

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Optima Ventures LLC, Optima 7171 LLC and Optima 55 Public Square LLC

v.

United States of America

(ICSID Case No. ARB/21/11)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Mónica Pinto, President of the Tribunal

Prof. Jan Paulsson, Arbitrator

Mr. David Pawlak, Arbitrator

Secretary of the Tribunal

Gonzalo Flores

March 20, 2023

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Introduction

The first session of the Tribunal was held on February 28, 2023, at 9am (EST), by video conference. The session was adjourned at 9:33am (EST).

A video recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties on February 28, 2023.

Participating in the conference were:

Members of the Tribunal:

Prof. Mónica Pinto, President of the Tribunal

Prof. Jan Paulsson, Arbitrator

Mr. David Pawlak, Arbitrator

ICSID Secretariat:

Gonzalo Flores, Secretary of the Tribunal

Daniela Argüello, ICSID Legal Counsel

Participating on behalf of the Claimants:

Robert T. Dunlap, Freedman Normand Friedland LLP

Devin (Velvel) Freedman, Freedman Normand Friedland LLP

Niraj Thacker, Freedman Normand Friedland LLP

Zaharah R. Markoe, Black Srebnick

Mark P. Ressler, Kasowitz Benson Torres LLP

Joshua N. Paul, Kasowitz Benson Torres LLP

Participating on behalf of the Respondent:

Lisa J. Grosh, Assistant Legal Adviser, U.S. Department of State

John D. Daley, Deputy Assistant Legal Adviser, U.S. Department of State

David M. Bigge, Chief of Investment Arbitration, U.S. Department of State

Julia H. Brower, Attorney-Adviser, U.S. Department of State

Nathaniel E. Jedrey, Attorney-Adviser, U.S. Department of State

Melinda E. Kuritzky, Attorney-Adviser, U.S. Department of State

Mary T. Muino, Attorney-Adviser, U.S. Department of State

David J. Stute, Attorney-Adviser, U.S. Department of State

Isaac D. Webb, Attorney-Adviser, U.S. Department of State

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The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on January 31, 2023; and
- The parties' comments on the Draft Procedural Order, received on February 21, 2023, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Having considered the above documents and the parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this Procedural Order sets out the Procedural Rules that govern this arbitration. A timetable is attached as **Annex B**.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on July 6, 2022. Following the disqualification of an arbitrator on December 20, 2022, the Tribunal was reconstituted on January 24, 2023, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal is properly constituted and that no party has any objection at this time to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on July 6, 2022, and January 24, 2023.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulations 14 and 15; ICSID Schedule of Fees; ICSID Memorandum on Fees and Expenses
- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Pursuant to ICSID Administrative and Financial Regulations 14 and 15, under the current Memorandum on Fees and Expenses, each Tribunal Member is entitled to:
- 3.2.1. USD500 per hour of work performed in connection with the proceeding, including each hour spent participating in hearings, sessions and meetings;
- 3.2.2. USD900 as a *per diem* for each day spent away from their city of residence while traveling in connection with a proceeding when overnight lodging is required. This covers all personal expenses, including lodging, tax on lodging, service charges, meals, gratuities, in-city transportation, laundry, personal communications and internet;
- 3.2.3. USD250 for each hour of travel to and from a hearing. For work performed during travel, Members may charge the hourly rate for work (USD500) *in lieu* of the hourly rate for travel. For day trips not requiring overnight lodging, Members are also entitled to a *per diem* of USD200; and
- 3.2.4. reimbursement for the costs of air and ground transportation to and from the city where the hearing, session or meeting is held.
- 3.3. Non-refundable expenses incurred due to postponement or cancellation of a hearing shall be reimbursed, *e.g.*, the lesser of: (a) actual non-refundable cost or (b) USD 900 *per diem*.
- 3.4. Each Tribunal Member shall submit her/his detailed claims for fees and expenses to the ICSID Secretariat on a quarterly basis or more frequently. Claims for work performed must be declared in a detailed, itemized format and appended to the Claim for Fees and Expenses form.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence.
- 5.3. The Tribunal will draft and issue all rulings, including the Award, within a reasonable time. If an award has not been issued within 6 months, or other ruling within 3 months, after the final submission on a particular matter, the Tribunal will provide the parties with status updates upon the written request of either party.
- 5.4. The President is authorized to sign Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically by letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday. Consistent with §13.5, time limits are satisfied if undertaken by a party by midnight, Washington, D.C. time, on the relevant date.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

- 7.1. The Tribunal Secretary is Gonzalo Flores, Deputy Secretary-General, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to

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time. Ms. Daniela Argüello, Legal Counsel, ICSID, will assist Mr. Flores in this proceeding.

- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Gonzalo Flores
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ICSID Legal Counsel: Daniela Argüello
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Paralegal name: Anastasia Tsimberlidis
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- 7.3. For local messenger deliveries, the contact details are:

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Tel.: +1 (202) 458-1534

8. Representation of the Parties
Arbitration Rule 18

- 8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

Optima Ventures LLC, Optima 7171
LLC and Optima 55 Public Square LLC

For Respondent

United States of America
c/o Ms. Lisa J. Grosh

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c/o Mr. Robert T. Dunlap
Mr. Velvel (Devin) Freedman
Ms. Colleen Smeryage
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Ms. Melinda E. Kuritzky
Ms. Mary T. Muino
Mr. Alvaro J. Peralta
Mr. David J. Stute
Mr. Isaac D. Webb

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JedreyNE@state.gov;
KuritzkyME@state.gov;
MuinoMT@state.gov;
PeraltaAJ@state.gov;
StuteD@state.gov;
WebbID@state.gov;

9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of July 12, 2022, ICSID requested that each party pay USD200,000 (two hundred thousand United States dollars) to cover the initial costs of the proceeding. ICSID received Respondent's payment on August 2, 2022, and Claimants' payment on August 9, 2022.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

10. Place of Proceeding

Convention Articles 62 and 63; Arbitration Rule 13(3)

- 10.1. The Hague, the Netherlands, shall be the place of the proceeding.
- 10.2. The Tribunal may hold in-person hearings at the place of the proceeding or, if the parties so agree, any other place that it considers appropriate.
- 10.3. The Tribunal members may deliberate at any place and by any appropriate means they consider convenient.

11. Procedural Language(s), Translation and Interpretation

Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of the arbitration.
- 11.2. Documents filed in any other language must be accompanied by a translation into English.
- 11.3. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.

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- 11.5. Documents exchanged between the parties in a language other than English need not be translated.
- 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted simultaneously.
- 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses, or experts require interpretation.
- 11.8. The costs of interpretation will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal. In case of urgency, the President may transmit communications on behalf of the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date, the parties shall:
 - 13.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports, and an index of all supporting documentation¹; and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

- 13.1.2. within three (3) business days, upload the pleading with all the supporting documentation and updated index to the file sharing platform created by ICSID for purposes of this case.

- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 13.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted. The parties shall follow the naming conventions contained in **Annex A**.
- 13.4. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 13.5. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 14.1. After consulting with the parties, the Tribunal has adopted the Procedural Calendar which is set out in **Annex B**.
- 14.2. The parties may at any stage of the proceedings seek further directions from the Tribunal regarding procedural steps relating to and/or in addition to those set out in the Procedural Calendar.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-34

- 15.1. The parties agreed in principle on the technical aspects of a discovery phase (as described below). The Tribunal will determine, in due course, after hearing from the parties, whether document production is necessary, and if so, the appropriate timetable.
- 15.2. Within the time limits to be set out in due course, any party may submit to the other party (without copying the Members of the Tribunal or the Secretary of the Tribunal) a request to produce a limited number of documents or narrow categories

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of documents within the other party's possession, custody or control. The request shall identify with precision each document or narrow category of documents sought and establish its relevance to the case and materiality to the outcome. The requests to produce, responses and replies and any applications to the Tribunal shall be made in the form of a Schedule in the format set out in **Annex C** hereto. An electronic MS Word version of the Schedule is to be transmitted to the party to whom the request is made and, when requesting the Tribunal's decision, to the Tribunal.

15.3. Each request for a document shall contain:

15.3.1. A description that is sufficient to identify the document and its subject matter, or else a sufficiently detailed description of the specific category of documents reasonably believed to exist;

15.3.2. A declaration as to why the documents sought are relevant to the dispute and material to the outcome of the case; and

15.3.3. A declaration that the documents sought are not within the requesting party's possession, custody, or control, as well as a declaration stating the requesting party's reasons for believing that the documents sought are within the other party's possession, custody, or control.

15.4. Within the time limits to be fixed in due course, using row C of the schedule provided by the first party (the "Requesting Party"), the party to whom the request is made (the "Requested Party") shall either confirm that it will produce the requested documents that are in its possession, custody or control or set forth its objections to the production sought, and the reasons for such objections. At this stage, the Schedule should be sent to the Requesting Party only (not to the Tribunal or the Tribunal Secretary).

15.5. Within the time limits to be fixed in due course, the Requesting Party shall reply to the Requested Party's objections in row D of the same schedule. Such reply shall be limited to answering specific objections made in row C. Each party shall then file simultaneously with the Tribunal the completed schedule (in both MS Word and PDF formats).

15.6. The Tribunal shall endeavor to resolve any contested document requests on or before the relevant date to be set out in due course, having regard to all the surrounding circumstances, as well as the requirements under this section.

15.7. Within the time limits to be set out in due course, documents shall be produced which are responsive to requests for which no objection has been made, and where objections have been made, documents shall be produced to the extent directed by

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the Tribunal. Documents shall be produced to the Requesting Party without copying the Tribunal.

- 15.8. The Tribunal shall have discretion to order a party to produce documents or other evidence without regard to whether the documents or evidence have been requested by the other party. In the event the Tribunal intends to exercise that discretion, it will give due notice to the parties and provide the parties with an opportunity to make submissions as to whether the Tribunal should exercise its discretion in the particular circumstances.
- 15.9. In case of the failure by a party, without satisfactory explanation, to comply with an order of the Tribunal to produce a document, or a category of documents, the Tribunal may make any inferences it deems appropriate in light of the relevant circumstances.
- 15.10. At any time during the proceeding, a party may request the production of documents either upon agreement of the parties, or by making an application to the Tribunal showing good cause.

16. Submission of Documents

Convention Article 44; Arbitration Rule 24

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party.
 - 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.
 - 16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to present its observations concerning such a document. Upon the Tribunal's approval, the other party shall also have an opportunity to submit counterevidence.

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- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.5. The documents shall be submitted in the following form:
 - 16.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 16.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and “RL-001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document and shall be incorporated into the file name in accordance with §16.5.4.
 - 16.5.3. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
 - 16.5.4. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 16.6. The parties shall number the paragraphs of their written pleadings consecutively.
- 16.7. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.8. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 16.9. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy format to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) prior to their use at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that special circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall state: (1) the name and address of the witness or expert; (2) his or her relationship to, and interest in, any of the parties in this arbitration, if any; (3) an affirmation of the truth of the witness statement or expert report; and (4) the date and place of signature.
- 17.4. Each expert report shall also include a statement of qualifications of the expert in the claimed area of expertise. Each expert report shall attach a current curriculum vitae evidencing such qualifications.
- 17.5. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' memorials, in which case reference to such exhibits shall be sufficient. The procedural rules set out in the above §16 shall apply by analogy to the evidence of experts.
- 17.6. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1. All matters addressed in this section may be revisited at the pre-hearing organizational meeting, as appropriate.
- 18.2. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual or expert witness whose written testimony has been advanced with the pleadings.
- 18.3. The parties shall notify the opposing party which witness and experts it intends to call for cross-examination three weeks in advance of the pre-hearing organizational meeting. Shortly after the parties' notifications, the Tribunal will indicate which witnesses or experts, not called by the parties, it wishes to question, if any.

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- 18.4. Unless agreed otherwise, a fact witness shall not be present in the hearing room during the opening statement, the hearing of oral testimony, nor shall he or she read any transcript of any oral testimony, prior to his or her examination. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.
- 18.5. Witnesses and experts will be examined before the Tribunal in person. Exceptionally, examination by videoconference may be permitted for justified reasons, after consultation with both parties.
- 18.6. Other matters regarding hearings shall be agreed upon by the Parties or decided by the Tribunal at a later stage.

19. Pre-Hearing Organizational Meetings

Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties. It shall comprise a teleconference or videoconference between the Tribunal and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing organizational meeting, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings

Arbitration Rules 20(1)(e) and 32

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. No new evidence may be presented at the hearing except in accordance with §§16.3 and 17.2 above.
- 20.3. The hearing may be held in person or by any other means of communication as determined by the Tribunal after consultation with the parties. An in-person hearing shall be held at the place of the proceeding or at a place to be determined in accordance with §10 above.
- 20.4. Having due regard to the views of the parties and the specific circumstances of the case, including any relevant travel restrictions and/or social distancing measures,

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the Tribunal may decide to hold a hearing (other than the final merits hearing) remotely or in a hybrid form.

- 20.5. Dates of hearings will be determined by the Tribunal, in consultation with the parties, in due course.
- 20.6. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 20.7. All substantive hearings shall be broadcast to the public and made accessible by video link on the ICSID website or an alternative form of broadcast to be agreed upon by the parties. The Tribunal shall establish procedures for the protection of proprietary and confidential information.
- 20.8. The topic of allocation of time will be addressed at a later stage in the arbitration.
- 20.9. At a date to be determined by the Tribunal, and in any event no later than two weeks prior to the hearing, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately:

20.9.1. A chronology of relevant facts in tabular form;

20.9.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”).

21. Records of Hearings and Sessions

Arbitration Rules 13 and 20(1)(g)

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in *real-time* and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 21 days of the close of the hearing or the receipt of the sound recordings and final transcripts, whichever is later. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

22.1. In consultation with the parties, the Tribunal will determine whether post-hearing memorials are necessary at a later date. To the extent such submissions are deemed necessary, they may not (absent leave of the Tribunal) contain new evidence, or be accompanied by new exhibits, witness statements, or expert reports. Such submissions (if deemed necessary) shall also have a page-limit that the Tribunal will determine at a later date.

22.2. The Tribunal will also determine the specifics of any costs submissions at a later date in consultation with the parties. In principle, however, such submissions may list only expenses and may not contain argumentation by the parties.

23. Publication

Convention Article 48(5); Administrative and Financial Regulation 25; Arbitration Rule 48(4)

23.1. ICSID shall publish public versions of all pleadings (exclusive of documentary evidence), witness statements and expert reports, procedural orders, decisions, and awards related to the proceeding. Subject to the procedures in § 23.3 for the redaction of confidential information, ICSID shall publish all such documents within ten (10) business days of their filing or distribution to the parties.

23.2. The parties shall seek to enter into a Confidentiality Agreement and shall present such Confidentiality Agreement to the Tribunal as soon as possible. If the parties are unable to agree on the content of a Confidentiality Agreement, either party may request an order from the Tribunal to resolve any such differences between the parties.

23.3. In the event that any decision, order, or award of the Tribunal contains or refers to information designated as confidential in accordance with the parties' Confidentiality Agreement and Order, the Tribunal shall prepare, or direct the party or parties who designated the information in question as confidential to consult and prepare for the Tribunal's approval a redacted copy of the decision, if any. Unless otherwise directed by the Tribunal, such redacted version shall be furnished to the Tribunal for approval within 45 days. As regards the award, the Tribunal shall be competent to approve the same without prejudice to Articles 49 to 52 of the Arbitration Rules.

24. Data Privacy

24.1. The Members of the Tribunal, the parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.

- 24.2. The parties and their representatives agree to protect data as agreed or as legally required, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the parties are invited to bring that to the attention of that other participant and the Tribunal in advance of such action.

25. Non-Disputing Parties

Arbitration Rule 37

- 25.1. The Tribunal shall consider any application for permission to file a submission in this arbitration by an intending non-disputing party, in consultation with the parties, in accordance with the provisions of ICSID Arbitration Rule 37.
- 25.2. The parties shall have the opportunity to comment on any non-disputing party submission by the date set by the Tribunal.
- 25.3. Consistent with ICSID Arbitration Rule 37, the Tribunal shall ensure that any non-disputing party submissions (if appropriate) do not disrupt the proceeding or unduly burden or unfairly prejudice either party.

26. Third Party Funding

- 26.1. Claimants confirmed that they have not received funds from, or engaged, any third party funder in connection with this case.
- 26.2. Each party will immediately notify the Tribunal if there are any changes in this regard. In doing so, the party will disclose the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding. If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.

27. Disposal of Record

- 27.1. One year after: (1) the Secretary-General of ICSID has dispatched certified copies of the Award to the parties pursuant to Article 49 of the ICSID Convention or (2) in the event of an annulment proceeding, following any decision on annulment and following the end of any post-annulment proceedings, the arbitrators shall dispose of

the record of the arbitration, unless the parties ask that the documents be returned to them or to their counsel, which will be done at the expense of the requesting party.

On behalf of the Tribunal,

[Signed]

Prof. Mónica Pinto
President of the Tribunal

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report–Name of Expert–Type–Name of Submission–LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion–Name of Expert–Name of Submission–LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i> <i>MJ-0001</i>

Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	<i>LS-0002</i>
	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
OTHER APPLICATIONS	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
	Name of Application–[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
<i>Costs Submissions-[Respondent]-ENG</i>	
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Procedural Calendar

Optima Ventures LLC, Optima 7171 LLC and Optima 55 Public Square LLC

v.

United States of America

(ICSID Case No. ARB/21/11)

Rule 41(5) Preliminary Objections Calendar

Procedural Step	Party/Tribunal	+Days	Filing Date
Respondent's Rule 41(5) Preliminary Objections	Respondent	N/A	February 14, 2023
Claimants' Observations on Respondent's Rule 41(5) Preliminary Objections	Claimants	45	March 31, 2023
Respondent's Reply to Claimants' Observations	Respondent	21	April 21, 2023
Claimants' Rejoinder to Respondent's Reply	Claimants	21	May 12, 2023
Hearing on Rule 41(5) Preliminary Objections	All	TBD	TBD
Tribunal Decision on Rule 41(5) Preliminary Objections	Tribunal	TBD	TBD

ANNEX C

Model Schedule for Document Requests

Document Request No	
A. Documents or category of documents requested (requesting party)	
B. Relevance and materiality, including references to submissions (requesting party)	
C. Objections to document request (objecting party)	
D. Response to objections and request for resolution (requesting party)	
E. Decision of the Tribunal	