**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

UNITED MEXICAN STATES

Petitioner,

v.

LION MEXICO CONSOLIDATED L.P.

Respondent.

Case No. 1:21-cv-03185 (TFH)

**RESPONSE TO MOTION TO INTERVENE**

PILLSBURY WINTHROP SHAW PITTMAN LLP

Stephan E. Becker
D.C. Bar No. 366676
Kristina Fridman (*pro hac vice*)
1200 Seventeenth Street NW
Washington, D.C. 20036-3006
Tel.: +1 (202) 663-8000
stephan.becker@pillsburylaw.com
kristina.fridman@pillsburylaw.com

*Attorneys for Petitioner United Mexican States*

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Petitioner United Mexican States ("Mexico"), by and through its attorneys, Pillsbury Winthrop Shaw Pittman LLP, respectfully submit this response to the Motion to Intervene (the "Motion").

## I. PRELIMINARY STATEMENT

Mexico has consistently maintained that this case is a simple, straight-forward one focused on one key issue: that the arbitral tribunal exceeded its powers and manifestly disregarded the law by acknowledging the meaning of Article 1105 of the North America Free Trade Agreement ("NAFTA"), Dec. 17, 1992, 32 I.L.M. 289 (1993), and then openly disregarding that meaning to achieve its desired result. This is Mexico's sole ground for vacatur pursuant to 9 U.S.C. § 10(a)(4) and 9 U.S.C. § 207.

The Motion expressly acknowledges that it is unrelated to Mexico's Petition to Vacate Arbitral Award ("Petition"). *See* Memorandum of Law in Support of Hector Cardenas' Motion to Intervene at 18 ("[T]he single ground that Mexico advances to vacate the Award is unrelated to Mr. Cardenas' injuries."). Thus, whether or not Mr. Cardenas's Motion satisfies the requirements for intervention as of right or permissive intervention—Mexico takes no position on either issue—it has no relationship to Mexico's pending petition.

## II. PROCEDURAL HISTORY

On December 6, 2021, Mexico filed the Petition rendered against it and in favor of Respondent Lion Mexico Consolidated L.P. ("Lion"). Mexico's sole ground for vacatur pursuant to 9 U.S.C. § 10(a)(4) and 9 U.S.C. § 207 is that the tribunal exceeded its authority and manifestly disregarded the law by openly admitting that it was disregarding the plain meaning of the NAFTA to achieve its desired result. Petition, ¶¶ 39-75.

On December 21, 2021, Lion filed a joint motion for a briefing schedule regarding the Petition. On December 29, 2021, the Court granted the joint motion.

In accordance with the established briefing schedule, on February 4, 2022, Lion filed a Response to the Petition and Cross Motion to Confirm the Arbitral Award ("Resp. MOL"). Like Mexico, Lion solely focused on whether the tribunal had exceeded its authority or manifestly disregarded the law in relation to Article 1105. Resp. MOL at pp. 11-24.

On March 4, 2022, Mexico filed its Reply to the Petition and Response to the Cross-Motion ("Reply MOL"). Mexico explained that "[t]his is a relatively simple case. The arbitral tribunal did not like the constraints of the governing arbitration agreement and openly stated it was rejecting the 'literal reading' of the law." Reply MOL at 1. Indeed, Mexico emphasized that the "Award… should be evaluated based on its own contents and reasoning" and the Court should not consider any authorities on which the tribunal did not rely. *Id*. at 5-7.

On March 25, 2022, Lion filed its Reply in Further Support of the Cross-Motion. Lion reiterated its arguments that the tribunal did not exceed its authority regarding Article 1105 and that manifest disregard of the law was not a basis for vacatur.

Since March 25, 2022, the Petition and Cross-Motion have been fully briefed.

## III. MEXICO'S COMMENTS ON THE MOTION

Mexico's challenge to the Award falls squarely within the grounds for vacatur set out in the Federal Arbitration Act ("FAA"). Specifically, the tribunal acknowledged that the "literal reading of Art. 1105 of NAFTA" only protected investments, and not investors, Becker Decl., Ex. 1, ¶¶ 356-358,[1] but then openly disregarded the meaning of that provision to "effectively dispense

[1] References to "Becker Decl." are to the Declaration of Stephan Becker dated December 6, 2021, filed with the Petition.

[its] own brand of industrial justice…." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671-672 (2010). Such disregard of the plain meaning of the arbitration agreement merits vacatur of the Award pursuant to 9 U.S.C. § 10(a)(4). *Hill v. Wackenhut Servs. Int'l*, 971 F. Supp. 2d 5, 10 (D.D.C. 2013); *Swift Industries, Inc. v. Botany Industries, Inc.*, 466 F.2d 1125, 1131-34 (3rd Cir. 1972).

The Motion does not address this issue, and rather raises certain factual issues that reflect that the underlying dispute was between private parties. For example, Mr. Cardenas argues that the settlement agreement between his company and Lion was not a forgery and that there was no fraudulent scheme. *See* Cardenas Decl., ¶¶ 30-35. Mr. Cardenas also challenges the nature and purpose of the loans that were at issue in the Mexican domestic litigation. *Id*. at ¶¶ 3-8, 33. The Motion also states that an attorney acting for Mr. Cardenas's companies requested the arbitration tribunal to allow him to participate as *amicus curiae* in the arbitration in order to raise a jurisdictional issue but the tribunal "would not allow Mr. Mercado's participation as amicus curiae" and "ignored the jurisdictional problem."[2] Regardless of the merit of these claims, they do not relate to Mexico's challenge to the Award.

[2] Mr. Mercado alleged that Lion was in breach of the waiver provision in the NAFTA, Section 1121, see Cardenas Decl., ¶ 26, which requires claimants to "waive their right to initiate or continue… any proceedings with respect to the measure of the disputing Party that is alleged to be a breach…." Becker Decl., Ex. 2, Art. 1121. Mexico did not make this jurisdictional objection; rather, it argued that Lion was not required to abandon Mexican judicial proceedings and therefore could not show that it had been denied fair and equitable treatment. See Becker Decl., Ex. 3, ¶¶ 205-213.

## IV. CONCLUSION

Petitioner Mexico takes no position on Hector Cardenas's Motion to Intervene and emphasizes that his motion is unrelated to the basis of Mexico's petition to vacate the award.

Dated: Washington, D.C.
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PILLSBURY WINTHROP SHAW PITTMAN LLP

*/s/ Stephan E. Becker* .

Stephan E. Becker
D.C. Bar No. 366676
Kristina Fridman (*pro hac vice*)
1200 Seventeenth Street NW
Washington, D.C. 20036-3006
Tel.: +1 (202) 663-8000
stephan.becker@pillsburylaw.com
kristina.fridman@pillsburylaw.com

*Attorneys for Petitioner United Mexican States*