

**IN THE MATTER OF AN ARBITRATION
UNDER THE – DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES
FREE TRADE AGREEMENT (CAFTA-DR)**

MICHAEL BALLANTINE,
LISA BALLANTINE, and
RACHEL BALLANTINE

Claimants

v.

THE DOMINICAN REPUBLIC,

Respondent

NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION

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Counsel for Claimants

I. **NAME AND ADDRESS OF THE DISPUTING INVESTORS**

1. The disputing investors are Michael, Lisa, and Rachel Ballantine (collectively, the “Ballantines” or “Investors”):

Michael, Lisa, and Rachel Ballantine
850 Wellington Avenue #206
Elk Grove Village, Il 60007

2. Pursuant to CAFTA-DR Article 10.16.1(b), the present Notice of Intent is also submitted on behalf of the following enterprises organized under the laws of the Dominican Republic (previously defined as the “Enterprises”), which are solely owned and controlled by the Investors:

Jamaca de Dios SRL
Entre las montañas de Pinar quemado y Palo Blanco, Carretera la colonia,
Sección Palo Blanco
Jarabacoa
Provincia La Vega
República Dominicana

Aroma de la Montaña, E.I.R.L.
Entre las montañas de Pinar quemado y Palo Blanco, Carretera la colonia,
Sección Palo Blanco
Jarabacoa
Provincia La Vega
República Dominicana

3. For purposes of the present Notice of Intent, the Investors are represented by:

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4. All communications with regard to this matter should be directed to counsel.

II. BREACH OF OBLIGATIONS

5. The Investors allege that the Dominican Republic has acted inconsistently with its obligations under Chapter 10, Section A, of the CAFTA-DR, with respect to the following provisions:

- i. Article 10.3 National Treatment
 - ii. Article 10.4 Most-Favored Nation Treatment
 - iii. Article 10.5 Minimum Standard of Treatment
 - iv. Article 10.7 Expropriation and Compensation
6. In relevant part, the text of each applicable CAFTA-DR provision is as follows:

Art. 10.3 National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that

regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Art. 10.4 Most-Favored Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Art. 10.5 Minimum Standard of Treatment¹

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
 - (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
 - (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

¹ Article 10.5 shall be interpreted in accordance with Annex 10-B.

Art. 10.7 Expropriation and Compensation²

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
 - (d) in accordance with due process of law and Article 10.5.
2. Compensation shall:
 - (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realizable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
 - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

² Article 10.7 shall be interpreted in accordance with Annexes 10-B and 10-C.

- (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Fifteen (Intellectual Property Rights).³

III. FACTUAL AND LEGAL BASIS FOR THE CLAIM

7. As set out in detail below, the Ballantines are U.S. citizens who have dedicated themselves to improving the lives of others. Most recently, the Ballantines have invested all of their efforts and money into planning and developing the Jamaca de Dios (“Hammock of God”) gated community in the Dominican Republic. This project was created to support tourism and develop recreational housing in a region of the country that has long been in need of investment. The project has already created hundreds of direct and indirect jobs in the Municipality of Jarabacoa over the past eight years, and if allowed to proceed as the Ballantines had planned and expected, the project would provide additional hundreds of jobs in the future.

8. The past and future economic value of the Jamaca de Dios project is plain. The dedication of the Ballantines to the Dominican Republic is also well understood and accepted by the many Dominicans who have built their homes in Jamaca de Dios or dined at the Ballantines’ world-class restaurant, Aroma de la Montaña. However, rather than being permitted to expand the Jamaca project, as allowed under Dominican law, the Ballantines have faced a series of administrative roadblocks that can only be described as arbitrary, discriminatory and

³ For greater certainty, the reference to “the TRIPS Agreement” in paragraph 5 includes any waiver in force between the Parties of any provision of that Agreement granted by WTO Members in accordance with the WTO Agreement.

expropriatory in nature. After investing millions of dollars in the Jamaca de Dios project, the Ballantines are now faced with the loss of over ten years of effort and their life savings.

9. There is no doubt that the Dominican Republic has every right, under its own laws and international law, such as the CAFTA-DR, to expropriate foreign investments. But, with this right comes an obligation that foreign investors such as the Ballantines must be treated in a manner consistent with the rule of law, and be properly compensated for the loss of their expropriated investment. The factual and legal bases supporting the Ballantines' CAFTA-DR claims are set out below.

A. The Investors and the Enterprises

10. In 2000, Michael and Lisa Ballantine moved to the Dominican Republic with their four children to work as Christian missionaries with Jesus For All Nations Ministry. The family traveled throughout the Dominican Republic strengthening churches in Moca, Santo Domingo, La Vega, Santiago, La Romana, Dajabon, Jarabacoa, Puerta Plata, Tanares, Constanza, San Francisco, and many small villages. They also helped found three Christian churches. The time the Ballantine family spent in the Dominican Republic was transformative for them, and the family developed a deep love and affection for the country's people and their culture.

11. Following the Ballantines' return to the United States in 2001, the family continued its work in the Dominican Republic, returning for several months each year to assist with the churches it helped to found.

12. In 2003, the Investors began purchasing undeveloped mountain property in the Municipality of Jarabacoa, in the Province of La Vega, a mountainous region located near the center of the Dominican Republic. In 2006, Michael and Lisa Ballantine as well as their four

children moved permanently to the Dominican Republic to develop a gated community on the property, which they named Jamaca de Dios. The Investors' plan for Jamaca de Dios was to develop an upscale, family-friendly eco-tourism complex to include luxury homes and apartments, fine dining restaurants, and a boutique hotel and spa.

B. The Investment in Jamaca de Dios

13. In order to achieve their plan, the Investors invested millions of dollars developing the necessary infrastructure to support the Jamaca de Dios community.⁴ This included engineering and building environmentally sound roads and bringing electricity, high speed internet, and potable water to the property. The Investors also provided 24-hour security for the community and hired a full-time maintenance staff.

14. With the necessary infrastructure in place, the Investors subdivided the lower portion of their mountain property into over 90 lots for private buyers to build luxury homes (almost all of which have been sold to Dominicans); built a popular fine dining restaurant, Aroma de la Montaña (famous for its rotating floor); and developed common areas for the community, including tennis and basketball courts, an aerobics center, a playground, a recreational lake stocked with fish, and an organic garden.

15. In fewer than five years, the Investors transformed Jamaca de Dios from an undeveloped mountain property into a highly desirable gated community that has provided direct and indirect employment to over 300 people.

16. As Jamaca de Dios became more profitable and well-known, the Investors proceeded with plans to develop the upper portion of their property, which contains the most

⁴ The Investors' investments are held by two Dominican companies: Jamaca de Dios, SRL, originally registered as Jamaca de Dios Jarabacoa, C.A., on 27 April 2005 and Aroma de la Montaña E.I.R.L., originally registered as Aroma de la Montaña, S.A., on 14 May 2007.

valuable land, due to its cool temperatures, breathtaking views and exclusivity. In addition to delineating approximately 70 additional lots for luxury homes, the Investors also planned to build a second restaurant and a world-class boutique hotel and spa as well as two luxury apartment complexes. The Investors commissioned architectural and engineering plans and designs and entered into a contractual agreement with Prohotel International, Inc., a property management company that operates and manages upscale hospitality properties throughout the Caribbean.

17. In November 2010, the Investors began the process of obtaining an extension to their existing environmental permit from the *Ministerio de Medio Ambiente y Recursos Naturales* (“Ministry of Environment” or “Ministry”), so that they could proceed with the planned expansion onto the upper portion of their property. Also in 2010, Michael and Lisa Ballantine became dual citizens of the United States and the Dominican Republic for estate planning purposes, with the United States remaining their dominant country of citizenship.

18. In January 2013, the Investors also began the process of obtaining the necessary permits to build a luxury apartment complex, which required obtaining a letter of “no objection” from the Municipality of Jarabacoa.

19. In addition to developing Jamaca de Dios, the Investors have continued with their missionary work by funding numerous social development and environmental sustainability programs, including community water filtration projects, healthcare programs, housing projects, and reforestation programs in the Dominican Republic. Furthermore, the Investors have

provided significant financial support to FilterPure, a non-profit organization founded by Lisa Ballantine.⁵

C. Legal Framework for Environmental Permitting

20. Under the *Ley General sobre Medio Ambiente y Recursos Naturales* (No. 64-00) (“Environmental Law”) and its corresponding regulations, the Ministry is responsible for implementing and enforcing environmental laws and policies within the Dominican Republic. All people wishing to initiate, amend, or extend any projects or activities with potential impacts on the environment need to apply for and obtain an environmental permit from the Ministry of Environment.⁶ To obtain a permit, a person must file an application requesting that the Ministry of Environment provide the “terms of reference” necessary to submit a “*Declaración de Impacto Ambiental*” (“Environmental Impact Statement” or “DIA”). This application must be accompanied by a letter of “no objection” from the municipal government of the area where the project is located.

21. Following the submission of an application for an environmental permit, the Ministry of Environment is responsible for coordinating a technical visit to the project and providing the terms of reference that define the framework for the preparation and review of the DIA. Once the applicant submits the DIA, the Ministry of Environment must evaluate the environmental permit application and issue a decision on the basis of a technical report provided by the *Comité Técnico de Evaluación* (“Technical Evaluation Committee”). The Ministry of

⁵ See http://www.filterpurefilters.org/the_filter.htm. FilterPure distributes ceramic water filters to low income families, providing an affordable source of potable water. These ceramic filters, which were developed by Lisa Ballantine, remove 99.9% of contaminants and last for at least five years. Lisa has established self-sustaining ceramic water filter factories in Tanzania, Haiti, and the Dominican Republic. To date, approximately 70,000 filters have been distributed and FilterPure has received international awards and recognition for its work.

⁶ *Ley General sobre Medio Ambiente y Recursos Naturales*, art. 40

Environment also must consider any comments submitted by stakeholders and the general public during preparation of the DIA.

D. The Dominican Republic's Unlawful and Otherwise Harmful Measures

1. The 2010 Application to Extend Jamaca de Dios' Environmental Permit

22. Following the Investors' November 2010 application to extend their existing environmental permit for purposes of expanding Jamaca de Dios, the Investors exchanged a series of communications with the Ministry of Environment. These communications primarily related to the Ministry's unfounded allegation in September 2011 that the slopes of the upper portion of the Jamaca de Dios property were steeper than what was permitted under applicable Dominican law. Over the course of several years, the Investors engaged in a good faith effort to address the Ministry's concerns and to explain that, in fact, the slopes of the land designated for development in the expansion did not exceed the threshold permitted by applicable law, nor did Jamaca de Dios have any intention of building in any area where the grade of the slope was steep.⁷ In fact, the sites on which the new homes would have been built are essentially flat. Regrettably, the Ministry neither provided technical justifications to support its finding of a violation nor acknowledged the environmental technical report provided by the Investors with respect to the slope of the land designated for expansion.

23. However, the Ministry had previously approved the environmental permits of other, similarly situated investors, Quintas del Bosque and Paso Alto. Quintas del Bosque is owned by a Dominican entity while Paso Alto is owned by Dominican and Spanish entities.

⁷ Moreover, the slopes on the upper portion of the property plainly appear to be less steep than those on the lower portion of the property (which had been previously approved by the Ministry).

Even to a non-expert observer, it is clear that the slopes of these two developments are of a similar grade as Jamaca de Dios, and perhaps steeper.

24. In a letter dated 15 January 2014, the Ministry finally rejected the Investors' application to expand Jamaca de Dios. In this letter, the Ministry continued to allege that the slopes in the proposed expansion were too steep, without providing a technical basis for this allegation. Notably, the Ministry also alleged that the Investors' extension application was not viable because a portion of Jamaca de Dios was located within the boundaries of the Baiguate National Park, which had been designated as a protected area on which development was restricted.⁸

25. The Ministry's reference to the Baiguate National Park was surprising for several reasons. First, even though the decree establishing that the national park was a protected area was issued years earlier, and notwithstanding that over that period there were continuous communications between the Ministry and the Investors, January 2014 was the first time the Ministry had indicated that the existence of the Baiguate National Park could be a basis for precluding or otherwise restricting the development of Jamaca de Dios. If the Ministry had actually believed that a portion of the development of Jamaca de Dios could be restricted on the basis that it was located within the Park boundaries, it would have doubtless raised this concern in the previous years. It is notable that the Ministry is the government entity responsible both for National Parks and environmental matters concerning Jamaca de Dios.

26. Moreover, the boundaries of the Baiguate National Park – which was designated as protected parkland *after* the Investors acquired the main portion of the Jamaca de Dios property – appear to have been drawn in a discriminatory manner. On their face it seems

⁸ Decreto Número 571-2009, creación de Reservas Científicas, Parques Ecológicos y otros espacios protegidos, art. 14.

apparent that the boundaries were drawn to *include* the most valuable portion of Jamaca de Dios while simultaneously taking efforts to *exclude* the property boundaries of Jamaca's Dominican-owned neighboring luxury home mountain developments, Quintas del Bosque and Paso Alto. These two developments are similar in scope and nature to the Jamaca de Dios development and all three have competed for many years for the same type of mountain luxury home purchaser. Moreover, while the official justification for the creation of the Baiguarte National Park was to protect the Salto Baiguarte waterfall, that waterfall is not even located within the Park boundaries.

27. The Ministry's failure to provide technical support for its allegation regarding the slopes within Jamaca de Dios; the fact that it permitted other, similarly situated investors to develop their land; its plainly discriminatory drawing of the Baiguarte National Park boundaries, and exclusion of Investors from consultations regarding the Park's boundaries have significantly damaged the value of the Investors' investment in Jamaca de Dios, called into question the validity of their property interests in the project, and created great uncertainty about the ability of the Investors to further develop a valuable portion of their investment. Through these and other related measures, the Dominican Republic has denied the Investors the same treatment that it is required to afford, and has afforded, to investments of its own nationals and to nationals of other states, as it is required to do under CAFTA-DR Articles 10.3 and 10.4. This conduct has also denied the Investors the benefit of the international minimum standard of treatment required by CAFTA-DR, Art. 10.5 (including full protection and security and fair and equitable treatment of its investment).

28. This conduct constitutes an expropriation of the Investors' investment in the Dominican Republic. Pursuant to the CAFTA-DR and international law, such an uncompensated taking is unlawful. This expropriation was not effected for any legitimate

public purpose, was discriminatory, was not undertaken in accordance with due process of law, and was not accompanied by payment of compensation as provided by CAFTA-DR Article 10.7. The Investors should be compensated for these breaches of the CAFTA-DR.

2. 2013 Application to Build an Apartment Complex within Jamaca de Dios

29. As noted above, following the success of the Jamaca de Dios community, the Investors also sought to develop an apartment complex within the boundaries of its pre-existing environmental permit. However, the architectural plans for the apartment complex required an amendment to the existing environmental permit. As previously explained, amending an existing permit entails obtaining letters of “no objection” from relevant municipal authorities.

30. The Investors requested a letter of “no objection” from the Municipality of Jarabacoa on 10 January 2013. Over a year and a half later, and despite many requests seeking clarification for the delay, the Municipality of Jarabacoa has failed to act on this application, effectively preventing the Investors from developing the apartment complex and failing to provide them the benefit of due process or any justification for its failure to act.

31. Moreover, on 22 April 2013, the Municipality passed a resolution to tear down two of the gates protecting the Investors’ property so that the Municipality could access the Investors’ private roads. At the time this resolution was passed, the Municipality was advised by its own legal counsel that its actions were unlawful, but it persisted and proceeded to forcibly remove the gates on 17 June 2014. In order to prevent imminent harm to Investors, the *Tribunal de Tierras de La Vega* (“Land Tribunal”) issued a preliminary injunction on 31 July 2013, preventing the Municipality from entering Investors’ private property.

32. As with the Ministry’s conduct toward the Investors, the Municipality’s conduct has denied the Investors the benefit of the international minimum standard of

treatment required by CAFTA-DR, Art. 10.5 (including full protection and security and fair and equitable treatment of its investment) and the Investors should be compensated for the related damages.

IV. **RELIEF SOUGHT AND DAMAGES CLAIMED**

33. Without prejudice to its rights to amend, supplement or restate the relief to be requested in the arbitration, the Investors intend to request the arbitral tribunal to:

- 1) Declare that the Dominican Republic has breached the terms of CAFTA-DR;
 - 2) Damages of not less than **Twenty Million U.S. Dollars** (US\$20,000,000.00) as compensation for the losses caused by, or arising out of, Respondent's measures which have been held to have breached the terms of the CAFTA-DR;
 - 3) Award costs associated with any proceedings undertaken in connection with this Notice of Intent, including all professional fees and costs;
 - 4) Award pre- and post- award interest at a rate to be fixed by the tribunal; and
 - 5) Grant such other relief as counsel may advise and that the tribunal may deem appropriate.
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Dirección de Comercio Exterior y Administración de Tratados Comerciales Internacionales
Secretaría de Estado de Industria y Comercio
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