

**ANGEL SAMUEL SEDA, JTE INTERNATIONAL INVESTMENTS, LLC, JONATHAN
MICHAEL FOLEY, STEPHEN JOHN BOBECK, BRIAN HASS, MONTE GLENN
ADCOCK, JUSTIN TIMOTHY ENBODY, JUSTIN TATE CARUSO, AND
THE BOSTON ENTERPRISES TRUST**

Claimants

and

THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA

Respondent

**NOTICE OF INTENT TO SUBMIT CLAIMS UNDER CHAPTER TEN OF THE
UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT**

ARENT FOX LLP
1717 K Street, NW
Washington, DC 20006
Pierre-Richard Prosper
Timothy J. Feighery
Lee M. Caplan
Jeffrey R. Makin
Claudia D. Hartleben

Counsel for Claimants

August 17, 2018

1. Pursuant to Article 10.16.2 of the United States – Colombia Trade Promotion Agreement (“TPA”), the persons and entities identified in the caption above (“Claimants”) hereby submit to the Government of the Republic of Colombia (“Government” or “Colombia”) this Notice of Intent to Submit Claims under Chapter Ten of the TPA (“Notice”).

I. NAMES AND ADDRESSES OF THE CLAIMANTS

2. Angel Samuel Seda is a national of the United States. He undertook significant risk to make several valuable investments in Colombia’s real estate, hospitality and tourism industries and contributed significantly to the economic development of Colombia. He is the sole owner of Royal Realty SAS (or “Royal Realty”), the owner of the majority interest in Newport SAS and the owner of the majority interest in Luxe By The Charlee SAS. He can be contacted at the following address:

19909 Corby Avenue
Lakewood, California 90715
USA

3. JTE International Investments, LLC, a company incorporated in the United States, and Jonathan Michael Foley and another U.S. national whose interests are held in trust by The Boston Enterprises Trust, have made an investment in Colombia by way of shareholdings in Newport SAS. They can be reached at the following address:

c/o Arent Fox
1717 K Street, NW
Washington, DC 20006
USA

4. Brian Hass, Stephen John Bobeck, Monte Glenn Adcock, Justin Timothy Enbody, and Justin Tate Caruso, all U.S. nationals, have made an investment in Colombia by way of shareholdings in Luxe By The Charlee SAS. They can be reached at the following address:

c/o Arent Fox
1717 K Street, NW
Washington, DC 20006
USA

5. Legal counsel for Claimants are Pierre-Richard Prosper and Jeffrey R. Makin of Arent Fox LLP, 555 West Fifth Street, 48th Floor, Los Angeles California 90013-1065, and Timothy J. Feighery, Lee M. Caplan and Claudia Hartleben of Arent Fox LLP, 1717 K Street, NW, Washington DC, 20006. All correspondence should be directed to:

pierre.prosper@arentfox.com
Tel: +1 (213) 443-7511
Fax: +1 (213) 629-7401

jeffrey.makin@arentfox.com
Tel: +1 (213) 443-7521
Fax: +1 (213) 629-7400

timothy.feighery@arentfox.com
Tel: +1 (202) 857-6085
Fax: +1 (202) 857-6395

lee.caplan@arentfox.com
Tel: +1 (202) 857-6337
Fax: +1 (202) 857-6395

claudia.hartleben@arentfox.com
Tel: +1 (202) 857-8936
Fax: +1 (202) 857-6395

II. PROVISIONS OF THE TPA THAT HAVE BEEN BREACHED

6. By its conduct as explained in more detail below, the Government is responsible, through a series of on-going, separate and cumulative actions, for depriving Claimants' investments in Colombia of fair and equitable treatment in breach of Article 10.5 (Minimum Standard of Treatment) of the TPA.
7. By its conduct as explained in more detail below, the Government is responsible, through a series of on-going, separate and cumulative actions, for the illegal expropriation of Claimants' investments in Colombia in breach of Article 10.7 (Expropriation and Compensation) of the TPA.

III. OVERVIEW

8. Claimants' claims arise out of the destruction, by the Government of Colombia, of the investments made by Claimants in Colombia by virtue of its unlawful and abusive misapplication of Colombian law to the Claimants. These actions clearly violated

Articles 10.5 and 10.7 of the TPA. The specific target of the government was a high-end, mixed-use (residential and commercial) real estate project (the "Meritage") in the area of Medellín, Colombia, under development by Mr. Seda through companies he founded and controlled.

9. The legal backdrop to the investors' claims under the TPA is the arbitrary, discriminatory and confiscatory application of Colombia's Asset Forfeiture Law ("extinction of ownership" law, *Código de Extinción de Dominio* or hereinafter, *extinción de dominio* law), the applicable version of which is Law No. 1708 of 2014. This law permits Colombian authorities to extinguish, in certain situations, ownership rights to assets where the assets are connected (as defined in the law) with illegal activity.
10. Because a misapplication of this law results in the unlawful confiscation of property, the law necessarily sets forth important safeguards to avoid causing irreparable harm to innocent investors, as was caused here. The first 14 articles of Law No. 1708 set forth the rights to be protected, and the procedures to be followed, in applying this law and in implementing relevant international law standards. The protections in Law No. 1708 include protection of "affected persons" (*afectado*) under the law, defined in Article 1.1 as a "person who claims to be the holder of any right over the property that is the subject of the extinction of ownership procedure, with standing to resort to the process." The law guarantees an affected person protection of fundamental rights. The law also protects property obtained in good faith (Article 3) and the right to due process (Article 5). It requires a presumption of good faith for purchasers who proceed in a diligent and prudent manner (Article 7), and the right to adversarial proceedings (Article 8). The umbrella protection is contained in Article 2 entitled "Dignity," which guarantees "the respect for human dignity" as a "limitation and basis to the extinction of ownership." In other words, the law requires a compelling basis for overcoming these presumptions and protections before the right of property ownership can be extinguished. Importantly, the presumption of good faith protects against the confiscation of assets absent clear evidence of wrongdoing.
11. All of these rights, protections and guarantees were flouted by the Colombian authorities. By its flagrant disregard of this law, the Government of Colombia illegally confiscated

the Meritage property, in clear violation of its *extinción de dominio* law, denying Claimants their due process rights, their right to a presumption of good faith, their right to an adversarial proceeding, and ignoring their status as good faith purchasers of this property. Moreover, Colombia ignored Law No. 1708 and the international legal protections incorporated therein. These actions doomed Claimants' other valuable projects already underway in Colombia, resulting in irreparable harm to the projects and to the reputation of everyone involved in those projects, particularly, Mr. Seda, who was the project developer.

12. As discussed in below, Colombian courts have criticized the Government's actions in this process for failing to provide reasons for the confiscation and failing to adhere to a minimum standard of care in carrying out the confiscation, including never clearly identifying the scope of the property under confiscation. Notwithstanding many opportunities, no Colombian authority, in any branch of government, has provided any relief to the Claimants in this case. Colombian courts have failed to arrest, let alone reverse, this process. Moreover, instead of seeking to cure its blatant shortcomings, the Government of Colombia, in an effort to circumvent the procedures articulated under Law No. 1708, has resorted to taking improper steps designed to harass and intimidate those involved in the projects. The Government's increasing aggression makes filing of this Notice necessary not just to permit Claimants to obtain compensation for their losses, but to protect their business reputations, their ability to pursue this claim under the TPA, and, in some cases, to protect their personal safety.

IV. **FACTUAL BACKGROUND**

A. **A Lost Opportunity for a New Era for Medellín**

13. On November 1, 2012, Mr. Seda, through Royal Realty, entered into an agreement to purchase a lot of land close to the city of Medellín, Colombia¹ to develop a luxury community project he named the "Meritage." The Meritage was designed as a planned community consisting of apartments, residential lots and commercial units, and created

¹ The parcel is identified at page number 001-930485 of the Office of Registration and Public Instruments of Medellín.

for the purpose of providing residents and visitors innovative and modern living, both indoors and outdoors. The project was to include one of the largest fitness facilities in Colombia, an expansive forest reserve, outdoor fitness training amenities, shops and dining. It was to be the first and largest luxury planned community in the area, with a hotel that would include over 400 long-term stay hotel suites (“aparta suites”), as well as 90 residential homes and 36 commercial storefronts.

14. The initial work focused on taking all necessary steps to confirm good title to the property. In fact, and as discussed below, Claimants went beyond the requirements of Colombian law. They also secured investors and financing to support the project, and undertook a successful marketing campaign to attract buyer commitments for the properties.
15. By July 2016, the Meritage was on track for completion: pre-development architecture and design was completed; all environmental permitting was completed; marketing was largely completed and paid for; 152 of the aparta-suite and commercial storefronts had been sold during the initial phase of construction; construction permits had been secured; the Urban Planning office had been satisfactorily provided all necessary architectural, public services, sewage, environmental, structural and architectural plans; construction of the hotel was well under way; and approximately 500 local workers were directly and indirectly employed on the construction and development of this project.
16. On July 22, 2016, however, after almost four years of work and after substantial investments had been made, Colombia’s Office of the Attorney General (the *Fiscalía General de la Nación* or *Fiscalía*)² suddenly, arbitrarily, and discriminatorily abused its authority under Colombia’s *extinción de dominio* law³ by clouding the title to the property and sequestering the Meritage development, thereby freezing all business and investment activities and prospects. This action was confirmed on January 25, 2017

² The *Fiscalía* has a dominant role in the *extinción de dominio* process. Articles 29(1) and (2) of Law No. 1708 of 2014 (*Código de Extinción de Dominio*), which empower the *Fiscalía* to, among other things, “1. Investigate and determine whether the assets covered by the [extinción de dominio] process are subject to some of the grounds for the extinction of ownership rights. 2. Secure the assets covered by the process of extinction of ownership and adopt the precautionary measures that apply.” The *Fiscalía* has a separate unit dedicated to *extinción de dominio*; the National Unit of Money Laundering and Assets Forfeiture.

³ Law No. 1708 of January 20, 2014.

when the *Fiscalía* rendered its provisional determination to proceed with its asset forfeiture claim (*Resolución de Fijación de la Pretensión*), and formalized on April 5, 2017 when the *Fiscalía* made its request to the court to proceed with the asset forfeiture process (*Requerimiento de Extinción*).

17. Since the *Fiscalía*'s imposition of the July 2016 precautionary measures, now over two years ago, the *Fiscalía* has wholly ignored the legal presumption that Newport is a good faith purchaser and ignored its status as an affected person under the law. Instead, the *Fiscalía* has chosen to push forward the *extinción de dominio* proceeding, even in the face of compelling evidence presented by Newport to the *Fiscalía*—both as part of the *extinción de dominio* proceeding before the competent Colombian court and through its own constitutional *tutela* action—that proves Newport is a good faith buyer under Colombian law. The *Fiscalía* has made no attempt to investigate the facts under this presumption, as is required before it can proceed with the *extinción de dominio* process. Incredibly, the *Fiscalía* pressed ahead in the face of numerous serious procedural deficiencies, including its failure to provide a complete and accurate description of the property.
18. Thus, for over two years, the *Fiscalía* has not only failed to rebut the legal presumption that Newport is a good faith buyer, a protection to which Newport is entitled under Law No. 1708, but it has also demonstrated its disregard for carrying out the *extinción de dominio* process within the due process requirements of the law.
19. Aside from destroying the Meritage development and freezing all Royal Realty's business and investment prospects, Colombia's measures improperly and indelibly tainted Mr. Angel Seda's personal reputation and his reputation as a legitimate project developer. It also tainted the brands that Mr. Seda had developed in Colombia, such as "The Charlee" brand. As a direct result, Mr. Seda and the operating companies, Newport SAS and Luxe By The Charlee SAS, have been unable to obtain the appropriate financing and investment necessary to continue his development of the other projects that were underway in Colombia. These actions have also created extraordinary and unnecessary liabilities and losses for each Claimant that they would not otherwise have incurred.

20. In addition to the severe economic harm resulting from Colombia's conduct, Mr. Seda is, and has been, subject to threats and harassment by Colombian governmental entities. Upon information and belief, the Government, through the *Fiscalia*, has to this day misused and manipulated international law enforcement cooperation processes and/or other mechanisms, and local judicial processes, in order to mask its own wrongful confiscation of the investments in question and its attempt to discredit Mr. Seda and the Claimants' claims against the Government. These efforts have destroyed reputations, adversely affected livelihoods, negatively impact freedom of movement, and compromised personal safety.
21. These same officials, upon information and belief, have taken the additional steps and efforts to impugn the reputations of potential witnesses in support of Claimants and others who have voiced their concern about this abuse of the law.
22. Because of this egregious situation, it is now necessary to file this submission to put the Government on notice of Claimants' intent to pursue claims under the TPA. This notice also serves as a means to highlight the urgent need and demand to end the abusive practices.
23. Notwithstanding the circumstances described above, including the continuing aggressive conduct by Government officials, Claimants are prepared, pursuant to Articles 10.15 and 10.16.2 of the TPA, to seek consultations and negotiations with the Government over the next 90 days, as circumstances safely permit, with a view to settling this dispute amicably and expeditiously.

B. Claimants' Development of Property in Colombia

24. On July 3, 2007, Mr. Seda moved to Colombia with the intent of developing real estate projects. His selection of Colombia as his base of operations was founded on his assessment of the opportunities provided by its growing market. Mr. Seda planned to create properties that exuded luxury, fitness, environmental consciousness, and social interaction, and thereby establish "lifestyle" properties and a lifestyle property brand. His target demographic was the growing number of affluent Colombian and international buyers who were seeking to invest in this kind of property.

25. Mr. Seda's research indicated that of all the business opportunities in Central and South America, Colombia held the most promise. Colombia, and in particular, Medellín, had one of the fastest-growing affluent classes in Latin America, as well as a burgeoning destination for both tourism and multinational companies. This was strong evidence to Mr. Seda that Colombia would present unique business opportunities for his vision.
26. In October 2007, Mr. Seda secured a 4,000-square foot office building in Medellín to serve as his base of operations. On November 2, 2007, he established Royal Realty under the laws of Colombia as his development vehicle. Mr. Seda has wholly owned and controlled Royal Realty from its establishment to the present day. On March 10, 2008, the Government granted him an investor visa. The following year, Mr. Seda established Newport SAS, the company that would eventually develop the Meritage project.
27. Mr. Seda's first project in Colombia was The Charlee Hotel in Medellín, which was fully constructed and in operation since 2011. With this project, he established the "Charlee" lifestyle brand, trademarked and registered in Colombia. This project also presented Mr. Seda with the first opportunity to pursue, via Royal Realty, the business of property management and operations and, in particular, hotel management and operations. Mr. Seda's investment and development model included multi-year contracts for the management by Royal Realty of the hotel properties once developed, using Royal Realty's hotel management staff, employees, and know-how.
28. By the summer 2016, Royal Realty had established itself as a premier property developer in Latin America, with The Charlee Hotel completed and operating successfully, and several projects at various stages of development that were to be operated under the "Charlee" brand. Mr. Seda's developments caught the attention of international investors and international media. For example, his projects in Colombia were featured in a *New York Times* article in its "Great Homes and Destinations" section on May 9, 2013.⁴
29. At its height in July 2016, Royal Realty employed over 120 local personnel directly, including architects, engineers, construction auditors, quantity surveyors, marketing and

⁴ *Luxury Living in a Bucolic, Shoreline Setting in Colombia*, available at <https://www.nytimes.com/2013/05/10/greathomesanddestinations/10iht-recolumbia10.html> (last accessed 26 April 2018).

design experts, events directors, hotel managers, human resources personnel, managers of social media and hotel staff.⁵

30. In addition to The Charlee Hotel and Meritage, other developments in Colombia (described in more detail below) included the Luxe Development Project Guatape, 450 Heights, Cartagena Tierra Bomba Development Project, Santa Fe de Antioquia, and Prado Tolima. Royal Realty also acquired land as part of an effort to create an Andean brand of luxury eco-tourism resorts generally. One such project, on the Galapagos Islands,⁶ was at the point of starting construction on an eco-tourism hotel resort as prior to the conduct of the Government leading to these claims which devastated his business and reputation.
31. Sharing his vision, the U.S. investors named as Claimants in this action invested in these properties, at this point in time in the Meritage project, via their share purchases in Newport SAS, and in the Luxe Guatape project, via their share purchases in Luxe By The Charlee SAS.
32. This progress and promise came to an end when the *Fiscalía's Extinción de Dominio y Lavado de Activos* Unit issued precautionary measures on the Meritage property, ordering the embargo and sequestration of the property. This action tainted Mr. Seda, Royal Realty and his other properties, rendering Claimants unable to access the financing and investment necessary for the success of these projects.

C. Claimants' Investment in the Meritage Project

33. The Meritage was similar to real estate development projects of its kind where the developer drives the process through a number of overlapping stages referred to by such terms as "project initiation," "project marketing," "project management," and "project realization" or "project conception." The Meritage project also anticipated a long-term

⁵ See Payrolls for Royal Realty and other project companies. (July 2016).

⁶ See Galapagos Agreement for Sale of Rural Property (Nov. 9, 2012). The Agreement was between private owners and PERSUPACK S.A., an Ecuadorian entity in which Mr. Seda was a shareholder. (Since it was a protected land, only Ecuadorians could purchase the land. Seda set up a company with another Ecuadorian shareholder and the company purchased the land from Ecuadorian private owners.)

hotel operations and management contract for Royal Realty, as described above in the case of The Charlee Hotel.

34. Project initiation requires three elements: an idea, a location and capital. In June 2012, Mr. Seda, after developing the idea for new lifestyle properties, began searching for a location to develop in the Alto de las Palmas area of Envigado, a suburb outside of Medellín, Colombia. Over a six-month period he examined scores of potential development lots before reducing the targeted properties to three. In August 2012, he settled on the Meritage parcel of land.
35. In November 2012, Royal Realty reached an agreement on contract terms, and signed a purchase agreement that was subject to obtaining approval of construction permits and required the seller to transfer clean title to the property.
36. At this point, Newport undertook the process of establishing the "project entitlements," establishing the legal rights that are conveyed by approvals from governmental entities to develop a property for a certain use, intensity, building type and building placement. In this case, Mr. Seda's work for Newport involved meetings with local, regional and national officials to determine all permitting and licensing requirements, meetings with engineers and architects to determine the suitability of the property for the development planned. It also included a corporate study of the then-current titleholder to the property, La Palma Argentina. After the expenditure of significant time and monies, the property was determined to be ideal for the planned development in all respects.
37. Mr. Seda identified *Fiduciaria Corficolombiana* ("Corficolombiana"), one of the most prominent and well-respected fiduciaries in Colombia, to act as the fiduciary for the project.⁷ Before agreeing to do so, however, *Corficolombiana* required a formal title

⁷ In the development of commercial real estate in Colombia, and particularly with large-scale real estate development in Colombia, the role of a "fiduciary" is predominant and has become a necessary part of the development process. Basically, the fiduciary aids in structuring and implementation of the project, from ensuring good title to the property to ensuring that all of the monies invested into a project by buyers are used properly to complete the investment. In Colombia, in particular, where there is no custom of title insurance, the role of the fiduciary in ensuring good title is essential to large-scale real estate developments. Under a commercial fiduciary agreement, the property developer transfers their ownership of certain assets to the fiduciary, who is then responsible for the undertakings stipulated in the underlying trust agreement. In Colombia, fiduciaries are highly regulated and supervised by the Government. Notably, in Colombia, although the fiduciary is responsible for managing the contributed assets, those assets do not become the fiduciary's property.

search by a third party and recommended the law firm of Otero & Palacio to ensure clean title to the property. Otero & Palacio was duly retained for this purpose by Royal Realty; the firm undertook the necessary detailed title searches and on March 7, 2013 confirmed clean title to the property. This title study included a search of the United States Treasury's Office of Foreign Assets Control "Specially Designated Nationals" list (the "OFAC SDN" list) and of the United Nations sanctions lists for all natural and juridical persons who were included in the chain of title. The study concluded that there were no matches.

38. Given the size and value of the property, *Corficolombiana* also advised Newport that, before formally contracting with Royal Realty, it would need to submit a petition to the *Fiscalía's Extinción de Dominio* Unit for information on any ongoing investigations or legal proceedings against any of the prior title holders. This petition was submitted by *Corficolombiana* to the *Fiscalía* on August 22, 2013. On September 9, 2013, the Head of the *Extinción de Dominio* Unit sent a letter to counsel for *Corficolombiana* advising that there were no investigations or legal proceedings registered against any of the prior title holders or the property itself. In October 2013, a fiduciary contract with *Corficolombiana* was concluded, the Meritage property was transferred to the trusteeship of *Corficolombiana*, and sales of the Meritage project officially began.
39. As is customary in Colombian real estate development, a fiduciary (here, *Corficolombiana*) was retained and paid by Newport, and the fiduciary took steps to ensure, among other things, good title to the property owner so as to permit closing of the property purchase and sale agreement. In addition, in accordance with its independent legal obligations as a financial institution, *Corficolombiana*, on behalf of and paid by Newport, undertook the task of searching databases once again to identify any possible criminal involvement with the Meritage property, including the OFAC SDN, and UN and INTERPOL lists of drug traffickers and members of organized criminal gangs. It also included implementation of the Colombian Government's money laundering and terrorism financing risk management system (*Sistema de Administración de Riesgo de Lavado de Activos y de la Financiación del Terrorismo*, or "SARLAFT") to the Meritage property.

40. Newport acted in good faith and undertook extraordinary measures to ensure good title to the Meritage project. Assured of his position in this regard, Mr. Seda identified and secured investors who would provide capital necessary to realize the initial phases of the project, including investors in the earlier and highly successful Charlee hotel project. Sales of the Meritage residential and commercial units were dynamic, and the funds from such sales were held in trust by *Corficolombiana* for the purpose of funding, among other things, construction of the project.
41. As noted above, by July 2016, the Meritage was fully on track for completion: 152 of the aparta-suite and commercial storefronts had been sold during the initial phase of construction; construction permits had been secured from the Urban Planning office as all necessary architectural, public services, sewage, environmental, structural and architectural plans had been satisfactorily provided; construction of the hotel was well under way; and approximately 500 local workers were employed directly or indirectly on the construction and development of the project at this time.

D. Colombia's Abrupt Intervention to Destroy Claimants' Investments

42. In the meantime, on July 3, 2014, a certain Mr. Ivan Lopez Vanegas filed a dubious *tutela* claim on the Meritage property based on his assertion that he was the victim of crimes that resulted in the deprivation of his ownership of the Meritage property. He asserted that he was the true owner of the Meritage property on or around 2004, and that his son, Sebastian Lopez, was kidnapped and forced to sign over the property to a criminal organization. On April 8, 2016, approximately two and a half years after beginning presales and after substantial work on the project had already concluded, unbeknownst to Claimants, the *Fiscalía's* Extinction of Ownership Unit ordered *Fiscalía* Office 44 to open an investigation of assets associated with Mr. Lopez.
43. On July 22, 2016, the *Fiscalía's* Extinction of Ownership Unit issued precautionary measures (*medidas cautelares*) against the Meritage property, ordering the embargo and sequestration of the property. The law that the *Fiscalía* purported to apply was Law No. 1708 of 2014 (“*Código de Extinción de Dominio*”). However, the *Fiscalía's* actions represented a grossly arbitrary misapplication of that law.

44. As explained, this law expressly guarantees a presumption of good faith in the acquisition of a property. The *Fiscalía* must rebut the presumption of good faith prior to any adverse action on any property.⁸ Indeed, in 2014 a reform was passed pursuant to an intervention by the United Nations (specifically, the United Nations Office on Drugs and Crime (UNODC)), to address this very point and failings of the previous extinction of ownership law, including the abusive application of that law in a cross-border context, in violation of international norms.⁹
45. Article 7 of Law No. 1708 expressly states: “Good faith is presumed in any legal act or transaction related with the acquisition or use of the assets, so long as the holder of the right proceeds in a diligent and prudent manner without any fault.” The presumption of good faith is also reflected in Article 22 of Law No. 1708, which expressly provides that the *Fiscalía* has the burden to prove that property has an illegal origin. Moreover, the law further provides that even if proven, and the associated acquisition of the asset becomes void, such a finding is “without prejudice to the rights of third parties of good faith without fault.”¹⁰
46. In addition, Colombia incorporated international law human rights standards, including Colombia’s obligations under international treaties, into Law No. 1708. Among other articles, this is apparent in particular in Articles 4, 5 and 6 of Law No. 1708:

Article 4. *Guarantees and integration.* In the application of this present law, the rights recognized in the Political Constitution, as well as in the international treaties and conventions regarding human rights ratified by Colombia which are compatible with the nature of the action of extinction of ownership shall be guaranteed and protected.

Article 5. *Due process.* In the exercise and processing of the action of extinction of ownership rights, the right to due process enshrined in the Political Constitution and this Code shall be guaranteed.

Article 6. *Principle of objectivity and transparency.* In the exercise of the action of extinction of ownership rights, the public officials shall act in an objective and

⁸ Law No. 1708 of January 20, 2014, Articles 7, 22 and 87.

⁹ See, e.g., Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime https://www.unodc.org/documents/organized-crime/Publications/Confiscation_Manual_Ebook_E.pdf. As a matter of jurisdiction *ratione temporis* the 2014 law very clearly applies to Mr. Seda’s investment.

¹⁰ Law No. 1708 of January 20, 2014, Article 87.

transparent manner, ensuring that their decisions legally comply with the Political Constitution and the law.¹¹

47. Importantly, according to Article 7 of Law No. 1708, in order to take action against the property, the *Fiscalía* must successfully rebut this presumption of good faith. Here, the *Fiscalía* blatantly disregarded this fundamental imperative of the law and continues to do so; for more than two years it has failed to rebut the presumption that Newport is a good faith purchaser and has failed to afford that presumption and protection to all of those affected by the measures, which, under Law 1708's broad definition of affected parties, would include shareholders who invested in the Meritage project companies. Further, the *Fiscalía* ignored Colombian administrative regulations which establish the minimum requirements that a property purchaser, like Newport, and financial institutions, like *Fiduciaria Corficolombiana*, must undertake, and in fact did undertake, to properly manage the risks of dealing with illicit assets, terrorism financing and money laundering. When a person or entity satisfies the minimum requirements, it is determined under the law to have acted prudently and is thereby considered to have a protected property right.
48. The *Fiscalía* failed to make any analysis of the steps taken by either Claimants, or by *Corficolombiana* on behalf of Claimants, to ensure proper title to the property. Although its resolution accompanying the precautionary measures recites the relevant law on the rights of a buyer or third party that acquired property in qualified good faith without fault, the *Fiscalía* failed to apply these legal principles to the case at hand, in total disregard of the presumption that the buyer was of qualified good faith. This was a wholesale abuse of the *extinción de dominio* law and process.
49. On August 3, 2016, the precautionary measures formally took effect when a prosecutor from the Extinction Office arrived at the Meritage project and posted a sequestration notice on the property. As of that date, the affected parties had no information from the *Fiscalía* about the extinction of ownership proceeding or the basis on which the ensuing precautionary measures had been imposed.

¹¹ Emphasis added.

50. Shortly thereafter, the *Corficolombiana*'s counsel went to the Extinction Office to demand a copy of the resolution of precautionary measures. However, the *Fiscalía* declined to provide a copy.
51. Imposition of the July 2016 precautionary measures through an embargo and sequestration order on August 3, 2016 dealt a serious blow to the Meritage project. On the basis of this measure, the company lost its right to offer Meritage units for sale, and had to remove the Meritage from the market. In addition, construction was suspended.
52. The embargo and sequestration order also triggered deep financial harm. On August 4, 2016, the morning after the *Fiscalía* posted the embargo and sequestration order on the Meritage, the *Fiscalía*'s actions received national press coverage. Newspaper articles about the confiscation were published in *El Espectador*, *El Tiempo* and *El Colombiano*, the largest newspapers of the country,¹² and financial institutions took quick notice. As the entity charged with the smooth development of the Meritage project, *Corficolombiana* held an emergency meeting with Newport to discuss the immediate legal and financial impact of the precautionary measures. *Banco de Bogotá*, which had extended a construction credit to Newport and that was guaranteed by the Meritage property, ceased to make the credit line available pending resolution of the *extinción de dominio* process. To keep the project afloat, shareholders made emergency loans necessary to meet current obligations with the expectation that the July 2016 precautionary measures would soon be lifted and the *extinción de dominio* process would be discontinued.
53. As a result of the *Fiscalía*'s actions, all Royal Realty projects were considered tainted, such that banks and lenders refused to extend necessary financing. Thus, in addition to the Meritage, Royal Realty's other projects were similarly affected while in various stages of development, as described in the section that follows.

¹² See e.g., “Embargan predios donde se construye exclusive proyecto en Medellín”, *El Espectador* (Aug. 4, 2016), available at <http://www.elespectador.com/embargan-predios-donde-se-construye-exclusivo-proyecto-articulo-647129> (last viewed July 28, 2018); “El ‘narcobien’ en Antioquia que enreda a una modelo”, *El Tiempo* (Aug. 4, 2016), available at <http://www.eltiempo.com/justicia/cortes/megaproyecto-en-envigado-enreda-a-una-modelo-34442> (last viewed July 28, 2018); “Denuncia destapó problemas del lote Meritage”, *El Colombiano* (Aug. 6, 2016), available at <http://www.elcolombiano.com/antioquia/denuncia-destapo-problemas-del-lote-de-meritage-HN4719548> (last viewed July 28, 2018).

54. On January 25, 2017, the *Fiscalía* publicly issued its resolution (*Resolución de Fijación de la Pretensión*) to proceed with the asset forfeiture claim. Again, the resolution completely ignored the evidence provided by Newport that it was a good faith buyer without fault. With this measure, it became abundantly clear that the *Fiscalía* had no intention of considering the legal status of Newport as a good faith buyer without fault.
55. By ignoring Newport's protected status and issuing the public resolution, the *Fiscalía* triggered court proceedings that further stalled the Meritage project. Because of the initiation of lengthy court proceedings to quiet title, the Meritage project had no access to capital and could not sell units or operate the property.
56. The *Fiscalía*'s subsequent actions confirmed the demise of the project. In April 2017, the *Fiscalía* issued its *Requerimiento de Extinción* and asked the Court to proceed with the asset forfeiture proceedings. Again, these actions contributed not only to the destruction of the Meritage project; they contributed to the destruction all of the ongoing projects, described below, that were under development in Colombia by Claimants.
57. In light of the *Fiscalía*'s actions, Newport filed a *tutela* petition with the Superior Court of Bogotá, seeking recognition of its constitutional rights to justice, due process and the right to defend itself. *Corficolombiana*, Newport's Trustee, joined the *tutela* action against the *Fiscalía*. The matter was later transferred to the Colombian Supreme Court Federal Court of Appeals. On February 28, 2017, the court ruled on Newport's claims. Consistent with the nature of a *tutela*, the court explicitly did not address the merits of the *extinción* action, but rather whether Claimants' constitutional rights were violated by the *Fiscalía*'s process and conclusion. The Court broadly accepted Claimants' position, and declared that the *Fiscalía* “violate[d] the plaintiff's basic right to due process - the right of petition, since it has not received any answer on the merits independent of the admissibility of its claims.”
58. Given that a *tutela* is simply a judicial writ to protect constitutional rights, such as due process, the court could not reject the *Fiscalía*'s decision. Instead, the court ordered the *Fiscalía* to provide within 48 hours of the date of the order a response on the merits to Claimants' assertions in their petitions to the *Fiscalía* on December 7, 2016, December

14, 2016 and January 23, 2017 that they, Newport, were a “blameless third party acting in good faith.”

59. The *Fiscalía* completely ignored the court's order. On March 4, 2017, the *Fiscalía* sent Newport a notice that did not respond to Newport's petition; that is, it still failed to address the evidence that Newport had placed on the record to demonstrate its protected status as a third party acting in good faith without fault.
60. In addition, on May 7, 2018, the Antioquia District Court that specializes in extinction of ownership rejected the *Fiscalía*'s extinction of ownership determination (*requerimiento de extinción de domino*) for procedural deficiencies that deprived the interested parties' fundamental due process rights in the extinction of ownership proceeding. The Court found that the *Fiscalía*'s determination lacked, among other relevant procedural aspects, information required to identify the specific assets involved in the extinction of ownership proceeding, thereby depriving interested parties from adequate notice of the object of the extinction of ownership proceeding. As the Court explained, identification of the subject assets was of vital importance for any eventual judgment ordering the extinction of ownership and emphasized that failure to do so may deprive third parties from objecting to the proceeding due to recognizable good faith or another legitimate basis. The Court expressly recognized that transparency in an extinction of ownership proceeding is of maximum importance since its result may eradicate the fundamental right of domain over the assets, and that once judged, acquires legal force of *res judicata*.
61. Notwithstanding the *Fiscalía*'s serious due process violations, the Court nevertheless refused to overturn the precautionary measures over the Meritage property, despite its recognition that those precautionary measures resulted in violations of due process. Consequently, while the Court rejected the *Fiscalía*'s determination of extinction of ownership, it inexplicably left in place the very precautionary measures that it had deemed unlawful. Thus the precautionary measures were left untouched, leaving a cloud on the Meritage title. The property was then transferred to state custody. At this moment in time, therefore, the Meritage property is under state custody while Claimants' due process rights suffer repeated and continuous infringement by Colombia and severe economic harm.

62. The Colombian government, through statements by knowledgeable judicial and executive officials, have recognized that the *Fiscalia*'s purported basis for initiating the *extinción de dominio* proceeding – the alleged kidnapping of Ivan Lopez's son – was false. That there exists such recognition of both the lack of due process and falsehood underlying the pretext of a confiscation of a massive real estate project is the epitome of outrageous, egregious treatment of foreign investment under international law.
63. Notwithstanding this recognition, rather than attempt to rectify its harm, or even attempt to mitigate the irreparable damage Colombia has carried out to the investments and individuals bringing this claim, it appears that the Colombian government has continued on its destructive path, seeking to harass and intimidate the U.S. developer of the project in question. Whether such actions are designed to create a *post-hoc* justification for its wrongful acts, whether it has caught wind of this imminent claim under international law, whether it is simply another arbitrary, wrongful measure in a long line of wrongful measures, or whether it is in retaliation for this future claim, these measures are also part and parcel of Colombia's breaches under international law for which monetary compensation is due.

E. Status of Other Claimants' Investment Projects

(i) Luxe Development Project Guatape

64. The Luxe is a mixed residential and hotel property located in Antioquia, approximately two hours by car from the city of Medellín. The investment was made in three phases of the project, two of which were 100% complete and the third of which comprised a hotel that was approximately 71% complete at the time of the *Fiscalia*'s action.
65. Phases one and two consisted of a total of 17 residential lots, 18 apartments, and over 40 luxury villas. Of the available units for sale in these phases, all residential lots, apartments and all but two luxury villas had been sold. The hotel included 116 guest rooms, several pools, three restaurants, a convention center, tennis courts, spa and a gym among other amenities.

(ii) Prado Tolima

66. Prado Tolima was a land bank and "Land Entitlement" project with three planned future developments. The purpose of phase one was to purchase 300 to 500 hectares of land bordering the *Represa De Prado* Dam outside of Bogota. Royal Realty had been selected to work with the local municipality to pay for and implement their new planning and zoning ordinance.
67. Royal Realty had already reached agreements with the local mayor's office to pay for the planning and ordinance proposal in exchange for improved zoning and density on Royal Realty's specified purchased lots. Representatives of Royal Realty had travelled to the mayor's office to meet with him and city council members to tour the projects and explain exactly how the property would be constructed and developed.

(iii) 450 Heights

68. Royal Realty invested approximately 12 months studying the land and performing land surveying studies. In 2015, Royal Realty negotiated purchase contracts with the sellers giving deposits on the land, began more advanced studies, and moved the project into the advanced design phase and second round of fund raising.

(iv) Santa Fe de Antioquia

69. The Crystal Lakes property located in Santa Fe, Antioquia was planned to be a development property with residential units and villas, located within a 105 hectares parcel of land. Topographical studies had been undertaken, and the project had been approved via the mayor's office for all estimated construction. A detailed underwriting study of the Crystal Lakes project had been done that contemplated all construction costs, a marketing budget, financing, taxes and other expenses.

(v) Cartagena Tierra Bomba

70. Royal Realty had started an entitlement process which included contracting attorneys, completing advanced design work, working with the local municipality, local planning director's office, and working with local protected minority population to secure their approval for the project.

71. In addition, Royal Realty held a valuable hotel operation and management commitment relating to adjacent land that was cancelled as a result of the *Fiscalía*'s imposition of the confiscation measures on Meritage. The owner of this adjacent property owned over 500 hectares of land representing over 33% of the island's available private land and was in the middle of a master plan for the island and all of his property holdings. The owner contacted Royal Realty in 2016 and asked Royal Realty to operate a hotel asset that was 50% constructed. After the *Fiscalía*'s *Requerimiento*, Royal Realty received communications from the sellers of the property that in light of the confiscation of the Meritage project, they no longer wanted to be involved with Mr. Seda or his businesses.

* * *

72. Based on the acts and omissions of the *Fiscalía* described above, all of Claimants' investments in Colombia have been completely destroyed, resulting in significant losses to them in this case as well as reputational harm to Mr. Seda, his associates and his projects.

V. LEGAL BASIS FOR THE CLAIM - COLOMBIA'S VIOLATIONS OF CHAPTER TEN OF THE TPA

73. Colombia, through the acts and omissions of the *Fiscalía*, is responsible for, among other things, the arbitrary, discriminatory and confiscatory misapplication of Colombia's Asset Forfeiture Law (Law No. 1708 of January 20, 2014, *Código de Extinción de Dominio*, or Extinction of Ownership Law). Colombia's misapplication of that law destroyed Claimants' investments and caused significant harm to their business interests and reputations in breach of Colombia's obligations under Articles 10.5 and 10.7 of the TPA.¹³

A. Claimants' Investments Are Protected Under the TPA

74. Chapter Ten of the TPA protects an "investor of a Party," including a U.S. investor who makes an "investment" in the territory of the other Party, Colombia.

¹³ Claimants' claims are set forth below. Claimants reserve the right to supplement their claims as they continue to investigate the scope of the Government of Colombia's wrongdoing.

75. Mr. Seda is an “investor of a Party” under the TPA. He is a U.S. national having been born in California, and holds a U.S. passport. He does not possess any other nationality.
76. Mr. Seda has made “investments” in Colombia, which are detailed in Section IV.C above. Article 10.28 of the TPA defines “investment” as “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.” The definition of investment includes, among other things, “an enterprise,” “shares, stock, and other forms of equity participation in an enterprise,” “management ... and other similar contracts,” “intellectual property rights,” “licenses, authorizations, permits, and similar rights conferred pursuant to domestic law,” “intellectual property rights,” and “other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”
77. Mr. Seda owns “investments” because he holds “shares” in three “enterprises” that constituted his principal investment vehicles. Royal Realty, which is solely owned and controlled by Mr. Seda is an “enterprise.” Newport SAS, in which Mr. Seda is the majority shareholder through Royal Realty is an enterprise, and Luxe By The Charlee SAS, in which Mr. Seda is the majority shareholder, is an enterprise. Also, as detailed in the preceding Section, Mr. Seda’s investments include, among others, valuable hotel management and operation contracts, intellectual property rights, including in the “Charlee” brand, permits and licenses, and other assets that have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.
78. JTE International Investments, LLC is a company incorporated in the United States and is an “investor of a Party” under the TPA. Jonathan Michael Foley, Brian Hass, Stephen John Bobeck, Monte Glenn Adcock, Justin Timothy Enbody, Justin Tate Caruso, and another investor whose interests are held in trust are U.S. nationals who possess no other nationality. Each entity and person has made an “investment” in Colombia through their respective ownership of “shares” in Newport SAS and/or Luxe By The Charlee SAS.

79. Accordingly, Claimants' investments are protected against any misconduct by Colombia, including that of its government and its courts, that violates the investment protections of the TPA.

B. Colombia Violated Article 10.5 (Minimum Standard of Treatment) of the TPA

80. Colombia violated its obligation to provide Claimants fair and equitable treatment under Article 10.5 (Minimum Standard of Treatment) of the TPA.

Article 10.5 of the TPA provides, in relevant part:

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 describes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond that which is required by this standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principle legal systems of the world"

81. By its own terms, Article 10.5 incorporates into the TPA a fair and equitable treatment standard that is tied to customary international law.

82. The Government's actions in connection with its confiscation of Claimants' investments were so egregious as to fall below the standard of fair and equitable treatment in violation of Article 10.5.

83. First, the Government's actions were highly arbitrary. The Government grossly abused its authority under that law when it unjustifiably repudiated the central tenet of the applicable regulatory regime—namely, that a qualified good faith purchaser without fault is presumptively deemed the legitimate owner of property. Claimants (specifically, Mr. Seda by himself) and through their business entities went well beyond the requirements

under the law to demonstrate clean title to the Meritage property. Nonetheless, the Government baselessly confiscated the investments. The reckless and arbitrary manner in which the Colombian government misapplied this law has been confirmed by Colombian courts and other Colombian government officials.

84. Second, the Government took steps that extinguished Claimants' ownership rights to their investment properties without affording adequate due process protections. For example, and as noted above, on July 22, 2016, the Government sequestered the Meritage property without ever informing Claimants or the project companies that such action would be taken against them.
85. Third, the Government's actions are also potentially highly discriminatory in breach of Article 10.5. Based on evidence gathered to date, Claimants' investments were inappropriately and specifically targeted by the Government. Moreover, there is reliable information that the Government continues to intimidate and retaliate against Mr. Seda and other individuals who are connected to the Meritage project.
86. In addition, the practice of the Colombian authorities and courts has been to afford the presumption of good faith to property owners who have done much less diligence on purchased property than Claimants undertook in this case. Thus, Colombia has discriminatorily singled out Claimants' investments for destruction.
87. Colombia's conduct in breach of Article 10.5 has caused Claimants to incur significant loss and damage by reason of that breach.

C. Colombia Violated Article 10.7 (Expropriation and Compensation) of the TPA

88. The Government is responsible for the unlawful confiscation and destruction of Mr. Seda's investments in Colombia. The Government's acts and omissions constitute violations of Article 10.7 (Expropriation and Compensation) of the TPA.
89. Article 10.7 of the TPA provides:
 1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ('expropriation'), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;

- (c) on payment of prompt, adequate and effective compensation;
and
- (d) in accordance with due process of law and Article 10.5.

90. In this case, the Government illegally expropriated the Meritage property and unjustifiably deprived Claimants' investments in Colombia of all value. The Government's actions constitute a direct taking that fails to meet the legality conditions under Article 10.7. Namely, the Government has never paid compensation to Claimants; nor has it acted in the public interest, in accordance with due process, and in a non-discriminatory manner.
91. The *Fiscalía*'s precautionary measures issued on July 22, 2016 and the embargo and sequestration order that it served and physically posted on the property on August 3, 2016 harmed Claimants' property rights. This action was compounded on January 25, 2017 when the *Fiscalía* rendered its provisional determination to proceed with its asset forfeiture claim, and was formalized on April 5, 2017, when the *Fiscalía* made its request to the court to proceed with the asset forfeiture process.
92. These Government's measures confiscated the Claimants' property and Newport's right of possession, and transferred the property to administration by the State's fund for rehabilitation, social investment and fight against organized crime, or *Fondo para la Rehabilitación Inversión Social y Lucha contra el Crimen Organizado* ("FRISCO"). With the embargo and sequestration order, Newport was not just dispossessed of the land on which the Meritage project was built, but the confiscation placed the entire development in a state of legal limbo.
93. In the meantime, financial institutions were notified of the precautionary measures in connection with the *extinción de dominio* proceeding, causing the *Corficolombiana*, Claimants and Newport to implement damage control in hopes that the measures would be quickly rescinded and their ownership rights would be restored. It soon became apparent, however, that with the Government's subsequent measures (the provisional determination to proceed with its asset forfeiture claim, and the request to the court to proceed with the asset forfeiture process) the uncertainty as to whether Newport could continue the project increased. Without the ability to continue sales, construction ceased and the Meritage project was doomed.

94. The economic impact of the Government's conduct was devastating, resulting in a total deprivation of the value of Claimants' investments on a permanent basis. Further, the Government's actions against Mr. Seda, in particular, have ruined his reputation and prevented him from obtaining access to funding that has damaged all of his investments in Colombia and across South America.
95. Accordingly, the Government violated Article 10.7 of the TPA.
96. Colombia's conduct in breach of Article 10.7 has caused Claimants to incur significant loss and damage by reason of that breach.

VI. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

97. Claimants seeks through consultations and negotiations to receive full compensation for the losses suffered as a result of the Government's violations of the TPA.
98. In the event consultations are unsuccessful, Claimants will submit a claim in arbitration seeking compensation for damages by reason of, or arising out of, Colombia's measures that are inconsistent with its obligations under Section A of Chapter Ten of the TPA, along with interest and costs. Claimants estimate their damages to be no less than USD 250 million.
99. Claimants reserves their rights to amend or supplement this Notice of Intent.

ARENT FOX LLP
Pierre-Richard Prosper
Timothy J. Feighery
Lee M. Caplan
Jeffrey R. Makin
Claudia D. Hartleben

Counsel for Claimants

August 17, 2018