

**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

**REQUEST FOR ARBITRATION UNDER CHAPTER TEN
OF THE
UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT**

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I. INTRODUCTION

1. This arbitration concerns the pioneering efforts of United States' investors to feed the new Colombian boom and the inexplicable invalidation of their investments by sections within the Colombian government that threaten to mire Colombia in the corruption of the past. The Republic of Colombia, specifically the city of Medellín, has recently enjoyed a new wave of international investment and development. Medellín is no longer the city that was once dubbed "the most dangerous city in the world," marred by gang warfare, international drug trade, perilous city streets and large swaths of undeveloped mountainous land. Medellín has sought to put its past behind it and is now considered one of the "up and coming" cities in the world, boasting one of the fastest growing economies in Latin America.¹ Contributing to this positive momentum, Claimants invested in Colombia's revitalization by funding mixed-use luxury developments that featured the country's stunning natural beauty paired with cutting-edge design.

2. Instead of supporting stable foreign investment, the acts of the Government in this case promise to pull Medellín backwards, by making the ownership of any property precarious, at best, through the abusive application of an important Colombian law - a law that was designed to help rid Colombia's economy of narcotraffickers. Colombia's abuse of this law has resulted in an unlawful, uncompensated taking in violation of international law and has undermined Colombia's promise to afford foreign investors a stable and fair environment under international law in the United States-Colombia Trade Promotion Agreement ("TPA").

3. The legal backdrop to the investors' claims under the TPA is the gross misapplication of Colombia's Asset Forfeiture Law ("*Código de Extinción de Dominio*" or "asset forfeiture law"). On January 20, 2014, the Colombian Congress passed Law No. 1708, which redesigned the constitutional *extinción de dominio* regime that was established in the Constitution of 1991.² Aimed at debilitating criminal networks, this law permits Colombian authorities to extinguish ownership rights to assets connected with illegal activity. Law No. 1708 sought to separate *extinción de dominio* from any criminal liability, and to harmonize its constitutional nature with

¹ See, e.g., C-1, A. Sánchez-Jabba, "La Reinención de Medellín," in L. Galvis (ed.), *Economía de las grandes ciudades en Colombia: seis estudios de caso* (2014), p. 223; C-2, OECD, *Promoting the Development of Local Innovation Systems: The Case of Medellín Colombia* (2015), p. 11.

² C-3, Law No. 1708, 20 January 2014.

the need to preserve due process under Colombian law as well as international law.³ Unlike its prior versions, Law No. 1708 established that an asset forfeiture claim could not be presented if and until all legal elements to bring the claim were met; chief among these being the protection of good faith purchasers, a higher burden of proof before confiscating property, and rights guaranteed under the Colombian constitution and its international obligations.⁴

4. While the Colombian Constitution has long protected just title to property, Law No. 1708 provides an independent right of action for the Government to root out criminal activity by taking assets connected to illicit activities or persons. Critically, in carrying out this mission, the Government must judiciously uphold the protections guaranteed by the Colombian Constitution and enshrined in the law, such as protection of fundamental rights,⁵ due process,⁶ a presumption of good faith,⁷ and the right to be heard.⁸ The Office of the Attorney General of Colombia (*Fiscalía General de la Nación*) possesses sole authority to bring and prosecute an asset forfeiture case in accordance with the law's autonomous rules and procedure.⁹ Article 116 of the Colombian Constitution requires that the *Fiscalía* administer justice, as it does of the Constitutional Court, the Supreme Court of Justice, Courts and judges.¹⁰

5. The facts in this case, however, demonstrate that the *Fiscalía* ignored Claimants' constitutional, procedural, and substantive rights and applied the asset forfeiture law in a grossly unjust, arbitrary, discriminatory, and confiscatory manner resulting in extensive damages to Claimants and their investments in Colombia, in violation of international law. The Government's specific target was the Meritage, a large, high-end, residential, and commercial

³ C-4, U.N. Office on Drugs and Crime, *La Extinción Del Derecho de Dominio en Colombia: Especial referencia al Nuevo Código* (2015), available at https://www.unodc.org/documents/colombia/2017/Marzo/La_extincion_del_derecho_de_dominio_en_Colombia.pdf (last viewed 8 January 2019) ("U.N. Manual"), pp. 51-52.

⁴ C-3, Law No 1708, art. 117. See also C-4, U.N. Manual, pp. 57-59.

⁵ C-3, Law No. 1708, art. 3.

⁶ C-3, Law No. 1708, art. 5.

⁷ C-3, Law No. 1708, art. 7.

⁸ C-3, Law No. 1708, art. 8.

⁹ C-4, U.N. Manual, pp. 27-28.

¹⁰ C-5, Colombian Political Constitution (1991) ("Political Constitution"), art. 116 ("*La Corte Constitucional, La Corte Suprema de Justicia, El Consejo de Estado, Comisión Nacional de Disciplina, La Fiscalía General de La Nación, los Tribunales y los Jueces, administran justicia.*").

real estate project situated on a beautiful highland bordering Medellín, Colombia, which was under development by Mr. Angel Seda and other investors through companies Mr. Seda founded and controlled.¹¹

6. The unlawful application of the asset forfeiture law automatically resulted in an unlawful confiscation of property rights and interests, in breach of the protections against unfair treatment and unlawful expropriation set forth in Articles 10.5 and 10.7 of the TPA.¹² The swift and severe damage to Claimants' business and reputation resulting from the Government's actions impacted not just the Meritage project, but all of Claimants' property developments in Colombia: Luxé By The Charlee, Prado Tolima, Santa Fe de Antioquia, Cartagena Tierra Bomba and 450 Heights. What is more, Colombian authorities stand to be unjustly enriched from their bad acts by hastily selling Claimants' investments through opaque maneuvers that are in violation of the TPA.

7. Law No. 1708 protects an "Affected Person," defined as "[a] person who states to be the titleholder of the asset that is covered by the asset forfeiture proceeding, with legal standing to participate in the process."¹³ Articles 1 to 14 of Law No. 1708 contain the fundamental guarantees under the law that limit the Government's ability to extinguish property rights. One such guarantee is that the law cannot be applied to property purchasers of good faith without fault:

Article 3. Right to ownership. Asset forfeiture shall have as its limit the right to ownership legally obtained in good faith without fault and exercised in accordance with the social and ecological function inherent therein.¹⁴

Paired with that express limitation, the law also affords an initial presumption of good faith:

Article 7. Presumption of good faith. Good faith is presumed in all legal action or transaction related to the acquisition or use of the assets, as long as the titleholder proceeds in a diligent and prudent manner, without any fault.¹⁵

¹¹ See C-6, Meritage Sales Brochure.

¹² C-7, Agreement Between the Government of the United States and the Government of the Republic of Colombia Trade Promotion Agreement, signed November 22, 2006, Ch. 10. The US-Colombia FTA entered into force on May 15, 2012.

¹³ C-3, Law No. 1708, art. 1.1.

¹⁴ C-3, Law No. 1708, art. 3.

¹⁵ C-3, Law No. 1708, art. 7.

8. Among the fundamental guarantees, Colombia was purposeful in setting forth protections under international law, including Colombia's obligations under international treaties. This is set out in particular in Article 4, as well as Article 5 and 6:

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 asset forfeiture shall be guaranteed and protected.

Article 5. Due process. In the exercise and processing of the asset forfeiture action, the right to due process enshrined in the Political Constitution and this Law shall be guaranteed.

Article 6. Principle of objectivity and transparency. In the exercise of the asset forfeiture action, public officials shall act in an objective and transparent manner, assuring that their decisions legally comply with the Political Constitution and the law.¹⁶

9. In addition to fundamental substantive protections, Law No. 1708 codifies the procedure of an asset forfeiture action. The protection for purchasers of good faith without fault imposes an absolute limitation on the asset forfeiture proceeding, as expressly recognized in several articles under the law. Article 22 provides that title to property is void *ab initio* if found to have an illicit origin, unless the title is held by a bona fide purchaser without fault – consequently, any finding of illicit origin is “without prejudice to the rights of bona fide third parties without fault.”¹⁷

10. Importantly, Law No. 1708 makes clear that Colombian authorities must presume the good faith of a property purchaser. Precautionary measures therefore may not be applied if they would contravene the protections owed to bona fide purchasers:

¹⁶ C-3, Law No1708, arts. 4-6.

¹⁷ C-3, Law No. 1708, art. 22. “Article 22. Nullity *ab initio*. Once the illicit origin of the assets covered by the asset forfeiture proceeding has been demonstrated it shall be understood that the object of the legal transactions that resulted in their acquisition is contrary to the constitutional and legal regime regarding property and as such the acts and contracts concerning such assets in no case constitute fair title and they shall be considered void *ab initio*. The foregoing, without prejudice to the rights of bona fide third parties without fault.” *Id.*

Article 87. Purposes of the precautionary measures. At the time the prosecutor renders its provisional determination to proceed with the asset forfeiture claim, the Prosecutor shall order, by way of an independent and reasoned order, the precautionary measures which it deems applicable in order to avoid that the assets in question can be hidden, negotiated, encumbered, removed, transferred or may suffer any deterioration, misdirection, or destruction; or for the purpose of stopping their illicit use or destination. **In any case, the rights of bona fide third parties without fault must be safeguarded.**¹⁸

11. The Colombian authorities flouted all of these rights, protections and guarantees. In misapplying and recklessly disregarding law and procedures when it confiscated the Claimants' investments, Colombia violated international law, its own Constitution and Colombia's asset forfeiture law. The Government denied Claimants their due process rights and their right to a presumption of good faith, and entirely ignored their status as bona fide purchasers of the asset that became the *Fiscalía's* target of the *extinción de dominio* proceeding.

12. It bears emphasis that, at this point in time, whether the Colombian courts are capable of eventually correcting the mistakes of the *Fiscalía's* reckless disregard for due process and the presumption of good faith is irrelevant. The damage resulting from the failure of due process and violations of international law was immediate, irreparable and uncompensated.

13. Colombia's actions have resulted in an unlawful expropriation and breach of fair and equitable treatment in violation of the TPA, which has caused extensive damage to Claimants. Moreover, Colombia has undertaken measures to further harm the investments, to endanger the physical safety of one of the Claimants, and to jeopardize one of the Claimants' reputation and ability to pursue a living. These tactics have increased and expanded to other potential witnesses since the filing of the Notice of Intent. For these reasons Claimants' request for relief includes restitution, compensation and appropriate provisional measures in light of Colombia's conduct which threatens the integrity of the proceedings.

II. THE REQUEST FOR ARBITRATION

14. Claimants Angel Samuel Seda, JTE International Investments, LLC, Jonathan Michael Foley, The Boston Enterprises Trust, Brian Hass, Stephen John Bobeck, Monte Glenn Adcock, Justin Timothy Enbody, and Justin Tate Caruso, hereby request that their dispute with the Government of the Colombia ("Colombia" or "Respondent") be referred to arbitration pursuant

¹⁸ C-3, Law No 1708, art. 87 (emphasis added).

to Articles 10.16(1) and 10.16(3)(a) of the TPA. Pursuant to Article 10.16(3)(a) and as Colombia and the United States are parties to the ICSID Convention, Claimants elect to proceed to arbitration in accordance with the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

15. On August 17, 2018, Claimants submitted a Notice of Intent to Submit a Claim to Arbitration to Colombia (“Notice of Intent”),¹⁹ with a request to engage in amicable settlement discussions as soon as possible, pursuant to Article 10.15 of the TPA. On August 23, 2018, Colombia acknowledged receipt of the Notice of Intent via email. On September 10, 2018, the disputing parties met in Bogota, Colombia to discuss the merits of Claimants’ claims. On November 21, 2018, the parties had a further teleconference to discuss possible frameworks for amicable settlement. On December 20, 2018, Claimants notified the Government in a letter that the consultation period under Article 10.16 of the TPA had expired, however, Claimants remained open to prompt amicable settlement. Given the aggravation to Claimants interests that continued to be perpetrated by Colombian authorities and courts, Claimants informed the Government that they intended to proceed with filing the Request for Arbitration.

16. Ultimately, Respondent failed to offer any form of compensation, restitution or resolution for the injuries caused by Colombia. Consequently, the parties were unable to settle the dispute. Pursuant to Articles 10.16(2) and 10.16(3) of the TPA, Claimants submit this Request for Arbitration more than 90 days after delivery of the Notice of Intent and more than six months after the events giving rise to their claims.

III. PARTIES TO THE DISPUTE

17. Angel Samuel Seda is a national of the United States. He undertook significant financial 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 (“Royal Realty”), the owner of a majority interest in Newport SAS, and the owner of the majority interest in Luxé By The Charlee SAS. He can be contacted at the following address:

¹⁹ C-8, Notice of intent to submit the claim to arbitration dated 17 August 2018.

19909 Corby Avenue
Lakewood, California 90715
USA

18. JTE International Investments, LLC, a company incorporated in the United States, wholly owned by Justin Enbody, Jonathan Michael Foley, and The Boston Enterprises Trust, which holds the interests of a U.S. national, 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

19. The Boston Enterprises Trust, 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 Luxé By The Charlee SAS. They can be reached at the following address:

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

20. Legal counsel for Claimants are Pierre-Richard Prosper, Jeffrey R. Makin, and Ismael Bautista, Jr. 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:

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21. Respondent is the Government of Colombia. Pursuant to Annex 10-C of the TPA, delivery of notices and documents to Respondent should be made to the following address:

*Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. – Colombia*

IV. THE ARBITRATION AGREEMENT

22. Claimants and Respondent have consented to arbitration under the TPA. Respondent has consented to the submission of a claim to arbitration pursuant to Article 10.17(1). Claimants have consented to arbitration by submitting a claim to arbitration against Respondent pursuant to TPA Articles 10.16(1) and 10.16(3)(a).

23. Claimants have satisfied all waiver requirements under the TPA. Pursuant to Article 10.18(2), Claimants submit, in writing as Annex A to this Request for Arbitration, their consent and waiver of their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure of Colombia that is alleged to constitute a breach referred to in TPA Article 10.16(1). Annex B contains the undersigned counsels' authority to act on Claimants' behalf in this proceeding.

24. Claimants have submitted their claims in accordance with all time periods under the TPA. Pursuant to TPA Article 10.18, Claimants have submitted their claims within three years from the date on which they first acquired, or should have first acquired, knowledge of Respondent's breach and knowledge that the Claimants had incurred loss or damage. Pursuant to TPA Articles 10.16(2) and 10.16(3), Claimants have submitted their claims more than 90 days after delivery of

their Notice of Intent and more the six months after the events giving rise to their claims have elapsed.

V. PROVISIONS OF THE TPA THAT HAVE BEEN BREACHED

25. Through a series of separate and cumulative actions, the Government is responsible, as explained in more detail below, for depriving Claimants' investments in Colombia of fair and equitable treatment in breach of Article 10.5 (Minimum Standard of Treatment) of the TPA.

26. By its conduct as explained in more detail below, the Government is responsible, through a series of 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.

VI. FACTUAL BACKGROUND

A. The Promise of a New Era of Development in Medellín

27. Twenty-five years ago the city of Medellín in Antioquia, Colombia had a reputation as the most dangerous city in the world.²⁰ Today, Medellín has been reinvented. It is a thriving metropolis with a population of well over two and a half million people where "levels of violence decreased, social and economic indicators improved, and the city sought an urban resurgence, orienting the economy towards a generation of knowledge founded in innovation and the use of technology."²¹ Angel Seda's investments in Medellín and its surrounding areas were a part of that transformation.

28. On July 3, 2007, Mr. Seda moved to Colombia with the intention of developing real estate projects. He selected Colombia as his base of operations after assessing the opportunities provided by its growing market. Mr. Seda planned to create properties that exuded luxury and fostered healthiness, environmental consciousness, and social interaction. His aim was to establish "lifestyle" properties and a lifestyle property brand within Colombia.²² His target

²⁰ See, e.g. C-9, S. Stewart, *How Medellín went from murder capital to hipster holiday destination*, The Telegraph, 4 January 2018; C-1, A. Sánchez-Jabba, "La Reinención de Medellín," p. 235.

²¹ C-1, A. Sánchez-Jabba, "La Reinención de Medellín," p. 223.

²² C-10, N. Foster, *Luxury Living in a Bucolic, Shoreline Setting in Colombia*, The New York Times, 9 May 2013.

demographic was the growing number of affluent Colombian and international buyers who were seeking to invest in this kind of property.

29. Mr. Seda's research and travel throughout Central and South America indicated that of all the business opportunities in the region, 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. A *Businessweek* article from May 28, 2007 endorsed Mr. Seda's understanding that Colombia was an "investment hot spot."²³ This was further strong evidence to Mr. Seda that Colombia would present unique business opportunities for his vision.

30. Mr. Seda secured a 4,000-square foot office building in Medellín in October 2007 to serve as his base of operations. On November 2, 2007, he established Royal Realty under the laws of Colombia as his development vehicle.²⁴ 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.²⁵ The following year, Mr. Seda established Newport SAS, the company that would eventually develop the Meritage project.²⁶

31. At the time of the events that give rise to this claim, Mr. Seda had become a well-known property developer in Medellín, known for his innovative sense of design and ability to offer something brand new to the Colombian market. His Charlee Hotel, located in the heart of Medellín, was opened in 2011 and brought a fresh "lifestyle" brand to the city. The Charlee Hotel went beyond the traditional hotel concept by offering its guests a lifestyle experience through emphasis on local products and culture, seamless indoor-outdoor structures paired with modern design adorned by curated art, and offering the highest standard of service. Unlike any other hotel in Medellín, The Charlee Hotel created a unique "buzz" and successfully captured a budding market of luxury entertainment seekers who flocked to the hotel for concerts and events. This model resulted in consistently strong occupancy rates of 80.27% and 77.11% in 2016 and

²³ C-11, R. Farzad, *Extreme Investing: Inside Colombia*, Bloomberg Businessweek, 28 May 2007.

²⁴ See C-12, Royal Realty SAS Certificate of Existence and Good Standing.

²⁵ See C-13, Angel Seda Investment Visa issued 10 March 2008.

²⁶ See C-14, Newport SAS Certificate of Existence and Good Standing.

2017, respectively, which are exceptional rates for a hotel in Medellín.²⁷ This success has earned the Charlee Hotel placement in international rankings: in 2012, just 15 months after its opening, it was featured in the 2012 Hot List of Conde Nast Travel, a renowned luxury and lifestyle travel magazine, which described the Charlee Hotel as a “stylish modern tower overlooking Parque Lleras, in Medellín’s buzzing Zona Rosa.”²⁸ It remains one of the most successful hotels in Medellín, having been featured recently in a 2018 Conde Nast Travel article.²⁹

32. Mr. Seda’s next project, the “Luxé by The Charlee,” was an expansion of his vision for Colombia. Located in Guatapé, near the town of Rionegro where Jose María Córdova International Airport that receives most of Medellín’s air traffic is located, the Luxé was a breathtaking lakeside experience, comprised of villas, apartments, residential lots and a hotel with 360 degree views of the magnificent 6,365 hectare reservoir of Guatapé. It also boasted unimpeded views of the famous “La Piedra de Peñol” (Rock of Peñol), a 70-million-year-old rock formation that stands at 656 feet (200 meters) high, and is one of Colombia’s premier tourist attractions. Luxé was the first and only luxury community in the highly valuable reservoir of Guatapé.

33. The investment was made in three project phases, and work on the Luxé began in 2010. The first two phases consisted of the sale of a total of 17 residential lots,³⁰ 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. Phase three, a luxury hotel, was to include 116 guest rooms, a pool, a beachfront club, three restaurants, a convention center, tennis courts, a spa and gym, among other amenities.

34. Four more developments, bearing the style and innovation of the other Charlee developments, were planned for Colombia and underway: Prado Tolima, a development that would feature the peaceful waters of the Prado reservoir skirted by mountains; Santa Fe de Antioquia, a waterfront development along the Cauca River that would feature a blue lagoon to provide guests respite from dry heat; Cartagena Tierra Bomba, located on the island of Tierra

²⁷ C-15, Charlee Hotel Management Report 2017, p. 4.

²⁸ See C-16, *Hot List 2012: Best New Hotels Under \$300*, Conde Nast Travel, 16 April 2012.

²⁹ See C-17, A. Marsh, *3 days in Medellin*, Colombia, Conde Nast Travel, 16 April 2018.

³⁰ Owners of residential lots would design and build custom homes.

Bomba; and 450 Heights, a commercial and residential real estate development close to Medellín. As described in Section H below, by 2016 these projects were under development by Mr. Seda and Royal Realty and at various stages of progress.

35. In the meantime, and motivated by the great success of the Charlee Hotel and the nearly completed Luxé by the Charlee in Guatapé, Mr. Seda sought property for a larger development in Antioquia, one that would attend to the emerging need for a variety of living options as the city of Medellín and its surroundings enjoyed economic growth, through growth in textile manufacturing, tourism, technology and communications.³¹ The Colombian airline Avianca had decided to open a new service center in this area, between Medellín's international airport and the city itself, anchoring growth in the area.³² A toll booth was being relocated further up Las Palmas highway, closer to the airport, opening up previously undeveloped land that was a fifteen minute drive from central Medellín. On November 1, 2012, Mr. Seda, through his company Royal Realty, entered into an agreement to purchase a lot on this highway situated between Medellín and the airport to develop a luxury community project he named the "Meritage by Charlee."³³ The Meritage would offer a variety of living options to locals and newcomers alike.

36. The Meritage was envisioned by Mr. Seda as a planned community, consisting of a luxury hotel, long-term stay hotel suites ("aparta-suites"), residential apartments, single family homes, and commercial storefronts. It promised its residents and guests a unique and innovative modern living experience, both indoors and outdoors, with easy access to both the city of Medellín and its international airport. The commercial and residential mix within a planned community was a brand new concept that appealed to the upper strata of Colombian home buyers. The residences catered to home buyers seeking to live in a safe, green area just outside of Medellín, whereas the aparta-suites would feed the demand for longer term hotel stays that had been generated by Medellín's regional economic growth. Finally, the commercial zones of the project would be accessible to all customers driving along the Las Palmas highway, who would be able to drive in to the Meritage community and utilize designated parking spaces. The project was to include one of the largest fitness facilities in Colombia, an expansive nature

³¹ C-1, A. Sánchez-Jabba, "La Reinención de Medellín," 248-49.

³² C-18, J.F. Sierra et. al., *Avianca trasladará su centro de mantenimiento a Rionegro*, El Colombiano, 24 May 2014.

³³ See C-19, Meritage-La Palma Argentina Commitment to Purchase Agreement dated 1 November 2012.

reserve, outdoor fitness training amenities and cross-country course, shops and fine dining, all in the beautiful bucolic countryside adjacent to Medellín.

37. As with any large development project in Colombia, the property on which the Meritage was built was transferred into a trust after a private law firm and the trust company had conducted the necessary due diligence on the property. By July 2016, the Meritage was on schedule for completion: pre-development architecture and design was completed; all environmental permitting was obtained; the marketing strategy had been developed and successfully executed; 152 of the aparta-suite and commercial storefronts had been sold; construction permits had been secured; the Urban Planning office had been satisfactorily provided all necessary architectural, public services, sewage, environmental, structural and architectural plans; and construction of the hotel was well under way.³⁴ Approximately 500 local workers were directly and indirectly employed in the construction and development of this project.³⁵

38. On July 22, 2016, after almost four years of work on the Meritage, however, and after substantial investments had been made, Colombia's Office of the Attorney General (the *Fiscalía General de la Nación* or *Fiscalía*)³⁶ abruptly, arbitrarily, and discriminatorily imposed an embargo on the property's title to prevent its transfer and sequestered the property, thereby freezing all of the Meritage's business and investment activities.³⁷ This abuse of authority was confirmed on January 25, 2017, when the *Fiscalía* rendered its provisional determination to proceed with its unlawful asset forfeiture claim (*Resolución de Fijación de la Pretensión*), and

³⁴ See **C-20**, Resolutions of Antioquia Urban Curator: Construction Permits issued 23 December 2014, 4 December 2015 and 28 December 2015 (listing all satisfied preconditions to issuance of construction license).

³⁵ See **C-21**, Letter from Fiduciaria Corficolombiana to Attorney General Office of Asset Forfeiture dated 18 August 2016, p. 2.

³⁶ The *Fiscalía* has a dominant role in the *extinción de dominio* process. **C-3**, Law No. 1708, arts. 29(1) and (2) (*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 Asset Laundering and Asset Forfeiture.

³⁷ See **C-22**, Attorney General Asset Forfeiture Unit, *Resolución de Medidas Cautelares en Fase Inicial* dated 22 July 2016 ("Resolution of Precautionary Measures").

formalized on April 5, 2017 when the *Fiscalía* made its petition to the court to proceed with asset forfeiture (*Requerimiento de Extinción*).³⁸

39. The Meritage would have been the first development of its kind in the area of Medellín: a luxury “lifestyle” hotel and residential complex. As of the date of this submission, the structures of the Meritage dominate part of the Las Palmas highway, the road that connects Medellín to its international airport. The unfinished structures are powerful evidence of what this project would have been were it not for the illegal actions of the Government.

B. Mr. Seda’s History of Property Development in Colombia

40. As noted above, Mr. Seda’s first project in Colombia was The Charlee Hotel in Medellín, which was fully constructed and in operation since 2011.³⁹ With this project, he established the “Charlee” lifestyle brand, trademarked and registered in Colombia.⁴⁰ The property was named to *Condé Nast Traveler’s* 2012 “Hot List” as one of the best new hotels in the world.⁴¹ The Charlee was featured in this list with high-profile luxury hotels, such as The Ritz-Carlton Hong Kong, The Ritz-Carlton Toronto, the Mandarin Oriental Paris and the Grand Hyatt Goa. 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.

41. By the summer of 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 and innovative thinking caught the attention of international investors and international media. For example, his projects in Colombia were featured in a *New*

³⁸ See C-23, Attorney General Asset Forfeiture Unit, *Resolución de Fijación de la Pretensión* dated 25 January 2017 (“Resolution to Proceed with Claim”), and C-24, Attorney General Asset Forfeiture Unit, *Requerimiento de Extinción* dated 5 April 2017 (“Forfeiture Petition”).

³⁹ See C-25, Royal Property Group Brochure.

⁴⁰ See C-26, “The Charlee” Trademark Registration dated 19 January 2009.

⁴¹ C-16, *Hot List 2012: Best New Hotels Under \$300*, Conde Nast Travel, 16 April 2012.

York Times article in its “Great Homes and Destinations” section on May 9, 2013.⁴² About Luxé by The Charlee, the former mayor of Medellín and former governor of Antioquia, Aníbal Gaviria stated, “[I]ike much of the department, Guatapé is a diamond in the rough, but it’s certainly a great location to start a business and a wonderful place to have a home.”⁴³

42. At its height in July 2016, Royal Realty directly employed over 120 local personnel, including architects, engineers, construction auditors, quantity surveyors, marketing and design experts, events directors, hotel managers, human resources personnel, managers of social media and hotel staff.

43. In addition to The Charlee Hotel and Meritage, Mr. Seda’s other developments in Colombia included the Luxé By the Charlee in Guatapé, Prado Tolima, Santa Fe de Antioquia, Cartagena Tierra Bomba and 450 Heights. Royal Realty also acquired land as part of an effort to create an Andean brand of luxury eco-tourism resorts. One such project, an eco-tourism hotel resort located on the Galapagos Islands, was in nascent stages of obtaining entitlements at the time of the Government’s misconduct, which devastated Mr. Seda’s ability to develop an Andean brand due to harm to his business and reputation in Colombia.

44. The U.S. investors named as Claimants in this action invested in these properties because they believed in and shared Mr. Seda’s vision, and were encouraged by Royal Realty’s prior successes and the favorable environment for investment. These individuals invested in the Meritage project through share purchases in Newport and invested in the Luxe Guatapé project through share purchases in Luxé By The Charlee SAS.

45. This progress and promise came to an end when the National Unit for Anti-Asset Laundering and Asset Forfeiture of the Office of the *Fiscalía General de la Nación* issued precautionary measures on the Meritage property, ordering the embargo and sequestration of the property.⁴⁴ Claimants thus learned that the property on which the Meritage was being built was the subject of an asset forfeiture action. The *Fiscalía*’s imposition of precautionary measures

⁴² C-10, N. Foster, *Luxury Living in a Bucolic, Shoreline Setting in Colombia*, The New York Times, 9 May 2013.

⁴³ C-10, N. Foster, *Luxury Living in a Bucolic, Shoreline Setting in Colombia*, The New York Times, 9 May 2013.

⁴⁴ See C-22, Resolution of Precautionary Measures.

instantly tarnished Mr. Seda, Royal Realty and his other properties, rendering Claimants unable to access the financing and investment necessary for their success.

C. Claimants' Investments in the Meritage Project

46. In June 2012, Mr. Seda began searching for a location to develop his new project, the Meritage, in the Alto de las Palmas area of Envigado, a suburb outside of Medellín. Over a six-month period he examined scores of potential development lots for location, size, environmental attributes, ownership, price and neighboring projects. Mr. Seda was aware, having received legal advice, that he would need to carry out a title search to make sure the property was not subject to asset forfeiture proceedings.

47. A local broker showed Mr. Seda a lot that was adjacent to the Las Palmas highway, the main thoroughfare that traversed the area and connected the José María Cordova International Airport to the city of Medellín. The large lot, up to this point used only for raising cattle, was owned by La Palma Argentina SAS, a local cattle ranching company. Mr. Seda had a unique vision that would dramatically increase the value of the property, and shared that vision with the Business Manager of La Palma Argentina. La Palma Argentina recognized that it stood to gain from partnering with Mr. Seda by selling him the property, in phases, thereby enabling La Palma Argentina to earn a significant financial gain on the property.

48. After initial due diligence, Mr. Seda learned that, upon purchasing the land in October 2007, La Palma Argentina had obtained a confirmation from the National Unit for Anti-Money Laundering and Asset Forfeiture of the Office of the *Fiscalía General de la Nación* that the title was clear of any proceedings, and shared this document with Mr. Seda.⁴⁵ The *Fiscalía's* certification gave Mr. Seda the assurance necessary to proceed with negotiations for the property.

49. At this time, Newport also undertook the process of establishing the “project entitlements,” that is, 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,

⁴⁵ C-27, Letter from the Office of the Attorney General to La Palma Argentina dated 30 October 2007 (certifying clean title of Meritage lot).

regional and national officials to determine all permitting and licensing requirements and meetings with engineers and architects to determine the suitability of the property for the development planned. As noted above, Mr. Seda also inquired about the then-current titleholder to the property, La Palma Argentina. After the expenditure of significant time and money, Mr. Seda determined that the lot satisfied his selection criteria of location, size, environmental attributes, ownership, price and neighboring projects.

50. On November 1, 2012, Royal Realty reached an agreement on contract terms with La Palma Argentina, and signed a commitment to purchase agreement. Under the agreement, Royal Realty would make payments to La Palma Argentina for the purchase price over time as the project progressed through the stages of development. Mr. Seda identified Fiduciaria Corficolombiana (“Corficolombiana”), one of the most prominent fiduciaries in Colombia, to act as the fiduciary for the project.

51. Because of the historical absence of long-term commercial financing and title insurance in Colombia, this kind of arrangement – namely, contractual obligations between a purchaser and a seller with the involvement of a fiduciary – was and is typical for property development in Colombia. Arrangements whereby a seller (such as La Palma Argentina) is willing to accept payment over time from a buyer (such as Newport) substitutes for the kind of commercial financing that is readily available in sophisticated economies like the United States.

52. The role of the fiduciary is critical to ensuring that each party involved in the development process meets their obligations. The fiduciary accepts the property into a trust (the *fideicomiso*), and also accepts in trust the revenues received from project sales (*e.g.*, in this case, down payments and monthly payments made by purchasers of residential and commercial units).⁴⁶ As each predetermined phase of the project reaches the predetermined “point of equilibrium,” (which involves meeting pre-agreed targets such as conducting required studies, securing licenses, meeting sales targets and obtaining financing), certified by the fiduciary, the fiduciary then makes payments out of the trust to the seller – and importantly, to the construction contractor to enable work on the project to continue. In the meantime, as was the case here, the

⁴⁶ See C-28, Fiduciaria Corficolombiana Administration and Payment Contract dated 17 October 2013 and Amendments; C-29, Fiduciaria Corficolombiana Asset Custody Agreement dated 25 November 2014 and Amendment.

fiduciary (Corficolombiana) held title to the real estate asset in the trust, subject to rights possessed by the purchaser (Newport) under the commitment to purchase and commercial trust administration agreements, and title was to be transferred (to unit purchasers) upon successful completion of the project.⁴⁷

53. This process is legally mandatory in Colombia, and fiduciaries are highly regulated by the Government. Like other forms of commercial financing, the system works so long as the project continues to develop as planned, and revenue through sales, loans, and investment progresses in tandem with the actual physical development of the project to completion. If the project is interrupted – specifically, if it is sequestered and confiscated mid-stream – the financing edifice collapses with dire consequences for the developer and the investors.

54. Before Corficolombiana agreed to act as the fiduciary for this project, it required a formal title search by a third party in order to ensure that the title to the property was clear.

Corficolombiana recommended the prominent law firm of Otero & Palacio to undertake this work. Otero & Palacio was 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. Their 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 sanction matches.⁴⁸

55. Given the size and value of the property, Corficolombiana also advised Newport that, before establishing the trust Corficolombiana would need to submit a petition to the Colombian *Fiscalía’s Extinción de Dominio* Unit requesting whether there was any negative information or investigations or legal proceedings against any of the prior title holders. This petition was submitted by Corficolombiana as the fiduciary to the *Fiscalía* on August 22, 2013 and explained the petition was being made in connection with a real estate negotiation to ensure the asset was

⁴⁷ The contractual relationships pursuant to the commitment to purchase agreement, between La Palma Argentina and Newport, and the trust agreements, between Corficolombiana, Newport and La Palma Argentina, will be described in detail in the Statement of Claim. All three entities were interested parties in the Meritage project and affected by the Government’s actions.

⁴⁸ See C-30, Otero & Palacio Title Study dated 7 March 2013 and Supplement dated 23 July 2013.

not utilized in an asset laundering or terrorism financing operation.⁴⁹ 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:⁵⁰

Con la finalidad de dar respuesta a la solicitud de la referencia, me permito manifestar lo siguiente:

Que consultado el sistema de información consolidado interno que administra esta unidad **A LA FECHA NO** aparece registro de las personas naturales y jurídicas que se relacionan a continuación:

...

Inmueble identificado con folio de matrícula 001-930485.	No aparece relacionado en el sistema de información
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56. With the title record cleared of negative information about prior titleholders and investigation by the *Fiscalía*, Newport agreed to a fiduciary contract with Corficolombiana in October 2013, and the Meritage property was transferred to the trusteeship of Corficolombiana.⁵¹

57. In accordance with its internal compliance procedures and its independent legal obligations as a financial institution, Corficolombiana separately undertook, on October 22, 2013, the tasks of searching databases once again to identify any possible criminal connections with the Meritage property, including the OFAC SDN list and U.N. 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.⁵²

⁴⁹ C-31, Petition for Information from Fiduciaria Corficolombiana to The Office of the Attorney General Asset Forfeiture Unit and Anti-Asset Laundering dated 22 August 2013, p. 1 ("*La Compañía que represent, en ejercicio de una debida diligencia, realiza esta consulta a la Unidad a su cargo, de manera previa a la negociación de este inmueble que puede ser de su interés, con el exclusive propósito de cumplir con elementales medidas de prevención cuidándose de no ser utilizada en una operación de Lavado de Activos o Financiación del Terrorismo.*").

⁵⁰ C-32, Petition Response from The Office of the Attorney General Asset Forfeiture and Anti-Asset Laundering Unit to Fiduciaria Corficolombiana dated 9 September 2013 ("*Fiscalía's Clean Title Certification*").

⁵¹ See C-29, Fiduciaria Corficolombiana Asset Custody Agreement dated 25 November 2014 and Amendment.

⁵² See C-33, Petition Response from Fiduciaria Corficolombiana to Newport SAS dated 26 July 2017.

58. Based on all of these actions, and assured by the September 9, 2013 letter of the Head of the *Extinción de Dominio* Unit that the title to the Meritage property was unencumbered by any criminal activity, Mr. Seda initiated sales of the Meritage project at the end of 2013. He also identified and secured foreign and Colombian investors who would commit capital necessary to realize the initial phases of the project, including investors from 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 the construction of the project.⁵³

59. 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 on the construction and development of the project at this time.

60. Despite that Mr. Seda and Royal Realty completed all necessary due diligence, relied on government representations and obtained all necessary permits and licenses to build a visionary hotel/residential complex, Claimants were abruptly and unjustifiably deprived of their investments by the *Fiscalía*'s misconduct.

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

61. In the Spring of 2016, construction of the Meritage was well underway, all phase 1 units had been sold, large bank financing had been secured from Banco de Bogotá and the project was advancing as carefully planned. Unbeknownst to Mr. Seda, in April 2016, the *Fiscalía* opened an *extinción de dominio* investigation of the property on which the Meritage project was being built based upon allegations received from a former indicted drug dealer.

62. Mr. Ivan Lopez Vanegas ("Mr. Lopez") was indicted in the United States and extradited from Colombia in 2003 to face criminal charges in U.S. federal district court. After returning to Colombia in August 2007, Mr. Lopez approached the *Fiscalía* in July 2014 – seven years later and after sales and construction of the Meritage project were underway – and claimed that he

⁵³ C-34, Fiduciaria Corficolombiana Presale Agreement dated 17 October 2013.

owned the land on which the Meritage was being built. The *Fiscalía* largely ignored Mr. Lopez's claims, which had been debunked as false, until the Spring of 2016 when it commenced its arbitrary action against the Claimants' investment in the Meritage.

63. In the first half of 2014, as the Meritage project was in full swing, Mr. Lopez approached Mr. Seda on multiple occasions claiming he was the alleged owner of the land where the Meritage was being developed.⁵⁴ Consistent with his criminal past, Mr. Lopez attempted to extort money from Mr. Seda by: (1) demanding that if he did not pay Mr. Lopez \$40 million pesos, the *Fiscalía's* Asset Forfeiture Unit would embargo the property; (2) threatening that he had the necessary contacts at the *Fiscalía's* Asset Forfeiture Unit to take the Meritage out of business and damage the project, investors, and risk the financing; and (3) threatening his integrity. Mr. Seda, however, did not cower to Mr. Lopez's attempted extortion and proceeded with the project.

64. On July 3, 2014, Mr. Lopez followed through with his extortive threats and filed a specious criminal complaint. On the same day, he was interviewed by the Medellín *Fiscalía* specialized in organized crime ("Medellín *Fiscalía*"). Mr. Lopez claimed that he owned and lost title to the Meritage property through illicit activities of drug traffickers over ten years prior. Specifically, Mr. Lopez alleged: (1) he bought the Meritage property in 1994 through a partnership; (2) in 2004, while he was incarcerated in Miami on drug trafficking charges, later dismissed on appeal,⁵⁵ Hector Javier Restrepo Santamaria (aka "*Perra Loca*") kidnapped his son Sebastian Lopez Betancur and forced Mr. Lopez to sign over the property to "*Perra Loca*"; and (3) "*Perra Loca*" then made death threats against Mr. Lopez and his family, telling Mr. Lopez not to initiate any legal proceedings for return of the property. As a result of these claims, the Medellín *Fiscalía* began investigating Mr. Lopez's complaint as an organized crime matter.

65. On April 18, 2016, two years after Mr. Lopez's initial attempted extortion on Mr. Seda, the *Fiscalía's* Asset Forfeiture Unit, unbeknownst to Claimants, ordered *Fiscalía* Office No. 44

⁵⁴ See C-35, Declaration of Angel Seda dated 28 February 2017, submitted on record of *Fiscalía's* Asset Forfeiture Proceeding, File No. 20, p. 8.

⁵⁵ Although the drug trafficking charges were dismissed on appeal in 2007, the basis was the lack of intent to transport drugs to the U.S. because Lopez instead intended to transport drugs to Europe. See C-36, *United States v. Lopez-Vanegas*, 493 F.3d 1305, 1311-1313 (11th Cir. 2007). It is undisputed Mr. Lopez was a drug trafficker, and evidence presented at his trial in the U.S. included recorded conversations regarding transporting drugs to Paris, France, and drug money owed to Mr. Lopez. *Id.*

(“*Fiscalía* No. 44”)⁵⁶ to investigate the properties currently and formerly owned by Mr. Lopez.⁵⁷ The *Fiscalía* No. 44, however, based on information and belief, failed to investigate all such properties and merely focused on the Meritage property.

66. On May 6, 2016, Mr. Lopez filed an action for constitutional protection (*Acción de Tutela*) against the Medellín *Fiscalía* No. 24, Fiduciaria Corficolombiana, and Royal Property Group SAS,⁵⁸ alleging that the Medellín *Fiscalía* were taking too long to act on his criminal complaint and seeking return of the Meritage property.⁵⁹ He later added as parties to the action Colombia’s National Unit of Money Laundering and Asset Forfeiture, and *Fiscalía* No. 37 Specialized in Asset Forfeiture (“*Fiscalía* No. 37”), Royal Royalty SAS, and Newport SAS.

67. On May 17, 2016, Royal Property filed a response to the *tutela* filed by Mr. Lopez, clarifying that Royal Realty SAS was the entity in charge of promoting the Meritage project, while Newport was the buyer of the Meritage property and in charge of developing the project.⁶⁰ Royal Realty also emphasized the companies’ status as bona fide purchasers, and explained that these entities were unaware of the allegations Mr. Lopez made regarding how he lost the property, and further noted that his *tutela* raised no allegations of criminal activities against them.

68. On May 23, 2016, the Bogotá Superior Court, Penal Division, issued a decision on Lopez’s *tutela* petition.⁶¹ Among other things, the Court ordered the Medellín *Fiscalía* No. 24, which only focused on organized crime and not *Extinción de Dominio*, to decide within fifteen days whether to proceed or archive the investigation of the property.

69. On July 22, 2016, *Fiscalía* No. 44 issued a resolution tracing the property’s title chain, concluding that the original sale from, allegedly, Mr. Lopez’s company to Hector Javier Restrepo Santamaria likely stemmed from a criminal act. The *Fiscalía* took the extraordinary step of

⁵⁶ The *Fiscalía* offices are numbered for organizational purposes.

⁵⁷ See C-23, Attorney General Asset Forfeiture Unit, *Resolución de Fijación de la Pretensión* dated 25 January 2017 (“Resolution to Proceed with Claim”), p. 1-2.

⁵⁸ Royal Property Group SAS is an inactive company.

⁵⁹ C-37, Lopez *Acción de Tutela* dated 6 May 2016.

⁶⁰ C-38, Newport’s Response to Lopez *Acción de Tutela* dated 17 May 2016.

⁶¹ C-39, Constitutional Court Judgment Lopez *Acción de Tutela* dated 23 May 2016.

ordering the imposition of precautionary measures (*medidas cautelares*) on the Meritage property while its investigation was still ongoing, without having any evidence rebutting the presumption of good faith afforded to Newport and the Meritage unit buyers and on the basis of the testimony of an indicted drug trafficker.⁶²

70. 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. Until that date, the affected parties received no information from the *Fiscalía* about the asset forfeiture proceeding or the basis on which the ensuing precautionary measures had been imposed. Shortly thereafter, Corficolombiana's counsel went to the Extinction Office to demand a copy of the resolution of precautionary measures.⁶³ However, the *Fiscalía* refused to provide a copy of the resolution accompanying the precautionary measures.⁶⁴

71. Implementation of the July 22, 2016 precautionary measures, through the freezing and sequestration order of August 3, 2016, dealt a serious blow to the Meritage project. On the basis of these measures, 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.⁶⁵

72. The embargo and sequestration order also triggered deep financial harm. On August 4, 2016, the morning after the *Fiscalía* posted the freezing and sequestration order on the Meritage project, the *Fiscalía*'s actions received national press coverage. Newspaper articles about the confiscation of the Meritage property were published in *El Espectador*, *El Tiempo* and *El Colombiano*, the largest newspapers of the country,⁶⁶ and financial institutions quickly took 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

⁶² See C-22, Attorney General Asset Forfeiture Unit, *Resolución de Medidas Cautelares en Fase Inicial* dated 22 July 2016 (“Resolution of Precautionary Measures”).

⁶³ C-21, Letter from Fiduciaria Corficolombiana to The Office of the Attorney General Asset Forfeiture Unit dated 18 August 2016

⁶⁴ See C-40, Letter from The Office of the Attorney General Asset Forfeiture Unit to Fiduciaria Corficolombiana dated 21 September 2016.

⁶⁵ C-41, Letter from Newport to Mensula Construction dated 8 August 2016 (requesting suspension of construction).

⁶⁶ See C-42, Colombian Press Articles in August 2016 on Imposition of Precautionary Measures.

construction credit to Newport and 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 and confident that the *Fiscalía* would rescind its investigation in light of its prior certifications that the property title was clean, 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.

73. As a result of the *Fiscalía*'s actions, all Royal Realty projects were thus considered tainted, such that banks and lenders refused to extend necessary financing. In addition to the Meritage, Royal Realty's other projects were similarly affected while in various stages of development, as described in subsection I, below.

E. Colombia Continues to Mistreat the Claimants

74. In an attempt to mitigate the irreparable harm imposed by the precautionary measures in violation of Colombian law and the TPA, on September 26, 2016, Corficolombiana, as the fiduciary of the property, filed with the First Penal Court of Antioquia specialized in *Extinción de Dominio*⁶⁷ a request for legality control ("*control de legalidad*") under Article 112 of Law No. 1708, seeking to set aside the precautionary measures.⁶⁸

75. On October 20, 2016, the First Penal Court denied the legality control petition.⁶⁹ Among other things, the Court held, in blatant contradiction of the law itself,⁷⁰ that Corficolombiana's evidence and argument on the issue of protecting bona fide purchasers without fault were irrelevant. On November 8, 2016, Corficolombiana appealed⁷¹ the above decision to the Superior Tribunal of Bogotá, *Extinción de Dominio* Division.⁷² On February 21, 2017, the

⁶⁷ *Juzgado Primero Penal del Circuito Especializado de Extinción de Dominio de Antioquia.*

⁶⁸ See **C-43**, Fiduciaria Corficolombiana's *Control de Legalidad* Petition dated 26 September 2016 ("Corficolombiana's Legality Control").

⁶⁹ See **C-44**, Sentence by Asset Forfeiture Court on *Control de Legalidad* dated 20 October 2016.

⁷⁰ **C-3**, Law No. 1708, art. 87 makes it clear that the rights of bona fide purchasers without fault must be protected throughout the entire process.

⁷¹ **C-45**, Fiduciaria Corficolombiana Appeal to First Instance Decision of Legality Control dated 26 October 2016 (date of document is 26 October 2016, not 2017 as reflected in the document).

⁷² There was no automatic stay of the *Extinción de Dominio* process pending appeal because of its interlocutory nature. See **C-3**, Law No 1708, art. 65(4) and its amendment under **C-46**, Law No. 1849, 2017, (not providing a stay for appeals based on legality control).

Superior Tribunal upheld the decision and rationale of the First Penal Court. The embargo and sequestration measures remained in place, as a result of the appellate decision, and the initial phase of the *Extinción de Dominio* action went forward.⁷³

76. On December 7, 2016, in a further attempt to mitigate the substantial harm done under Colombian law and the TPA, Newport submitted a petition to *Fiscalía* No. 44, pursuant to Article 124 of Law No. 1708, requesting that it dismiss the proceeding and lift the precautionary measures on the basis of evidence showing that Newport was a bona fide third-party without fault.⁷⁴ On December 14, 2016 Newport supplemented its petition with additional evidence supporting Newport's status as a bona fide purchaser without fault. However, *Fiscalía* No. 44 still ignored Newport's petition notwithstanding such additional evidence.⁷⁵

77. On January 23, 2017, Newport submitted yet another petition⁷⁶ to *Fiscalía* No. 44 seeking to set aside the precautionary measures on the grounds that more than six months had elapsed since their imposition.⁷⁷ Under Law No. 1708, precautionary measures can only be imposed over a six-month period that cannot be extended; before this deadline, the *Fiscalía* must either issue a resolution "setting" the case to permit it to go forward, or it must dismiss or "shelve" (*archivar*) the case. *Fiscalía* No. 44 ignored these three petitions and failed to respond, despite having a duty to do so, as the Constitutional Court confirmed a month later.

78. Instead of exercising their obligations under the law, on January 25, 2017, the *Fiscalía* belatedly and publicly issued its resolution to proceed with the asset forfeiture claim (*Resolución de Fijación de la Pretensión*). In its resolution, *Fiscalía* No. 44 alleged that the Meritage property's chain of title was tainted by illicit activities and irregularities based on the following: (1) claims by Lopez that the property was taken from him in 2004 through the kidnapping of his son, who had a power of attorney, while Lopez was incarcerated in Miami on charges that were

⁷³ See C-47, Appellate Decision on *Control de Legalidad* of Superior Tribunal of Bogotá Asset Forfeiture Division, dated 21 February 2017.

⁷⁴ C-48, Newport's Petition for Dismissal of the Proceeding and Lifting of Precautionary Measures dated 7 December 2016.

⁷⁵ C-49, Newport's Petition for Dismissal of the Proceeding and Lifting of Precautionary Measures dated 14 December 2016.

⁷⁶ C-50, Newport's Petition for Dismissal of the Proceeding and Liftmen of Precautionary Measures dated 23 January 2017.

⁷⁷ See C-3, Law No. 1708, art. 89.

later dismissed on appeal; (2) the chain of title includes individuals who lacked the financial means to buy the property; (3) there were various irregularities in certain title documents, including inconsistent signatures and dates; and (4) Lopez was incarcerated in Miami for drug trafficking.⁷⁸

79. *Fiscalía* No. 44 also alleged in the resolution that Corficolombiana did not properly conduct its due diligence because it would otherwise have discovered the identified illicit activities and irregularities. In particular, the *Fiscalía* claimed Corficolombiana should have searched historical public information, because it then would have discovered that Lopez was the legal representative of Sierralta Lopez y CIA, the entity that purchased the property in 1994.⁷⁹ Again, and critically, the resolution completely ignored the question of good faith, and ignored the evidence provided by Newport demonstrating that it was a bona fide buyer. There was also no requirement for Corficolombiana to conduct a title search essentially going back twenty years, especially where the statute of limitations for pursuing real property ownership claims in civil actions is ten years.⁸⁰

80. In light of the *Fiscalía*'s failure to address Newport's three petitions challenging the imposition of the measures and showing of evidence of its good faith, on February 10, 2017, 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 joined Newport's *tutela* action against the *Fiscalía*.⁸¹ The Superior Court later transferred the matter to the Colombian Supreme Court Federal Court of Appeals. On February 28, 2017, the Appellate Court ruled on Newport's claims. Consistent with the nature of a *tutela* – a judicial writ to protect constitutional rights, not to examine the merits of the underlying claim – the Court focused on whether Claimants' constitutional rights were violated by the *Fiscalía*'s investigation and prosecution of the Asset Forfeiture action. The Appellate Court broadly accepted Claimants' position, and declared that the *Fiscalía* "violat[e]d the plaintiff's basic right to due process – the

⁷⁸ C-23, Attorney General Asset Forfeiture Unit, *Resolución de Fijación de la Pretensión* dated 25 January 2017 ("Determination to Proceed with the Asset Forfeiture Claim").

⁷⁹ The *Fiscalía* did not raise these arguments in its decision to issue the precautionary measures. See C-22, Attorney General Asset Forfeiture Unit, *Resolución de Medidas Cautelares en Fase Inicial* dated 22 July 2016.

⁸⁰ See C-51, Law No. 793, 2002, art. 1.

⁸¹ See C-52, Newport *Acción de Tutela* dated 17 February 2017.

right of petition, since it has not received any answer on the merits independent of the admissibility of its claims.”⁸²

81. Rather than rejecting the *Fiscalía*'s resolution to proceed with the asset forfeiture claim, the Appellate 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* of December 7, 2016, December 14, 2016 and January 23, 2017, that they (wherein Newport and Corficolombiana) demonstrated they were “blameless third part[ies] acting in good faith” that should be exempt under the Asset Forfeiture law.

82. The *Fiscalía* ignored the instructions in the Appellate Court's order. On March 4, 2017, the *Fiscalía* sent Newport a provisional resolution that did not respond to Newport's petition; that is, it still failed to address the requirements of the law and address the issue and presumption that Newport was a third party acting in good faith.⁸³ On March 27, 2017, Newport responded to the *Fiscalía*'s provisional resolution, arguing, among other things, the *Fiscalía* failed to rebut Newport's presumption of good faith and that the property was legitimately acquired by Newport.⁸⁴

83. The *Fiscalía*'s subsequent actions confirmed the demise of the project: on April 5, 2017, the *Fiscalía* filed with the Specialized Asset Forfeiture Court its *Requerimiento de Extinción*, namely, its formal request to the Court to commence the asset forfeiture proceeding.⁸⁵ The *Requerimiento* regurgitated the same arguments raised in its January 25, 2017 resolution, thereby “fixing” the resolution into a formal petition to the Court to proceed with the Asset Forfeiture action. These actions further contributed to the destruction of the Meritage project and contributed to the destruction of all of the ongoing projects that were under development in Colombia by Claimants.

⁸² C-53, Decision on Newport *Acción de Tutela* by the Supreme Court of Justice dated 28 February 2018, p. 18 (“...vulnera el derecho fundamental al debido proceso – postulación – de la demandante, en tanto no ha recibido una respuesta de fondo independientemente de la satisfacción de sus pretensiones.”)

⁸³ See C-54, Letter from The Office of the Attorney General Asset Forfeiture Unit to Newport dated 4 March 2017.

⁸⁴ See C-55, Letter from Newport to The Office of the Attorney General Asset Forfeiture Unit dated 27 March 2017.

⁸⁵ C-56, Forfeiture Petition dated 5 April 2017.

F. Colombian Courts Reinforced the Abusive Application of Law No. 1708

84. When a *requerimiento*, or forfeiture petition, is filed, the receiving court is required to confirm and formally accept its jurisdiction over the *Extinción de Dominio* action, a phase known as the *avocamiento* phase.⁸⁶ On August 17, 2017, the Antioquia District Court Specialized in Asset Forfeiture rendered its *avocamiento* order.⁸⁷ In it the Court surprisingly ruled that Newport did not have a legitimate interest in the proceeding and lacked standing to participate.⁸⁸ However, under article 30 of Law 1708, Newport’s standing is clear. Article 30 determines standing by defining “affected parties” as any natural or legal person with tangible or intangible interests in a given property or asset, including beneficiaries.⁸⁹ Adding to the arbitrariness of this decision is the fact that the Court accepted La Palma Argentina as an affected party, even though La Palma Argentina and Newport both had rights over the property.⁹⁰

85. The Asset Forfeiture Court also strongly recommended to the “beneficiaries”—namely, purchasers of units in the Meritage development—that they file criminal fraud complaints⁹¹ against Newport for “pretending” to be a trustor under the trust (*fideicomiso*).⁹² Newport filed an

⁸⁶ The resulting order is an act of embodiment (*acto de sustantación*). See C-3, Law No. 1708, art. 137.

⁸⁷ C-57, Asset Forfeiture Court *Avocamiento* Order dated 17 August 2017.

⁸⁸ C-57, Asset Forfeiture Court *Avocamiento* Order dated 17 August 2017.

⁸⁹ C-3, Law 1708, art. 30. Article 30 states: **Affected persons.** Within asset forfeiture proceedings, any person, natural or legal, is considered an affected person who claims to be the holder of rights over any assets that are covered by the forfeiture action:

1. In the case of physical assets, whether movable or immovable, any person, whether an individual or a legal person, who claims to be a titleholder of the assets covered by the forfeiture action shall be considered an affected person.

2. In the case of personal or credit rights, any person, whether an individual or a legal person, who claims to be entitled to claim fulfillment of the respective obligation shall be considered an affected person.

3. In respect of securities, any person, whether an individual or a legal person, who claims to be the legitimate holder of these assets or a beneficiary with a certain right shall be considered an affected person.

4. Finally, in terms of participation rights in the capital stock of a company, any person, whether an individual or a legal person, who claims to be the holder of any real property right regarding a part or the entirety of the stocks, equity interests, equity rights, or shares which are subject to asset forfeiture shall be considered an affected person. *Id.*

⁹⁰ C-57, Asset Forfeiture Court *Avocamiento* Order dated 17 August 2017, p. 120 and p. 124.

⁹¹ Notably, pursuant to Article 67 of the Colombian Code of Criminal Procedure, judges are under a legal duty to report to the authorities any suspected criminal activity. Notwithstanding his incitement of Meritage unit buyers, the judge never reported Newport or any of its officers to the authorities. It should also be noted that, as discussed in the section that follows, the unit buyers have brought a local arbitration against Newport.

⁹² See C-57, Asset Forfeiture Court *Avocamiento* Order dated 17 August 2017, pp. 104-105.

appeal of the *avocamiento* order, which remained pending while the *Fiscalía* proceeded with the *Requerimiento* phase in which it petitioned to the court to proceed with the asset forfeiture. Newport appealed on the grounds that: (1) it was a bona fide third-party purchaser; (2) the judge erred in ruling Newport lacked standing; (3) the judge erred in issuing such a ruling during the jurisdiction acceptance phase, *i.e.*, *avocamiento*, when he could only have done so after the notification phase under Article 141 of Law No. 1708; and (4) the decision was patently erroneous because the court failed to recognize the broad scope under article 30 of the definition of “affected parties” and selectively acknowledged the standing of La Palma Argentina, an entity in the same situation as Newport. Newport argued that the decision amounted to a violation of Newport’s fundamental constitutional rights to due process, equality, right to defend itself, and access to administration of justice.⁹³ These gross errors also violate the TPA.

86. On May 7, 2018, the Antioquia District Court Specialized Asset Forfeiture rejected the *Fiscalía*’s asset forfeiture petition for procedural deficiencies under Article 132 of Law No. 1708 of 2014 that deprived interested parties’ fundamental due process rights.⁹⁴ The Court found that the *Fiscalía*’s petition lacked, among other required procedural elements, detailed information about the specific assets involved in the extinction of ownership proceeding, thereby depriving interested parties from adequate notice of the assets subject to forfeiture.⁹⁵

87. As the Asset Forfeiture Court explained, identification of the subject assets was of vital importance for any eventual judgment ordering the extinction of ownership. The Court expressly recognized that transparency in an asset forfeiture proceeding was of critical importance because the proceeding may result in the eradication of the fundamental right of ownership of the assets, and the eventual judgment acquires legal force of *res judicata*. Thus, by the Asset Forfeiture Court’s own words, the *Fiscalía* breached Claimants’ fundamental due process rights and their rights under the law to their property.⁹⁶ Notwithstanding this decision, the court did not order lifting of the precautionary measures.

⁹³ The appeal was pending before the Superior Court of Bogotá, but was withdrawn before filing this Request for Arbitration in accordance with the waiver requirements under TPA art. 10.18(2).

⁹⁴ C-58, Decision Asset Forfeiture Court Rejection of First Forfeiture Petition dated 7 May 2018.

⁹⁵ C-58, Decision Asset Forfeiture Court Rejection of First Forfeiture Petition dated 7 May 2018, p. 3.

⁹⁶ C-58, Decision Asset Forfeiture Court Rejection of First Forfeiture Petition dated 7 May 2018, p. 22.

88. On May 25, 2018, *Fiscalía* No. 44 re-filed the corrected *Requerimiento*, and it was reassigned to the same judge at the Asset Forfeiture Court.⁹⁷ The *Fiscalía*'s only revision was its description and identification of the property; everything else mirrored its original *Requerimiento* of April 5, 2017. On June 18, 2018, the Court accepted the corrected *Requerimiento* and initiated the notification phase. On October 8, 2018, Newport filed a response to the corrected *Requerimiento* supported by substantial evidence of its status as a bona fide purchaser without fault.

89. On December 12, 2018, the Specialized Court ruled on the admissibility of the *Fiscalía*'s corrected asset forfeiture petition (*Requerimiento*).⁹⁸ Once again, the Court analyzed whether the *Requerimiento* satisfied the legal requirements set forth in Article 132 of Law No. 1708 of 2014, and once again the Court concluded that the first requirement – identification and location of the assets subject to forfeiture – was not met. The *Fiscalía*'s omission of cadastral information in the forfeiture petition about each subdivision of the principal asset made adequate notice to interested parties impossible. Again, notwithstanding the legal deficiency of the *Fiscalía*'s corrected asset forfeiture petition, the Asset Forfeiture Court left the precautionary measures on the property in place, in violation of Law No. 1708, international law, and the TPA.⁹⁹ As of the date of this Notice, the *Fiscalía* had not yet satisfied the requirements for the Court to proceed with the case.¹⁰⁰

90. In the meantime, and notwithstanding Claimants' Notice of Intent to Arbitrate dated August 17, 2018, and the onset of the TPA's 90-day cooling off period, on or about August 24, 2018, the Colombian Company of Special Assets (*Sociedad de Activos Especiales*) ("SAE") stewarded an opaque process for early sale of the Meritage assets, seemingly intent on getting rid of the assets as quickly as possible. Claimants learned in mid-January 2019 that the SAE had concluded its valuation of the assets. It thus appears that the SAE is poised to sell the assets

⁹⁷ See C-59, The Office of the Attorney General Asset Forfeiture Unit, *Requerimiento de Extinción* dated 25 May 2018 ("Second Asset Forfeiture Petition").

⁹⁸ C-59, The Office of the Attorney General Asset Forfeiture Unit, *Requerimiento de Extinción* dated 25 May 2018 ("Second Asset Forfeiture Petition"); C-60, Decision Asset Forfeiture Court Rejection of Second Forfeiture Petition dated 12 December 2018.

⁹⁹ C-60, Decision Asset Forfeiture Court Rejection of Second Forfeiture Petition dated 12 December 2018.

¹⁰⁰ See C-58, Decision Asset Forfeiture Court Rejection of First Forfeiture Petition dated 7 May 2018; C-60, Decision Asset Forfeiture Court Rejection of Second Forfeiture Petition dated 12 December 2018.

through this secretive process even before the courts have determined that the *Fiscalía* has met its requirements for *extinción de dominio* under the law.¹⁰¹

G. Local Arbitration By Meritage Unit Buyers

91. In addition to the bank and creditor claims noted above, as a result of the *Extinción de Dominio* process, Newport has faced numerous other commercial disputes arising from its inability to meet contractual commitments. Significantly, Newport has had to defend itself against a domestic arbitration claim, commenced on August 1, 2017, before the Medellín Chamber of Commerce, which was filed by a group of purchasers of commercial and residential units in the Meritage project.¹⁰² The claimants seek restitution of the amounts paid by them for the units, plus penalties for Newport's alleged failure to deliver finished units by the contractual deadline. The Government's actions have made it impossible for Newport's fulfillment of contractual commitments that directly arise from and are part and parcel of its investment.

92. Newport has expended, and continues to expend, substantial resources in defending its interests in this high-stakes arbitration, which is ongoing as of the date of this Notice, and the costs and damages incurred in this process, and all other legal processes and liability resulting from the Governments' actions form part of the Claimants' damages claim in this arbitration.

H. Status of Claimants' Other Investment Projects

93. Similarly, the other projects under development by Mr. Seda and Royal Realty were stopped in place as a result of the Government's illegal actions in the *Extinción de Dominio* process. Word rapidly spread among banks, business partners and investors, that the *Fiscalía* was pursuing an *extinción de dominio* action against the Meritage property, which had immediately tainted Mr. Seda and Royal Property Group, as the group of project companies were collectively called. In Colombia, an *extinción de dominio* action signifies association with the drug mafia and, whether that association is real or merely perceived, severe stigma is immediate, widespread and operates as a barrier to business in Colombia and beyond. As a result of the Government's actions, all of the goodwill and reputation that Mr. Seda and Royal Property Group had built through their welcome success in creating fresh and desirable residential,

¹⁰¹ C-61, Letter from Sociedad de Activos Especiales to V. Alonso received 20 December 2018.

¹⁰² C-62, Demand for Arbitration, *Pinturas Prime S.A. et al. v. Fiduciaria Corficolombiana S.A., Meritage Trust and Newport S.A.S.*, Medellín Chamber of Commerce dated 1 August 2017.

commercial and hospitality properties in Colombia was destroyed. One by one, large national banks, such as Banco de Bogotá and Banco Colpatria, which had extended financing to Royal Property Group recalled their loans. Mr. Seda's private business partners with which he had developed a roster of other projects, described below, cutoff ties with Mr. Seda. The status of these projects at the time of the events giving rise to this claim are as follows.

(i) Luxé By The Charlee - Guatapé

94. The Luxé is a mixed residential and hotel property located in Antioquia, approximately two hours travel from the city of Medellín. The investment was made in three project phases, two of which were 100% complete and the third, which is comprised of a hotel, was approximately 71% complete at the time of the *Fiscalía's* action.

95. 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 was to include 116 guest rooms, a pool, a beachfront club, three restaurants, a convention center, tennis courts, spa and a gym, among other amenities.¹⁰³

(ii) Prado Tolima

96. Prado Tolima was a project with planned development of a condominium hotel, commercial development and infrastructure for boats and small airplanes.¹⁰⁴ Prado is a reservoir created by the Represa de Prado Dam on the Prado river that is located in the department of Tolima. The large Prado reservoir spans 40 kilometers and offers a consistently warm climate within a three-hour drive from the capital city of Bogotá, an attractive feature. Visitors come to Prado for a host of water activities and to enjoy a peaceful lake surrounded by mountains. Around 2014, Mr. Seda had identified Prado as ripe for investment: property values were increasing, economies in the regional cities were growing and security in the area had improved. 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 partner with the local municipality to pay for and implement their new planning and zoning ordinance.

¹⁰³ See C-63, Luxe by The Charlee Planning Drawing.

¹⁰⁴ C-64, Prado Tolima Investment Fund Brochure.

97. 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 the mayor and city council members to tour the projects and explain exactly how the property would be constructed and developed. Mr. Seda had begun to identify investors in the Prado Tolima project.¹⁰⁵

(iii) Santa Fe de Antioquia

98. The Crystal Lakes property located in Santa Fe, Antioquia was planned to be a development property with residential units and villas, located on a 105 hectares parcel of land.¹⁰⁶ Santa Fe is a sunny, hot region less than two hours outside of Medellín that is a favorite place among the people of Medellín. Crystal Lakes would be unique because it featured waterfront views to the Cauca River all along the entire property. A unique blue lagoon would be added to the landscape for guests to swim and cool off from the heat. Topographical studies had been undertaken, and the project had been approved via the mayor's office for all projected construction.¹⁰⁷ 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.

(iv) Cartagena Tierra Bomba

99. Royal Realty had started an entitlement process for a new project on the island of Tierra Bomba in Cartagena, which included contracting attorneys, completing advanced design work, consulting with the local municipality, local planning director's office, and engaging the local protected minority population to secure their acceptance of the project.¹⁰⁸

100. In addition, Royal Realty had a valuable hotel operation and management agreement with a land owner that was cancelled as a result of the *Fiscalía's* imposition of the confiscation measures on Meritage. That land owner 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

¹⁰⁵ See C-64, Prado Tolima Investment Fund Brochure.

¹⁰⁶ See C-65, Santa Fe de Antioquia Land Use Certificate dated 9 May 2017.

¹⁰⁷ C-65, Santa Fe de Antioquia Land Use Certificate dated 9 May 2017.

¹⁰⁸ C-66, Presentation to Native Tierra Bomba Community.

of his property holdings. The land owner pursued Royal Realty in 2016 and asked Royal Realty to operate a hotel asset that was 50% constructed. After the *Fiscalía*'s actions, the business partner no longer wanted to be involved with Mr. Seda or his businesses in light of the reputational taint associated with the State's confiscation of the Meritage project.

(v) **450 Heights**

101. In the wake of Meritage's early success, Mr. Seda envisioned 450 Heights as a smaller, sister project near Medellín. Royal Realty invested approximately 12 months studying the land and performing land surveying studies. In 2015, Royal Realty negotiated purchase contracts with the sellers after paying deposits on the land, began more advanced studies, and moved the project into the advanced design phase and second round of fund raising.

I. **Colombia's Grossly Unjust and Arbitrary Application of its *Extinción de Dominio* Law**

102. It bears emphasis that Law No. 1708 of 2014 contains an express presumption of good faith "in all legal action or transaction related to the acquisition or use of the assets, as long as the titleholder proceeds in a diligent and prudent manner, without any fault."¹⁰⁹ In administering Law No. 1708, the *Fiscalía* must therefore rebut this presumption with actual evidence in order for the forfeiture to be lawfully executed. In doing so, the *Fiscalía* must uphold all fundamental guarantees under the law, set forth in Articles 1 to 14, which also include abiding by Colombia's obligations under international treaties¹¹⁰ consisting of, among others, due process¹¹¹ and the principle of objectivity and transparency.¹¹²

103. The retelling of the fate of the Meritage project at the hands of the *Fiscalía* demonstrates its consistent flouting of the basic principles and rules that underpin Colombia's *Extinción de Dominio* law. The record demonstrates a complete absence of the statutory and constitutional

¹⁰⁹ C-3, Law No. 1708, art. 7. C-5, Political Constitution, art. 83 ("las actuaciones de los particulares y de las autoridades públicas deberán ceñirse a los postulados de la Buena fe, la cual se presumirá en todas las gestiones que ellos adelanten ante estas.")

¹¹⁰ C-3, Law No 1708, art. 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 asset forfeiture shall be guaranteed and protected.")

¹¹¹ C-3, Law No. 1708, art. 5.

¹¹² C-3, Law No. 1708, art. 6.

mandate of good faith – both as a limitation on its power to pursue the forfeiture of the Meritage project, and as the mandatory guide to its own conduct. It is as if the *Fiscalía* was pre-determined to require the forfeiture of this property, and would not let the facts, in the form of Claimants’ evidence of its own good faith, or the legal process, get in its way.

104. The manner in which the *Fiscalía* based its investigation – on a hearsay, unfounded statement by an indicted, notorious drug trafficker – and ignored the information provided by Mr. Seda, not only would violate Law No. 1708, but is contrary to the United Nations Manual on *Extinción de Dominio* – a Manual that is entirely based upon Colombia’s Law No. 1708 of 2014.¹¹³ The U.N. Manual states clearly that not every piece of information that arrives before the *Fiscalía* should necessarily be relied upon as a legitimate basis for an *extinción de dominio* investigation. Rather, the U.N. Manual emphasizes that the investigation has to be based on reason, objectivity and probable cause “*en cuanto a la existencia de un soporte objetivo y probable que sustente un cuestionamiento serio...*” (insofar as an objective and probable basis exists to support a serious inquiry).¹¹⁴ The U.N. Manual (written in Spanish) states:

[N]ot all of the information that reaches the office of the prosecutor is sufficient to justify the initiation of an official asset forfeiture investigation, as the functional burden must adhere to the other requirements of objectivity, reasonableness, and substantiation as set forth by the Political Constitution (Article 250), insofar as an objective and probable basis exists to support a serious inquiry regarding the assets that are considered susceptible to forfeiture and that justify the rational use of investigative and operational resources, thus avoiding an increase in judicial congestion and the irrational use of scarce professional resources and materials on which investigative entities and judicial administration rely.¹¹⁵

Moreover it states that:

Prosecuting an asset forfeiture case demands an enormous amount of seriousness and responsibility by the State, as according to the new code, not all information, anonymous tips, reports of suspicious behavior, publications in a risk list, or requests by citizens or other public authorities, among other possible sources, can be considered, in and of themselves, a valid and legitimate argument to open a case at the initial stage, unless previously verified by specialized police in accordance with the special powers granted by Article 161 of Colombia’s Asset

¹¹³ See C-4, U.N. Manual.

¹¹⁴ C-4, U.N. Manual, p. 59.

¹¹⁵ C-4, U.N. Manual, p. 60.

Forfeiture Law, or unless the information has enough objective and well-based support to justify initiating an investigation into the [asset].¹¹⁶

105. The report explains further that the *Fiscalía* has both the power and a duty to “reject a complaint, official or anonymous, if lacking credibility and substantiation (Article 124 C.E.), or abstain from initiating action during the initial phase and remitting the respective notice or report to the judicial police so they, in accordance with Article 161 of Colombia’s Asset Forfeiture Law, can perform the verification and investigation needed to fulfill the requirements of seriousness and sound bases mentioned above.”¹¹⁷ A report by a previously indicted drug trafficker based on his allegations of an alleged kidnapping of his son by a criminal organization over ten years ago, a kidnapping that the U.S. DOJ attaché states never happened¹¹⁸ is hardly a credible report that could justify the blocking of the Meritage project and the refusal to afford Mr. Seda the due process rights of a bona fide purchaser.

106. In addition, as noted above, the *Fiscalía* took the extraordinary step of ordering the imposition of precautionary measures on the Meritage property prior to the conclusion of its investigation. The law is clear that the imposition of precautionary measures prior to the conclusion of the *Fiscalía*’s investigation – that is, prior to the preliminary setting of the case (“*la fijación provisional de la pretensión*”) – is extraordinary. Article 89 of Law No. 1708 permits such measures to be imposed only “[a]s an exception” and only “in cases of apparent urgency or when serious grounds have been established which make it possible to consider them indispensable and necessary to [avoid that the assets in question can be hidden, negotiated, encumbered, removed, transferred or may suffer any deterioration, misdirection or destruction; or for the purpose of stopping their illicit use or destination].”¹¹⁹

107. This action begs the question of why the *Fiscalía* was in such a rush to condemn the Meritage development (for that was the readily foreseeable consequence). The property on which the Meritage project was being built was not going anywhere. It could not be hidden.

¹¹⁶ C-4, U.N. Manual, p. 60.

¹¹⁷ C-4, U.N. Manual, p. 60.

¹¹⁸ C-67, Letter from U.S. Department of Justice to National Police of Colombia dated 21 November 2016, p. 1 (“*los integrantes de la Oficina de Envigado fingieron el secuestro de Sebastián López Betancur con su consentimiento poniéndolo a quedar en un apartamento en Medellín[.]*”)

¹¹⁹ See C-3, Law No. 1708, art. 89, referencing the standards set forth in Article 87 for the imposition of precautionary measures.

Moreover, the allegation of illicit activity identified by the *Fiscalía* was supposed to have occurred some 12 years earlier, and thus imposing the precautionary measures could not have been for the purpose of “stopping illicit activity.” Most grievously, imposition of the measures ensured that, contrary to the intent and purpose of the law, the Meritage property would deteriorate, as, in fact, it has over the months following its sequestration. For all of these reasons, the imposition of precautionary measures contravened Law No. 1708, and was arbitrary, grossly unjust and abusive.¹²⁰

108. Moreover, under Law No. 1708 of 2014, the investigative phase of the *Extinción de Dominio* process is the period of time in which the *Fiscalía* had complete control over the process. During this period, the *Fiscalía* could have seriously examined – indeed the law obliged it to seriously examine – the evidence put forward to it by Newport of its status as a bona fide purchaser. This evidence included the September 9, 2013 letter sent by the Head of the *Fiscalía*’s Unit 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.

109. By ignoring the limits and the requirements of the law, the *Fiscalía* triggered court proceedings that froze 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.

110. Furthermore, as noted above, the *Fiscalía*’s provisional resolution was untimely. The precautionary measures were imposed on July 22, 2016, and the resolution was filed more than the six months permitted by law.¹²¹ The *Fiscalía*’s belated resolution is yet another example of the willful disregard of the law, including Newport’s rights under the Colombian Constitution and the *extinción de dominio* law itself.

¹²⁰ The *Fiscalía* has twice presented a *Requerimiento de Extinción*, a forfeiture petition, before the Specialized Court of Extinción de Dominio. On both occasions, the Court has rejected the forfeiture petition because the *Fiscalía* failed to satisfy all legal requirements to proceed and, in such failure, the *Fiscalía* had incurred due process violations against interested parties. Notwithstanding the Court’s rejection of both forfeiture petitions, the Court has inexplicably left the precautionary measures on the Meritage property in place. The Colombian authorities’ ongoing capricious actions have pervaded the entire asset forfeiture proceeding that has been carried out in breach of Colombia’s obligations under the TPA. *See supra* Section F.

¹²¹ *See* C-40, Letter from Attorney General’s Office of Asset Forfeiture to Fiduciaria Corficolombiana dated 21 September 2016; C-50, Newport’s Petition for Dismissal of the Proceeding and Lifting of Precautionary Measures dated 23 January 2017.

111. The Court, however, committed a gross judicial error when it made such a ruling during the *avocamiento* phase and before the “trial” phase of the *Extinción de Dominio* process was concluded. According to Article 141 of Law No. 1708, the *avocamiento* phase is limited to reviewing the *Requerimiento* for any pleading deficiencies. Moreover, the trial phase (circumscribed in Articles 137-144 of Law No. 1708) does not give the trial judge any discretion to rule on a party’s standing. Pursuant to Article 145, the judge may only issue a judgment after the trial is concluded (which, according to Article 144 is after closing arguments are submitted). There was simply no legal basis, therefore, for the judge to make any standing ruling during the *avocamiento* phase of the process.

112. When, on May 7, 2018, the Antioquia District Court specialized in *extinción de domino* rejected the *Fiscalía*’s extinction of ownership request (*requerimiento*) for procedural deficiencies that deprived the interested parties’ fundamental due process rights in the extinction of ownership proceeding, the Court, as the protector of the Law No. 1708 and the Constitution, was obliged to lift the encumbrances on the property in the form of the precautionary measures imposed on the Meritage property. It failed to do so.

113. Once again, on December 12, 2018,¹²² the Court analyzed whether the *Requerimiento* satisfied the legal requirements set forth in Article 132 of Law No. 1708 of 2014, and once again the Court concluded that the first requirement – identification and location of the assets subject to forfeiture – was not met. Notwithstanding the legal deficiency in the *Fiscalía*’s second asset forfeiture petition, the Asset Forfeiture Court left the precautionary measures on the property in place, in violation of Law No. 1708 of 2014, international law, and the TPA.¹²³

114. Despite the fact that the *Fiscalía* has not produced a legally adequate asset forfeiture petition in over two years since the precautionary measures were imposed, the Meritage assets have remained confiscated and the Colombian Government is in the process of administering an early sale. Based on Claimants’ best information and belief, the early sale of the assets have nefarious motives, as the State is paying no administrative costs for the property; it is not paying for maintenance, taxes, safekeeping of the inventory or any other cost for sequestering the

¹²² C-59, Attorney General Asset Forfeiture Unit, *Requerimiento de Extinción* dated 25 May 2018; C-60, Decision Asset Forfeiture Court Rejection of Second Forfeiture Petition dated 12 December 2018.

¹²³ C-60, Decision Asset Forfeiture Court Rejection of Second Forfeiture Petition dated 12 December 2018.

property. Thus while *Fiscalía* has failed to produce a legally sustainable basis for the Court to proceed with the asset forfeiture, the State has unnecessarily hurried to sell the assets in a closed transaction that ensures the permanent alienation of Claimants' assets.

115. These errors and omissions are not small errors that can be overlooked. They undermine the very core of the law, and indeed of Colombia's Constitutional protections. They render application of the law arbitrary and capricious to the point that no transfer of property in Colombia can be considered safe.

* * *

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

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

117. Colombia, through the acts and omissions of the *Fiscalía* and courts, is responsible for, among other things, the arbitrary, discriminatory, unjust and confiscatory application of Colombia's Asset Forfeiture Law (Law No. 1708 of 2014, *Código de Extinción de Dominio*, or Asset Forfeiture Law). Colombia's gross 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.¹²⁴

A. Claimants' Investments Are Protected Under the TPA

118. Chapter Ten of the TPA protects an "investor of a Party," namely, a U.S. investor who makes an "investment" in the territory of Colombia, the other Party to the Agreement.

119. Mr. Seda is an "investor of a Party" under 10.28 of the TPA. He is a U.S. national: born in California, Mr. Seda holds a U.S. passport, and does not possess any other nationality.

¹²⁴ 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.

120. Mr. Seda has made “investments” in Colombia, which are detailed in Section IV.C above. Article 10.28 of the TPA defines an “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 an investment includes “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.”

121. Mr. Seda has made an “investment” because he owns “shares” in three “enterprises” which constitute 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 largest majority shareholder through Royal Realty is an enterprise, and Luxé 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 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.

122. 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.

123. Accordingly, Claimants’ investments are protected against any misconduct by Colombia, including that of the Government’s agencies and its judiciary, which violate the investment protections of the TPA.

B. There is a Legal Dispute Arising Directly Out of an Investment

124. Articles 25(1) and (2) of the ICSID Convention set out the requirements to access ICSID arbitration:

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State [...] and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) ‘National of another Contracting State’ means: [...]

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

125. Article 25 provides that ICSID has jurisdiction over (a) legal disputes; (b) that arise directly out of an investment; (c) between an ICSID Contracting State and (i) a national of another Contracting State and/or (ii) a national of the Contracting State party to the dispute that, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of the ICSID Convention; and (d) which the parties to the dispute have consented to submit to ICSID arbitration.

126. All these elements are satisfied in this case:

- (a) There is a legal dispute arising from Colombia’s breach of its obligations under the TPA, as set out in Section VII;
- (b) the dispute arises directly out of Claimants’ investments in Colombia, as described in Section VII(A) above, which are qualifying investments under the TPA and the ICSID Convention;

- (c) the dispute has arisen between Colombia, an ICSID Contracting State¹²⁵ and Claimants, nationals of the United States, an ICSID Contracting State,¹²⁶ and
- (d) Colombia consented to submit this dispute to ICSID arbitration pursuant to Article 10.17 of the TPA. With this request, Claimants also consent to submit this dispute to ICSID arbitration in accordance with TPA Articles 10.16(1) and 10.16(3)(a).

C. Colombia Breached Article 10.5 (Minimum Standard of Treatment) of the TPA

127. 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”

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

¹²⁵ The ICSID Convention entered into force for Colombia on 14 August 1997, following its signature of the Convention on 18 May 1993 and the deposit of its instrument of ratification on 15 July 1997.

¹²⁶ The ICSID Convention entered into force for the United States on 14 October 1966, following its signature of the Convention on 27 August 1965 and the deposit of its instrument of ratification on 10 June 1966.

129. 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.

130. First, the Government's actions were highly arbitrary. The Government grossly abused its authority under Colombian law when it unjustifiably repudiated the central principle of the applicable regulatory regime—namely, that a qualified bona fide purchaser without fault is presumptively deemed the legitimate owner of property. Claimants (specifically, Mr. Seda by himself) and through Claimants' business entities went well beyond the requirements under the law to demonstrate clean title to the Meritage property. Nonetheless, the Government unjustifiably derailed the investments. For example and among other things, it took the extraordinary step of ordering the imposition of precautionary measures (*medidas cautelares*) on the Meritage property while its investigation was still ongoing in violation of fundamental regulatory and constitutional principles. Not only did the *Fiscalía* blatantly disregard the presumption that Claimants were bona fide purchasers without fault, but it never undertook the required analysis of whether Claimants had demonstrated clean title to the property. The reckless and arbitrary manner in which the Colombian Government misapplied the law has been confirmed by Colombian courts and other Colombian Government officials.

131. Second, the Government took steps that extinguished Claimants' ownership rights to their investment properties without affording adequate due process. The Government also never responded to Claimants' urgent petitions in December 2016 and January 2017 to rescind the unlawful sequestration of the Meritage property and proceeded with the asset forfeiture claim without providing Claimants the opportunity to be heard.

132. Third, the Government's actions are also highly discriminatory in breach of Article 10.5. Based on evidence gathered to date, Claimants' investments were inappropriately and specifically targeted by the Government. In addition, the administrative and judicial practice of the Colombian authorities has been to afford the presumption of good faith to property owners who have conducted far less diligence on purchased property than Claimants have in this case. Thus, there is no reasonable explanation for why Colombia has discriminatorily singled out Claimants' investments for destruction.

133. Colombia's conduct in breach of Article 10.5 has caused Claimants to incur significant loss and damage by reason of, and arising out of that, breach.

D. Colombia Breached Article 10.7 (Expropriation and Compensation) of the TPA

134. 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.

135. 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.

136. 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.

137. 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 forced the immediate unwinding of Claimants' investment. This action was exacerbated 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.¹²⁷

138. These Government measures confiscated 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*

¹²⁷ C-57, Forfeiture Petition dated 5 April 2017.

Social y Lucha contra el Crimen Organizado (“FRISCO”). With the embargo and sequestration order, Newport was not only dispossessed of the land on which the Meritage project was built, but also the confiscation placed the entire development in a state of legal and financial limbo.

139. In the meantime, financial institutions were notified of the precautionary measures in connection with the *extinción de dominio* proceeding, prompting 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) uncertainty as to whether Newport could continue the project increased. Without the ability to continue sales, construction ceased and the Meritage project was doomed.

140. 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 Mr. Seda from obtaining access to funding from any commercial lenders or private investors, irreparably damaging all of his investments in Colombia and across South America.

141. Accordingly, the Government violated Article 10.7 of the TPA. Colombia’s conduct in breach of Article 10.7 has caused Claimants to incur significant loss and damage by reason of, and arising out of, that breach.

VIII. ARBITRATORS AND PROCEDURAL MATTERS

142. Article 10.19 of the TPA provides that: (i) unless the parties otherwise agree the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties; (ii) the Secretary-General of ICSID shall serve as appointing authority; and (iii) if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration, the Secretary-General of ICSID, on the request of a disputing party, shall appoint, in her discretion, the arbitrator or arbitrators not yet appointed. The disputing parties have not agreed to an alternative method of constituting the Tribunal. Accordingly, Claimants confirm that a three-member Arbitral Tribunal should be appointed and that the 75-day time limit for such appointment should run from the date of registration of this Notice.

143. Claimants hereby nominate Lucinda A. Low, a U.S. national, as their party-appointed arbitrator. Ms. Low may be reached at:

Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
United States of America
(202) 429-8051
llow@steptoe.com

IX. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

144. Claimants seek to receive full compensation for their financial losses, including restitution of property and monetary damages and applicable interest, suffered as a result of the Government's violations of the TPA, along with costs and attorney's fees.

145. Claimants' financial losses and damages relate to, but are not limited to, business interruption, real estate, contracts and licenses, brand equity, licenses and royalties, and personal/reputational harm and damages. The exact amount of Claimants' damages is currently unknown and will be proven, but Claimants estimate their damages to be in the hundreds of millions of dollars.

146. Claimants reserve their rights to amend or supplement this Request for Arbitration.

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January 25, 2019