ICC Court of International Arbitration

ICC CASE NO. 84/2024/INT

Spanish International S.A. (Spain)

Claimant

Versus

Nederlands Finance B.V. (The Netherlands)

Respondent

WITNESS STATEMENT
OF MAARTEN KLOMPARENS

1. I, Maarten Klomparens, of Wilhelminaplein111, 56121 Eindhoven, Netherlands state the following:

2. I submit this witness statement in support of Nederlands Finance B.V. ("Nederlands Finance") in arbitral proceedings brought against it by Spanish International S.A. ("Spanish International") (ICC CASE NO. 84/2024/INT).

3. I am employed by Nederlands Finance as Vice President of Finance & Treasury.

4. I began working at Nederlands Finance in October 2019 as Project Finance Manager. In this position, I was responsible for the financing of the newly acquired South American ventures like Uruguay Computer Systems ("UCS").

5. I am currently Vice President of Finance & Treasury for Nederlands Finance. In this position, I am responsible for the execution of daily cash management, cash flow planning and reporting, securitization of funding, hedge management, and bank relationship management. In this capacity, I also serve as a point of contact at Nederlands Finance for UCS financial matters generally and specifically for the UCS Budget Administrator, who is appointed by Nederlands Finance. I am in weekly, and often more frequent, contact with the UCS Budget Administrator to discuss issues related to UCS's cash management, liquidity, foreign currency hedging, external financing, and other topics.

6. I also served on UCS's Finance Committee from 2020 until 2024. As the Nederlands Finance-appointed member to the UCS Finance Committee, I generally attended Finance Committee meetings once a month and participated in weekly calls between meetings. The role of the committee was to ensure sufficient liquidity for UCS, to assist UCS in obtaining external funding, to manage foreign currency issues including with respect to foreign currency hedging, and to deal with cash management issues.

7. In this witness statement, I describe, on the basis of my personal knowledge, various steps taken by Spanish International to threaten UCS and its financial functioning, which I have witnessed in the roles I have played with respect to UCS financial matters. As I describe below, in 2023 and 2024, Spanish International took a number of deliberate and aggressive steps which exposed UCS to severe risks, including the risk of having its funds frozen, being unable to pay taxes, defaulting on its credit facility, being unable to meet its day-to-day operating expenses and even subjecting its board members to personal liability.

8. The statements I make here are from my own knowledge, except where I state that they are statements based on information and belief. The facts and matters in this Witness Statement are true and accurate to the best of my knowledge and belief.

I. THREATENED DEFAULT ON THE UBS FACILITY

9. From 2020 to early 2023, I worked with Spanish International's representatives on the UCS Finance Committee, Jorge Breganza and Alisdair Marlowe. Although we disagreed on certain finance issues, especially with respect to hedging foreign currency exchange exposures, we generally managed to work together. UCS's Finance Department was reasonably insulated from the larger UCS shareholder disputes because it was not responsible for controversial operational decisions (e.g., decisions regarding marketing strategies and research and development), but instead was responsible for financial support functions such as accounting, investment control and portfolio management, foreign currency hedging, credit risk management, taxation issues, the collection of receivables, and budgeting.

10. That situation changed dramatically in late 2023, when Uruguay Technology was re-registered as a UCS shareholder in the Uruguayan shareholder registry in place of Spanish International. At the same time, new UCS Supervisory and Management Boards, consisting

of Uruguay Technology's appointees in the place of Spanish International's, were also registered.

11. Immediately following the registration of Uruguay Technology and the new UCS boards, Spanish International and its former UCS Management Board appointees took a number of actions that were designed to obstruct UCS's operations, including its financial operations. In particular, in February 2024, Spanish International contacted UCS's banks and persuaded or coerced them into believing that the new Management Board members could not validly authorize payments on behalf of UCS.

12. Under the UCS Deed of Formation and Shareholders Agreement, UCS's payments must be authorized by two Management Board members (or those to whom they have delegated signature authority): one Nederlands Finance-appointed Management Board member, and one Management Board member appointed by the other Operational Shareholder. By continuing to claim that it was a legitimate UCS shareholder, even after an arbitration tribunal had declared in late 2023 that it was not, Spanish International managed to create significant confusion regarding the identity of the Operational Shareholders and, consequently, the validity of UCS's payment authorizations. As a result, in early 2024, Spanish International managed to effectively freeze certain of UCS's accounts, particularly its account with UBS Montevideo.

13. At the time, UCS had a $700,000,000 syndicated credit facility for which UBS was the head of the syndicate. A payment under the facility was due on 28 January 2024. Although UCS had more than enough money in its UBS account to pay the amount due, UBS would not accept the payment authorization without the approval of the Spanish International Management Board members. This was particularly problematic because UBS was

threatening that if UCS could not make its scheduled payment, UCS would default on the credit facility, bringing the entire balance of the credit facility due.

14. On 2 February 2024, UBS finally allowed full repayment of the amounts outstanding under the credit facility (although it required that the payment be made out of funds in UCS's account at Citibank rather than out of UCS's UBS account). In the evening of 2 February, after UBS received the funds from Citibank, UBS finally distributed the payment to the other banks in the syndicate. This payment was made within the 1-week grace period stipulated in the credit facility, and UCS avoided default under the credit facility, notwithstanding Spanish International's actions.

15. Late that night (2 February 2024), I received a call from Adam Santos, the UCS Budget Administrator. Earlier that day, Spanish International had made a proposal to the Nederlands Finance appointees on the UCS Management Board that the former Management Board (i.e., including Spanish International's representatives) be reformed for the purpose of countersigning (1) any request to be made to the facility agent to prevent UBS from claiming a continuing default and (2) the upcoming payments to be made by UCS in the ordinary course of business (e.g., payments to employees, tax authorities, hardware suppliers). Accepting this proposal could have been perceived as an acceptance by Nederlands Finance of the Spanish International appointees, who were no longer legally entitled to represent UCS, and it was therefore unacceptable to Nederlands Finance.

16. Mr. Breganza had informed Mr. Santos that this proposal had already been agreed upon with "the banks," and Mr. Breganza urged him to convince the Nederlands Finance appointees to accept the proposal. Mr. Breganza stressed that if Nederlands Finance did not agree to the proposal, UCS could be put into default under the credit facility at any moment. Mr. Santos explained to me that Mr. Breganza had urged him to contact Nederlands Finance

and to exert pressure on Nederlands Finance to agree to the proposal made by the Spanish International appointees.

17. Mr. Santos specifically brought this to my attention as he was aware that Mr. Breganza and I had known each other for a long time through business and had even been friends for years. Mr. Santos asked me whether I could talk to Mr. Breganza privately to convince him that he was on the wrong track. I informed Mr. Santos that the friendship with Mr. Breganza was over and I would engage with Mr. Breganza on a professional level only. The reason why we were no longer friends is unrelated to the various steps taken by Spanish International to threaten UCS and its financial functioning that are the topic of this witness statement. I shall add though that based on my personal experience, I was not surprised by Mr. Breganza playing foul to reach a business goal.

18. Notwithstanding that UCS had made the required payment, on 3 February 2024, Messrs. Breganza and Marlowe (purporting to be members of UCS's Management Board) put direct pressure on Aron Reemsma, a Nederlands Finance appointee to UCS's Management Board, to accept Spanish International's proposal by reminding him of the consequences of UCS not being able to meet its payment obligations if he continued to refuse to compromise his position. In an email to Reemsma on 3 February 2024, Messrs. Breganza and Marlowe wrote that because Mr. Reemsma would not agree to their terms, "severe harm is occurring every day to UCS, a direct result of your actions." They then wrote that a "if you are unable to reach a compromise with us regarding payment authorization, UCS will soon default on its credit facility, will have no money remaining to make routine and other payments, and other dire consequences will take place." This was not the only time that Spanish International pressured Mr. Reemsma. Among other things, Spanish International went so far as to threaten to report him to the public prosecutor. I recall that Mr. Reemsma

was under a significant amount of stress as a result of Spanish International's pressure on him, and he eventually resigned his position on UCS's Management Board and ultimately took early retirement.

19. Despite the fact that UCS had made the required payment under the credit facility, UBS sent UCS a letter on 3 February 2024 stating that UCS might have defaulted on the 28 January payment and threatening that the shareholder dispute could put UCS in default (pursuant to the material adverse change provision) of the entire $700,000,000 credit facility. There were absolutely no grounds for this threat because UCS had always made regular payments under the facility prior to this instance, and indeed made the 28 January payment in full within the grace period provided by the credit facility.

20. On 4 February 2024, the UCS Management Board was able to gain full control over UCS's systems, accounts and financial functions. UCS was then able to rectify the situation with the credit facility through a conference call with the syndicate banks. Following this, relations with UBS normalized.

21. Spanish International's efforts to disrupt the UCS credit facility were reckless and exposed UCS to severe risks, including the risk of having its funds frozen, defaulting on its credit facility, being unable to meet its day-to-day operating expenses and even subjecting its board members to personal liability. We understood then that Spanish International would do almost anything to regain control over UCS, regardless of the potential negative consequences for UCS. In fact, Spanish International seemed to have concluded that threatening or even damaging UCS and its business was a way indirectly to put pressure on us in the shareholders dispute.

II. THE PAYMENTS CRISIS

22. In late 2023, I learned from UCS's Budget Administrator that Spanish International's representative and former UCS CFO, Mr. Breganza, was targeting UCS employees who had authority to authorize payments on behalf of UCS and attempting to persuade them to leave UCS (presumably to create a situation where UCS could not pay its bills). Mr. Breganza used the knowledge that he had from his years as UCS's CFO to target the relevant employees with signature authority. In my experience, information regarding who has payment authority in a company is not widely known, but as the former CFO, Mr. Breganza had this information and used it to concentrate his efforts on inducing certain key people to leave UCS in order to disable UCS's Finance Department and freeze UCS's accounts.

23. I learned from UCS's Budget Administrator that Mr. Breganza was making extremely favorable offers to all individuals with payment authorization to induce them to leave UCS. The terms of these offers included the following in exchange for leaving UCS: (1) a salary that was far above the individual's UCS salary, (2) a term contract for employment with a non-operational company, such that the individual would be paid a salary but would not be required to perform job duties for the term of the employment, (3) guaranteed placement at a reputable, operational company thereafter, and (4) for some individuals, an additional cash bonus. It was clear that Mr. Breganza's ultimate intent was to prevent UCS from making routine payments because he targeted only those employees with payment authority, and not others.

24. In addition, Mr. Breganza threatened the individuals to whom he made these offers that if they did not take it, he would fire them when he returned to UCS. He also sent letters to the Finance Department forbidding authorization for certain payments. Of course these employees were receiving opposite instructions from the actual UCS CFO. Employees

therefore faced a threat of termination for non-performance from two different sides: for not doing their job on the one hand, or for not following Mr. Breganza's contrary instructions on the other. Under these circumstances, it is not at all surprising that Spanish International succeeded in persuading the UCS employees who could authorize payments to leave the company.

25. The UCS Budget Administrator, Mr. Santos, was a particularly important target for Mr. Breganza because he had signature authority to make bank transfers and payments. Because Mr. Santos had been appointed by Nederlands Finance and had an employment contract with Nederlands Finance, however, it would have been very hard to convince him to leave his job voluntarily.

26. Mr. Santos told me that he felt extremely pressured by Spanish International. According to Mr. Santos, Mr. Breganza began pressuring him intensely – approaching Mr. Santos at the playground when his children were playing, at the shopping mall when he was out with his family, and even at his own home. Mr. Santos also received calls at all hours of the night. Mr. Santos told me that Mr. Breganza repeatedly threatened him with termination and insisted that Mr. Santos follow Mr. Breganza's instructions rather than those of the UCS CFO to whom Mr. Santos reported.

27. Eventually, as the situation intensified, Mr. Santos began to feel very frightened. I invited him to Eindhoven in order to better assess the situation and discuss how it could be dealt with. When Mr. Santos arrived in Eindhoven, he immediately came to my office and handed me his "smart cards" with which he accessed UCS's cash management system. It was quite clear to me at that time that Mr. Santos felt genuinely afraid for his personal safety. I had worked closely with Mr. Santos for some time, and I had found him to be a very reliable, competent, methodical person, not someone who would be immediately susceptible

to pressure. And yet, it was apparent that Mr. Santos was genuinely afraid that he might be harmed by someone because of his role in UCS. Mr. Santos eventually had to be placed on leave because of his concerns, and Nederlands Finance appointed a new UCS Budget Administrator.

28. Then, in January 2024, my wife got seriously ill and I decided to stay that month at the hospital to be there for her and to support her. We also used this time as an opportunity to talk about many things that happened in the past year between the two of us and that could not be entirely cleared because of the enormous stress I faced in my job at Nederlands Finance, in particular due to my involvement with UCS and the severe threats imposed by Spanish International in late 2023.

29. Still, I tried to keep up to date regarding the developments surrounding Mr. Breganza's efforts to target employees with signature authority. This is why I learned from UCS’s new Budget Administrator in mid-January 2024 that, with Mr. Santos out of the way, Mr. Breganza was now trying in earnest to regain control of the Finance Department of UCS. In late January 2024, this situation reached a crisis point, as the last remaining employee with signature authority went on maternity leave. UCS was on the verge of complete financial paralysis because no one could authorize payments to UCS’s suppliers, nor authorize critical payments on behalf of UCS for such things as wages, tax, social security and so forth. Nederlands Finance initiated a meeting with Spanish International in order to try to find a resolution that would allow UCS to continue to operate. We believed that if we could make Spanish International aware of the truly catastrophic impact that its actions were having on UCS and would continue to have if money were not released, it would stop its campaign to paralyze the company. I could not attend this meeting for the private reasons stated above and I am not aware of its contents.

30. When I returned to the office in early February 2024, there was no longer anyone at UCS authorized to make payments on behalf of the company. We had prepared ourselves for this scenario ever since we heard that Spanish International was targeting employees to leave the company, but the fact that Spanish International was really willing to let UCS face a possible insolvency still came as a shock to us. We quickly mobilized to set up a loan agreement between UCS and Nederlands Finance to cover expenses until the situation could be resolved, but this was obviously only an interim solution, because Nederlands Finance could not commit to funding UCS's operating expenses for an indefinite period.

31. During this period, I received daily from UCS a description of payments that would be due that day. I then consolidated a list of payments due and circulated it to Nederlands Finance's Management Board members. We had to determine which payments to make, since we could not float the entirety of UCS's business for an indeterminate period. We chose to make critical payments, such as tax, salary, and social security payments, as well as crucial operational payments such as hardware suppliers, and rental payments. Nederlands Finance paid the salaries of all UCS employees because we wanted to be very clear to these employees and to everyone else that Nederlands Finance, unlike Spanish International, was not prepared to ask UCS's employees to work without receiving their salaries.

32. Nederlands Finance paid these expenses on behalf of UCS from January through March 2025. This occupied a significant amount of my time. Especially at month end, compiling and authorizing the necessary payments was a painstaking and time-consuming task. The General Counsel and Deputy General Counsel of Nederlands Finance were both authorized to approve these payments, which meant they had to spend a substantial amount of time sorting the issue of UCS's payments, particularly at the end of each month when many of these payments were due.

33. In addition to dealing with the daily schedule of payments and arranging the actual payments, I spent considerable time negotiating with and reassuring the Uruguayan banks. As a result of Spanish International's earlier instigation of serious problems with UCS's lenders in the credit facility syndicate (as described above), the banks were extremely nervous. After some high level discussions, the banks eventually agreed to accept the payments from Nederlands Finance on UCS's behalf.

34. The situation was resolved at the very end of March 2024 when the appellate court recognized the Arbitral Tribunal's Award. UCS has been able to meet its payment obligations in a normal manner since that time.

I declare that the facts set forth in this statement are true and correct to the best of my knowledge.

Signed: ______________________________

Dated: ______________________________