

**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, DAVID A. JANNEY AND ROGER RAGUSO**
(United States of America) (Claimants)

v

THE REPUBLIC OF COSTA RICA (Respondent)

**SECOND WITNESS STATEMENT
OF DAVID RICHARD AVEN**

I, **DAVID RICHARD AVEN**, of Pennsylvania, U.S.A., SAY as follows:

1. I am the same David Richard Aven that gave a witness statement on November 27, 2015 (my “**First Witness Statement**”). I make this second statement in support of the Claimants and their Reply 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.
4. I make this statement to address matters arising from the Respondent’s Counter Memorial dated April 8, 2016, as well as the evidence, expert reports, and witness statements contained therein.

5. In my First Witness Statement, I have already set out the factual background of the Las Olas project and my involvement in it, and I will not repeat that here. In this statement, to the extent that I am able, I provide further details of my U.S. and Italian nationality, the project's compliance with Costa Rican law and the terms of the Concession, the Protti Report, the TAA injunction, the allegedly forged document and my criminal trial. I also respond to other discrete issues raised by the Respondent and detail the current status of the Las Olas project site.
6. I have not attempted to address each and every issue raised and allegation made against me, and the other Claimants, by the Respondent. To the extent that I have not addressed a particular point, should not be taken as an admission that the point is true. I would also like to say that this is the first time I have ever been in this kind of proceeding. In this proceeding there are no depositions, only witness statements. I have been advised by my attorney to keep the scope of my words focused on the facts and evidence and not wander off into trying to argue the case. Although I am not familiar with the particular demands of this process, I am well-schooled in telling the truth, a value I learned at a young age from my parents. As in my First Witness Statement, that is what I am attempting to do in this Second Witness Statement. My intent is to tell and reveal the truth based upon my perspective of my knowledge of the events as they transpired, to the best of my recollection, over the last 15 years. I believe what I have to say is important for the Tribunal who needs to hear from me on these important issues, since I have lived through this for that last 15 years and there is no one that knows more about the events than me. So I want to try to explain as much of what I know so the panel can hear it unfiltered directly from the one U.S. Investor that was acting in the capacity of project manager and the US representative for all of the other U.S.-based Investors in this proceeding. Please forgive me if I wander over the line and get into areas that are more argument than just the facts and the evidence as I know them. In reading Luis Martinez's witness statement, I was fascinated with all kinds of speculations, assertions and accusations he made and then called evidence. I will comment on that in this witness statement as well.

I. Overarching Observations.

7. In reading Costa Rica's Counter Memorial and the witness statements of Luis Martinez, Monica Vargas, Hazel Diaz and Julio Jurado, I was struck by the numerous speculations, assertions and accusations that the Respondent then called evidence. The same tactic was used by Mr. Martinez when he filed his 33-page criminal complaint against me in October 2011, alleging I had committed environmental crimes. All accusations with no proof and it was the same at the preliminary hearing held on June 19, 2012, and the criminal trial that started in December of 2012 and it is still ongoing as I have read through the witness statement as well as the Respondent's Memorial. This is my clear and truthful statement right at the beginning. The Government was not able to prove that either Jovan Damjanac or I were guilty of any of the crimes we were charged with; and that should come as no surprise, because we did not commit any crimes. It appears the purpose of this tactic was to create a smoke

screen for the Tribunal to try to hide and explain away why the Government shut down a fully-permitted project that had been issued five SETENA environmental viability permits (EVs) (all of which said there were no wetlands, forest or ecosystems on the project site) and the required construction permits and was nine months into construction. In trying to explain that away, the Government actually accused me of “duping” SETENA five times into issuing me their EV permits. This is just one of many preposterous and stunning accusations the Respondent makes with no proof. In all of the many thousands of words that the Respondent wrote, the most relevant 64 words for me were written by Dr. Jurado, one of the Respondent’s expert witnesses, where he said the following:

Similarly, the law clearly provides that both private and public institutions must comply with SETENA’s resolution in relation to these environmental impact assessments. Accordingly, SETENA is a technical body legally designated to analyse and resolve the environmental impact assessment as well as to monitor compliance, such that in the event of a breach of its resolutions, it may order the stoppage of works.

8. I am advised that the SETENA resolutions are Government orders that all must comply with, and that includes public institutions such as the Prosecutor’s office, MINAE, the TAA, the Municipalities, the Defensoria and all others. The question is why did all of the above public institution heads refuse to follow the law and comply with the Resolutions? The Respondent’s sole purpose in its Counter Memorial and witness statements is to try to make as many baseless accusations as possible, with no proof, in the hope that the Tribunal will believe they acted in good faith, did not treat us unfairly and that they lived up to the terms of the DR-CAFTA provisions. The purpose of my statement is to describe what really happened and to clearly show the Tribunal that the Respondent failed to act in good faith, treated us unfairly and failed to uphold the DR-CAFTA provisions.
9. Before I address these matters in detail, I wish to make a few important points regarding the far-reaching effects of the Respondent’s conduct discussed in the Memorial and my First Witness Statement, which the Counter Memorial utterly ignores.
10. This whole case can be summed up very simply, and I like to keep things simple. The other Claimants in this case and I bought a property on a beautiful beach with the intent of building a mix plan development project. Before we made a decision to go ahead with the development we engaged the services of Norton Consulting and EDSA a world known land planner, to conduct a thorough market study in early 2004. The comprehensive market study cost \$150,000 and was issued in September of 2004. Based upon that encouraging report we decided to move forward with our mixed plan development. We hired experienced Costa Rican licensed professionals, including attorneys, specialists, and environmental experts to work with the relevant Government agencies to acquire all required permits. I know that all lawful permits were acquired and then, contrary to the findings of its own Governmental agencies, without adherence to due process or sound

environmental findings, and contrary to its own laws, the Respondent arbitrarily shut down the Las Olas project.

11. Since then, my life and reputation have been destroyed as a consequence of the Respondent's actions - I have been falsely charged as a criminal (and have had my name dragged through the mud due to the issuance of an INTERPOL Red Notice). An assassination attempt was made on my life and on the life of another U.S. investor. Through emails sent to me, it related the shooting to the problems I was having with the Government. I now live with anxiety, uncertainty and fear for my life and have been forced to seek medical treatment as a result.¹ I have also been forced to take extreme measures to protect my life. It is important for you to know that I never in my life had ever been charged with a crime anywhere in the world before. What happened in Costa Rica represented a lot of firsts for me. It was the first time I lived in a foreign country, the first time I invested in a foreign country, the first time I did business with a Government, the first time Government officials tried to solicit bribes from me, the first time my office was broken into and all my business and personal files were stolen, the first time I was falsely charged with a crime, with no evidence, by a criminal prosecutor who admitted the same in his witness statement, the first time anyone tried to assassinate me and the first time I was reported to INTERPOL. These represent a lot of firsts and in my opinion, all of the above represent not only violations of the law, but also violations of my human rights.
12. I have no doubt that the Costa Rican Governmental agencies that have taken action against me and the Las Olas project, have done so because of my status as a foreign investor and because I refused to pay bribes to local authorities. Now, the Costa Rican Government is attempting to create a smoke screen in an attempt to obscure their arbitrary and illegal actions from this Tribunal's view, using post hoc logic, fabrications, misstatements, distortions and lies. However, I want to acknowledge that the one Government agency that acted entirely properly during the past ten years was SETENA. They at least never asked me for a bribe and at all times acted in good faith and treated me fairly in carrying out their responsibilities granted to them by the Government. They stood solidly behind their permit, except for the one time when they were lied to by MINAE and the Prosecutor, and in fact, their permit is still valid and in force. If the other Government agencies would have acted the same, we would not be here, the project would have been mostly completed by now and the community and the country would be enjoying the economic benefits. Instead, today there are criminal trespassers and squatters on the Las Olas property who are creating a health hazard to the community. They are creating an unsafe environment for people living in the community, as they are being robbed, assaulted and raped by the invaders. While this travesty is ongoing, the Government sits idly by and does nothing to stop this criminality, even though I and my attorneys have written them numerous times to request that they enforce the laws of Costa Rica and evict the criminal trespassers from the Las Olas property.

¹ Exhibit C[] [Aven's psychiatrist's report, hopefully]

13. I have been personally attacked by Mr. Martinez, the criminal prosecutor, whose illegal actions have destroyed both the project and my life and reputation. Mr. Martinez did not attack SETENA for issuing four EV permits and one re-confirmation of an EV permit, he did not attack the Municipality for issuing construction permits and he did not attack any other U.S. Investor. He personally attacked me and falsely charged me with crimes that he knew I did not commit and admitted that he had no evidence of.

II. Effective and Dominant Citizenship

14. The Respondent's efforts to argue that my "effective and dominant citizenship" is Italian, and not American, are completely off base.
15. My grandfather and grandmother were born in Italy, but both of my parents, and I, were born in the United States. I am an American citizen, born in New Castle in Pennsylvania in 1942 and I have never renounced my citizenship. I graduated from high school in 1960 and graduated from Baylor University in 1964 with a business and economics degree. As I stated in my First Witness Statement, I have never lived in Italy and have no personal, financial, or business connection to Italy.
16. I received my Italian passport around the year 1990, based upon Italian law that provides that if my grandfather was an Italian citizen when my father was born in the United States, I am eligible for Italian citizenship and could obtain an Italian passport. My grandfather was killed in an accident shortly after he and his wife arrived in the U.S., meaning he did not have an opportunity to become a naturalized U.S. citizen.
17. I elected to get an Italian passport for the sole reason that it was available to me, and because there were (and still are) many Americans targeted while traveling abroad. I thought it would be a good option to be able to travel on a non-U.S. passport.
18. I have visited Italy only about three or four times in my entire life, most recently about ten years ago. All of my visits have been for vacation only and I would stay one or two weeks each time. That is the extent of my contact with Italy.
19. I have never voted in Italy, and I have no investments, no driver's license, no bank accounts, and no contacts with anyone in Italy and no family living there. I do not speak Italian. I have lived in the United States for my whole life, except for the period of time that I resided in Costa Rica.
20. In contrast, and as I explained in my First Witness Statement, I have (and have had) substantial business and investment interests in the United States. I am currently a Director of Kindness Works International Foundation, a U.S. non-profit organization.
21. The Respondent makes a sweeping statement that "*Mr. Aven has used his Italian, not his U.S., nationality in the conduct of businesses both outside and in Costa Rica,*" and later gives a few examples of forms that list me as an

Italian national.² This is a classic case of the Respondent's misstatements, distortions and self-serving cherry picking of public information.

22. On occasion, for the reasons I have mentioned above (*e.g.*, convenience, bias against Americans, *etc.*) I have filled out forms using my Italian passport information as identification while abroad. However, I have, many times, used and have been recognized by my American nationality in my interactions and business dealings with both Costa Rican businesses and Costa Rican authorities and in official submissions with Governmental authorities.³
23. The Respondent's accusation that my dominant citizenship is Italian is plainly wrong, and is proof of Costa Rica's continued attempts to misstate, distort and to obscure the facts, in an attempt to distract from their illegal shut down of the Las Olas project, their filing of false criminal charges against me, their bribery attempts, and their unjustifiably reporting me to INTERPOL to serve a three year sentence. The truth is that I never was found guilty of a crime and never sentenced to serve a three-year sentence.

III. Ownership of the Parcels and Enterprises

24. The Respondent criticizes me and the other Investors for failing to cite all records supporting the purchase of the parcels of land that make up the Las Olas project, as well as all the records pertaining to the initial formation of the Enterprises - though I do not believe they dispute that the Claimants own our investment. The main reason we do not have many of those records is that our office at Las Olas was broken into shortly after the preliminary hearing and an entire filing cabinet of records were stolen. I will attempt to explain the line of ownership of the investment below, and also refer the Tribunal to the submissions made in the Reply Memorial.
25. As the Respondent acknowledges,⁴ on February 2, 2001, to the best of my recollection, Mr. Carlos Alberto Monge Rojas ("Mr. Monge") owned the land, later to become known as the Las Olas project, through two existing Costa Rican entities: "La Canicula" and "Pacific Park Condo."
26. In turn, on February 6, 2002, Inversiones Cotsco acquired three properties in Esterillos Oeste mentioned by the Respondent in its Counter Memorial: Property No. 6-12678-000, Property No. 6-91765-000, and Property No. 6-001004-Z-000 (which included the land making up the Concession). This acquisition was contingent upon the granting of the Concession to develop the beach in the Maritime Terrestrial Zone of Puntarenas.
27. We entered into a Purchase and Sale Agreement with Mr. Monge to purchase all the shares of La Canicula from him. Upon payment for the purchase of the

² Counter Memorial, para. 263.

³ See, *e.g.*, C-_____ 27 February 2012 Motion filed with Court in Aguirre & Parrita, noting that I have U.S. Nationality; C-_____ Appeal filed with ACOPAC (indicating that I have U.S. Nationality); C-_____ 17 February 2009 Construction Contract with ASADA for a water system (indicating that I am a U.S. National).

⁴ See Counter Memorial, para. 113.

non-Concession property, the title was transferred by Pacific Park Condo, on April 1, 2002⁵ to Inversiones Cotsco. As a result, the U.S. Investors owned the entirety of both La Canicula and Inversiones Cotsco as of April 1, 2002, including the three properties mentioned above. In Costa Rica, it is required that 51% of any Concession be owned by a Costa Rican and from the very inception until today a Costa Rican has owned 51%, despite Costa Rica's suggestion that we owned 100%.

28. On May 22, 2002, we purchased an additional three parcels of land from Mr. Monge: Properties No. 124625-000, 124626-000, and 124627-000, through Inversiones Cotsco. The land was purchased from Chicas Ponderosas S.A., a corporation owned by Mr. Monge. These parcels are adjacent to the three properties mentioned above.
29. On October 4, 2004, after the Norton Consulting/EDSA Report was completed, and the family decided to move forward with the development, I wrote a letter to the other Claimants, my family and friends who were going,⁶ to be shareholders in the project regarding the properties that we purchased.⁶ At the time, the project had a place holder name of "Haciendas Del Mar Real Estate Project" which was later changed to "Las Olas". The interest in the shares of the corporations that owned the property that became known as Las Olas were issued as follows: Samuel Aven 44%, David Aven 25%, Carol Park 10%, Eric Park 10%, Roger Raguso 5%, Giacomo Buscemi 3%, Jeffrey Shieleno 2%, and David Janney 1%. It was decided by the shareholders that I would be the U.S. shareholder representative. I agreed to eventually move to Costa Rica to be able to better manage the development and I moved to Costa Rica in 2005.
30. On September 16, 2005, using local Costa Rican counsel, we consolidated the individual parcels that were purchased from Mr. Monge into one parcel, designated as Property No. P-142626. Later we subdivided property along the municipal roads into a number of other properties and planned to develop those parcels according to Costa Rican law. Those subdivided properties as well as the condominium parcel and the Concession were put into individual Costa Rican corporations and all these properties together became known as Las Olas. These companies are known as the "Enterprises" in the Reply Memorial, which explains more about these transactions.
31. One of those companies was Trio International, a company established on October 22, 2008 and registered on October 24, 2008, which held the Property No. P-142626 in trust until the main properties in Trio were formally subdivided into 288 lots, per the master site plan submitted to SETENA, with Lot No. 2881-M-000, and Lots Nos. 79209-F to 79496-F, after the project received the SETENA EV approval on June 2, 2008. The subdivision occurred on or about September 29, 2007. Mr. Martinez falsely asserted at our

⁵ See Exhibit C-8.

⁶ See Exhibit C_____, October 4, 2004 letter from David Aven to Samuel Aven, Carol Park, Eric Park, Roger Raguso, David Janney, Jack Buscemi, and Jeff Shieleno re: "*Norton Consulting and EDSA Report and Proposed Haciendas Del Mar Real Estate Project in Costa Rica*."

criminal trial that the subdivision was made after we received our EV permit from SETENA on June 2, 2008.

32. As explained to the Tribunal previously, due to an unlawful break-in at our office in July of 2012, many of our important files and documents were stolen. Included, were the shareholder books of each of the corporations that made up the Las Olas Properties that showed the share interest for each of the US shareholders. As a result, the books needed to be replaced and we had our attorney, Manuel Ventura, replace them according to what was written in the shareholder book before and according to the above referenced October 2004 letter. Mr. Ventura, on behalf of the Claimants submitted signed and notarized replacement registrations of shareholder certificates (“Reposiciónes”), executed on March 1, 2013. The Repositiones set forth the ownership percentages of each of the Claimants in the Enterprises as they existed in the original books.

IV. Compliance with the terms of the Concession

33. The Respondent similarly accuses me and the other Investors of failing to comply with the rules that apply to the Concession. This is the first time that Costa Rica or its governmental authorities have lodged such scurrilous allegations that have no basis in the truth, regarding compliance with the Concession terms. I suspect that this is one of the smoke screens that the Respondent is using to distract attention away from its illegal conduct and treaty breaches. We complied with all the rules, regulations and the law regarding our duty and responsibilities under the law at every step of the way. I have often found that what others accuse you of, they are in fact guilty of themselves. My accusers, Mr. Martinez, Ms. Vargas, Mr. Piccado. Ms. Diaz and Mr. Bogantes all failed to comply with legally issued Government orders, which were the five different SETENA resolutions that were issued, and then they accuse me for non-compliance.
34. Prior to reading Costa Rica’s Counter Memorial, I never received any notice in regards to any issue with Las Olas’ compliance with the Concession’s terms. I certainly have received no notice (as the Respondent alleges) of a “sanction of cancellation of the Concession.”⁷ There has been no hearing regarding the cancellation of the Concession, and the Concession is valid and in force.
35. Moreover, the Respondent’s accusations regarding the Concession are unfounded. As would any prudent developer implementing a project in Costa Rica, we hired a team of local attorneys, professionals and other experts to ensure that all laws were being observed, on both the Concession and the condominium properties, as well as the other properties that were subdivided. Even though we followed all the rules and regulations by the book, as we were advised to do by local attorneys, it did not prevent the Respondent from accusing me of duping SETENA into issuing their Environmental Viability permit on the condominium part of the project. However, we also were issued

⁷ Counter Memorial, para. 309.

two SETENA EV permits for the Concession, and there are no accusations that we duped SETENA into issuing those permits.

A. Ownership of the Concession

36. The Respondent argues that I was a 100% owner of the Concession before 2005. This is just another scurrilous and false accusation with no basis in the truth. At all times a Costa Rican national owned a fifty-one percent (51%) interest in the Concession.
37. It is a normal practice that a Costa Rican attorney holds the 51% interest in the Concession on behalf of a foreign investor. Initially, that person was Esquivel & Asociados S.A. as the Trustor, Banco Cuscatlan De Costa Rica, S.A. was the Trustee, and I was one of the Trust Beneficiaries under the agreement.⁸ The above held the 51% Concession interest on trust for the U.S. Investors until 2005, at which time Ms. Paula Murillo (a Costa Rican national) was appointed to hold that 51% interest.⁹ Ms. Murillo has held that 51% interest from 2005 until the present.

B. Taxes

38. The Respondent, without evidence, knowingly made another scurrilous and false accusation in its Counter Memorial, and accused the Claimants of not paying taxes on the Concession. They allege that "*through the more than fourteen years that Claimants held the Concession, Claimants never paid any tax to the Municipality.*" The Respondent's accusation is false and they knew, or should have known, it was false since they have access to all of those records.
39. The Claimants have paid the required taxes from our purchase of the property in 2002 until 2008. As per this ledger of payments for the Concession, tax payments made on the Concession (labelled "ALQUILER DE TERRENO Z.M.T.") indicated for the periods 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011 - until the date that the project was expropriated.¹⁰ If we had not paid taxes, the Municipality would never have issued construction permits, a fact that the Respondent utterly ignores.
40. In 2008, after the worldwide financial recession hit, and the housing market collapsed. At the very same time the Costa Rican Government arbitrarily, and without any appraisals, increased the taxes levied on all Concessions in Costa Rica. The Las Olas Concession tax was increased from USD \$1,600 per year to USD \$32,000 per year. There was no prior notice or an opportunity to dispute the huge increase, they just arbitrarily increased the Concession taxes without giving the concession owners an opportunity to challenge the confiscatory increases. Therefore, we challenged this arbitrary and

⁸ See C____ - Trust Agreement Between Banco Cuscatlan de Costa Rica, S.A.; David Aven; and Carlo Alberto Monge Rojas, dated April 30, 2002.

⁹ See C-____ - Agreement between Paula Murillo and David Aven, dated March 8, 2005.

¹⁰ See C____ - "PAGOS REALIZADOS POR: LA CANICULA SOCIEDAD ANONIMA," retrieved July 19, 2016.

confiscatory tax increase and sought to enjoin enforcement in the Costa Rican court. We were able to get a restraining order from the judge. He ordered us to continue to pay the old tax rate of USD \$1,600, and not the higher rate of USD \$32,000,¹¹ and we complied. That lasted about two years, and then was overturned by an appeal court, with no basis in the law. That decision was not based on the merits of our case, but rather on a political issue regarding a drastic change in tax policy country-wide.¹² I was told that if we prevailed in our lawsuit, the Government would have to cancel the increased taxes on all the Concessions in the entire country, and that would cause havoc in revenue stream to the municipalities throughout the entire country. However, in doing so the court failed to uphold the law that states a Government cannot raise taxes on property to a confiscatory level and then seize the property when people cannot afford to pay the increased taxes. Since that time, I was told by people who worked at the Municipality that numerous concession owners were forced out of business because they could not afford to pay the increased confiscatory Concession taxes.

C. Declarations on the Value of the Cabins

41. The Respondent also states that the Claimants “*have not proved that a declaration of the value of each of those works was submitted to the Municipality in accordance with Clause Thirteen of the Concession Agreement.*”¹³
42. That is a bald faced lie and I reject that we somehow had to prove up these declarations in our Memorial, as these documents are not part of our treaty claim, but part of the Respondent’s defense. Secondly, this is just another scurrilous and false accusation, with no basis in the truth.
43. In any case, each of these documents is contained in the Municipality’s file in the Respondent’s possession. However, I will point out that on the La Canicula Construction permit, the value of all of the cabins is listed as 421,270,000 colóns, which is equivalent to about USD 800,000. This is a valuation that is used to form the basis of a construction fee that the Municipality charges on each construction permit it issues.¹⁴ As these documents indicate, a declaration for the appraisal of each cabin was clearly submitted to the Municipality, and the appraisal value is also listed on the permit at line 12.¹⁵

V. The Respondent’s Allegations of Illegal Work are Baseless

¹¹ See C-____ - Filings regarding the arbitrary tax increase.

¹² See *id.*

¹³ See Counter Memorial, para. 313.

¹⁴ See C-____ - “PAGOS REALIZADOS POR: LA CANICULA SOCIEDAD ANONIMA,” retrieved July 19, 2016. The fees for “PERMISO DE CONSTRUCCION” are clearly listed on the ledger.

¹⁵ See C-____, Permiso De Construccion No. 165, dated August 27, 2008, for La Canicula S.A. to Sotela Mussio y Madrigal Arquitectos.

44. The Respondent has made numerous allegations that we worked on the Las Olas site without the proper permits. These are just more scurrilous and false accusations, with no basis in the truth. The Respondent, in reaching this conclusion, simultaneously ignores and rewrites Costa Rican laws on environmental and construction permits to serve its own case.
45. The Respondent agreed in its Counter Memorial that the developer was required to obtain an Environmental Viability from the National Technical Environmental Secretariat (“SETENA”) at the outset of the process.¹⁶ SETENA has a list of what each developer must provide to SETENA before they will issue their EV permit. We engaged the services of a licensed and experienced architect and engineering firm by the name of MUSSIO MADRIGAL. My contact at this firm was Mauricio Mussio and his firm shepherded the application through the SETENA approval process. Once SETENA received all the required information, and all the boxes were checked, they issued their permit. The Respondent clearly knows that and that and absolutely cannot dispute that SETENA issued a lawful permit on June 2, 2008. At that point and in the words of the Respondent’s own expert MINAE witness, Dr. Jurado, once the SETENA resolution is issued it became a Government order that carried with it the force of law, and everyone was required to comply with it according to Dr. Jurado: *“the law clearly provides that both private and public institutions must comply with SETENA’s resolution in relation to these environmental impact assessments.”*¹⁷ However, Mr. Martinez and the other agency heads failed, and or refused, to comply and just ignored those Government orders.
46. The Respondent does not dispute that SETENA granted their EV for the Concession on March 17, 2006,¹⁸ and that SETENA granted a revised EV for the Concession on August 23, 2011.¹⁹ Regarding the Concession, the Respondent also does not deny that the Municipality issued construction permits for the Concession (for cabins, a hotel, and a pool).²⁰ The Respondent fails to include that infrastructure development was covered in these construction permits as well.²¹
47. The Respondent acknowledges that a SETENA EV for the Condominium Section was issued on June 2, 2008,²² and also acknowledges that the

¹⁶ See Counter Memorial, para. 130 (“In order to obtain work permits from the Municipality, and develop the Project Site, Claimants had first to obtain an EV from SETENA.”); see Memorial, para. 52 (“The most important of these permits at the outset of the process is the environmental feasibility permit (the “Environmental Viability”), which is administered by SETENA, the National Technical Environmental Secretariat, a specialist branch of the Ministry of the Environment (“MINAE”).”)

¹⁷ See Witness Statement of Julio Jurado, para. 11.

¹⁸ See Counter Memorial, para. 154.

¹⁹ See *id*, para. 157.

²⁰ See *id*, para. 168.

²¹ See R-98.

²² See Counter Memorial, para. 166.

Claimants hired Mussio Madrigal to assist in the submission. The Respondent further acknowledged in its Counter Memorial that SINAC issued a confirmation that the Las Olas Project Site was not within a Wildlife Protected Area (WPA) prior to the issuance of the EV for the Condominium Section.²³

48. Moreover, the Respondent also admitted that the Claimants, as part of the review process that SETENA conducted, prior to the issuance of their EV, the following studies for the Condominium Section submitted:
 - (a) an Environmental Management Plan prepared by Empresa Geoambiente S.A.;
 - (b) a Geotechnical Survey performed by Tecnocontrol S.A.;
 - (c) a physical Environmental Protocol prepared by Mr. Eduardo Hernández Garcia;
 - (d) an Archeological Survey conducted by Ms. Tatiana; and
 - (e) an Anthropic Risk Certification from Mussio Madrigal.²⁴
49. Once SETENA issued their EV permit on June 2, 2008, for the Condominium Section, the Respondent admits that the Claimants obtained a certification of the Land Use and a construction permit on September 7, 2010.
50. All of the above facts are undisputed, and all developments in Costa Rica (including the developments that surround Las Olas' Project Site) are supposed to follow the same system. Las Olas did follow all the rules, regulations and procedures according to the law and subsequently was issued all the lawful permits, and was nine months into infrastructure construction when the project was illegally shut down by the Government. One of the main antagonists against the project in Esterillos Oeste was Ms. Vargas, who worked for the Municipality of Parrita in the environmental department. In her witness statement Ms. Vargas made the following unbelievable, disturbing and totally false comment:

However, it is clear that the developers of the Las Olas project had no interest in complying with the environmental legislation of Costa Rica. Otherwise, the project could have been developed without problems since the project area, the forest and wetland areas represented only a small portion thereof. That is why the question would have been easy to solve if the developers had submitted a plan to the SINAC and obtained the relevant permits. However, neither the developers nor the Environmental Specialist demonstrated that they had any interest in this regard. In general, the developers see environmental issues as an obstacle, as a cost, and prefer to ignore them. If the developer or its Environmental Specialist had really been on the project site and had

²³ See *id*, para. 163.

²⁴ See *id*, para. 159.

come to the respective institutions, it could have avoided in large measure the suspension of the project.

51. Next to the false accusation that I "duped SETENA" into issuing Las Olas four different EV permits (and re-confirming one of them), this has to be one of the most offensive and erroneous statements made by the Government. I absolutely cared about, and had an interest in, complying with all the environmental legislation of Costa Rica. Millions of dollars were spent making sure that we followed all environmental legislation. During Ms. Vargas's testimony at my criminal trial it became clear that she did not even know me, yet that did not stop her from making her reckless and false statement. If she did not know me, then on what basis is she making that statement? What I know for sure is that Ms. Vargas had no interest in complying with the SETENA resolutions, which under Costa Rican law she was required to comply with. However, she simply refused and then accuses me of non-compliance. These false accusations being made by Ms. Vargas and Mr. Martinez seem to be from the same criminal trial playbook in which false accusations and assertions were made and then presented as evidence.
52. The Respondent once again, because they cannot show that we failed to obtain the legal requisite permits, raises another scurrilous and false accusation, with no basis in the truth in accusing me of "*submitting the EV application in a fragmented way.*"²⁵ The Respondent lodges both false and explicit accusations that we lied to authorities, alleges that we buried evidence regarding the conditions of the land, and claims that we generally acted in bad faith when obtaining required permits and licenses.²⁶ None of these accusations are true, and the Government has not one shred of evidence to prove their offensive and unfounded statements. I can tell you for certain that this was never raised or proven in the criminal trial and I was there for the entire trial. Just like all the other aforementioned scurrilous and false accusations were never raised or proven at the criminal trial. The criminal trial videos are available to watch and I encourage all to watch them and you will see that Mr. Martinez was unable to prove I was guilty of any of his criminal charges. You can then judge if his representations were true or false.
53. Essentially, the Respondent is saying that although the authorities issued lawful permits to the Claimants, they knowingly and falsely alleged that the permits were obtained "*illegally*" because we did not submit the documents to the Respondent in a timely manner. That is another false accusation with no basis in the truth. While I am not personally familiar with all the nuances of the procedure regarding the cancellation of a SETENA permit or a construction permit, I was advised by my Costa Rican counsel that in order to revoke a construction permit, the Municipality must initiate the "*lesividad*" process. While I address some of these allegations below, it escapes me why Costa Rica did not demand at the time of Mr. Martinez's criminal investigation, a request for a "*lesividad*" hearing if it wished to contest the issuance of those permits. To my knowledge Mr. Martinez never requested a

²⁵ See *id.* para. 129.

²⁶ See, e.g., *id.* paras. 147, 160 and 164.

“*lesividad*” hearing, even though he apparently did not agree with the SETENA resolutions since he refused to comply with them.

A. Accusations of a “Failure to obtain an Environmental Viability permit from SETENA for the Easements Section of Las Olas”

54. As the Claimants have emphasized throughout this arbitration, at all times, we relied on our local experts and attorneys to instruct us in the law, to ensure we were in compliance with Costa Rican law and the permitting process at all times. This included receiving advice regarding the necessity of acquiring an EV permit from SETENA for each of the sections of the Las Olas project.
55. The Respondent alleges that we started development of the Easements without an Environmental Viability from SETENA. On the contrary, from the Claimants’ Memorial it is clear that we followed the law. We engaged the service of a local real estate attorney, Gavridge Perez, who guided us in the subdivision. We also engaged the services of Mussio Madrigal, a local licensed architect and engineering firm, to assist in the subdivision as well, all according to Costa Rican law. The subdivision was completed prior to the filing of the SETENA Environmental permit. Mr. Mussio provides more information about this in his witness statement with the Claimants’ Reply Memorial in which he explains the permitting laws for the Easements Section, as well as other sections, and verifies that everything was done according to Costa Rican law.
56. What I can say is that the Government never informed us that we lacked the required permits for work for the Easements, and that the Respondent has already admitted that we obtained legal construction permits for the Easements on July 16, 2010.²⁷ The Municipality would not have issued the construction permits unless it had been satisfied that their issuance was appropriate and according to Costa Rican law.

B. The Construction Permit for the Condominium Section was “legally obtained”

57. The Respondent alleges that we did not “legally” obtain the construction permit for the Condominium Section, but plainly acknowledges that the Municipality had issued said construction permit.²⁸ This is another example of a scurrilous and false accusation with no basis in the truth. What is puzzling is the Respondent dysfunction and failure to follow its own laws. They issue permits and then do not comply with SETENA resolutions, which are Government orders. They criminally charged me with environmental crimes when I relied upon and operated under the authority of those permits. SETENA issued an EV permit and the Municipality issued legal construction permits and the law clearly stated that all people, including Government functionaries, were required by law to comply with those SETENA findings. Over and over again these Government functionaries ignored those

²⁷ See *id*, para. 185.

²⁸ See *id*, paras. 175-179.

Government orders and refused to obey the law and comply with their own permits and the law. Once again the Government is accusing us of not complying with the very laws they refused to comply with. It is like the pot calling the kettle black.

58. As a foreign investor, we relied on our local counsel, local professionals and other local experts, who liaised with the Costa Rican authorities to provide all the necessary information that the Government required in order to ensure the issuance of a permit. Only after the various permitting agencies received all of that required information and after providing that the Government issued to us five (5) different SETENA EV resolutions for the condominium section and the Concession, and a total of 9 Construction permits, 7 for the easements, 1 for the condominium infrastructure, and 1 for the Concession.
59. The Respondent now wishes to distract this Tribunal from its breaches of the DR-CAFTA by questioning the legal permits that were issued by its own agencies, and which were never challenged before I refused to pay a bribe in August 2010.

C. Ms. Vargas's Witness Statement

60. Now, I turn to certain allegations made by Ms. Vargas, the Environmental Manager of the Municipality of Parrita. As discussed in my First Witness Statement,²⁹ and confirmed in Ms. Vargas's own witness statement,³⁰ Ms. Vargas based her reports and allegations solely upon hearsay opinions and observations of "neighbors" or from viewing the property from the borders of the project site, but never going onto the site.
61. To be clear, Ms. Vargas's reference to complaints from "neighbors" or the "community" stem from one source: Mr. Steve Bucelato. I mentioned Mr. Bucelato in my First Witness Statement,³¹ and stated that he was a competitor who did not want to see a competitive project built. I also stated that he felt like he lost out when he was not able to acquire the Las Olas project site, before we bought it. He then started making false accusations about wetlands being on the project site, false accusations about our work, and frequently went to the Las Olas site to disrupt our dealings with prospective buyers, yelling that our site was "*illegal*," or that Ms. Vargas and the authorities were going to "*shut us down*." At one point I was forced to file a slander and defamation lawsuit against him. As also explained in my First Witness Statement, Mr. Bucelato filed numerous baseless complaints, which ultimately formed the basis of the environmental charges filed against me. He also attempted to accuse us of draining the wetlands before it was a law. After SETENA rejected his false accusations with resolution number 2086-2010 issued on September 1, 2010,³² he then refused to accept that Government order and filed the same complaint with Mr. Martinez, the criminal prosecutor.

²⁹ See *id*, para. 213.

³⁰ See e.g., Witness Statement of Monica Vargas Quesada, para 11.

³¹ See First Witness Statement of David Richard Aven, at paras. 142 and 144-146.

³² See C___ - [SETENA's rejection of Bucelato's complaint]

Instead of Mr. Martinez recognizing his duty to comply with that Government order (the SETENA Resolution) and advising Mr. Bucelato to do the same, he used the Bucelato criminal complaint as a basis to begin a criminal investigation of me and to shut down the project.

62. Now, Ms. Vargas gives an incredibly self-serving description of Mr. Bucelato as a “*person who felt helpless in the face of the environmental damage*,” and accuses the developers of Las Olas of “*threaten[ing] and assault[ing]*” him.³³ This is another scurrilous and false accusation with no basis in truth. It’s an utterly false description of Mr. Bucelato, and a baseless accusation against me and the other Claimants. It is entirely unsurprising that the Respondent has declined to include a witness statement from Mr. Bucelato, as his lack of credibility, and questionable reputation, would be clearly exposed to the Tribunal. It is also not surprising that the Government, as of now, did not get a witness statement from Mr. Piccado, Mr. Bogantes or Mr. Manfredi, who were all key players in the illegal shutdown. However, all of them were called to provide testimony at my criminal trial, but the Government does not want to let them testify in this proceeding.
63. Turning back to Ms. Vargas’s witness statement, it contains baseless assertions regarding an alleged investigation conducted by the Municipality regarding the Las Olas project, about which the Claimants and I never received notice. Ms. Vargas made her false statements in light of the letter sent to me by Mr. Freddy Garro, the Mayor of Parrita, that they never sent us any complaints regarding any irregularities in the Las Olas project.³⁴ This letter is an exhibit and it is inexplicable how Ms. Vargas who works for the Mayor can make her false assertions that are in direct contradiction with her employer’s statement.

1. “*Cutting and Burning Trees*”

64. Ms. Vargas has alleged at paragraph 14 of her witness statement that we were cutting and burning trees on weekends, citing her own report from January 20, 2010 in which she repeated Mr. Bucelato’s accusations against us, which she says was supplemented only by her “*visual inspections from the property boundary*.” This is another scurrilous and false accusation with no basis in the truth and completely lacks evidence.³⁵ Ms. Vargas testified at my criminal trial and said none of these things in her 20 minute testimony when she was under oath. Once again the criminal trial videos are available to watch.
65. During this time, we had just reopened the site and were performing general clean-up activities such as clearing brush and fallen trees. We certainly did not perform any work that affected “a wetland” or “a forest,” since the SETENA permit stated that there were no wetlands or a forest, and there were also a number of MINAE and SETENA studies all stating no wetlands or

³³ See First Witness Statement of Monica Quesada Vargas, para. 95-96.

³⁴ See C-__ - Letter from Mayor Freddy Garro to David Aven.

³⁵ It is interesting that this is the first time she raises this issue, because she also testified during my criminal trial and never discussed this allegation with the court there.

forest as well. The SETENA resolutions were Government orders and stated that there were no wetlands and forest on the project site. Costa Rica law required that Ms. Vargas to comply with the findings of those resolutions and she simply refused to do so.

66. Similarly, when Ms. Vargas visited the site in May 2010, a grounds crew was performing general clean-up activities, including the burning of accumulated grasses and shrub, and was not cutting or burning trees. What the Respondent fails to recognize is that Las Olas is in a region of Costa Rica where there is a massive amount of shrub and low-ground vegetation that falls over or overgrows on the property and has to constantly be maintained. These areas are not forests, a fact that was confirmed by SETENA and SINAC in 2008, 2010 and 2011³⁶ and all our activities were totally legal. The hallmark of all of the statements I have read by the Respondent is that they are all assertions, accusations and hearsay, with no basis in the truth and lacking any credible evidence, yet are treated as evidence by Respondent.

2. “Machinery Working on Site”

67. Ms. Vargas also refers at paragraph 62 of her witness statement to a report of an inspection that was carried out at the site in January 2010 by an official of ACOPAC-MINAET “*due to machinery working on the site.*” This is another scurrilous and false accusation with no basis in truth. There could not have been any heavy machinery on the site at that time, in January 2010, since the site had only just been reopened by Jovan Damjanac in January of 2010 and there was no work going on. Therefore, it was not possible that any machinery was on the site, unless Ms. Vargas calls weed-whackers “machinery” (*see above*).

3. Encounter with Mr. Sebastian Vargas

68. In paragraph 85 of Ms. Vargas’s witness statement, she claims that she encountered Sebastian Vargas, my attorney, at the Municipality in Parrita on September 7, 2010.³⁷ At that encounter she states that she mentioned her concerns about a possible wetland and thought that the Environmental Specialist should take up the matter. I know that statement is totally false, since I remember being with Mr. Vargas on that day, as we were there specifically to pick up the construction permits, having been called by the Municipality a few days prior to do so. That was a memorable day for me since we were working towards acquiring those permits for years, hence my clear memory of it. Therefore, I am certain when I say that her comment that she talked to us about wetlands and a forest is totally false. It had already been verified by an additional study by SETENA as well as one conducted by MINAE in July and August of 2010, that there were no wetlands on the project site. Once again, Ms. Vargas makes another scurrilous and false accusation with no basis in truth and failed to comply with a legitimate Government order. We did pick up those permits on September 7, 2010 and I

³⁶ See First Witness Statement of David Richard Aven, at para. 152.

³⁷ See *id*, para. 85(1).

do not remember seeing Ms. Vargas, much less having a conversation with her about wetlands. This is just another example of her refusing to comply with a Government order.

4. Collapsed Rainwater Line

69. Ms. Vargas's witness statement contains many unsubstantiated or convoluted attempts to cast shade upon the Las Olas project. Another instance of this is her description of an episode involving a collapsed rainwater line at the site, which she inexplicably blames on Las Olas because, according to her, the "*building details presented in the plans before the Municipality did not correspond to what had been built.*" Once again, this is another scurrilous and false accusation with no basis in truth. Ms. Vargas utterly fails to provide any specific information about any of her accusations.
70. The irony is that the Municipality itself had been constructing the storm drain lines, and not the Claimants, so that would not appear on our plans. The town always knew about drainage issues because of flooding during heavy rains. However, there was also flooding in Parrita when it rained hard. In 2010, the *Municipality* (not Las Olas) constructed a storm drain in the community along public roads. If the drain collapsed it was the responsibility of the Municipality to maintain it, not Las Olas.
71. We worked with the Mayor and the Municipality regarding this issue of improving the storm drains in the community out of a desire to help the community in which our project was located and to improve community functionality. We donated materials and storm drains that were necessary to help control the flooding during hard rains and the Municipality then carried out the work using their machinery and laborers in installing the storm drains. We donated money to improve the water lines and pumps that brought water into the community. We wanted to help the community since this is where we were building our development.
72. It is also false that, in regards to this same rainwater storm drain line issue, Sebastian Vargas "*instructed that [we] should not sign acknowledgment of receipt, but also that [we] should not provide the documentation required by the Municipality.*" This is another scurrilous and false and unsubstantiated accusation with no basis in truth.

5. Other accusations

73. Ms. Vargas alleges at paragraph 85(6) of her witness statement that:

The Manager of Urban and Social Development of the Municipality replied to a request for information from Atty. Sebastian Vargas Roldan (Mr. David Aven's attorney) stating that there were restrictions on building activity under an investigation opened before the TAA which he should be aware of and pursuant to official letter ACOPAC-CP-03-11, (i) the National Wetlands Program had been asked to conduct an inspection on the site

regarding the facts; and (ii) the suspension of all works had been decided until the real truth of the facts has been clarified.

This is another scurrilous and false accusation with no basis in truth. We never received the above-mentioned document that she cites in her statement for her accusation (R-125, OIM-558-2012), and I see no confirmation of proof of service anywhere on this document.

74. Ms. Vargas states this in paragraph 85 of her witness statement:

Therefore, it is not true that the developers have not been notified of the proceedings pending before the Municipality. Not only were they notified, but it was they who chose to ignore and violate these notifications and never appeared in the DEGA to address the environmental issues.

This is another false statement that lacks evidence. No dates, no copies of notifications, no specifics - just accusations with no proof. We never ignored notifications. This was a multi-million dollar project and we were working in good faith with the Government. The problem was the Government was not working in good faith with us.

75. Finally, regarding the Respondent's inclusion of Exhibit R-84, which allegedly shows that we were notified of the TAA injunction on the same day that it was issued (i.e. April 13, 2011), I never received that notice and in fact did not know about the TAA shut down notice for many months after the date it was issued because they failed to properly deliver it to us as required by law. The proof of service, that the Respondent provided, was signed by Angie Portillo Araya. I have no idea who this person is and she has never worked for me or Las Olas. Just like the SETENA shutdown notice Mr. Martinez admitted was not properly delivered to us, the TAA notice was not delivered properly either and in fact, Mr. Martinez was forced to dismiss his false criminal charge of not obeying a Government order, admitting that it was not properly delivered.

VI. The Possibility of an Environment Mitigation Plan

76. With regards to the possibility of reaching a settlement with the Government authorities by "*agreeing to repair the environmental damage caused and to re-design the project in a way that respects Costa Rica's environmental laws,*"³⁸ we tried to negotiate a mitigation plan that would result in the criminal charges being dropped and allow us to continue to develop the project. However, despite our best efforts to get that plan approved, I do not recall the Costa Rican authorities ever responding, either verbally or in writing to our plan, they simply ignored it. I believe the time frame for this was from July to September of 2011.

77. The mitigation plan included the planting of trees on the project site and in the community, and included other environmental considerations. It failed because

³⁸ See Counter Memorial, para. 254; First Witness Statement of Luis Martinez Zuñiga, para. 88.

the Government never responded to our mitigation plan. We contacted them a number of times, and the attorney from the Civil Division told my attorney he was just too busy on other matters and did not have time to look at it. So it was thrown back into Mr. Martinez's hands and he pursued his criminal complaint. Not once did Mr. Martinez ever talk to us about his sole purpose of repairing a non-existent wetland nor did he have any suggestion whatsoever to remedy the problem he illegitimately was raising.

78. In Nestor Morera Viquez's second witness statement, he mentions some plea negotiations that took place between the prosecutor and him on the eve of my criminal trial.³⁹ These are different than the mitigation discussions I reference above. In reference to these "plea" negotiations, I certainly refused to plead guilty in my criminal case. I would never plead guilty for a crime that I did not commit.

VII. The Allegedly Forged Document

79. I want to state loud and clear that I had nothing to do with, nor did I know anything about, this alleged forged document. I was falsely charged by the prosecutor, Mr. Martinez, for forging that document. However, Mr. Martinez admits in his witness statement that he had no evidence that I had anything to do with that document. Despite having no evidence, Mr. Martinez first charged me criminally for forging it, then later he went on a speculative rant that he also believed that it was forged by Edgardo Madrigal Mora, admitting that he has no evidence, only a "suspicion". I really do not understand the dysfunctional way this criminal prosecutor approaches the law. I am not an attorney, but common sense tells me you have to have evidence before you can accuse and charge someone with a crime. However, that did not stop Mr. Martinez from falsely charging me with that crime and also falsely accusing Mr. Madrigal that he suspected him of committing that crime. That is called malicious prosecution in the U.S., but I am sure that conduct is also illegal in Costa Rica.
80. Much is made of the allegedly forged document⁴⁰ in the Respondent's submissions. I will attempt to explain what I can in regards to this issue, because it is a red herring and another false accusation. The alleged forged document is probably one of the most revealing pieces in this puzzle since it shows the duplicity of the Government in handling this specific allegation and the larger case at hand, since it appears to be an encapsulation and microcosm that reveals how Costa Rica treated this entire matter starting in 2011 and continuing even now, in July 2016.
81. First, it is important to understand that there are thousands of documents in the file on this case and in the original project files maintained by the various Government agencies. I do not have perfect recall of most of them. However, I do have very good recall of the most relevant and important documents, the

³⁹ See Second Witness Statement of Nestor Morera Viquez.

⁴⁰ See C-47. The Respondent calls this document the "*Forged Document*," even though the Respondent readily admits that Prosecutor Martinez ultimately dropped his allegation that it was "forged." See Counter Memorial, para. 220.

SETENA resolutions and the construction permits. The alleged forged document, at the time it was written on March 27, 2008, was not an important document. It was not a document that SETENA required, it was not a document that was necessary for any permission, and it did not cover any ground that the other submitted reports addressed.

82. At that time, since I do not recall exactly when I first became aware of the alleged forged document, I told the prosecutor when I gave him my statement in May of 2011 that I thought the document was not forged since a letter that Mr. Bogantes wrote on August 27, 2010 stated that document was in the MINAE file along with a number of other documents. Those documents all said the same thing: no wetlands on the project site.
83. As stated above, I think this is one of the most interesting and revealing documents because it really shows you the following Government duplicity: (1) the Government accused me of forging it with no evidence; (2) they falsely accused Mr. Madrigal of forging it with no evidence; (3) Mr. Piccado and Mr. Martinez falsely told SETENA that I forged it and that it was the document that SETENA relied upon when they issued their June 2, 2008 permit; (4) SETENA unjustly shut the project down based upon the false representation by MINAE and the Prosecutor's office; (5) at the time I gave my statement to Mr. Martinez in May of 2011, he told me that he was not going to pursue the matter of the forged document since he had no way to prove I had anything to do with it; (6) when he filed his false criminal charges against me he charged me with forging that document; (7) I recently became aware of a profound piece of new evidence that my attorneys dug up in the first part July 2016. It is a copy of that alleged forged document that was filed with SETENA, with a number of pictures and a note on the back of the document that said it was submitted by Steve Allen Bucelato on March 28, 2008. I had never seen that before my attorney sent me a copy in the middle of July 2016;⁴¹ (8) Mr. Martinez stated he seized the SETENA file on Feb 8, 2011. Therefore, he had to see that document with the note on the back shortly after he picked up the file; (9) Mr. Martinez did not reveal to me or my attorneys that there was a note on the back of the document stating that it was submitted by Mr. Bucelato; (10) Mr. Martinez never called the police to do an official criminal investigation of this serious crime and never got a judicial ruling from a judge stating that the document was actually forged. This is just another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol.
84. As I explained in paragraphs 145 and 146 of my First Witness Statement, I recall one time in late 2010 or early 2011, Mr. Bucelato came by our office at Las Olas and dropped off a document that I think I recall he said was forged, but I am not sure if it was the alleged forged document, because I just don't remember. Then recently I learned two things, (1) Mr. Mussio said in his witness statement that I gave him a copy of that document, but I really do not recall doing that, and (2) I also recently found out about the copy of the

⁴¹ See C____. Copy of original of Allegedly Forged Document held at Criminal Court of Quepos, including handwritten note.

alleged forged document with the note on the back that said, “*presented by Steven Allen Bucelato on March 28, 2008.*” I also know that Mr. Martinez had to see that document because our attorneys, Batalla Salto Luna, got a copy of that document from the criminal court files. Upon careful inspection of that document with many pictures, they discovered the handwritten note on the back of the document.

85. Therefore, it is quite possible that my attorney picked up a copy of that document at the SETENA office without making a copy of the back of the last page, gave it to me and I passed it on to Mr. Mussio. That would explain why we never noticed the note on the back of the last page before.
86. However, this recent information about the note on the back of the forged document raises some very puzzling questions, since it was alleged by Mr. Piccado and Mr. Martinez to SETENA in March of 2011 that I forged the document, and that it was the document that SETENA relied upon when they issued their June 2, 2008 EV permit.
87. In regards to the handwritten note, it is suspicious that the alleged forged document is dated only a day before the copy was giving to SETENA by Mr. Bucelato. This begs the question how Mr. Bucelato obtained a copy of that document only a day after it was created and why he filed it with SETENA. It also begs the question of how the prosecutor’s office could possibly pursue a criminal action against me for forgery, in light of this handwritten note and also with no evidence that I had anything to do with it. Why did Mr. Martinez not mention this to me when I gave my statement on May 6, 2011 when we had lengthy discussions about the forged document? There are only two rational explanations, gross incompetence and he just did not see it, or an intention of trying to hide it from me, like they tried to hide the July 16, 2010 MINAE report from me. If that is the case, then It is ironic that they got caught twice in their deceptions.
88. The Respondent makes much of the fact that the allegedly forged document was presented by me at the criminal trial. This again is a distortion and misstatement of what happened at the criminal trial. There was no reason to talk about the forged document at trial, since the prosecutor had dropped those charges at the preliminary hearing. I talked about the alleged forged document in my closing declaration to make a point to the trial Judge that when I gave my statement to Mr. Martinez in May of 2011, and the subject of the forged document came up, Mr. Martinez told me that he was not going to pursue that charge since he had no proof I had anything to do with that document. I was of course shocked and surprised that when he finally filed his criminal charges in October 2011, I learned that he had included that forgery charge in his criminal complaint. In my closing declaration, I was merely pointing out to the judge the discrepancy between Mr. Martinez’s words and his actions. The Respondent’s first sentence reads like we were arguing that at the trial, which we were not. I also pointed out to the Judge why I thought it was not a forged document by showing a letter written by MINAE stating the document was in

their file and that the Prosecutor admitted that he had no evidence that I had anything to do with the forged document.⁴²

89. In any event, it is now clear from Mr. Martinez's own witness statement that he charged me with the crime of forging a document with no evidence. He admitted as much in his own witness statement and here it is in his own words:

*[I]t was strongly suspected that the false document had been introduced in SETENA's records by Mr. Edgardo Madrigal Mora to induce SETENA to make a mistake in benefit of Mr. Aven's Las Olas project. Nevertheless, there was no conclusive evidence that assured that it was Mr. Edgardo Madrigal Mora who introduced that document into the records, since there was no record of who submitted it, nor that it was done with the complicity of the accused David Richard Aven.*⁴³

90. There are numerous problems with this statement, not least of which is the fact that after Mr. Martinez saw the note on the back of the document, and he had to see it because we got it from the court file, why would he then go ahead and falsely accuse me and charge me with that crime? Why would he say there was no evidence of who submitted it when he had a copy of that document in the criminal file with the note on the back? Why would he then also come up with the preposterous story trying to implicate Mr. Madrigal in forging the document with no evidence? Why did Mr. Martinez apparently hide the document with the note on the back from my attorneys during a criminal investigation? This is exculpatory evidence that was withheld from us and it appears that Martinez had to know about it since Batalla got it from the criminal court file.
91. Additionally, in his witness statement, Mr. Martinez has made a bizarre attempt to portray his dismissal of the forgery charge as evidence that he did not have a personal problem with me. According to Mr. Martinez, the decision to drop a baseless criminal charge only a few months before trial demonstrates that he acted appropriately as a prosecutor. Never mind the fact that he falsely charged me with a crime that carries a six-year prison sentence with no evidence and a note on the back of the forged document stating Bucelato filed it with SETENA. The fact that Martinez never had any evidence that I forged that document, and it took him eight months to drop those charges, he describes this as being "objective." I call his objectivity bad faith. The Tribunal should reject this "objectivity" assertion and recognize it for what it was: "bad faith", gross incompetence or an act of intention to withhold important information during a criminal investigation.

VIII. The Protti Report

⁴² See C____, Transcript of Criminal Trial, Jan. 16, 2013, part C.

⁴³ Witness Statement of Luis Martinez Zúñiga.

92. I had nothing to do with the Protti report and do not recall the genesis of that Report from 2007.⁴⁴ It may have been something that Mussio Madrigal or one of its subcontractors ordered as part of their work, but I was not involved in any decision or ordering that report and never saw it until recently. It clearly says on the report that a Costa Rican company, called Tecnocontrol, ordered it. That study could have even been done without Mussio Madrigal's knowledge. But for sure it was not ordered by the Claimants as asserted by the Respondent in its Counter-Memorial, which led them to falsely accuse me of "duping" SETENA and asserting it proves I knew there were wetlands. This is just another scurrilous and far-fetched assertion with no basis in the truth.
93. Nonetheless, I have since reviewed the Protti Report, and I am confused as to the degree of emphasis that the Respondent places on this report. The report speaks about hydrology and water wells, but does not squarely address the environmental conditions of the property and whether the site contains a wetland. The Protti Report also references poor drainage, which was a problem known to the town and the Municipality already. Parrita has poor drainage, and I have seen the Municipality building totally flooded with heavy rains. It makes little sense that the Respondent alleges that I "ordered" the report, and then subsequently "buried" it during the permitting process and states that it proved I knew about wetlands at Las Olas and was guilty of "duping" SETENA into issuing me the EV permits.⁴⁵ This is just another one of the Respondent's false and outrageous accusations, that lacks any credibility since I never knew about that report until much later after June 2, 2008, the date that SETENA issued their EV permit.
94. Importantly, even a lay person on a simple reading of the Protti Report would conclude that it makes no findings about wetlands or forests. It also is not a required report to be submitted as part of the permitting process.

IX. The Bribery Complaints

95. In the Memorial, the Claimants had detailed in full Mr. Bogantes's first bribery solicitation in July to mid-August 2010 from Mr. Damjanac, as well as a second bribery attempt in the Las Olas site office in August 2010.⁴⁶
96. The first bribery attempt occurred as Mr. Damjanac and Mr. Bogantes were walking around the project site, and Mr. Bogantes told Mr. Damjanac that the developers would have to give him lots of money in order to keep the project running.⁴⁷
97. The second bribery attempt occurred in the Las Olas office in late August of 2010, in the presence of Mr. Damjanac. Mr. Bogantes asserted there was a wetland and a forest, and insisted that the developers contributed to his

⁴⁴ See R-11.

⁴⁵ See Counter Memorial, paras. 286, 404 and 492.

⁴⁶ See Memorial, paras. 163-164.

⁴⁷ See *id.*, para. 163.

“retirement or pension plan” in order to solve the problems and ensure the project advanced smoothly.⁴⁸ I rejected the offer and told him that it was a crime in both Costa Rica and the United States to pay Government officials a bribe and I was not going to risk going to jail in either country.

98. The Respondent has noted the timeline of the bribery attempts, pointing out that the complaint concerning Mr. Bogantes’s second bribery attempt was not filed until about a year after it took place. I handled the second bribery attempt in the same way as I handled a prior bribery attempt with the Municipality in 2009, in the most diplomatic way I could without causing retaliation against me or the project by the Government.
99. Once MINAE started asserting that the project had wetlands, shortly thereafter I refused to pay the second bribery attempt, Mr. Martinez started his criminal prosecution against me. At that time it became very apparent to me that it was retaliation against me personally for my failure to pay the bribe. In addition, once I realized that Mr. Martinez refused to investigate my bribery complaint against Mr. Bogantes, then and only then, did I decide to file a formal criminal complaint with the prosecutor in Quepos, where Mr. Bogantes’s MINAE office is located.
100. On the advice of my Costa Rican criminal law attorney, I did not bring up the bribery if to conduct that line of questioning because “Mr. Bogantes was not on trial.”
101. After a year, I revisited the prosecutor in Quepos to see what had become of my criminal complaint that I filed against Mr. Bogantes. I was told that there was nothing in the file as yet. I asked how was that possible since this complaint was filed over a year ago. The clerk told me she did not know, but would put a note in the file inquiring about the status of the case.
102. Recently, I learned that the investigation into the complaint I filed against Mr. Bogantes in 2011 had been dismissed for lack of evidence. I also learned that the criminal prosecutor of Quepos put a hand written note into the file saying that he spoke to me and I told him I did not want to pursue my complaint against Mr. Bogantes. This is total fabrication. I never spoke to the Quepos prosecutor or anyone else from the prosecutor’s office and no one ever contacted me or my attorneys. On November 2, 2015, sent Mr. Martinez a letter to draw his attention to this fact, but I never received a response to my letter.⁴⁹

X. The Criminal Trial

103. In my First Witness Statement, I provided an accurate description of the events leading up to my criminal trial and the trial itself. After reviewing the Counter Memorial and supporting documents - in particular the witness

⁴⁸ See *id.*, para. 164.

⁴⁹ Exhibit C[] David Aven letter to Luis Martinez, November 2, 2015.

statement of Mr. Martinez - it is necessary for me to address a series of inaccurate, misleading and false statements.

104. The Counter Memorial completely mischaracterizes the witness testimony, especially in claiming that “*eleven people . . . helped to confirm the Prosecution’s side.*” This is completely out of touch with the reality of what took place at the criminal trial, as the prosecution’s witnesses continuously contradicted themselves, testified against the prosecution case, sought to mislead the court, and undermined their own credibility. The video and transcript have been made available for the Tribunal to review and they will show the exact opposite of what the prosecutor is claiming. There is not one shred of evidence you will find in the video or transcript that will back up the Prosecutor false assertion that all witnesses help to confirm the “Prosecution side”. In fact, Mr. Martinez was unable to prove even one of his criminal charges in his 33-page criminal complaint. Below is a description of some of the statements made during the testimony of the prosecution’s witnesses:
- (a) Mr. Bogantes had no coherent explanation for why his agency issued a report in July of 2010 categorically stating that “*no wetlands are found in this property.*”
 - (b) The judge noted that the July 2010 report was inconsistent with Mr. Bogantes’s testimony, and the Judge proceeded to read the July 16, 2010 report in open court. After reading it, he demanded an explanation from Mr. Bogantes why his testimony was in contradiction to the report he conducted with Mr. Manfredi in July of 2010. Mr. Bogantes blurted out to the Judge that he just drove Mr. Manfredi to the project site, but was not involved in the actual inspection. When I was given the opportunity to make a declaration at the end of the trial, I pointed out to the judge that Mr. Bogantes had written a letter on August 27, 2010, about five weeks after the July 2010 report was done, and in that letter Mr. Bogantes admitted conducting the 2010 inspection with Mr. Manfredi and stated clearly that there were no wetlands, lakes or lagoons on the project site and he signed that letter. However, under oath he told the Judge that he “just drove” Mr. Manfredi there. To me this is clear evidence of perjury. Even though both Mr. Martinez and the Judge heard it, there was no consequence for Mr. Bogantes for his perjured testimony. Does that sound like testimony that “*helped to confirm the Prosecution’s side?*”
 - (c) Mr. Manfredi offered a similarly confusing explanation of why the July 2010 SINAC no wetland report was contradicted by his later 2011 report where he said there were now wetlands. He astonishingly claimed that the existence of wetlands can change from year to year and that is why you have to keep checking. This is a ridiculous statement that leads to absurd possibilities. Under this “Manfredi rule,” a developer could get cleared and start construction and then another study could be done the next year or two and wetlands discovered and the entire project shut down. There is no way any developer could do business in a country in such an unpredictable regulatory framework like this. When Dr. Cubero was called to testify,

he rebuked what Mr. Manfredi said, and clearly stated that wetlands soils do not change from year to year. Does that sound liked testimony that “*helped to confirm the Prosecution’s side?*”

- (d) During the trial, Ms. Vargas admitted that she had never observed wetlands on the project site, she was not a wetlands expert, never saw Mr. Damjanac or me doing anything illegal on the site, did not even know me, and that in fact, and she had never even set foot on the project site. It was clear that, during her trial testimony, Ms. Vargas’s lack of first-hand knowledge called her credibility into question. She testified for about 20 minutes and was unable to say anything to support the prosecution’s case and provided no direct evidence that was able to prove that we committed any of the crimes for which we were charged. It is all on video and in the trial transcript.
 - (e) Mr. Bucelato’s testimony was replete with contradictions and false or otherwise ridiculous statements. I have already described these statements in my First Witness Statement, but would further point out that Mr. Bucelato grossly mischaracterized the alleged wildlife on the project site and admitted to lacking any technical qualifications whatsoever to be able to make a determination of the existence of wetlands or any ecological or biological discipline, instead describing himself as a retired musician. His lack of first-hand knowledge clearly called into question his credibility and honesty as a prosecution witness. He also testified for about 20 minutes and was unable to say anything that proved we were guilty of even one crime for which we were charged. I find it simply incredible that Mr. Martinez called Mr. Bucelato and Ms. Vargas (two witnesses who readily admitted to lacking any capacity to determine wetlands), yet failed to call witnesses from SETENA, the one agency that issued five SETENA resolutions that made a finding of “no wetlands”, and the agency that was legally responsible for that permit and compliance therewith. Mr. Martinez’s actions in this regard are completely inexplicable and one can only conclude this was either gross incompetence or an intentional act.
 - (f) Alberto Mora was also called as a witness for the prosecution. His testimony confirmed that he had spent most of his life in Esterillos Oeste, was familiar with the project site, that he rode his horses all over the Las Olas property and grazed his cattle on the property as well. He confirmed that Las Olas never was a wetland or forest and that the property had always been a farm. He also stated that his cousin built 90 homes right next to Las Olas that use to be part of the farm and was located in the lowest part of the property. Does that sound liked testimony that “*helped to confirm the Prosecution’s side?*”
105. None of the above or any other statements made by any of the witnesses that “*help[] confirm the prosecution’s side*” of the case as asserted by the Respondent’s Counter Memorial. In fact, they do just the opposite. While there are countless other examples of the generally absurd nature of the prosecution’s case, I would also point out that Mr. Martinez himself has even

attempted to distance himself from the INTA report in his witness statement, specifically attempting to downplay the testimony of Dr. Cubero where he clearly testified that Las Olas does not have wetlands soils. Mr. Martinez's statements are even more puzzling when you consider that he was the one that commissioned the INTA report. However, once he discovered that the findings were detrimental to his case, he decided to just ignore them. In fact, when he visited the site on May 13, 2010 and the subject of the INTA report came up, he personally told me that he "*did not believe in the INTA report.*" That is not only disingenuous, but it is clearly not the way a prosecutor is supposed to practice the law. From what I know, prosecutors do not have the discretions to cherry pick evidence they like and discard evidence they do not like. They must accept the evidence as presented and that evidence will speak loud and clear in court. Decisions are made based upon evidence, not personal feelings and beliefs. How can anyone who practices and respects the law explain this type of behavior? This is just another example of Mr. Martinez playing fast and loose with the law and refusing to follow proper legal protocol.

106. Finally, in his witness statement Mr. Martinez has criticized my refusal to settle the criminal case, and claims that he "*stated his intention to negotiate many times to the defendants.*" That statement is totally false. As I stated above, Mr. Martinez never spoke to, or wrote, me or my attorneys about wanting to negotiate. It is telling that Mr. Martinez cannot produce one letter that he wrote to me or my attorneys stating such an intention. If he can produce one, then let him produce it. The only evidence out there stating such an intention was from the Claimants and we never got a response to our mitigation plan. This is just another scurrilous and false assertion with no basis in the truth.

XI. My decision to not appear at the second criminal trial

107. The re-trial of my criminal case was set for January 2014. I never received notice of the subsequent trial date and had scheduled a necessary surgery in January 2014. When I learned that the second trial was scheduled for January 2014, I immediately got letters from my doctor and hospital and sent them to my attorney, Mr. Ventura and he notified the Costa Rican court that I was unable to be present at trial for medical reasons. The Court refused to accept these as valid reasons to postpone the trial date. Since I was not there, and even though I had provided proof of my surgery in January of 2014, Mr. Martinez issued an arrest warrant for me and then reported me to INTERPOL and falsely told them I was wanted to serve a three-year sentence. That illegal, vengeful and capricious act has forever ruined my life and reputation.

XII. Mr. Luis Martinez's Witness Statement

108. Mr. Martinez stated the following:

The declaration of Mr. David Richard Aven:

On 6 May of 2011, Mr. David Richard Aven appeared at the prosecutor's office to deliver a statement.

That is true, however, I was advised by my attorney not to speak since it was criminal. However, I rejected that advice because I thought that this was just a misunderstanding. I thought reasonable people could straighten out the misunderstandings if they talked with one another. So that is what I decided to do. I presented all the relevant documents showing that the project was fully permitted and that there was no intent on my part to commit a crime. It was always my understanding that intent was a very important necessary component prior to filing criminal charges against anyone. Further, I did not want to remain silent and give the impression then I had something to hide. In the end, it did not budge Mr. Martinez and he continued to pursue his criminal complaint against me.

109. Mr. Martinez stated this in his witness statement:

It's important to note that at the summons, Mr. Aven had an interpreter into English, since that is what he and his lawyer requested. At that time, there was no one from the official court list, so one was named due to lack of means. This procedural act was done with the translation to English by the designated person, and at no time was there a protest, either from Mr. Aven or his lawyer, that the interpreter was translating poorly.

The above statement is false. It was not my attorney that requested a certified translator, by law one had to be provided by the Government. However, the translator that the Government hired was a college student who spoke poor English and was not a certified interpreter. This was mistake number one that the prosecutor made at his inquest.

110. Mr. Martinez states the following:

It's important to clarify that Mr. Aven was summoned for this act, which he appeared for of his own free will, with no coercion, and he initialled what was declared there in any case, of his own free will and under no pressure. If Mr. Aven was fearful or concerned, this was due an inner thing, and not because there were outward signs by the undersigned or any other person that were threatening or coercive in any way. Likewise, at no time did Mr. Aven say he felt any kind of pressure in addition to what may be caused to any person going to the Courts of Justice.

111. I have no idea what Mr. Martinez is trying to say here. I was not fearful when I appeared and was presenting the evidence and speaking to Mr. Martinez, so I have no clue what Mr. Martinez means when he says, “*If Mr. Aven was fearful or concerned, this was due an inner thing, and not because there were outward signs by the undersigned or any other person that were threatening or coercive in any way*”. However, I did feel threatened and coerced at the end of the inquest, after Mr. Martinez had a transcript of my statements typed up in Spanish and asked me to sign it. I did not want to sign something that I could not read and understand, and it was totally improper for Mr. Martinez to try to make me sign a document in Spanish which I did not understand. So I told him I did not want to sign that document and would prefer to have it

translated into English. When I said that, he got very upset and said something to the effect of, “*Sign it or else.*” Knowing that the criminal prosecutors have a lot of power in Costa Rica and can put people in jail for no reason under their preventative detention laws, I went ahead and signed it under duress. This is just another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol and provide me with a copy of the statement in English.

112. Mr. Martinez then says this in his witness statement:

In that meeting, Mr. Aven showed me the SINAC-MINAE document identified as "67289RNVS-2008" and insisted that it was valid and that the SINAC-MINAE had indicated that there were no problems with the project. The witness statement of Mr. Aven mentions that I did not investigate the matter of the false document. This is completely incorrect. It can be proven by the case records that the report supposedly issued by SINAC-MINAE identified as "67289RNVS-2008," that established that the project was not a threat to the environment, had been falsified. I personally interviewed the persons whose names and signatures appeared in that document, and both categorically denied they created it, and refuted that those were their initials; they also stated that the supposed office that issued that document did not exist.

This is another misleading statement. I told Mr. Martinez I had nothing to do with that document, but that I wanted to show him why I believed it was an authentic document. I then showed Mr. Martinez a letter that was written by Mr. Christian Bogantes on August 27, 2010 to Ms. Hazel Diaz Melendez, who was director from another Government agency called the Defensoria. The purpose of the letter was to tell Ms. Diaz about the number of reports they had on the Las Olas project. I pointed out that the very first document he listed was the alleged forged document and I asked how a forged document could get into the MINAE files. (At the time, I did not know that Mr. Martinez had a copy of the forged document in his possession with a note on the back stating it was filed by Mr. Bucelato on March 28, 2008, which was one day after the document was written.)

113. Further, I told Mr. Martinez that if he thought it was a forged document, he should call the police and have them conduct an investigation since forging a Government document is a serious crime. However, Mr. Martinez never did that and he never informed either me or my lawyers about his efforts to investigate it. Mr. Martinez said he conducted some cursory investigation; however, he never went through a proper process of having the police conduct an official investigation, collect what evidence they could and present it to a Judge and have the Judge make a determination that it was forged. To my knowledge that was never done, so there never was a judicial ruling that that document was actually forged. My experience in observing how Mr. Martinez worked at his duties was this was par for the course and just another example of his sloppy and incompetent approach to his job as follows: (1) his refusal to comply with five different SETENA resolutions; (2) his accepting a criminal complaint from Mr. Bucelato and starting a criminal investigation when he

should have complied with legally issued SETENA Resolutions and rejecting Mr. Bucelato's complaint; (3) his failure to recognize that there was no intent on my part to commit a crime since the project was fully permitted and I was just operating under the authority of the Government permits that were issued to me; (4) his incompetence in not properly challenging a SETENA permit that he apparently thought should not have been issued. It would have been a legally proper procedure under Costa Rican law and would not have led to criminal charges being filed against me personally; (5) Mr. Martinez filed false criminal charges against me when he knew I had not committed a crime; (6) he falsely told SETENA that I forged a document with no evidence; (7) he falsely told SETENA that the alleged forged document was the one that they relied on when they issued their June 2, 2008 resolution; (8) he did not conduct an investigation of a bribery attempt I told him about when I gave him my statement in May of 2011; (9) he did not accept the findings of the INTA report, one that he commissioned. This is just another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol.

114. I could go on, but this is enough to prove my point. Mr. Martinez is either one of the most incompetent prosecutors in the world or for whatever reason was out to shut the project down and personally attack me as one of the U.S. investors who was the project manager. Those are the only two logical conclusions when you look at Mr. Martinez's actions rather than relying on his misguided and disingenuous words in his witness statement.

115. Mr. Martinez then makes this statement:

Clearly, given that that document only benefited the Las Olas project and that Mr. Aven himself, during the summons meeting he attended at the Prosecutor's Office, had insisted that that document was true, the investigation lines led to Mr. Aven as the main suspect of having procured the falsification of the document in order to benefit his project.

116. Once again, Mr. Martinez is being disingenuous with his speculations and false assertions. First, this alleged forged document did not benefit me in any way, in fact it hurt me. It was not a document that SETENA relied upon, as represented to them by Mr. Martinez and Mr. Piccado, and it was not saying anything the other documents were not saying. But take note of what Martinez says: "*led to Mr. Aven as the main suspect of having procured the falsification of the document.*" Mr. Martinez never had any evidence that I committed a crime of forgery, instead he used the word, "suspect" yet he charged me knowing he had no evidence. By Mr. Martinez's own words, it is a striking example of prosecutorial misconduct and another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol.

117. Then Mr. Martinez makes this remarkable, unfounded statement:

Therefore, it was strongly suspected that the false document had been introduced in SETENA's records by Mr. Edgardo Madrigal Mora to

induce SETENA to make a mistake in benefit of Mr. Aven's Las Olas project. Nevertheless, there was no conclusive evidence that assured that it was Mr. Edgardo Madrigal Mora who introduced that document into the records, since there was no record of who submitted it, nor that it was done with the complicity of the accused David Richard Aven. It is for this reason that, in applying the principle of objectivity that governs the work of prosecution, a definitive acquittal (archiving of the cause) was requested in favour of Mr. Aven for the crime of using false documents.

Now Mr. Martinez said he “suspected” Mr. Madrigal of introducing the alleged forged document since there was no record of who submitted it. This belies the fact that Mr. Martinez had in his possession the document that was filed with SETENA with the note on the back that said it was submitted by Mr. Bucelato, but he insists there was no record of who submitted it. He had it in his possession when he seized the SETENA filed on February 8, 2011. He admits he has no evidence that either Mr. Madrigal or I had anything to do with it, then turns right around and charges me with the crime and then accuses Mr. Madrigal of forging it. This is the height of dysfunction and I would say this is one of the most damning paragraphs in all of Costa Rica’s statements. He accuses Mr. Madrigal of committing a crime that, if true, he could be sent to jail for, but then admits he has no evidence. He then admits he has no evidence that I was complicit and says he requested a dismissal of the false criminal charges he filed against me with “*no conclusive evidence*.” He tops it off with this remarkable statement: “*there was no conclusive evidence that assured that it was Mr. Edgardo Madrigal Mora who introduced that document into the records, since there was no record of who submitted it...*”. But he had the letter in his possession with the note on the back saying it was presented by Mr. Bucelato. There are only two possible explanations, gross incompetence that Mr. Martinez just missed a very important fact in his investigation, or Mr. Martinez is lying.

118. Also his statement, that there is no record of who submitted it is factually wrong and false. He had a copy of the alleged forged document that my attorneys discovered going through the criminal court’s file. Therefore, Mr. Martinez surely must have seen the handwritten note on the back noting that it was submitted by Mr. Bucelato, since Mr. Martinez previously admitted to seizing the SETENA files on February 8, 2011.
119. Mr. Martinez then makes another remarkable statement in the very next paragraph:

In this regard, it also caught my attention that in the Claimants' Memorial and the witness statement of Mr. Aven, it was suggested that I had something personal against him or an illegitimate purpose in connection with the investigation of the case because I had made the accusation without any evidence. That is not true and I strongly reject such an unjustified accusation.

Actually, his statement is misleading. He not only personally accused me, but actually filed criminal charges against me for forging that document. He

admitted he did not have evidence, but then rejects my accusation that he had no evidence. How can one explain this dysfunctional and irrational reasoning?

120. But Mr. Martinez is not finished as he goes on to say this in his own words:

Since there was no record of who submitted it, nor that it was done with the complicity of the accused David Richard Aven. It is for this reason that, in applying the principle of objectivity that governs the work of prosecution, a definitive acquittal (archiving of the cause) was requested in favour of Mr. Aven for the crime of using false documents.

Again, there was a record of who submitted it - Mr. Bucelato. Either Mr. Martinez was just incompetent and did not discover it, or he was lying about it and was trying to keep it from us. There is no other explanation. Further, his comment that he calls “*applying the “principle of objectivity”*”, has nothing to do with *applying the “principle of objectivity”*, it has everything to do with applying the principle of the “rule of law”. You do not charge someone with a crime unless you have evidence, and in Mr. Martinez’s own words he admits he had no evidence, yet he still charged me with that crime. If Mr. Martinez is so interested in applying the rule of objectivity, then I think it is quite objectively reasonable to say that not only did he have no evidence to file his false charge of forgery against me, but he had no evidence for any of his other false criminal charges as well.

121. Mr. Martinez continues with a crescendo of remarkable statements, that I can only describe as befuddling to one’s mind:

If that were true, then it is incomprehensible why I decided to drop the charges against Mr. Aven on the basis of the use of a forged document, which is a very serious crime with penalties of up to 6 years in prison. Of course even if one has well-founded suspicions, in accordance with the principle of presumed innocence, one can never accuse a person without having enough evidence that he or she has committed a crime. That is why the investigation into the use of a forged document did not allow us to determine with probability that Mr. Aven used this document or that Mr. Madrigal developed or used it before the SETENA. Therefore, I decided to seek dismissal of the charge.

Mr. Martinez charged me with a crime when he had no evidence. By Mr. Martinez’s own words again, his above statement gives ample evidence and reasons when he should not have filed his false criminal charges against me. Please think about what Mr. Martinez is saying here. He starts off saying, “*If that were true?*” If what were true? If my assertions were true that he had “*a illegitimate purpose?*” Or if it were true that he had a personal vendetta against me? Or if it was true he had no evidence? Does Mr. Martinez just have an inability to speak clearly or is he speaking unclearly as an attempt to mask his egregious behavior? He then says that if it were true then “*it is incomprehensible why I decided to drop the charges against Mr. Aven*” because I could have spent six years in jail. Then he says, “*well-founded suspicions, in accordance with the principle of presumed innocence, one can never accuse a person without having enough evidence that he or she has*

committed a crime.” There you have his admission that “*one can never accuse a person without having enough evidence that he or she has committed a crime.*” Mr. Martinez admits he had no evidence, yet he still went ahead and charged me with a crime in October of 2011. Therefore, because he had no evidence, he was forced to dismiss his false charge at the preliminary hearing for lack of evidence, because he did not want me to spend 6 years in jail for a crime I did not commit. Is any of the above rational to a rationally thinking person? It’s really hard to believe this kind of reasoning is coming from a top criminal prosecutor in Costa Rica. With this kind of logic and irrational thinking is it any wonder why we are where we are today?

122. Mr. Martinez continues with his crescendo of irrationality:

Far from what is suggested by the claimants, my intention was never to punish Mr. Aven with a long prison sentence, because of a personal issue. My role as an environmental prosecutor is to enforce Costa Rican environmental legislation and especially, if there has been environmental damage, that the person responsible repairs it. My investigation and prosecution of the case in all instances had that as the sole objective.

Mr. Martinez never spoke to me about repairing any damage nor did he send any letters to my attorneys suggesting that, yet he has the audacity to say that his sole objective was to make sure environmental damage was repaired. If that was true, then why did he not communicate that to me or my attorneys? There is nothing in the file to support his claim that he ever discussed with us “his sole objective”. There is a huge difference between Mr. Martinez’s words and his actions.

123. Mr. Martinez continues with his false and distorted statements:

On the other hand, it's also worth noting in the accusation that Mr. Aven renders in his witness statement, that during the meeting of March 2011, he had stated to me that he received an alleged request for a bribe from Mr. Christian Bogantes and that I did not investigate it. It's worth clarifying many points about that affirmation.

Actually the date of that meeting was May 6, 2011, not March 2011. Other than that error, the above statement is true, and what I told him was because I refused to pay a bribe to Mr. Bogantes (the MINAE director in Quepos), SINAC decided to illegally use their power, do a 180 degree turn and after two years of saying there were no wetlands, all of a sudden they found a wetland at Las Olas.

124. Mr. Martinez goes on to say:

In the first place, that complaint was filed with another prosecutor, not with the Deputy Environmental Agrarian Prosecutor, so it was not up to me to investigate it.

The above statement is not true. At the time, on May 6, 2011, I told Mr. Martinez about Mr. Bogantes asking me for a bribe. I brought it to Mr. Martinez because he was conducting a criminal investigation and I was reporting a crime to him that was committed by Mr. Bogantes that I actually thought that he would investigate, but to my shock and surprise he did not. It was only after Mr. Martinez refused to conduct an investigation that I decided to file a formal criminal complaint against Mr. Bogantes with the Criminal Prosecutor in Quepos, which is where Mr. Bogantes's MINAE office was located.

125. Mr. Martinez also states:

In the second place, the complaint was made a year after the date of the supposed act, when there were already many charges filed against the project for violations of environmental legislation. In fact, Mr. Aven's report against Mr. Bogantes, for the supposed crime of requesting a bribe, was presented when the criminal process against Mr. Aven and Mr. Damjanac was underway and was known to them.

Again, this is a false statement. At the time I gave my statement on May 6, 2011, there were no charges filed against me and Mr. Martinez was only conducting a criminal investigation. Further, I was trying to deal with the attempted bribery in the most diplomatic way that I could since it was not my desire to cause trouble for Government functionaries. So I dealt with it like I dealt with the other bribery attempt in the spring of 2009 when the city manager of Parrita asked me for a \$200,000 bribe. In that case my diplomatic efforts worked and I was successful, but in the Bogantes case my efforts were not successful and they took revenge action against me and shut the project down.

126. Mr. Martinez further states that:

In the third place, I understand that the prosecutor in that case was supposed to request the archiving of the complaint due to a lack of evidence, since Mr. Aven did not appear after many requests, as stated in the case records opened for this purpose at the Quepos Prosecutor's Office, and as indicated by the claimants' witness, Mr. Manuel Ventura.

Mr. Martinez is wrong again. I filed a six or seven-page criminal complaint against Mr. Bogantes with the Quepos prosecutor. This is much like the complaint that was filed by Mr. Bucelato with Mr. Martinez against me. In that case, Mr. Martinez did not call Mr. Bucelato to make additional statements. He called me to respond to the criminal complaint that Mr. Bucelato filed against me. So is there one standard for me, a foreigner, and another standard for Mr. Bogantes, a Costa Rican? Why was Mr. Bogantes not called to respond to my complaint? In looking at the file, we saw no statement made by Mr. Bogantes, meaning the prosecutor never called him in to respond to my complaint. First, it is a total fabrication that the Quepos Prosecutor ever tried to contact me or my attorney to make additional statements. That never happened. What did happen, however, was the Quepos

prosecutor wrote a hand-written note to the file and fabricated a false story that he spoke to me alleging that I told him I did not want to pursue the criminal complaint any further. That was a total lie. Secondly, it was not necessary for me to make any other statements, since they had my sworn statement I filed with the prosecutor. What the prosecutor should have done was to get a statement from Mr. Bogantes about my complaint, but that did not happen.

127. Mr. Martinez continues:

If what the claimants suggest were right, that the accusations regarding environmental damage are all based on Mr. Bogantes' anger, because Mr. Aven had refused to pay him a bribe in July-August of 2010, it really is incomprehensible what would be the logic that the only document on which they base their defense is a document that was the result of that visit from Mr. Bogantes in July of 2010.

128. This is another very interesting statement that Mr. Martinez makes. First, the MINAE report Mr. Martinez is talking about is the July 16, 2010 report with number 371-2010, which concluded that there were no wetlands on the Las Olas site. That report was dated one month before I refused to pay Mr. Bogantes a bribe. Further, the report of July 16, 2010, is the one that Mr. Bogantes and Mr. Piccado, attempted to bury and keep from me. I was only able to get a copy of that report by accident when Esteban Bermudez, our environmental regent, became aware of it and told me to go down to Quepos and get it. I thought it would not be a problem if I went there by myself. However, Mr. Bogantes got very upset and started yelling at me telling me that he did not have that report. I was only able to get a copy by causing such a stir that Mr. Bogantes was forced to call a MINAE attorney by the name of Laura Chaves, who spoke good English, and she ordered him to give me a copy of the report. Since January 2011, Mr. Martinez was conducting a criminal investigation into environmental crimes he was asserting I committed. This document was an important piece of exculpatory evidence, because it was saying that there were no wetlands on the project site. Mr. Martinez had to get this letter from the MINAE file, which Mr. Martinez said in his witness statement that he did get copies of. Yet this July 2010 report was never provided to us by either MINAE or Mr. Martinez. This was an ongoing criminal investigation and a very important piece of exculpatory evidence that was being withheld from us. I do not think that this type of conduct is permitted in any country which adheres to "democratic principles. This is just another example of where Mr. Martinez played fast and loose with the law and refused to follow proper legal protocol.

129. Mr. Martinez continues with his remarkable statements:

Moreover, Mr. Bogantes was a witness during the trial and Aven's defense had the opportunity to interrogate him at length. There was not a single question or reference to the alleged bribery solicitation. If that fact were allegedly connected to the charges against Mr. Aven for environmental damage, this would have been the correct instance to prove it. Although, as I have said before, this was never even alleged

by Mr. Aven's defense. When Mr. Bogantes attended the hearing of the criminal trial in which he was called as a witness, the accused's counsel, Mr. Nestor Morera, having the opportunity to question the witness (who was under oath) on the alleged bribe, did not do so.

This is another totally amazingly ridiculous statement. First, I objected to having Mr. Bogantes testify against me, because he attempted to bribe me and therefore was a biased and hostile witness. He proved to be such a witness by giving perjured testimony at my criminal trial. However, Mr. Bogantes was not on trial, I was. My attorney advised that we should not bring up the bribe solicitations since it could very well upset the Judge and work against us, so that is why this was never brought up at trial.

130. Mr. Martinez continues:

To pretend that the fact that those professionals work under the scope of MINAE, like engineer Bogantes, is enough to consider them biased, without any indication whatsoever that those gentlemen had knowledge of or participated in the supposed attempt to solicit a bribe by engineer Bogantes, is simply far-fetched.

131. Why is it far-fetched to investigate an alleged crime committed by a Costa Rican, but not far-fetched to investigate an alleged crime committed by a foreigner who had a fully permitted project? Further, it is well-known that corruption in Costa Rica is very prevalent. Former Presidents of the country have been put on trial for corruption. There have been many public officials indicted for corruption. I told Mr. Martinez that Mr. Bogantes asked me for a bribe and Mr. Damjanac was a witness. However, Mr. Martinez never investigated it and then says it is far-fetched. I believe it is far-fetched, unconscionable and a human rights violation to be criminally charged by a criminal prosecutor with environmental crimes, forgery, and failing to obey a Government order, having not one shred of evidence and after having been issued Government permits granting us permission to operate under the authority of those permits. Then once we started the construction, another Government agency comes along and charges us for environmental crimes. So for him to say this kind of conduct is far-fetched is a false and ridiculous statement. Mr. Martinez simply does not understand that what he did was way beyond being far-fetched and another example of playing fast and loose with the law and refusing to follow proper legal protocol.

132. Mr. Martinez continues:

One of the procedures that a prosecutor investigating a case must do is visit the site. I went to the site personally during the investigation. At that visit I was able to observe the damage that was caused to the wooded area, and the filling and drainage that was being done at the wetland area where machinery was working, the laborers working at the location were identified, Mr. Francisco Iglesias Caldera and Mr. Gabriel Alberto Montero Arce, who were interviewed regarding who had hired them for that work. All of this was documented in a video.

Mr. Martinez does not provide a date that he appeared at the Las Olas site, but given the names he uses, it was after we were issued the construction permits and we were into the infrastructure construction. Mr. Martinez says this, “*One of the procedures that a prosecutor investigating a case must do is visit the site.*” At the time Mr. Martinez visited the site, the project was fully permitted and we were doing our infrastructure construction under the authority of the permits that were issued. What Mr. Martinez fails to tell you is what he was “required” to do was to comply with and respect the permits that were issued. A Government process was followed, rigorous procedures were followed, large sums of money were expended by the developers in following all of the Government procedures and construction was underway, and none of the permits were challenged under the applicable law. Mr. Martinez is acting more like an environmental potentate than a legitimate Government prosecutor who is supposed to be acting under the law. Instead, he comes on the scene after all the permits were issued and visits the site, without informing us or asking for a meeting, and starts making wild accusations and false declarations. Why did he not call SETENA, Mr. Mussio, our environmental regent, or our attorneys and ask them for a meeting to visit the site and talk about it? Is it not that something a reasonable person would have done?

133. Mr. Martinez continues:

I want to clarify that in this case, many smaller diameter trees were cut, with the clear intent of weakening the forest located in a part of the Las Olas project, and certainly therefore, having eliminated the density of the ecosystem, the claimants requested a permit to cut the bigger trees, alleging that there was no forest proper. This is precisely a typical technical delinquency in order to eliminate a forest. Nevertheless, according to the Forestry Act, the felling of trees is still a crime even though they were not in a forest, simply because it was done without a permit, as regulated by Article 61 paragraph a) of the Forestry Act.

This is yet another false statement. I had commissioned three professional forestry studies done by independent forestry engineers. They all concluded Las Olas was not a forest as defined by Costa Rican law. Mr. Martinez did not have one forestry study done, other than by MINAE who asked me for a bribe and was therefore biased against the project. However, once again, there were SETENA resolutions in force and Mr. Martinez was required to comply with them, but he refused and continued his vendetta against me and the project.

134. Mr. Martinez continues:

On 3 October 2011, Lic. Piccado Cubillo sent me a police report expanding the complaint, which mentioned that an inspection had found 4 people doing illegal activities of felling, removing stumps, burning and covering the residue from the burn with dirt. At that time, I understood that the investigation had brought up enough evidence to file an accusation against the defendants for the environmental damages they had caused.

This is a false statement with no basis in the truth. Just general clean-up work was going on, nothing else. If we were doing something illegal, then a citation would have been issued for whatever illegal work was going on. We never received one citation for doing anything illegal on the project site and in fact, Mr. Freddy Garro, the mayor of Parrita, sent me a letter on December 4, 2012 to confirm that and stated the following in part, “*I Freddy Garro Aria, Mayor of the municipality of Parrita hereby certify this municipality Government has not initiated any complaints whatsoever due to irregularities in Las Olas project. Likewise, I hereby certify that based on a review of the records kept by the municipality governments office, there have been no measures taken by previous mayors aimed at denouncing the aforementioned project*”.⁵⁰ This was just another one of Mr. Martinez’s manufactured false fabrications, just like the one he fabricated for SETENA, when he told them I forged a document and it was the one SETENA relied upon to issue their permit. How can you explain the contradictions in Mayor Garro’s statement of no irregularities and the multiple statements of irregularities, with no evidence, in the statements of Ms. Vargas and Mr. Martinez?

135. Mr. Martinez continues:

At the same time as the requests for technical reports from the MINAE, I asked the Judicial Investigation Agency (OIJ), an investigation agency with judicial powers, to determine who was carrying out the actions against the two ecosystems. The OIJ determined that the project administrator Jovan Dushan Damjanac was the one who gave the orders for the trees to be cut, and Mr. David Richard Aven had ordered the drainage of the wetland.

Another false statement. There are no dates, no specifics, no names of who was there. How were they able to determine the findings of facts? Jovan was not the administrator. He was the director of sales and marketing. What evidence did they have that I ordered the drainage of a non-existent wetland? No one appeared at my criminal trial and testified against me about any of the above, especially not an OIJ officer that Mr. Martinez referred to above. These are just more of the same false accusations that Mr. Martinez makes throughout his entire witness statement. At the criminal trial he was not able to prove even one of his criminal charges in his entire 33-page accusation. It is all on video.

136. Mr. Martinez continues:

As I mentioned previously, SETENA is based on the documents submitted to it by the developer. If they do not mention the existence of a wetland or forest, it is possible that SETENA will grant environmental viability for development in the entire area of the project. In SETENA’s records, the defendant David Richard Aven declared under oath his commitment to comply with all environmental regulations and conditions established by SETENA and environmental

⁵⁰ Exhibit C[] David Aven letter to Luis Martinez, November 2, 2015.

legislation. This means that if the competent agency, which is SINAC-MINAE, determines that a wetland and/or forest exists in the area of that project, not only is it essential for the developer to request the applicable permits for cutting trees and affecting the wetland, but it was Mr. Aven's obligation to inform SETENA of that circumstance.

Every study or document that SETENA required was submitted. I followed every commitment that I made to SETENA. The Respondent knows that, but they continue to make false assertions and accusations that I “duped” SETENA into issuing me their EV permit in an effort to get out of all their breaches under the DR-CAFTA. This is just one more glaring example of bad faith that is ongoing until this very day and can be clearly seen by all. It is really quite astonishing that they think they can get away with this blatant ruse.

137. Mr. Martinez continues:

On the other hand, the environmental viability had a validity of two years counted from the date of its granting (2 June 2008), within which time work was supposed to commence, and Mr. Aven was ordered to comply with certain permits and present documentation on the fulfillment of this a month before beginning the works. Recently, on 14 June of 2010, that is, when the environmental viability was already expired, the defendant stated to SETENA that the work had begun on 1 June of 2010, without having fulfilled by that date the deposit of eight thousand dollars established by SETENA.

Here is more nonsense and false accusations by Mr. Martinez as he continues to try to justify his illegal conduct. The SETENA permits were never expired and always had the required security deposit, which was placed with SETENA shortly after they issued their permit. The letter that was sent to SETENA was on June 1, 2010, not June 14, 2010 as misstated by Mr. Martinez above. The letter was sent to SETENA on June 1, 2010 by our environmental regent, Esteban Bermudez, and correctly informed SETENA that work had commenced. Therefore, our commitment was fulfilled under the terms of the resolution that was issued by SETENA on June 2, 2008. We received our construction permits on July 16, 2010, but months prior to June 1, 2008, we had been doing other work on the project site that was absolutely necessary for the infrastructure construction, but work that did not require any construction permits. If Mr. Martinez had taken the time to actually read the SETENA resolution issued on June 2, 2008, he would have seen the statement that says only that work must be “commenced” within two years from the date it was issued. There was no definition of what “commenced” meant, but clearly only used that word in a general way to mean the project work needed to begin work within two years from the date the SETENA resolution was issued and that work began before June 2, 2010.

138. Mr. Martinez continues:

Nevertheless, note that the municipal permits in regards to the easements were granted on 16 July 2010, and the construction permit

was recently granted on 7 September of 2010. Therefore, if it is a fact that work commenced on 14 June 2010, then that was done without any construction permits issued by the municipality, and with SETENA's environmental viability expired.

Here is another speculation by Mr. Martinez when he says, “*Therefore, if it is a fact that work commenced on 14 June 2010.*” If he had evidence that work had commenced before we were issued the permits, he would not have said “*if it is a fact*”. Work commenced only after we received the construction permits on July 16, 2010, but “work” on the project site began in the spring of 2010.

139. Mr. Martinez goes on to state:

Mr. Aven refers to an offer of \$6,000 made during the negotiations. Those negotiations were done with the Attorney General of the Republic within the civil lawsuit for compensation, and not with the Public Prosecutor (which the Prosecution belongs to). This proposal of money seems to respond only to the thought of paying to destroy, and that is unacceptable from the Prosecution's point of view.

Here is another remarkably false statement. I did not offer \$6,000 dollars during negotiations with the Attorney General. That is false and Mr. Martinez knows, or should know, it is false. The Government put a value of the alleged environmental damage at \$6,000. Think about that. For a damage of \$6,000 dollars, Mr. Martinez shut down a multi-million dollar project? I have no idea what the prosecutor is talking about when he makes this incoherent statement, “*This proposal of money seems to respond only to the thought of paying to destroy, and that is unacceptable from the Prosecution's point of view*”. However, Mr. Martinez’s imprecise use of words is replete throughout his entire witness statement and some sentences I have no idea what he is trying to say. The above is a good example.

140. Mr. Martinez continues with his false and ridiculous statements:

Like previous occasions, Mr. Aven also did not want to settle at this time. As Dr. Morera mentioned, Mr. Aven's refusal to settle was a "matter of pride."

This is pure nonsense and not to be confused with our mitigation plan. I think what Mr. Martinez is talking about is my refusal to settle the case just before the trial. I was not going to settle the case at trial since I would have been required to admit I was guilty and I was not prepared to do that.

141. Mr. Martinez continues:

Of all the witnesses heard, the most relevant and illustrative to the court in regards to the wetlands matter was Lic. Jorge Gamboa Elizondo, so it stands out to me that neither Lic. Morera Viquez or Mr. Aven or Mr. Damjanac mentioned that statement in their witness statements in this arbitration.

This is yet more nonsense. Mr. Gamboa works for MINAE and Mr. Martinez chose him to do a wetland land study after I refused to pay a bribe to MINAE. Both Mr. Gamboa and Mr. Martinez refused to comply with the SETENA resolution, a Government order, that determined that there were no wetlands on the project site. Rather, these government functionaries just ignored it and started doing their own investigation. Mr. Martinez knows that I informed him that Mr. Bogantes, the MINAE Director in Quepos, asked me for a bribe. However, instead of investigating Mr. Bogantes, he called him to testify against me and then called on Mr. Gamboa to declare there were wetlands on the Las Olas site. Not only is that an inherent conflict of interest and represented a 180 degree turn after MINAE had been saying for years that there were no wetlands, but all three of the above individuals refused to comply with a number of SETENA resolutions.

142. Mr. Martinez continues:

Likewise, Lic. Gamboa Elizondo explained that during the visit he made to the site on 16 March 2011, he observed that heavy machinery was working in the wetland zone, tractors to move dirt, and a canal was being built. He mentioned he could see that the palustrine wetland area was clearly affected by that work and that it had been backfilled and drained. He also explained why it's so important to preserve the wetlands, and how affecting them modifies the natural conditions, eliminating the ecosystem.

Now we have a date, March 16, 2011. Yes, infrastructure construction was going on at the Las Olas site under the authority of the construction permits that were issued. The construction permits for the easements were issued on July 16, 2010 and the construction permit for the condominium section was issued on September 7, 2010. At that time, we had lawful permits that included four (4) different SETENA resolutions and 9 construction permits and were in the process of building the infrastructure. Both Mr. Gamboa and Mr. Martinez were required by law to comply with the lawful SETENA resolutions and the construction permits. They refused to do that and instead were working together to undermine the authority of the legally issued Government permits. Therefore, both were in violation of Costa Rican law and there should be consequences for not following that law. But notice what Mr. Gamboa says, "*he observed that heavy machinery was working in the wetland zone, tractors to move dirt, and a canal was being built. He mentioned he could see that the palustrine wetland*". This is in conflict with the MINAE report of July 16, 2010 and the two other MINAE reports done in January and February of 2010, referenced in the July 16, 2010 report. It is also in conflict with the SETENA study done in August of 2010 and the SETENA resolution written on September 1, 2010 that rejected Mr. Bucelato's complaint that there were wetlands on the project site. It is also in conflict with the INTA report that determined there were no wetlands on the project site. However, Mr. Martinez does not mention any of that. He just refers to the one report that he ordered from MINAE whom I refused to pay a bribe to. It is also in conflict with our expert report by Mr. Barboza, who worked for MINAE for 30 years and offered the following conclusion in

his expert report. “*In my expert opinion there is no palustrine wetland on the site indicated within the “Las Olas” project area. For the same reason, the SINAC authorities did not technically substantiate the type of ecosystem in the study area*”. Mr. Martinez and all the other Government functionaries who refused to follow the law seem to not understand this one salient fact. The reason and intent for the Government and courts of Costa Rica in giving SETENA the power to issue a Government order, that has the force of law, was for the purpose of establishing stability and certainty in the permitting process. The purpose was to keep the dysfunction between Government functionaries that is happening right now with the U.S. Investors, from happening. The intent was in giving SETENA authority to issue the EV permit and speak with one voice in the permitting process, was to establish stability and confidence in the permitting process Once SETENA issued their resolution it would have the force of law and everyone would be required to comply with and respect the law. No developer can do business in any country that does not have a stable and secure permitting process. It is not a magic trick of now you see it and now you do not. Developers are not going to invest millions of dollars in a country that does not have stability, security and law and order. Investors will not invest in countries where their investments are at risk due to Government instability and Government functionaries who do not obey the law. Investors will not invest in a country where they can be criminally charged after working under the authority of legally issued Government permits. I do not think any reasonable person in the world would agree with the dysfunctional and illegal way that Costa Rica has conducted themselves in this matter, where they actually charged the managing U.S. Investor with environmental crimes after the project was fully permitted. It violates one of the primary directives of the Government to bring stability and security in the permitting process. It’s just totally outrageous and unconscionable what has happened and unbelievable that this abhorrent dysfunction was permitted to continue and no one intervened to stop it although there were many opportunities along the way to correct the injustice. All one needs to do is just read the witness statements and the false statements, the convoluted and twisted reasoning proffered by the Government functionaries and it is clear the law was just not followed. The Respondent’s conduct is embarrassing and shameful and they double down on the injustice and actually try to make people believe that I duped SETENA and illegally acquired 5 SETENA Resolutions and 9 construction permits. However, once the evidence is carefully examined, it becomes quite clear that it indicates serious breaches of the DR-CAFTA occurred, as well as human rights violations in charging me with crimes the Government functionaries knew I did not commit.

143. Mr. Martinez continues:

Aven mentions in his witness statement that the testimony of Mrs. Vargas Quesada, Environmental Manager for the municipality of Parrita, did not demonstrate the existence of a wetland. That is true. Nevertheless, the Prosecution did not call Mrs. Vargas Quesada to render testimony on the existence of a wetland since, as she herself clarified during the interrogatory, the municipality has no competence

to determine that matter, but SINAC-MINAE does. The only reason for the testimony of Mrs. Vargas was to demonstrate that she had responded to community complaints regarding the work being done in the area and knew the geographical location of the zone regarding which there was a conflict on the existence of a wetland.

I do not know if Mr. Martinez has read Ms. Vargas's witness statement, but I did and it was filled with a lot more than her saying that she was just trying to respond to community complaints. She makes definitive statements about all kinds of illegal things we were allegedly doing, all without any proof. So by Mr. Martinez's statement, we can discount anything that Ms. Vargas said in her statement, other than talking about community complaints, since Mr. Martinez clearly states that: "*the municipality has no competence to determine that matter, but SINAC- MINAE does. The only reason for the testimony of Mrs. Vargas was to demonstrate that she had responded to community complaints.*" So by Mr. Martinez's own words, we must discount anything she says other than community complaints.

144. Further, Ms. Vargas seems to contradict Mr. Martinez's statement that "*the municipality has no competence to determine that matter, but SINAC- MINAE does*". Ms. Vargas said in her statement that: "*On October 17, 2012, "we requested that the ACOPAC demarcate the wetland and declare that "our purpose [was] to prevent any damage to the natural heritage and in turn decide the status of the project so that they can continue their work". She then said that, "On October 30, 2012, the ACOPAC replied that it was not competent to carry out the demarcation of the wetland in the Las Olas project since that task is the responsibility of the National Geographic Institute ("IGN")*". If that is true that MINAE does not have the competence to determine wetlands, then on what basis did Mr. Martinez come down to the Las Olas site on May 13, 2010 and have MINAE wander around the property and point indiscriminately to where they thought wetlands were? Why did Mr. Martinez not have IGN demarcate the wetland, or better yet why did he not comply with SETENA's Government order that stated there were no wetlands or forest?

XIII. Current Status of Las Olas site

145. As I explained in my First Witness Statement, since the shutdown notice, we have begun suffering a terrible problem with squatters at Las Olas. The squatters' presence is having a very negative effect on the Esterillos Oeste community as a whole, with increased crime and litter problems. One of our neighbors, the Hotel Pacifica, even wrote to Mr. Damjanac to complain about them, saying that they were cutting trees and moving in with their furniture.⁵¹ The squatters enter our site with vehicles, motorbikes and on foot and have erected over 350 shacks and huts there. I have been told by my attorney, Mr. Ventura, that you need a police escort just to go on the property now. Unfortunately, the Costa Rican authorities have refused to do anything concrete to have them evicted and they are still on site today. Since

⁵¹ Exhibit C[], Email from Jovan Damjanac to David Aven and Manuel Ventura, November 8, 2015.

November 2015, I have written three letters, the latest being sent on July 19, 2016, to the Ministry of Justice, Mr. Martinez, the Municipality of Parrita and even President Solis requesting they enforce their laws and evict the criminal trespassers and stop the crimes that are being committed.⁵² Although the Ministry of Security contacted my attorney, Mr. Ventura, and told him they would take action and evict the squatters/trespassers, to this date nothing has been done.

146. My attorney, Mr. Ventura has had countless text message exchanges with the Mayor and made trips to the Municipality, the Ministry of Security, the Court and the police to file letters and requests in a bid to have the squatters removed. Despite assurances from the Ministry of Justice and the Municipality of Parrita that the eviction would proceed,⁵³ nothing has yet been done. Every day that goes by is another day that the squatters cause more environmental harm to our property and the local community. There are numerous people living on the property and they are building a non-approved sewage system that we are told is causing a health hazard in the community. In July 2016, we finally received a notice from the Ministry of Security that the eviction process was approved and that they would proceed to take squatters off the property,⁵⁴ but nothing has yet come to fruition regarding actual action. What is hard to understand is this: we had a fully-permitted project and the Government came down on us with their great power and shut the project down and charged me with environmental crimes. Yet, they sit idly by while horrendous environmental harm is being committed on the project site, illegal construction is going on, illegal roads are being built, electricity and water stolen and illegal sewage systems are being built that are causing health hazards in the community. Where are the voices of Mr. Martinez, Mr. Piccado, Mr. Bogantes and Ms. Vargas? Where are the police to enforce the law? Where is the Ministry of Justice? Where is the Municipality? The Claimants are not the only ones complaining. There are many people living in Eselerillos Oeste, that are complaining as well, but nothing is being done. If a country cannot enforce its laws, then you do not have a country, and it is not a country anyone can safely and securely live in.

XIV. Effect of this ordeal on my health and business ventures

147. As I explained in my First Witness Statement, the effects of the attempt on my life, the criminal prosecution, the INTERPOL Red Notice and the loss of my investment in Costa Rica have been profound. I continue to suffer from insomnia and anxiety brought on by these events and, despite being healthy all of my life, have had to seek professional help to address these issues⁵⁵ and am taking medication. These issues have also impaired my ability to conduct business in the way I used to - both because my mental well-being has been

⁵² Exhibit C[], [David Aven Letter to Luis Martinez regarding Las Olas squatters, July 19, 2016.]

⁵³ Exhibit C[], David Aven letter to Luis Martinez regarding Las Olas squatters, November 2, 2015; Exhibit C[], David Aven letter to Luis Martinez regarding Las Olas squatters, December 9, 2015.

⁵⁴ See Exhibit C[], July 4, 2016 “Resolucion 510-16” regarding the removal of squatters from the site.

⁵⁵ Exhibit C[] [Aven’s psychiatrist’s report, hopefully].

impaired and I cannot function like I used to and it is causing me to miss out on valuable business opportunities, such as the Google partnership I described in my Frist and Second Witness Statements, because of the damage to my reputation.

XV. Other Matters

148. Many other accusations have been lodged against me by the Respondent. Because I do not speak Spanish and relied at all on times local Costa Rican attorneys and experts, I can only attest that I followed their advice and complied with all requirements known to me. In turn, I have asked these attorneys and experts to provide statements to this Tribunal to confirm compliance with applicable Costa Rican laws.

XVI. Moral Damages

149. I have a claim for \$5,000,000 for moral damages and I do understand that moral damages should only be considered in extreme circumstances. I think we have one of those circumstances in my case.
150. Mr. James Comey, the director of the FBI in the United States made the following comment on TV recently, "*The two things I place the highest value on is my reputation and my family*". I agree with that and would say the same, but I would add to that my life and good health. The actions of the Costa Rican Government have destroyed my reputation, caused my family pain and suffering, affected my health and my involvement in Costa Rica and almost cost me my life. They have destroyed my ability to enjoy my life, liberty and the pursuit of happiness. I live in a state of constant fear and am under the care of a Doctor and taking medication.
151. Governments have great power that normal people do not have, and with that great power comes great responsibility not to abuse that power. All of us are aware of what happens when Governments misuse their great power, human rights are violated, people die and are imprisoned and lives destroyed. My human rights were violated, my life has been destroyed and I was almost killed and imprisoned. Mr. Luis Martinez, the Criminal Prosecutor, admitted in his witness statement that he charged me with a crime of forgery when he had no evidence of my involvement and also charged me criminally for not obeying a Government order. He was forced to dismiss both of those charges at the preliminary hearing on June 19, 2012 where he admitted he had no evidence.
152. I believe, once the Tribunal goes through all the evidence, it will come to the conclusion that there was no basis to file any criminal charges against me because there simply was no intent on my part to commit any crime. All I was doing was relying upon, and operating under, the authority of legally issued Government permits as well as the many Government reports from 2008 until January of 2011, all of which stated there were no wetlands or forest on the Las Olas Project site. Mr. Martinez certainly understood the necessary component of intent in accusing, charging and proving a crime. In fact, at the preliminary hearing he dropped the charge of my not obeying a Government

order, which was a SETENA resolution to shut down the project, in saying “*Mr. Aven was supposed to get the shutdown notice hand delivered, but instead it was faxed to him. Therefore, I cannot charge Mr. Aven with a crime he didn’t know about.*” If that is Mr. Martinez’s standard, then not only did I not know about the existence of wetlands, but everything that I saw stated there were no wetlands.

153. The damage that was done to me by filing criminal charges against me was, in my view, a violation of the terms of the CAFTA Treaty and was also a human rights violation. More than that, however, the Government then issued an arrest warrant for me after I had told them, in January 2014, that I was recovering from surgery in the U.S. and therefore could not attend the trial. My position became even worse when the Government referred me to INTERPOL. Reporting a person to INTERPOL is not an action to be taken lightly and I am told this type of crime does not rise to the level of filing a red notice on someone with INTERPOL. I am told this has never happened before in Costa Rica and I challenge Costa Rica to produce all other similar referrals they have made to INTERPOL for the tribunal to look at. We have asked for the complete INTERPOL file from Costa Rica that would identify which Government functionary was responsible for making this abusive report that violated my human rights, what exactly was told to INTERPOL about their referral and who was responsible for taking my name down from the INTERPOL data base. Did that request come from Costa Rica and if so, who made it, or was it taken down by INTERPOL after realizing that is was not a crime that warranted its involvement?
154. Mr Fernando Zumbado, the Housing Minister during the Oscar Arias administration, has given a witness statement in this arbitration in which he states very clearly that the government of Costa Rica uses their criminal justice for political purposes. It is widely known in Costa Rica and has been aired all over the news, that the Government falsely charged Mr. Zumbado with a crime to keep him from running for President. Years later, after being put through a grilling criminal trial, having to spend huge attorney fees and having had his life and reputation destroyed, he was exonerated and found not guilty due to lack of evidence. Here is what Mr. Zumbado said regarding that, “*At my first trial in January 2014 I was sentenced to three years in prison, although I was not required to serve any of that time behind bars, and banned from holding a public office for five years. However, on appeal to the Court of Appeals in San José, I was finally acquitted of all charges on May 11, 2015, on the basis that there was no evidence that I had done anything unlawful*”.⁵⁶ The same applies in my case: if the prosecution had let the original criminal trial conclude I would have been acquitted on the same basis as Mr Zumbado was.
155. As stated above, it was widely known that the reason Mr. Zumbado was charged with a crime was to keep him from running for President of Costa Rica, and all the polls said he would win. His political enemies did not want that to happen and so they fabricated a false charge against him, forced him to

⁵⁶ Witness Statement of Fernando Zumbado, paragraph 10.

resign and destroyed his political and personal life. What does this highly regarded and long standing Government servant have to say about the Costa Rican criminal justice system? “*As a result of my own experience, my impression of the criminal justice system is one of subjectivity and mediocrity. It is a system in which I no longer have any confidence*”.⁵⁷ This is not just an ordinary person like me making the above statement, this is a person who was a Costa Rican public servant for a good part of his life; who became Minister of Planning for Costa Rica in 1977 at the age of 32, Minister of Housing between 1986 and 1990, and again between 2006 and 2008, was Costa Rican Representative at the UN between 1982 and 1985, was Costa Rican Ambassador in Washington D.C. 1985, and Assistant Secretary General for the Latin American Bureau at the United Nations Development Program.

156. Mr. Zumbado went on to say this about what happened to me in his statement, “*Whereas in the past political disputes would have been resolved in the political arena, since around 2000 the courts have increasingly been used as a venue for political point-scoring. This can be seen at the local level too, where civil matters are brought into the criminal courts, as in David Aven’s case. Normally, one would expect the authorities to pursue a civil claim against anyone accused of breaching environmental laws, not a criminal one. But in Mr. Aven’s case the prosecutor seems to have been determined to pursue Mr. Aven personally in the criminal courts for what is, in reality, a civil issue*”.⁵⁸
157. Not only do I believe that I am being pursued personally by an overzealous prosecutor, but Mr. Zumbado, this highly regarded civil servant, also believes it based upon years of experience and involvement in Government. Governments should not be allowed to operate in this abusive manner and there needs to be consequences. A clear message needs to be sent that the international community will not tolerate this kind of discriminatory and abusive behavior that steps over the line into human rights abuses. That clear message will be sent with a \$5,000,000 or more moral damages award from the Tribunal. If doing that will prevent just one other Government from acting in the same abusive and illegal way that Costa Rica has acted, then I think we all would say it is a victory. However, once it is known that this Tribunal speaks out in favor of human rights, adherence to the law and non-discriminatory behavior, I sincerely believe this will be a statement that will be heard around the world that will cause other Governments to act in a more cautionary and respectful manner with other foreign investors.
158. As I described in my First Witness Statement, Costa Rica’s actions in reporting me to INTERPOL have had serious repercussions for me professionally, in addition to the personal toll on my life. In particular, being reported to INTERPOL caused me to miss out on a fantastic business opportunity to partner with Google to market a digital downloads that include a Bible app. I had an agreement with Litchfield Associates, the company which owns the rights to the You Bible product, under which I would have

⁵⁷ Witness Statement of Fernando Zumbardo, paragraph 13.

⁵⁸ Witness Statement of Fernando Zumbardo, paragraph 15.

been paid 10% commission on each download of the app. The app sells for USD 19.99 so I would have earned approximately USD 2.00 per download.⁵⁹

159. We conservatively estimated that with the power of Google's partnership behind us, we could have generated around 40 million downloads per year.⁶⁰ Google itself put their conservative estimate of minimum downloads at 20 million per year.⁶¹ This would have earned me USD 40 million per year.
160. This opportunity became available because of my friendship with Mr. Ohryn Valecourt, who had contacts in Google from his previous work for the U.S. Federal Government. I have known Mr. Valecourt through a mutual friend for a number of years, and he stayed with me on one occasion when I was still living in Costa Rica. In the summer of 2015 I was talking to him about a proposal I had to build a partnership with Google to increase sales of the You Bible app.
161. Briefly, in the early 1980s we had had an opportunity to sell audio cassettes of the Bible on the then emerging Cable News Network ("CNN"). The network would run our adverts whenever they had spare slots in their scheduling, on a "pay per sale" basis, by taking a cut of sales of each product sale (as I recall the split was 70% to us 30% to the network). The adverts routed purchasers to a 800 telephone number which the network had control in order to guarantee accurate accounting.
162. The way Google's advertising operation works is by a "pay per click" system where it pushes out adverts and every time an advert is clicked on, the seller pays a small fee. Of course, Google has very advanced methods of targeting advertising, and also has access to hundreds of millions of consumers in a way CNN never could have. My idea was to bring Google in as a partner in a similar way that we worked with CNN. Instead of paying per click for advertising, Google would push out our adverts and take a cut of each download generated from the advert. Google would be able to do this easily, and send as many adverts out as it wished at any time, so the opportunity for placement was huge.
163. The attraction for Google, of course, would be the very large target market for a Bible application. Unlike a pair of sneakers, or a piece of music, the Bible has a huge market of worldwide consumers, and is not subject to changing fashions.
164. When I spoke to Mr. Valecourt about this idea, he mentioned that he had some high level contacts at Google and agreed to contact them to gain an introduction to the relevant business development people at the company. Mr. Valecourt kept me updated on his progress and led me to understand that Google was looking at the partnership idea very seriously and was very keen to make it work. It was at that stage that Mr. Valecourt, at Google's request,

⁵⁹ Exhibit C[] [commission agreement for David Aven].

⁶⁰ See my commission agreement with Litchfield Associates – Exhibit C[insert].

⁶¹ Exhibit C171.

gave the company some information about me and Litchfield Associates, because Google always performs background checks on potential business partners. I had not told Mr. Valecourt about the INTERPOL situation, since I did not think it would be relevant, and so he did not tell me beforehand that Google had asked for background information. He then informed me, however, that Google had performed a background check, my INTERPOL listing had been discovered and that they could not go into business with me because of this background. I asked Mr. Valecourt to memorialize his discussions with me in a letter, which he duly sent to me on November 1, 2015.⁶²

165. Therefore, I am asking this panel to award moral damages in the amount of \$5,000,000 or an amount the panel believes would fair and reasonable.

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

Signed.....

David Richard Aven

Dated.....

⁶² Exhibit C171 – note that in the Memorial this is incorrectly referred to as being dated 11 January 2015, an error stemming from the difference between U.S. and U.K. dating conventions.