.e.*, before the date of termination of the NAFTA on 1 July 2023.⁴³² These investments likewise were in existence on the date of entry into force of the USMCA on 1 July 2020.⁴³³

3.15 Accordingly, SVB’s investments qualify as “investments” within the meaning of NAFTA Article 1139, and as “legacy investments” within the meaning of USMCA Annex 14-C.

- (ii) SVB also made covered investments within the meaning of ICSID Convention Article 25(1)

3.16 While the ICSID Convention does not contain any definition of the term “investment,” ICSID tribunals have considered various objective criteria in determining whether a particular investment falls within the meaning of ICSID Convention Article 25(1). Such criteria have included the list of typical characteristics of an investment set out by the ICSID tribunal in *Salini v. Morocco*, namely, (a) a contribution of money or assets, (b) of a certain duration, (c) with an element of risk, and (d) that contributed to the economic development of the host State.⁴³⁴ As numerous ICSID tribunals have found, these criteria are not mandatory

⁴³¹ See Section 2.

⁴³² Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada dated 30 November 2018, **CL-0041**.

⁴³³ Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada dated 30 November 2018, **CL-0041**.

⁴³⁴ *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, **CL-051**, para. 52; see also *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006, **CL-059**, para. 91 (“The ICSID Convention contains no definition of the term ‘investment’. The Tribunal concurs with ICSID precedents which, subject to minor variations, have relied on the so-called ‘Salini

jurisdictional requirements, but rather are indicative of typical elements that a tribunal “could consider in determining whether the subject matter from which the dispute has arisen is an ‘investment’ contemplated by the ICSID Convention”.⁴³⁵

- 3.17 In this case, SVB’s economic activity and contributions to acquire and develop the Sierra Mojada Project in Mexico qualify as “investments” under ICSID Convention Article 25(1).
- 3.18 *First*, the Project, as well as SVB’s shareholding in and contributions to Minera Metalín, qualify as contributions of value. ICSID tribunals have interpreted contribution broadly to encompass not only payments of money, but also other kinds of non-pecuniary contributions, such as “materials, works, or services”.⁴³⁶ As detailed above, between 2000 and 2022, SVB invested considerable capital and other resources to develop the Project in the territory of Mexico.
- 3.19 *Second*, SVB’s investments in Mexico were long-term, strategic investments. ICSID tribunals have recognized that “[duration] is a very flexible term ... [and] could be anything from a couple of months to many years”.⁴³⁷ Having spent over two decades investing in Mexico to develop the Project, SVB’s investments amply satisfy the duration criterion.
- 3.20 *Third*, SVB’s investments involved substantial risk, as evidenced by this dispute. ICSID tribunals have been clear that an element of risk is inherent in any long-term investment.⁴³⁸ SVB exposed itself to financial and market risk to acquire and develop the Project as a sustainable, responsible, efficient, and profitable mine in Mexico over the long term.

test’. Such test identifies the following elements as indicative of an ‘investment’ for purposes of the ICSID Convention: (i) a contribution, (ii) a certain duration over which the project is implemented, (iii) a sharing of operational risks, and (iv) a contribution to the host State’s development, being understood that these elements may be closely interrelated, should be examined in their totality and will normally depend on the circumstances of each case”).

⁴³⁵ *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania II*, ICSID Case No. ARB/15/41, Award of the Tribunal, 11 October 2019, **CL-0110**, para. 200; *see also Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, **CL-0069**, para. 294.

⁴³⁶ *LESI, S.p.A. and Astaldi, S.p.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction (unofficial translation), **CL-060**, para. 73(i).

⁴³⁷ *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012, **CL-0069**, para. 303.

⁴³⁸ *See Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, **CL-0051**, para. 56; *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, **CL-0058**, para. 136.

3.21 *Fourth*, and finally, SVB’s investments contributed to Mexico’s economic and social development. While contribution to the host State’s development is arguably implicit in any contribution of value and therefore need not be established separately,⁴³⁹ there can be no dispute in this case that SVB made substantial contributions to Mexico’s economic and social development. SVB not only created much needed local employment in Sierra Mojada during the exploration phase of the Project, but Minera Metalín also contributed to the Mexican economy by paying tax revenue to Mexico.

(C) The Tribunal has jurisdiction *ratione temporis*

(i) SVB has met the temporal requirements under the USMCA and the NAFTA

3.22 Article 3 of USMCA Annex 14-C provides that Mexico’s consent to arbitration in respect of “legacy investments” expires three years after termination of the NAFTA.⁴⁴⁰

3.23 The USMCA entered into force, and the NAFTA was terminated, on 1 July 2020.⁴⁴¹ Therefore, the opportunity to commence arbitration proceedings under NAFTA Chapter 11 remained available in respect of “legacy investments” for three years thereafter, *i.e.*, until 1 July 2023.

3.24 SVB filed its Request for Arbitration (“**RFA**”) on 28 June 2023, *i.e.*, within three years after termination of the NAFTA. SVB’s submission of its claims to arbitration thus is timely under the USMCA.

3.25 Moreover, SVB’s claims arise out of continuing breaches by Mexico that commenced before NAFTA’s termination on 30 June 2020. Accordingly, unlike the claimants in *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America*, SVB’s claims in this case do not arise out of alleged breaches that occurred only during the transition period, *i.e.*, between 30 June 2020 and 30 June 2023 (although the Tribunal would still have jurisdiction even if that were the case).⁴⁴² Rather, as detailed in Section 2 above, the events

⁴³⁹ See, *e.g.*, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, **CL-0064**, para. 85.

⁴⁴⁰ MCA, **CL-0044**, Annex 14-C, article 3.

⁴⁴¹ Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, 30 November 2018, **CL-0041**.

⁴⁴² See Investment Arbitration Reporter, *Mexico intervenes in Keystone XL Arbitration, siding with the USA’s view that the USMCA’s NAFTA legacy provision does not apply to disputes that arose during the NAFTA-USMCA transition period*, 19 September 2023, C-

giving rise to SVB's claims here are continuous in nature, spanning from the commencement of the Continuing Blockade in September 2019, *i.e.*, before the transition period, until the present.⁴⁴³

(ii) SVB's submission of its claims to arbitration also is timely under NAFTA Articles 1116(2), 1117(2), 1119, and 1120(1)

3.26 NAFTA Articles 1116(2) and 1117(2) establish that an "investor may not make a claim if more than three years have elapsed from the date on which the investor, or its enterprise, acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor, or its enterprise, has incurred loss or damage".⁴⁴⁴ Notably, the limitation period starts to run only when the investor, or its enterprise, has acquired both knowledge of the alleged breach and knowledge that it has incurred loss or damage as a result.

3.27 SVB's claims are timely because no more than three years have elapsed since SVB, or Minera Metalín, first acquired knowledge of SVB's and Minera Metalín's losses and damage caused by Mexico's continuing breaches and the filing of SVB's RFA on 28 June 2023.

3.28 As noted, the events giving rise to SVB's claims are continuous in nature, spanning from the commencement of the Continuing Blockade in September 2019 until the present. As a result of Mexico's failure to take any reasonable action to end the Continuing Blockade imposed by Mineros Norteños – which continues to block the Project area with impunity and now is using and exploiting the Project area unlawfully for its own financial gain – SVB lost its entire investment in the Project.⁴⁴⁵ SVB's losses and damage crystallized in August 2022, when South32 and SVB terminated the Option Agreement due to Mineros Norteños's continuing unlawful blockade and inability to access the Project site or progress the exploration works for three years, marking the end of the Project.⁴⁴⁶ The termination of the Option Agreement

0135 (available at www.iareporter.com/articles/mexico-intervenes-in-keystone-xl-arbitration-siding-with-the-usas-view-that-the-usmcas-nafta-legacy-provision-does-not-apply-to-disputes-that-arose-during-the-nafta-usmca-transition).

⁴⁴³ See Section 2.

⁴⁴⁴ NAFTA, **C-0004**, Art. 1116.2, 1117.2.

⁴⁴⁵ See Section 2; Barry WS, para. 8.8; Edgar WS, paras. 7.7-7.9.

⁴⁴⁶ See Section 2; Barry WS, para. 8.8; Edgar WS, paras. 7.7-7.9; Termination Agreement between SVB Resources Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd, 31 August 2022, **C-0048**.

in August 2022 resulted in the complete loss of the Project's value, as well as the value of the amounts SVB invested to acquire and develop the Project.

- 3.29 SVB filed its RFA on 28 June 2023, *i.e.*, within three years after SVB lost its entire investment in the Project as a direct result of Mexico's continuing breaches.
- 3.30 NAFTA Article 1119 further requires that the disputing investor "deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted".⁴⁴⁷ SVB delivered its Notice of Intent to submit a claim to arbitration to Mexico on 2 March 2023, *i.e.*, more than 90 days before the RFA was filed on 28 June 2023.⁴⁴⁸ Moreover, the Notice contained all of the information required by NAFTA Article 1119.⁴⁴⁹
- 3.31 Finally, NAFTA Article 1120(1) provides that an investor may submit an investment claim to arbitration only if "six months have elapsed since the events giving rise to [the] claim".⁴⁵⁰ As set forth in Section 2 above, more than six months have elapsed since the events giving rise to SVB's claims. Specifically, more than six months have elapsed since Mexico failed to take any reasonable action to end the Continuing Blockade imposed by Mineros Norteños in September 2019 and continuing through to the present, notwithstanding Minera Metalín's and SVB's repeated requests for intervention and assistance from the Mexican authorities.⁴⁵¹

⁴⁴⁷ NAFTA, **CL-0004**, arts. 1119.

⁴⁴⁸ Nol, **C-0069**; Letter No. DGCJCI.511.80.189.2023 from Mexico to Squire Patton Boggs LLP, 9 March 2023, **C-0054**.

⁴⁴⁹ See Nol, **C-0069**.

⁴⁵⁰ NAFTA, **CL-0004**, arts. 1120(1).

⁴⁵¹ See Section 2.

(D) The Tribunal has jurisdiction *ratione voluntatis*

- 3.32 SVB consented to the submission of this dispute to the jurisdiction of the Centre by the filing of its RFA.⁴⁵² Mexico's consent arises from the text of the USMCA and the NAFTA, namely, USMCA Annex 14-C Article 1 and NAFTA Article 1122.⁴⁵³
- 3.33 NAFTA Articles 1121(1) and 1121(2) provide that an investor may submit a claim to arbitration only if the investor and its enterprise consent to arbitration in accordance with the terms of the NAFTA, and waive their rights to bring claims before the national courts of any NAFTA State party with respect to the measures complained of in the arbitration.⁴⁵⁴ The relevant consent and waiver documents in accordance with Article 1121 were enclosed with the RFA.⁴⁵⁵
- 3.34 Finally, SVB has complied with NAFTA Article 1118, which provides that "[t]he disputing parties should first attempt to settle a claim through consultation or negotiation".⁴⁵⁶
- 3.35** In its Notice of Intent, SVB requested consultations with Mexico with a view to settling the claims amicably.⁴⁵⁷ On 30 May 2023, just two days prior to the end of the cooling-off period under the NAFTA, the Parties held a formal consultation meeting at the offices of the Ministry of Economy regarding SVB's and Minera Metalín's losses and damage incurred as a direct result of Mexico's breaches. The delay in holding the consultations was due to Mexico's refusal to conduct the consultation meeting virtually and its lack of availability any earlier than 30 May 2023. Notwithstanding SVB's good faith efforts, the Parties were unable to resolve this dispute amicably.

⁴⁵² RFA, para. 5.44.

⁴⁵³ USMCA, **CL-0044**, Annex 14-C, Art. 1 ("Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under: (a) Section A of Chapter 11 (Investment) of NAFTA 1994; (b) Article 1503(2) (State Enterprises) of NAFTA 1994; and (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994."); NAFTA, **C-0004**, Art. 1122 ("Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement").

⁴⁵⁴ NAFTA, **CL-0004**, arts. 1121.1, 1121.2.

⁴⁵⁵ Consent and Waiver Letter by SVB, 13 June 2023, **C-0060**; Consent and Waiver Letter by Minera Metalín, 12 June 2023, **C-0058**.

⁴⁵⁶ NAFTA, **CL-0004**, Art. 1118.

⁴⁵⁷ Nol, **C-0069**, para. 75.

4. MEXICO HAS BREACHED ITS OBLIGATIONS UNDER THE NAFTA

4.1 Mexico has breached and continues to breach its obligations under the NAFTA in relation to SVB's protected investments. Specifically, Mexico unlawfully expropriated SVB's protected investments without any compensation (**Section 4(A)**). Mexico also failed to accord SVB's protected investments full protection and security (**Section 4(B)**) and fair and equitable treatment (**Section 4(C)**). Finally, Mexico unlawfully discriminated against SVB and its protected investments (**Section 4(D)**).

(A) Mexico unlawfully expropriated SVB's protected investments

4.2 Mexico unlawfully expropriated SVB's protected investments in the Sierra Mojada Project through a series of acts and omissions, the effect of which was the taking of the Project in breach of NAFTA Article 1110(1).

(iii) The applicable standard

4.3 NAFTA Article 1110(1) provides that:

"[n]o Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ('expropriation'), except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and Article 1105(1); and (d) on payment of compensation in accordance with paragraphs 2 through 6".⁴⁵⁸

4.4 NAFTA Article 1110(1) protects covered investors against both direct (*de jure*) and indirect (*de facto*) expropriation that is not: (a) for a public purpose, (b) taken in accordance with due process of law, (c) non-discriminatory, and (d) accompanied by payment of compensation.⁴⁵⁹ The failure to comply with any of these four cumulative criteria set out in Article 1110(1) by a NAFTA Party renders its measure or set of measures, the effect of which is tantamount to expropriation, unlawful under the NAFTA.

⁴⁵⁸ NAFTA, CL-0004, Art. 1110.1.

⁴⁵⁹ See NAFTA, CL-0004, Art. 1110.1.

- 4.5 An indirect expropriation occurs where, as here, the covered investor is substantially deprived of the value of its investment by conduct attributable to a NAFTA Party.⁴⁶⁰ An indirect expropriation may occur even in the absence of a formal transfer of title, and even if the host State has not obtained any economic benefit.⁴⁶¹
- 4.6 In determining whether an indirect expropriation has taken place, “the practice of NAFTA tribunals has been to follow a three-step approach focusing on (i) whether there is an investment capable of being expropriated, (ii) whether that investment has in fact been expropriated, and (iii) whether the conditions set forth in Article 1110(1)(a)-(d) have been satisfied”.⁴⁶² As the tribunal in *Windstream Energy v. Canada* observed:

“NAFTA tribunals have generally taken the view that under Article 1110 of NAFTA the determination of whether an indirect expropriation has taken place is in the first place a matter of evidence, that is, a factual determination of whether an effective or de facto taking of property that is attributable to the State has taken place, even if there has been no formal transfer of title, and even if the host State has not obtained any economic benefit. If it is determined that such a de facto taking has indeed taken place, the

⁴⁶⁰ See *Pope & Talbot Inc. v. The Government of Canada*, UNCITRAL, Interim Award dated 26 June 2000 **CL-0109**, para. 102 (“While it may sometimes be uncertain whether a particular interference with business activities amounts to an expropriation, the test is whether that interference is sufficiently restrictive to support a conclusion that the property has been ‘taken’ from the owner.”); *Merrill & Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/01, Award, 31 March 2010, **CL-0029**, para. 145 (observing that “[t]he standard of substantial deprivation identified in *Pope & Talbot*, and followed by many other decisions, both in the context of NAFTA and other investment protection agreements, is the appropriate measurement of the requisite degree of interference”); see also *Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/1, Award, 17 July 2006, **CL-0089**, para. 176 (observing that “[t]he taking must be a substantially complete deprivation of the economic use and enjoyment of the rights to the property, or of identifiable distinct parts thereof (*i.e.*, it approaches total impairment)”).

⁴⁶¹ See, e.g., *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, **CL-0086**, para. 238 (“Expropriation may take place through State measures other than direct taking of tangible property, such as taxation. When such interference occurs, the legal title to the property remains in the owner but, as a result of the host State measure, the investor’s rights to use of the property are rendered nugatory, or lack the economic value they previously had.”); *Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/1, Award, 17 July 2006, **CL-0089**, para. 176 (noting that, under NAFTA Article 1110(1), “[t]he taking usually involves a transfer of ownership to another person (frequently the government authority concerned), but that need not necessarily be so in certain cases (e.g., total destruction of an investment due to measures by a government authority without transfer of rights)”).

⁴⁶² *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, 2 August 2010, **CL-0082**, para. 242.

issue arises as to whether the taking is lawful, and what the appropriate form and level of relief should be".⁴⁶³

- 4.7 To prove a breach of NAFTA Article 1110, there is no requirement that an investor establish bad faith or intent on the part of the host State.⁴⁶⁴ As the tribunal in *Tecmed v. Mexico* remarked, "[t]he government's intention is less important than the effects of the measures on the owner of the assets or on the benefits arising from such assets affected by the measures; and the form of the deprivation measure is less important than its actual effects."⁴⁶⁵ Thus, in assessing whether a NAFTA Party's conduct constitutes an indirect expropriation, tribunals have focused on "[t]he effects of the measures on the owner of the assets or on the benefits arising from such assets affected by the measures".⁴⁶⁶
- 4.8 Additionally, as the *Tecmed* tribunal noted, "[t]o determine whether such an expropriation has taken place, the Arbitral Tribunal should not '... restrict itself to evaluating whether a formal dispossession or expropriation took place, but should look beyond mere appearances and establish the real situation behind the situation that was denounced'".⁴⁶⁷ In *Tecmed*, the tribunal found that Mexico's decision to refuse renewal of the claimant's operating permit permanently neutralised the value of the claimant's investment and thus was expropriatory.⁴⁶⁸

⁴⁶³ *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Award, 27 September 2016, **CL-0090**, para. 284.

⁴⁶⁴ See, e.g., *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/97/3), Award, 20 August 2007, **CL-0022**, para. 7.5.20 ("While intent will weigh in favour of showing a measure to be expropriatory, it is not a requirement, because the effect of the measure on the investor, not the state's intent, is the critical factor").

⁴⁶⁵ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 116.

⁴⁶⁶ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 116.

⁴⁶⁷ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 116.

⁴⁶⁸ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 116.

- 4.9 A measure tantamount to expropriation may include both acts and omissions. This follows from a good faith reading of the term “measure” in Article 1110(1) and is consistent with the well-established principle that both acts and omissions may give rise to State responsibility.⁴⁶⁹
- 4.10 Critically, the Tribunal in the present case need not find that Mexico directly participated in the taking of SVB’s protected investments, as the tribunal in *Wena Hotels v. Egypt* made clear. In *Wena*, the tribunal found that an expropriation “exists not only when a state takes over private property, but also when the expropriating state transfers ownership to another legal or natural person”, as well as when “the state withdraw[s] the protection of its courts [from] the owner expropriated, and tacitly allow[s] a *de facto* possessor to remain in possession of the thing seized”.⁴⁷⁰
- 4.11 Applying this standard, the *Wena* tribunal held that Egypt had breached the relevant investment treaty by failing to provide the claimant with “prompt, adequate and effective compensation” for the losses it suffered as a result of the seizures of the Luxor and Nile Hotels.⁴⁷¹ In so ruling, the *Wena* tribunal noted that it was irrelevant whether the host State had directly participated in the taking:

*“Whether or not it authorized or participated in the actual seizures of the hotels, Egypt deprived Wena of its ‘fundamental rights of ownership’ by allowing EHC forcibly to seize the hotels, to possess them illegally for nearly a year, and to return the hotels stripped of much of their furniture and fixtures”.*⁴⁷²

- 4.12 The *Wena* tribunal further rejected Egypt’s argument that the deprivation was merely “ephemeral”, underscoring that “allowing an entity (over which Egypt could exert effective

⁴⁶⁹ International Law Commission Articles on State Responsibility, 2001, **CL-0081**, art. 2 (“There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.”); *see also id.*, art 15(1) (“The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.”).

⁴⁷⁰ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, para. 97; *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award, 20 November 1984, **CL-0047**, para. 158.

⁴⁷¹ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, para. 131.

⁴⁷² *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, para. 99.

control) to seize and illegally possess the hotels for nearly a year is more than an ephemeral interference ‘in the use of that property or with the enjoyment of its benefits’” .⁴⁷³

4.13 As elaborated below, in this case, Mexico has deprived SVB in whole of its fundamental rights of ownership and of the use, enjoyment and economic benefit of its protected investments by encouraging and permitting *Mineros Nortesños* to blockade, occupy, possess and exploit the Project site in its unlawful attempt to extort more than US\$ 6.8 million from SVB.

(iv) Mexico has indirectly expropriated SVB’s protected investments

4.14 As elaborated in Section 2 above, Mexico encouraged, permitted and continues to permit a *de facto* possessor (*Mineros Nortesños*) to blockade, occupy, possess and exploit the Sierra Mojada Project site unlawfully for its own financial gain.⁴⁷⁴ Despite SVB’s multiple requests to the Mexican authorities and attempts to reach an amicable resolution with *Mineros Nortesños* regarding its extortionate demands, Mexico has made no genuine attempt to intervene in or bring an end to the Continuing Blockade or to allow SVB and *Minera Metalín* to regain access to the Project site.⁴⁷⁵ Nor has Mexico sanctioned *Mineros Nortesños* or its representatives for their unlawful actions.⁴⁷⁶

4.15 Specifically, as detailed above, the Continuing Blockade imposed by *Mineros Nortesños* forcibly locked in, effectively kidnapped and ultimately drove SVB’s personnel to escape from the Project site under cover of night, resulting in the termination of all activities on the Project.⁴⁷⁷ Despite SVB’s multiple requests for intervention and assistance from the local prosecutors, the Mexican police, the Ministry of Economy, and other State authorities, Mexico did not take and has never taken any real or genuine steps to clear the Continuing Blockade and restore the Project site to SVB and *Minera Metalín*.⁴⁷⁸ Nor has Mexico sanctioned *Mineros Nortesños* or its representatives for their unlawful actions in holding SVB’s and *Minera Metalín*’s personnel hostage, forcibly expelling SVB and *Minera Metalín*, and

⁴⁷³ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, para. 99.

⁴⁷⁴ See Section 2.

⁴⁷⁵ See Section 2.

⁴⁷⁶ See Section 2.

⁴⁷⁷ López Ramírez WS, paras. 8.1-8.49, 15.1-15.7; Barry WS, para. 8.7.

⁴⁷⁸ See Section 2.

illegally possessing the Project site for nearly five years.⁴⁷⁹ Accordingly, the Project site remains occupied by and under the control of Mineros Norteños, which has begun to sell the tailings at the Project for its own financial gain.⁴⁸⁰

4.16 On 31 August 2022, as a result direct of the Continuing Blockade, the inability to access the Project site or progress the exploration works for nearly three years, and the continued lack of any action by the Mexican authorities, South32 and SVB terminated the Option Agreement for the Project.⁴⁸¹ With the loss of SVB's critical financing and development partner for the Project, SVB understood that it would not be able to progress the Project further.⁴⁸² This was because no reasonable investor would be interested in a mining project illegally blockaded for nearly three years with no hope of any Government intervention.⁴⁸³ Thus, the termination of the Option Agreement resulted in the complete loss of the Project's value, as well as the value of the amounts SVB invested to acquire and develop the Project.⁴⁸⁴

4.17 Specifically, the following series of acts and omissions by Mexico has deprived SVB of its fundamental rights of ownership, including its right to use, enjoy and benefit from the Sierra Mojada Project, and amount to an indirect expropriation of SVB's protected investments, in violation of NAFTA Article 1110(1):

(a) the encouragement by Deputy Borrego for Mineros Norteños to impose the unlawful Continuing Blockade on the Sierra Mojada Project in September 2019;

(b) the failure by the Mexican police and other State authorities to take reasonable action to remove the Continuing Blockade forcibly imposed by Mineros Norteños or to protect SVB's and Minera Metalín's personnel and ensure their safe passage;

⁴⁷⁹ See Section 2.

⁴⁸⁰ See Section 2.

⁴⁸¹ See Section 2; Barry WS, paras. 8.5-8.6;; Edgar WS, paras. 7.7-7.9; Termination Agreement between SVB Resources Inc., Minera Metalín, S.A. de C.V. and South 32 International Investment Holding Pty Ltd, 31 August 2022, **C-0048**.

⁴⁸² See Section 2; Barry WS, paras. 8.7; Edgar WS, paras. 7.7-7.9.

⁴⁸³ See Section 2; Barry WS, paras. 8.7; Edgar WS, paras. 7.7-7.9.

⁴⁸⁴ See Section 2; Barry WS, paras. 8.8; Edgar WS, paras. 7.7-7.9.

- (c) the failure by the Mexican police and other State authorities to take reasonable action to remove the Continuing Blockade and occupation that remain in place to this day;
- (d) the failure by the Mexican police, prosecutorial, and other State authorities to sanction the Mineros Norteños blockaders, notwithstanding SVB's complaints, for the unlawful Continuing Blockade and illegal possession and use of the Project site; and
- (e) the ongoing failure by the Mexican police, prosecutorial, and other State authorities to restore SVB's and Minera Metalín's access to the Project site, notwithstanding its numerous complaints and pleas for assistance.⁴⁸⁵

4.18 These acts and omissions amount to an indirect expropriation of SVB's protected investments in the Project, for which Mexico bears responsibility.

- (v) Mexico's indirect expropriation of SVB's protected investments was unlawful

4.19 Mexico not only indirectly expropriated SVB's protected investments, but it did so unlawfully.

4.20 First, the taking of SVB's protected investments in the Project was not justified by any public purpose.⁴⁸⁶ The taking was effectuated by the unlawful Continuing Blockade forcibly imposed by Mineros Norteños. It has benefitted only Mineros Norteños, a Mexican mining cooperative, and has prevented development of the Project and destroyed local employment in Sierra Mojada and in the surrounding communities.

4.21 Second, the taking of SVB's protected investments in the Project was discriminatory. State conduct is discriminatory where, as here, it treats similar cases differently without reasonable justification.⁴⁸⁷ Mexico's acts and omissions in this case were discriminatory. Mexico not only expressly encouraged Mineros Norteños, a Mexican mining cooperative, to blockade the Sierra Mojada Project site unlawfully, but it then permitted Mineros Norteños to occupy,

⁴⁸⁵ See Section 2.

⁴⁸⁶ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, **CL-0061**, paras. 432-433.

⁴⁸⁷ *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, **CL-0019**, para. 113; *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016, **CL-0075**, para. 616; *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, **CL-0026**, para. 184.

possess and exploit the Project site for its own extortionate demands and financial gain, while ignoring SVB's complaints and pleas for assistance. Most critically, as detailed above, the Mexican authorities during this same time period took swift action against other blockades imposed on other mining projects in Mexico. These included:

(a) Minera Penmont's mining operation at La Herradura located in Sonora in 2023;⁴⁸⁸

(b) the Los Filos mine in Guerrero in 2021;⁴⁸⁹

(c) Americas Gold and Silver's San Rafael mine in Sinaloa in 2021;⁴⁹⁰ and

(d) Pan American Silver's La Colorada mine in Zacatecas in 2023.⁴⁹¹

4.22 From these examples, it is evident that the Mexican authorities had the resources and the ability to intervene in and end the Continuing Blockade, as they did contemporaneously to restore law and order at other mining projects in Mexico. The Mexican authorities also swiftly intervened in and ended the Initial Blockade in 2016 at Sierra Mojada.⁴⁹² That Mexico chose not to take any reasonable action in respect of the Continuing Blockade unlawfully imposed by Mineros Norteños in September 2019 and continuing until today is clear evidence of discrimination.

4.23 Third, the taking was not conducted in accordance with due process of law. Due process requires, at a minimum, that the expropriation accord with a "lawful procedure",⁴⁹³ including "basic legal mechanisms" which enable an investor to have its claims heard, including notice,

⁴⁸⁸ See Mexico Business News, *Authorities Lift Blockade at Herradura*, 17 May 2023, **C-0134**, at mexicobusiness.news/mining/news/authorities-lift-blockade-herradura.

⁴⁸⁹ See Mexico Business News, *Blockade Lifted At Equinox Gold's Los Filos Mine*, 2 August 2021, **C-0122**, at mexicobusiness.news/mining/news/blockade-lifted-equinox-golds-los-filos-mine.

⁴⁹⁰ See Mexico Business News, *San Rafael Mine is No Longer Blocked*, 15 September 2021, **C-0123**, at mexicobusiness.news/mining/news/san-rafael-mine-no-longer-blocked?tag=blockade.

⁴⁹¹ See LatinUS, *Zacatecas government promises protection to Canadian miner that suspended operations after organised crime robberies*, 7 October 2023, **C-0136**, latinus.us/2023/10/07/gobierno-de-zacatecas-promete-proteccion-a-minera-canadiense-que-suspendio-operaciones-tras-robos-del-crimen-organizado/#Ingrnual3ziq3cwvd2k.

⁴⁹² See Section 2.

⁴⁹³ *Antoine Goetz and others v. Republic of Burundi (I)*, ICSID Case No. ARB/95/3, Award (Embodying the Parties' Settlement Agreement) (unofficial translation), 10 February 1999, **CL-0048**, para. 127.

a fair hearing, and an unbiased and impartial adjudicator to assess the actions in dispute.⁴⁹⁴ Absent such legal procedure, “the argument that ‘the actions are taken under due process of law’ rings hollow”.⁴⁹⁵ Due process also requires that the host State act transparently and that it not take decisions with the intent of causing damage to the investment.⁴⁹⁶

4.24 In this case, there has been no due process: SVB was not lawfully warned, and Mexico has not provided any assistance in ending the Continuing Blockade. Nor has SVB been able to secure legal redress since the Continuing Blockade was installed in September 2019. As explained above, the Mexican authorities have ignored SVB’s criminal complaints and failed to sanction Mineros Norteños for its ongoing unlawful conduct.⁴⁹⁷

4.25 Fourth and finally, Mexico has not paid SVB any compensation for the deprivation of its protected investments in the Project as required by NAFTA Article 1110(1). This fact alone renders Mexico’s indirect expropriation of SVB’s protected investments unlawful.⁴⁹⁸

(B) Mexico failed to provide full protection and security

4.26 Mexico has failed to provide full protection and security to SVB’s protected investments in breach of Article 1105 of the NAFTA.

4.27 NAFTA Article 1105 sets out the “minimum standard of treatment” that each State Party must accord to covered investments, such as SVB’s investments in the Sierra Mojada Project. Article 1105 provides in relevant part that “[e]ach Party shall accord to investments of

⁴⁹⁴ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, **CL-0061**, para. 435.

⁴⁹⁵ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, **CL-0061**, para. 435.

⁴⁹⁶ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, **CL-0024**, para. 602; *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, **CL-0065**, paras. 438,441.

⁴⁹⁷ See Section 2.

⁴⁹⁸ *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, **CL-0025**, para. 706; *JSC Tashkent Mechanical Plant, JSCB Asaka, JSCB Uzbek Industrial and Construction Bank, and National Bank for Foreign Economic Activity of the Republic of Uzbekistan v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/16/4, Award, 17 May 2023, **CL-0103**, para. 571; *Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award, 14 July 2023, **CL-0106**, para. 293.

investors of another Party treatment in accordance with international law, including fair and equitable treatment and *full protection and security*".⁴⁹⁹

- 4.28 In their Notes on Interpretation of Certain Chapter 11 Provisions dated 31 July 2001, the NAFTA Free Trade Commission clarified that "Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party," and that "[t]he concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens".⁵⁰⁰
- 4.29 Historically, the obligation to provide full protection and security requires the State to protect and secure investments from physical harm.⁵⁰¹ As the tribunal in *Saluka v. Czech Republic* observed, the standard applies "essentially when the foreign investment has been affected by civil strife and physical violence".⁵⁰²
- 4.30 The full protection and security standard imposes an obligation of due diligence or vigilance,⁵⁰³ and requires the State to exercise reasonable care and to take reasonable actions within its power to prevent harm or injury to the investment.⁵⁰⁴

⁴⁹⁹ NAFTA, **CL-0004**, art. 1105.

⁵⁰⁰ NAFTA Free Trade Commission, *Notes of Interpretation of Certain Chapter 11 Provisions*, 31 July 2001, **CL-0052**.

⁵⁰¹ See, e.g., *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, **CL-0074**, para. 157; *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015, **CL-0073**, paras. 596-597.

⁵⁰² *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, **CL-0019**, para. 483.

⁵⁰³ See *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability, 10 April 2013, **CL-0070**, para. 999; *Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Final Award, 12 June 2012, **CL-0068**, para. 272; *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011, **CL-0067**, paras. 323-325; *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, **CL-0005**, paras. 6.05-6.06.

⁵⁰⁴ *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 177; *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, **CL-0079**, paras. 626-627.

4.31 The full protection and security standard can be violated through State action, as well as inaction.⁵⁰⁵ As the tribunal in *Parkerings v. Lithuania* noted:

*“[a] violation of the standard of full protection and security could arise in case of failure of the State to prevent the damage, to restore the previous situation or to punish the author of the injury. The injury could be committed either by the host State, or by its agencies or by an individual”.*⁵⁰⁶

4.32 Likewise, in *Cengiz v. Libya*, the tribunal described the obligation to provide full protection and security as “an obligation of result and an obligation of means”, which comprises two parts: “[a] negative obligation to refrain from directly harming the investment by acts of violence attributable to the State”, as well as “[a] positive obligation to prevent that third parties cause physical damage to such investment”.⁵⁰⁷

4.33 In *AMT v. Zaire*, for example, the tribunal held that the State’s failure to take all measure of precaution to protect and ensure the security of the claimant’s investment from third parties who destroyed, damaged, and stole property located on the claimant’s premises on two separate occasions breached the full protection and security standard.⁵⁰⁸ In the tribunal’s view, the standard imposed an obligation of vigilance to protect the claimant’s investment on Zaire’s territory.⁵⁰⁹ The tribunal interpreted the obligation of vigilance to mean:

“that Zaire as the receiving State of investments made by AMT, an American company, shall take all measures necessary to ensure the full enjoyment of protection and security of its investment and should not be permitted to invoke its own legislation to detract from

⁵⁰⁵ See, e.g., *Asian Agricultural Products LTD (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, **CL-0094**, para. 85 (finding “that the Respondent through said inaction and omission violated its due diligence obligation which requires undertaking all possible measures that could be reasonably expected to prevent the eventual occurrence of killings and property destructions”); *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability, 28 April 2011, **CL-0067**, para. 325.

⁵⁰⁶ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, **CL-0062**, para. 355.

⁵⁰⁷ *Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, 7 November 2018, **CL-0077**, paras. 403-404.

⁵⁰⁸ *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, **CL-0005**, paras. 6.11-6.14.

⁵⁰⁹ *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, **CL-0005**, 21 February 1997, paras. 6.04-6.11.

*any such obligation. Zaire must show that it has taken all measure of precaution to protect the investments of AMT on its territory”.*⁵¹⁰

- 4.34 Similarly, in *Wena Hotels v. Egypt*, the tribunal held that Egypt had breached its obligation to accord Wena’s investment full protection and security. In so holding, the tribunal found that (i) the Government was aware of the Egyptian Hotel Company’s intention to seize the claimant’s hotels and took no action to prevent this seizure; (ii) once the seizures occurred, both the police and the Ministry of Tourism took no immediate action to restore the hotels promptly to Wena’s control; and (iii) neither the Egyptian Hotel Company nor its senior officials were seriously sanctioned for their actions in forcibly expelling Wena and illegally possessing the hotels for approximately a year.⁵¹¹
- 4.35 In *von Pezold v. Zimbabwe*, the claimant’s farmland was invaded and occupied by settlers, who had also threatened the claimant’s representatives.⁵¹² The tribunal observed that the full protection and security standard concerned not only physical security, but also threats of violence.⁵¹³ The tribunal held that Zimbabwe had failed to provide full protection and security to the claimant’s investment due to the police’s failure to protect the claimants’ properties from occupation, its failure to remove the settlers from the claimants’ properties, and its non-responsiveness to various violent incidents.⁵¹⁴
- 4.36 Likewise, in *MNSS v. Montenegro*, the claimant’s steelworks had on two occasions been invaded and occupied by workers protesting over unpaid wages and social benefits.⁵¹⁵ With regard to the first occupation, the tribunal noted that “[i]rrespective of when the police was advised of the demonstration, the police took no action to dislodge the occupiers during the seven days that the occupation lasted”.⁵¹⁶ With regard to the second occupation, the State

⁵¹⁰ *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, **CL-0005**, para. 6.05.

⁵¹¹ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, paras. 84-95.

⁵¹² *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, **CL-0073**, para. 110.

⁵¹³ *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, **CL-0073**, para. 596.

⁵¹⁴ *Bernhard von Pezold and others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, **CL-0073**, para. 597.

⁵¹⁵ *MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, **CL-0076**, paras. 352-353.

⁵¹⁶ *MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, **CL-0076**, para. 352.

authorities (including the then Minister of Economy) had been advised of a forthcoming strike and of the workers' intent to occupy the claimant's site the next day.⁵¹⁷ The police, however, failed to intervene. As a result, the building not only was occupied as announced, but the CEO was physically assaulted.⁵¹⁸ The tribunal concluded that Montenegro had failed to provide the "most constant protection and security" to the claimant's investments.⁵¹⁹

4.37 In *Ampal-American v. Egypt*, the claimant's personnel contacted an Egyptian army patrol and asked them to stop saboteurs from laying explosives on the claimant's pipeline at a nearby facility.⁵²⁰ The police refused to act and subsequently the explosives detonated, cutting off the gas supply for almost three months.⁵²¹ The tribunal held that Egypt had breached the full protection and security standard by failing to take material steps – whether "preventive or reactive" – to protect the claimant's pipeline from continuous attacks by third parties.⁵²²

4.38 Like the State authorities in the cases set out above, the Mexican authorities in this case failed to protect SVB's investments from the Continuing Blockade and failed to take any reasonable action within their power to restore SVB's and Minera Metalín's access to the Project site, despite their multiple requests for assistance.⁵²³ The Mexican authorities also failed to take any reasonable action within their power to dislodge Mineros Norteños and its encampment from SVB's property, or to sanction Mineros Norteños and its representatives for their unlawful actions.⁵²⁴ As a result, SVB had been foreclosed from the Project site for years and,

⁵¹⁷ *MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, **CL-0076**, para. 353.

⁵¹⁸ *MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, **CL-0076**, para. 354.

⁵¹⁹ *MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, 4 May 2016, **CL-0076**, Award, paras. 351, 356.

⁵²⁰ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, **CL-0040**.

⁵²¹ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, **CL-0040**, paras. 286-289.

⁵²² *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, **CL-0040**, paras. 288-289.

⁵²³ See Section 2.

⁵²⁴ See Section 2.

indeed, Mineros Norteños continues to block and occupy the Project site unlawfully to this day.⁵²⁵ Moreover, as Mr. López Ramírez testifies, Mineros Norteños has begun selling silver and zinc obtained from the tailings on site.⁵²⁶

- 4.39 Mexico's continued failure to exercise any care, much less reasonable care, to protect SVB's investments from the unlawful Continuing Blockade and occupation by Mineros Norteños breached Mexico's obligation to provide full protection and security.

(C) Mexico failed to accord fair and equitable treatment

- 4.40 As noted above, NAFTA Article 1105 provides that "[e]ach Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment".⁵²⁷ In the present case, Mexico breached the minimum standard of treatment not only by failing to provide full protection and security, but also by failing to accord fair and equitable treatment to SVB's protected investments.

- 4.41 A State will be deemed to have violated its obligation to accord fair and equitable treatment if it failed to act in good faith, or if it engaged in arbitrary, grossly unfair or idiosyncratic, or discriminatory conduct that exposed the investor to sectional or racial prejudice.⁵²⁸ While bad faith on the part of the State necessarily will establish a violation of the fair and equitable treatment standard, an investor need not demonstrate bad faith.⁵²⁹

- 4.42 In *Mondev v. United States*, for example, the tribunal observed that, in modern times, "what is unfair or inequitable need not equate with the outrageous or the egregious," and that "a State may treat foreign investment unfairly and inequitably without necessarily acting in bad

⁵²⁵ See Section 2.

⁵²⁶ López Ramírez WS, para. 15.5.

⁵²⁷ NAFTA, **CL-0004**, Art. 1105.

⁵²⁸ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, 19 December 2013, **CL-0071**, para. 454; *Waste Management v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, **CL-0056**, para. 98; *Glamis Gold Ltd. v. United States of America*, Award, 8 June 2009, **CL-0088**, para. 627.

⁵²⁹ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador (II)*, ICSID Case No. ARB/06/11, Award, 5 October 2012, **CL-0035**, para. 186; *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, **CL-0017**, para. 280; *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 21 October 2011, **CL-0032**, para. 357.

faith”.⁵³⁰ The tribunal further found “no doubt” that the NAFTA’s reference to the minimum standard of treatment refers to the standard under “customary international law as it stood no earlier than the time at which NAFTA came into force.”⁵³¹ The tribunal noted in this regard that each State party to the NAFTA had accepted that the minimum standard of treatment “can evolve” and “has evolved”.⁵³²

4.43 In *Waste Management v. Mexico (II)*, the tribunal described the minimum standard of treatment of fair and equitable treatment under NAFTA Article 1105 in the following terms:

*“[T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. [...] In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant”.*⁵³³

4.44 Similarly, the tribunal in *Merrill & Ring v. Canada* observed that the minimum standard of treatment of fair and equitable treatment “protects against all such acts or behavior that might infringe a sense of fairness, equity, and reasonableness”.⁵³⁴

⁵³⁰ *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, **CL-0055**, para. 116; *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01, Award, 2 August 2010, **CL-0082**, para. 121; *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, **CL-0029**, para. 193.

⁵³¹ *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, **CL-0055**, para. 125

⁵³² *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, **CL-0055**, paras. 119, 124.

⁵³³ *Waste Management v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, **CL-0056**, para. 98.

⁵³⁴ *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, **CL-0029**, para. 210.

4.45 A State's obligations to provide fair and equitable treatment and full protection and security are often stated together in the relevant treaty, as is the case in the NAFTA.⁵³⁵ As such, investment tribunals often examine these standards together and, although they represent different obligations, a breach of one often entails a breach of the other. For instance, in *Wena Hotels v. Egypt*, the tribunal concluded that the same acts and omissions by the State amounted to both a failure to provide full protection and security and fair and equitable treatment to Wena's investments.⁵³⁶

4.46 Likewise, in *Suez v. Argentina*, the tribunal noted that the obligations to provide full protection and security and fair and equitable treatment were contained in the same provision of the Argentina-France BIT and concluded that a breach of the former entailed a breach of the latter:

*"[...] the concept of full protection and security is included within the concept of fair and equitable treatment, but that the scope of full protection and security is narrower than the fair and equitable treatment. Thus, State action that violates the full protection and security clause would of necessity constitute a violation of fair and equitable treatment under the French BIT".*⁵³⁷

4.47 Similarly, in this case, Mexico's acts and omissions that amount to a breach of full protection and security also amount to a breach of the obligation to accord fair and equitable treatment to SVB's protected investments, in breach of NAFTA Article 1105.

4.48 Specifically, like Egypt's acts and omissions in *Wena Hotels*, Mexico's acts and omissions here were unjust, arbitrary, unreasonable and in violation of due process, and thus failed to provide the minimum standard of treatment of both full protection and security and fair and equitable treatment to SVB's protected investments. In particular, Mexico has failed to address or sanction in any just or reasonable way:

⁵³⁵ NAFTA, **CL-0004**, Art. 1105.

⁵³⁶ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-049**, para. 95.

⁵³⁷ *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. (formerly Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A.) v. Argentine Republic (II)*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010, **CL-0066**, para. 171.

- (a) the Continuing Blockade and illegal occupation at the Project site;
- (b) the wrongful confinement and effective kidnapping of SVB's personnel at the camp; and
- (c) the substantial damage to SVB's facilities and illegal exploitation by Mineros Norteños.⁵³⁸

4.49 The failure of Mexico, including the police, prosecutorial authorities, and other federal, state and local authorities, to take any reasonable action within their power to end the Continuing Blockade and to protect SVB's personnel and facilities was arbitrary, as well as grossly unreasonable, unfair and unjust. Mexico did not act in an even-handed, unambiguous, transparent or candid manner. And, although SVB need not make the showing, Mexico's failure to take any reasonable action, in the words of the *Pope & Talbot* tribunal, was without a doubt egregious, outrageous, shocking and extraordinary.⁵³⁹

4.50 Furthermore, Mexico frustrated SVB's legitimate expectations regarding the Project. Indeed, SVB legitimately expected that its representatives and personnel would be able to access and work safely at the Project area, without interference, confinement or occupation. SVB further expected that its representatives, personnel, facilities and equipment would be safe from physical harm and damage by third parties, or at a minimum that Mexico would take corrective action to address that harm and damage, and sanction those responsible.

4.51 Mexico violated SVB's legitimate expectations, by, among other things, failing to address or sanction the Continuing Blockade or the damage inflicted on the Project's facilities.⁵⁴⁰

4.52 In addition, Mexico treated SVB and its protected investments in a discriminatory fashion. As elaborated above, Mexico not only encouraged the Continuing Blockade, but Mexico took corrective action against blockades imposed on other mining projects in Mexico, including:

- (a) Minera Penmont's mining operation at La Herradura located in Sonora in 2023;⁵⁴¹

⁵³⁸ See Section 2.

⁵³⁹ *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, **CL-0050**, para. 118.

⁵⁴⁰ See Section 2.

⁵⁴¹ See Mexico Business News, *Authorities Lift Blockade at Herradura*, 17 May 2023, **C-0134**, at mexicobusiness.news/mining/news/authorities-lift-blockade-herradura.

(b) the Los Filos mine in Guerrero in 2021;⁵⁴²

(c) Americas Gold and Silver's San Rafael mine in Sinaloa in 2021;⁵⁴³ and

(d) Pan American Silver's La Colorada mine in Zacatecas in 2023.⁵⁴⁴

4.53 That Mexico chose not to take any similar action in respect of the Continuing Blockade at the Sierra Mojada Project is clear evidence of discriminatory treatment in breach of the minimum standard of treatment of fair and equitable treatment.

4.54 In sum, Mexico's acts and omissions amount to a failure to accord the minimum standard of treatment of fair and equitable treatment to SVB's protected investments, in breach of NAFTA Article 1105.

(D) Mexico failed to accord national treatment and most-favored nation treatment

4.55 Article 1102 of the NAFTA requires Mexico to provide national treatment to foreign investors and their investments:

"1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investor of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to

⁵⁴² See Mexico Business News, *Blockade Lifted At Equinox Gold's Los Filos Mine*, 2 August 2021, **C-0122**, at mexicobusiness.news/mining/news/blockade-lifted-equinox-golds-los-filos-mine.

⁵⁴³ See Mexico Business News, *San Rafael Mine is No Longer Blocked*, 15 September 2021, **C-0123**, at mexicobusiness.news/mining/news/san-rafael-mine-no-longer-blocked?tag=blockade.

⁵⁴⁴ See LatinUS, *Zacatecas government promises protection to Canadian miner that suspended operations after organised crime robberies*, 7 October 2023, **C-0136**, latinus.us/2023/10/07/gobierno-de-zacatecas-promete-proteccion-a-minera-canadiense-que-suspendio-operaciones-tras-robos-del-crimen-organizado/#Ingrnual3ziq3cwvd2k.

*the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments”.*⁵⁴⁵

4.56 Article 1103 of the NAFTA requires Mexico to provide most-favoured-nation (“MFN”) treatment to foreign investors and their investments:

“1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

*2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.”*⁵⁴⁶

4.57 To demonstrate that Mexico *prima facie* breached its obligations under NAFTA Articles 1102 and 1103, SVB must establish the following elements:

(a) Mexico accorded to SVB or its investments treatment “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments”;⁵⁴⁷

⁵⁴⁵ NAFTA, **CL-0004**, Art. 1102.

⁵⁴⁶ NAFTA, **CL-0004**, Art. 1103.

⁵⁴⁷ *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, **CL-0021**, para. 83(a); *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, **CL-0063**, para. 117; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, **CL-0083**, para. 189; *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, paras. 717-718.

(b) SVB or its investments were in like circumstances with “local investors or investments” or with investors of a third State or their investments;⁵⁴⁸ and

(c) Mexico treated SVB or its investments less favourably than it treated local or foreign investors or investments.⁵⁴⁹

4.58 The legal burden with respect NAFTA Articles 1102 and 1103 lies with SVB.⁵⁵⁰ However, as the tribunal held in *Bilcon v. Canada*, the evidentiary burden shifts to the respondent State to raise a positive defense once a *prima facie* case has been demonstrated:

*“once a prima facie case is made out under [Article 1102 of the NAFTA], the onus is on the host state to show that a measure is still sustainable within the terms of Article 1102. It is the host state that is in a position to identify and substantiate the case, in terms of its own laws, policies and circumstances, that an apparently discriminatory measure is in fact compliant with the ‘national treatment’ norm set out in Article 1102”.*⁵⁵¹

4.59 The first element is to identify “treatment” with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

⁵⁴⁸ *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, 11 June 2007, **CL-0021**, para. 83(b); *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, **CL-0063**, para. 117; *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, paras. 717-718.

⁵⁴⁹ *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, **CL-0021**, para. 83(c); *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, **CL-0083**, para. 193; *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, **CL-0063**, para. 117; *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, paras. 717-718.

⁵⁵⁰ *Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, **CL-0086**, para. 7.16; *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, **CL-0021**, para. 120; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, **CL-0105**, para. 177

⁵⁵¹ *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, para. 723; *Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, **CL-0086**, para. 7.16.

This is a broad requirement encompassing all conceivable measures taken by the State. As the *Merrill & Ring* tribunal observed:

*“This is a broad definition indeed, as it includes almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor’s business activity. The treatment is not different than the aggregate of all the regulatory measures applied to that business”.*⁵⁵²

4.60 As noted above, a measure may include both acts and omissions.⁵⁵³ In this case, Mexico’s measures described in Section 2 above directly affected SVB’s ability to access the Project site to advance and develop the Project.⁵⁵⁴ Accordingly, Mexico’s inaction in relation to the Continuing Blockade constitutes “treatment” for purposes of NAFTA Articles 1102 and 1103.

4.61 The second element is identifying comparator investors or investments “in like circumstances,” as the claimant or its investments. The concept of “like circumstances” is flexible and does not require the comparator investors or investments to be in identical circumstances.⁵⁵⁵ As the *Pope & Talbot* tribunal observed:

*“The Tribunal must resolve this dispute by defining the meaning of ‘like circumstances.’ It goes without saying that the meaning of the term will vary according to the facts of a given case. By their very nature, ‘circumstances’ are context dependent and have no unalterable meaning across the spectrum of fact situations [...]”*⁵⁵⁶

4.62 In identifying comparator investors or investments, tribunals considered three factors: (a) investors who are subject to a comparable legal regime; (b) who operated in the same business or economic sector; and (c) who provided the same or competing products or

⁵⁵² *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, **CL-0029**, para. 79.

⁵⁵³ See para. 4.9.

⁵⁵⁴ See Section 2.

⁵⁵⁵ *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, **CL-0063**, para. 129; *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, para. 692.

⁵⁵⁶ *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, **CL-0050**, para. 75.

services.⁵⁵⁷ In principle, SVB need only identify a single comparator, who, if granted more favorable treatment, will lead to the breach of the NT standard.⁵⁵⁸

4.63 In this case, there are several comparators operating in the mining sector, subject to the same legal regime and providing comparable products and services. These include mining projects operating in Mexico and owned by domestic investors, such as *Mineros Norteños*, as well as mining projects operating in Mexico and owned by foreign investors, such as *Fresnillo plc* (United Kingdom) and *Americas Gold and Silver Corporation* (United States).⁵⁵⁹

4.64 The final element is demonstrating that the claimant was accorded treatment less favorable than that accorded to comparable investors or investments. The term “no less favorable” means “equivalent to, not better or worse than, the best treatment accorded to the comparator”.⁵⁶⁰ Such treatment must have produced a practical, adverse effect on the claimant,⁵⁶¹ but the claimant need not have suffered some “disproportionate disadvantage” as a result.⁵⁶²

4.65 In this context, as discussed above, the Mexican authorities have accorded more favorable treatment to *Mineros Norteños*, a Mexican mining cooperative, by permitting *Mineros Norteños* to blockade, occupy, possess, and exploit the *Sierra Mojada Project* site unlawfully

⁵⁵⁷ *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Award, 12 January 2011, **CL-0102**, paras. 165-167; *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT/07/1, Award, 31 March 2010, **CL-0029**, para. 89; *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, **CL-0072**, para. 692; *S.D. Myers, Inc. v. Government of Canada*, Partial Award (Merits), 13 November 2000, **CL-0085**, para. 250; *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, **CL-0021**, paras. 101-104; *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, **CL-0050**, paras. 76, 88; *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/1, Decision on Responsibility, 15 January 2008, **CL-0063**, para. 117; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, **CL-0083**, para. 205.

⁵⁵⁸ Andrea K. Bjorklund, 'National Treatment', in August Reinisch (ed.), *Standards of Investment Protection* (Oxford, 2008), **CL-0084**, p. 38.

⁵⁵⁹ See Section 2.

⁵⁶⁰ *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, **CL-0050**, para. 42; *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, **CL-0086**, para. 205.

⁵⁶¹ *S.D. Myers, Inc. v. Government of Canada*, Partial Award (Merits), 13 November 2000, **CL-0085**, paras. 252-254

⁵⁶² *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, **CL-0050**, paras. 71-72.

for its own financial gain.⁵⁶³ The Mexican authorities have also accorded more favorable treatment to foreign mining companies Fresnillo plc (United Kingdom) and Americas Gold and Silver Corporation (United States), by ending the blockades imposed on their mining operations, while permitting the Continuing Blockade at Sierra Mojada to continue unabated and without sanction.⁵⁶⁴

4.66 That Mexico chose to accord SVB and its investments treatment less favorable than these other mining companies is clear evidence of discrimination, which is impermissible under NAFTA Articles 1102 and 1103.

4.67 Finally, any defense by Mexico in relation to the differential and less favorable treatment accorded to SVB and its investments must fail. In order to pass muster under NAFTA Articles 1102 and 1103, Mexico must establish that the discriminatory treatment has a:

*“reasonable nexus to rational government policies that (1) do not distinguish, on their face or de facto, between foreign-owned and domestic companies, and (2) do not otherwise unduly undermine the investment liberalizing objectives of NAFTA”.*⁵⁶⁵

4.68 The tribunal in *Pope & Talbot* held that Article 1102 requires “any difference in treatment ... be justified by showing that it bears a reasonable relationship to rational policies not motivated by preference of domestic over foreign owned investments.”⁵⁶⁶ To meet this burden, Mexico must demonstrate that less onerous alternatives were not available to achieve its policy objective.⁵⁶⁷ This Mexico cannot do.

4.69 Not only is there clear evidence of Mexican State conduct permitting Mineros Norteños to maintain its Continuing Blockade with impunity and assisting other foreign mining companies

⁵⁶³ See Section 2.

⁵⁶⁴ See Section 2.

⁵⁶⁵ *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, **CL-0050**, para. 78; *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, **CL-0086**, para. 205.

⁵⁶⁶ *Pope & Talbot v. Government of Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, **CL-0050**, para. 79.

⁵⁶⁷ *S.D. Myers, Inc. v. Government of Canada*, Partial Award (Merits), 13 November 2000, **CL-0085**, para. 255.

in ending similar blockades imposed on their mining operations in Mexico, but Mexico cannot reasonably advance a rational policy justification in support of its inaction in this case.

4.70 As elaborated below, Mexico's acts and omissions led to the total destruction of value of the Project, as well as the value of the amounts SVB invested to acquire and develop the Project, in breach of Mexico's obligations under the NAFTA for which compensation is due and owing.

5. SVB IS ENTITLED TO COMPENSATION IN AN AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES OF MEXICO’S BREACHES OF THE NAFTA

5.1 SVB seeks an award that fully compensates SVB for the total loss of its investments caused by Mexico’s continuing breaches of the NAFTA.

5.2 As detailed below, as a direct result of Mexico’s acts and omissions, SVB and Minera Metalín suffered damages in the amount of **US\$ 362.7 million**, which amount should be awarded to SVB along with pre- and post-award compounded interest at a commercially appropriate rate.

(A) Mexico is under an obligation to make full reparation for the injuries caused by its breaches of the NAFTA

5.3 While the NAFTA defines the measure of damages in the event of a lawful expropriation,⁵⁶⁸ it does not contain any express language regarding the measure of damages for other breaches, such as breach of the minimum standard of treatment of fair and equitable treatment and full protection and security. As multiple NAFTA tribunals have found, principles of customary international law accordingly provide the relevant standard of compensation.⁵⁶⁹

5.4 Under customary international law, a State has an obligation to make “full reparation” for the injuries caused by its internationally wrongful acts.⁵⁷⁰ As the Permanent Court of International Justice underscored in the seminal *Chorzów Factory* case, “[t]he essential principle contained in the actual notion of an illegal act [...] is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if the act had not been committed”.⁵⁷¹

⁵⁶⁸ NAFTA, **C-0004**, Art. 1110(2).

⁵⁶⁹ See, e.g., *S.D. Myers, Inc. v. Canada*, UNCITRAL (NAFTA), Partial Award (merits), 13 November 2000, **CL-0085**, para. 310 (“There being no relevant [damages] provisions of the NAFTA other than those contained in Article 1110 [concerning expropriation] the Tribunal turns for guidance to international law.”); *Archer Daniels Midland Co. and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award of 21 Nov. 2007, **C-0086**, paras. 277-278 (“The NAFTA provides no further guidance as to the proper principles to measure damages and compensation . . . In the instant case, the principles upon which compensation should be awarded derive from the applicable international law rules.”).

⁵⁷⁰ See ILC Articles, Art. 31(1) (“The responsible State is under an obligation to make a full reparation for the injury caused by the internationally wrongful act.”) **C-0081**.

⁵⁷¹ *Case Concerning the Factory at Chorzów*, PCIJ, Claim for Indemnity – Merits, Judgment No 13, 13 September 1928, **C-0096**, p. 47.

- 5.5 Investment tribunals have consistently affirmed this principle and held that, regardless of the nature of the treaty breach, compensation for damage caused must be at a level that provides full reparation such that it “wipes out” the consequences of the wrongful act.⁵⁷² As the tribunal in *AAPL v. Sri Lanka* underscored, “the amount of the compensation due has to be calculated in a manner that adequately reflects the full value of the investment lost as a result of said destruction and the damages incurred as a result thereof”.⁵⁷³ The principle of full reparation thus requires Mexico to place SVB in the financial position it would have been in, had the wrongful acts never occurred.⁵⁷⁴
- 5.6 With respect to a lawful expropriation, NAFTA Article 1110(2) requires compensation to be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place.⁵⁷⁵ NAFTA Article 1110(2) further states that “the valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value”.⁵⁷⁶ Although NAFTA Article 1110(2) applies specifically in the context of a lawful expropriation, the measure of the fair market value of an investment may also be taken into consideration to determine the value lost as a result of an unlawful expropriation.
- 5.7 In *Crystallex v. Venezuela*, for example, the tribunal found both an unlawful expropriation and a breach of the fair and equitable treatment standard, which had caused the investments “to

⁵⁷² See, e.g., *S.D. Myers, Inc. v. Government of Canada*, Partial Award (Merits), 13 November 2000, **CL-085**, para. 311; *Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, **CL-0100**, para. 13.81.

⁵⁷³ *Asian Agricultural Prods. Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, **CL-0094**, para. 88.

⁵⁷⁴ See, e.g., *Petrobart Limited v. The Kyrgyz Republic* (SCC Arbitration Case No 126/2003) Arbitral Award, 29 March 2005, **CL-107**, pp. 77-78 (ruling that the claimant “shall so far as possible be placed financially in the position in which it would have found itself, had the [respondent’s] breaches not occurred”).

⁵⁷⁵ NAFTA, **CL-0004**, Art. 1110(2) (“Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (‘date of expropriation’) and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value”).

⁵⁷⁶ NAFTA, **CL-0004**, Art. 1110(2).

become worthless”.⁵⁷⁷ The *Crystallex* tribunal adopted the fair market value standard for the valuation of the damage caused by both treaty breaches, noting that:

*“it is well-accepted that reparation should reflect the ‘fair market value’ of the investment. Appraising the investment in accordance with the fair market value methodology indeed ensures that the consequences of the breach are wiped out and that the situation which would, in all probability, have existed if the wrongful acts had not been committed is re-established”.*⁵⁷⁸

5.8 Fair market value in this context is understood as “the price that a willing buyer would buy given goods at and the price at which a willing seller would sell it at on condition that none of the two parties [is] under any kind of duress and that both parties have good information about all relevant circumstances involved in the purchase”.⁵⁷⁹ A number of investment treaty tribunals have adopted similar formulations of fair market value in assessing compensation due for treaty breaches.⁵⁸⁰

5.9 Investment treaty tribunals have also consistently held that claimants need not prove with absolute certainty what the fair market value of an investment would have been but for the State’s unlawful measures. As the tribunal in *Vivendi v. Argentina* remarked, “the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has

⁵⁷⁷ *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award of 4 April 2016, **CL-0075**, para. 850.

⁵⁷⁸ *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award of 4 April 2016, **CL-0075**, para. 850.

⁵⁷⁹ *Starrett Housing Corp v. The Government of the Islamic Republic of Iran*, Interlocutory Award No ITL 32-24-1, 19 December 1983, 23 ILM 1090, **CL-0112**, para. 18; see also *Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, **CL-0100**, para. 12.11; *Talsud, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/04/4, Award, 16 June 2010, **CL-0115**, para. 12.11.

⁵⁸⁰ See, e.g., *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award II, **CL-0022**, para. 8.3.12; *BG Group Plc v. The Republic of Argentina*, Final Award, 24 December 2007, **CL-0092**, paras 422, 426-427; *National Grid PLC v. The Argentine Republic*, Award, 3 November 2008, **C-0093**, para. 275; *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, **CL-0020**, para. 424; *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, **CL-0017**, paras. 402, 410; *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, **CL-0057**, para. 238; *CME Czech Republic B.V. v. The Czech Republic*, Partial Award, 13 September 2001, **CL-0053**, para. 98; *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, **CL-0094**, paras. 87-88.

been incurred. In such cases, approximations are inevitable; the settling of damages is not an exact science”.⁵⁸¹ The tribunal in *Tecmed v. Mexico* put it more succinctly, noting that “any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain”.⁵⁸²

(B) Compensation due to SVB as a result of Mexico’s breaches

- 5.10 Full reparation is assessed by measuring the difference between the fair market value of the claimant’s investment in light of the State’s wrongful conduct (the “actual” scenario) and the fair market value of the claimant’s investment in the absence of such measures (the counterfactual “but for” scenario).⁵⁸³ Both valuations are carried out as of the date of breach; in the case of continuing breaches, such as here, the date the claimant’s loss crystallizes serves as the most appropriate valuation date.⁵⁸⁴
- 5.11 As elaborated above, in the present case, the investment has been indirectly expropriated in full, leaving no residual value in the actual scenario.⁵⁸⁵ This simplifies the calculation of appropriate compensation, as the but-for value of the investment (including any pre-expropriation historical loss) is the appropriate measure of full reparation.
- 5.12 In its report, BRG estimate the fair market value of the Sierra Mojada Project in the absence of Mexico’s wrongful conduct using a valuation date of 31 August 2022, *i.e.*, the date South32 terminated the Option Agreement as a direct result of Mexico’s breaches.⁵⁸⁶ As explained above, SVB’s losses and damage crystallized when South32 terminated the Option Agreement, marking the end of the Project and the loss of SVB’s critical financing and

⁵⁸¹ *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award II, **CL-0022**, para. 8.3.16.

⁵⁸² *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, **CL-0055**, para. 190.

⁵⁸³ *See, e.g., Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020, **CL-0095**, para. 1861.

⁵⁸⁴ *See Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, **CL-0020**, para. 417; *see also Compañía del Desarrollo de Santa Elena, S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, **CL-0007**, para. 78.

⁵⁸⁵ BRG Expert Report, para. 46.

⁵⁸⁶ BRG Expert Report, para. 7.

development partner. The termination resulted in the complete loss of the Project's value, as well as the value of the amounts SVB invested to acquire and develop the Project.

- 5.13 As BRG explain, under the CIMVal Code for the Valuation of Mineral Properties – which sets out the commonly-used Canadian industry standard for valuing mining projects – there are three standard approaches that may be appropriate for valuing a mineral resource property like the Sierra Mojada Project: (i) the market approach; (ii) the costs approach (in some cases); and (iii) the income approach (in some cases). In this case, given the available data and stage of development of the Project, BRG adopted a comparable transactions method within the market approach as the primary methodology for assessing the fair market value of SVB's investment.
- 5.14 The comparable transactions method is a market-based valuation approach designed to establish the value of the subject enterprise by comparing it to the market value of publicly traded stock in comparable enterprises.⁵⁸⁷ It is a well-established method for determining the fair market value of an investment.⁵⁸⁸ Deriving equity value from the transaction values for comparable companies is particularly reliable in the natural resources sector. The market price of such companies is driven largely by the volume and quality of resources, which can be readily used to extrapolate what the price of the target enterprise would be if it were acquired at FMV.⁵⁸⁹
- 5.15 BRG identified 514 silver and diversified metal ores companies in which transactions were completed within the three years preceding the valuation date.⁵⁹⁰ The list was then narrowed to achieve maximum comparability with the Sierra Mojada Project using three criteria:

⁵⁸⁷ S Ripinsky, K Williams, *Damages in International Investment Law*, 2008, **CL-0116**, pp. 212-213; B Sabahi, *Compensation and Restitution in Investor-State Arbitration: Principles and Practice*, 2011, **CL-0117**, pp. 113-116.

⁵⁸⁸ M Kantor, *Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence*, 2008, **CL-0118**, at p. 119.

⁵⁸⁹ While SVB is publicly traded company, its share price cannot be used as a method to determine the fair market value of its Mexican investment in this case. As BRG explain, SVB's share price reflects that it did not trade in an efficient market and that its stock price in any event reflected the risk of blockades given the Initial Blockade, the investment climate in Mexico under the AMLO administration's policies toward mining, and the lack of exploration progress due to the Continuing Blockade. See BRG Report, paras. 71-72, Appendix B.

⁵⁹⁰ BRG Report, para. 79.

- (a) **Availability of data:** BRG excluded transactions for which data on implied enterprise value or resources in the relevant period were not available.⁵⁹¹
- (b) **Level of development:** BRG excluded transactions of assets at a more advanced stage of development than the Sierra Mojada Project.⁵⁹²
- (c) **Volume of silver and zinc resources:** In line with the resource profile of SVB’s investment, BRG excluded transactions with total silver and zinc below 50% of total weighted resources.⁵⁹³

5.16 This filtering process resulted in a list of nine highly comparable mining companies. From there, BRG calculated an acquisition premium to the transactions targeting minority stakes to reflect SVB’s 100% stake in the Project, calculated an EV to Resources multiple for each transaction, and used the median of that calculation to calculate the fair market value of SVB’s investment at **US\$ 362.7 million**.⁵⁹⁴

(C) Compensation must include interest at an appropriate commercial rate running to the date of payment of the award

5.17 Awards of interest are universally accepted by investment tribunals as an integral component of full reparation for internationally wrongful conduct, as recognized in Article 38 of the ILC Articles on State Responsibility.⁵⁹⁵ This is because the State’s obligation to make full reparation arises from the date on which the State’s international responsibility is engaged. To the extent payment is delayed, the claimant loses the opportunity to reinvest the

⁵⁹¹ BRG Report, para. 80(a).

⁵⁹² BRG Report, para. 80(b).

⁵⁹³ BRG Report, para. 80(c).

⁵⁹⁴ BRG Report, para. 85.

⁵⁹⁵ See ILC Articles on State Responsibility, Art. 38 (“1. Interest on any principal sum . . . shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result. 2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.”), **CL-0081**; see also *Asian Agricultural Prods. Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, **CL-0094**, para. 114 (holding that “interest becomes an integral part of the compensation itself, and should run consequently from the date when the State’s international responsibility became engaged”); *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award, 12 July 2019, **CL-0078**, para. 1784; *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)*, PCA Case No. 2015-32, Award, 20 August 2019, **CL-0111**, para. 849.

compensation owed.⁵⁹⁶ Interest is thus not an award *in addition* to reparation; rather, it is a component of full reparation which gives effect to that principle.⁵⁹⁷

- 5.18 Consistent with this principle, NAFTA Article 1135(2)(b) expressly provides for “an award of monetary damages *and any applicable interest*”.⁵⁹⁸
- 5.19 Further, NAFTA Article 1110(2) provides that, for a lawful expropriation, “compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment”.⁵⁹⁹ Although this requirement applies only in respect of a lawful expropriation, it reflects modern arbitral practice and leaves the notion of a “commercially reasonable rate” to the discernment of the tribunal.
- 5.20 While some investment treaty tribunals have suggested that the claimant’s cost of capital is the optimal proxy for the rate of interest required to make the claimant whole, BRG has calculated interest at Mexico’s sovereign borrowing rate.⁶⁰⁰ By not paying compensation promptly, Mexico has effectively compelled SVB to become an unwilling lender. SVB is thus entitled to receive no less than the rate of interest that Mexico pays to willing lenders. Indeed, an award of interest less than Mexico’s borrowing costs would incentivize Mexico to “refinance” fiscal obligations by withholding money due to judgment creditors.

⁵⁹⁶ *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, **C-0008**, para. 128; see also *Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020, **CL-0095**, para. 1944; *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, **CL-0114**, para. 440; *Cube Infrastructure Fund SICAV and others v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on Jurisdiction, Liability and a Partial Decision on Quantum, 19 February 2019, **CL-0097**, para. 537; *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Award, 12 July 2019, **CL-0078**, para. 1783.

⁵⁹⁷ See *Asian Agricultural Prods. Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, **CL-0094**, para. 114 (observing that “the case-law elaborated by international arbitral tribunals strongly suggests that in assessing the liability due for losses incurred the interest becomes an integral part of the compensation itself”); *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, **CL-0008**, para. 128; *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, **CL-0013**, para. 174 (“Regarding such claims for expropriation, international jurisprudence and literature have recently, after detailed consideration, concluded that interest is an integral part of the compensation due[.]”).

⁵⁹⁸ NAFTA, **CL-0004**, Art. 1135(2)(b).

⁵⁹⁹ NAFTA, **CL-0004**, Art. 1110(4).

⁶⁰⁰ BRG Report, para. 112.

Modern economic reality, as well as equity, further demands the award of interest on a compound basis. As the tribunal in *Wena Hotels v. Egypt* observed, “it is neither logical nor equitable to award the claimant only simple interest”.⁶⁰¹ The tribunal in *Continental Casualty v. Argentina* similarly observed that “[t]he time value of money in free market economies is measured in compound interest; simple interest cannot be relied upon to produce full reparation for a claimant’s loss occasioned by delay in payment”.⁶⁰² Multiple investment treaty tribunals have awarded compound interest on awards of damages on this basis.⁶⁰³ Any interest awarded to SVB therefore should therefore be subject to reasonable compounding.

(D) Summary of compensation owed to SVB

5.21 The total compensation owed to SVB is summarized in the table below.⁶⁰⁴

Damages as of 31 August 2022 <i>(US\$ million)</i>	Interest <i>(US\$ million)</i>	Damages as of 17 June 2024 <i>(US\$ million)</i>
US\$ 362.7	US\$ 45.7	US\$ 408.4

(E) Tax

5.22 The valuation in the BRG report has been prepared net of Mexican tax.⁶⁰⁵ Any taxation by Mexico of the eventual Award in this arbitration would result in SVB effectively being taxed twice for the same income. This would subvert the purpose of the award – *i.e.*, to place SVB in the financial position it would have been in, had Mexico not breached the NAFTA. As other

⁶⁰¹ *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, **CL-0049**, para. 129.

⁶⁰² *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008, **CL-0091**, para. 309.

⁶⁰³ See, e.g., *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002, **CL-0013**, para. 174 (noting that “compound (as opposed to simple) interest is at present deemed appropriate as the standard of international law in such expropriation cases”); *Azurix Corp. v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, **CL-0020**, para. 440 (observing that “compound interest reflects the reality of financial transactions, and best approximates the value lost by an investor”); *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, **CL-0025**, paras. 769, 818 (finding that compound interest reflects “the recent practice of ICSID tribunals”); *LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc v. Argentine Republic* (ICSID Case No. ARB/02/1) Award, 25 July 2007, **CL-0104**, para. 103 (observing that “compound interest would better compensate the Claimants for the actual damages suffered since it better reflects contemporary financial practice”).

⁶⁰⁴ BRG Report, Table 1, pg. 10.

⁶⁰⁵ BRG Report, para. 107.

tribunals have recognized, in this circumstance “any additional taxes applying the amount granted [...] would undermine the principle of full compensation of the damage incurred”.⁶⁰⁶

5.23 To secure the finality of the Tribunal’s award in this arbitration, the Claimant requests that the Tribunal declare that:

(a) its award is net of all Mexican taxes; and

(b) Mexico may not tax or attempt to tax the award.

5.24 Additionally, SVB seeks an indemnity from Mexico in respect of any adverse consequences that may result from the imposition of double taxation liability by the United States tax authorities if the declaration in the Tribunal’s award recognizing that the award is net of Mexican tax is not accepted as the equivalent of evidence of payment. This will ensure “that the amount effectively received by Claimants after deduction of all applicable taxes corresponds to the full amount granted” to SVB in the award.⁶⁰⁷

⁶⁰⁶ See *Phillips Petroleum Company Venezuela Ltd and ConocoPhillips Petrozuata B.V. v. Petroleos de Venezuela, S.A.*, (ICC Case No. 16848/JRF/CA), Final Award, 17 September 2012, **CL-0108**, para. 313; see also *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 09 September 2021, **C-0098**, para. 916; *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela II*, ICSID Case No. ARB/12/23, Award, 12 December 2016, **CL-0113**, paras. 788-792; *Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India*, PCA Case No. 2016-07, Final Award, 21 December 2020, **CL-0095**, para. 1936; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, **CL-0039**, paras. 853, 855.

⁶⁰⁷ *Phillips Petroleum Company Venezuela Ltd and ConocoPhillips Petrozuata B.V. v. Petroleos de Venezuela, S.A.*, (ICC Case No. 16848/JRF/CA), Final Award, 17 September 2012, **C-0108**, para. 333(vii); see also *Gardabani Holdings B.V., Inter RAO UES PJSC and Telasi JSC v. Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, State Service Bureau Ltd*, ICSID Case No. ADM/18/1 and SCC Case No. V2018/039, Final Award, 09 September 2022, **C-0099**, para. 125.g; *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, 27 August 2019, **C-0101**, paras. 1625-1627, 1630.

6. REQUEST FOR RELIEF

6.1 The Claimant respectfully requests the Tribunal to:

- a) **DECLARE** that Mexico has breached its obligation not to expropriate the Claimant's investment under Article 1110 of the NAFTA;
- b) **DECLARE** that Mexico has breached its obligations to accord full protection and security and fair and equitable treatment to the Claimant's investment under Article 1105 of the NAFTA;
- c) **DECLARE** that Mexico has breached its obligation to accord national treatment to the Claimant and its investment under Article 1102 of the NAFTA, and most-favoured nation treatment to the Claimant and its investment under Article 1103 of the NAFTA;
- d) **ORDER** Mexico to pay compensation for the loss and damage sustained by the Claimant and Minera Metalín as a result of Mexico's breaches of its obligations under the NAFTA and international law, in an amount of not less than **US\$ 362.7 million**, or such other amount quantified during the course of this proceeding;
- e) **ORDER** Mexico to pay pre-award and post-award interest compounded at a rate that ensures full reparation;
- f) **ORDER** Mexico to bear the costs of the arbitration and compensate the Claimant for all its costs and expenses incurred in relation to this proceeding, including the fees and expenses of their counsel, in-house counsel, witnesses and experts and reasonable funding costs, the fees and expenses of the Tribunal, and ICSID's other costs and fees;
- g) **ORDER** Mexico to indemnify SVB in respect of any adverse consequences that may result from the imposition of double taxation liability by the United States tax authorities; and
- h) **AWARD** such other and further relief as the Tribunal deems appropriate.

6.2 The Claimant reserves its rights further to amend, develop, and quantify its claims and requests for relief, assert additional claims and requests for relief, and to present further argument and evidence in the course of the arbitration, in accordance with the ICSID Convention and the ICSID Arbitration Rules.

Respectfully submitted,

17 June 2024

For and behalf of the Claimant

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