BRYAN CAVE LEIGHTON PAISNER LLP
200 South Biscayne Boulevard
Suite 400
Miami FL 33131 5354
T: +1 786 322 7500
F: +1 786 322 7501
www.bclplaw.com

October 11, 2022

BY EMAIL & FEDEX

Pedro J. Martínez-Fraga
Direct: 786/322-7373
Fax: 786/322-7473
pedro.martinezfraga@bclplaw.com

Mr. Orlando Pérez Gárate
Director General de Consultoría Jurídica de Comercio Internacional
orlando.perez@economia.gob.mx
Datos de la Oficina Responsable del Trámite
Pachuca 189, Colonia Condesa, Alcaldía de Cuauhtémoc, C.P. 06140, Ciudad de Méjico, Méjico

Re: Notice of Intent to Submit a Claim to Arbitration pursuant to the North American Free Trade Agreement (NAFTA) Article 1119

Dear Director General Pérez Gárate,

May this writing find you and yours well and safe in these uncertain times.

Access Business Group, LLC. ("*Access*" or "Nutrilite") has retained the law firm of Bryan Cave Leighton Paisner LLP ("BCLP") to represent it in a proceeding arising from the wrongful taking on the part of the Government of the United Mexican States ("Mexico") of 280 hectares (approximately 700 acres) of income-producing property ("the *Subject Property*"). The *Subject Property* is in the Municipality of San Gabriel (f/k/a Venustiano Carranza), State of Jalisco.

Preliminary Statement

As detailed below, the taking constitutes a stark breach of international law. It violates virtually every substantive treaty protection standard contained in the NAFTA 1994.

The illegal expropriation also disavows Mexico's domestic legislation concerning foreign investment protection (*Ley de Inversión Extranjera*) (*Ultima reforma publicada DOF 15-06-2018*). This illicit government measure also violates Mexico's own domestic law concerning expropriation (*Ley de Expropiación*) (*Ultima reforma publicada DOF 27-01-2012*).

The purported grounds for the illicit taking directly and expressly conflict with a *Presidential Resolution* issued by Mexican President Manuel Ávila Camacho dated December 2, 1942.[1] In this same vein, the expropriation also conflicts with the undisputed ruling of the *Tribunal Unitario Agrario*,[2] and with a covenant entered into by the very Government of Mexico and the Municipality of San Gabriel.[3]

It follows that this illicit expropriation, in addition to undermining Mexico's legislative and international commitment to protecting foreign investments, also has placed into question the very normative standing of judicial pronouncements and *Presidential Resolutions*. Put simply, the government measure at issue quite remarkably has managed to cast its shadow on the legitimacy and normative standing of Mexico's judiciary, legislative pronouncements, and Presidential Decrees.

These consequences notwithstanding, perhaps the most tangible negative repercussion from the illegal taking will be borne by Mexican nationals whose standard of living shall be adversely compromised because of the dissolution of the micro- and macroeconomic benefits that Nutrilite's agricultural operations on the *Subject Property* contribute to the local economy and to the State of Jalisco more generally.

Under any analysis, the illicit taking is indefensible. It is only premised on short-term political

---

1 *See infra* Section II, E. This Presidential Resolution possibly was discharged decades later. The legality of the discharge remains an issue. During the decades that it was undisputably enforced, however, title to the *Subject Property* could not have been clouded by virtue of the *Presidential Resolution* of 1939, and notably for approximately forty-five (45) years no claim that the *Presidential Resolution* of 1939 was not fully discharged, could have been made.

2 *See infra* note 21.

3 *See infra* note 22.

expediency and not the welfare of Mexican nationals.

I. All Jurisdictional Predicates Are Met

A. Jurisdiction

The contemplated claim satisfies all jurisdictional strictures.

1. *Ratione Personae*

This jurisdictional requirement is amply met. *Access* is a for-profit corporation incorporated in the State of Michigan, U.S.A., located at 7575 Fulton Street East, Ada, Michigan 49355-0001.[4] At all times material to the prospective claim, Access Business Group LLC owned Nutrilite S.R.L. de C.V., a Mexican entity. *Access* is a company that continues to own Nutrilite S.R.L. de C.V.

Therefore, *Access* falls within the ambit of NAFTA Art. 1139 (*Definitions*), providing that the term "*investor of a Party* means a Party or state enterprise thereof, or a national or an enterprise[5] of such Party, that seeks to make, is making or has made an investment." (Emphasis in original.)

This jurisdictional requirement is met. *Access* is an investor of a Party pursuant to NAFTA Art. 1139.

2. *Ratione Materiae*

The *Subject Property*[6] consists of approximately 280 hectares of agricultural income-producing

---

4 Attached as **Composite Appendix 1** is a true and correct copy of the Filing Endorsements by the Michigan Department of Consumer and Industry Services of the Access Business Group LLC Articles of Organization and Amendment of the Articles dated November 13, 2000 and February 6, 2001, respectively.

5 NAFTA, Chpt. 2 (*General Definitions*), Art. 201.1 provides that "unless otherwise specified[,] *enterprise* means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association."

6 Nutrilite S.R.L. de C.V. acquired the *Subject Property* in two transactions. The registration of each of the properties corresponding to each transaction is set forth below in the Spanish language original to ensure accuracy, as registered in the public records in Mexico:

Adquisición de los predios "Puerta del Petacal" Uno y Dos.

property. It also includes processing facilities.[7] The *Subject Property* constitutes *Access'* "investment" as that term is defined in NAFTA Art. 1139.

Pursuant to Art. 1139 an *investment* means an enterprise (here Nutrilite S.R.L de C.V.) where the enterprise is an affiliate of the investor (here *Access*) having "an interest in an enterprise that entitles the owner to share in income or profits of the enterprise." *Access'* right to compensation from the products that Nutrilite S.R.L de C.V. generates falls within this definition of the term "investment" set forth in Art. 1139 (a) (i) (e).

Access' investment also qualifies under the definition provided in Art. 1139 (a) (i) (f) where an investor has "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)."

Mediante escritura número 34,365 de fecha 12 de Mayo de 1994, otorgada ante el Licenciado Armando Gálvez Pérez Aragón, Notario Público número 103 del Distrito Federal, hoy Ciudad de México, "Nutrilite" S.R.L de C.V., adquiere de los señores Lauro Martin Uribe, Elías Manuel Abud Elías y con el consentimiento de sus respectivas esposas las señoras Emilia del Socorro Abud y Noemi Pérez Rivera de Abud, las superficies de 60-00-00 y 70-00-00 hectáreas, de los predios identificados como "Puerta del Petacal Uno" y "Puerta del Petacal Dos", ubicados en el poblado de San Gabriel (antes Venustiano Carranza) Jalisco, sumando una superficie total de 130-00-00 hectáreas, encontrándose inscrito en anterior acto traslativo ante el Registro Público de la Propiedad y Comercio del municipio de Ciudad Guzmán, Jalisco, bajo documento 11, folios del 76 al 100, Libro 1,200, Sección Primera, Orden 57,503, instrumento que se agrega al presente escrito bajo Anexo 02.

Adquisición de los predios "Puerta del Petacal Tres y Cuatro."

Mediante escritura número 12,802, de fecha 13 de Abril de 1992, otorgada ante el Licenciado, Carlos Páez Stille, Notario Público número 4 del Municipio de Ciudad Guzmán, Jalisco, "Nutrilite" S.R.L de C.V., adquiere de los señores Abelardo Reyes Vargas y su esposa Laura Elena Mayorquin León de Reyes y el señor Rodrigo Vargas Villaseñor las superficies de 100-00-00 y 70-00-00 hectáreas, de los predios identificados como "Puerta del Petacal Tres" y "Puerta del Petacal Cuatro", ubicados en el poblado de San Gabriel (antes Venustiano Carranza) Jalisco, sumando una superficie total de 170-00-00 hectáreas, encontrándose inscrito en anterior acto traslativo ante el Registro Público de la Propiedad y Comercio del municipio de Ciudad Guzmán, Jalisco, bajo documento 55, folios del 529 al 535, Libro 1,047, Sección Primera, Orden 87,107

Dentro de esas 300-00-00 hectáreas se localizan las 280-00-00 has que ordena afectar la SEDATU. Así mismo, en esas 280 has. se localizan las superficies de 120 y 160 has.

The *Subject Property* that was illegally expropriated because of takings pursuant to which 120 and 160 hectares, respectively, were seized in violation of the domestic laws of Mexico, and contrary to the conventional and customary public international law of investment protection. The two takings comprise the expropriation of 280 hectares contained in the 300 hectares referenced in these two property registrations immediately above in the two *Subject Property* registrations.

7 *See infra* Section II, D, 3 and **Composite Appendix 8**.

Moreover, *Access'* investment meets the definition contained in Art. 1139 (a) (i) (g) defining "investment" as "real or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other purposes."

Finally, *Access'* investment satisfies the definition articulated in Art. 1139 (a) (i) (h) because the *Subject Property* represents an "interest[ ] arising from the commitment of capital or other resources in the territory of a Party [Mexico] 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 [Mexico], including turnkey or construction contracts, or concessions, or (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise."

The jurisdictional *Ratione Materiae* prong is satisfied amply.

3. *Ratione Voluntatis*

Both the United States of America and the United Mexican States are signatories to the *North American Free Trade Agreement* (NAFTA) and to its successor, the *United States-Mexico-Canada Agreement* (USMCA).

The NAFTA was implemented on January 1, 1994. On June 30, 2020, it expired. The NAFTA was replaced by the USMCA, which entered into force on July 1, 2020.

Annex 14-C of the USMCA, titled: "*Legacy Investment Claims and Pending Claims,*" in parts relevant to this writing states:

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

> (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
>
> ***
>
> 3. A Party's *consent* under paragraph 1 shall expire three years after the termination of NAFTA 1994.
>
> 4. For greater certainty, an arbitration initiated pursuant to the submission of a claim under paragraph 1 may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the tribunal's jurisdiction with respect to such a claim is not affected by the expiration of *consent* referenced in paragraph 3, and Article 1136 (Finality and Enforcement of an Award) of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal.
>
> (Emphasis supplied.)

The USMCA entered into force on July 1, 2020. According to USMCA Annex 14-C.3, both the United States and Mexico have consented to bring arbitral claims in accordance with Section B of Chapter 11 (*Investment*) of NAFTA for "three years after the termination of NAFTA 1994."

Therefore, consent to the prospective intended arbitral claim is valid so long as the claim is submitted by July 1, 2023 (in any case by no later than June 30, 2023). *Access* shall submit its arbitration claim pursuant to Section B of Chapter 11 (*Investment*) of NAFTA at least three months *prior to* June 30, 2023.

Access would assert violations of treatment protection standards set forth in Section B of Chapter 11 (*Investment*) of the NAFTA and in accordance with that chapter's *Most-Favored Nation* (MFN) clause (Art. 1103). Hence, *Ratione Voluntatis* would be met as a matter of law.

4. *Ratione Temporis*

As briefly referenced, the dispute at issue concerns 280 hectares of real property and corresponding facilities[8] located in the Municipality of San Gabriel, in the State of Jalisco,

---

8 *Id.*

Mexico, known as "*El Petacal*." The 280 hectares were purchased pursuant to two separate but related transactions.

The first of these properties, consisting of 160 hectares in a 170 hectares transaction, was acquired on April 13, 1992.[9] The real property comprising this initial acquisition was known as estates "*Puerta del Petacal Tres y Cuatro.*"[10]

On May 12, 1994, the purchase of the second of the two properties consisting of 120 hectares contained in a 130 hectares transaction, was completed.[11] This property was known as estates "*Puerta del Petacal Uno y Dos.*"

The 280 hectares at issue are contiguous.

Subsequent to the acquisition of the real estate forming the *Subject Property*, *Access*, through its Nutrilite S.R.L. de C.V. affiliate, continued to invest by constructing facilities for purposes of treating, processing, and packaging the plants, vegetables, and fruits cultivated on the *Subject Property*. A research facility also was constructed.[12]

On July 1, 2022, the Mexican government through its Secretariat of Agrarian, Territorial and Urban Development ("SEDATU"), notified Nutrilite S.R.L. de C.V. that it would immediately sieze 120 hectares forming part of the *Subject Property* so that they may be conveyed as soon as practicable to the alleged beneficiaries of the *Presidential Resolution* of 1939.[13]

---

9 Citation in the original Spanish language as reflected in the public records set forth at note 6, *supra*.

10 NAFTA Annex 7, n. 39. Art, 1101 (*Investment-Scope and Coverage*) states that "this Chapter covers investments existing on the date of entry into force of this Agreement as well as investments made or acquired thereafter." *See also* Mondev International Ltd. v. United States of America, ICSID Case No. ARB (AF)/99/2, (Award) (Sir Ninian Stephens (President), Professor James Crawford, and Judge Stephen M. Schwebel) (October 11, 2002), at ¶ 68 (holding that "Note 39 to NAFTA confirms the position in providing that 'this Chapter covers investments existing on the date of entry into force of this Agreement as well as investments made or acquired thereafter.'"

11 *See* note 9, *supra*.

12 *See infra* Section II, E, 3 and **Composite Appendix 8**.

13 *See infra* Section II, E.

The remaining 160 hectares referenced in the July 1, 2022 Notice would be seized and conveyed to the alleged beneficiaries of the *Presidential Resolution* of 1939 at such time as the harvest being sustained on that property is reaped.

A second notice ensued. On July 7, 2022, SEDATU advised Nutrilite S.R.L. de C.V. that a meeting had been scheduled at the Town Hall of San Isidro on July 14, 2022 for purposes of instructing all concerned with the execution of the *Presidential Resolution* of 1939 regarding the *Subject Property*. At the July 14, 2022 San Isidro Town Hall meeting, SEDATU advised that the remaining 160 hectares comprising the *Subject Property* would be transferred to the alleged beneficiaries of the *Presidential Resolution* of 1939 within an approximately six (6) month timeframe as of that date (July 14, 2022).[14] Minutes of the July 14, 2022 Town Hall meeting were kept but not made available to Nutrilite S.R.L. de C.V. A formal request for those minutes has been tendered. The minutes are yet to be produced.

Accordingly, the dispute on which the intended claim is based matured and became known to *Access* on July 1 and 7, 2022.

The dispute, occurring beyond the July 1, 2020 date on which the USMCA entered into force, and prior to the expiration of the three (3) year timeframe set forth in Annex 14-C of the USMCA, amply satisfies the *Ratione Temporis* jurisdictional requirement.

II. Notice of Substantive Treatment Protection Standards Intended to Be Included in the Prospective Claim

A. *Expropriation and Compensation*

NAFTA Art. 1110 (*Expropriation and Compensation*) in pertinent part reads:

> *1. No 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;*

---

14 *See* **Appendix 3** *infra.*

> *(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.*
>
> *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.*
>
> *3. Compensation shall be paid without delay and be fully realizable.*

Quite remarkably, the expropriation of the *Subject Property* managed to violate all four elements that must be present in order for an expropriation to comport with international law pursuant to Art. 1110, and the customary public international law of investment protection.

The failure to meet any single one of these four conditions is enough to trigger liability. Here, all four requirements for legality were violated, thus underscoring the extraordinary character of the expropriation at issue.

B. Payment of Compensation

The taking of the *Subject Property* was devoid of compensation. This indisputable fact, without more, renders the expropriation an indefensible breach of international law. No additional facts are necessary for a NAFTA Arbitral Tribunal to issue an award finding in favor of Nutrilite and against Mexico.

The solitary remaining consideration would concern *quantum* of compensation based upon the loss and intransferability of 280 hectares of income-producing property.

The consideration of additional factors forming part of the taking of the *Subject Property* serves to underscore the egregious nature and character of the expropriation. One such factor is that the Ejido San Isidro's right to the property that was expropriated for their possession was long ago and repeatedly rejected in multiple courts in Mexico that confirmed Nutrilite's full

ownership and right to the property. The taking of the *Subject Property* cannot be reconciled under any reasonable theory of fact, equity, or law.

C. Public Purpose

The taking was not for a public purpose. In fact, it undermines the public purpose doctrine constituting Art. 1110.1 (a) on multiple grounds.

The *Subject Property* employs approximately 450 local workers. These employment opportunities have enriched the lives of thousands of local Mexican nationals who directly benefit from the "seed-to-supplement" agricultural farming and product development activities that *Access* has made possible since 1994.

Beyond the microeconomic and macroeconomic contributions arising from the income-producing nature of the *Subject Property*, thousands of Mexicans have benefited from the production of products. Similarly, hundreds of local inhabitants have reaped the benefit of employment at the *Subject Property* and support by Nutrilite of the surrounding village schools, childcare, and healthcare facilities. These longstanding gains now arbitrarily have been placed in jeopardy.

The expropriation also flouts the public purpose predicate of Art. 1110.1 (a) because it brings into irreconcilable and explicit conflict the judicial and the executive branches of Mexico's government. The *Tribunal Unitario Agrario* has held that the *Subject Property* (i) is private in nature, (ii) exempted from the August 23, 1939 Land Grant that President Lázaro Cardenas conveyed to the town of San Isidro, and (iii) was duly purchased by Nutrilite S.R.L. de C.V. on April 13, 1992.[15]

---

15 *See* Expediente: 615/97, Acción: Ampliación de Ejido por Incorporación de Tierras al Régimen Ejidal, Tribunal Unitario Agrario, Poblado: "San Isidro", Municipio: "San Gabriel", Estado: Jalisco, Oficio: 0266/98.

See also Asunto: SE CONTESTA DEMANDA EXP. J. A. 350/16/2000, presented by Lic. J. Leonel Sandoval Figueroa, of the Sector Agrario, Subordinación Jurídica Clave 13 04 308 01, Representación Regional Occidente, Pob: "SAN ISIDRO", MPIO: "SAN GABRIEL", antes Venustiano Carranza, EDO: JALISCO.

In addition to creating an intra-governmental legitimacy crisis between the normative authority of national courts and an executive expropriation mandate that disavows national judicial precedent and international law, the taking of the *Subject Property* further delegitimizes Mexico's Executive branch of government because the taking itself explicitly conflicts with *SEDATU*'s own agreements with (i) the Ejido San Isidro, and (ii) the Ejido San Isidro and owners of the replacement "*Potrero Grande/Paso de Cedros,*" pursuant to which land was conveyed to the Ejido San Isidro in lieu of the *Subject Property.*

The Mexican Executive branch's non-compliance with its own agreement undermines any purported overriding public purpose that would justify the expropriation of the *Subject Property.*

The Executive branch not only contravened judicial precedent, but also ignored its own judicially ratified agreement. The alleged public purpose presumably justifying the taking cannot justify this normative conflict between the executive and the legislative branches of government.

The expropriation of the *Subject Property* runs afoul of Mexico's national legislation purporting to protect foreign investments and investors (*Ley de Inversión Extranjera*) *(Última reforma publicada DOF 15-06-2018*). The wrongful taking of the *Subject Property* is in derogation of this legislation that is mission critical to Mexico's economic development and, therefore, cannot be found to be consonant with the public purpose doctrine.

The expropriation of the *Subject Property* additionally fails to meet the predicates of the public purpose doctrine because it is in derogation of Mexico's *Expropriation Law* (*Ley de Expropiación*) (*last amended Dof 27-01-2012*). Article 21 of the *Expropriation Law* in part states that:

> *The application of this Law shall be construed as without prejudice* ***to the provisions of the international treaties to which Mexico is a party and, where applicable, of the arbitration agreements that are concluded.***[16]

---

16 *Ley de Expropiación*, (México) Art. 21 (1936 (rev. 2012), Artículo reformado Dof. 22-12-1993)) in its Spanish language original it states:

Esta Ley es de carácter federal en los casos en que se tienda alcanzar un fin cuya realización competa a la Federación conforme a sus facultades constitucionales, y de carácter local para el Distrito Federal. La aplicación de esta Ley se

(Emphasis supplied.)

The expropriation here at issue cannot be reconciled with a national legislative directive stating that, with respect to foreign (non-Mexican) investments and investors, international treaty law shall supersede domestic legislation on this issue. It thus follows that on this ground alone the public purpose requirement articulated in Art. 1110.1 is not, and cannot, be met.

The illegal expropriation further contravenes the public purpose doctrine because it disavows the public policy underlying national development pursuant to foreign direct investments.

To the contrary, a taking of this ilk can only have a chilling effect on foreign direct investments. It necessarily has an adverse effect on Mexico's economic and social development.

It cannot be construed that a taking

(i) inconsistent with judicial precedent,

(ii) inimical to the host-State's foreign investment protection legislation,

(iii) in defiance of the host-State's national Expropriation Law,

(iv) that diminishes the micro- and macroeconomic effects of an investment that contributes to the foundational health and well-being of an entire regional population, and

(v) that has a chilling effect on social and economic development,

is consonant with the public purpose doctrine within the meaning of NAFTA Art. 1110.1 (a), or the customary public international law of investment protection.

---

entenderá ***sin perjuicio de lo dispuesto por los tratados internacionales de que México sea parte y, en su caso, en los acuerdos arbitrales que se celebren.***

(Énfasis añadido)

D. Non-Discriminatory Treatment

The taking of the *Subject Property* was executed on a *discriminatory* basis. No other privately-owned and comparable agricultural income-producing property suffered the same fate within the last five (5) years, i.e., an expropriation without compensation, contrary to the public purpose doctrine, undertaken on a discriminatory basis, and bereft of any semblance of due process.

Access was not accorded the same treatment as Mexican nationals or other foreign investors who own and manage income-producing agricultural property in the State of Jalisco, or beyond.

The discriminatory taking without compensation, without more, constitutes a paradigmatic violation of NAFTA Art. 1110 (*Expropriation and Compensation*).

E. Due Process of Law, and Consonant with International Law, Including *Fair and Equitable Treatment* and Full Protection and Security

The *Subject Property* was taken without even a pretense of due process.[17]

Neither *Access* nor Nutrilite S.R.L. de C.V. was provided with notice of a hearing to obviate, let alone challenge, the expropriation. Instead, *Access*, constructively through Nutrilite S.R.L. de C.V., was served with two notices informing *Access* that the *Subject Property* had been expropriated. On July 1, 2022, an initial notice of expropriation concerning 120 hectares was served on Nutrilite S.R.L. C.V.[18]

A second notice advising of a July 14, 2022 San Isidro Town Hall meeting regarding the alleged execution of pending matters concerning the *Presidential Resolution* of 1939 was served on July

---

17 Significantly, Art. 1110.1 (c) provides that a lawful expropriation must be "in accordance with due process of law and Article 1105 (1)." NAFTA Art. 1105.1 (*Minimum Standard of Treatment*) states that "[e]ach Party shall accord to investments of investors of another Party treatment in accordance with international law, including *fair and equitable treatment* and full protection and security." (Emphasis supplied.)

18 The first Notice dated July 1, 2022, is here attached as **Appendix 2**.

7, 2022.[19] Later at the July 14, 2022 meeting the Mexican government advised Nutrilite S.R.L. de C.V. that 120 hectares of land would be immediately given into the possession of the Ejido San Isidro, and the remaining 160 hectares constituting the balance of the 280 hectares comprising the *Subject Property* would be expropriated within six (6) months from that date.

Both notices are foundationally flawed. The first Notice (July 1, 2022) is illustrative.

Its very first sentence states that "with respect to the *Presidential Resolution* published in the Federation's Official Daily on November 18, 1939, pursuant to which the town of San Isidro, and the Municipality of San Gabriel, in the state of Jalisco, benefitted by receiving 536 hectares of real property, and with respect to which 280 hectares *remain pending* because they were never allocated."[20] (Emphasis supplied.)

At the outset, it is necessary to observe that the *Presidential Resolution* referenced is dated August 23, 1939 issued by President Lázaro Cardenas ("*Presidential Resolution* of 1939"). It is quizzical that somehow on July 1, 2022, fourteen (14) Presidential administrations and eighty-three (83) years later, SEDATU would seek the execution of a purportedly "pending" allocation of property.

The implicit, and perhaps explicit, untested assumption is that during the intervening eighty-three (83) years and fourteen (14) Presidential administrations, the referenced allocation had remained pending. Nothing, however, can be farther from the truth as a matter of fact and law.

The Notice turns a blind eye to judicial pronouncements stating that the *Presidential Resolution* of 1939 had been fully discharged.

The Honorable Judge Carmen Laura López in judicial proceeding No. 615/97 (Juicio Agrario

---

19 The second Notice dated July 7, 2022, is here attached as **Appendix 3.**

20 The Spanish language original reads:

En referencia a la Resolución Presidencial publicada en el Diario Oficial de la Federación de fecha 18 de noviembre de 1939, mediante la cual se benefició al poblado de San Isidro, municipio de San Gabriel, estado de Jalisco, con la superficie de 136 hectáreas de las cuales se encuentran pendientes de ejecutar 280 hectáreas.

No. 615/97) made clear that 280 hectares pertaining to the Haciendas "*Paso de Cedros*" or "*Potrero Grande*" had been conveyed to the town of San Isidro pursuant to the *Presidential Resolution* of 1939.[21] This conveyance fully discharged President Lázaro Cardenas's *Presidential Resolution* of 1939.

The proposition asserted in the first paragraph of the July 1, 2022 notice of expropriation purporting to assert that 280 hectares arising from the *Presidential Resolution* of 1939 inexplicably remained "pending" and now, that part of the *Presidential Resolution* of 1939 was being discharged (eighty-three (83) years later), disavows the *Tribunal Unitario Agrario's* assertion to the contrary.

It also ignores the *physical fact* that approximately 280 hectares known as "*Paso de Cedros*" or "*Potrero Grande*" were conveyed to the Municipality of San Gabriel in 1994 in lieu of the 280 hectares comprising the *Subject Property* pursuant to an agreement between the ***Núcleo Agrario San Isidro through its agricultural ogranization, Unión Campesina Democrática, and the Secretaria of the Agrarian Reform.*** The solitary reason for the conveyance and that agreement was to satisfy the *Presidential Resolution* of 1939.

Accordingly, the taking of the *Subject Property* cannot be justified as somehow transferring property to the town of San Isidro, Municipality of San Gabriel, State of Jalisco under the *Presidential Resolution* of 1939 that nearly a century later remained "*pending.*"[22]

---

21 *See Judgment* pertaining to proceeding identified as:

Expediente: 615/97, Acción: Ampliación de Ejido por Incorporación de Tierras al Régimen Ejidal, Tribunal Unitario Agrario, Poblado: "San Isidro", Municipio: "San Gabriel", Estado: Jalisco, Oficio: 0266/98, here attached as **Appendix 4**.

22 *See Judgment* titled: Juicio Agrario No. 615/97, Poblado "San Isidro", Municipio: San Gabriel, Estado: Jalisco, Acción: Aplicación de Ejido por Incorporación de Tierras al Régimen Ejidal (Magistrado Poniente: Lic. Carmen Laura López), p 7, here attached as **Appendix 5,** which in the Spanish language original reads:

NOVENO. *– La Secretaria de la Reforma Agraria, representada por el Oficial Mayor y el Director General de asuntos jurídicos, así mismo, por su titular, celebraron convenio el 14 de marzo de mil novecientos noventa y cuatro, con los representantes del poblado 'San Isidro', municipio de Venustiano Carranza, hoy San Gabriel, Estado de Jalisco, y la Organización denominada Confederación Unión Campesino Democrática: el objeto de resolver en definitiva la ejecución de la Resolución Presidencial del núcleo agrario, entregado en forma directa al núcleo gestor la cantidad de N$ 668,052.35 (seiscientos sesenta y ocho mil cincuenta y dos nuevos pesos 35/100 M.N.), con apoyo económico subsidiario por parte del*

The wrongful expropriation has the effect of providing the town of San Isidro, Municipality of San Gabriel, State of Jalisco with almost a twofold conveyance of property beyond what was contemplated in the *Presidential Resolution* of 1939.

Indeed, on April 6, 1994 the Agrarian Coordinator appointed Mr. Fernando Hernández Zamora as Commissioner. Mr. Hernández Zamora drafted an *Agreement* that was signed by the forty-four (44) residents of the town of San Isidro for whom the federal government of Mexico purchased the 280 hectares called "*Paso de Cedros*" or "*Potrero Grande,*" and who received this property in lieu of any claims to the *Subject Property* known as *El Petacal.*

That *Agreement* was acknowledged and ratified by the Mexican government itself.

The Agrarian Sector (*Sector Agrario*) of the Secretariat of the Agrarian Reform (*Secretaría de la Reforma Agraria)* asserted the following representations concerning the Mexican government's *Agreement* with the forty-four (44) residents of San Isidro regarding receipt of the "*Paso de Cedros*" or "*Potrero Grande*" land as full, complete, and final performance and execution on the part of the Mexican government of the *Presidential Resolution* of 1939.

For purposes of ensuring the linguistic integrity of the Agrarian Sector's pronouncement of this *Agreement*, the Spanish language original is cited:

> *Por otra parte cabe destacar que en ésta de mi cargo se cuenta con un expediente, en el que se encuentra* ***un Convenio suscrito entre el Núcleo Agrario 'SAN ISIDRO', a través de su Organización Campesina UNIÓN CAMPESINA DEMOCRÁTICA, Representada por el C. Gerardo Avalos Lemus, y los Representantes Legales del Núcleo Agrario y la Secretaría de la Reforma Agraria, Representada por su Titular el C. Victor Cervera Pacheco, de fecha 14 de marzo de 1994****, mediante el cual el Núcleo Agrario recibió de la Secretaría $668,052.35 (seiscientos sesenta y ocho mil, cincuenta y dos pesos 35/100 M.N.), para que adquieran el Predio 'PASO DE CEDROS' o 'POTRERO*

Gobierno Federal, para la adquisición de 334-02-61.76 (trescientas treinta y cuatro hectáreas, dos áreas, sesenta y una centiáreas, setenta y seis miliáreas) de temporal y agostadero cerril, que constituyen el predio denominado 'Paso de Cedros' o 'Potrero Grande', ubicado en el Municipio de Tolimán, Estado de Jalisco, propiedad de Esperanza Nava Gómez y José Nava Palacios; y cuya entrega material será realizada y distribuida, bajo la responsabilidad de la Delegación Agraria en la entidad, de la siguiente manera: 280-00-00 (doscientas ochenta hectáreas), para el poblado 'San Isidro' y el resto, o sea 54-02-61.76 (cincuenta y cuatro hectáreas, dos áreas, sesenta y una centiáreas, setenta y seis miliáreas), para el poblado 'San Antonio', ambos del Municipio de Venustiano Carranza, hoy San Gabriel, Estado de Jalisco.

> *GRANDE', ubicado en el Municipio de Tolimán, Estado de Jalisco, propiedad de la o, ESPERANZA NAVA GÓMEZ,* ***en sustitución de las 280-00-00 has. de la 'HACIENDA DEL PETACAL', propiedad de María Rojas, que se les concedió mediante Resolución Presidencial de Dotación de Tierras, del 23 de agosto de 1939, consintiendo expresa y libremente el cambio de localización que posibilitara la aprobación del expediente de ejecución y la formulación e inscripción del Plano Definitivo en el Registro Agrario Nacional****; trayendo como consecuencia dicho convenio, que previos los trámites realizados ante el Cuerpo Consultativo Agrario, este Órgano de consulta puso en Estado de Resolución el expediente referido ante el Tribunal Superior Agrario, quien con fecha 9 de diciembre de 1997, resolvió dotar al Núcleo Agrario, con 280-00-00 has. del predio denominado 'PASOS DE CEDROS' o 'POTRERO GRANDE', que fueron puestas a disposición de la Secretaría de la Reforma Agraria; habiéndose ejecutado por personal de dicho tribunal la resolución antes referida el 24 de febrero de 1998, según consta en el Acta que al efecto se levantó: en tales condiciones,* ***se debe tener por ejecutada la Resolución Presidencial del 23 de agosto de 1939, publicada en el Diario Oficial de la Federación el 18 de noviembre de 1939, teniendo en cuenta que el libre y espontáneamente y sin presión alguna, suscribieron el referido Convenio, por el que aceptan el cambio de localización, que legitima su derecho sobre esta superficie.***[23]

(Emphasis supplied.)

Access had every right to rely on the legal and factual proposition that the *Presidential Resolution* of 1939 had been fully discharged. Further, due process dictated that any challenge to *Access'* ownership of the *Subject Property* would first necessitate airing in a judicial venue legitimate and substantive grounds in furtherance of any such challenge. No comparable hearing preceding the unilateral expropriation ever took place. The taking lacked every vestige of due process and violates NAFTA Art. 1110.1 (c).

1. The Article 1105.1 (c) *Fair and Equitable Treatment* Protection Prong Was Not Met

The expropriation of the *Subject Property* violates Art. 1110.1 (c) on the additional ground

---

[23] *See Asunto: SE CONTESTA DEMANDA EXP. J. A.* 350/16/2000, presented by Lic. J. Leonel Sandoval Figueroa, of the Sector Agrario, Subordinación Jurídica Clave 13 04 308 01, Representación Regional Occidente, Pob: "SAN ISIDRO", MPIO: "SAN GABRIEL", antes Venustiano Carranza, EDO: JALISCO, at p 5, here attached as **Appendix 6.**

(beyond lack of due process) that this Article incorporates Art. 1105.1 (*Fair and Equitable Treatment* protection).

That protection standard – *Fair and Equitable Treatment* (FET) – was in part violated because *Access* harbored the very reasonable expectation that its ownership of the *Subject Property* was not susceptible to any challenge, let alone one premised on the alleged enforcement of a fictitious pending land transfer pursuant to the *Presidential Resolution* of 1939. Three foundational propositions are critical to *Access*' FET claim.

2. The December 2, 1942 *Presidential Resolution*

First, as a matter of public record and as early as December 2, 1942, Mexican President Manuel Ávila Camacho, together with the then highest ranking member of Mexico's Department of Agriculture (*Jefe del Departamento Agrario*) Fernando Foglio Miramontes, modified the *Presidential Resolution* of 1939 in order to exempt the *Subject Property* from the estates that were to be transferred to the Municipality of San Gabriel. In fact, on April 1, 1943 the Mexican government's *Official Journal*[24] published the Presidential Exemption of the *Subject Property* from the *Presidential Resolution* of 1939.

The *Official Journal* in pertinent part reads:

> *Based on what has been stated, the undersigned, the President of the Republic, based upon subsection xiii of article 27 of the Constitution, and also based on article 35 of the Agrarian Code currently in force, it is proper to cite as follows*
>
> *AGREED:*
>
> *I. – The three hundred hectares (300) are declared unemcumberable, one hundred (100) hectares of which are seasonable and two hundred (200) hectares that remain are of the quality of land to be used for summer pasturing that form part of the small agricultural producing property named Puerta del Petacal, which property is owned by Miss María Rojas, and located in the Municipality of Venustiano Carranza, in the State of Jalisco, which property must be registered with the referenced characteristic*

---

24 *DIARIO OFICIAL: ORGANO DEL GOBIERNO CONSTITUCIONAL DE LOS ESTADOS UNIDOS MEXICANOS, Director: Lic. CARLOS FRANCO SODI (Sección Tercera), Méjico, jueves 1° de abril de 1943, Tomo CXXXVII, Núm. 28,* titled: *PODER EJECUTIVO – DEPARTAMENTO AGRARIO.*

> *in the National Agricultural Registry [Registro, Agrario Nacional] prior to the property's survey and demarcation on the part of its owner.*
>
> ***
>
> *Issued in the Palace of the Executive Branch of the Union, in Mexico, D.F.*
>
> *On December 2, 1942 – Manuel Ávila Camacho – Constitutional President of the United Mexican States. – Fernando Foglio Miramontes. – Head of the Department of Agriculture.*[25]

Access had no reason to opine the *Subject Property* suffered from a cloud on title arising from the *Presidential Resolution* of 1939. To be sure, no less than Mexico's President Manuel Ávila Camacho had as a matter of public notice certified by dint of a *Presidential Resolution* the contrary to be true, no less than fifty-two (52) years before *Access* acquired the *Subject Property.*

3. Micro- and Macroeconomic Contribution

Second, *Access'* expectation that the *Subject Property* would not be the subject of an expropriation for any reason, let alone the *Presidential Resolution* of 1939, was reasonable and well-founded.

The legitimacy and reasonableness of this expectation is all the more poignant because of the evident macro- and microeconomic contribution that the Nutrilite operation has made to the local economy and to the State of Jalisco more generally.

---

25 Translation by undersigned counsel, The Spanish language original provides:

Por lo expuesto, el suscrito, Presidente de la República, con fundamento en la fracción xiii del artículo 27 Constitucional y en el artículo 35 el Código Agrario vigente, tiene a bien dictar el siguiente

ACUERDO:

I.- Se declaran inafectables las 300 Hs. (trecientas hectáreas), de las cuales 100 Hs. (cien hectáreas), son de temporal y 200 Hs. (doscientas hectáreas) de agostadero de buena calidad, que integran la pequeña propiedad agrícola en explotación denominada Puerta del Petacal, propiedad de la Señorita María Rojas, ubicada en el Municipio de Venustiano de Carranza, del Estado de Jalisco, debiendo inscribirse con tal carácter en el Registro Agrario Nacional, previo su deslinde por cuenta de la interesada.

***

Dado en el Palacio del Poder Ejecutivo de la Unión, en México, D.F., a los dos días el mes de diciembre de mil novecientos cuarenta y dos. - Manuel Ávila Camacho – Rúbrica. – Presidente Constitucional de los Estados Unidos Mexicanos. – Fernando Foglio Miramontes. - Rúbrica. – Jefe del Departamento Agrario.

A true and correct copy of this iteration of the *Official Journal* is here attached as **Appendix 7.**

The Nutrilite operation on the *Subject Property* was the first source of employment in the local community. It did more than contribute to the local economy. The Nutrilite investment actually *created* that economy.

As part of Nutrilite's microeconomic contribution to the area, the infrastructure needed to create a productive economic environment was constructed. Nutrilite, with the support of the Tolimán government, built a six-kilometer highway to allow Nutrilite employees and workers in the areas adjacent to the *Subject Property* access to the workplace directly from the municipality.

As part of this effort, more than just the Petacal road was constructed. A bridge was also built to facilitate travel.

In this same vein, Nutrilite spent significant resources for the enhancement of electric infrastructure in the area. The Juan Rulfo electric substation and corresponding electric line were refurbished in order to multiply electric output and distribution.

The consequences of a modernized electric substation, increased output, and updated distribution capabilities not only enhanced Nutrilite's operational efficiencies, but also attracted other investments to the area. Having incurred the initial upfront development costs, other investors were incentivized to develop the properties adjacent to El Petacal.

Nutrilite also financed the construction of a water treatment plant for the "El Petacal community." This contribution was mission critical to a viable economic infrastructure in the area. More meaningfully, however, it materially enhanced the local community's living standards and well-being.

In addition to the deployment of considerable resources in order to create and to develop a local economy, Nutrilite understood that economic growth cannot be severed from social and cultural development.

Hence, Nutrilite donated substantial resources for the construction of a church in honor of the Virgin of Fátima of El Petacal.

Similarly, Nutrilite contributed meaningful resources towards the construction of a soccer/*futbol* facility and the maintenance of elementary school facilities and gardens for the local children.

Nutrilite built a community center. That center has served as an educational facility and meeting place where Nutrilite has sponsored events such as

(i) nutrition programs,

(ii) courses on human values,

(iii) English language courses,

(iv) arts and crafts workshops,

(v) food supplement delivery programs and corresponding instructions, and

(vi) a venue for the delivery of food pantry to senior citizens and local citizens with disabilities.

With Nutrilite's support, the community center has served as a venue for the sale of costume jewelry, a venue for first aid, a place where local residents have engaged in the preparation of snacks and baked good for the community, as well as a center for textile weaving.

Access' expectations with respect to the stability and ownership of the *Subject Property*, in part, were grounded on these contributions. They speak for themselves, and they far exceeded Nutrilite's legal economic obligations to the region.

It defies logic to imagine that an investor responsible for the development of a regional geopolitical economy would have its property expropriated in direct and explicit violation of international law and the very statutory rubrics of the host-State.

4. The Operations On, and Facilities Comprising, the *Subject Property*

A third premise on which Nutrilite's *Fair and Equitable Treatment* standard expectations were

rooted concerned the development of the *Subject Property*.

Access' reasonable expectations of stability and support from the local and federal governments in part were based on the agricultural productivity of the *Subject Property*. The Nutrilite operation on the *Subject Property* itself constituted a basis for reasonable expectations of support from all levels of the Mexican government.

a. The 120 Hectares

The 120 hectares expropriated on July 1, 2022 comprise four distinct estates located on different parts of the property.

The "*Pivote Chico*" is made up of approximately 11.5 hectares that are used for farming different kinds of vegetables. These vegetables are cultivated pursuant to rigorous organic agricultural practices.[26]

---

[26] All of the farming undertaken on the *Subject Property* are in compliance with the strictest national and international organic farming and certification standards. Accordingly, Nutrilite's vegetables, plants, and fruits meet the requirements of the eight most exacting national and international agencies concerned with best practices in the context of organic farming:

(i) The CAC (The Codex Alimentarius Commission, a joint Food and Agriculture Organization (FAO), and World Health Organization (WHO), Food Standards Program established in 1963 that formulates voluntary international standards, codes of practice, and guidelines and codes of practice that actually constitute the Codex Alimentarius);

(ii) The IFOAM (The International Federation of Organic Agriculture Movements), a worldwide umbrella organization for the Organic Agriculture Movement, having approximately 800 affiliates in 117 countries;

(iii) The USDA (United States Department of Agriculture), a US government agency that, in part, provides leadership regarding food, agriculture, natural resources, and related issues;

(iv) The FDA (US Food and Drug Administration), a US government agency responsible for protecting the public health by laboring to assure the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, the US food supply, cosmetics, and products that emit radiation. The FDA also aspires to provide accurate, science-based health information to the general public;

(v) The SAGARPA (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación*), a Mexican government instrumentality that traces its roots to 1917, when it was established as the *Secretaría de Agricultura y Fomento*. The agency's name changed 1946 to *Secretaría de Agricultura y Ganadería*, in 1976 to *Secretaría de Agricultura y Recursos Hidráulicos*, and in 2000 in adopted the current nomenclature. The SAGARPA is charged with maximizing the likelihood of best practices that would yield a sustainable and salubrious food supply for the national population of Mexico, as well as for exportation;

(vi) SENASICA (El Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria), is a decentralized administrative body of the Mexican Ministry of Agriculture and Rural Development

The second estate, having approximately 36.38 hectares and identified as "*Barranca.*".

The two remaining estates, identified as "Zones 8 and 10," are used as buffers in order to prevent cross-pollination and contamination. These buffer zones are essential to organic agricultural farming.

b. The 160 Hectares

The 160 hectares expropriated on July 7, 2022 primarily are used to cultivate alfalfa, grapefruits, mandarins, lemons, broccoli, kale, sage, parsley, cacti, rosemary, and chia. These fruits, vegetables, and herbs are organically cultivated. Some are used as botanical ingredients for food and nutritional supplement products sold globally by *Access* through its subsidiaries around the world.

The 160 hectares also sustain considerable processing and packaging operations. Here the vegetables and plants are washed, appropriately shredded, dehydrated, thermally processed, packed, and stored. They are processed and prepared for loading and exportation. Significantly, the entire process is undertaken pursuant to strict organic and kosher certification from the agencies referenced immediately above (footnote 26 above).

This portion of the *Subject Property*, in addition to producing crops, happens to be particularly responsive to the production of seedlings for crops and the organic fertilizers that Nutrilite uses in the practice of organic agricultural farming. Thus, the production of collateral ingredients necessary to cultivate, process, package, and store food and nutritional

---

(SADER) whose mission includes safeguarding against the introduction into the national borders of pests and disease that may contaminate the agricultural sector;

(vii) The COFEPRIS (La Comisión Federal Para La Protección Contra Riesgos Sanitarios), is a Mexican government regulatory agency charged with regulating multiple health related issues in Mexico, including food safety and environmental protection;

(viii) The EPA (U.S. Environmental Protection Agency), a US federal government agency tasked with protecting the general population and the environment from health risks arising from existing or potential environmental hazards. The EPA, in addition to conducting scientific research on how best to develop and maintain a safe and productive environment, also develops and enforces environmental regulations, many of which concern organic agricultural harvesting.

supplements also are grown on this sector.

Finally, the 160 hectares constitute the actual venue for scientific investigations focused on the adaptation and development of new crops that may enhance Nutrilite's nutritional supplements.

These activities are pivotal to *Access' Fair and Equitable Treatment* protection expectations. The scope, legality, transparency, and longstanding productive activity sustained on the *Subject Property* for approximately twenty-eight (28) years further bolstered *Access'* expectations that the host-State would honor its *Fair and Equitable Treatment* treaty obligation.

5. Improvements on the *Subject Property*

All of Nutrilite's operational facilities are circumscribed within the 160 hectares comprising part of the *Subject Property*. A video narrative taken from a drone documents the agricultural activity on the *Subject Property* (all 280 hectares) and the buildings on the 160 hectares that were expropriated on July 7, 2022.

The video reference link together with twenty (20) PowerPoint slides illustrating the improvements forming part of the *Subject Property*, as well as the two tracks of real property (120 and 160 hectares) also constituting the *Subject Property,* are attached to this *Notice of Intent to Submit a Claim to Arbitration.*[27]

There are four major facilities on the *Subject Property*, all of them located on the 160 hectares expropriated on July 7, 2022:

(i) *Dehydration Plant*,[28]

---

27 *See* https://youtu.be/nvTeQo6T7NM and PowerPoint slides attached as **Composite Appendix 8.**

28 This improvement is a building with a 14,531 sq. ft. working area. It is constructed with brick walls and a tiled sealing. The interior of the building is divided into five production sections, in addition to an office, a dressing area, a laundry room, and bathroom and showers for men and women.

(ii) *Heat Treatment Facility*,[29]

(iii) *Rotary Dryer*,[30] and

(iv) *Research Facility*[31].

These processing and research facilities represent a tangible "brick and mortar" sunk investment that added palpable value to the local and regional economy and also represent Nutrilite's profound commitment to the host-State.

The presence of this tangible investment in the local and regional economies further underscores Nutrilite's expectations that its investment would be accorded *Fair and Equitable Treatment* pursuant to NAFTA Arts. 1105.1 and 1110.1 (c).

The taking here at issue eviscerates Nutrilite's interest in the *Subject Property*, including its improvements, and almost irreparably frustrates the Nutrilite operation.

For the reasons stated here and in prior sections, the FET component of NAFTA Art. 1110.1 (c), citing to Art. 1105.1, has been breached in the context of Art. 1110.1 (c), and separately pursuant to the very elements of the FET treatment protection standard contained in Art. 1105.1.

6. Notice of Article 1102 (*National Treatment*) Violation

Access formally provides notice that it intends to assert a claim against Mexico alleging breach

---

29 This improvement consists of a building with a working area of 13,465.65 sq. ft. It has a "pharmaceutical" graded construction. In addition to being equipped with standard air conditioning and a security system, the facility has HEPA filters to control particle size in the air, heat treatment equipment, dust collectors, a reverse osmosis system (to generate clean water), a water softener, an industrial steam boiler, and an equipment washing room. The office area consists of two stories.

30 This improvement consists of a building with an 8,998 sq. ft. working area for dehydrating alfalfa. The structure also has an external facility with a soak hopper and a rotary dehydrator. All of the equipment necessary for dehydrating and grinding alfalfa is housed, operated, and maintained in this facility, including standard cyclone, mill, rotary valve, sifter, magnetic traps, and floor scales. The facility includes an equipment washing room and a custom quarantine area.

31 This improvement consists of a building with 4,632.79 sq. ft. of working area that includes micro-biology, laboratories, offices, and an auditorium.

of NAFTA Art. 1102.1 and 1102.2 for failure to accord *Access* and its investment treatment no less favorable than that which it accords, in like circumstances, to Mexico's own investors and investments.

The grounds for this discriminatory treatment, in part, have been set forth (without limitation) in *Access*' notice to Mexico of *Access*' intent to assert a claim based upon Mexico's violation of Art. 1110.1 (b) (*Expropriation and Compensation*). Under the purported banner of executing in July 2022 a *Presidential Resolution* issued on August 23, 1939, and in relevant part abrogated also by *Presidential Resolution* on December 2, 1942, before *possibly* being discharged decades later, the Mexican government singled out *Access* and expropriated 280 hectares of income-producing property, known as "*El Petacal*."

There is no record of the Mexican government expropriating a similarly situated Mexican investor and investment in violation of Mexico's own legislative and constitutional strictures addressing government takings. As referenced above, the expropriation of the *Subject Property* was in direct and explicit violation of (i) Mexico's national *Investment Law* (*Ley de Inversión Extranjera (Última reforma publicada DOF 15-06-2018)*), (ii) Mexico's national *Expropriation Law* (*Ley de Expropiación (Última reforma publicada DOF 27-1-2012*), as well as (iii) the conventional (NAFTA 1994) and customary public international law of investment protection.[32]

There is no recent or contemporaneous conduct on the part of the Mexican government with respect to Mexican investors and investments comparable to the conduct in relation to *Access* and *Access*' Nutrilite operation on the *Subject Property*, where the Mexican government (i) arbitrarily, (ii) based upon pure political expediency, (iii) devoid of due process, and (iv) without compensation, expropriated income-producing agricultural property.

Mexico accorded *Access* and its investment (the *Subject Property*) treatment less favorable than that accorded to comparable Mexican investments and investors because of *Access*' status as a

---

32 NAFTA Article 1131 (*Governing Law*) in part reads:

> *1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.*

non-Mexican national.

This conduct is in violation of NAFTA Art. 1102.1 and 1102.2 (*National Treatment*) and, therefore, gives rise to liability on the part of the Mexican government and correspondingly imposes on the Mexican government an obligation to compensate *Access*.

7. Notice of Article 1105 (Minimum Standard of Treatment) Violation

NAFTA Art. 1110.1 (c) explicitly references using the conjunctive "and," due process of law *and* Art. 1105.1. Thus, in referencing the Mexican government's non-compliance with the expropriation treatment protection standard articulated in Art. 1110.1 (c), *Access* articulated its intent to file a claim that includes an alleged FET violation pursuant to Art. 1105.1. (*See supra*, **Section II**).

III. Damages Arising from the Mexican Government's Illicit Expropriation

The Nutrilite operation on the *Subject Property* is unique. Consequently, the quantification of damages is premised on its "seed-to-supplement" process and its part in a holistic methodology used in *Access*' and its subsidiaries' manufacturing-direct sales process. The Nutrilite operation is the underpinning of this broader process that is both interconnected and interdependent with *Access*' global operations. No single operational phase in this continuum can be affected without altering the process in its entirety.

Therefore, the pecuniary damages analysis underlying the intended claim quantifies losses that include those arising from

(i) a complete loss of a product line that cannot be replicated elsewhere within a thirty-six (36) month timeframe,

(ii) a supply chain disruption that cannot be mitigated within a thirty-six (36) month period of time,

(iii) the cost of idle equipment,

(iv) the cost of idle employees,

(v) the cost of the loss of real property (including improvements),

(vi) the cost of relocating the Nutrilite operations to a different jurisdiction, as the Mexican government does not provide for the *Fair and Equitable Treatment* of foreign direct investments, and cannot be deemed reliable, and

(vii) lost profits calculated for only a thirty-six (36) month timeframe.

This three-year period is the assumed time that it would take to establish some semblance of an operational equivalent to the current Nutrilite "seed-to-supplement" operation that the *Subject Property* sustains, during which time, global production and resultant sales of Nutrilite products that are developed using raw materials from the *Subject Property* would be non-existent.

Set forth below are the damages associated with three of the most pragmatically conceptual options for mitigating the loss of the Nutrilite operations and a fourth possible option that contemplates a purchase and/or lease of property in the United States where *Access* has no operations.

OPTION 1	**Farming:** Assuming complete loss of spinach and remaining items are transferred to External Buyout Supplier. Sustainable and reliable sources for organic Spinach are difficult to locate/ do not exist. **Processing:** External Buyout Supplier to source feedstock and all processing **Total Additional Impact** ▪ One Time Cost - $10M ▪ Additional Cost/Year - $3.5M + spinach loss Annual $630M Revenue & $430M Margin ▪ Three-year loss of Nutrilite product sales > $3B revenue ($1B ann.) & $2.2B margin ($0.7B ann.)
OPTION 2	**Farming:** (1) Assuming Trout Lake Farm (TLF), *Access'* farming operation in Washington, could incorporate growth of Spinach and Alfalfa in its existing operations, and the remaining El Petacal crops are split and transferred to (2) *Access'* farming operation in Brazil (BZL) and (3) External Buyout Supplier. ▪ TLF would need to lease additional land

	▪ Spinach – difficult to find sustainable and reliable sources for organic crop but would try again to qualify at TLF. Background: tried to qualify TLF twice (2013 and 2015) but failed at micro-qualification. ▪ BZL may have open acreage for El Petacal crops and also could look at utilizing partner growers, but would need to adapt operations for processing in time for further shipments. **Processing:** (1) Expansion at *Access'* Quincy Heat Treat Milling (HTM); (2) Development of Heat Treat Milling operations in Brazil to properly stabilize and process product in proper amount of time to ship; (3) External Buyout Supplier to source feedstock and processing **Total Additional Impact** ▪ One Time Cost - $32M ▪ Additional Cost/Year - $23M ▪ Three-year loss of Nutrilite product sales > $3B revenue ($1B ann.) & $2.2B margin ($0.7B ann.)
OPTION 3	**Farming:** (1) Assuming *Access'* Trout Lake Farm (TLF), in Washington, could grow Spinach and Alfalfa and (2) remaining El Petacal crops are transferred to External Buyout Supplier. ▪ TLF would need to lease additional land Spinach – difficult to find sustainable and reliable sources for organic crop but would try again to qualify at TLF. Background: tried to qualify TLF twice (2013 and 2015) but failed at micro-qualification. **Processing:** (1) Expansion at Quincy Heat Treat Milling (HTM); (2) External Buyout Supplier to source feedstock and processing **Total Additional Impact** ▪ One Time Cost - $20M ▪ Additional Cost/Year - $13M ▪ Three-year loss of Nutrilite product sales > $3B revenue ($1B ann.) & $2.2B margin ($0.7B ann.)
Other	**Farming:** Purchase and/or lease all new land in the United States **Processing:** (1) Expansion at Quincy Heat Treat Milling (HTM); (2) Development of Heat Treat Milling operations in another US location for dual operations **Total Additional Impact** ▪ One Time Cost $$$ + $10M for HTM ▪ Additional Cost/Year - $$$ + $4.4M for HTM ▪ Three-year loss of Nutrilite product sales > $3B revenue ($1B ann.) & $2.2B margin ($0.7B ann.)

A detailed nineteen-page spreadsheet supporting the immediately preceding schematic is here

attached as **Composite Appendix 9**.

Pursuant to NAFTA Art. 1119 (d), the relief that *Access* seeks is in the amount of approximately USD 3,000,000,000 (Three Billion Dollars).

Under the circumstances, *Access* is compelled and intends to apply to the Arbitral Tribunal for reasonable attorneys' fees and costs arising from the preparation and prosecution of this cause.

You are invited to contact the undersigned if the Government of the United Mexican States deems this *Notice of Intent to Submit a Claim to Arbitration* does not sufficiently specify the nature, substance, or scope of the arbitral claim that *Access* intends to submit pursuant to NAFTA Art. 1120.1 (a).

Respectfully,

Pedro J. Martinez-Fraga
C. Ryan Reetz
David Harford
Dilmurod Satvaldiev