

**IN THE MATTER OF AN ARBITRATION UNDER THE DOMINICAN
REPUBLIC CENTRAL AMERICA FREE TRADE AGREEMENT AND THE
UNCITRAL RULES OF ARBITRATION (2010)**

**DAVID R. AVEN, SAMUEL D. AVEN, CAROLYN J. PARK, ERIC A. PARK,
JEFFREY S. SHIOLENO, GIACOMO A. BUSCEMI, DAVID A. JANNEY
AND ROGER RAGUSO (United States of America) (Claimants)**

v

THE REPUBLIC OF COSTA RICA (Respondent)

**FIRST WITNESS STATEMENT
OF JOVAN DUSHAN DAMJANAC**

I, **JOVAN DUSHAN DAMJANAC**, of Puerto San Luis, Tilaran, Guanacaste, Costa Rica, SAY as follows:

1. I make this statement in support of the Claimants' Memorial in these proceedings.
2. The matters contained in this witness statement are true to the best of my knowledge, information and belief. The facts and circumstances contained in this statement are within my own knowledge or derived from information and documents provided to me by those reporting to me, in which case I refer to the corresponding source of information.
3. I confirm that the Claimants' lawyers, Vinson & Elkins RLLP, have assisted me in preparing this statement, but I also confirm that its contents set out my evidence to the Tribunal in these proceedings.

Background

4. I am a citizen of the United States of America.
5. I have more than 30 years' experience in residential, commercial, and resort real estate appraisal, development, and sales, as well as in business sales, retail sales, time-share sales and mortgage financing.
6. I was a licensed real estate agent in Pennsylvania and New Jersey. I have attended many seminars and classes on land development, land design and sales. I also attended numerous America Resort Developer Conventions where I learned about fractional ownership.
7. In 1985, I became involved in real estate development. I joined a developer based just outside of Philadelphia called SD Catalano Inc, which, among other things, carried out resort and residential developments. I was a sales manager and executive assistant to the developer, and a licensed salesman and project finance specialist. We carried out sub-divisions of upscale resorts built on farms and rural areas just outside of New York and Philadelphia. I was also involved in the marketing and sale of these properties. Most of my income came from commission from consummating deals.
8. Between 1987 and 1988, I worked at Patten Corporation, where I was an acquisitions specialist. I would scope out land deals for the developer. I arranged the acquisition of several properties, and subsequently assisted with the subdivision of the land. As part of this, I was involved in aspects such as site investigations, surveys, title research, research into development approvals, land use planning, marketing, and dealing with different professionals, including surveyors, soil scientists, draftsmen, engineers, lawyers, brokers, accountants, regulatory officials, and township officials.
9. In 1988, I went back to SD Walker (which was affiliated to SD Catalano) and worked as a seller agent and later in land development. I also was affiliated with a real estate brokerage company in Ambler Pa. Called "Continental Assets Corporation" where I sold commercial and business properties. The businesses I sold included commercial properties like carwashes, beer distributors, restaurants, distribution companies, and other small business. In around 1990, I sold a chain of music stores for a businessman. In lieu of commission, I was given ownership in a retail music store in Downingtown, Pennsylvania. As a side-line business to my real estate work, I ran this store

for 15 years and acquired two further music retail stores in nearby towns in Pennsylvania.

10. While at SD Walker, I also worked in land development. Again, I was working mainly on a commission-only basis, although I was also paid fees on specific administrative and management tasks. We developed properties mainly in Burlington and Monmouth Counties, New Jersey. One of the biggest projects I worked on was the development of a 150 unit RV Cabin Resort that was located next to a major theme park called Great Adventure Six Flags. After purchasing the land, it took us around five years to assemble the parcels of land there and to obtain all the approvals for the RV cabin resort. We used a fractional ownership model, selling 20 per cent ownership parcels in the lots. We operated the resort for around 20 years. I was also involved in other large lot subdivisions for SD Walker at Bacons Run in Chesterfield, New Jersey and at Meadowview Estates, Mansfield, New Jersey.
11. In 2003-2004, I worked for BlueGreen Corporation, the successor company to Patten Corporation. My role there was as a timeshares salesman. I was mainly interested in learning their sales techniques in order to apply these methods to our project in New Jersey and to my future endeavours.
12. In 2004, I moved to Arizona, where I worked on originating mortgages at Premium Capital Funding in Scottsdale, Arizona.

Relocation to Costa Rica in 2005

13. In around 2005, I sold the three music stores in Pennsylvania that I owned. With the money raised, I decided to move to Costa Rica to work in real estate since I heard things were booming down there. I arrived in Costa Rica in late 2005. I have lived in Costa Rica ever since.
14. I initially moved to Tamarindo, a vibrant beach town in the province of Guanacaste. When I arrived, the town was experiencing a real estate boom. I soon found work with developers. I helped them find investors for large property developments. I worked on a commission-only basis.
15. In around 2006, I went to work on a project in the beach town of Jaco for a developer called Jaco Blue which had a 22-story beach project. My role involved finding buyers for the project either in its entirety or as individual units. I managed to find a buyer for the whole project, although the seller decided last minute to hold onto the property.

16. At this time, I was also managing a couple of condominiums in a high-rise called Vista Mar in Jaco.
17. After working with Jaco Blue for about a year, I worked with Costa Rica Commercial on and off between 2006 and 2012. My role for them involved mortgage brokerage. I would locate investors who were willing to provide mortgages for buyers of high-end residential and commercial properties. I also found borrowers and originated mortgages for them through Costa Rica Commercial.
18. I was involved in a number of other projects too during this time period.

Background to my involvement in Las Olas

19. In 2007, I started working for Randy Berg at CR Home, who was a successful developer of small-scale residential developments in Costa Rica. I helped Mr. Berg find new properties to develop and sell properties he owned.
20. Sometime in 2007, Mr. Berg set up a meeting with David Aven to discuss the Las Olas project. He invited me to that meeting too. That is how I met David. Mr. Berg was interested in buying lots at Las Olas and building properties on those lots. However, nothing came of that since David and Mr. Berg could not agree on the price per lot. However, David and I kept in touch. We were both from Pennsylvania and hit it off.
21. In my line of business, it pays to keep in contact with a large number of people because you never know where an opportunity may come from. It was through my network of contacts that I would find out what properties were on the market and who was looking to invest. I would frequently talk about my developments and offer advice to developers on how to develop their properties so as to keep the conversations with developers alive. I have a brokerage business background and it was through this process that I would generate my income.
22. Between 2008 and 2010, I interacted with David on a similar basis. I would say that we spoke about once every month or two, sometimes a little more frequently. Generally, we would discuss David's plans for the Las Olas project as well as discuss investors on the lookout for properties. During these conversations, we talked about David's plans to do time-shares and I made suggestions to him about developing a fractional ownership model. I recall

that David was already on board with that idea. He liked the fact that I also had a mortgage background because he wanted to do mortgages as well.

23. We also discussed David's plans for Las Olas. I remember David telling me that he, his cousin, Roger Raguso, and David Janney wanted to vertically integrate the development, and not only do lot sales, but build the homes and time-shares and then offer mortgages and time-share financing. David would tell me that once you have a customer, you should provide as many of the goods and services as possible that they are in the market for. In this way you increase your return on investment. David's plan was also to have a real estate company that would manage the rental pool program and also handle resells too.
24. David's plans made total sense to me as it was a way to maximise and leverage your relationship with the customer. David told me that he had no debt on the project and wanted to keep it that way since he did not want something that was out of his control to occur which, because of debt, would sink the whole project.
25. At that point I was still working with Mr. Berg, but David and I developed an ongoing dialogue on these subjects and we enjoyed discussing them. I developed a good friendship, as well as a good business relationship, with him.

The financial crisis

26. In September 2008, the financial crisis happened. This had a significant impact on the Costa Rican real estate market. Things came to a sudden halt. This was a difficult time for developers in Costa Rica. Most developers who had significant levels of debt on their projects eventually lost them as they were unable to service the debt due to extremely low sales. However, since David did not have any debt on his project he was able to freeze everything and wait until things turned around.
27. Shortly after the crisis, Mr. Berg's acquisition and development activities stopped. I subsequently left his company and sought other opportunities elsewhere to earn money. I was talking to a number of investment companies who were pursuing opportunities to buy properties in Costa Rica. On several occasions in 2008 and 2009, I even took a few groups of potential investors down to Esterillos Oeste to meet with David and view the Las Olas project.

28. My regular interactions with David and my trips to Las Olas meant that I gradually became familiar the Las Olas project, as well as the Master Site Plan.¹ There were several parts to the project:

- (a) Beach club and hotel/condo units: There was a 2.2 hectare concession piece right on the beach. This was going to be a luxury development on the beach-side concession with an 60-room boutique beach-front hotel/condominium units, a restaurant and bar, beach club, sports club, spa and swimming pool.² I was told by David that prices of condos were on offer for around US\$ 500,000.
- (b) Condominium Section: There were 288 lots for single-family home residential buildings.³ I was told by David that these residential lots were priced at around US\$ 160,000. There were also nine larger lots set aside for small condo towers. These were slated to be developed as time-shares and would be built as part of the last phase of development.
- (c) Easement lots: There was a section of the project that comprised lots that had full title and were not part of the Condominium Section. There were a total of 72 lots which were located along nine easements (eight lots on each easement) which came off the public road running down the west of the property.⁴ In addition, there were two lots directly fronting the public road which ran down the western side of the site. David told me that these lots were originally priced at US\$ 100,000. I have included as Exhibit C59 a video of entrance to the Las Olas site, which I filmed soon after I arrived on the site, to illustrate the layout of the Easement lots and their proximity to the beach.⁵
- (d) Commercial and hotel areas: There were three main areas reserved for commercial development and a potential hotel.⁶

29. I saw a number of virtues in David's development. The development was located almost equal distance from two of the biggest beach towns on the

¹ Exhibit C54, Master Site Plan, September 17, 2008.

² Exhibit C39, Las Olas Analysis Report, 2007, PDF page 19 of 41.

³ Exhibit C39, Las Olas Analysis Report, 2007, PDF page 19 of 41.

⁴ Exhibit C54, Master Site Plan, September 17, 2008.

⁵ Exhibit C59, Video of Site Layout, 2010/2011.

⁶ Exhibit C54, Master Site Plan, September 17, 2008.

Pacific Coast. It was also on what many considered to be one of the most beautiful beaches in the area,⁷ and is a renowned surfing beach which many world-class surfers visit regularly.



Figure 1 – Photograph of Playa Esterillos

30. The local area did not suffer from any of the issues from over-development affecting other stretches of the coast, such as the pollution that was affecting Jaco and in an area around the Manuel Antonio National Park.
31. It was on a piece of land that was located on rolling hills, rather than in a low lying area like so many other beachside projects on the coast from Jaco to Quepos.



Figure 2 – Aerial photograph of Las Olas site⁸

⁷ I have included a video that I took in 2010/2011 of the beach as Exhibit C60.

32. It was also very easily accessible from the main road and it was beachside. Many developments along the coast were on the other side of the highway, and if they were on the beach side of the highway, you frequently had to drive along a long rocky gravel road with potholes for perhaps 15-20 minutes to get to the beach⁹—not the case with Las Olas. The project and beach were less than one minute from the highway.
33. In my long years in the real estate business, I knew the value of property that was located on the water. Whether it be lakes, canals, rivers or beaches, people just wanted to be on or near the water. So the value of, and demand for, a project on a beautiful beach, with close access to the capital, San José, and the airport, were very high. The beach is where most people wanted to be. I was sure that this was just a very special place.
34. Based upon the fact David had cut out nine larger parcels for future condo development,¹⁰ I immediately saw the potential to develop Las Olas into a condominium resort and hotel time-share development. I had experience in time-share sales and knew how profitable they could be. I viewed this as a once in a life time opportunity to marry my acquired skills with the right project in a very unique beach location that people would gravitate to.
35. I considered this model to be one which could work well in Costa Rica. There was strong demand for holiday homes from international buyers, particularly from North America,¹¹ as well as from people in Costa Rica. However, many potential customers were looking for a place they could use for only part of the year. Fractional ownership would work well in this scenario, as it enables people to buy into a property and have access to it a specified number of weeks per year. It is also relatively easy to buy a fractional ownership share, since the shares are priced per week and it is like buying a car. You can use your credit card to make the down payment and then it is like making car payments: you can pay it off in five or six years. It also works for the developer too, as you can charge more per square foot for the fraction.

⁸ Exhibit C46, Investor Summary of Las Olas Project, March 15, 2008, page 3 of 17.

⁹ Exhibit C100, Las Olas Business Plan, December 20, 2010, internal pages 31-33.

¹⁰ Exhibit C39, Las Olas Analysis Report, 2007, PDF page 19 of 41.

¹¹ Exhibit C39, Las Olas Analysis Report, 2007, PDF page 38 of 41.

36. On top of that, David was talking about also providing time-share financing to buyers.¹² The interest rates for time-shares were around 16 to 18 percent, much higher than for mortgages. As I explain above, I was familiar with this model from my previous experiences. I shared my thinking with David about his plan to vertically integrate the project. Timeshares would fit nicely into his overall business model. I thought it was a very smart approach to development, which often time developers miss. It made good sense to me that once you have a customer that buys something from you, you then look for other things you can sell him. It is like the old saying that if you want to be successful, you just have to find a need and then fill it.
37. During this time period, i.e. 2008 to late-2009, I also continued with my own separate real estate brokerage, sales and mortgage brokerage activities in Costa Rica, while carrying on discussions with David.

My employment at Las Olas

38. In around September of 2009, during one of my regular conversations with David, I remember him telling me that he thought that the market was picking up enough to reopen the Las Olas project. He asked me if I would come to his home office Escazu, a suburb of San José, and start doing some telemarketing for potential buyers to get a better feel for where the market was. He said that if the market was recovering, as he suspected it was, they would re-open the project in 2010.
39. Of course, I jumped at that job opportunity since I am a lot, home and time-share salesman. That is my background. I had significant experience in this line of work and felt that I would be able to use my expertise to spend a few months getting a feel for the market.
40. David had a very large home/office in Escazu. He initially offered me a place to work and live while I took a gauge of the market.
41. David had acquired a number of marketing lists of potential US buyers. I am not sure who he bought them from, but they were great leads. I went down to David's place and started to make the marketing calls. From September to December of 2009, I probably made around 700 to 800 calls in total. I became convinced that the market was coming back, but not to where it was pre-crisis. Before the crash of 2008, I recall prices for two-bedroom high-end homes and

¹² Exhibit C46, Investor Summary of Las Olas Project, March 15, 2008, page 3 of 17.

condos near the beach in Costa Rica were selling for as much as US\$ 350,000 to US\$ 800,000. Now the prices people seemed willing to pay were about half that amount. However, demand for properties was still there – and was increasing by the day.

42. David and I would have daily conversations about the progress of my marketing efforts. I was generating a lot of interest in the Las Olas project. This was very encouraging to David who soon decided, along with the other US investors, to re-open the Las Olas project in January of 2010. He made me an offer to become sales and marketing director of the project. I accepted and was very excited by the opportunity. I decided to put my full efforts into the Las Olas project and move away from the other real estate brokerage work I was previously doing. This was the most promising project I had been involved with in my long history in the development business in the US and Costa Rica. I recognized this as a great opportunity to earn significant commission from sales of lots, homes and time-shares. I also had experience in mortgage placements, which would all work synergistically as the project was developed. The Las Olas project represented an opportunity for financial independence and retirement security for me.
43. Part of the deal was that I would move down to Esterillos Oeste and live and work there on a full-time basis and report to David.

My relocation to Esterillos Oeste

44. I moved to Esterillos Oeste in the holidays in December of 2009 to get the project ready for its re-launch in January 2010. I was the Marketing and Sales Director and Site Manager for the Las Olas project.
45. To keep costs down, David and I agreed that I would live and work out of the office on the Las Olas property, just on the north-western corner of the concession. The building had a small living area. I generally worked seven days a week, though I would take off a few hours each day for leisure time.
46. Limited construction had taken place at the site by the time I arrived.
 - (a) I was aware that David and several local developers had arranged, in 2007, for a new water line to be built by the Association for the Management of Water and Sewage to connect the Las Olas project (as well as the Esterillos Oeste community more generally) to the municipality water wells.

- (b) Four cabins had been started on the concession part of the project, but were stopped due to the financial crisis.¹³ The concession was the area next to the beach, where David was planning to build a beach club that had been designed by Zurcher Architects prior to the financial crisis. However, a redesign was subsequently carried out to cater to current market conditions.
 - (c) Two easements had been built that were the first two closest to the beach (Easements #8 and #9).
47. I do not remember any other work having been done by the time I moved to the site in the later part of December 2009. However, by that stage, I was aware of significant progress had been made in developing plans for the project and obtaining permits. In summary:
- (a) The land use plan, which set out all the various lots and the infrastructure for the whole project, had been approved by the government authorities. As part of this land use plan:
 - (i) Nine easements along the public road on the west side of the project had been separated out from the Condominium Section in 2007; and
 - (ii) Two large pieces on the main public road at the top of the site and two other pieces on the interior road between the concession and the Condominium Section were separated out.
 - (b) The land (apart from the concession) had been legally subdivided into fee simple lots;
 - (c) The SETENA Environmental Viability was issued in June of 2008 for the Condominium Section;
 - (d) SETENA had also issued the Environmental Viability for the condo/hotel units on the beach concession, where the beach club was being built;
 - (e) Architectural designs for the beach club had been developed by Zurcher architects;

¹³ I have included a video that I filmed which shows the work that had been carried out on the concession by the time I arrived at Exhibit C56.

- (f) Construction permits for the beach club had been obtained in 2007; and
 - (g) Architectural designs for homes on the Condominium Section had been developed.
48. All this preparatory work was important and represented significant progress in the project. This had cost millions of dollars to carry out.
49. I recall that David had already made about seven sales before I came on board in late 2009, which were in the US\$ 130,000 to US\$ 160,000 per lot range. Mr. Janney was responsible for bringing in US\$ 900,000 as well. I understand that this money had been invested back in the project.
50. We were in a strong position to rapidly move forward with the project in 2010 and build upon the foundation that was laid up to September of 2008.

Resumption in activities at Las Olas

51. When I arrived on site in December of 2009, there were three main tasks that I was immediately involved in.
- (a) First, I assisted David in researching the post-crisis market for holiday homes and developing a new business plan for the Las Olas project that would reflect the new post-crisis market realities;
 - (b) Second, I obtained quotes and negotiated with the various contractors for work that needed to be done.
 - (c) Third, I led the sales and marketing efforts. The burden was on me to produce sales and that is exactly what I was working on day and night. Being in sales all my life I knew that nothing happens without a sale, so that is where I put most of my efforts and attention.
52. I will discuss these tasks each in turn in the sections that follow. I note that during 2010, I had a number of additional responsibilities, which I explore in more detail below.

Research on post-crisis market for properties

53. As explained above, the financial crisis had a significant impact on the market for second homes in Costa Rica. David and Mr. Janney wanted to better understand this new market and adapt the project to better cater to it. David

asked me to assist him in collecting information, which he could use for this purpose.

54. As I explain below, from around November 2009, I had been carrying out sales calls to potential customers. Feedback during these conversations gave me a good idea of the types of properties and prices for these that would sell in the new environment.
55. In addition, I obtained sales figures from local brokers in the area in early 2010 to get information on the market for properties in the local area.¹⁴ This data gathering was an ongoing task during 2010. I looked at comparables for the developments that were around the Las Olas project from Tarcoles down to Dominical on the coast. I was in contact with a number of agents in Jaco and the surrounding areas, including Thomas Ghormly, Jeff Fisher, Hannah Fletcher, Ken Shafma, Brad Sanson and Jim Gray, to name a few. They sent me details about the properties recently sold, including as to the size, price, location, and ownership structure of the respective properties.
56. It was clear from reviewing these figures that sales prices had dropped. My impression was that prices had fallen by around a half for most properties. However, many of the properties that I reviewed were, in my opinion, inferior to those at Las Olas, when considering factors such as location and proximity to a beautiful beach. The ownership structure and the quality of development were superior at Las Olas to other developments in the area as well. For instance, the Las Olas properties were titled and fee simple properties, whereas other developments offered buyers shares in corporations that owned the whole project and the buyers only had rights to use the lot they bought as shareholders. Such ownership structures were inferior to what was being offered at Las Olas.
57. I obtained information on projects offering fractional ownership in the area. From this I gleaned that there was significant potential for fractional ownership at Las Olas, as well as time-shares that David was already considering. This seemed logical to me. The area is renowned for being a world-class surfing, sport fishing, and eco-tourism destination. People from the US, Canada and Central America could travel here in the morning and be on the beach or on a boat by lunchtime. It was, therefore, an easy getaway location, which lends itself to being a successful time-share resort. Other

¹⁴ These lists were synthesized on PDF pages 31 to 33 of Exhibit C100, Las Olas Business Plan, December 20, 2010.

fractional resorts have been developed in Jaco under this model, including OCEANO.

Revised plans for Las Olas

58. David and I discussed on a number of occasions how the plans should be revised in light of the findings of our market analysis. I recall that David was open-minded as to the pricing and the sales offerings and was keen to be led by market conditions. Because Las Olas did not have any debt, there were few restrictions on what could be done. That flexibility gave us a great advantage over our competitors.
59. Based upon my extensive research and our discussions, David decided to take the following steps:
- (a) The beach club and hotel/condo units on the concession would be re-designed to reflect the new market conditions. The development would be lower-spec than the previous design. The units would be smaller and less expensive. We initially targeted minimum prices of US\$ 249,000 for the larger units US\$ 129,000 for the smaller units. As well as featuring two swimming pools, a beach club and other facilities, this would now include a 66-unit resort hotel/condo complex. David appointed Andres Castro, an architect from San José, to carry out the new designs.¹⁵ The render below shows the overall layout of the new development on the concession.



Figure 3 – Render of beach club and hotel/condo units on the concession

¹⁵ Exhibits C196, Examples of Andres Castro renders and designs

- (b) The 14,000 square meter parcel across from the beach club was also re-designed to build a 100-plus room hotel. David had initial conceptual designs drawn up.¹⁶ The following render shows the front of the hotel as envisaged.



Figure 4 – Render of the hotel

Mr. Janney was already talking to a number of hotel chains about flagging the hotel.

- (c) The lots for residential family homes in the master site plan for the Condominium Section would remain the same. The only retooling that was needed was to adjust the price of lots from US\$ 160,000 down to US\$ 80,000 - US\$ 90,000 (although we were willing to negotiate down to US\$ 60,000 in the early days as these represented “loss leader” deals and allowed us to get things going with instant significant cash flow from sales).
- (d) In terms of the designs for the family homes themselves, these were downsized. Smaller homes had a lower initial price point of around US\$ 160,000-US\$ 250,000, compared to a pre-crisis level of around US\$ 260,000-US\$ 750,000. New designs were developed for different models of houses. Examples of these are included in the following renders.

¹⁶ Exhibit C57, Renders of the hotel design, 2010.



Casa Riviera



**Phase #1
Esterillos Beach**



Casa Toledo



**Phase #1
Esterillos Beach**

Figure 5 – Examples of model homes

- (e) The sales prices of the lots on the Easements were similarly readjusted downwards. Pre-crisis they had been priced at around US\$ 100,000 per lot. Post-crisis, I recall that we decided to price these at around US\$ 50,000 to US\$ 70,000 per lot.
- (f) The nine larger lots in the Condominium Section would be slated for the final phase of development of condo towers, once all the other

phases were completed. We planned to develop small multi-storey condo towers on these lots. David obtained some conceptual designs for these in 2010.¹⁷



Figure 6 – Render of one of the planned condo towers

Obtaining quotes for works

60. During the first half of 2010, I also helped David to obtain quotes for the construction of these revised designs, to help us decide on contractors as well as to use in putting together a business plan.
61. I consulted with a number of engineers and building contractors, who provided cost estimates for the construction work. Engineers took measurements on site with laser measuring equipment to determine the total square meters of expected infrastructure such as roads and drainage channels.
62. I spent considerable time getting quotes and bid documents for various aspects of the project and negotiating with contractors.

New Business Plan

63. During the course of 2010, I also helped David to put together projections for our post-crisis business plan for the project. This is the kind of work I did for other developers I worked for in the US, so I was happy to help and felt comfortable doing so.

¹⁷ Exhibit C100, Las Olas Business Plan, December 20, 2010, PDF page 17 of 38.

64. As part of this process, I relied on the figures that I had gathered on the local market for properties, as well as the estimates and quotes from construction companies for the revised works.

Construction analysis

65. With respect to the anticipated costs of construction that we included in the business plan:¹⁸

- (a) I estimated the cost of the main infrastructure for the whole project would be approximately US\$ 5.7 million.¹⁹ This would include the costs of excavation, concrete work, drainage, roads, water and sewage. My assumptions were based on prices that I had gathered from construction companies and engineers, including Manuel Calvo, the project engineer. These costs are summarised in the business plan. I note that the amount I projected was less than the quote that Manuel Calvo, the project engineer, had put together.²⁰ This is because we did not include the cost of electric in our costings.
- (b) I also conducted analysis on the costs of building the beach club and hotel/condo units on the concession. Manuel Calvo, the project engineer in 2010, put together figures for the costs of building the infrastructure. In addition, we consulted with other people on building the hotel/condo units and the buildings for the beach club, including builders who had built a number of developments in Jaco. We also got prices from a pre-fab modular home company in Jaco that manufactured concrete panels. We estimated that the average cost for the construction of each of the beach condominiums would be US\$ 68,100,²¹ with smaller units costing less (around US\$ 35,000 to US\$ 45,000) and larger units costing more (around US\$ 65,000 to US\$ 70,000).
- (c) For the cost of constructing a hotel on the 14,000 square meter plot, we obtained approximate costings from contractors and engineers on the basis of the preliminary design for the hotel David obtained from an

¹⁸ Exhibit C100, Las Olas Business Plan, December 20, 2010.

¹⁹ Exhibit C100, Las Olas Business Plan, December 20, 2010, PDF page 35 of 38.

²⁰ Exhibit C88, Manuel Calvo Budget, Total Cost of Urban Works, October 2010

²¹ Exhibit C100, Las Olas Business Plan, December 20, 2010.

architect. The cost estimate for building the hotel, which David and Mr. Janney helped put together, was US\$ 11 million.²²

- (d) At this stage, we did not put together any figures on the expected costs of constructing the apartment buildings. These were only in the preliminary stage and were slated to be done in the last phase.

Income analysis

- 66. Based upon the vertical integration plans on the project developed by David and Mr. Janney, I worked up numbers of future sales and profits with market data available at the time, which were included in the business plan.²³

- (a) Sales prices for residential lots and condos

As I explain above, in early 2010, I had collected information from local brokers about the sales prices of nearby properties to use as a benchmark for Las Olas prices. I also spoke to thousands of potential buyers, which gave me a sense of suitable price points. Our analysis led us to adopt a much more conservative pricing structure for residential lots and condos than we had in place prior to the crisis. We initially priced the lots in the Business Plan at US\$ 60,000 and the condos at US\$ 229,000.²⁴

- (b) Number of projected sales for residential lot and condos

We based our assumptions, in large part, on projects located on either side of Las Olas in Esterillos Oeste that were selling lots, such as Cabo Caletas and Costa Developers. We also monitored the volumes of lots sold at nearby Los Sueños, which was a very successful project in Costa Rica.

We assumed that Las Olas would be building all of the houses on the lots sold. In Year 1, we anticipated 55 residential lots would be sold and that for all of these, Las Olas would be constructing the houses.²⁵

²² Exhibit C100, Las Olas Business Plan, December 20, 2010.

²³ Exhibit C100, Las Olas Business Plan, December 20, 2010, PDF page 36 of 38.

²⁴ Exhibit C100, Las Olas Business Plan, December 20, 2010, PDF pages 37 of 38.

²⁵ Exhibit C100, Las Olas Business Plan, December 20, 2010 PDF page 37 of 38.

Roger Raguso, who was David's cousin, was an experienced contractor who had built a number of very large projects in the United States and was going to be the Project Construction Supervisor. He was planning to move to Costa Rica in the first half of 2011 to assume his general contractor and construction supervisor duties and be in charge of all construction on the Las Olas project.²⁶ There were no doubts in my mind that Las Olas would be able to deliver the construction of these houses as and when required.

(c) Beach club timeshares

We divided the units into week-long time-shares. I obtained catalogues of time-share offerings from organizations like Interval International, and RCI, which report on the prices of time-share ownership resorts each year. This information was available on their websites. I based our pricing on the cost of one-week time-shares in resorts that were similar to Las Olas. I also checked these prices against the prices for a few resorts in the area.

Mr. Janney had good connections with time-share companies in Florida and he was getting ready to heavily promote our time-share sales on the beach club once we had secured the SETENA environmental permit for the redesigned Beach club.

(d) Hotel sale price

I relied on my knowledge of the local market to put together an estimated sale price for the hotel of US\$ 18 million.²⁷ This was checked by David and Mr. Janney. I also came up with some projections for time-share sales for a hotel partner that Mr. Janney was speaking with.

(e) Mortgages

I note that we did not include any figures for the planned mortgage business in the revised business plan. This is because we were still developing a precise mortgage plan at that time. Our initial focus had been on planning the beach club and the infrastructure first, and we

²⁶ See Witness Statement of Roger Raguso ¶ 45.

²⁷ Exhibit C100, Las Olas Business Plan, December 20, 2010, page 37 of 38.

simply had not yet had time to set out in written form the projections for the mortgage part of the Las Olas businesses. However, we did end up originating several mortgages for the project during 2010-2011.²⁸

(f) Time-share financing

For time-share financing estimates, I used a then-current model from BlueGreen Corp on their rates for financing their units. Although BlueGreen is based in the US, the rate used for time-share financing was typical of any resort in the world. Further, like BlueGreen resorts, Las Olas was expecting to target North Americans. A key characteristic of successful time-share properties is that they are easily accessible, and Costa Rica is around 2.5 to 3.5 hours from major US cities by plane. I believed that the BlueGreen type of structure and the level of interest rates it used were therefore appropriate and reasonable for our prospective buyers.

67. The above-mentioned information was fed into the new business plan for Las Olas. I created the first draft of this, which was adjusted with the input of David and Mr. Janney. I recall the first draft being prepared in mid-2010, though we refined it on a number of occasions after that point, including in December 2010.²⁹

Sales & Marketing

68. Although I helped David to develop a revised business plan in early 2010, and took on site management responsibilities, my primary role day-to-day while at Las Olas was to carry out the marketing and sales efforts. I would say that this took up, on average, around 75 per cent of my time.
69. I was the only full time member of the sales team during 2010 and 2011. However, I worked with local brokers, mainly those who were based in Jaco. They would be constantly speaking to people looking to buy property and we offered them attractive commission of five to six per cent.
70. David, meanwhile, was working on acquiring the construction permits. We had a good division of labor. Things were going very well on both fronts and there was considerable momentum on the project.

²⁸ Exhibit C152, Deal Sheet of Jovan Damjanac, May 11, 2012.

²⁹ Exhibit C100, Las Olas Business Plan, December 20, 2010.

71. Most of my sales efforts focused on talking to potential buyers. In 2007, David had acquired contact details of thousands of people who had visited Costa Rica and had expressed an interest in buying real estate. The names, addresses and phone numbers of these potential buyers were included on individual contact sheets, as well as a brief description of who they were, what they were looking for, and the timeframe for their purchase.³⁰ This was very valuable information. I understood that this material had been obtained from big developers in Costa Rica, like Costa Developers and Paragon Properties in 2006 and 2007. We also bought leads from companies such as Ventas Leads,³¹ who had built up large databases of people who had expressed an interest in buying holiday homes in Costa Rica. These were generally fresh leads which had been obtained by Ventas by carrying out targeted Internet marketing using information on Las Olas and requesting the contact details of people who were interested.
72. Most days, I would methodically work my way through the list of leads. I would make at least 50-100 phone calls each day, of which I would say I would obtain 10-20 or so good prospects. I would record the details of what was discussed and with whom in a spreadsheet, and follow up with these people by regular emails and phone calls.
73. To encourage buyers to become more involved in the purchase process, we allowed them to make a refundable lot reservation deposit and gave them 45 to 60 days to come and examine the lots at Las Olas. We offered a number of incentives to them too, including the following:³²
- (a) We offered to reimburse buyers for their expenses down to Costa Rica if they subsequently bought a lot; and
 - (b) We offered buyers a US\$ 2,000 fee if they could find a comparatively equal or better property deal in our market. I note that no-one managed to find one.
74. Many people who became interested in buying lots would send me deposits and then come to Esterillos Oeste to visit the site to secure a particular lot. I would say that, from 2010 through May 2011, I received approximately 25

³⁰ I have provided examples of the contact sheets we received at Exhibit C195.

³¹ Exhibit C224, Example of a lead provided by Ventas Leads, January 20, 2011.

³² Exhibit C100, Las Olas Business Plan, December 20, 2010, page 23 of 38

deposits, and more than 100 people visited the site on the basis of my phone calls.

75. This was the most successful approach of all of our sales and marketing efforts, and one of the most successful efforts I had been involved in. Considering the fact that we were just coming out of a financial crisis, it was even more remarkable. David, Mr. Janney and Roger Raguso were all very pleased. I thought I would be able to live, work, and retire comfortably at Las Olas.

76. During 2010 and 2011 (through May), I sold the following lots:³³

#	Buyer	Lot No.	Location	Value of sales	Mortgage
1.	Anthony Findley	45	Easement 6	US\$ 49,000.00	Mortgage of US\$ 15,000
2.	Anthony Findley	49	Easement 6	US\$ 46,000.00	-
3.	Noel Janssen	46	Easement 6	US\$ 49,500.00	-
4.	Noel Janssen	95	Condo	US\$ 67,500.00	-
5.	David Maes	93	Condo	US\$ 67,000.00	-
6.	David Kramer	48	Easement 7	US\$ 52,000.00	-
7.	Tory Mills	69	Easement 9	US\$ 47,000.00	Mortgage of US\$ 28,000.00
8.	Michael Musto	94	Condo	US\$ 67,000.00	Mortgage of US\$ 35,000.00
9.	Teresa Jones	50	Easement 7	US\$ 49,000.00	-
10.	Kevin McNeary	137	Condo	US\$ 60,000.00	-
11.	Terry Phillips	97	Condo	US\$ 54,500.00	-
12.	Terry Phillips	136	Condo	US\$ 54,500.00	-
13.	Andrew Waycott	138	Condo	US\$ 65,000.00	-
14.	Sam Bermudez	25	Easement 4	US\$ 42,000.00	-
15.	Teresa Jones	51	Easement 7	US\$ 30,000.00	-

³³ Exhibit C152, Deal Sheet of Jovan Damjanac, May 11, 2012.

77. David also made a sale to Glenn Griffin of a lot on Easement 7 for the price of US\$ 70,000 in January 2010.³⁴
78. The sales were made mainly on the back of the leads we purchased and word of mouth from our buyers. Most of the buyers were from the US or Canada.
79. A pattern emerged among a number of people who bought the properties, namely that word-of-mouth recommendations were very important in generating sales. For example, I sold two lots in mid-2010 to Noel Janssen. He, in turn, brought Tory Mills to Las Olas, who bought a lot. Mr. Mills then recommended the project to Terry Phillips, a builder, who bought two lots. Similarly, I sold a lot to Anthony Findley, who in turn bought another lot, and then brought in David Kramer, who bought the lot next to Mr. Findley.
80. This is a pattern I have seen in other developments. What typically happens is that you sell someone a lot and they become exited and tell people in their local community. Before long you have a group of people interested in buying properties so that they can all holiday and live together. Sales grow exponentially because of this.
81. I note that these sales were made before the beach club had been developed and infrastructure had been put in. Both David and Mr. Janney wanted to get the plans approved for the beach club as soon as possible because once construction started on the beach club, it was expected that this would drive sales and prices upwards as the beach club was an attractive component for buyers and would reassure them that the project was going ahead smoothly. I, too, was certain that once the beach club was complete, and roadways were being constructed, the velocity of sales would increase.
82. As I discuss below, the project was shut down by the government authorities in May 2011. After this point my sales efforts stopped, aside from several isolated sales which I subsequently made.
83. There were a number of deals that were in the pipeline in May 2011 that were supposed to close, but collapsed as a result of the government shutting down the project.

³⁴ Exhibit C176, Glenn Griffin Mortgage Receipt, November 1, 2015.

84. These were as follows:

	Buyer	Lot No.	Location	Expected value of sales
1.	Mark Quinn	152	Condominium Section	US\$ 62,500.00
2.	Mark Quinn	153	Condominium Section	US\$ 62,500.00
3.	Mark Quinn	169	Condominium Section	US\$ 62,500.00
4.	Peter Matthys	-	Concession	US\$ 199,000.00
5.	Clint Kimery	57	Condominium Section	US\$ 40,000.00
6.	Clint Kimery	157	Condominium Section	US\$ 40,000.00
7.	Mark Spiegel	139	Condominium Section	US\$ 90,000.00 (in total)
8.	Mark Spiegel	140	Condominium Section	

Sales made post May 2011

85. I also sold lots on the project in 2012 to an investor called Mr. Webb, after the problems with the government emerged. These lots comprised the 14,000 square meter lot immediately to the north of the concession, as well as 41 lots. These were sold at prices considerably below market rates. David was forced to sell at a discount due to the government's actions that had rendered the land worthless.

Marketing

86. I also coordinated the marketing activities.

87. One of the steps I took in 2010 was to create signage on the roads. There is a considerable flow of traffic from San José down the coastal road past Las Olas to Manuel Antonio which is one of the most visited tourist attractions in Costa Rica. There is only one main highway to Manuel Antonio from San José, which runs right in front of the Las Olas project. We put up a huge billboard next to our property facing the main highway, as well as one next to our office. We also put up about nine signs in total in Jaco and surrounding areas, which had lifestyle photos and information about the project and our contact details. Examples of the type of images used are as follows:³⁵

³⁵ Exhibit C100, Las Olas Business Plan, December 20, 2010, page 28 of 38.



Figure 7 – Photographs of billboards

88. Tens of thousands of people would have seen our billboard as they drove to Manuel Antonio. I recall many people stopping by our office telling me they saw our sign. We received many calls and visits and had a lot of office walk-ins.
89. We developed marketing material to provide to prospects. Mr. Shiolen was involved in this process too. Examples of the flyers we developed are as follows:³⁶



Figure 8 – Example of flyer used

90. In addition, we designed advertising for various publications. These advertisements were placed in publications such as AM Costa Rica, La Nación, the magazine For Sale by Owner, the Toronto Globe and in various newspapers in Calgary and on free property websites, such as Mygola.com. I remember that David ran advertisements on the local radio and we were getting some interest from Costa Ricans who heard these ads.

³⁶ Exhibit C204, Las Olas flyer.

91. I also spent considerable time and effort keeping the Las Olas website³⁷ up-to-date with information on the project. I provided background information on the project as well as site plans and other project information. I would regularly record videos, which I would post on the site. I also put up information of the latest construction work carried out.

Problems with Mr. Bucelato

92. I recall that our sales efforts were hampered by one of the neighbours of Las Olas, Steve Bucelato.
93. Mr. Bucelato owned a big house in Esterillos Oeste which was on the very top of the hill overlooking Las Olas. I understood that he wanted to buy Las Olas before David and the other investors bought it. I felt that he was jealous of the project and wanted to shut it down.
94. Starting in around February 2010, when potential buyers visited the property, Mr. Bucelato would come down to the front of my office and tell buyers that Las Olas had wetlands and was an illegal project. He would also make other derogatory statements about the project while confronting prospective buyers in front of our office. Mr. Bucelato's efforts intensified as we started doing work on the infrastructure and more people were stopping by to look at our development. We tried to reason with Mr. Bucelato and ask him to leave, but we were generally unsuccessful. He continued making defamatory remarks. I felt that several potential buyers were scared away by his comments.
95. I filed complaints against Mr. Bucelato for threats of bodily injury with the Esterillos Police during 2010 and the first half of 2011³⁸, as well as at the local court.³⁹ I discuss these further below.

Las Olas is given the green light to start construction

96. As I explain above, in the first half of 2010 we worked to revise the business plans for Las Olas and start selling some of the lots to generate income for the project.
97. During this time period, I recall that David and his then-attorney Sebastian Vargas were working to get the remainder of the construction permits for the

³⁷ <http://lasolascr.com/index.php?page=construction>

³⁸ Exhibit C107, Police Station Complaint against Steve Bucelato, January 31, 2011.

³⁹ Exhibit C108, Denunciation filed by Jovan Damjanac, June 27, 2011

project so that we could start to build the infrastructure. Due to the re-design of the beach club, Las Olas also had to re-apply to SETENA for a new Environmental Viability permit to reflect the new scope of works. I was not involved in this permit application process. However, I was given updates on the progress on a regular basis by David so I could pass that along to our buyers and prospective buyers. From what I was told, everything appeared to be running smoothly and according to plan.

98. The construction permits were issued for the remaining seven easements in July 2010.⁴⁰ The construction permits for the Condominium Section were issued by the local municipality in September 2010.⁴¹ This paved the way for the start of work on the infrastructure construction. The SETENA environmental permit for the redesign of the beach club was later issued in August of 2011.⁴²

Bogantes First Bribery Attempt

99. In July 2010, Mr. Bogantes and another representative from MINAE came to the project site to carry out an inspection. I do not recall the reasons given for this inspection. Mr. Bogantes did not come to the office prior to the inspection, but just started walking across the property. Our engineer Roy Trigueros, who was out on site, spotted them and came to the office and suggested I join them, which I did. Mr. Bogantes told me that there were some problems with streams and a forest and that we would need to donate a couple of lots to him or give something else up because of this. I looked at him in bewilderment and said “*what for?*” He said “*you know what for.*” I just shrugged this off and did not pay too much attention to it since there were a lot of things going on at the time.

SETENA visit in August 2010

100. I recall an inspection by Juan Diego Pancheco Polanco from SETENA taking place in around mid-August 2010.⁴³
101. I was present for this visit and took Mr. Polanco on a tour of the whole of Las Olas site. I recall Mr. Polanco explaining that SETENA had received a

⁴⁰ Exhibit C71, Construction Permits Nos. 090-10 to 096-10, July 16, 2010.

⁴¹ Exhibit C85, Construction Permits for the Condominium Section, September 14, 2010.

⁴² Exhibit C138, SETENA Environmental Viability for the Concession, August 23, 2011.

⁴³ Exhibit C78, SETENA Inspection Report by Juan Diego Pacheco Polanco, August 18, 2010.

complaint from Mr. Bucelato. He wanted to look around the property as part of his investigations into this. I remember that we entered into the southerly portion of the Condominium Section and also visited the area where the easements were located. During the inspection, I recall standing with him at the top of the public road on the western side of the property and looking down Easement 7 towards the Condominium Section. It was clear to me that Mr. Bogantes was trying to obtain a bribe from us. I recall that Mr. Polanco said that this area was not a wetland, and asked me if we had any problems with our neighbours. I took this to mean that he considered the reason why he was carrying out the inspection was because of troublesome neighbours, rather than any real issues with the project.

102. I recall at some point shortly after Mr. Polanco's visit reading a document from SETENA confirming that, on the basis of Mr. Polanco's inspection, there was no wetland on the Condominium Section or the area next to it, and that Mr. Bucelato's complaint was dismissed⁴⁴.
103. I have read SETENA Resolution No. D1-1362-2007-SETENA dated August 19, 2010,⁴⁵ and believe that this is the document I reviewed in the weeks following the visit.

Bogantes Second Bribery Attempt

104. During the latter part of August 2010, just prior to getting the construction permits from the local municipality, David and I were in the site office with Luis Alfaro, a general contractor who was doing a lot of work for us on the project site. Mr. Bogantes came into the office. Mr. Alfaro left the office almost immediately to go to work on the site. Mr. Bogantes said to David that there were problems with the project and that if David wanted the project to continue, he would have to contribute money to his retirement fund. Mr. Bogantes was talking in Spanish and I was translating for David. I recall David responding that paying bribe money was a crime, and that he was unwilling to do this and risk being sent to jail. Mr. Bogantes got upset at this and stormed out of the office.

⁴⁴ Exhibit C78, SETENA Inspection Report by Juan Diego Pacheco Polanco, August 18, 2010.

⁴⁵ Exhibit C79, Resolution No. ASA-1216-2010-SETENA, August 19, 2010.

Work carried out in 2010-2011

105. I was not responsible for overseeing the construction work that took place at Las Olas. The technical supervision was carried out by the appointed architects and engineers. In September 2010, when the construction works commenced on site, I recall that our engineer, Roy Trigueros, was initially the professional responsible for overseeing the work and the contractors working on site. In March 2011, an engineer called Manuel Calvo took over as the project's technical director. I also recall that Esteban Bermúdez was the Environmental Regent for the work carried out on the Condominium Section. He would visit the site around once every two months. I do not remember him ever mentioning to us that there was a problem with any of the works being carried out from an environmental perspective.
106. Although the role of supervising the work at Las Olas was carried out by these Costa Rican professionals, I was at the site every day. By virtue of this I witnessed a lot of the work that was carried out and took a lot of videos which were posted on the web site. I thought this was a good way for buyers to actually see the progress we were making with the construction of the infrastructure.
107. I set out in the paragraphs that follow the main work that was carried out.
108. The storm drains started to be put in in August of 2010. This was done as a joint effort by the local municipality and Las Olas. The local municipality had run storm drains from the soccer field, which was about 100 meters from our office, to the estuary that ran into the ocean. The municipality asked us to help them complete the storm drains along the rest of the public road. They needed to run another 450 meters of storm drains along the road in front of our office, then turn right before running up the road on the west of the project that connected the community to the main highway.
109. This work was needed to help with the rain runoff from the hills and the road into the community immediately around Las Olas that would flood in heavy rains. There was a significant problem with flooding in this area, as is evident from the video I prepared in May 2010.⁴⁶ The local municipality told us that they ran out of money and that if we would put up the money to buy the storm drains, they would provide the machinery and manpower to install them. We wanted to be good neighbors and help the community, as well as help out the

⁴⁶ Exhibit C66, Video: Flood 5-26-10 and 11-5-10 comparison, May 26, 2010 and November 5, 2010.

project, so David agreed to do that. It is my understanding that the permits for this were all organised by the local municipality.

110. I have included below a photograph of the local municipality carrying out the work. This involved digging trenches to the side of the roads and laying storm drains along these. The local municipality was there all the time overseeing the works.



Figure 9 – Photograph showing the local municipality carrying out the storm drainage work in 2010

111. The drainage work on the public roads was completed in around November 2010. It was very successful. I took a video in November 2010,⁴⁷ shortly after the work was finished at a period when there was heavy rain. As is clear from the video, the issues with flooding had been resolved by the works.
112. After receiving the construction permits in September 2010,⁴⁸ Las Olas also installed storm drainage in the Condominium Section to drain the water coming off the hills in that area. David had agreed with local municipality that these drains would connect into the drainage installed by the local municipality. This work was approved as per the permitted construction plans for the project. It was carried out by Pata Walter Nunez under the supervision of our then-project engineer, Roy Trigueros.

⁴⁷ Exhibit C66, Video: Flood 5-26-10 and 11-5-10 comparison, May 26, 2010 and November 5, 2010.

⁴⁸ Exhibit C85, Las Olas Construction Permit, September 14, 2010.

113. Like with the storm drainage installed by the local municipality, this involved digging a trench and installing large concrete drains. Every 30 or so yards, a collector box was installed which would be used to clean the drains from time to time.



Figure 10 – Photograph showing collector boxes installed

114. As part of this process, storm drainage was installed between January and around March 2011 at the end of Easements 7, 8 and 9. This connected to a catch basin, which in turn connected to the main drainage channel running next to the public road.
115. Right after we received the construction permits from the Municipality of Parrita in September 2010, we also started to cut the roads in the Condominium Section according to the master site plan. This was an ongoing activity. As part of this process it was necessary to first landscape the land to ensure that the cross-sections of the roads were not on an angle and that the roads were not too steep. We then cut the roads and put in culverts and storm drains, as is visible from the photograph below and from the video included as Exhibit C95⁴⁹.

⁴⁹ Exhibit C95, Video of road curving and laying of drainage pipe, December 3, 2010.



Figure 11 – Photograph showing the work carried out on the roads

116. In addition, we put in a sub-base of gravel to give protection to the road, before putting the paving down. Here is a photo that was taken of the roads installed.



Figure 12 – Photograph showing the works carried out

117. We were planning on developing the infrastructure for the Condominium Section in three different stages. By the time of the shut-down notice of May

2011,⁵⁰ we had only developed roads in the first stage of the project, as shown in the following drawing:



Figure 13 – Site plan indicating first phase of works in the Condominium Section

118. After May 2011, no further roads were carved. I believe some gravel was placed on the existing streets as part of remedial works so that they could be used during the next rainy season in early May. After the shutdown notice we only carried out basic property maintenance.
119. By this point in time, we had also cut the roads in Easements 4, 6 and 7,⁵¹ after we had obtained in July 2010 the required permits to carry out the construction works on those easements.⁵² Electric was installed in Easements 8 and 9, early in 2010, by Mario Solis from Selectrica, who had acquired the necessary permits. Pipes for potable water were also installed in some of the Easements.

Overseeing work of employees

120. In 2010, Las Olas hired three agricultural workers on a full-time basis to help keep the land clear. Their names were Melvin José González Benavides, Antonio Gutierrez Mendez, and Marzio Rodriguez Martinez Peralta. Their

⁵⁰ Exhibit C125, MUNI Shutdown Notice, May 12, 2011.

⁵¹ Exhibit C102, Video of road cutting on Easement 7, January 25, 2011.

⁵² Exhibit C71, Construction Permit for Easements, July 16, 2010.

main role was to keep the land maintained and to carry out tasks such as putting posts in the ground and helping to mark up the lots and keeping them clean. They would spend most of their time cutting vegetation, mainly grass and small brush. This was important for the upkeep of the land and to ensure that it was in good condition when potential buyers visited the site.

121. I was responsible for overseeing the daily work of these three employees as dictated by David and other project managers. I would relay instructions as to the areas of the site they should be working on. I would visit them during the day and check on their work. I would also pay their wages each week.
122. At no stage did the workers cut any trees unlawfully. The only trees that were cut were small caliper ones permitted by the Costa Rican law which were part of the brush or “Secate or Tacotal” as it is known here in Costa Rica. At all times we followed the law. Esteban Bermúdez hired a forestry engineer by the name of Minor Arce⁵³ to do a study about what trees could be and could not be cut in our maintenance program, since we had to keep the property clean, as required by law. We also wanted it looking good for people who were visiting the project. David wanted to get a definite blueprint to make sure that everyone knew what the law was, and to follow this at all times. To the best of my knowledge, at all times we followed the guidelines outlined by the forestry engineer, Mr. Arce, in his report.
123. Furthermore, it was not in our interests to cut trees since they are valuable assets in a gated community of this type. Buyers like trees as they provide shade and look nice. They add value to the lots—not disvalue. We were not cutting trees. We were clearing brush in an area we had no intention of building on anytime soon.
124. I also oversaw the work of Francisco Iglesias Calderon, who was known as Chico. He came on board in mid-2010, after we had obtained all the construction permits and approvals, as our backhoe operator. David purchased a backhoe because it would be much cheaper than renting one with an operator month after month. Chico was not only an excellent backhoe operator, but he was also an excellent mechanic, and kept the backhoe in perfect condition. He was an invaluable person to have on a project like this.
125. Chico cleared the roadways, helped with the construction of easements and the main entrance to the condominium, as well as interior work that needed to be

⁵³ Exhibit C82, Minor Arce Solano Forestry Report, September 2010.

done on the infrastructure. He also assisted with the internal project drainage work. For this construction work, he reported to the project engineer for instructions, rather than me.

Issues with the government authorities

126. I recall that in mid to late 2010, Mr. Bucelato came to the project and started making comments that he would have the project shut down. He said that the project was illegal because there was a falsified a document which meant the environmental permit was not valid. I did not pay much attention to Mr. Bucelato's comments as to the validity of the project. He had been a menace for some time already, and, again, I just thought his comments were lies. I was confident as we had all the approvals and had done everything legally. We had obtained all the correct environmental and construction permits. As I explain above, SETENA had even confirmed a few months earlier, in August 2010,⁵⁴ that there were no problems with the site from an environmental perspective and that construction work could continue.
127. However, I was worried because of the bad publicity he was spreading. I thought that this would affect sales when buyers were visiting. In addition, I was worried for my safety. Mr. Bucelato made personal threats against me like "*watch your back*" and "*I know some guys that will take care of you.*" As I explain above, I filed several reports with the Esterillos Police about this, although nothing came of this. The police did nothing. They just nodded their heads.
128. I made sure that David was kept updated on Mr. Bucelato's threats relating to the project. I recall that in early 2011, David and Mr. Vargas were in contact with the government authorities as a precautionary measure to make sure that nothing was amiss with the permits. I was not really involved in this process or in the subsequent discussions, although David kept me in the loop on what was going on. However, I reported to him when government officials, police or anyone else came to the project.
129. I soon became aware of the situation with the government authorities, which unfolded in the months that followed David's initial receipt of the SINAC administrative injunction in February 2011. I understand that this is fully detailed in David's witness statement.

⁵⁴ Exhibit C79, SETENA Report No. ASA-1216-2010, August 19, 2010.

130. During the first half of 2011, I was present during a number of the visits and inspections of the government authorities. A summary of these is set out in the sub-paragraphs that follow.

(a) In February 2011, I recall that Luis Gerardo Martínez Zuniga, the criminal prosecutor, visited the property. Mr. Martínez did not announce the visit in advance or come to the office. However, workers on the site informed me that they were there so I walked up to see them. I explain in more detail below what I discussed with Mr. Martínez when we met at that time.

(b) On May 18, 2011, Mr. Polanco from SETENA came to the office and hand-delivered SETENA Resolution 839-2011 (dated April 13, 2011).⁵⁵ This resolution stated that the SETENA Environmental Viability for the Condominium Section had been revoked. Mr. Polanco told me that we could not do any work on the site while the investigations were ongoing, despite it being only around seven months previous to this that Mr. Polanco had himself confirmed in SETENA Resolution D1-1362-2007-SETENA of August 19, 2010,⁵⁶ that there were no problems with the project.

(c) On May 19, 2011, Mr. Martínez visited Las Olas again. He was with Luis Picado and a few other MINAE officials. I explain in more detail below what happened on this site visit.

131. While preparing this statement, I read the TAA injunction dated April 13, 2011.⁵⁷ I confirm that to the best of my knowledge I do not recall ever having received copies of these at the time.

Las Olas is shut down

132. As of end of May 2011, we stopped work on the project. From this point on all we did was maintenance work and cutting grass. The local municipality constantly sent out inspectors afterwards to make sure we were not working.

⁵⁵ Exhibit C127, email from Jovan Damjanac to David Aven, May 18, 2011; and Exhibit C122, Resolution No. 1362-2007-SETENA, April 13, 2011.

⁵⁶ Exhibit C79, SETENA Report No. ASA-1216-2010, August 19, 2010.

⁵⁷ Exhibit C121, TAA Injunction, April 13, 2011.

133. I left Esterillos Oeste in July of 2012. I moved into David's house in Escazu where I worked with him on preparation of our case for the trial, which started in December 2012, as I explain below.

Criminal investigation

134. I first learned that I was the subject of a criminal investigation in or around February of 2011. As I mention above, the environmental prosecutor, Mr. Martínez, made an unannounced visit to the Las Olas site. During that visit Mr. Martínez informed me that an investigation was underway that could result in criminal charges against David and me. After Mr. Martínez's visit, I immediately contacted David, who contacted his attorney, Sebastian Vargas.
135. The criminal investigation came as a surprise to David and me because Las Olas had received the requisite permits and we were operating legally. SETENA had issued an Environmental Viability permit to the project,⁵⁸ and we had also received construction permits from the Municipality of Parrita.⁵⁹ In addition, we had hired the Environmental Regent for the project, who submitted environmental reports once every two months as required by Costa Rican law, and none of those reports contained findings of wetlands or forests on the property.⁶⁰
136. Nonetheless, during his visit, Mr. Martínez informed me that the investigation was premised on a series of complaints filed by Steve Bucelato in which he made a variety of allegations against the Las Olas project, including that the project site contained wetlands.⁶¹ As mentioned above, Mr. Bucelato slandered and spoke out against the project throughout 2009 and 2010, with no evidence to back up his allegations. SETENA even issued a report in August of 2010 in which it dismissed Mr. Bucelato's complaint for lack of evidence of wetlands

⁵⁸ Exhibit C52. SETENA Resolution No. 1597-2008-SETENA, June 2, 2008.

⁵⁹ Exhibit C85, Construction Permits for the Condominium Section, September 14, 2010.

⁶⁰ Exhibit C74, August – September 2010 "DEPPAT Environmental Report".

⁶¹ Mr. Bucelato filed a complaint with the Defensoría de los Habitantes, who then forwarded the complaint to numerous government agencies, including SINAC and SETENA. See Exhibit C91, Letter from Hazel Diaz of the Defensoría de los Habitantes to SINAC, forwarding the complaint of Steve Bucelato, November 23, 2010; and Exhibit C75, Letter from Hazel Diaz of the Defensoría de los Habitantes to SETENA, forwarding the complaint of Steve Bucelato, August 7, 2010.

on the project site.⁶² He continued to speak out against the project though, which eventually led David to file a defamation lawsuit against him.⁶³

137. In April of 2011, Mr. Martínez ordered two new reports in connection with the criminal investigation. The first was from the Instituto Nacional de Tecnología Agropecuaria, or National Institute of Agricultural Technology (“INTA”), and the second report was from MINAE. Dr Diogenes Cubero Fernandez, a wetlands specialist working for INTA, issued his report on May 5, 2011, confirming that there were no wetlands on the project site.⁶⁴ The MINAE report, which was issued on May 16, 2011, came to a conflicting conclusion, stating that there was damage to the ecosystem on the project site as a result of the draining and filling of a wetland.⁶⁵
138. Mr. Martínez visited the property again in May of 2011, after the issuance of the INTA and MINAE reports. During that visit, I alerted him to the discrepancy between those reports, and asked him how he could proceed with filing criminal charges despite the credible findings of Dr Cubero, an environmental expert. David also asked him if he read the INTA report, and Mr. Martínez responded by stating that yes, he did read the report, but he did not believe the findings in that report. Both David and I were shocked at this response.
139. As part of Mr. Martínez’s this visit, I recall walking along the road which started at the entrance at the southwest of the project and into the interior of the Condominium Section and around the area of the Easements. Luis Picado from MINAE ordered workers from Las Olas to put in flags at certain specified points which designated the areas that were supposedly wetlands. I remember at one point during this process, Luis Picado pointed to the ground beneath him, stomped his foot down and said “*this is my finca*”. I was shocked. This area was clearly not a wetland, nor was it Mr. Picado’s land.
140. After the inspection, I went with a worker from Las Olas to the places where the flags were placed and dug pits in these locations. I filmed this process and have included, as Exhibit C128, the video of this.⁶⁶ As is clear from the video,

⁶² Exhibit C79, SETENA Report ASA-1216-2010, August 19, 2010.

⁶³ Exhibit C89, Defamation Lawsuit filed by David Aven against Steve Bucelato, October 20, 2010.

⁶⁴ Exhibit C124, INTA Report, May 5, 2011.

⁶⁵ Exhibit C126, MINAE Report ACOPAC-CP-081-11, May 16, 2011.

⁶⁶ Exhibit C128, Video of MINAE inspection, May 19, 2011.

we dug to depths of around 1.5 meters. None of the holes dug contained wet soil. I could not understand how MINAE could have reached their conclusions that there were wetlands on the property, despite that there were no signs of this.

141. During the same site visit, Mr. Martínez made the allegation that we had unlawfully ordered the cutting down of 400 different trees on the project site. David asked him to provide evidence of this, at which point Mr. Martínez became agitated. He then pointed to the stump of a three to four-inch caliper tree. The tree was part of the Guarúma species that is common in cow pastures. Guarúma trees have hollow cores with short root systems, and as a result, they typically fall down naturally within a few years due to wind and rain storms. The size and species of the tree identified by Mr. Martínez were such that it was not protected by Costa Rican forestry laws, and David pointed this out to Mr. Martinez during the site visit. In response, Mr. Martínez stated, *“If you kill a small child, isn’t that murder?”* It was clear from this statement and Mr. Martínez’s behaviour during the site visit that he had his own personal agenda in pursuing the criminal investigation, and he was willing to move forward despite the lack of any evidence of a crime.

Criminal charge

142. Mr. Martínez eventually filed criminal charges against David and me on October 21, 2011 in the criminal court in Aguirre and Parrita.⁶⁷ It is notable that there was little difference between Mr. Bucelato’s various complaints and Mr. Martínez’s criminal complaint. In fact, it appeared that Mr. Martínez simply cut and pasted one of Mr. Bucelato’s complaints into the template of a criminal complaint, without conducting any further investigation or gathering any additional facts. It is also notable that only a few weeks after the criminal charges were filed, SETENA issued Resolution No. 2850-2011,⁶⁸ which had the effect of reinstating the previously issued Environmental Viability. Nonetheless, Mr. Martínez persisted in pursuing the criminal charges.⁶⁹
143. I learned of the criminal charges filed against me in November of 2011 through David and Mr. Vargas. There was no basis for a criminal charge to be

⁶⁷ Exhibit C142, Case filing in Criminal Court of Aguirre and Parrita by Environmental Public Prosecution Office, October 21, 2011.

⁶⁸ Exhibit C144, Resolution No. 2850-2011- SETENA, November 15, 2011.

⁶⁹ Exhibit C144, Resolution No. 2850-2011-SETENA, November 15, 2011; Exhibit C122, Resolution No. 839-2011-SETENA, April 13, 2011.

filed against me. We were not in the business of cutting or selling trees. In fact, there were no valuable trees on the property that could be sold for a profit. The only trees that we did cut down on the property consisted of short tree brush that is commonly referred to as “tacotal,” or “secate,” These are not protected species under Costa Rican forestry laws. Minor Arce Solano, a forestry consultant and expert witness who testified at the criminal trial, confirmed this fact in his September 2010 report.⁷⁰

144. The criminal complaint made reference to Las Olas’s agricultural workers Melvin José González Benavides and Antonio Gutierrez Mendez, claiming that I ordered them to cut down and to remove 400 trees of diameters ranging from 5 to 25 centimetres. This is simply not true. We hired Mr. González and Mr. Gutierrez to help clear the brush because it grows rapidly. They were weed wackers who worked with machetes. It would be impossible for them to cut down protected trees with nothing but a machete.
145. The complaint also stated that Mr. González and Mr. Gutierrez removed 29 different timber species in the fall of 2011. Again, there was no basis for this claim. Mr. González and Mr. Gutierrez were hired to clear brush. They did not cut down any protected species of trees. In fact, during his investigation of the property, Mr. Martínez took certain photos of stumps at the project site, and clusters of small-caliper, one to three-inch trees, none of which are protected species. He failed to demonstrate the types of trees removed from those stumps and took no measurements of their diameters.
146. The third allegation against me in the criminal complaint was that I was responsible for removing a higuérón tree. The tree referenced in the complaint was not even on the Las Olas site. Instead, it was located on the fence line of a neighbour’s property. Additionally, the tree was rotting, and it posed a risk. If the tree fell on its own, it could severely damage nearby homes. As a result, David offered to assist the property owner in obtaining permission from MINAE to cut the tree down to prevent it from falling and causing property damage. MINAE granted the permission, and the neighbours were grateful that the tree was removed. There was nothing illegal about the cutting down of the tree. The environmental prosecutor eventually realized this and decided to drop the charge against me.

⁷⁰ Exhibit C82, Forestry Report of Minor Arce Solano Concerning the Las Olas Project Site, September, 2010.

147. The criminal complaint included several names of potential witnesses, many of whom lived near the Las Olas site. However, Mr. Bucelato is the only neighbour that actually testified against David and me at the criminal trial. Alberto “Beto” Mora also lived near the site, and the prosecution offered him as a witness. However, Mr. Mora stated in his testimony that the project site did not contain wetlands or a forest, and that it largely consisted of a cattle pasture.

Preliminary hearing and first trial

148. The preliminary hearing took place on June 19, 2012. At this point, an investigation was underway against David related to an alleged forged document. The document was a report from SINAC, describing an investigation of the Las Olas project.⁷¹ After SETENA issued the environmental permit to the Condominium Section on June 2, 2008,⁷² MINAE alleged that SETENA’s decision was based in part on the alleged forged document. As a result, SETENA revoked the Environmental Viability on April 13, 2011.⁷³ However, SETENA subsequently reinstated the permit on November 15, 2011,⁷⁴ after determining that the alleged forged document was not the document that SETENA relied upon when issuing the Environmental Viability in June of 2008. Mr. Martínez knew that he could not prove that David had anything to do with the alleged forged document and as a result, the investigation was dropped.
149. The first trial began on December 5, 2012. I was notified of the trial via email. At trial, the prosecution failed to support any of its claims with documentary evidence. Instead, they merely repeated the statements made in the criminal complaint. The prosecution offered Mr. Bucelato as a witness, but his testimony was unreliable and inaccurate. Mr. Bucelato claimed that he witnessed flamingos and jaguars on the property, which was an absurd and untrue allegation. He was also unable to define the terms “wetlands” or “forests” in any coherent way. In addition, prior to the trial, Mr. Bucelato had convinced local residents to sign a petition against the Las Olas project, and many of those neighbours were also named as witnesses in the criminal

⁷¹ Exhibit C47, SINAC Report 67389RNVs-2008, March 27, 2008.

⁷² Exhibit C52, Resolution No. 1597-2008-SETENA, June 2, 2008.

⁷³ Exhibit C122, Resolution No. 839-2011-SETENA, April 13, 2011.

⁷⁴ Exhibit C144, Resolution No. 2580-2011-SETENA, November 15, 2011.

charge. However, none of them showed up to the trial, which calls into question whether they ever had any objections to the project in the first place.

150. As mentioned above, the only other local resident who did actually show up was Beto Mora, a politician and businessman who lived near the Las Olas site. Mr. Mora was the prosecution's witness, but his testimony was actually favourable to the defence's case. He was very familiar with the Las Olas area, as his father raised cattle on the Las Olas property and nearby land for many years. Mr. Mora testified that there were no wetlands or forests on the property, and the areas that the prosecution alleged to be a wetland and a forest were actually cattle pastures. As such, the alleged forest area had many Guarúmo trees, which are an indicator that cows have recently been in the area. Guarúmo trees grow rapidly in the presence of cows, as they are fertilized by cow dung. They also tend to fall down very frequently because their roots are shallow. Guarúmo trees are not a protected species under Forestry Law 7575. Mr. González and Mr. Gutierrez also testified at trial, and confirmed that they did not cut down any protected trees, but instead used machetes to clear brush.
151. The prosecution also called various other witnesses, but they did not provide any credible evidence demonstrating that David or I had committed any crimes. For example, Mr. Bogantes, the SINAC representative who conducted various inspections of the Las Olas site and had attempted to solicit a bribe from David and me in 2010, testified that the Las Olas site did contain wetlands. However, his testimony was contradicted by his own report issued in July of 2010, in which he came to the exact opposite conclusion.⁷⁵ The judge pointed out this contradiction, and Mr. Bogantes claimed that his role in the July 2010 inspection was simply that of a driver, and that he had nothing to do with the actual conclusions. This was contradicted not only by the fact that his name and signature were on the July 2010 report, but by other correspondence with the Defensoría de los Habitantes, in which he specifically relied upon and acknowledged the findings of the July 2010 report.⁷⁶ Mr. Bogantes also admitted in his testimony that his colleague in the inspection, Mr. Rolando Manfredi, was not actually a specialist in wetlands. Mr. Bogantes was the prosecution's witness, but his testimony was unreliable, inconsistent, and damaging to their case.

⁷⁵ Exhibit C72, Inspection Report ACOPAC-OSRAP371-2010 SINAC, July 16, 2010.

⁷⁶ Exhibit C80, ACOPAC-OSRAP-468-10, Letter from Christian Bogantes at SINAC to Hazel Diaz Melendez (Town Defender Department), 27 Aug 2010.

152. Dr Cubero also testified and offered strong support for our defence. Dr Cubero is a wetlands specialist working for the National Agricultural Technology Institute, or Instituto Nacional de Tecnología Agropecuaria (“INTA”). He testified that in order to characterize an area as wetlands, it was necessary to conduct a soil analysis. The prosecution’s allegations were particularly flawed because they did not pay attention to the soil, instead choosing to focus on factors such as the amount of water and presence of birds. However, the mere presence of water, or a “wet area,” does not lead to the classification of a wetland, especially when the soil analysis provides no evidence of a wetland, as in the case of the Las Olas property. There is indeed a difference between a “wet area” and a wetland.
153. The trial lasted from December 5, 2012 to December 19, 2012, at which point it adjourned for the holidays and the New Year. The trial then resumed on January 16, 2013. In the morning, David gave a final declaration in which he reintroduced documentary evidence demonstrating that Las Olas was compliant with government regulations and he had not committed any crimes. After his statement, both the defence and the prosecution were scheduled to make closing statements before the trial came to an end. At this point, the prosecution decided to request a continuance from the judge. The basis for the continuance was that there was insufficient time for both sides to deliver closing arguments, and the prosecution argued that they should deliver those arguments on the same day.
154. Mr. Morera did not object to the motion, and as a result, the judge granted it and reset the trial to resume on January 25, 2013. However, on January 24, we received a notification from Judge Solis that he could not return to court due to a medical condition. At this point the trial had almost concluded, as the parties only needed to deliver their closing statements. Under the Costa Rican Criminal Code, if a trial has been suspended for more than ten days, then there must be an entirely new trial⁷⁷. The result of Judge Solis’s notification was that the ten-day period had lapsed. The prosecution viewed this as an opportunity for a second chance. In my opinion, the reason for this is that the prosecution knew that it failed to carry its burden at trial, and it wanted a new trial so that it could attempt to remedy the mistakes that it made in the first trial.

⁷⁷See Witness Statement of Nestor Morera Viquezat dated November 26, 2015 ¶¶43-48

155. Our witnesses had demonstrated that the project received the proper permits and that there were no wetlands or forests on the site. The prosecution was unable to respond to these points, instead offering weak and unreliable testimony. Indeed, none of the criminal prosecutor's witnesses were able to present evidence, whether in the form of testimony or documentary exhibits, proving David or I had committed any crimes. Nonetheless, rather than drop the charges at this point, the prosecution decided to take advantage of the ten-day rule to get another trial. The effect of this was that we had to start over from square one. This was frustrating given the overwhelming evidence we had presented in support of our case and the expenses that we would incur in a second trial. Additionally, while a new trial is typically automatic after a ten-day suspension, the parties can agree to proceed with the trial despite the interruption. Mr. Morera requested that the prosecution agree to move forward, but the prosecution refused. I felt that the rules of the criminal justice system in Costa Rica were being used unjustly, and I wondered if I would ever get a fair trial.

Second trial

156. After the conclusion of the first trial, I received several anonymous threats in the form of phone calls. Most of those threats included statements such as, "*Get out gringo if you value your life.*" While I waited for the second trial, I had a difficult time finding work. I had invested a great deal of time and effort into the Las Olas project, and after the criminal charges and the injunctions against the project, I needed to find another source of income. Eventually I found work in the mortgage industry, and selling properties on the secondary market at Lake Arenal. The properties that I am currently selling are considered semi-tropical because they are not beachfront properties. Rather, they are in mountainous areas with nearby lakes. As a result, they sell for less and they sell more slowly than properties that are closer to the water.
157. David also experienced anonymous threats during and after the first trial,⁷⁸ as well as an assassination attempt. In April 2013, he was driving back from the Las Olas property with another US investor, when a motorcycle passed them on a hill and fired a number of gunshots into their car. I was shocked to hear about this assassination attempt. Shortly after it took place, David informed me that he was going to move back to the US because he was concerned for his safety.

⁷⁸ Exhibit C159, Threatening Email from Ruben Jimenez to David Aven, February 2, 2013.

158. I was notified of the second trial through my attorney, Mr. Morera. The second trial resulted in the judge finding me not guilty of all charges. Despite the favourable outcome, the second trial had several of the same frustrating characteristics as the first trial. For example, the translator spoke poor English and I was not at all confident that the translations were accurate. Additionally, Mr. Bucelato testified again, and his statements were every bit as inaccurate and unsupported as in the first trial.
159. There were fewer people at the second trial. Unfortunately, our forestry engineer from INGEOFOR Ingeniería y Ambiente S.A. was unable to attend, which concerned me given that his findings regarding the lack of forests were highly favourable to our case. Mr. González did attend, and once again testified that his role was to clear brush, not to cut down any protected species of trees. Beto Mora also testified again, and offered similar testimony as in the first trial.
160. We had a different judge in the second trial named Judge Maureen Víquez Córdoba. At times she seemed to understand the absurdity of the prosecution's statements, and she was noticeably frustrated by this. My impression is that Judge Víquez wanted to keep things simple in the second trial. As a result, instead of engaging in a highly technical discussion regarding the classification of a forest, she focused more on whether I specifically ordered the cutting of trees. That said, we did conduct a site visit during the second trial, and Judge Víquez did attend. Mr. Bucelato had made some allegations regarding particular types of trees on the property. The site visit failed to demonstrate the cutting of any protected species of trees. Additionally, it was clear that Mr. Bucelato could not have observed the area in question without trespassing on the property.

Corruption issues and other criminal charges

161. I have witnessed, and suffered from, corruption related to the Las Olas project first-hand. As mentioned above, there were two instances in which Christian Bogantes solicited bribes from Las Olas. The first instance took place during an unannounced inspection to the Las Olas site. Mr. Bogantes came to the property in or around July 2010 and asked to inspect the area of the alleged forest. During Mr. Bogantes's visit, he told us that we were "*going to have to give something up,*" in the form of cash payments or lots on the property. It was a strange request because we had received permits and we were operating lawfully at the time. I declined Mr. Bogantes's request.

162. The second bribe solicitation took place during the latter part of August of 2010, as described above.
163. David filed a criminal complaint against Mr. Bogantes on September 16, 2011, based on the attempted bribery in August of 2010⁷⁹. I went to the criminal prosecutor's office in Quepos as a witness when David gave his statement. When we told the prosecutor that I witnessed the attempted bribery, the prosecutor stated that he was not interested in taking my statement. David and I thought it was strange that a criminal prosecutor would not be interested in taking a statement from a person who witnessed a crime. The case was eventually dismissed in September of 2013 by the prosecutor based on a lack of evidence.
164. I also filed a separate complaint against Mr. Bucelato in around June of 2011⁸⁰. In the complaint, I stated that Mr. Bucelato had threatened physical harm and had even made death threats against me. These threats were made in person during 2010. In addition, he repeatedly tried to sabotage the Las Olas project by showing up at the property while potential buyers were discussing lot purchases with me. On several occasions, Mr. Bucelato told those potential buyers that the project was illegal and they would be making a mistake in purchasing lots there.
165. I attended a hearing regarding my Denuncia against Mr. Bucelato, and the judge decided to extend the trial date. However, I never received any additional information from the court and the trial was never rescheduled.

Appeal and current status

166. After the favourable outcome in the second trial, I was hopeful that the criminal matters were finally over. However, that was not the case, as the environmental prosecutor decided to pursue an appeal. I found this to be very surprising. I was not charged with offences that carried extremely high financial penalties or long prison sentences. It was strange to me that the prosecution would invest the resources in continuing to pursue these charges. Nonetheless, there was an appeals hearing that took place after the second trial on June 24, 2014. On appeal, the panel determined that the reasons for the not

⁷⁹ Exhibit C139, Criminal Complaint by David Richard Aven against Cristian Bogantes at the Judicial Branch of the Justice Department at the Public Prosecutor's Office of Aguirre and Parrita, September 16, 2011.

⁸⁰ Exhibit C108, Jovan Damjanac Denuncia against Steve Bucelato, June 27, 2011.

guilty verdict in the second trial were not clear enough, and as a result, there must be a third trial. I was again shocked, though this time not surprised, given the treatment I had already received in the criminal proceedings so far.

167. As of the date of this witness statement, the status of the third trial is still pending. I now have a new attorney named Luis Marino. There was a hearing about six or seven months ago in which there was some discussion of a possible agreement for me to plant a number of trees in the area in question on the Las Olas property in exchange for the prosecution dropping all charges. However, we did not reach an agreement on this, and I have heard nothing further from the court or from the prosecution in the past six to seven months.
168. The criminal charges and multiple trials have severely affected me on both a professional and a personal level. I am in the type of business in which any given project can take years to come to fruition. I invested considerable amounts of time and effort into the Las Olas project, only to see it fall apart as a result of politically motivated, false accusations. The effect of the government's actions extends beyond my involvement in Las Olas. For example, after the prosecution filed charges, a number of articles were written about the Las Olas project, how it was involved in a criminal case, and how I became a criminal defendant. Despite the fact that all of the charges were completely unsupported by any evidence, and I was eventually acquitted, there are still certain people who do not want to work with someone who has been charged with a crime.
169. I have also lost the opportunity to be able to generate significant commission on the sale of lots, houses, and mortgages, as well as management fees, on a project that I had fully invested my time and effort in developing.
170. In addition to these professional effects, the experience has caused me a great deal of stress that has persisted for years, given the fact that the case is still not resolved. As a result, it has greatly affected my general health and well-being, including have severe impacts on my financial well-being. The assassination attempt on David and the government corruption has caused me to fear for my own safety and the safety of my family.

I believe the facts stated in this WITNESS STATEMENT are true.

Signed.....

Jovan Damjanac

Jovan Damjanac

Date.....

Nov. 26, 2015