

Caso CPA No. 2016-17

**EN EL CASO DE UN ARBITRAJE DE CONFORMIDAD CON EL TRATADO DE LIBRE
COMERCIO REPÚBLICA DOMINICANA, CENTROAMÉRICA, ESTADOS UNIDOS,
FIRMADO EL 5 DE AGOSTO DE 2004 (“DR-CAFTA”)**

– y –

**EL REGLAMENTO DE ARBITRAJE DE LA CNUDMI (APROBADO EN 2013)
(el “Reglamento CNUDMI”)**

– entre –

MICHAEL BALLANTINE Y LISA BALLANTINE

(los “Demandantes”)

– y –

LA REPÚBLICA DOMINICANA

(la “Demandada”, y conjuntamente con los Demandantes, las “Partes”)

ORDEN PROCESAL NO. 5

Tribunal

Prof. Ricardo Ramírez Hernández (Árbitro Presidente)
Sra. Marney L. Cheek
Prof. Raúl Emilio Vinuesa

17 de julio de 2017

A. HISTORIA PROCESAL

1. De conformidad con el Calendario Procesal, el día 8 de junio de 2017, las Partes intercambiaron solicitudes para la exhibición de documentos en forma de cronograma Redfern.
2. El día 22 de junio de 2017 las Partes intercambiaron opiniones y objeciones a las solicitudes de la otra Parte usando los cronogramas Redfern.
3. El día 29 de junio de 2017, las Partes intercambiaron replicas a las objeciones de la otra Parte con arreglo al Calendario Procesal, utilizando de nuevo el cronograma Redfern.
4. El día 3 de julio de 2017, las Partes presentaron sus respectivas solicitudes de exhibición de documentos al Tribunal para que éste decidiera al respecto.

B. LA DECISIÓN DEL TRIBUNAL

5. El Tribunal ha revisado las solicitudes de exhibición de documentos de las Partes y ha deliberado sobre las mismas. La decisión del Tribunal (dictada en inglés y español) respecto de las solicitudes disputadas de los Demandantes y la Demandada, se encuentran en los cronogramas Redfern adjuntos a la Orden como Anexos 1 y 2 respectivamente.
6. En virtud del Calendario Procesal, se ordena a cada Parte que entregue los documentos indicados en el Anexo 1 y en el Anexo 2 a la Parte solicitante a más tardar el **lunes, 31 de julio de 2017**, con sujeción a las disposiciones de la presente Orden. No se enviarán al Tribunal los documentos entregados y éstos solo pasarán a formar parte del expediente si una Parte los presenta como medios de prueba acompañando un escrito de alegaciones ulterior.
7. El Tribunal nota que su decisión respecto de las solicitudes disputadas de las Partes no tiene por objeto constituir una decisión implícita sobre ninguna de las cuestiones en disputa entre las Partes.
8. En la medida en que se deniegue una solicitud de exhibición de documentos, la denegación no afecta a ningún documento que ya se haya entregado voluntariamente o que, habiendo sido solicitado, no se le hubiera esgrimido objeción.
9. En la medida en que no se entreguen documentos que se ha ordenado presentar con arreglo a lo dispuesto en esta orden o no se entreguen de manera completa, el Tribunal podrá tomarlo en cuenta en su evaluación de las respectivas alegaciones de hecho y medios de prueba, inclusive

podrá extraer inferencias en contra de la Parte que se niega a entregar los documentos, de conformidad con la sección 5.6 de la Orden Procesal No. 1.

Sede del Arbitraje: Washington, D.C., Estados Unidos de América

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke that ends in a small hook.

Ricardo Ramírez Hernández
(Árbitro Presidente)

En nombre y representación del Tribunal

ANNEX 1 TO PROCEDURAL ORDER NO. 5

PCA Case No. 2016-17

Claimants' Requests for Production of Documents

The Claimants set out their requests for documents in the schedule below. In respect of each request, the Claimants confirm that the documents are not in its possession, custody or control, except to the extent previously appended to a submission in this proceeding. The documents are all created by, or known to have been received by, the Respondent and should therefore be within the Respondent's possession.

The Dominican Republic's Responses to Claimants' Requests for Production of Documents

Set forth in the schedule below are the responses of the Dominican Republic to Claimants' Requests for Production of Documents. In their discussion on the relevance and materiality of the requested documents (third column of the chart below), the Ballantines in various passages purport to characterize the Dominican Republic's submissions and position on different issues. The Dominican Republic has not attempted herein to respond to such characterizations, except insofar as they were deemed relevant to particular document requests and the Dominican Republic's response thereto. Accordingly, the absence of response or comments by the Dominican Republic in this document to particular assertions or characterizations by the Ballantines should not be construed as tacit acceptance or acquiescence by the Dominican Republic.

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
1	The complete file maintained by Respondent's MMA showing the bases both for the creation and demarcation of the Baiguate National Park (the "Park").	The creation and demarcation of the Park is central to this case. Respondent used the existence of the Park to deny a permit to the Ballantines. The existence of the Park has also been used by Respondent to prevent development of any kind. Both parties have submitted evidence regarding the circumstances of the creation of the Park, the ecological justifications for its establishment, the MMA's decision to demarcate the specific Park boundaries, and the notice to and communication with the landowners of property within the Park. The Ballantines understand that Respondent's MMA maintains a file that includes the documents requested here.	The Dominican Republic has no objection to providing the documents described in this request. However, the Ballantines' understanding of the types of information contained in the file (as articulated in its commentary below) is not necessarily accurate.	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>The Ballantines look forward to the production of responsive material.</p> <p>Because the Respondent contends that the Ballantines' description of the expected content of such file "is not necessarily accurate", the Ballantines reserve their rights to contest the completeness of</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

the
Respondents'
production.

Commentary of the Ballantines:

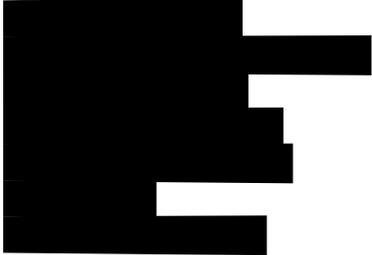
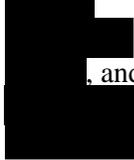
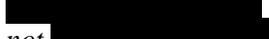
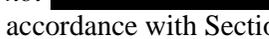
We understand that this file contains, among other things, the following information: technical reports (flora and fauna inventories, slope maps, riparian and watercourses analyses); gap analyses; minutes or reports of meetings with affected landowners; drafts of proposed Park boundaries; communications with landowners; documents publicizing the Park's creation.

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
2	The complete file maintained by MMA with regard to the creation and implementation of the Baiguate Park Management Plan (the "Plan") (<i>Ex. R-084</i>).	Respondent has submitted the Plan in this Arbitration as evidence for various assertions. The Plan was dated March 20, 2017, almost 8 years after the purported creation of the Park. Respondent maintains that this Plan governs the permitted activities and uses of the Park. Respondent further maintains that the Plan was created in connection with various groups and after research. Given the many years that passed before this Plan was distributed, and the technical assertions made in this plan, the circumstances surrounding the creation of the Plan and the information and analyses conducted (if any) in connection with this Plan are relevant and material to the arbitration.	The Dominican Republic has no objection to providing the documents described in this request. However, the Ballantines' understanding of the types of information contained in the file (as articulated in its commentary below) is not necessarily accurate.	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>The Ballantines look forward to the production of responsive material.</p> <p>Because the Respondent contends that the Ballantines' description of the expected content of such file "is not necessarily accurate", the Ballantines reserve their rights to contest the</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

				completeness of the Respondents' production.	
Commentary of the Ballantines: We understand that this file contains, among other things, the following information: minutes of public meetings and MMA meetings; the ICT (technical committee report); drafts of the Plan; records of communications with landowners and stakeholders; documents created for the public.					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
3	<p>The complete file maintained by Respondent's MMA showing the bases both for the creation and demarcation of the Salto de Jimenoa Natural Monument.</p>	<p>The Salto de Jimenoa Natural Monument is another park that was specifically drawn as to exclude favored Dominican businesses and landowners. Central to Respondent's defense is its assertion that it did not treat the Ballantines differently than Dominican landowners in areas with similar terrain and topography. The analyses that Respondent relied upon to create the Monument and to demarcate its boundaries are relevant and material to this dispute. In addition, certain witnesses, such as Eleuterio Martinez wrote extensively about the circumstances surrounding the creation of this National Monument without including any of the relevant documents requested here.</p>	<p>The Dominican Republic has no objection to providing the documents described in this request. However, the Ballantines' understanding of the types of information contained in the file (as articulated in its commentary below) is not necessarily accurate.</p>	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>The Ballantines look forward to the production of responsive material.</p> <p>Because the Respondent contends that the Ballantines' description of the expected content of such file "is not necessarily accurate", the Ballantines reserve their rights to contest the</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

			completeness of the Respondents' production.	
<p>Commentary of the Ballantines:</p> <p>We understand that this file contains, among other things, the following information: technical reports (flora and fauna inventories, slope maps, riparian and watercourses analyses); gap analyses; minutes or reports of meetings with affected landowners; drafts of proposed boundaries; communications with landowners; documents publicizing the natural monument's creation.</p>				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
4	<p>The complete files maintained by Respondent's MMA for each of the following projects (hereinafter, the "Projects"):</p> <ul style="list-style-type: none"> • Jamaca de Dios (Phase 1) • Jamaca De Dios (Phase 2 or "Ampliacion") 	<p>The Ballantines have put forward evidence to show that they were treated in an inequitable and discriminatory fashion compared to Dominican-owned projects, such as the ones in this request. Respondent has asserted that many of these Projects were treated differently for various reasons. But Respondent did not submit complete documentation relating to these Projects to support these assertions. Each of these Projects is relevant to this proceeding as an ecological, environmental, geographic, or competitive comparator to the Ballantines' investment. As such, complete MMA files concerning its evaluation of these Projects are directly material to the Ballantines' claims and Respondent's defense.</p>	<p>The Dominican Republic does not object in principle to providing the files for the projects identified by the Ballantines in this request, with two exceptions:   , and   for the reasons articulated below. First, the relevance of   project has not been established, as it has never been mentioned by either party in this arbitration. Second, any information concerning any of</p>	<p>We look forward to the production of the agreed documents but request that all documents in the request be produced.</p> <p> is relevant to this dispute. The fact that the Ballantines did not cite it in the Amended Statement of Claim has no bearing on whether or not it is an appropriate comparator. This large, residential mountain project was built by a Dominican in a Category 2</p>	<p>The Tribunal takes note of the Respondent's conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially.</p> <p>The production will include information pertaining to  <i>but not</i>  in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p>

			<p>the requested projects, which may be confidential on the basis that it is information pertaining to an ongoing process of evaluation by the MMA for an environmental permit, <i>i.e.</i>, [REDACTED]</p> <p>In addition, Resolution No. 0022-2017 dated 2 June 2017 provides that the files pertaining to projects of third parties are reserved and confidential information.¹</p>	<p>protected area (Valle Neuvo) that is at altitudes higher than Phase 1 or Phase 2 of Jamaca de Dios. It has at least 51 residences, a restaurant and common areas. It was not only allowed to develop years after the park was created in 1996 but it was also allowed to expand in 2011 by the MMA despite steep slopes and its location. The project is directly relevant to the discriminatory</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero no a</i> [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos</p>
--	--	--	---	---	---

¹ Resolution No. 0022-2017 dated 2 June 2017 classifies as “reserved information data and contacts of third parties provided with the sole purpose of procuring environmental authorizations or services provided by this Ministry, pursuant to General Law No. 200-04 on Free Access to Public Information, article 17, paragraph (i), which provides as follows: “Concerning commercial, industrial, scientific, or technical secrets, or reserved or confidential industrial, or commercial information of third parties received by the government concerning a request for a permit, authorization or any other procedure, and submitted with that sole aim, and disclosure of which could lead to economic damages. “

			<p>Concerning the files of those projects, which the Dominican Republic does not object to provide, the Dominican Republic notes that any business-related information concerning third parties is deemed confidential and would be provided subject to Claimants' commitment not to disclose such information or make any use thereof outside this arbitration.</p>	<p>treatment of the Ballantines. We note that the Respondent's contention that some projects are different because of altitude (made in the Statement of Defense for the first time) makes this directly relevant to the case. In fact, Constanza (where [REDACTED] is located) and Jarabacoa (where Jamaca is located) are nationally recognized mountain tourism areas. (Law 158-01.) This makes these projects quite analogous. Similarly, [REDACTED]</p>	<p>establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
--	--	--	--	--	--

██████████
material should be produced. Although mentioned in the ASOC, Respondent and its witnesses completely ignore it. The Ballantines understand that the permit for that second phase of development *has been issued*, making an assertion under the June 2017 resolution immaterial.

But even if a permit has not been granted, this material should be produced. As an initial matter, we note that Respondent's reliance on a resolution issued

			<p>this very month (June 2017) as a basis to refuse to produce this file is quite convenient. Otherwise, that a party deems information to be confidential may (a) restrict its access to the public or (2) require redactions but is not a valid basis to refuse production completely. All sorts of material is confidential to varying degrees. Not all of the information in the file is a “business record” of an applicant. The file includes much information created by Respondent.</p>	
--	--	--	---	--

			<p>Nevertheless, in order to avoid an issue, the Ballantines would agree that any alleged business records from [REDACTED] file can be treated initially as attorney's eyes only, meaning Baker & McKenzie personnel. We would reserve the right to make an application to the Tribunal to use the material and/or disclose it to the Ballantines themselves if appropriate. We would also be happy to discuss redaction of certain financial or personal information if appropriate. But</p>	
--	--	--	---	--

			<p>withholding the details of the permit application regarding the plan for the project and materials evaluating the project in the ministry is not appropriate given its relevance and materiality to this case.</p> <p>Lastly, the Ballantines commit not to disclose any such information produced or make any use thereof outside this arbitration as requested by Respondent.</p>	
<p>Commentary of the Ballantines: We understand that the files for each of the Projects would include, among other things, the following documents: solicitations of the terms of reference (request, preliminary analysis, project description, payment of environmental tax); terms of reference (“ToR”) (including technical visits and technical reports needed to generate ToR); environmental studies (including environmental impact statements); assessment by MMA of request (technical visits, ITR, minutes and report of Technical Evaluation Committee, issuance or denial of permit or license, reconsideration requests, and</p>				

responses, if any); approved site documents and technical information; communications between project proponent and MMA; project's chronological report.

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
5	<p>Fines and supporting documents levied against the Projects (as defined above), as well as proof of payment of those fines by the Project proponents.</p>	<p>The Ballantines have submitted evidence and testimony about an arbitrary, discriminatory, and excessive fine levied against them. Respondent has asserted that it has fined other property owners, noting a fine that it asserts was made against the politically-connected [REDACTED] was fined for building an entire project on the side of a mountain without any permit at all. The Ballantines believe that this fine remains unpaid years later even though it was purportedly levied. The Tribunal should be made aware of what other fines, if any, were levied on Dominican land owners for building entire projects without permits or for other violations of environmental laws, as well as whether those fines were actually paid. As such, these documents relating to fines are relevant and material to the Ballantines' claims and Respondent's defense.</p>	<p>The Dominican Republic has no objection to providing copies of fines and supporting documents levied against the Projects identified in request no. 4 above (except for [REDACTED], for the reasons explained in request no. 4 above), and proof of payment of such fines by Project proponents. However, the Ballantines' understanding of the information contained in such documents (as indicated in its</p>	<p>We look forward to the production of the agreed documents but request that all documents in the request be produced.</p> <p>We reiterate our relevancy arguments for [REDACTED] – <i>i.e.</i>, the fact that the Ballantines did not mention this project as a comparator in the Statement of Claim does not mean that the project is not relevant.</p> <p>Respondent contended for the first time in</p>	<p>The Tribunal takes note of the Respondent's conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially.</p> <p>The production will include information pertaining to [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p>

			<p>commentary below) is not necessarily accurate.</p>	<p>the Statement of Defense that altitude of the project was a factor, despite the lack of support for that in the law. This means that [REDACTED] is certainly relevant as it has altitudes exceeding Jamaca. The file will show, among other things, how Respondent considered the altitude of the project, if it all.</p> <p>We note that Respondent's basis for refusing to provide information on project files for [REDACTED] was based a</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero no</i> [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
--	--	--	---	---	---

resolution and
purported
confidentiality
because the
Ministry was
**considering a
permit. But
what does this
have to do with
fines levied
and/or paid by**

[REDACTED]
?

These fines and
payments have
nothing to do
with the material
submitted for an
environmental
permit.

In addition, the
June 2017
Resolution
discusses
“business”
material
“provided” by
the project
proponent.
Here, we are
seeking fines
issued by the
Ministry. Such

			information is not confidential simply because an entity is allegedly seeking a permit. Thus, Respondent has provided no basis to refuse to produce documents regarding fines and payments for [REDACTED] and such documents should be produced.	
--	--	--	--	--

Commentary of the Ballantines:

This supporting material should include: report of infringement (inspection report, technical support, photos or other evidence); resolution of fine; reconsideration requests and final resolutions; new evaluations; and minutes of meetings discussing the fines.

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
6	<p>Inspection reports (or similar documents) for each of the Projects (as defined above)</p>	<p>The Ballantines have asserted that they were discriminated against as a result of inspections against their project, relating to the manner of these inspections and related issues. Respondent has asserted that it inspections are part of the ordinary course for Respondent and that the Ballantines were not treated any differently than other projects. These inspection reports will show the frequency and results of inspections conducted on the Dominican-owned Projects compared to the inspections conducted at Jamaca de Dios. As such, these inspection reports are relevant and material to the Ballantines' claims and Respondent's defense.</p>	<p>The Dominican Republic has no objection to providing the inspection reports that may exist for the Projects defined above, (except for [REDACTED], for the reasons explained in request no. 4 above).</p>	<p>We look forward to the production of the agreed documents but request that all documents in the request be produced.</p> <p>We have explained the relevancy of [REDACTED] in reply to Request nos. 4 and 5.</p> <p>With respect to [REDACTED], we note that Respondent relied on a June 2017 resolution and general confidentiality to assert that the file requesting a permit should</p>	<p>The Tribunal takes note of the Respondent's conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially.</p> <p>The production will include information pertaining to [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p>

			<p>not be produced. But, again, such a resolution has nothing to do with inspection reports by the Ministry. These reports are based on site visits and evaluations done by the Ministry. This is separate from allegedly confidential information submitted by an applicant. Respondent's own inspection of a project is not the type of material contemplated by Respondent's June 2017 resolution as this is not business information related to the project. As such, these inspection reports should be produced.</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero no a</i> [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
--	--	--	--	---

Commentary:

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
7	Requests for and issuance of “No Objection” letters by the municipalities for each of the Projects (as defined above)	The Ballantines have asserted (and Respondent has agreed) that a “No Objection” letter from the municipality is required for each project. The Ballantines have asserted (and Respondent does not deny) that some projects did not even have MMA permits. Respondent has offered no documentary evidence with regard to other projects obtaining “No Objection” letters. The requests for these no objection letters, the speed with which the municipalities issued the no objection letters, and whether in fact certain projects even have them, are relevant and material to this dispute.	The Dominican Republic has no objection to providing copies of any “No objection” letters issued by municipal authorities for those projects mentioned under request no. 4 (except for [REDACTED] and [REDACTED], for the reasons explained in request no. 4 above).	We look forward to the production of the agreed documents but request that all documents in the request be produced. We have explained the relevancy of [REDACTED] in reply to Request nos. 4 and 5. With respect to [REDACTED], Respondent’s objection makes no sense given its explanation for objecting in its response to Request No. 4. In that response, Respondent pointed to a June	The Tribunal takes note of the Respondent’s conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially . The production will include information pertaining to [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules. The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR. ***

			<p>2017 Resolution that talked about information submitted by the project proponent “with the sole purpose of procuring environmental authorizations or services provided by this Ministry.” Here, these requests would have been made to the municipality, not the Ministry. In addition, a no objection letter issued by the municipality would certainly not be confidential data provided by a project proponent. As such, this material should be provided.</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero</i> no a [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
Commentary:				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
8	The Request for a “No Objection” letter by the [REDACTED] project to the municipality of Jarabacoa and the issuance of this “No Objection” letter.	The Ballantines have learned that another project in Jarabacoa, [REDACTED], obtained an extraordinarily speedy no objection letter from Jarabacoa while these officials would not even respond to requests from Jamaca de Dios for the same. The Ballantines understand that [REDACTED] is owned by a politically-connected Dominican. The failure of Jarabacoa to issue a “no objection” letter for the construction of a mountain lodge while speedily granting other such letters is relevant and material to this dispute.	The Dominican Republic objects to the relevance and materiality of this request. This document request is the first time [REDACTED] has been mentioned in this arbitration. The Ballantines have not attempted to explain why the information about this project would be relevant for the case at hand. In addition, Resolution No. 0022-2017 dated 2 June 2017 provides that the files pertaining to projects of third parties are reserved and	Respondent seems to take the view that anything not mentioned in the Statement of Claim cannot be relevant to the case. This is faulty reasoning. This proceeding is designed to be an exchange of arguments, facts, and assertions. A claimant cannot possibly anticipate in its Statement of Claim every argument or fact a Respondent will raise in its two later submissions. As a respondent submits facts or makes arguments, a claimant introduces new	The request is denied in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules. It is also denied for lack of relevance. *** Se deniega la solicitud de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI. También se deniega por falta de relevancia.

			confidential information ² .	facts or arguments to support its claims and defenses. This is exactly what is happening here. Respondent has asserted that it did not discriminate regarding the timing it took with respect to the no objection letter that was never issued to the Ballantines. The Ballantines understand that the no objection letter issued to [REDACTED] by the same municipality was issued with	
--	--	--	---	---	--

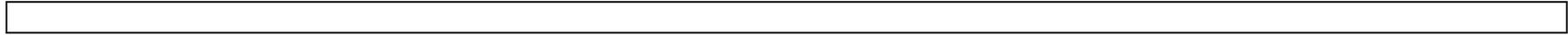
² Resolution No. 0022-2017 dated 2 June 2017 classifies as “reserved information data and contacts of third parties provided with the sole purpose of procuring environmental authorizations or services provided by this Ministry, pursuant to General Law No. 200-04 on Free Access to Public Information, article 17, paragraph (i), which provides as follows: “Concerning commercial, industrial, scientific, or technical secrets, or reserved or

an alacrity unrecognized by the Ballantines. This makes such a request and issuance of the no objection letter relevant and material.

We further note that the burden of producing this request and letter is quite minimal, especially as Respondent is already producing other such requests and letters.

Commentary:

confidential industrial, or commercial information of third parties received by the government concerning a request for a permit, authorization or any other procedure, and submitted with that sole aim, and disclosure of which could lead to economic damages. “



	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
9	<p>Environmental Compliance Reports (defined in Statement of Defense by its Spanish acronym "ICA") submitted by any Project (as defined above) between 2010 to the present.</p>	<p>The Ballantines have asserted that they were treated differently from Dominican project owners because, among other reasons, the Ballantines were required to produce ICA Reports every six months, whereas other projects were not. Respondent has implied that all project owners are required to and do submit these reports. Respondent even submitted a document purporting to show a landowner who was fined for not submitting an ICA Report. This fine was levied in 2017 against a gas station. Respondent's implied assertion that Dominican Project owners were submitting ICA Reports is dubious as it is unlikely that [REDACTED] was submitting ICA Reports when it operated for years without a permit. And Respondent has submitted no evidence to support its implied assertion that any of these entities in fact did submit ICA Reports. Whether these Dominican Projects were in fact required to submit ICA Reports is relevant and material to the Ballantines' claims and Respondent's defenses.</p>	<p>The Dominican Republic has no objection to providing the ICAs submitted by the projects defined above, (except for [REDACTED] and [REDACTED], for the reasons explained in request no. 4 above).</p>	<p>We look forward to the production of the agreed documents but request that all documents in the request be produced.</p> <p>We reiterate our arguments on the relevance and materiality of these documents as set out in our replies to request nos. to 4 to 8 – <i>i.e.</i>, the fact that [REDACTED] is not mentioned in the Statement of Defense is not at all determinative of its relevance and materiality.</p> <p>With respect to</p>	<p>The Tribunal takes note of the Respondent's conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially.</p> <p>The production will include information pertaining to [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p>

			<p>Respondent's arguments about confidentiality and its June 2017 Resolution, these arguments are not applicable to this request. We understand that these ICA Reports are produced periodically by permitted projects. This means that any restrictions about business documents submitted by a project proponent seeking a permit are outside of these ICA Reports. As such, the Respondent should produce these documents.</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero no a</i> [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
--	--	--	--	---

Commentary:

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
10	Slope calculations performed by MMA at any time on any Project (as defined above).	<p>The issue regarding slopes lies at the heart of this dispute. Respondent has simply denied that it treated the Ballantines differently with regard to the slope issue, but has not provided any relevant evidence about the Ballantines' claims of disparate treatment. The Projects that the Ballantines have identified as comparators are mountain projects, meaning that all of them are likely to be built or have been built on property that includes areas in which slopes exceed 60%. Whether these Projects are approved (or simply built) on property that contains slopes in excess of 60%, while the Ballantines have been entirely denied any right to build at all on their land because a small portion of that land purportedly has slopes in excess of 60%, is of central relevance and materiality to the claims before the Tribunal. Respondent purports to have measured slopes on the Ballantines' Phase 2 property, but has provided no evidence that it has measured slopes on any other Projects. Importantly, these Projects are built</p>	<p>The Dominican Republic objects to the relevance of this request. The Dominican Republic has already provided its slope calculations regarding the following projects: Jamaca de Dios I, Jamaca de Dios II, [REDACTED]</p> <p>See Witness Statement of Engineer Zacarias Navarro, p. 27 and Annex B of that Statement. Annex B provides details concerning</p>	<p>Respondent attempts to obfuscate the issue here. The calculation of slopes by Zacarias Navarro for purposes of this arbitration have been presented in his report, but the Ballantines seek contemporaneous measurements taken by the MMA with its evaluation of these projects and their requests for permits. If the MMA did not take any such measurements at any of these projects, Respondent should be forced</p>	<p>Granted partially.</p> <p>The production will include the contemporaneous measurements taken by the MMA on any Project, including the information pertaining to [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1. and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p> <p>Concedida parcialmente.</p> <p>La entrega incluirá las medidas contemporáneas</p>

on private property and the Ballantines may not be able to obtain access to determine slope percentages for these projects. It is therefore important for Respondent to provide its slope calculations, if any, for these projects.

the concentration and slope range of the area comprised within each of the aforementioned projects. The slope calculations for [REDACTED] and [REDACTED] have not been provided, since those projects do not appear relevant to the case at hand (and in fact the [REDACTED] was not even mentioned in any of Claimants' pleadings. Moreover, information regarding the [REDACTED] project continues to be confidential because the relevant

to disclose that. If it did take slope measurements, it should disclose those, as the MMA's denial of the Ballantines' request to expand based upon the putative slopes of Phase 2 appears to be a singular event in the history of the MMA.

This is extremely relevant and material. If Respondent granted permits for these projects despite having determined that the projects included slopes in excess of 60%, this would call into

tomadas por el MMA en los Proyectos, incluida la información concerniente a [REDACTED] pero no a [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento de la CNUDMI.

Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.

			<p>environmental permit request is still under consideration by the MMA.</p> <p>In addition, Resolution No. 0022-2017 dated 2 June 2017 provides that the files pertaining to projects of third parties are reserved and confidential information.³</p>	<p>question the Respondent's entire defense here.</p> <p>Lastly, we note that Respondent has (apparently) for the first time in this particular response asserted that [REDACTED] is not relevant, even though Respondent admits that it is mentioned in the Amended Statement of Claim. Respondent does not provide a basis to assert that [REDACTED] is not</p>	
--	--	--	--	---	--

³ Resolution No. 0022-2017 dated 2 June 2017 classifies as “reserved information data and contacts of third parties provided with the sole purpose of procuring environmental authorizations or services provided by this Ministry, pursuant to General Law No. 200-04 on Free Access to Public Information, article 17, paragraph (i), which provides as follows: “Concerning commercial, industrial, scientific, or technical secrets, or reserved or confidential industrial, or commercial information of third parties received by the government concerning a request for a permit, authorization or any other procedure, and submitted with that sole aim, and disclosure of which could lead to economic damages. “

relevant. But, in any event, it certainly is relevant and material.

[REDACTED] is a mountain resort / housing project quite similar to the Jamaca de Dios. [REDACTED] can be seen from both the City of Jarabacoa.

Both Jamaca de

[REDACTED]

have elevations gains between 250-300 meters and have comparable terrain, and geology. It is comparable both in terms of its location and its operations. As such,

				Respondent should produce these documents.	
Commentary:					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
11	Permits from the Department of Tourism for any Project (as defined above).	Such a permit is required for any project and there is no evidence that any of the Projects were required to obtain such a permit, despite Respondent's assertions that these Projects had correct permitting. Respondent has allowed (and continues to allow) certain projects to operate in National Parks after their creation. Whether these Dominican-owned projects have tourism permits, or are otherwise allowed to operate without them, is relevant and material to the discriminatory and unfair treatment by Respondent against the Ballantines.	The Dominican Republic has no objection to providing copies of the permits from the Department of Tourism concerning the projects identified in request for documents No. 4 above (except for [REDACTED], for the reasons explained in request for documents No. 4 above).	We look forward to the production of the agreed documents but request that all documents in the request be produced. We reiterate our arguments above regarding the relevance and materiality of [REDACTED] and [REDACTED]. With respect to Respondent's reliance on its June 2017 resolution and assertions about confidential business information, we note that such	The Tribunal takes note of the Respondent's conformity to produce documents pertaining to those projects which have not been objected. The remainder of the request is granted partially . The production will include information pertaining to [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules. The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR. ***

			<p>objections are not applicable here. We seek permits from the Department of Tourism, not documents from the Ministry of the Environment. The June 2017 Resolution has nothing to do with the Department of Tourism. Moreover, permits from the Ministry of Tourism would not contain confidential business information submitted by a project proponent. As such, they should be produced.</p>	<p>El Tribunal toma nota de la conformidad de la Demandada para entregar documentos concernientes a aquellos proyectos que no han sido objetados. El resto de la solicitud se concede parcialmente.</p> <p>La entrega incluirá información concerniente a [REDACTED] <i>pero</i> no a [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
Commentary:				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
12	<p>Communications to and from Respondent, on the one hand, and [REDACTED] officials, on the other hand, with respect to any permit requests and responses, any reconsideration requests and responses, and any proposed developmental maps and plans .</p>	<p>Respondent has asserted repeatedly that [REDACTED] and Jamaca de Dios are comparable projects in very meaningful respects. Respondent has asserted that it has denied [REDACTED] a permit for its work and then reconfirmed that denial. Documents submitted by the Ballantines call into question that assertion as Respondent admitted to still considering the [REDACTED] permit after it asserts to the Tribunal that it denied the request. As Respondent asserts that [REDACTED] is the most comparable, the issue of whether Respondent has actually denied the permit and the communications regarding this permit request and relevant and material to the dispute.</p>	<p>The Dominican Republic objects to this request because it is repetitive. This request is already subsumed within request for documents No. 4 above, to which the Dominican Republic has not objected with respect to [REDACTED]</p>	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>The Ballantines look forward to the production of responsive material.</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>
<p>Commentary:</p>					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
13	Applications for permits to MMA from any development project (whether housing, resort, manufacturing, commercial, or otherwise) within a Category 2 Protected Area within the Dominican Republic after August 9, 2009 and the MMA's acceptance or rejection of any such permit applications.	Respondent has asserted that Category 2 Protected Areas have very limited uses as defined by its Law No. 202-04. Respondent denied a permit to Jamaca de Dios for development activity based on its assertion that the land was located in a Category 2 Protected Area. Whether Respondent has granted Dominican projects for development activities in these protected areas are relevant and material to this dispute.	The Dominican Republic objects to the materiality and relevance of this request. The characteristics and nature of the projects in Jamaca de Dios render immaterial and irrelevant projects on "manufacturing, commercial, or otherwise". There is no justification at all for requesting the full universe of permits in Category 2 environmentally protected areas that the MMA has received during the last 8 years, and the MMA's replies to those requests. In addition, the request is overly	We note that this Request, unlike many of Respondent's requests, does not ask for documents "referencing or discussing" the applications for permits. The Ballantines are simply requesting the applications and denials or approvals from the MMA. Such documents are certainly relevant and material to the dispute. Respondent made all manner of assertions in its Statement of Defense about the limited activities that	Granted partially. Respondent will only produce the applications of the projects that were granted permission in the mentioned areas, including the corresponding permit. *** Concedida parcialmente. La Demandada solo entregará las solicitudes de los proyectos a los que se otorgó un permiso en las áreas mencionadas, incluirá también los respectivos permisos.

			<p>broad, administratively onerous, and not readily available. The MMA has estimated that providing such information would require a 10-person team of MMA officials dedicated full-time to document review and site visits for approximately two months. Requests for documents should ask for specific and relevant information; they should not be fishing expeditions.</p>	<p>purportedly can occur in Category 2 Protected Areas. The Ballantines have demonstrated the disparate treatment they have encountered with regard to its project. Respondent should produce documents with regard to what it has permitted in Category 2 Protected Areas.</p> <p>The Ballantines are willing to compromise on this Request. Rather than seeking all applications and denials/approvals for these projects, the Ballantines will accept the applications of</p>	
--	--	--	--	--	--

			<p>the projects that were granted permission in these areas, including the corresponding permit. Given what Respondent asserts is the very limited activities that are allowed in these areas, this should be relatively simple for Respondent to provide. We will not seek the applications for the projects in these areas that were denied a permit.</p>	
Commentary:				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
14	<p>The attached picture includes three arrows pointing to roads neighboring Jamaca de Dios. The Ballantines request the applications for permission and permits granted, if any, for these three roads, and all technical studies evaluating slope percentages and other considerations for these three roads. We understand that these three roads are [REDACTED]</p> 	<p>Respondent has admitted that the neighboring [REDACTED] has meaningful similarities to Jamaca de Dios. The land adjacent to Jamaca on the other likewise has similar terrain. Roads were built on both sides of Jamaca de Dios through similarly sloped terrain with similar environmental conditions. Whether Respondent granted permits for those roads, or just acquiesced to those roads being built, is relevant and material to whether the Ballantines were required to obtain permits and/or denied permits for road projects in the same conditions.</p>	<p>The DR objects to this request because it lacks sufficient specificity to enable the Dominican Republic to identify the roads for which the Ballantines are requesting information. The Ballantines' request provides a map of a few inches which can be barely read. Without the geo-references of the roads and the names of the relevant projects, it would not be possible to provide the requested information. Once the Ballantines have identified the relevant roads</p>	<p>The following are what we understand to be the GPS coordinates of the three roads, as well as the names of the projects and/or roads:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Finally, we have included a larger map as an</p>	<p>The request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>

			with adequate specificity, the Dominican Republic may be in a position to provide responsive documents (without prejudice to its right to assert objections on relevant grounds at the appropriate time).	attached jpeg to this Request in order to provide a more clear picture.	
Commentary:					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
15	Permits (or denials) issued by the Dominican Ministry of Forest Resources after August 18, 2000 in the La Vega Province, and any evaluation or measurement of slope percentages in connection with such permits.	Respondent has asserted that roads cannot be built on land that contains slopes in excess of 60%. The Ballantines have asserted that Dominican landowners have been allowed to construct roads on land where the slopes exceed 60%. The permits requested here would show instances where Respondent has allowed logging or related activity in mountain areas. Such logging activities would necessary include the construction of roads to move the trees. To the extent that Respondent has permitted the construction of roads on land with slopes in excess of 60%, this is relevant and material to Respondent's discriminatory treatment of the Ballantines.	The Dominican Republic objects to this request on the basis that it is obscure and its relevance has not been substantiated. First of all, there is no "Ministry of Forest Resources" in the Dominican Republic, and there has never been. Assuming that the Ballantines are referring to permits and denials of permits issued by the MMA over the last 17 years, and to "any evaluation or measurement of slope percentages in connection with such permits" by the MMA, the	We understand that a separate ministry devoted to forestry issues was incorporated into the MMA. We are seeking permits related to these forestry activities in La Vega. We are limiting this request for permits in La Vega issued by the MMA that are for forestry (as that term is commonly understood) permits. These permits will show that Respondent has allowed persons and companies to construct roads for forestry	The request is denied for lack of sufficient relevance and unreasonable burden to produce. *** Se deniega la solicitud por falta de relevancia y por resultar irrazonablemente gravosa la exhibición.

			<p>Ballantines have not explained the relevance of <u>the la Vega Province, or the relevance of the 17-year timespan for which they are requesting them.</u> . In any event, the scope of this request is overly broad, and the Dominican Republic objects for that reason as well.</p>	<p>purposes where slopes far exceed 60%.</p>	
<p>Commentary:</p>					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
16	<p>The file (i.e., permit application, terms of reference, technical reports (including slope measurements) and resolution) from MMA for the [REDACTED].</p>	<p>Respondent denied the Ballantines' request to build a road in Phase 2 of Jamaca de Dios because of Respondent's assertion that the land had slopes in excess of 60%. Respondent approved or permitted the [REDACTED] to be built in the [REDACTED]. The Ballantines believe that the [REDACTED] is built on slopes exceeding 60% and in terrain similar to the terrain of Jamaca de Dios. Respondent's approval of the [REDACTED] (or allowing it to be built) while refusing to allow the Ballantines' road is relevant and material to this dispute.</p>	<p>The Dominican Republic objects to this request on the basis of its lack of specificity. As far as the Dominican Republic is aware, the [REDACTED] has no road by the name of [REDACTED]. The Dominican Republic reserves the right to object to any revised request from the Ballantines in this regard.</p>	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>Respondent has stated its willingness to produce the file for [REDACTED]. We would expect this file to include applications and permits for any roads in the project, whether named [REDACTED] or not. In other words, to the extent that there are roads in the [REDACTED] project, whether those roads were</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

made as part of the original map or added in later, those applications, permits, etc. should be in the file produced.

In order to assist Respondent with determining which road [REDACTED], we understand that the following are the GPS coordinates for that road:

[REDACTED]

Commentary:

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
17	<p>The complete file maintained by Respondent's MMA with respect to the proposed ██████████ located in the buffer zone of the Los Haitises National Park, including the application for a permit for this factory, the MMA's responses to those requests, and President Fernandez overruling this denial.</p> <p>The Ballantines likewise request communications from Respondent's witnesses Eulatario Martinez or Jamie David Mirabal concerning the factory.</p>	<p>The Respondent has asserted in this arbitration that the national parks have a special significance and must be protected. Yet Respondent's former President Fernandez, who was President during the events in question here, overruled the MMA's initial denial to build ██████████ in the buffer zone of the Los Haitises National Park. It was only after a public outcry that the UN stepped in to urge the rejection of the cement factory in 2009. The credibility of Respondent's assertions about its desire to protect the environment is relevant and material to this dispute. And this requested documents will further add to the fact that Respondent did not act in good faith with regard to the environment, but instead sought to reward politically-connected Dominicans.</p>	<p>The Dominican Republic objects to the materiality and relevance of this request. The Ballantines have not explained how the fact that a permit may have been granted or denied for the construction of ██████████ in a different national park has any connection with the current case, the Baiguante National Park, or the Ballantines' real estate mountain development projects.</p>	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>Respondent has failed to address in any way the Ballantines' statement of relevance and materiality, instead asserting generally that the relevance was not explained.</p> <p>To reiterate, Respondent's MMA had approved the building of a cement factory in the buffer zone of a national park 200 times larger than the Jamaca</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

de Dios
expansion eco-
tourism/residentia
l project.

These documents
will show the
nature of the
environmental
harm the cement
factory would
have caused and
the situation by
which President
Fernandez
determined that
[REDACTED]
[REDACTED] should be
allowed. If
Respondent
allows an
[REDACTED]
[REDACTED] to be
built in the buffer
zone, that is
relevant and
material to this
case.

Commentary of the Ballantines:

We understand that the file for this cement factory would include, among other things, the documents described in the commentary to Document Request No. 4.

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
18	Documents showing guidance from MMA or another agency of Respondent regarding the altitude of a project being relevant for slope determination or project evaluation.	Respondent has asserted in the Statement of Defense that whether a slope over 60% will be approved depends on the altitude of the project. Respondent asserts that this is why some projects with slopes over 60% might be approved while others will not. To the extent Respondent maintains that this is the law or the rule in the Dominican Republic, it should provide such contemporaneous guidance from the MMA or any other agency, if any exists.	The Dominican Republic objects to the relevance and materiality of this request, which is based on an erroneous premise. The request attributes to the Dominican Republic a statement that it has not made. The Dominican Republic has never asserted that "whether a slope over 60% will be approved depends on the altitude of the project."; As indicated in the Statement of Defense and in the witness statement of the Dominican Republic's witness, Mr.	Even accepting Respondent's response here as accurate, this still means that Respondent agrees that altitude of the project is one of the "factors" that the MMA considers when deciding whether to grant the project. The response likewise notes that other factors are included. As those factors are not listed in the law or regulations, as far as the Ballantines can tell, the Ballantines' request here still stands. The Ballantines should be able to see the	The request is granted . Respondent will produce any documents showing guidance from MMA or any other agency, as to the factors to be considered for slope determination such as range of slopes, concentration of slopes, altitude of the project and environmental impact. *** Se concede la solicitud. La Demandada entregará todo documento que muestre orientación del MMA o cualquier otra agencia en relación a los factores que se han de considerar para la determinación de la pendiente, como el rango de las pendientes, concentración de las mismas, altura del

			<p>Zacarias Navarro, many factors, including range of slopes, concentration of slopes, altitude of the project and environmental impact need to be considered to determine the viability of a particular project, and the characteristics of each project need to be evaluated in the aggregate.</p>	<p>document(s) that give this guidance to the MMA about considering the altitude of the project as one of the “factors” in deciding to grant a permit. Likewise, since Respondent mentions it, Respondent should provide the document(s) showing these other “factors” that Respondent lists in its response.</p> <p>The Ballantines have a right to know whether Mr. Navarro is basing these decisions on some guidance or information from the MMA or is simply making up “factors” on his own.</p>	<p>proyecto e impacto medioambiental.</p>
--	--	--	--	---	---

				As Respondent did not provide any specifics as to its objection other than to say that its assertion was mischaracterized, we cannot further address the assertion that the documents are not relevant.	
Commentary:					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
19	<p>Complaints from persons and businesses regarding █████ construction of roads, infrastructure, or buildings from mid-2000s when the project started until the project was eventually fined in August 2013.</p>	<p>Respondent has asserted that it treated the Ballantines the same as Dominican project owners. The project adjacent on the mountain to Jamaca de Dios, █████ was being notoriously built on the side of a mountain for 8 years without a permit and without any action by the MMA. The Ballantines maintain that Respondent received numerous complaints about the █████ building and operating without any permit. This building was apparent given its position on the side of a mountain. The complaints made by persons and businesses to Respondent about █████ and Respondent's failure to act on those complaints given the politically-connected nature of █████, are relevant and material to this dispute.</p>	<p>The Dominican Republic has no objection to this request.</p>	<p>The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents.</p> <p>The Ballantines look forward to the production of responsive material.</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>
<p>Commentary:</p>					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
20	Document evidencing the “easement” Respondent claims exists for the so-called “historical” road. (See paragraph 129 of the Statement of Defense.)	One issue involving the Ballantines’ claims is the Respondent’s role in inciting the local population to tear down gates that had been constructed on a road into the Ballantines’ property. Respondent asserts that this road was a “historical” road (which Respondent highlighted in red on page 77 of the Statement of Defense) purportedly pursuant to an 80-year old easement. Respondent did not submit any documents evidencing this easement and instead cited to a current court case. If Respondent maintains that this road was historical and based on an easement, it should be required to produce the easement so that the Ballantines can examine it. Whether such an easement actually exists is relevant and material to this dispute.	The Dominican Republic objects to this request on the basis that the documents that are in possession of the Dominican Republic and are related to the easement have already been provided, in Exhibits R-092, (road used for more than 80 years), and R-118 (Ballantines admitting that there is an easement by requesting the closure of a right of way easement). Moreover, some of the documents related to the easement have already been provided by the Ballantines themselves, as	The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents. We understand this response to mean that the Respondent does not have any other documents in its possession other than the documents it has provided in this arbitration. We request that Respondent instruct us if this is not the case. We further note easements are typically	The Tribunal takes note. *** El Tribunal toma nota.

			<p>Exhibit C-069 (Judgement of the Civil Court declaring that the road has been used for more than 80 years, and deciding that there has been no affectation of the property rights of the Ballantines), and C-022 (recognizing the use of the road for more than 80 years). As indicated by the Dominican Republic, the matter between the townspeople of Palo Blanco and the Ballantines is a dispute between private parties. The Dominican Republic is not aware of, and is not privy to, any executed agreements between these two</p>	<p>recorded so that purchasers of land have knowledge of the easement when purchasing such land. We therefore understand this response to mean that there are no recorded easements for this allegedly "historic road" in the possession of Respondent.</p> <p>If this is the case (meaning that Respondent has no additional documents in its possession other than the documents exhibited so far), we withdraw this Request.</p>	
--	--	--	---	---	--

			parties, which might have created rights or obligations with respect to the road in question.		
Commentary:					

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
21	MMA resolutions denying permits for any development project on the basis (in whole or in part) of Article 122 of Law 64-00 and any subsequent permit granted for the same property following such denial.	The Ballantines have put forward evidence to show that they were treated in an inequitable and discriminatory fashion compared to other projects. The Ballantines believe they are the only project in the Dominican Republic to be entirely refused permission to develop on the basis of allegedly excessive slopes. Documents concerning this issue are directly relevant and material to the claims at issue here.	The Dominican Republic objects to this request as it is overly broad. Providing resolutions for any development project in the entirety of the Dominican Republic on the basis of Article 122 of Law 64-00 would require an unduly cumbersome effort and expense by the Dominican Republic. That said, the Dominican Republic has no objection to providing copies of any and all MMA resolutions denying permits on the basis of Article 122 of Law 64-00 <i>with respect to any</i>	The denial of the Ballantines' permit on the basis of Article 122 is at the heart of this case. Permit denials premised on the slope restrictions of Article 122 would necessarily relate to mountain projects only and it is entirely material and relevant as to whether or not any other mountain project in the entire country has been entirely refused development on the basis of slope concerns. It would appear the DR does not want to respond to this Request	The request is granted . *** Se concede la solicitud.

		<p><i>development project in Jarabacoa specifically</i>; or to the extent that they exist, any subsequent permits granted for the same properties in Jarabacoa following an initial denial of such permits.</p>	<p>because it will reveal the idiosyncratic, unique, and inequitable treatment that was foisted on the Ballantines by the MMA.</p> <p>Given this importance to this case, we think this is an important document request that will allow the Tribunal to make its factual determinations.</p> <p>We are simply asking for the resolutions denying these projects for not being in compliance with Article 122. We are not, as Respondent did, seeking “any and all” documents “discussing or</p>	
--	--	---	--	--

referring” to any denials under Article 122. These resolutions should be easy to access. In addition, as we are not aware of any project that was denied the right to build totally due to Article 122, there should be few resolutions, if any. It should not be difficult for the Respondent to produce a few resolutions.

To the extent that Respondent views this as onerous burden, which we reject, we would be willing to have the names and precise locations of any project that was entirely denied a permit due to Article 122 (i.e., slopes in

			excess of 60%).	
Commentary:				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
22	<p>The file maintained by Respondent's MMA for each of the following projects:</p> <p>[REDACTED]</p>	<p>The Ballantines have put forward evidence to show that they were treated in an inequitable and discriminatory fashion compared to Dominican-owned projects, such as the ones in this request. Respondent has asserted that many of these projects were treated differently for various reasons. But Respondent did not submit complete documentation relating to these projects to support these assertions. Each of these projects is relevant to this proceeding as an ecological, environmental, geographic, or competitive comparator to the Ballantines' investment. As such, complete MMA files concerning its evaluation of these projects are directly material to the Ballantines' claims and Respondent's defense.</p>	<p>The Dominican Republic objects to the materiality and relevance of this request. The Ballantines fail to explain why these projects are relevant; why they would be appropriate comparators to the projects of the Ballantines; or even where in the Dominican Republic such projects are located. The Ballantines' Statement of Claim merely mentions the [REDACTED] project, without providing any additional information that would explain its relevance (See Statement of Claim, ¶186).</p>	<p>The Ballantines have not failed to explain the relevancy of these projections. Each of these projects is relevant to this proceeding as an ecological, environmental, geographic, or competitive comparator to the Ballantines' investment. Each of these projects were approved for development or allowed to develop without permits, where the Ballantines were prohibited from an expansion of their already-permitted project. The DR</p>	<p>The request is granted partially.</p> <p>The Respondent will produce the file maintained by Respondent's MMA for each of the following projects: [REDACTED]. The rest of the requests pertaining to the remainder of the projects is denied in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1. and Art. 22 of the UNCITRAL Rules.</p> <p>The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p>

			<p>The Statement of Claim contains somewhat more information concerning the [REDACTED] project, but fails to explain the relevance of such project, which is located in a bay area and belongs to a different category of protected area (Category IV, and not Category II as is the case of the Baiguate National Park) (See Statement of Defense, ¶ 143, fn 444, 451). Concerning the projects [REDACTED] the Ballantines' document request is the first time those projects have been mentioned in this</p>	<p>of course seeks to minimize the number of Dominican projects that have been (explicitly or implicitly) allowed to proceed while the Ballantines have been denied the right to proceed. The DR is free to make its arguments that these projects should not be compared to Jamaca de Dios, but the Ballantines have requested a reasonable and circumscribed number of project files. The MMA's evaluation and approval of these projects will stand in stark</p>	<p>La Demandada entregará el archivo mantenido por el MMA de la Demandada para cada uno de los siguientes proyectos: [REDACTED]. El resto de solicitudes concernientes a los proyectos restantes se deniegan de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
--	--	--	--	---	--

			<p>arbitration, and the Ballantines provide no explanation of their relevance to the case at hand. In addition, Resolution No. 0022-2017 dated 2 June 2017 provides that the files pertaining to projects of third parties are reserved and confidential information.⁴</p>	<p>demarcation to the treatment of the Ballantines.</p> <p>Put simply, the relevance and materiality is that these projects are in protected areas and/or in terrain similar to the Ballantines. They have become relevant in light of the Respondent's assertions in its statement of defense about the "factors" it considers when it decides whether to grant a permit.</p>	
--	--	--	---	--	--

⁴ Resolution No. 0022-2017 dated 2 June 2017 classifies as "reserved information data and contacts of third parties provided with the sole purpose of procuring environmental authorizations or services provided by this Ministry, pursuant to General Law No. 200-04 on Free Access to Public Information, article 17, paragraph (i), which provides as follows: "Concerning commercial, industrial, scientific, or technical secrets, or reserved or confidential industrial, or commercial information of third parties received by the government concerning a request for a permit, authorization or any other procedure, and submitted with that sole aim, and disclosure of which could lead to economic damages. "

We further note that these are not onerous or burdensome requests. These files, as we understand them, are located in one place and can be easily retrieved.

We note that Respondent once again relies on its June 2017 Resolution to assert that such documents cannot be produced. It makes no sense why some files for projects can be produced while others cannot, based on the same June 2017 Resolution.

Nevertheless, we are happy to discuss a

			<p>redaction of purely business information (but not to environmental information) or to take other steps, such as attorneys' eyes only, to preserve confidential business information. But what we are seeking is not the project's business plan, but the environmental information from the project and, most importantly, the analyses conducted by the MMA as part of its approvals.</p>	
<p>Commentary of the Ballantines:</p> <p>We understand that the files for each of the Projects would include, among other things, the documents described in the commentary to Document Request No. 4.</p>				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
23	Slope calculations performed by MMA at any time on any projects listed in Request No. 22	The issue regarding slopes lies at the heart of this dispute. Respondent has simply denied that it treated the Ballantines differently with regard to the slope issue, but has not provided any relevant evidence about the Ballantines' claims of disparate treatment. The projects in Request No. 22 are additional comparators, meaning that all of them are likely to be built or have been built on property that includes areas in which slopes exceed 60%. Whether these projects are approved (or simply built) on property that contains slopes in excess of 60%, while the Ballantines have been entirely denied any right to build at all on their land because a small portion of that land purportedly has slopes in excess of 60%, is of central relevance and materiality to the claims before the Tribunal. Respondent purports to have measured slopes on the Ballantines' Phase 2 property, but has provided no evidence that it has measured slopes on any other projects.	The Dominican Republic objects to the materiality and relevance of this request, on the same basis as for request for documents No. 22.	The Ballantines incorporate their reply to Request No. 22 into this reply. We further note the obvious that slope calculations cannot be properly withheld due to the Respondent's June 2017 Resolution. This Resolution talks about "commercial, industrial, scientific, or technical secrets, or reserved or confidential industrial, or commercial information of third parties received by the	The request is granted partially . The Respondent will produce slope calculations performed by the MMA for each of the following projects: [REDACTED]. The rest of the requests pertaining to the remainder of the projects is denied in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1. and Art. 22 of the UNCITRAL Rules. The Parties are requested to agree on a process to protect any confidential information contained in the files, which is consistent with the process provided in Article 10.21(4) of the CAFTA-DR. *** La solicitud se concede parcialmente .

			<p>government.” (Please note the emphasis as it is key here.) The slope measurements by MMA – i.e., Respondent – are information from the MMA and not informed “received by the government.” Thus, this information is inapplicable to this brand new June 2017 resolution. Respondent cannot withhold the information on that basis.</p>	<p>La Demandada entregará los cálculos de pendiente realizados por le MMA para cada uno de los siguientes proyectos: [REDACTED]. El resto de solicitudes concernientes a los proyectos restantes se deniegan de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI.</p> <p>Se solicita a las Partes que convengan en un proceso para proteger cualquier información confidencial que se encuentre en los archivos que sea conforme a los procedimientos establecidos en el artículo 10.21.4 del DR-CAFTA.</p>
Commentary:				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
24	Title, deed, or similar document showing the GPS coordinates of the Projects (as defined above) from the National Cadastral Office or MMA.	<p>Respondent and its witnesses have asserted that the Baiguate National Park was created based on environmental concerns and not based on land ownership. The Ballantines have pointed out that the Park's boundaries demonstrate that certain landowners have been excluded from the Park despite being similarly-situated environmentally.</p> <p>The material provided by Respondent is not clear with respect to the boundaries of the Projects at issue in this case. The location of these projects is relevant and material given the fact that most of these Projects were excluded from the Park and their precise boundaries are uncertain.</p>	<p>It is unclear whether the information sought in this request relates to those projects referred to in request No. 4 or in request No. 22. Assuming that the Ballantines are referring to the projects included under request No. 22, the Dominican Republic objects to the relevance and materiality of this request, on the same basis articulated with respect to the request for documents No. 22.</p>	<p>The Ballantines defined the term "Projects" in their Request No. 4 and this Request relates to that defined term, not the projects listed in Request No. 22.</p> <p>The Ballantines appropriately seek GPS coordinates for each of those Projects (in Request No. 4). We understand from the Respondent's Response that it will produce the documents for the Request No. 4 Projects. If not, we reiterate our statement of relevance and materiality.</p>	<p>The request is granted partially.</p> <p>Respondent will produce the title, deed, or similar document showing the GPS coordinates of the Projects (as defined in Request no. 4, including [REDACTED] <i>but not</i> [REDACTED] in accordance with Sections 6.2 and 6.3 of the Procedural Order No. 1 and Art. 22 of the UNCITRAL Rules) from the National Cadastral Office or MMA, consistent with the Tribunal Order provided for in Request No. 4.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>La Demandada entregará cualquier título de propiedad, escritura o documento similar que</p>

			<p>This information is necessary to understand where those projects are precisely located in order to evaluate the terrain and related environmental information.</p>	<p>muestre las coordinadas GPS de los Proyectos (como se definieron en la Solicitud número 4, incluido [REDACTED] <i>pero no</i> [REDACTED] de conformidad con las secciones 6.2 y 6.3 de la Orden Procesal No. 1 y el artículo 22 del Reglamento CNUDMI) de la Oficina del Catastro Nacional o del MMA, conforme a lo dispuesto por el Tribunal en su orden para la Solicitud número 4.</p>
<p>Commentary:</p>				

	Description of Document	Relevance and Materiality	Response	Reply	Tribunal's Order
25	Valle Nuevo Management Plan, including any earlier versions of this plan.	The Ballantines have asserted that the Respondent applies its laws in an arbitrary, unfair, and discriminatory fashion. Specifically, the Ballantines have pointed out that the [REDACTED] project was allowed to notoriously build in the Bague National Park even in the absence of a permit. The Ballantines understand that projects in the Valle Nuevo National Park have likewise been allowed to develop their property in ways inconsistent with both purported Dominican law and the management plan for that park. The Ballantines request the management plan for the Valle Nuevo National Park in order to verify the “approved” activities within that park.	The Dominican Republic has no objection to providing the documents sought in this this request.	The Ballantines do not seek an order with respect to this request— Respondent has agreed to produce the documents. The Ballantines look forward to the production of responsive material.	The Tribunal takes note. *** El Tribunal toma nota.
Commentary:					

ANNEX 2 TO PROCEDURAL ORDER NO. 5

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (UNCITRAL) AND THE DOMINICAN REPUBLIC - CENTRAL AMERICA - UNITED STATES FREE TRADE
AGREEMENT (CAFTA-DR)**

MICHAEL BALLANTINE and LISA BALLANTINE

Claimants

v.

THE DOMINICAN REPUBLIC,

Respondent

**DOMINICAN REPUBLIC'S APPLICATION FOR AN ORDER
ON THE PRODUCTION OF DOCUMENTS BY THE BALLANTINES**

**Arnold & Porter Kaye Scholer
Counsel to the Dominican Republic**

3 July 2017

Michael Ballantine and Lisa Ballantine v. The Dominican Republic
PCA Case No. 2016-17
REDFERN SCHEDULE
Dominican Republic's Document Requests to Claimants⁵

⁵ Lisa Ballantine and Michael Ballantine (jointly, the "Ballantines") are referred to as "Claimants" for convenience only. This reference should not be construed as an admission that the Ballantines in fact qualify as Claimants under the DR-CAFTA.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
Request for documents relating to dominant nationality						
1.	A list of all of the social media sites, networking websites, and blogs used by the Ballantines from 2005 to the present.	<p>Notice of Arbitration ¶ 2</p> <p>L. Ballantine 1st Statement ¶¶ 2, 3</p> <p>M. Ballantine 1st Statement ¶¶ 3, 88</p> <p>Bifurcation Response ¶¶ 4, 25, 31, 41</p> <p>M. Ballantine 2nd Statement ¶¶ 2, 3</p>	The documents requested are relevant and material to determining the Ballantines' motives for moving to the Dominican Republic and acquiring Dominican nationality, as well as to their general attitude towards residing in the	<p>This is not a document request. This is a request for the Ballantines to create a list of social networking sites. In any event, the Ballantines have no such list.</p> <p>This is also a broad and ill-defined request. It is unclear as to what is being requested as Respondent makes no effort to limit in any way the types of sites or the information posted on those sites. Does Respondent seek to know the website that Lisa Ballantine uses to post a favorite recipe or the site that Michael Ballantine uses to post a comment about his favorite hair product? There can hardly exist a more overly broad and irrelevant request that seeks to know any networking, blog, or social media site "used" by the Ballantines on any</p>	<p>This request for documents is entirely appropriate, for the reasons set forth below.</p> <p>Relevance/Materiality: As the Ballantines themselves have stated, one of the issues that the Tribunal must determine is whether "[the Ballantines] are more closely aligned with the United States or with the Dominican Republic." Bifurcation Response, ¶ 23. The Ballantines have alleged that their own views on this issue are important to the analysis (<i>Id.</i>, ¶¶ 4, 7, 38, 45), and that "[they] never felt like [they] were Dominicans, never acted like Dominicans, and nobody perceived [them] as Dominicans." M. Ballantine 2nd Statement, ¶ 4.</p>	<p>The request is denied for being too broad and burdensome.</p> <p>***</p> <p>Se deniega la solicitud por ser demasiado amplia y gravosa.</p>

⁶ References are to the briefs of the Parties and witness statements submitted therewith.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>Dominican Republic and being Dominican nationals.</p> <p>It is the Dominican Republic's position that the Ballantines' dominant nationality at the relevant times was the Dominican nationality.</p>	<p>subject at any time without regard to the subject matter.</p> <p>The request is further entirely too broad in terms of time, requesting anything from 2005 to present. Who can recall what website they might have accessed two years ago?</p> <p>Given that the request is so broad and inappropriate, it is hard to argue the relevance and materiality. Respondent's statement of relevance talks about putative "motives" and the way the Ballantines felt "generally" about residing in the Dominican Republic. But the request makes no such limitation but instead talks about any such blog or site.</p> <p>The Ballantines have testified to their motives for moving to the DR and the DR is free to cross-examine them about that testimony at hearing. Social media postings are by their nature commentary on specific events or travels or pictures and cannot be considered relevant to</p>	<p>As the Ballantines observe in their objection to this very request, "[s]ocial media postings are by their nature commentary on specific events or travels or pictures" As such, they: (1) provide significant (and contemporaneous) insight into the perception of such events, travels, and pictures by the person making the post; and (2) tell a story of a person's daily life, which undoubtedly is useful when attempting to determine which country was the "center of [a person's] interests" (which is another issue that the Ballantines acknowledge as being relevant to the analysis). And, as the posts from Lisa Ballantine's Facebook page and Tobi Ballantine's Twitter page cited in the Statement of Defense confirm, social media posts also provide evidence of other issues that the Ballantines recognize as being relevant to the inquiry, including "participation in public life" and "attachment."</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>"why" the Ballantines moved to the DR or how they "felt" about living there. The DR simply cannot contend such postings are material to the issue of dominant nationality and demand unfettered access to some temporally undefined trove of social media snippets. Indeed, the DR makes no effort to explain how the "general attitude" of the Ballantines towards life in the DR is a factor for this Tribunal to evaluate as it considers whether this couple should be deemed to be more American or more Dominican.</p> <p>The Tribunal should reject this request and, in any event, no such list exists of course, as Respondent would fully know.</p>	<p>Breadth of the Request: The Ballantines object that this request is overly broad, since it: (1) supposedly “makes no effort to limit in any way the types of sites or the information posted on those sites”; (2) refers to the social media sites, networking websites, and blogs <i>used</i> by the Ballantines; and (3) spans the time period from 2005 to the present. This objection is unfounded, for three main reasons.</p> <p><i>First</i>, the request <i>does</i>, in fact limit the types of websites, to “social media sites, networking websites, and blogs used by the Ballantines.” The Dominican Republic is not asking for a list of every website ever <i>accessed</i> by the Ballantines. But, it was not possible to frame this request in any other way without knowing the full scope of the social media sites, networking websites, and blogs that the Ballantines have used — which is all that this request is attempting to</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					<p>determine — so that the Dominican Republic can be certain that the response to Request No. 2 below is complete.</p> <p><i>Second</i>, the suggestion that, when making its request, the Dominican Republic could or should have “limited the types of sites or the information posted on those sites” is inappropriate. As the US-Iran Claims Tribunal jurisprudence that the parties have cited makes clear, there is no bright-line test for determining dominant and effective nationality; any number of factors may be relevant to the inquiry. Because the inquiry is broad, it should follow that the relevant document production requests can be somewhat broad. On the basis of its review of Lisa Ballantine’s Facebook posts and Tobi Ballantine’s Twitter posts, the Dominican Republic knows that limiting the scope of the inquiry to posts about certain events or subjects would risk excluding important and</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					<p>helpful information about personal attachment, cultural integration, and social and family life. (Moreover, the Dominican Republic is puzzled as to why the Ballantines would prefer combing through years of posts to identify the ones they believe are relevant to specific elements of the relevant standard, over simply granting access to the Dominican Republic; surely, the Ballantines do not intend to claim that social media posts are legally privileged).</p> <p><i>Third</i>, the Ballantines themselves have contended that “th[e] Tribunal should look at the Ballantines’ <i>entire life</i> to determine whether or not they are more closely aligned with the United States or with the Dominican Republic.” Bifurcation Response, ¶ 23. In this context, a request that spans the time period from 2005 (the year before the Ballantines moved to</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					<p>the Dominican Republic) to the present cannot be considered overly broad.</p> <p><i>Nature of the Request:</i> The Ballantines also object to this request on the basis that it “is not a <i>document</i> request,” and that the list the Dominican Republic seeks “does not exist.” That likely is not true. As defined in the IBA Rules, the term “document” means “a writing, communication, picture, drawing, program <i>or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means . . .</i>” IBA Rules, p. 4 (emphasis added). The Ballantines’ computers, which likely store browsing histories, surely must have relevant information.</p>	
2.	Access to all posts/entries by the Ballantines (from 2005 to the present) on any site listed in	Notice of Arbitration ¶ 2 L. Ballantine 1st Statement ¶¶ 2, 3	The documents requested are relevant and material to	This request suffers from the same infirmities listed above. Imagine the scope of this request: Respondent is seeking “access”,	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request.	The request is denied for being too broad and burdensome.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	connection with Request No. 1.	M. Ballantine 1st Statement ¶¶ 3, 88 Bifurcation Response ¶¶ 4, 25, 31, 41 M. Ballantine 2nd Statement ¶¶ 2, 3	determining the Ballantines' motives for moving to the Dominican Republic and acquiring Dominican nationality, as well as to their general attitude towards residing in the Dominican Republic and being Dominican nationals. It's the Dominican Republic's position that	whatever that means, to all "post/entries" on any "social media sites, networking websites, and blogs used by the Ballantines" from 2005 until today. Again, there is no effort to limit the scope of this request to anything relevant to this case. There is instead a request to have "access" to the broadest possible range of material, which would by this definition include a website that the Ballantines accessed at any point over the last 12 years. In addition, it is entirely unclear about what the Respondent means by "access" to this material. Does Respondent seek the Ballantines passwords for their Pinterest account to have such access? Does Respondent wish to have access to the Ballantine's Reddit account to see whether they "upvoted" the video of a cat playing the piano? This is beyond a silly request. A state requesting "access" to various sites and accounts of a person who no	Although the Ballantines' objections here are cast in more offensive rhetoric (and revealing of an apparent lack of professional respect for the Dominican Republic's counsel), such objections are essentially the same as those raised in connection with Request No. 1, and should be rejected for the reasons discussed above. Only a few other observations are warranted. <i>First</i> , with respect to the question of access: No, the Dominican Republic does <i>not</i> seek the Ballantines' passwords. As indicated by the terms of the request, the Dominican Republic is seeking the Ballantines' posts/blog entries — <i>i.e.</i> , statements that have been published to others — <i>not</i> information (like personal messages or account details) that only the password-holder would have. The Ballantines could provide such access by creating an html file of the relevant	*** Se deniega la solicitud por ser demasiado amplia y gravosa.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			the Ballantines dominant nationality at the relevant times was Dominican nationality.	longer resides in that state is truly shameful and should not be countenanced by this Tribunal. For the reasons here and as set forth in the response to Request No. 1, the Tribunal should reject this request.	sites, as the Dominican Republic had done when submitting Lisa Ballantine's Facebook page into the record. <i>See</i> Ex. R-37. <i>Second</i> , there is simply no basis for the Ballantines' assertion that this request is so broad as to "include a[ny] website that the Ballantines accessed at any point over the last 12 years." What the Dominican Republic is seeking is access to the posts/entries on the social media sites, networking websites, and blogs used by the Ballantines from the year before they moved to the Dominican Republic to the present. The Dominican Republic is confident that the Tribunal, having seen the quotes in the Statement of Defense from Lisa Ballantine's Facebook page and Tobi Ballantine's Twitter Feed, will appreciate the relevance, materiality, and benefit of such access.	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					<i>Third</i> , the Dominican Republic notes that, in an attempt to belittle this, the Ballantines mentioned a “Pinterest account” and a “Reddit account.” These references to social media accounts demonstrate the relative ease with which the Ballantines could generate a list of the nature solicited in Request No. 1 above (even assuming <i>arguendo</i> that their computers did not already have one).	
3.	A list of all of the social media sites, networking websites, and blogs used by the Ballantines’ four children (namely, Joshua, Rachel, Josiah, and Tobi) from 2005 to the present.	Notice of Arbitration ¶ 2 L. Ballantine 1st Statement ¶¶ 2, 3 M. Ballantine 1st Statement ¶¶ 3, 88 Bifurcation Response ¶¶ 4, 25, 31, 41 M. Ballantine 2nd Statement ¶¶ 2, 3	The documents requested are relevant and material to determining the Ballantines’ motives for moving to the Dominican Republic and acquiring Dominican	This Request should be rejected for the reasons set out in our responses to Request Nos. 1 and 2. Of course, the Ballantines would have no such list and the Respondent is seeking to have the Ballantines to create such a list, which is not the purpose of a document request. In addition, this Request is even more problematic and absurd than the previous requests. Here, Respondent is seeking a list of websites “used” by the Ballantines children, including when these children were minors.	The Dominican Republic is <i>also</i> surprised by the Ballantines’ assertion that documents and information held by the Ballantines’ four children (one of whom was originally a party to this arbitration) is beyond the Ballantines’ reach, given that: (1) the Ballantines’ son-in-law is a witness in this arbitration; (2) the Ballantines’ nationality argument rests (in part) on the proposition that the Ballantines are so close to their children, and their lives so intertwined, that the activities of the Ballantine children should be considered evidence as to which of the	The request is denied for being too broad and burdensome. *** Se deniega la solicitud por ser demasiado amplia y gravosa.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>nationality, as well as to the general attitude of the Ballantines' children towards residing in the Dominican Republic and, in the case of Josiah and Tobi, having become Dominican nationals.</p> <p>It is the Dominican Republic's position that the Ballantines dominant</p>	<p>First, as is apparent to everyone including Respondent, any such information belongs to these children, who are not parties to this arbitration. Second, relatedly, because this information is owned and controlled by the children, the Ballantines have no ability to produce such information as this is not their information. And, of course, any postings by the Ballantine children -- two of whom did not even acquire dual Dominican nationality -- is entirely immaterial to the dominant nationality of their parents. Indeed, the younger two Ballantine children got their Dominican passports <i>only as they were leaving the country</i> to return to United States to continue their education.</p> <p>Importantly, the fact that Respondent seeks to have website use information from children of the Ballantines is telling about</p>	<p>Ballantines' two nationalities was dominant.</p> <p>The Dominican Republic is <i>also</i> surprised by the Ballantines' blanket assertion that "any postings by the Ballantine children . . . is entirely immaterial to the dominant nationality of their parents," given that: (1) the Ballantines previously insisted that their "immediate family" was relevant to the analysis (<i>see</i> Bifurcation Request, ¶ 24); and (2) the Dominican Republic has already demonstrated, through its citations in the Statement of Defense to Tobi Ballantine's Twitter feed, that these posts can and do provide insight into issues like the Ballantines' attachment and integration (in addition to "center of family life").</p> <p>Apart from these issues (and those already discussed above in connection with Request No. 1), the only other basis for the Ballantines' objection is a</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			nationality at the relevant times was Dominican nationality.	Respondent's strategy in this case and with these document requests.	concern that the request would cover the social media sites, networking websites, and blogs used by the Ballantines' children while they were minors. This seems overblown. If the Ballantines allowed their children to use social media sites, networking websites, or blogs while they were minors, they cannot reasonably claim now to be concerned by disclosure of what their children were posting on the Internet — let alone by mere disclosure of which social media sites, networking websites, and blogs the Ballantines' children have used since 2005 (which is what this Request seeks, so that the Dominican Republic can be certain that the response to Request No. 4 below is complete).	
4.	Access to all posts/entries by the Ballantine children (from 2005 to the	Notice of Arbitration ¶ 2	The documents requested are relevant and	This Request should be rejected for the reasons set out in our responses to Request Nos. 1, 2, and 3.	The Ballantines' objections to this Request are unfounded for the same	The request is denied for being

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	present) on any site listed in connection with Request No. 3 above.	L. Ballantine 1st Statement ¶¶ 2, 3 M. Ballantine 1st Statement ¶¶ 3, 88 Bifurcation Response ¶¶ 4, 25, 31, 41 M. Ballantine 2nd Statement ¶¶ 2, 3	material to determining the Ballantines' motives for moving to the Dominican Republic and acquiring Dominican nationality, as well as to the general attitude of the Ballantines' children towards residing in the Dominican Republic and, in the case of Josiah and Tobi, having	Again, this information belongs to the Ballantine children, who are not parties to this arbitration. Imagine, if you will, if a party in a dispute in which you were involved demanded access to your children's social media or blog accounts. (It must be remembered here that Respondent is not asking for particular documents related to a topic or even a group of topics but instead is asking for "access" to these accounts.) In any event, as has been stated, any such information and access belongs to the children themselves and the Ballantines	reasons set forth above in connection with Requests 1, 2, and 3. In addition, the Ballantines' assertion that "this information <i>belongs</i> to the Ballantine children" is not correct (given that postings made on social media sites are, by their very nature, postings shared with other people), and the implication that the Ballantines lack access is doubtful, since the Ballantines presumably are among the people who can view their children's shared posts. As noted above in connection with Request No. 2, and as the text of the request indicates, what the Dominican Republic is seeking here are posts and entries on social media sites, networking websites, and blogs — in other words, statements that have been published on the Internet. It is reasonable to assume that the Ballantines themselves are able to view the posts and entries that their children have made. There is no reason that they could not simply	too broad and burdensome. *** Se deniega la solicitud por ser demasiado amplia y gravosa.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>become Dominican nationals.</p> <p>It is the Dominican Republic's position that the Ballantines dominant nationality at the relevant times was Dominican nationality.</p>		<p>create an html file of such posts and entries (as the Dominican Republic was able to do for Lisa Ballantine's Facebook page and Tobi Ballantine's Twitter feed).</p>	
5.	A list of all of the social media sites, networking websites, and blogs used by (A) Joshua Ballantine's wife (from the time that she and Joshua became engaged, to	Bifurcation Response ¶ 41	The documents requested are relevant and material to determining the general attitude of the	<p>This Request should be rejected for the reasons set out in our responses to Request Nos. 1, 2, 3, and 4.</p> <p>Here, Respondent tries to expand its reach into an even further concentric ring of the Ballantine family by seeking social media information from the Ballantine's daughter-in-</p>	<p>The Ballantines' objections to this Request are unfounded for the same reasons set forth above in connection with Requests 1, 2, 3, and 4.</p> <p>As the Dominican Republic explained in its Statement of Defense, the Ballantines have put forward their son-</p>	<p>The request is denied for being too broad and burdensome.</p> <p>***</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	the present), and (B) Wesley Proch (from the time that he and the Ballantines' daughter Rachel became engaged, to the present).		<p>Ballantines family towards the Dominican Republic.</p> <p>Also, in that which concerns Mr. Proch, the documents are material to determining his motives and views on moving to the Dominican Republic in 2013.</p> <p>It is the Dominican Republic's position that the Ballantines</p>	<p>law and son-in-law. This is further absurdity and it is obvious that the Ballantines do not have the right to access any such information – even if those request was not so abjectly improper.</p> <p>Even more so, such information is even requested from the time that these now in-laws were engaged to the Ballantine children. And the DR makes no effort to explain how anything these in-laws may or may not have posted could be appropriately attributed to the Ballantines themselves.</p> <p>Requesting such an absurd list is silly, immaterial and abusive, and reflective of the dramatically improper scope of the entirety of these document requests. Perhaps Respondent will next seek the social media postings of the Ballantines' mailman or fitness instructors in order to assess whether they have posted anything about the "general</p>	<p>in-law, Mr. Proch, as a witness in this arbitration, and in his witness statement, Mr. Proch provided information relating to two of the issues that the Ballantines themselves have asserted are relevant for purposes of the nationality inquiry — namely, the “country of residence of the Ballantines’ immediate family,” and the “center of [the Ballantines’] family life.” It stands to reason that Mr. Proch, who visited the Dominican Republic frequently — and along with his wife and child (the Ballantines’ daughter and grandchild) even lived in the Dominican Republic for a time — may have made posts that provide further insight into location of the “center of [the Ballantines’] family life.”</p>	<p>Se deniega la solicitud por ser demasiado amplia y gravosa.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			dominant nationality at the relevant times was Dominican nationality.	attitude" of the Ballantines toward living in the DR.		
6.	Access to all posts/entries by Joshua Ballantine's wife and by Wesley Proch (during the time periods listed above), on any site listed in connection with Request No. 5 above.	Bifurcation Response ¶ 41	The documents requested are relevant and material to determining the general attitude of the Ballantine family towards the Dominican Republic. Also, in that which concerns Mr. Proch, the documents	This Request should be rejected for the reasons set out in our responses to Request Nos. 1, 2, 3, 4, and 5. Again, how could Respondent actually believe that the Ballantines could grant access to any website or social media account used by their daughter-in-law and son-in-law, starting no less from when they became engaged to the Ballantine children? Putting aside the absurdity of this request, this request further demonstrates the lack of relevancy of these requests. What relevancy would the "general attitude" of in-laws be toward the Dominican Republic? None.	The Ballantines' objections to this Request are unfounded for the same reasons set forth above in connection with Requests 1, 2, 3, 4, and 5. It bears repeating that what this Request seeks are posts and entries on social media sites, networking websites, and blogs which likely are visible to the Ballantines. The Ballantines, who appear to be "friends" with their daughter-in-law on Facebook and therefore can view posts and entries that she makes (and presumably would be able to view posts and entries by their son-in-law and daughter and law on other sites as	The request is denied for being too broad and burdensome. *** Se deniega la solicitud por ser demasiado amplia y gravosa.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>are material to determining his motives and views on moving to the Dominican Republic in 2013.</p> <p>It is the Dominican Republic's position that the Ballantines' dominant nationality at the relevant times was Dominican nationality.</p>		<p>well) could easily "grant access" to the posts and entries that they can view, by creating logging into their accounts and creating an html file of the posts, as the Dominican Republic was able to do for purposes of Lisa Ballantine's Facebook page and Tobi Ballantine's Twitter feed.</p> <p>As for the relevance of such posts and entries, the Dominican Republic notes once again that: (1) the Ballantines themselves have argued that the location of the center of the Ballantines' family life is relevant to the nationality analysis; and (2) the Ballantines' son-in-law has already provided testimony that contradicts the Ballantines' nationality assertions.</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
7.	Any document ⁷ discussing or referencing the Ballantines' decision to move to the Dominican Republic in 2006.	<p>Notice of Arbitration ¶ 2</p> <p>M. Ballantine 1st Statement ¶ 17</p> <p>L. Ballantine 1st Statement ¶ 3</p> <p>Bifurcation Response ¶ 31</p>	<p>The documents requested are relevant and material to determining the Ballantines' motives for moving to the Dominican Republic.</p>	<p>This request is overly broad and vague and does not square with the IBA's requirement that such requests contain: "a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist."</p> <p>Here, the description is not sufficient in detail. It merely asks for "any document discussing or referencing" the decision by the Ballantines to move to the DR. There is no effort to describe with any precision the types of documents that are believed to exist or that might potentially be relevant. Instead, any and all documents that discuss or reference something are claimed to be relevant. This is the stuff of U.S. style discovery where you blanket your opponent with expansively-drafted requests in an effort to seek anything</p>	<p>No order requested — the Dominican Republic withdrew this request.</p> <p>While the Dominican Republic maintains its position that the information sought in this request is relevant and material, it withdraws the request.</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

⁷ All of the references to documents contained in this request are to be interpreted expansively to include, documents, e-mails, correspondence and, generally, all written material. For purposes of clarity, when referring to any documents it should be understood to mean any and all documents.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References⁶	Comments			
				<p>that might lead to relevant documents, rather than making a precise request that is consistent with the IBA Rules.</p> <p>This is also not a narrow or specific category. To the contrary, the category is any and all documents (in the footnote with this request, Respondent asserted that “any” documents means “any and all” documents. There is no restriction here and this could include any manner of documents with no limitation).</p> <p>Also, there is no indication or showing that these documents “are reasonably believed to exist.” This is a fishing expedition. One may or may not have documents that generally discuss or reference a particular topic but there is nothing to assert that such documents reasonably exist. One would have to review every type of document from an expansive period to see if any of those documents might contain such</p>		

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>imprecisely and expansively defined information. Again, this is not what an IBA style request should require.</p> <p>Lastly, with regard to relevance and materiality, the issue here is whether the Ballantines' dominant and effective nationality is the U.S. Respondent cannot credibly maintain that one's dominant and effective nationality is fixed based on the thinking of a person when they first moved to another country. Rather, as explained in both of the parties' writings on this issue, one can potentially become a dominant and effective national of another state over some period of time. But one must first of course acquire that nationality and the Ballantines did not become Dominican nationals until long after they moved to the DR for purposes of their investment. What a person might have been thinking when they first moved to a state -- years before becoming a national -- is not relevant to any</p>		

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				determination of whether the Ballantines were more Dominican than American when they were discriminated against by the DR.		
8.	Any document discussing or referencing the Ballantines' decision to seek permanent residency in the Dominican Republic in 2006.	Bifurcation Response ¶ 41 Statement of Defense ¶ 40	The documents requested are relevant and material to determining the Ballantines' motives for seeking permanent residency in the Dominican Republic.	<p>This Request should be rejected for the reasons set out in our responses to Request No. 7.</p> <p>Like Request No. 7, this Request is hopelessly broad and seeks any and all documents discussing or referencing a broad topic.</p> <p>In addition, this request is also not relevant and material to this case. The test here and both relevance and materiality, meaning it must be a document which is "likely to influence the determination of the case." The Ballantines decision to obtain permanent residency in the DR is not relevant (and certainly not material) to this case. Dominant and effective nationality is tested by other factors, none of which have anything to do with the reasons for obtaining permanent residence. The reasons</p>	<p>The Ballantines' objection to this Request is unfounded.</p> <p>Relevance/Materiality: As the Ballantines themselves observe in response to Request No. 7, "one can potentially become a dominant and effective national of another state over some period of time." It follows from this — and the Ballantines' assertion that "the Tribunal should look at the Ballantines' <i>entire life</i> to determine whether they are not more closely aligned with the United States or with the Dominican Republic" (Bifurcation Response, ¶ 23 (emphasis in original)) — that some time period before the acquisition of nationality is also relevant. This is consistent with the Iran-US Claims Tribunal jurisprudence that both parties have cited, which</p>	<p>The Request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>for such a determination, even if they could be found in documents, would not affect the outcome of the case. Such documents are not material here and therefore not the proper subject of a request.</p>	<p>indicates that the “State of habitual residence” and the circumstances in which the second nationality is acquired are among the most important factors in the dominant nationality analysis.</p> <p>Breadth of the Request: As best the Dominican Republic can discern, the Ballantines’ assertion that this Request is “hopelessly broad” is based mainly on the fact that it begins with the words “[a]ny document discussing or referencing” But as the remainder of the request makes clear (and the Ballantines appear to acknowledge), the subject matter itself is actually quite limited in scope. A request for “any document discussing or referencing Mr. X’s decision to wear a yellow shirt on Monday” would not be overly broad on this basis. Nor is the request here, which involves a specific category of documents that the</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					Dominican Republic reasonably believes to exist.	
9.	Any document discussing or referencing the Ballantines' decision to obtain Dominican citizenship for themselves.	M. Ballantine 1st Statement ¶ 88 M. Ballantine 2nd Statement ¶¶ 2, 3 Request for Bifurcation ¶ 22 Bifurcation Response ¶ 25, 31 Statement of Defense ¶ 45	The documents requested are relevant and material to determining the Ballantines' motives for seeking Dominican nationality. It is the Dominican Republic's position that the Ballantines dominant nationality at the relevant times was	This Request suffers from the same flaws as stated in our response to Request Nos. 7 and 8. This request does not comply with the IBA's guidelines and instead is an overbroad request asking for any and all documents with no time limitation for a broad topic. Regarding relevance and materiality, this request also fails. Respondent has asserted that the relevant times for determining dominant and effective nationality is when the discriminatory actions were committed and when the Ballantines brought this claim. The Ballantines obtaining DR citizenship occurred prior to this time. Thus, under Respondent's theory, such relevancy is tenuous and materiality is lacking. Nevertheless, and without waiving our objections, the Ballantines will	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic disagrees with the objections asserted by the Ballantines, but does not discuss such objections herein, in light of the Claimants' commitment to conduct a search for the category of documents requested.	The Tribunal takes note. *** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			Dominican nationality.	undertake a reasonable search for contemporaneous documents that discuss the reasons why the Ballantines become dual citizens of the U.S. and D.R.		
10.	Any document discussing or referencing the Ballantines' decision to obtain Dominican citizenship for their children.	M. Ballantine 1st Statement ¶ 88 Bifurcation Response ¶ 41 Statement of Defense ¶¶ 39, 46	The documents requested are relevant and material to determining the Ballantines' motives for seeking Dominican nationality for their children. It is the Dominican Republic's position that the Ballantines	This Request suffers from the same flaws as stated in our response to Request Nos. 7, 8, and 9. Here, Respondent seeks any and all documents relating – not to the decisions of the Ballantines to obtain citizenship for themselves – but related to the citizenship of their children. This request is also broad and does not include any temporal restriction, instead asking for any and all documents at any time. This request also suffers from the same relevancy and materiality issues as the request above. Nevertheless, without waiving their objections, the Ballantines will agree to undertake a reasonable search for	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic disagrees with the objections asserted by the Ballantines, but does not discuss such objections herein, in light of the Claimants' commitment to conduct a search for the category of documents requested.	The Tribunal takes note. *** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			dominant nationality at the relevant times was Dominican nationality.	contemporaneous documents that discuss the reasons why the Ballantines' obtained citizenship for two of their four children.		
11.	Any document discussing or referencing any aspect of the Dominican naturalization application process.	M. Ballantine 1st Statement ¶ 88 Statement of Defense ¶¶ 39, 45, 46 M. Ballantine 2nd Statement ¶¶ 2, 3 Bifurcation Response ¶ 41	The documents requested are relevant and material to determining the Ballantines' motives for seeking Dominican nationality. It is the Dominican Republic's position that the Ballantines dominant	This Request suffers from the same flaws as stated in our responses to Request Nos. 7, 8, 9, and 10. This Request is broader and less defined than the 4 preceding requests. Here, Respondent seeking "any and all" documents "discussing or referencing" the naturalization process. Given the broadness and vagueness here, it is confusing at to what Respondent is even seeking. Do the Respondent seek some sort of primer on how one goes about applying for naturalization in the DR? Do they contend that the Ballantines created one themselves or otherwise have access to some description of the process? Note that there is no limits or restrictions of	The Ballantines' objection to this Request is unfounded. Relevance/Materiality: As noted above, "the circumstances in which the second nationality was acquired" is one of the relevant factors for purposes of the nationality analysis. This Request goes directly to that issue. Nature and Breadth of the Request: As the wording of the Request indicates, the Dominican Republic is seeking the documents in the Ballantines' possession that discuss or reference the Dominican naturalization process. It is true that "there is [sic] no limits or restrictions of any kind to this	The request is denied for being too broad and lacking relevance. *** Se deniega la solicitud por ser demasiado amplia y por falta de relevancia.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>nationality at the relevant times was Dominican nationality.</p>	<p>any kind to this request, with respect to time or individual applicant(s). No attempt is made in the Request to explain what aspect of the naturalization process is at issue in this proceeding.</p> <p>One might expect that the Respondent would be most interested in the Ballantines' application, but to the extent that Respondent seeks the application for naturalization and the materials the Ballantines submitted, these documents would be in the possession and custody of Respondent.</p> <p>Lastly, with respect to relevance and materiality, the Respondent's statement is woefully lacking. The Respondent does not explain how its broad request would lead to any document showing the "motive" for the Ballantine's naturalization. Indeed, on its face, the Request seeks documents that relate to the application process, a procedure with</p>	<p>request, with respect to time or individual applicant(s)," and that the Request is broad enough to cover "some sort of primer on how one goes about applying for naturalization in the DR" and "some description of the process." However, that was intentional. The purpose of this Request was to seek: (1) documents that the Ballantines received or obtained, describing the naturalization process, either as it would apply to them or their children (since the mere fact that the Ballantines received/obtained such documents would show that the Ballantines were informed about the process); (2) materials describing the naturalization test, or used by the Ballantines to study for the naturalization test; (3) emails/correspondence between the Ballantines and anyone whom they asked to serve as references for purposes of their applications; and (4) documents which reflect the</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>which the Respondents are surely familiar .</p> <p>The Tribunal should reject this request.</p>	<p>Ballantines' motives for seeking Dominican nationality.</p> <p>It seems reasonable to assume that such documents exist, given that the documents already in the record show that the Ballantines: (1) worked with an immigration attorney for purposes of their naturalization applications (and the applications of their children); (2) took and passed the naturalization test (which covers topics that the average American likely would be unable to answer without studying); and (3) provided references in support of their naturalization applications.</p>	
12.	Any document discussing or referencing the circumstances in which the Ballantines' Dominican	<p>M. Ballantine 1st Statement ¶ 88</p> <p>Statement of Defense ¶¶ 39, 45, 46</p> <p>M. Ballantine 2nd Statement ¶¶ 2, 3</p>	The documents requested are relevant and material to determining the circumstances in which	<p>This Request suffers from the same flaws as stated in our responses to Request Nos. 7, 8, 9, 10, and 11.</p> <p>Here, the Request is even broader and more ill-defined than the others. The Request is for "any and all" documents discussing or referencing the "circumstances" in which the</p>	<p>No order requested — the Dominican Republic withdrew this request.</p> <p>Given that the Tribunal expressly stated in its ruling on bifurcation that "the circumstances in which the second nationality was acquired" is</p>	<p>The Tribunal takes note.</p> <p>***</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	nationality was acquired.	Bifurcation Response ¶ 41	<p>the Ballantines sought Dominican nationality.</p> <p>It's the Dominican Republic's position that the Ballantines dominant nationality at the relevant times was Dominican nationality.</p>	<p>Ballantines acquired dual nationality. Again, there is no temporal restriction, no specifics on categories of documents, no other restrictions that would comport with the IBA Rules.</p> <p>There is no understanding of what would or would not be a "circumstance" in this regard. It is unclear what types of documents or information one would even look for with such a search.</p> <p>The statement of relevance and materiality is not helpful. It merely repeats that same statement made with respect to the last 11 requests, except that the word "circumstances" is substituted in for "motives" or "general attitude." How are the "circumstances" surrounding the naturalization relevant? Importantly, how is different from the first 11 requests? Respondent makes no effort to make this clear.</p>	<p>one of the issues that "will certainly be relevant to the Tribunal's analysis," (PO2, ¶ 25) the Dominican Republic is surprised that the Ballantines are questioning "[h]ow . . . the 'circumstances' surrounding the naturalization [are] relevant." Nevertheless, the Dominican Republic withdraws this request, on the basis that the documents responsive to its preceding requests should suffice.</p>	El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>In addition to the IBA Rules, there are prudential reasons for not having these broad sweeping requests that seek any and all documents for broad categories. That is, that the person locating documents for collection has no idea what to look for and how to interpret these broad request. In addition, with broad requests like these there would a substantial overlap between the various requests. In fact, were such documents to exist, one single document could arguably be responsive to each of the first twelve requests. Such broad requests are not proper for this proceeding and provide no help in reaching the truth or assisting the Tribunal in making its determinations.</p> <p>The Tribunal should therefore reject this request.</p>		
13.	School records for the Ballantine children, from 2005 to the present.	M. Ballantine 1st Statement ¶ 90	The Ballantines have claimed that the	This request is improper for many reasons. First, the temporal nature of this request seeks documents that would inarguably be irrelevant to any	The Ballantines' objection to this Request is unfounded.	The request is denied for being too broad and

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
		Bifurcation Response ¶¶ 6, 41	<p>educational path of the children establishes the dominant connection between the United States and the Ballantine family. The documents requested are relevant and material to determining what that educational path has been.</p> <p>It is the Dominican Republic's position that the Ballantines</p>	<p>issue in this arbitration. The Ballantines filed the RFA on September 11, 2014. Even Respondent doesn't assert that events after that date are relevant. Yet Respondent seeks here "school records" to the present date. Such documents fall outside of any temporal justification.</p> <p>Second, the Request is overly broad. The Request calls for "school records" for the Ballantine children, which records could mean anything. Report cards are school records. Is that what Respondent wants? Disciplinary records are school records. Is that what Respondent seeks? This request is overly broad that it call for the finger painting picture that the children painted in primary school. The Tribunal should reject this Request on this basis alone.</p> <p>Third, because the Request is so overly broad, much of this information is personal and</p>	<p>Relevance and Materiality: In their Bifurcation Response, the Ballantines asserted that "the educational path taken by each of the children plainly establishes the dominant connection between the United States and the Ballantine family," explained where their children had attended school (from 2006 until the present), and emphasized that the Ballantines' "two school-age children attended an <i>American school</i> in Jarabacoa." Bifurcation Response, ¶ 41. The Dominican Republic therefore is puzzled by the Ballantines' objection that school records are not relevant.</p> <p>The Dominican Republic is also puzzled by the Ballantines' assertion herein that the "relevance" prong has not been established because "[t]he Ballantines rely on numerous factors to show that the US is and has been their dominant and effective nationality." The Ballantines have made similar assertions with respect to other issues</p>	<p>lacking relevance.</p> <p>***</p> <p>Se deniega la solicitud por ser demasiado amplia y por falta de relevancia.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			dominant nationality at the relevant times was Dominican nationality.	<p>appropriately confidential and has no business being part of an arbitration, especially one with publication requirements.</p> <p>Fourth, Respondent's statement as to relevance and materiality is decidedly wanting. Again, the Request for school records is so broad that it would go far beyond the stated relevance and materiality for this Request. In addition, Respondent bases this request on three sentences in Michael Ballantine's witness statements where he mentions the education of his children. Respondent pretends as if this means that the question of dominant and effective nationality is dependent upon the school of the children. It is not. The Ballantines rely on numerous factors to show that the US is and has been their dominant and effective nationality. This includes the fact that the Ballantines lived their whole lives in the United States, even while also</p>	<p>that they deem relevant to the nationality analysis. However, the parties appear to agree that the "dominant nationality" inquiry turns on a range of factors, and if the Ballantines were able to evade production of documents relating to each of those factors on the basis that that particular factor is irrelevant in the aggregate, they would be able to evade production of nationality-related documents altogether.</p> <p>Temporal Scope of the Request: The Dominican Republic is also puzzled by the Ballantines' assertion that school records from 2005 until the present "fall outside of any temporal justification." As noted above, the Ballantines themselves focused on the time period from 2006 until the present. The reason for expanding this time period to include 2005 is simple: The Ballantines have asserted that the fact that their children attended school in the Dominican Republic is <i>not</i></p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>maintaining a residence in the DR for a few years. To assert that these are material documents that would change the outcome of the case is folly. Moreover, if Respondent believes that the Ballantines have not sufficiently and appropriately established the chronology of the geographical location of their childrens' educational entities, it is free to make whatever arguments it chooses in that regard. If the DR believes that the issue of where their kids went to school is not an appropriate element of their dominant and effective nationality, it can say so. The Respondent is not entitled to every school record because the Ballantines have testified that all of their children returned to the US for their schooling, even before the Ballatntines were driven from the country by the Respondent's discriminatory acts.</p>	<p>indicative of a dominant Dominican nationality, since the school was an American school. However, the Dominican Republic understands from public sources that the Ballantines once home-schooled their children. In these circumstances, the mere fact that the Ballantines <i>sent</i> their children to school in the Dominican Republic demonstrates “integration.”</p> <p>General Scope of the Request: The Ballantines’ attempt at <i>reductio ad absurdum</i> is itself absurd. A request for “school records” could not possibly be construed as “call[ing] for a finger painting picture that the children painted in primary school.” What the Dominican Republic is instead seeking are admission/enrollment records and scholarship information. The scholarship and enrollment information is relevant and material because the Dominican Republic understands from public sources that the school that the Ballantines’</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					<p>daughter Tobi attended when she moved back to the United States has an “international student program,” and a boarding program. It would thus be relevant, for example, whether Tobi Ballantine registered at that school as an “international student.”</p> <p><i>Alleged “Confidentiality” Issue:</i> The notion that “personal” or “confidential” information “has no business being part of an arbitration, especially one with publication requirements” is simply not true. The Ballantines initiated this arbitration knowing full well that their nationality was going to be an issue (<i>see</i> Original Statement of Claim, ¶ 21), and then asserted that the inquiry was a subjective one based on how the Ballantines envisioned themselves. <i>See</i> Bifurcation Response, ¶¶ 4, 7, 38, 45; M. Ballantine 2nd Statement, ¶ 4. In this context, the Ballantines cannot reasonably expect that information they consider “personal” will be</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					immune from all scrutiny. If the Ballantines are concerned with the publication requirements in the free trade agreement that they chose voluntarily to invoke, they can seek to make use of the mechanism articulated therein for “protected” information.	
14.	Copies of all college/university/graduate school applications by the Ballantine children.	Bifurcation Response ¶¶ 6, 41	The Ballantines have claimed that the educational path of the children establishes the dominant connection between the United States and the Ballantine family. The documents	It deserves repeating that Respondent has mischaracterized the Ballantines' position in Respondent's Statement of Relevance and Materiality. The Ballantines do not claim that the educational path of the children is the only factor in determining dominant and effectively nationality or even that it is the primary factor. Instead, this is but one of many factors relevant to the dominant and effective nationality. If Respondent does not believe that the Ballantines have supported their assertions, Respondent can say so.	The Ballantines' objection to this Request is unfounded for the same reasons set forth above in connection with Request No. 13. Once again, the Dominican Republic is surprised by the Ballantines' assertions here. The Dominican Republic <i>does</i> believe that the Ballantines have not “supported their assertions,” and it therefore <i>is</i> “entitled to ask” to see the relevant documents. This is one of the very purposes of the discovery process.	The request is denied for being too broad and lacking relevance. *** Se deniega la solicitud por ser demasiado amplia y por

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>requested are relevant and material to determining what that educational path has been. We are interested in determining what addresses were used, whether Dominican nationality was invoked or mentioned in any way, or whether the family's experience living in the DR was mentioned in any way.</p>	<p>But Respondent is not entitled to ask for anything it wants just because the Ballantines make an assertion.</p> <p>The Respondent's statement of relevance and materiality does not support its claims or defenses. Respondent talks about the educational path of the children being relevant and then requests applications from the children to universities. This is discordant. How the Ballantine's grown, adult children fill out a university application is not relevant to the issues of their parents' dominant and effective nationality.</p> <p>Lastly, in addition to the responses to Request No. 13, which are incorporated into this response, such documents are not documents of the Ballantines. Such documents would be the possession of the respective children, who are not parties to this arbitration. The Ballantines do not</p>	<p>Relevance/Materiality: In their Bifurcation Response, the Ballantines asserted that "the educational path taken by each of the children plainly establishes the dominant connection between the United States and the Ballantine family" and that "[t]he educational paths of the Ballantine children show a family centered in the United States," because "[e]very Ballantine child returned to America for further education" Bifurcation Response, ¶ 41.</p> <p>However, given the amount of time that the Ballantine children spent in the Dominican Republic (and the fact that, as noted in the Statement of Defense, Michael Ballantine has asserted that that time was "transform[ative]" for the family), it seems reasonable to assume that the children's college applications would have mentioned the time spent in the Dominican Republic, either: (1) for purposes of seeking scholarships, (2) in essays explaining</p>	<p>falta de relevancia.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			It is the Dominican Republic's position that the Ballantines dominant nationality at the relevant times was the Dominican nationality.	have possession or control over these documents.	<p>what made them unique, or (3) in responses to questions about important life experiences. References to the Dominican Republic in any of the foregoing contexts would demonstrate "integration," which is one of the elements considered in the dominant nationality analysis.</p> <p><i>Access:</i> The Ballantines' assertion that they cannot access these documents seems doubtful, especially considering that they asserted in the Bifurcation Response that they paid for their children's college educations. Bifurcation Response, ¶¶ 34(f).</p>	
15.	College/university transcripts for any college/university courses that the Ballantines have taken.	Bifurcation Response ¶ 24, 41 L. Ballantine 1st Statement ¶ 2 M. Ballantine 2nd Statement ¶ 6	The Ballantines have claimed that where the Ballantines went to	<p>This Request suffers from the same flaws as stated in our responses to Request Nos. 13 and 14.</p> <p>This Request seeks any college transcript for any college or university that the Ballantines have ever attended, without any temporal</p>	<p>The Ballantines' objection to this Request is unfounded.</p> <p>This is yet another instance where the Ballantines are questioning the relevance of a point that they</p>	The request is denied for being too broad and lacking relevance.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
		Statement of Defense ¶ 55	<p>college is relevant to determining dominant nationality. . .</p> <p>It is the Dominican Republic's position that the Ballantines dominant nationality at the relevant times was Dominican nationality.</p> <p>It is also the Dominican Republic's position that the courses taken by Lisa Ballantine in connection with her</p>	<p>or other restrictions. Were Respondent hiring the Ballantines as associates, this would be a perfectly proper request. Here, however, this request is utterly irrelevant. How could college transcripts from the 1980s be relevant to this dispute? (Spoiler alert: they are not.)</p> <p>Respondent in its statement of relevance and materiality makes statements that are odd given what they are requesting. First, Respondent states that where the Ballantines went to college is relevant here. But how does this translate into a request asking for transcripts showing what courses one took and the grades received? How would knowing that Lisa Ballantine obtaining an A- in Chemistry (assuming, arguendo) make any difference here, much less meet the materiality requirement of the IBA Rules.</p> <p>Respondent further asserts that Lisa Ballantine's transcript may be</p>	<p>themselves raised. Even before the Dominican Republic objected to jurisdiction, the Ballantines apparently thought that the courses they took in college were relevant, as Lisa Ballantine mentioned some of them in her witness statement. <i>See</i> Lisa Ballantine Statement, ¶ 2. In the Bifurcation Request, the Ballantines asserted expressly that “[t]he Tribunal should consider other factors as well, including but not limited to: . . . b) where the Ballantines went to college . . .” Bifurcation Response, ¶ 24.</p> <p>As the Dominican Republic explained in its Statement of Defense, apart from a line in Lisa Ballantine's witness statement explaining that she went “back to” college after visiting Jarabacoa, the Ballantines did not explain where they went to college. The purpose of this request is to determine where the Ballantines went to college or took college courses. A</p>	<p>***</p> <p>Se deniega la solicitud por ser demasiado amplia y por falta de relevancia.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			return to college in fact are related to the impending move to the Dominican Republic.	relevant because it could show that the courses she took were preparing her to move to the DR. Really? Colleges typically do not offer a class on "Shedding Your American Nationality." Even had Lisa Ballantine taken a Spanish class, for example, what would that show, other than she was interested in that language more than 15 years before she even set foot in the DR? If taking Spanish classes meant that you were not a dominant and effective U.S. national, the authors of this response would be likewise condemned. This is just simply not relevant to the case and is certainly not material to the outcome of the dispute.	request for a transcript is the traditional way to prove this point. Moreover, the request for a course list/transcript is entirely reasonable, given that Lisa Ballantine has testified that she went "back to Northern Illinois University" to take classes that would help her to create a start-up business in the Dominican Republic. As explained in the Dominican Republic's Statement of Defense, this indicates "attachment" to the Dominican Republic.	
16.	Copies of every page of the Ballantines' U.S. and Dominican passports (from 2005 to the present)	M. Ballantine 1st Statement ¶ 89 Bifurcation Response ¶¶ 6, 37	The Ballantines have claimed that the United States remained at	Respondent has records of the dates when the Ballantines entered and exited the Dominican Republic.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. ***

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
		Statement of Defense ¶ 44	all times their place of habitual residence and that they have spent significant time in the United States even when residing in the Dominican Republic. They have offered a summary of their travel history as alleged evidence of their continued ties to the United States. The documents	Nevertheless, the Ballantines will produce copies of the pages of their U.S. and Dominican passports.		El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>requested are relevant and material to determining with precision the Ballantines' travel history and the time they in fact spent in the Dominican Republic vs. abroad.</p> <p>It is the Dominican Republic's position that the place of habitual residence is a factor in determining dominant nationality and that the</p>			

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			Ballantines dominant nationality at the relevant times was the Dominican nationality.			
17.	A list of the precise dates that the Ballantines spent in the Dominican Republic and in the United States, from 2010 to the present.	M. Ballantine 1st Statement ¶ 89 Bifurcation Response ¶¶ 6, 37 Statement of Defense ¶ 44 M. Ballantine 2nd Statement ¶ 22	The Ballantines have claimed that the United States remained at all times their place of habitual residence and that they have spent significant time in the United States even when residing in the Dominican	This is another example of Respondent seeking to have the Ballantines create a document, instead of asking for a document. Respondent knows that people do not keep a list of all the precise dates of where they were at any given times. Document requests are not for seeking to have people to create a document as Respondent is seeking to do here. Nevertheless, the Ballantines will produce the copies of the pages of their U.S. and Dominican passports, which are sufficient to show the precise dates that they travelled to various locations, including the U.S. and the D.R.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic disagrees with the objections asserted by Claimants, but in any event withdraws the request.	The Tribunal takes note. *** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>Republic. They have offered a summary of their travel history as evidence of their continued ties to the United States. The documents requested are relevant and material to determining with precision the Ballantines' travel history and the time they in fact spent in the Dominican</p>			

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>Republic vs. abroad.</p> <p>It is the Dominican Republic's position that the place of habitual residence is a factor in determining dominant nationality and that the Ballantines dominant nationality at the relevant times was the Dominican nationality.</p>			
18.	Any document discussing or referencing the state of habitual	Notice of Arbitration ¶ 2	The documents requested are relevant and	This Request is vague and unclear, in addition to being extraordinarily broad in time and in scope. For example, the Request seeks any and	No order requested — the Dominican Republic withdrew this request.	The Tribunal takes note.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	residence of the Ballantines as Dominican Republic (from 2006 to 11 September 2014).	Amended Statement of Claim ¶ 154 Bifurcation Response ¶ 22 FN 15 Sur-reply on Bifurcation at 4	material to assess what the habitual residence of the Ballantines was at the relevant times. It is the Dominican Republic's position that the place of habitual residence is a factor in determining dominant nationality and that the Ballantines dominant nationality at the relevant times was the	all documents discussing or referencing (and this is where it becomes confusing) "the state of habitual residence of the Ballantines as Dominican Republic." It is unclear whether Respondent seeks information on the Ballantine's habitual residence generally or its "residence" in the DR, as it were. In any event, this Request is extremely broad and ill-defined. Any and all documents discussing the "state" of one's habitual residence could ostensibly include almost any document. Every piece of mail is addressed to a location, for example. It is entirely uncertain how one would go about looking for documents discussing the state of a habitual residence. Typically, we would try remedy this improper request by suggesting something narrow and appropriate that we would produce. Here the	However, it is worth noting that the Ballantines state here that "[t]ypically, [they] would try to remedy [an] improper request by suggesting something narrow and appropriate that [they] would produce." The Ballantines have not attempted to do this for the vast majority of the requests to which they object.	*** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			Dominican nationality.	Request is so flawed and broad that it is not possible to remedy it. We note, however, that the passport stamps will show where the Ballantines were at any given time. This should be sufficient to demonstrate where the Ballantines spent time at any relevant period.		
19.	Any document discussing or referencing the state of habitual residence of the Ballantines as United States of America (from 2006 to 11 September 2014).	Notice of Arbitration ¶ 2 Amended Statement of Claim ¶ 154 Bifurcation Response ¶ 22 FN 15 Sur-reply on Bifurcation at 4	The documents requested are relevant and material to assess what the habitual residence of the Ballantines was at the relevant times. It is the Dominican Republic's position that	This Request is likewise confusing. The responses to Request No. 18 are incorporated into this Request as well. Again, the passport stamps will show where the Ballantines were at during relevant times. A request involving habitual residence is artificial and not based in reality. People do not often go around talking about their habitual state of residence. The Ballantines have put information about their locations at various times and Respondent can review the Passport stamps to make its own	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic disagrees with the objections asserted by Claimants, but does not discuss such objections herein, in light of the Claimants' commitment to conduct a search for the category of documents requested.	The Tribunal takes note. *** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			the place of habitual residence is a factor in determining dominant nationality and that the Ballantines dominant nationality at the relevant times was the Dominican nationality.	determinations. Documents about a state of habitual residence is unclear, overly broad and confusing. This Request should be rejected as written.		
20.	Any document discussing or referencing the personal attachment of the Ballantines to the Dominican Republic (from 2006 to 11 September 2014)	Notice of Arbitration ¶ 2 Bifurcation Response ¶ 4, 22 FN 15, 25 Sur-reply on Bifurcation at 4 M. Ballantine 2nd Statement ¶ 4	The Ballantines have claimed that they had no particular attachment to the Dominican Republic; the documents requested are	The Ballantines incorporate their objections to Request Nos. 18 and 19 into this response. Again, this is an overly broad request that goes well beyond what is permissible under the IBA Rules and in these types of proceedings. The Request calls for “any and all” documents discussing or referencing the Ballantines’ personal attachment	No order requested — the Dominican Republic withdrew this request The Dominican Republic disagrees with the objections asserted by Claimants, but in any event withdraws the request.	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>relevant and material to assess what the Ballantines' attachments were at the relevant times, as manifested in and by their writings.</p> <p>Personal attachment is recognized by both parties to be relevant to the determination of dominant nationality.</p>	<p>to the Dominican Republic. This could be any sort of document across a wide variety of possibilities. Requests like these are additionally improper because they provide no guidance to the producer of the documents. It is doubtful that a document would include the terms "personal attachment." So the producer is left to guess as to what might and might not be referencing or discussing a personal attachment.</p> <p>In addition, this is not a narrow set of documents as required by the IBA Rules. Instead it requests all documents relating to an uncertain topic of personal attachments.</p> <p>The Ballantines have demonstrated an unbreakable personal attachment to the United States. If Respondent believes this not to be the case, Respondent can argue that the Ballantines have not shown this, challenge the Ballantines' evidence, cross examine them, etc. Respondent is not entitled, however, to go on a</p>		

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>fishing expedition in a desperate hope to find some document that might help them in some way. That is not the purpose of document requests under the IBA Rules. Certainly, parties always wish they had every single document from the other side in a proceeding. But it doesn't work that way. Respondent can certainly argue that the Ballantines have not proved their case.</p> <p>As such, the Tribunal should reject this Request.</p>		
21.	Any document discussing or referencing the personal attachment of the Ballantines to the United States of America (from 2006 to 11 September 2014)	<p>Notice of Arbitration ¶ 2</p> <p>Bifurcation Response ¶ 4, 22 FN 15, 25</p> <p>Sur-reply on Bifurcation at 4</p> <p>M. Ballantine 2nd Statement ¶ 4</p>	The Ballantines have claimed that they had no particular attachment to the Dominican Republic; the documents requested are	<p>This Request is improper for all the reasons set out in our response to Request No. 20, as well as responses to Requests Nos. 18 and 19.</p> <p>We do note that this is an even odder Request. It is the Ballantines position that they have a personal attachment to the United States, which they have shown in their evidence. Respondent here is requesting documents that support</p>	<p>No order requested — the Dominican Republic withdrew this request</p> <p>The Dominican Republic disagrees with the objections asserted by Claimants, but in any event withdraws the request.</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>relevant and material to assess what the Ballantines' attachments were at the relevant times, as manifested in and by their writings.</p> <p>Personal attachment is recognized by both parties to be relevant to the determination of dominant nationality.</p>	<p>the Ballantines' case and run counter to Respondent's assertions. It is one thing for a party to request documents to support its case (which is also wrong under the IBA Rules unless narrowly tailored), it is quite another thing to request documents that support the other side's case. What purpose is served by seeking the Tribunal's authority to cause the other side to produce documents that harm the case of the party requesting the documents.</p> <p>In any event, the Tribunal should reject this Request for the reasons above.</p>		

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
22.	Any document or information referencing the place of residence of the Ballantines' immediate family (from 2006 to 11 September 2014)	Bifurcation Response ¶ 24	<p>The Ballantines have submitted that the country of residence of the Ballantines' immediate family is relevant to the determination of dominant nationality.</p> <p>The documents requested are relevant and material to assess the facts on that issue.</p>	<p>This Request seeks an answer to this burning question: where were Lisa Ballantine's sisters and brothers residing in 2006?</p> <p>How is that material to the outcome, which is required by the IBA Rules?</p> <p>This Request is overly broad because, among other things, it seeks any and all documents about where the Ballantines siblings and parents were the last ten years. The Respondent wants more than just documents identifying the location of the Ballantines' sisters, brothers, and parents. They want all documents even referencing the location of the Ballantines' brothers and sisters. This goes well beyond what is permissible in this proceeding.</p> <p>This information is also not material to the outcome. The residence of the Ballantines' brothers, sisters, and parents will not change the</p>	<p>The Ballantines' objection to this Request is unfounded.</p> <p>The Ballantines again appear to be contradicting an argument that they themselves made. In their Bifurcation Response, the Ballantines asserted expressly that "[t]he Tribunal should consider . . . factors . . . including but not limited to: a) the country of residence of the Ballantines' immediate family" Bifurcation Response, ¶ 24. The language in this Request tracks the Ballantines' assertion almost exactly.</p> <p>Moreover, the Ballantines cannot escape document production simply on the basis that this "is one of many factors [that the Ballantines have argued is] to be considered for the Tribunal's determination . . ." As noted above, the Ballantines also have made this assertion with respect to</p>	<p>The request is denied for being too broad.</p> <p>***</p> <p>Se deniega la solicitud por ser demasiado amplia.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>Tribunal's determination on jurisdictional matters.</p> <p>Respondent notes a statement in our Response that refers to immediate family's residence being a factor for the Tribunal to consider. This is correct. But it is one of many factors to be considered for the Tribunal's determination, and one that is to be proved by the Ballantines. If the Ballantines do not prove this, then Respondent can make that argument. But Respondent is not entitled to such a broad request simply because the Ballantines discuss this as one of the factors to consider. This is not the purpose of document requests.</p> <p>The Tribunal should reject this Request for the reasons stated above.</p>	<p>other issues that they deem relevant to the nationality analysis, and if the Ballantines could invoke this excuse every time, they would be able to avoid producing any documents whatsoever on the issue of nationality, which cannot be right.</p> <p>Moreover, the Ballantines' assertion that "[t]he residence of the Ballantines' brothers, sisters, and parents will not change the Tribunal's determination on jurisdictional matters" is belied by the procedural history. As the Dominican Republic explained in its Request for Bifurcation, when the Ballantines initiated this arbitration, they gave a somewhat misleading account of their "permanent residence," by asserting that such residence was in Chicago, Illinois (<i>see</i> Original Statement of Claim, ¶ 21) and then listing the Illinois address of Michael Ballantine's mother in their "contact details" (Original Statement of Claim, ¶ 11). At the time, the Ballantines still</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					lived in the Dominican Republic. <i>See</i> Statement of Defense, ¶ 41 (explaining that the Ballantines moved back to the United States in the summer of 2015). The Ballantines responded to this evidence about “the residence of [their] parents” by citing different properties as their “residence.” <i>See</i> Bifurcation Response, ¶ 31.	
23.	With respect to all of the residential properties in the U.S. that the Ballantines say they owned from 2006 to the present: (1) records showing the date of purchase and sale; (2) photographs and floor plans of the property; and (3) information on who lived in the relevant	M. Ballantine 1st Statement at ¶ 89 Bifurcation Response ¶ 6, 31	The Ballantines have submitted that they have maintained their physical home in the United States throughout the time they were residing in the	This Request is overly broad and goes well beyond what is relevant and material to the outcome. Assuming for a moment that the properties owned by the Ballantines were relevant, photographs and floorplans of the properties is not material to the outcome. Nevertheless, and without waiving their objections, the Ballantines will produce documents showing their ownership or leasing of properties during this time, as well as provide any records of them leasing or	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	property/properties and on what dates.		Dominican Republic. The documents requested are relevant and material to assess that allegation.	renting any of the properties, should such documents exist.		
24.	A list of all of the gyms (in any country) to which the Ballantines belonged, from 2005 to the present, and records showing the dates on which the Ballantines used their memberships.	Bifurcation Response ¶ 33 M. Ballantine 2nd Statement at ¶ 10	The Ballantines have submitted that they maintained a health club membership in Chicago as evidence of their connection to the United States. The documents	Lawyers as a group have never been known to be the most physically fit professions. So perhaps that explains why this Request seems to totally misunderstand how gyms work. First, persons do not typically keep a "list" of all the gyms they attended for the last twelve years. The Respondent seems to be requesting that a list be made for this arbitration. Again, this is not the purpose of a document request, which is to request extant documents. Second, people typically do not keep a list of attendance at these gyms,	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The Ballantines' objection to this Request is unfounded. In their Bifurcation Response, the Ballantines asserted that "[their] connection to the Chicago area remained so strong after their move to Jarabacoa that they even joined a health club in Elk Grove Village and	The Request is granted. *** Se concede la solicitud.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References⁶	Comments			
			requested are relevant and material to assess that allegation.	<p>especially because such lists would be depressing. Such documents just would not be in the possession, custody, or control of the Ballantines.</p> <p>More fundamentally, this request is not material to the outcome. It is one thing for Michael Ballantine to testify that he has maintained a gym membership in the U.S. It is quite another to ask for records to show ever gym visit one has had for the last 12 years. Respondent can argue that Michael Ballantine has failed to regularly attend the gym, if it wants to. But this does not make his gym attendance material to the outcome. This is just another example of Respondent seeking any document that it hopes will prove its case. This is not the purpose of IBA Rules document requests.</p>	<p>were members from 2009 to 2013” Bifurcation Response, ¶ 33. The Dominican Republic is entitled to test this assertion by requesting information that shows how frequently the Ballantines made use of this membership. As the Ballantines note here, “Respondent can argue that Michael Ballantine has failed to regularly attend the gym, if it wants to.” To do this, the Dominican Republic needs access to the information requested. And since the “dominant” nationality test is one of comparison, it also should be entitled to seek the same information regarding gyms to which the Ballantines belonged in the Dominican Republic.</p> <p>Moreover, the assertion that the Ballantines could not obtain a list that demonstrates their attendance is not credible. Gyms frequently keep such lists, and, since the Ballantines already have submitted a letter from the gym to which they belonged from June</p>	

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
					2009 to March 2013 (<i>see</i> Ex. C-79) they should have no problem obtaining the remaining information requested.	
25.	Copies of the Ballantines' United States income tax returns, from 2005 to the present and copies of the Ballantines' Dominican income tax returns, from 2006 to the present or confirmation that such returns have not been presented and that the Ballantines have never paid taxes in the Dominican Republic.	Amended Statement of Claim ¶ 155 M. Ballantine 1st Statement at ¶ 91 Bifurcation Response ¶ 6, 34 M. Ballantine 2nd Statement at ¶ 11	The Ballantines have submitted that they have paid taxes in the United States as evidence of their primary financial ties to the United States. The documents requested are relevant and material to	The Ballantines object to this request. Respondent asserts that these documents are necessary to "assess th[e] allegation" that the Ballantines have paid taxes in the United States. But Respondent does not need copies of all tax returns from 2005 to the present to "assess" whether or not the Ballantines filed tax returns in the US during the 2010-2014 period during which the Respondent claims is the relevant period for assessing nationality. The purpose of document requests is not to demand any and all documents related to an allegation in order to "assess" its validity. The Ballantines have already presented their own testimony and an attestation from	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The Ballantines' tax returns would reflect their assets, and would allow the Dominican Republic to determine the location of the "economic center" of the Ballantines' lives, which is one of the elements that the Tribunal deemed relevant in its bifurcation ruling. The Ballantines have asserted that their tax returns showed that the center of their financial lives was in the United States (Bifurcation Response, ¶ 34); the requested documents would allow the Dominican Republic to test that proposition. That is precisely the purpose of the	The request is granted partially . The Tribunal's decision is limited to "[c]opies of the Ballantines' United States income tax returns, from 2010 to 2014." With respect to the reminder, the request is denied for lack of relevance.

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
			<p>assess that allegation.</p>	<p>their accountants to establish the fact that they filed taxes in the United States from 2010-2014. The DR is welcome to assert that such is insufficient to prove that the Ballantines actually did file tax returns, but it is not entitled to complete copies of those filings, let alone all filings from 2005 to the present – on the basis of a bland and generic assertion that such documentation is material to this Tribunal's jurisdictional consideration.</p> <p>Moreover, the Ballantines also object to the request for all Dominican tax returns, as there is no doubt that those returns have absolutely no bearing on whether or not the Ballantines paid taxes in the United States during the time period when the Respondent asserts that the Ballantines were not dominantly US citizens. Respondent's statement of relevance and materiality has nothing to do with Dominican taxes. In any</p>	<p>document production process (for each party to be able to test the other's assertions on evidentiary matters). The Ballantines' assertion to the contrary is just bizarre. Moreover, the mere filing of a tax return is not in and of itself sufficient to demonstrate that the Ballantines' financial lives were in one place or another. People file tax returns in different jurisdictions depending on whether they (or their companies) have commercial or financial activities there, but that does not necessarily say anything about where the <i>center</i> of the person's commercial or financial activities are.</p> <p>With respect to the request for documents related to payment of tax returns by the Ballantines in the Dominican Republic, the Dominican Republic agrees to withdraw that request.</p>	<p>***</p> <p>La solicitud se concede parcialmente.</p> <p>La decisión del Tribunal se limita a “[c]opias de las declaraciones de impuestos de los Ballantine en los Estados Unidos, desde 2010 hasta 2014.”</p> <p>Con respecto al resto, la solicitud es denegada por falta de relevancia.</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				<p>event, any Dominican tax returns are in the possession of Respondent and Respondent has not stated to the contrary. The Ballantines have no obligation to produce documents in Respondent's possession.</p> <p>Notwithstanding these objections, the Ballantines will produce documentation sufficient to show that they filed tax returns in the US from 2010 – 2014.</p>		
26.	Any document reflecting the Ballantines' assets, bank accounts, loans and credit instruments in the United States, in each year from 2005 to the present and any document reflecting the Ballantines' assets, bank accounts,	<p>Amended Statement of Claim ¶ 155</p> <p>M. Ballantine 1st Statement ¶¶ 89, 91</p> <p>Bifurcation Response ¶ 34</p> <p>M. Ballantine 2nd Statement at ¶¶ 12–14, 16</p>	The Ballantines have submitted the fact that they have maintained bank accounts and credit cards in the United States as evidence of	This again is an improper request. In many of the Respondent's requests, they assert that they want documents to "assess" an allegation of the Ballantines. Respondent is free to argue that the Ballantines have not meet their evidentiary burden for any particular allegation made by the Ballantines. But the purpose of document requests is not to submit any and all documents to assess an allegation of the other side. The	<p>The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request.</p> <p>The information requested is indeed relevant as it would enable the Dominican Republic to test the Ballantines' assertions on these matters. All that the Ballantines have shown is that they have bank accounts in the U.S., and that is not the relevant</p>	<p>The request is granted partially.</p> <p>The Claimants will produce any document reflecting the Ballantines' assets, bank accounts, loans and credit</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
	loans and credit instruments in the Dominican Republic, in each year from 2006 to the present.	Sur-reply on Bifurcation at 4	<p>their primary financial ties to the United States.</p> <p>The documents requested are relevant and material to assess that allegation.</p>	<p>Tribunal should reject this request on that basis alone.</p> <p>In addition, this Request is overly broad. Even if Respondent was allowed to just ask for any document it wanted to assess an allegation, the Request is far broader than what is necessary to assess an allegation. Keep in mind that the Respondent is not seeking a document showing the proof of an account generally during a particular time (because the Ballantines have already presented such evidence for a number of US-based financial accounts) but instead is asking for “any and all” documents “reflecting the Ballantines’ assets,” among many other documents. How is a document reflecting the Ballantines’ assets needed to assess a specific allegation about the Ballantines maintaining a bank account and credit card during the relevant periods. This is another example of Respondent just seeking</p>	<p>question. Rather, the relevant question is where the economic center of the Ballantines’ lives was, and this cannot be determined on the basis of the documents that the Ballantines have submitted to date. They redacted the relevant amounts of money, and the reports that they provided do not cover the entire time period (which is also relevant). Again, it makes no sense to argue (as the Ballantines do) that the purpose of document requests is not to assess the allegations of the other side. To the contrary, that is <i>precisely</i> the purpose of document requests — to make sure that one party has the information that it needs to properly evaluate and contest the allegations of the other side.</p>	<p>instruments in the United States, in each year from 2010 to 2014 and any document reflecting the Ballantines’ assets, bank accounts, loans and credit instruments in the Dominican Republic, in each year from 2010 to 2014.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>Los Demandantes</p>

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References ⁶	Comments			
				any possible document it can think of as part of a fishing expedition.		entregarán cualquier documento que refleje los activos, cuentas bancarias, préstamos e instrumentos de crédito de los Ballantine en los Estados Unidos, en cada año desde 2010 a 2014, y cualquier documento que refleje los activos, cuentas bancarias, préstamos e instrumentos de crédito de los Ballantine en la República Dominicana, en

Requesting Party: Dominican Republic						
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Documents Requests	Replies to Objections to Document Requests	Tribunal's Decision
		References⁶	Comments			
						cada año desde 2010 a 2014.

Request for documents relating to Merits						
27.	Any document to confirm ownership and mode of acquisition over the assets that the Ballantines consider are their “investment” in the Dominican Republic in relation to the claim, including but not limited to: ownership of land, ownership and control of domestic businesses, licenses and permits, debt, management, concession and revenue sharing, among other things.	Notice of Arbitration ¶ 22 Amended Statement of Claim ¶¶ 157, 159	The Ballantines have submitted that their investment in the Dominican Republic is comprised of ownership of land, ownership and control of domestic businesses, licenses and permits, debt, management, concession and revenue sharing, among other things. The documents requested are relevant and material to assess the	The Ballantines object to this request because it is overly broad, unduly burdensome, and vague to the extent it seeks "any" (which under the DR's definition means "any and all") documents concerning "ownership" and "mode of acquisition" of generically- defined assets or investments in the DR. The DR has failed to identify why such an expansively-worded request is relevant or material to this proceeding. How the Ballantines came to establish certain corporations has no bearing on this proceeding. This request is also improper because it is duplicative of, and even more broadly phrased than, the document requests that immediately follow. The Ballantines have the burden to establish they have a protected "investment" under CAFTA. The DR can make whatever arguments it chooses in this regard, but seeking any and all documents that relate to those investments is improper. Notwithstanding these objections, the Ballantines will undertake a reasonable search for specific documents that establish their	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of the specific assets upon which their claims are based”. The Dominican Republic confirms that the <i>breadth of the request</i> is appropriate as it does not refer to “any documents” in a vacuum, but rather limits the scope to documents that “confirm ownership and mode of acquisition over the assets that the Ballantines consider are their “investment” in the Dominican Republic in relation to the claim”. Similarly, proving ownership of the alleged investments in an investment arbitration is so fundamental that an objection to this request cannot be serious.	The Tribunal takes note. *** El Tribunal toma nota.

			investment claimed by the Ballantines.	ownership or control of the specific assets upon which their claims are based.		
28.	Corporate documents of Jamaca de Dios, S.R.L.; in particular Any document confirming ownership over the totality of the capital of said company, including but not limited to the shares transfer agreements by means of which the Ballantines acquired full ownership over the company.	Notice of Arbitration ¶ 12	The Ballantines have submitted that they solely own or control Jamaca de Dios, S.R.L. The documents requested are relevant and material to assess the investment claimed by the Ballantines.	The Ballantines object to this request as overly broad, unduly burdensome, and vague to the extent it seeks "any" document confirming "ownership" or "acquisition" of said company and to the extent it seeks "corporate documents" of JDD. It is unclear if the DR merely seeks the articles of incorporation for JDD or any other specific document that relates to the corporate form of JDD, or whether the DR seeks every document in the possession of JDD, as these could be considered "corporate documents." Use of such expansive language is rampant throughout the 85 requests submitted by the DR and is not appropriate under the IBA rules. The DR has also failed to identify why such an expansively-worded request is relevant or material to this proceeding. The manner in which the Ballantines established any corporation has no bearing on this proceeding. Notwithstanding these objections, and the objections to Request 27, which are incorporated	No order requested — the Ballantines agreed to produce responsive documents. The Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of the JDD.” In any event, the Dominican Republic provides the following comments on the relevance and scope of the request. To date the Ballantines have not provided documents confirming ownership over the totality of the capital of Jamaca de Dios, S.R.L. In this investment arbitration it is essential for the Dominican Republic to learn who the owners of such company are and in what percentages, for purposes of the Tribunal’s determination of whether the alleged investments are covered investments under the DR-CAFTA. Breadth of the Request: There is nothing overly broad about this	The Tribunal takes note. *** El Tribunal toma nota.

				here, the Ballantines will undertake a reasonable search for specific documents that establish their ownership or control of the JDD.	request. Again the Ballantines characterize a request for documents as overly broad, unduly burdensome and vague simply on the basis that it includes the term “any document”. But such term is not provided in isolation. The Dominican Republic is very specific in that it requests any document “confirming ownership over the totality of the capital of Jamaca de Dios, S.R.L.” Accordingly, the category of documents sought is in fact narrowly tailored; with that narrow category, it is entirely legitimate to request “any” document.	
29.	Corporate documents of Aroma de la Montaña, E.I.R.L.; in particular Any document confirming ownership over the totality of the capital said entity.	Notice of Arbitration ¶ 12	The Ballantines have submitted that they solely own or control Aroma de la Montaña, E.I.R.L. The documents requested are relevant and material to assess the	The Ballantines object to this request for the reasons more fully articulated in their responses to Requests 27 and 28. Notwithstanding these objections, the Ballantines will undertake a reasonable search for specific documents that establish their ownership or control of this company.	No order requested — the Ballantines agreed to produce responsive documents. The Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of [Aroma de la Montaña, E.I.R.L.]. For the same reasons provided above in its reply to Request 28, the Dominican Republic maintains its position that the scope of this request is appropriate, and that it is relevant.	The Tribunal takes note. *** El Tribunal toma nota.

			investment claimed by the Ballantines.			
30.	Corporate documents of Pino Cipres Investments S.R.L.; in particular Any document confirming ownership over the totality of the capital said entity.	Amended Statement of Claim ¶ 159	The Ballantines have submitted that they solely own or control Pino Cipres Investments S.R.L. The documents requested are relevant and material to assess the investment claimed by the Ballantines.	The Ballantines object to this request for the reasons more fully articulated in their responses to Requests 27 and 28. Notwithstanding these objections, the Ballantines will undertake a reasonable search for specific documents that establish their ownership or control of this company.	No order requested — the Ballantines agreed to produce responsive documents. The Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of [Pino Cipres Investments S.R.L.]. For the same reasons provided above in its reply to Request 28, the Dominican Republic emphasizes that the scope of this request is appropriate and that it is relevant.	The Tribunal takes note. *** El Tribunal toma nota.
31.	Corporate documents of Pina Aroma Investments S.R.L.; in particular	Amended Statement of Claim ¶ 159	The Ballantines have submitted	The Ballantines object to this request for the reasons more fully articulated in their responses to Requests 27 and 28. Notwithstanding these	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note.

	Any document confirming ownership over the totality of the capital said entity.		that they solely own or control Pina Aroma Investments S.R.L. The documents requested are relevant and material to assess the investment claimed by the Ballantines.	objections, the Ballantines will undertake a reasonable search for specific documents that establish their ownership or control of this company.	The Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of [Pina Aroma Investments S.R.L.]. For the same reasons provided above in its reply to Request 28, the Dominican Republic emphasizes that the scope of this request is appropriate and that it is relevant.	*** El Tribunal toma nota.
32.	Corporate documents of Upper Dreams Investments S.R.L.; in particular Any document confirming ownership over the totality of the capital said entity.	Amended Statement of Claim ¶ 159	The Ballantines have submitted that they solely own or control Upper Dreams Investments S.R.L. The documents requested are	The Ballantines object to this request for the reasons more fully articulated in their responses to Requests 27 and 28. Notwithstanding these objections, the Ballantines will undertake a reasonable search for specific documents that establish their ownership or control of this company.	No order requested — the Ballantines agreed to produce responsive documents. The Ballantines have agreed to “undertake a reasonable search for specific documents that establish their ownership or control of [Upper Dreams Investments S.R.L.]. For the same reasons provided above in its reply to Request 28, the Dominican Republic emphasizes that	The Tribunal takes note. *** El Tribunal toma nota.

			relevant and material to assess the investment claimed by the Ballantines.		the scope of this request is appropriate and that it is relevant.	
33.	The following documents concerning the real estate properties that the Ballantines purportedly acquired in connection with their real estate development projects in the Dominican Republic: acquisition contracts; copies of the certificates of title transferred to Jamaca de Dios; copies of the contracts by means of which any of such lands were later sold, in connection with the	Ex. C-031 Amended Statement of Claim ¶ 26 M. Ballantine 1st Statement at ¶ 18. Notice of Arbitration ¶ 41	The documents requested are relevant and material to assess the extent of the investment claimed by the Ballantines. The Ballantines have submitted Ex. C-31 which lists several properties allegedly acquired by the Ballantines for their real	The Ballantines object to this request as overly broad and unduly burdensome. The DR has failed to identify why such a broad swath of documents are relevant and material to this proceeding. In many of the Respondent’s requests, they assert that they want documents to “assess” an allegation of the Ballantines. Respondent is free to argue that the Ballantines have not meet their evidentiary burden for any particular allegation. But the purpose of document requests is not to seeks any and all documents related to that allegation in order to "assess" it. The Tribunal should reject this request on that basis alone. The Ballantines further object that this request is duplicative of other requests presented by the DR, including Request No. 51.	No order requested — the Ballantines agreed to produce responsive documents. The Ballantines have agreed to “search for documents establishing their ownership of the land intended for Phase 2 of JDD” and to “produce documentation establishing their sales of lots in Phase 1.” However the Ballantines have not agreed to provide documents that would identify the date of purchase of such properties. Relevance: Proof of ownership of the lots relevant to Phase1 and Phase 2 of Jamaca de Dios is essential to determine that those alleged investments are covered investments under DR-CAFTA. In addition, documents that would indicate the <i>date of purchase</i> of those real estate	The Tribunal takes note. *** El Tribunal toma nota.

	real estate project or otherwise; and indication of the real estate properties that the Ballantines continue to own in the Dominican Republic.		estate developments. It is not clear when or how the Ballantines acquired such properties, if they ever obtained title to such properties and if they retain title to such properties today.	The Ballantines acquisition of the land used to successfully develop Phase 1 of Jamaca de Dios is not at issue in this proceeding. It is unclear whether or not the DR is suggesting that the Ballantines do not own the land they claim to own, and it should be required to make its position clear before presenting such an expansive request. Notwithstanding these objections, the Ballantines undertake a reasonable search for documents establishing their ownership of the land intended for Phase 2 of JDD. The Ballantines will also produce documentation establishing their sales of lots in Phase 1.	properties is decisive for the Tribunal to assess the laws, regulations and environmental limitations in effect at the time of purchase of by the Ballantines of those lands. For example, Annex C-031 indicates that half of the land acquired by the Ballantines to develop Phase 2 was purchased <i>after</i> the Baiguate National Park was created. Precise information on the date of purchase of all the real estate properties acquired by the Ballantines in connection with their real estate development projects is thus highly relevant and material.	
34.	All promotional materials for Jamaca de Dios (including talking points, pitches, etc.)	Notice of Arbitration ¶ 32 Amended Statement of Claim ¶ 24 M. Ballantine 1st Statement at ¶ 19 Bifurcation Response ¶ 4	The documents requested are relevant and material to assess: (i) how the Ballantines marketed the project; (ii) importance, if any, placed by the Ballantines	The Ballantines object to this request as overly broad, unduly burdensome and irrelevant and immaterial to the issues in dispute in this proceeding. Again, the DR claims they are entitled to "assess" how the Ballantines planned and marketed their project. Relying solely on a putative right to "assess" as the basis for why multiple requests are allegedly material here is entirely insufficient. The Ballantines' "marketing" of the project has no bearing on this merits	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The Ballantines "marketing" materials for Jamaca de Dios are relevant and material. The Ballantines claim that "existence or nonexistence of promotional material for Phase 2 at any point prior to its approval by the MMA does not bear on whether or not Phase 2 was "envisioned" at any time.	The request is granted partially . The Claimants will produce all promotional materials for Jamaca de Dios (including talking points, pitches, etc.) which discuss

			on having become Dominican nationals; and whether (iii) "Phase 2" had been envisioned at the time.	of this proceeding. Phase 1 was approved, developed, and sold and promotional items relating to Phase 1 is not material. Also, there is no indication or showing that these documents "are reasonably believed to exist." This is a fishing expedition. One has to look through every type of document from an expansive period to see if any of those documents might contain such "promotional" information. Again, this is not what an IBA style request should require. Additionally, the existence of nonexistence of promotional material for Phase 2 at any point prior to its approval by the MMA does not bear on whether or not Phase 2 was "envisioned" at any time.	However, they have argued that right from the beginning of the development of their Phase 1 project, they had "envisioned" a second phase. See Notice of Arbitration ¶ 32; Amended Statement of Claim ¶ 24; M. Ballantine 1st Statement at ¶ 19; Bifurcation Response ¶ 4. Whether there is any evidence of such a vision, and the precise time at which the Phase 2 project was first ideated is relevant and material to determine whether the Ballantines' in fact held any expectations that they would develop a Phase 2.	the so called Phase 2. *** La solicitud se concede parcialmente . Los Demandantes entregarán todo el material promocional para Jamaca de Dios (incluidos los puntos de discusión, propuestas, etc.) que traten la llamada Fase 2.
35.	Any business plans related to the Ballantines' real estate developments, including any such plan submitted to the Dominican Authorities.	Amended Statement of Claim ¶ 24 M. Ballantine 1st Statement at ¶ 19 Notice of Arbitration ¶ 32	The documents requested are relevant and material to assess the scope of the Ballantines' project (and in particular	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any" business plans related to "developments." Any business plan relating to the successful development of Phase 1 is not at issue in this litigation. There is no requirement that business plans be submitted to the DR, and the existence of such plans is irrelevant	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The Ballantines have not presented contemporaneous business plans of their respective Jamaca de Dios Phase 1 and Phase 2 projects. To be clear, the	The request is granted Partially . The request is granted but limited to the production of economic plans for what the Parties' here

			<p>to determine if and when “Phase 2” had been envisioned).</p>	<p>and immaterial to the issues in this arbitration.</p> <p>Once again, the DR asserts the production of such documents are necessary to "assess" allegations made by the Ballantines. This generic contention of materiality is insufficient to mandate production of these documents.</p> <p>The Ballantines have already presented documents to establish a portion of their intended plans for the development plans Phase 2 of JDD, and those documents are already in the possession of the DR.</p>	<p>documents sought in this request are not in the possession of the Dominican Republic.</p> <p>Reasonableness: Business plans concerning the Ballantines’ Phase 1 and Phase 2 projects are sufficiently specific requests, which the Ballantines as developers of a commercial real estate mountain project must have. The Ballantines self-describe Jamaca de Dios as the gold-standard of mountain projects. It is surprising that they consider this request burdensome, considering that any diligent and sophisticated developer can be expected to have such business plans and to produce them without much difficulty.</p> <p>Relevance and materiality: The Ballantines must produce their business plans not because the Phase 1 project is at issue (it is not), but because one of the premises for the Ballantines’ allegation that their expectations about Phase 2 were legitimate and reasonable is their reference to their “vision” of Phase 2 during Phase 1. The Tribunal and the Dominican Republic are entitled to know whether such vision ever existed when the business plans for Phase 1 were drafted, and whether this was</p>	<p>refer as Phase 2 and those parts of the economic plan concerning what the Parties’ here refer as Phase 1 that refer (or are connected) to a future development of that project (Phase 2).</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>La solicitud se concede pero limitada a la entrega de planes económicos para lo que las Partes denominan aquí Fase 2 y a aquellas partes del plan económico que</p>
--	--	--	---	---	--	--

					communicated to Dominican authorities.	conciernan lo que las Partes aquí denominan Fase 1 que se refieran a (o estén conectadas con) un desarrollo futuro del proyecto (Fase 2).
36.	Any document submitted by the Ballantines in connection with their application to obtain tax-free status from CONFOTUR (in particular any preliminary economic and financial feasibility study or any certification from the Ministry of Environment submitted in connection with the feasibility of the project with respect to “Phase 2” specifically).	Amended Statement of Claim ¶ 73	The documents requested are relevant and material to assess the scope of the Ballantines project as submitted to CONFOTUR .	The Ballantines object to this request as any documents submitted to CONFUTOR, which is a Dominican government agency, should be in the possession of Respondent.	No order requested — the Dominican Republic withdrew this request.	The Tribunal takes note. *** El Tribunal toma nota.

<p>37.</p>	<p>All correspondence with, and studies conducted by, Antilia Environmental Consultants.</p>	<p>Amended Statement of Claim ¶ 32</p>	<p>The document requested may be material/relevant to the nature of the Ballantines' due diligence (if any), and the Ballantines' knowledge of/familiarity with the permit application process</p>	<p>The Ballantines object to this request as overly broad, unduly burdensome and irrelevant to the extent it seeks "all" correspondence with Antilia, an entity that assisted the Ballantines in obtaining the permit for Phase 1 of JDD.</p> <p>The approval of Phase 1 is not at issue in this arbitration and the Ballantines' "familiarity" with the permitting process is immaterial to this matter.</p> <p>The requested documents are not relevant or material to the claims presented here. The DR has not contended that the Ballantines did not follow MMA procedure in their application for Phase 2.</p>	<p>The Dominican Republic clarifies that this request (for all correspondence with, and studies conducted by, Antilia Environmental Consultants) relates to the Ballantines' Phase 1 and Phase 2 projects.</p> <p>The Ballantines' knowledge of and familiarity with the permit application process and the information provided by Antilia Environmental Consultants concerning the above-mentioned projects are <i>relevant</i> to determine whether the Ballantines were made aware by their consultants of the existing environmental conditions and limitations at the time the Ballantines commenced their application process for the Phase 2 project. This request is <i>material</i> for the determination of whether the Ballantines as developers and investors conducted an adequate due diligence process, or whether their "vision" to develop Phase 2 was unrealistic.</p>	<p>The request is granted partially.</p> <p>The Claimants will produce documents limited to correspondence and reports discussing the permitting process.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>Los Demandantes entregarán los documentos que se limiten a correspondencia e informes que traten del proceso de permisos.</p>
------------	--	--	--	--	---	--

<p>38.</p>	<p>Any document referring to any report(s) or study/studies conducted by any of the Ballantines' advisors related to the environmental status of the lands where the Ballantines' real estate developments were to be constructed; including but not limited to any study referring specifically to protected areas and slopes restrictions.</p>	<p>Amended Statement of Claim ¶ 32 Amended Statement of Claim ¶ 104</p>	<p>The documents requested are relevant and material to assess the level of due diligence carried out by the Ballantines in connection with their expansion project.</p>	<p>The Ballantines object to this request as overly broad and burdensome and vague to the extent it seeks "any document referring to any report" "by any of the Ballantines' advisors related to the environmental status" of the Ballantines' properties.</p> <p>Additionally, the Ballantines' land in Phase 1 is not at issue in this proceeding. Also, there is no indication or showing that these documents "are reasonably believed to exist." This is a fishing expedition. The Ballantines have already submitted to the Respondent the report of its environmental expert in connection with its request for expansion of JDD and the DR is in possession of that report. Contention that the DR needs to "assess" certain assertions made by the Claimants is insufficient to support this request.</p>	<p>There is nothing vague or overly broad about this request, which seeks information concerning the environmental status of the lands where the Ballantines planned to construct their projects. The request is very particular insofar as it seeks information "referring specifically to protected areas and slopes restrictions". Yet again the Ballantines object to this request on the basis of the term "any"— as if that term <i>ipso facto</i> signals over-breadth.</p> <p>The documents requested are sought to determine whether the Ballantines requested and received any studies, <i>at all</i>, about the environmental requirements and limitations of the lands where they were planning to build the Phase 2 project. As explained in the column on comments, this request is entirely relevant and material to assess the level of due diligence carried out by the Ballantines in connection with their Phase 2 project.</p>	<p>The request is granted partially.</p> <p>The Claimants will produce documents referring specifically to protected areas and slopes restrictions.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>Los Demandantes entregarán los documentos que se refieran específicamente a áreas protegidas y restricción relacionadas con la pendiente.</p>
------------	--	--	--	--	--	--

<p>39.</p>	<p>Descriptions of due diligence efforts and any studies, assessments or due diligence reports related to the commercial, financial, legal and/or environmental feasibility of the Ballantines’ real estate development projects, including “Phase 2”, the resulting studies, assessments or due diligence reports, as well as any document discussing the contents of such studies, assessments or reports, both prior the acquisition of the lands were the project was to be developed, and copies of all invoices to the Ballantines and/or Jamaca de Dios for due diligence, legal</p>	<p>Amended Statement of Claim ¶¶ 32, 37, 69, 104, 119, 298.</p>	<p>The documents requested are relevant and material to assess the level of due diligence carried out by the Ballantines in connection with their expansion project.</p>	<p>This request does not seek a document but a "description" of "efforts and any studies..." The Ballantines maintain no such "descriptions" and cannot be asked to create such a description now.</p> <p>Even if this were a request for a document or documents, the Ballantines object because the request would be dramatically overly broad and unduly burdensome. This request does not identify a "narrow and specific" category of documents, but instead seeks several different and expansive categories of documents across several different time periods. This request looks like it was draft for a US federal court litigation and not an UNCITRAL arbitration guided by the IBA rules.</p> <p>Additionally, Phase 1 of JDD was approved by MMA and any reports or studies concerning Phase 1 are irrelevant to this proceeding, and are sought by the DR to increase the cost and effort necessary to respond to these requests.</p>	<p>The Ballantines objects that the items requested in this category refers not to documents but to a “description.” As defined in the IBA Rules, the term “document” means “<i>a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means . . .</i>” IBA Rules, p. 4 (emphasis added). To clarify what should be obvious, the Dominican Republic is requesting information “of due diligence efforts and any studies, assessments or due diligence reports related to the commercial, financial, legal and/or environmental feasibility of the Ballantines’ real estate development projects, including “Phase 2” — of course all in <i>writing</i>.”</p> <p>Breadth of the Request: This request is sufficiently narrow and specific as it identifies the above-described documents by specifying that they should be “studies, assessments or diligence reports” related to those fields (<i>i.e.</i>, commercial, financial, legal and/or environmental) that would be reasonable for a duly diligent developer to assess before acting on a baseless “vision”. Moreover, the</p>	<p>The request is granted partially.</p> <p>The Claimants will produce documents about any studies, assessments or due diligence reports related to the commercial, financial, legal and/or environmental feasibility of the Ballantines’ real estate development projects regarding the so called “Phase 2”.</p> <p>***</p>
------------	---	---	--	--	---	---

	<p>analysis, and environmental studies conducted in connection with the real estate developments.</p>				<p>request is narrow as it refers to the feasibility of the Ballantines’ real estate projects, including Phase 2. The timespan of the documents sought is not specified because only the Ballantines know if and when they requested and received such assessments and documents, at any time.</p> <p>Relevance: This request is relevant to the current case considering that the Ballantines argue that they reasonably expected to receive an environmental permit for the Phase 2 project (See Amended Statement of Claim ¶¶ 37, 70, 283).</p> <p>Due diligence assessments and reports concerning the Ballantines’ Phase 2 project would be relevant for the determination of whether, as investors and developers, the Ballantines acted diligently, and whether their expectations were at all reasonable. If those assessments and reports do not exist, the Ballantines should disclose that fact. But if any such assessments and reports do exist, the Ballantines should produce them. Either way, the Tribunal and the Dominican Republic ought to know whether the Ballantines requested any due diligence</p>	<p>La solicitud se concede parcialmente.</p> <p>Los Demandantes entregarán los documentos sobre estudios, evaluaciones o informes de <i>due diligence</i> relacionados con la viabilidad comercial, financiera, legal y/o medioambiental de los proyectos de desarrollo inmobiliario referentes a la llamada “Fase 2”.</p>
--	---	--	--	--	---	---

					assessments, and should have access to any relevant documents.	
40.	Copy of the Topographical Map (<i>Plano Topográfico</i>) mentioned in the Empaca Redes report submitted as Ex. C-014	Ex. C-014	The Empaca Redes report refers to a topographical map detailing the slopes of the area slated for the extension of the Ballantines' real estate project.	Claimants will endeavor to produce this map.	No order requested — the Ballantines agreed to produce responsive document.	The Tribunal takes note. *** El Tribunal toma nota.
41.	Any document indicating that the Ballantines had no intention to build on land where slopes exceeded 60 percent (including but not limited to evidence that the foregoing was communicated to the Dominican Environmental Authorities).	Amended Statement of Claim ¶ 97	The documents requested are relevant and material to assess the Ballantines' assertion that they never intended to build on lands where slopes exceeded 60	The Ballantines object to this request to the extent that it requests proof of a negative and to the extent that it implies that any inference should be drawn from the existence or nonexistence of any document communicating the intentions of the Ballantines. A request that essentially asks for "anything that confirms that one intended to follow the law" is not a proper request for this UNCITRAL proceeding. As Respondent is aware, Claimants developed 90 lots as part	No order requested — the Ballantines agreed to produce responsive documents. The documents requested here refer to a simple binary question. The Ballantines either declared to Dominican environmental authorities that they had no intention of building on land where slopes exceeded 60 percent, or they did not. The Ballantines' objections to this request is really an objection not to the	The Tribunal takes note. *** El Tribunal toma nota.

			percent and that they communicate that fact to the Dominican Environmental Authorities.	of Phase 1 of JDD and did not build on slopes in excess of 60 degrees. This historical practice is more relevant to this proceeding than any putative document that confirms the Claimants' intention to do the same for Phase 2. Indeed, Claimants were never provided with Terms of Reference for Phase 2 and thus were not provided with the opportunity to confirm their intention to continue to abide by the environmental regulations of the DR. Notwithstanding these objections, the Ballantines will undertake a reasonable search for any such document in their possession.	materiality, relevance or scope of the request itself, but rather to the arguments that the Dominican Republic might make once the documents are produced. The Ballantines are reminded that each party will have forthcoming opportunities to plead their case. In any event, we note that the Ballantines agree to undertake a reasonable search for any such document sought in this request and in their possession.	
42.	Any document prepared by Eric L. Kay in connection with slope conditions and the requirements to construct what the Ballantines have termed the "Phase 1" and "Phase 2" roads.	Kay Report ¶ 2–12	The documents requested are relevant and material to assess the level of due diligence carried out by the Ballantines in connection with their expansion project.	The Ballantines object to this request as overly broad and burdensome and vague to the extent it seeks "any" document prepared by Eric L. Kay with respect to the "requirements" for construction of the Phase 1 and intended Phase 2 roads. The DR does not explain why these documents are necessary to "assess the statements" of Eric Kay. The DR approved the Phase 1 road and it was built by the Ballantines without any objection or issue from the DR.	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The request refers to "[a]ny document prepared by Eric L. Kay in connection with slope conditions and the requirements to construct what the Ballantines have termed the 'Phase 1 and 'Phase 2' roads". The Ballantines characterize the request of the Dominican Republic as overly broad but fail to acknowledge an element of	The Request is granted . *** Se concede la solicitud.

			<p>Moreover, the documents are relevant and material to assess the statements of Mr. Eric L. Kay in his expert report.</p>	<p>Notwithstanding these objections, the Ballantines will undertake a reasonable search for documents in Mr. Kay's possession discussing slope issues relating to the Phase 1 road.</p>	<p>the request that substantially narrows its scope : “in connection with slope conditions ...”.</p> <p>It is reasonable for the Dominican Republic to ask that the Ballantines produce the requested documents prepared by Mr.Kay simply by focusing on the documents that he may have prepared concerning the <i>slope conditions</i>, and the requirements to build the roads in the Phase 1 and Phase 2 projects. Moreover, please note that Mr. Kay was the Ballantines’ contractor and currently serves as an expert witness for them in this arbitration. These factors suggest there would be no heavy burden imposed on the Ballantines to produce the documents sought in this request.</p> <p>The Ballantines also attribute to the question the Dominican Republic the position that these documents are “necessary to ‘assess the statements of Eric Kay’”. However, the Dominican Republic never provided such a justification for this document request. As explained, the documents sought are relevant to “assess the <i>level of due diligence</i> carried out by the Ballantines in connection with their expansion project” — <i>not</i> to assess Mr. Kay’s testimony.</p>	
--	--	--	--	---	---	--

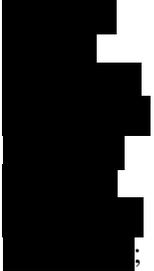
					<p>We note that the Ballantines have agreed to undertake a reasonable search for documents in Mr. Kay's possession discussing slope issues relating to the Phase 1 road.</p> <p>However, as the Ballantines have not agreed to produce the documents in their or Mr. Kay's possession regarding slope issues <i>relating to the Phase 2 road</i>, for the reasons articulated above, the Dominican Republic insists that these documents too should be produced.</p>	
43.	<p>Any document that supports the Ballantines' assertion that "[t]he Ballantines were at all times focused on ensuring not only that their development complied with all applicable Dominican laws, but that it also be beneficial to the environment and to the local community."</p>	<p>Amended Statement of Claim ¶ 27</p>	<p>The documents requested are relevant and material to assess the accuracy of the statement.</p>	<p>The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any" document relating to the Ballantines' commitment to the environment and the community.</p> <p>Once again, Respondent asserts that it wants documents to "assess" the "accuracy" of Claimants' contentions. This is an insufficient justification for documents in this proceeding and the Tribunal should reject this request on that basis alone.</p> <p>Every document in the Ballantines' possession arguably is consistent with their focus on the environment and on improving the community of Jarabacoa. The Ballantines also</p>	<p>No order requested — the Dominican Republic withdrew this request.</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

				<p>object to the extent that it implies that any inference should be drawn from the existence or nonexistence of any document.</p> <p>Perhaps most significantly, the DR has entirely failed to explain how this request is material to issues in dispute in this proceeding.</p>		
44.	<p>Any document referencing when the Ballantines first became aware of the adoption of the Decree 571-09 and/or the creation of Baiguate National Park.</p>	<p>Notice of Arbitration ¶ 61</p> <p>Amended Statement of Claim ¶ 211</p>	<p>The documents requested are relevant and material to assess the level of due diligence carried out by the Ballantines in connection with their expansion project, and their personal knowledge of the adoption of the Decree and creation of the Park.</p>	<p>This request is overly broad and ill-defined. The Request seeks “any” document “referencing” a topic. Respondent has made clear that an “any” request is an “any and all” request.</p> <p>Respondent made no effort to limit this request in a meaningful way.</p> <p>The Ballantines further object to the materiality and relevancy of this request, especially in light of Respondent’s unambiguous statement, in the fifth paragraph of their Statement of Defense, that “the entire issue of the Baiguate National Park, which perhaps has been featured by the Ballantines for its optical or theatrical value, is ultimately a mere distraction or red herring.” The DR insists that the existence of the Park has no bearing on the appropriateness of their denial of the Ballantines’ request to expand. As such, documents that</p>	<p>It is material to the outcome of this case to learn whether, as a developer of mountain projects in Jarabacoa, the Ballantines knew or should have known that the Baiguate National Park had already been established when they began their application process for an environmental permit for the Phase 2 project of Jamaca de Dios. To this end, any document evincing when the Ballantines first learned that the Baiguate National Park was created would be crucial to assess whether the Ballantines acted as a duly diligent investor and developer of mountain projects.</p> <p>In an effort to minimize the relevance of the fact that the Ballantines attempted to develop their Phase 2 project inside an environmentally protected area (where it is not permissible under Dominican law to build <i>luxury homes</i> and <i>multi-floor constructions</i>), the Ballantines cite</p>	<p>The Request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>

			<p>purport to establish when the Ballantines became aware of Decree 571-09 necessarily has no bearing on this matter.</p> <p>The Ballantines’ knowledge of the issuance of Decree 571-09 does not bear upon when the Ballantines first understood that the DR would refuse their expansion request on the basis of such Decree.</p> <p>There is no dispute that the DR made no reference to the existence of the Park as a basis for refusal to grant the Ballantines’ expansion request until January of 2014. There is no dispute that the DR continues to assert that the Park is immaterial to its defense of the Ballantines’ claims. Indeed, the DR contends that “the considerations relating to the Park were not the central ones motivating the reconsideration denial (or even the permit denial); the permit would not have been granted even if the Baiguate National Park had never existed.” (SOD par. 4).</p> <p>Moreover, the DR itself confirms in its SOD that “under Law 202-04 on Protected Areas, land in a “Category II” protected area like the Baiguate National Park can be used for many</p>	<p>statements of the Dominican Republic out of context. The reference by the Dominican Republic to the Baiguate National Park being “featured by the Ballantines for its optical or theatrical value” (see the Ballantines’ responses to this request) refers to the Ballantines’ narrative, and not to the merits of an additional reason provided by the Dominican Government for confirming the denial of an environmental permit for the Ballantines Phase 2 project, i.e., that it the location of the proposed project would be in an environmentally protected area, and therefore impermissible. It is false that the Dominican Republic has ever insisted, as the Ballantines claim in their responses to this request, that “the existence of the Park has no bearing on the appropriateness of their denial of the Ballantines’ request to expand”. In fact the Dominican Republic clearly stated that “[i]n its third reconsideration denial letter, in addition to reiterating the technical factors that had justified the original determination to deny the permit, <i>the Ministry also alluded to the fact that the property proposed by the Ballantines for the project was within an environmentally-protected area known as the “Baiguate National</i></p>	
--	--	--	---	---	--

			<p>purposes, including ecotourism.”(SOD par. 142). As such, the Ballantines’ “awareness” of the decree is entirely irrelevant and immaterial to these claims.</p> <p>Respondent remained silent until 2014 before asserting that the Park was a basis to refuse the permit, and yet it comes to this Tribunal seeking documents that show when the Claimants knew of the Decree – not when the Claimants knew that the Respondent would invoke the Decree as a basis for refusing its permit. Indeed, the Respondent did not invoke the Park when its CONFUTOR approved the expansion with the agreement of the MMA. It was only more than 3 year after the Ballantines sought treatment similar to all other mountain development projects in the DR that the Respondent chose to invoke the existence of the Park.</p>	<p>Park” (See Statement of Defense, par. 4). Despite the clarity of this statement and multiple other passages of the Statement of Defense (See, <i>e.g.</i>, paras. 83, 99-101, 106, 140, 141) the Ballantines somehow say that the Dominican Republic concedes that “the Park is immaterial to its defense of the Ballantines’ claims”.</p> <p>To be clear, it is and it has always been the position of the Dominican Republic that the Park <i>is indeed highly relevant and material</i> to its defense of the Ballantines’ claims. Why else would the Dominican Republic have denied the environmental permit for the Phase 2 project on the basis (<i>inter alia</i>) that the Ballantines intended to develop a project within the boundaries of the Baiguate National Park? In addition, the Dominican Republic has presented witness evidence concerning the creation of the Baiguate National Park, to dispel the preposterous allegation by the Ballantines that the Park was created for the very purpose of preventing construction of the Ballantines’ Phase 2 project.</p> <p>Considering the Dominican Republic’s position that the Baiguate National Park constituted a material ground not to grant the environmental permit for</p>	
--	--	--	--	--	--

					<p>the Phase 2 project, the Ballantines' objections on the basis of lack of materiality and relevance of the current request have no grounding. The Dominican Republic thus reiterates its request for documents indicating when the Ballantines first learned about the creation of the Baiguata National Park. This is relevant to an assessment of whether the Ballantines acted diligently or irresponsibly in connection with their proposed Phase 2 project.</p> <p>The Ballantines in their objections to this request allude to the categories of protected areas and to the timing of the Dominican Republic's explanation to the Ballantines that their property was inside the Park. However, the Ballantines fail to explain how those allegations make this request any less relevant or material.</p>	
45.	Any document or information related to the economics of the services offered, the logistics and internal control on the operations and the customer base of [REDACTED]	Amended Statement of Claim ¶¶ 178, 183	The documents requested are relevant and material to assess the Ballantines' allegations related to	The Ballantines object to this request as overly broad, burdensome and entirely vague in its demand for documents concerning "economics" or "services" or "operations" of third parties to this dispute. Respondent appears to want to deny or debate that the mountain projects identified	The documents sought in this request (or parts thereof) are reasonably believed to exist and to be in the possession of the Ballantines. Claimants have alleged the uniqueness of their project by comparison to [REDACTED]. In doing so they have referred to the	<p>The Request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>

			 projects which they have claimed to be comparable.	<p>by the Ballantines as comparables are appropriate comparables.</p> <p>But there is no indication or showing that these documents “are reasonably believed to exist” in the possession of the Ballantines. This is the epitome of a fishing expedition. The Ballantines object to the extent this request implies that the Ballantines should possess documents relating to other mountain residential projects in the DR that were approved by the DR or allowed to build without permits.</p> <p>Moreover, the DR is in possession of documents that were submitted by these entities when they sought approval for their projects.</p>	<p>number of lots in those projects, and the status of their operations (See par. 54-63). Moreover, in describing the “Jamaca Brand and Opportunities for Expansion” Michael Ballantine describes how the Ballantines “were approached [by] numerous mountain property owners in the region seeking our assistance to help successfully develop their projects”. (M.Ballantines Statement, par. 30).</p> <p>In reference to the business opportunity of acquiring  Michael Ballantines further notes that he agreed to a due diligence period with the owner of that property, which included “<i>thoroughly investigating all aspects of the company.</i>” (M. Ballantine Statement, ¶ 34 (emphasis added))</p> <p>In addition, this request is narrow as it refers specifically to documents “related to the economics of the services offered, the logistics and internal control on the operations and the customer base” of the named projects.</p>	
46.	Any document referencing any agreement or proposal made by the Ballantines to	M. Ballantine 1st Statement ¶ 78	The documents requested are relevant and material to	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any" document and objects to the extent it implies	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note.

	the townspeople of Jarabacoa related to their easement rights.	Amended Statement of Claim ¶ 153	assess the Ballantines' allegations in connection with the alleged expropriation of the road they constructed for the original Jamaca de Dios development.	that such an easement right exists for the "townspeople of Jarabacoa." Notwithstanding these objections, the Ballantines will undertake a reasonable search for documents in their possession which confirm their agreement to allow certain defined access to their property.	The Dominican Republic notes that the Ballantines have agreed to "undertake a reasonable search for documents in their possession which confirm their agreement to allow certain defined access to their property". The Dominican Republic disagrees with the Ballantines' objection that this request is overly broad and burdensome. <i>First</i> , the request is narrow as it refers to agreements between the Ballantines and the townspeople of Jarabacoa, relating specifically to the townspeople's easement rights. <i>Second</i> , the Dominican Republic would likely know if the Ballantines have any such agreement or proposals as described in this request.	*** El Tribunal toma nota.
47.	Copies of any notes, aides-memoire, or summaries of any meetings between the Ballantines and Ministry or Municipality officials.	Amended Statement of Claim ¶¶ 83, 88, 109, 110 M. Ballantines 1st Statement ¶¶ 39, 46, 51, 59, 60, 72	The documents requested are relevant and material to ascertaining the Ballantines' contemporaneous impressions of such meetings,	The Ballantines object to this request as overly broad and unduly burdensome as it seeks documents relating to "any" meetings over an undefined period of time. The Ballantines have testified to their recollection of specific meetings that are relevant to the issues in dispute in this proceeding. Notwithstanding the inappropriate scope of this request, with respect to any such specifically- identified	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that the Ballantines have agreed with respect to any specifically- identified meeting, to undertake a reasonable search for notes or summaries in their possession."	The Tribunal takes note. *** El Tribunal toma nota.

			which are referenced throughout the Amended Statement of Claim.	meeting, the Ballantines will undertake a reasonable search for notes or summaries in their possession.	The meetings identified by the Dominican Republic include the following: <ul style="list-style-type: none"> - Alleged meeting between F.Santana and M. Ballantine (See Statement of Claim ¶83) - Meeting of February 14, 2014 between Michael Ballantine and Minister Fernández (See Statement of Claim ¶87) - Meeting dated 29 August 2013, between Michael Ballantine and inspection team from the Ministry of Environment. (See Statement of Claim ¶109) - Meeting dated 13 September 2013, between Michael Ballantine, others and Zacarías Navarro. (See Statement of Claim ¶110) 	
Request for documents relating to Damages						
48.	Any document reflecting the financial situation of Jamaca de Dios, S.R.L. from the date of its incorporation until	Notice of Arbitration ¶ 4, 41 Amended Statement of Claim ¶ 5	The Ballantines have alleged that Jamaca de Dios was a resounding	The Ballantines object to this request as overly broad, unduly burdensome and impermissibly vague to the extent it seeks "any" document "reflecting the financial situation" of JDD. This request does not square with the IBA's requirement that such	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request.	The request is granted partially . The Claimants will produce

	<p>the present. These would include, but are not limited to, financial statements and income tax statements submitted to the Dominican Republic.</p>		<p>commercial success. The documents requested are relevant to the Ballantines' damages claims; in particular the issue of the speculative nature of the Ballantines' claimed loss of profits, and the DCF valuation.</p>	<p>requests contain: "a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist." The request is also not defined temporally in any way, making it even more expansive and inappropriate. These documents are irrelevant and immaterial to the issues in this arbitration, and have no bearing on the defense of speculation asserted by the DR. The Ballantines object to any request for income tax statements submitted to the DR as the DR should be in possession of such statements.</p>	<p>Breadth of the Request: The Ballantines err when they characterize this request as "overly broad, unduly burdensome and impermissibly vague." Not only is the category of documents requested well defined, but they are records that all businesses operating in the Dominican Republic are required to keep. Thus, the request imposes no additional burden.</p> <p>Notwithstanding the foregoing, the Dominican Republic agrees to narrow the scope of the request, to Jamaca de Dios' financial statements. As to the temporal limitations, the Dominican Republic reiterates that it is asking for the financial statements from the date of the company's incorporation until the present.</p> <p>Relevance: Contrary to what the Ballantines submit, the financial situation of Jamaca de Dios, S.R.L. is not only relevant, it may very well be outcome-determinative with respect to the damages allegations. The Ballantines and their expert have claimed damages on the basis of lost profits and DCF valuation. Jamaca de Dios, S.R.L.'s past financial performance is of evident relevance to that allegation all the more so given that the Ballantines have claimed time and time again in their submissions</p>	<p>Jamaca de Dios, S.R.L. financial statements from the date of its incorporation until the present.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>Los Demandantes entregarán los estados financieros de Jamaca de Dios, S.R.L. desde la fecha de su constitución hasta el presente.</p>
--	--	--	--	---	---	--

					<p>that the original project was a “resounding success,” and the fact that they are claiming damages based on alleged past performance.</p> <p>Notwithstanding the foregoing, the Dominican Republic agrees to narrow the request, by dropping its request for documents relating to taxation in the Dominican Republic.</p>	
49.	<p>Any document reflecting the financial situation of Aroma de la Montaña, E.I.R.L. from its incorporation to the present. These would include, but are not limited to, financial statements and income tax statements submitted to the Dominican Republic.</p>	<p>Amended Statement of Claim ¶ 5</p>	<p>The Ballantines have alleged that Aroma de la Montaña was a successful restaurant which was expanded in anticipation of the expansion of the project.</p> <p>The documents requested are relevant to the Ballantines’ damages claims, in particular the</p>	<p>The Ballantines object to this request as overly broad, unduly burdensome and impermissibly vague to the extent it seeks "any" document "reflecting the financial situation" of Aroma de La Montana. This request does not square with the IBA’s requirement that such requests contain: “a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist.” The request is also not defined temporally in any way, making it even more expansive and inappropriate. These documents are irrelevant and immaterial to the issues in this arbitration, and have no bearing on the defense of speculation asserted by the DR. The Ballantines object to any request for income tax statements submitted to the DR as the</p>	<p>The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request.</p> <p><i>Breadth of the Request:</i> The Ballantines characterize this request as “overly broad, unduly burdensome and impermissibly vague.” The Ballantines purposefully disregard the fact that the request is for documents responsive to a specific type of information: the financial situation of a specific person (Aroma de la Montaña, E.I.R.L.), during a specific timeframe (incorporation to the present). Also, the Dominican Republic has specified the types of documents it expects would be available: income statements and financial statements. As stated above, no additional burden is placed on the</p>	<p>The request is granted partially.</p> <p>The Claimants will produce Aroma de la Montaña, E.I.R.L. financial statements from the date of its incorporation until the present.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p>

			<p>issue of the reasonableness of any alleged investment made in expanding the restaurant.</p>	<p>DR should be in possession of such statements. The Ballantines have not sought lost profits associated with their restaurant and have already provided documentation to define the costs associated with expansion of the restaurant.</p>	<p>Ballantines by this request, as these are documents that they are legally required to keep.</p> <p>Notwithstanding the foregoing, the Dominican Republic agrees to narrow the scope of the request, by limiting it to the financial statements from the date of incorporation of Aroma de la Montaña, E.I.R.L. until the present.</p> <p>Relevance: The Ballantines suggest that that because they aren't directly claiming for lost profits in regard to the restaurant, this somehow makes the financial situation of the entity irrelevant. They seem to forget that they themselves have put forward the theory that it was because of their immense success that they decided to expand the restaurant to make room for all of the additional business driven by the larger expansion of the project.</p> <p>The Ballantines object to this request alleging that they "have already provided documentation to define the costs associated with expansion of the restaurant". However, what they consider sufficient documentation to define the costs associated with the expansion of the restaurant is nothing but a bare list in a <i>Word</i> document of purported expenses without any documentary support.</p>	<p>Los Demandantes entregarán los estados financieros de Aroma de la Montaña, E.I.R.L. desde la fecha de su constitución hasta el presente.</p>
--	--	--	--	--	---	---

					Whatever in fact was spent on the expansion of the restaurant would not have been reasonable unless the economics based on past performance supported such investment. This is relevant to the Dominican Republic's theory that the Ballantines failed to mitigate the alleged losses claimed and, instead, contributed to them.	
50.	Any document reflecting the financial situation of Pino Cipres Investments SRL, Pina Aroma Investments SRL, and Upper Dreams Investments SRL from the date of their incorporation until the present. These would include, but are not limited to, financial statements and income tax statements submitted to the Dominican Republic.	Amended Statement of Claim ¶ 159	The Ballantines have alleged that these companies were incorporated in connection with the expansion project. The documents requested are relevant to determine whether or not these companies ever operated, and, if so, the extent of	The Ballantines object to this request for the reasons set forth in their responses to Requests No. 48 and 49.	No order requested — the Dominican Republic withdrew this request. The Dominican Republic withdraws its request under this category, on the understanding that the Ballantines are not claiming any damages with regard to these companies.	The Tribunal takes note. *** El Tribunal toma nota.

			their operations.			
51.	All supporting documentation for the Jamaca de Dios Land Purchases included in C-31; including but not limited to purchase contracts and copies of the Certificates of Title that confirm that title was transferred to Jamaca de Dios.	Amended Statement of Claim ¶ 290 Ex. C-031 Statement of Defense ¶¶ 76, 322, 326 FN 766	The documents requested are relevant to determine the fact of acquisition, their timing and the cost of acquisition of each of the properties listed in Ex. C-031, which in turn are relevant to the assessment of damages.	The Ballantines object to this request as overly broad and burdensome and vague to the extent it seeks "all supporting documentation" for JDD land purchases. The Ballantines further object that this request is duplicative of Request 33 and the Ballantines fully incorporate their objections and response to Request 33 here. This duplication is indicative of the unreasonably expansive nature of these document requests.	<p>Relevance: The Ballantines have submitted a list of “land purchases” Ex. C-031. Such list purportedly represents the extension of the land that it had acquired to develop its projects. However, the Ballantines fail to substantiate with actual documents or records <i>when</i> such lands were acquired, <i>how</i> they were acquired or <i>if</i> in fact the Ballantines held or continue to hold title to those lands. These issues are relevant to damages assessment: the extent of the land they actually owned and the price purchased for such land is relevant to quantum, the timing of the acquisition is relevant to issues related to mitigation and/or contribution.</p> <p>Breadth of the Request: The Ballantines seem to take issue with the use of the term “all supporting documentation.”</p> <p>As stated repeatedly above, this sort of formulation does not make the request “expansive.” Rather, the request is specifically targeted to documents supporting the acquisition of the properties that the Ballantines list in their exhibit C-031.</p>	<p>The request is granted partially.</p> <p>The Claimants will produce purchase contracts and copies of certificates of title, or transactional documents related to the modality of acquisition used by the Ballantines to the relevant purchase</p> <p>***</p> <p>La solicitud se concede parcialmente.</p>

					<p>“Supporting documentation” is intended to cover the transactional documents relevant to whatever modality of acquisition was used by the Ballantines for the relevant purchase(s).</p> <p>In part, the Dominican Republic’s damages theory is that if any damage compensation is owed — <i>quod non</i> — the Ballantines would only be entitled to amounts corresponding to their actual losses of funds invested to purchase the raw, undeveloped land, offset by the current assessed market value of the land.</p> <p>Whether or not the request is duplicative of, or subsumed within, request no. 33 should not be an issue, as the Ballantines need only provide the relevant documents once.</p>	<p>Los Demandantes entregarán los contratos de compra y copias de certificados de los títulos de propiedad o documentos transaccionales relacionados con la modalidad de adquisición utilizada por los Ballantine para la compra pertinente.</p>
52.	Real estate tax declarations for the properties included in C-31.	Amended Statement of Claim ¶ 290 Ex. C-031 Statement of Defense ¶ 76	The documents requested are relevant to determine the fact of acquisition, their timing and the cost of acquisition of each of	The Ballantines object to any request for tax declarations because the DR should be in possession of any such tax declarations. The Ballantines further object to the relevance of the costs of their acquisition of property at JDD.	<p>No order requested — the Dominican Republic withdrew this request.</p> <p>The Dominican Republic withdraws its request under this category. However, it does not accept the Ballantines suggestion that cost of acquisition is not relevant. On the contrary, under the Dominican Republic’s theory of damages, if cost of acquisition would</p>	<p>The Tribunal takes note.</p> <p>***</p> <p>El Tribunal toma nota.</p>

			the properties listed in Ex. C-031 which are relevant to the assessment of damages.		be the only permissible reference to determine the amount of compensation owed, assuming <i>arguendo</i> that any compensation were owed.	
53.	Any documentation related to sales made by Jamaca de Dios of lots in the original Jamaca de Dios Project (“Phase 1”), including but not limited to the relevant sales agreements.	Notice of Arbitration ¶ 4 Amended Statement of Claim ¶¶ 51, 292, 293	The documents requested are relevant and material to the fact of sales, their timing, the size of the lots and the price at which the “Phase 1” lots were sold. The Ballantines use such historical “Phase 1” sales as a basis for their projections.	The Ballantines object to this request as overly broad, unduly burdensome, and impermissible vague to the extent it seeks "any document related to sales" within Phase 1. Notwithstanding this objection, the Ballantines will undertake a reasonable search for sales agreement for lots sold in Phase 1 of JDD.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to “undertake a reasonable search related to the sales agreement for lots sold in Phase 1 of JDD.” As has been stated before, the <i>breadth of the request</i> is appropriate as it does not refer to “any documents” in a vacuum but limits the scope exclusively to documents relating “to sales made by Jamaca de Dios of lots in the original Jamaca de Dios Project”.	The Tribunal takes note. *** El Tribunal toma nota.

54.	Any documentation related to expressions of interest by potential investors in “Phase 2” of Jamaca de Dios.	Amended Statement of Claim ¶ 53	The Ballantines base their damages assessment on projections. The documents requested are relevant and material to assess the reliability of such projections.	The Ballantines will undertake a reasonable search for responsive documentation in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.
55.	All supporting documentation related to any sale made by the Ballantines of lands/lots not included in “Phase 1”, originally purchased for the development of the Ballantines’ real estate developments.	Statement of Defense ¶ 323	The documents requested are relevant and material to damages calculations.	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any document related to any sale". The Ballantines further object that the sale of any land outside of Phase 1 is irrelevant and immaterial to any damage calculations presented in this proceeding.	No order requested — the Ballantines agreed to produce responsive documents. For the reasons already stated above, the Ballantines objections to the scope of the requests are inapposite. The Dominican Republic is seeking very specific documents. The documents requested under this category would relate to lands in what would have been Phase 2 which have subsequently been sold. The relevance of this information is that any compensation owed to the Ballantines would have to	The Tribunal takes note. *** El Tribunal toma nota.

					take into account what the Ballantines have already realized on their purported investment.	
56.	All documents relating to the Ballantines' experience in development and construction.	M. Ballantine 1st Statement at ¶ 27–28 Amended Statement of Claim ¶¶ 64, 294	The documents requested are relevant and material to damages calculations. The Ballantines base their projections of certain damages on their purported prior experience in construction.	The Ballantines object to this request as overly broad, unduly burdensome and impermissibly vague to the extent it seeks "any document relating to .. experience in development and construction." The Ballantines fully developed Phase 1 of JDD, constructed the highest quality mountain road in the DR, and built several of the homes in Phase 1. It need not produce every document related to those endeavors. This is simply not a request that seeks a "narrow and specific" category of documents.	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. The Dominican Republic agrees to narrow the scope of this request to clarify that what it is interested in is the experience that the Ballantines had purportedly acquired in construction of homes for sale. The Ballantines are the ones who have put this issue in play by claiming damages for builders EBT and claiming prior results in construction based on the fact that they built “several of the luxury houses that were sold in Phase 1.” Contrary to what the Ballantines contend, the Dominican Republic should be allowed to test that proposition, particular when the existence or not of prior, comparable and successful experience is essential to ascertaining damages.	The request is denied for lack of relevance and being too broad. *** Se deniega la solicitud por falta de relevancia y por ser demasiado amplia.
57.	All documents related to the costs of infrastructure required for the	Farrell 1st Report at 11 FN 27	The documents requested are relevant and	The Ballantines object to this request because counsel for Respondent sought this material prior to the submission of its Statement of	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note.

	construction of “Phase 2”		material to assess the Ballantines’ damages calculations.	Defense in order to facilitate its expert's report preparation. The Ballantines made the documents referenced in Farrell's report at footnote 27 available to Respondent at that time. Notwithstanding this objection, the Ballantines will undertake a reasonable search for any additional documents in their possession.	The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search for any additional document not already provided related to the cost of infrastructure required for the construction of “Phase 2.” It is important to clarify, however, that no information related to footnote 27 of the Farrell report was made available during our exchange prior to the submission of our Statement of Defense.	*** El Tribunal toma nota.
58.	All documents relating to the Ballantines’ efforts to sell the remaining “Phase 1” lots; including confirmation that those lots had never been sold before.	Amended Statement of Claim ¶ 297	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for their alleged inability to sell certain “Phase 1” lots.	The Ballantines object to this request as overly broad and impermissibly vague. The Ballantines have been forced to leave the DR as a result of the discriminatory and inequitable treatment they faced as owners of JDD. Whether or not the lots currently in their inventory have been sold and reacquired by the Ballantines pursuant to contract rights is irrelevant and immaterial to this proceeding.	Breadth of request: The request is narrow and specific. For purposes of greater clarity, the Dominican Republic notes additionally that it is requesting information relating specifically to the four lots in Phase 1 that the Ballantines claim to still hold in inventory, and with respect to those four lots, it is requesting documents that indicate what steps have been taken to sell those lots and confirmation on whether or not those lots are re-acquisitions. Relevance and Materiality: The request is relevant to the issue of causation, as the Ballantines cannot	The request is granted partially , in the following terms: With respect to four lots in the so called Phase 1 that the Ballantines claim to still hold in inventory, and with respect to those four lots, Claimants will produce all

					<p>claim damages from the Dominican Republic that it has not caused.</p>	<p>documents that indicate what steps have been taken to sell those lots and confirmation on whether or not those lots are re-acquisitions.</p> <p>***</p> <p>La solicitud se concede parcialmente, en los términos siguientes:</p> <p>Con respecto a cuatro lotes en la llamada Fase 1 que los Ballantine afirman conservar en su inventario, los Demandantes entregarán todos los documentos que indiquen qué pasos se han tomado para</p>
--	--	--	--	--	--	---

						venderlos y confirmación sobre si esos lotes son o no readquisiciones.
59.	Any document related to the planned operation of Hotel Taino under the brand Small Luxury Hotels of the World and to the engagement of Hospitality Management Services for the management of such hotel; including but not limited to contracts, engagements, letters of intent, memoranda of understanding, communications, emails, correspondence, etc.	Amended Statement of Claim ¶¶ 6, 69 Farrell 1st Report at 14	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from operation of the hotel.	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "all documents related to" operation of the planned hotel. Notwithstanding these objections, the Ballantines will undertake a resonable search for documents establishing intended and potential engagement of these service providers to promote and manage the hotel.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search “for documents establishing intended and potential engagement of these service providers to promote and manage the hotel.”	The Tribunal takes note. *** El Tribunal toma nota.

60.	Any supporting documents related to the projected construction costs of Hotel Taino.	Amended Statement of Claim ¶¶ 6, 69 Farrell 1st Report at 14 FN 45	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from operation of the hotel.	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.
61.	Documents related to the expressions of interest of potential buyers of Mountain Lodge; including but not limited to any contracts, letters of intent, options to purchase, terms sheets or evidence of down payments related to the future acquisition of apartments in Mountain Lodge.	Amended Statement of Claim ¶¶ 6, 71 Notice of Arbitration ¶ 68	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from the sales of units in Mountain Lodge.	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.

62.	Any document related to the engagement of Hospitality Management Services for the management of Mountain Lodge’s pool of rental units; including but not limited to contracts, engagements, letters of intent, memoranda of understanding, communications, emails, correspondence, etc.	Amended Statement of Claim ¶¶ 6 Farrell 1st Report at 15	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from management of Mountain Lodge pool of rental units.	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any document related to" the engagement of HMS. Notwithstanding this objection, the Ballantines will undertake a reasonable search for documents establishing intended and potential engagement of this service provider to promote and manage the hotel.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search “for documents establishing intended and potential engagement of this service provider to promote and manage the [property].” Please note that this request refers to Mountain Lodge, which we understand is an apartment complex, not a hotel.	The Tribunal takes note. *** El Tribunal toma nota.
63.	Any supporting document related to the projected construction costs of Mountain Lodge.	Amended Statement of Claim ¶¶ 6, 71 Farrell 1st Report at 16 FN 51	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from the	The Ballantines object to this request because counsel for Respondent sought this material prior to the submission of its Statement of Defense in order to facilitate its expert's report preparation. The Ballantines made the documentation referenced in Farrell's report at footnote 51 available to Respondent at that time. Notwithstanding this objection, The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search related to the projected construction costs of Mountain Lodge. It is important to clarify, however, that the only “support” for footnote 51 of the Farrell report that we received was	The Tribunal takes note. *** El Tribunal toma nota.

			sales of units in Mountain Lodge.		a <i>Word</i> document with no discernable author and with only one line relating to Mountain Lodge: “Mountain Lodge Construction Costs US\$2,000,000.00”.	
64.	Any document containing the quotes and plans prepared by David Almanzar in connection with the construction of Mountain Lodge and copies of the contract entered into between David Almanzar and the Ballantines for such works; any other quote, plan or contract between the Ballantines and David Almanzar related to the Jamaca de Dios development.	Amended Statement of Claim ¶ 71 Almanzar 1 st Statement ¶¶ 3–5	The documents requested are relevant and material to damages calculations, and to assess the timing of the Ballantines’ plans related to Mountain Lodge and the extent of works carried out related thereto.	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.
65.	Any document containing the offer presented to Wesley Proch by Michael Ballantine to become Operations Manager for the	Proch 1st Statement ¶ 3	The documents requested are relevant and material to	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. ***

	construction of the Mountain Lodge and the extension of the Jamaca de Dios development.		damages calculations. The documents requested are relevant and material to assess the timing of the plans related to Mountain Lodge and the extension of the Jamaca de Dios development, and to the extent of works carried out related thereto.			El Tribunal toma nota.
66.	Any document relating to the timing of Wesley Proch's and Rachel Ballantine's move back to Jarabacoa for Mr. Proch's Operations Manager position.	Proch 1st Statement ¶ 3	The documents requested are relevant and material to damages calculations. The documents	The Ballantines object to this request as irrelevant and immaterial to the issues in dispute in this proceeding. The Ballantines have put in evidence regarding this issue. Respondent can challenge that evidence but do not have the right to ask for documents for every allegation made by the Ballantines to prove. Respondent	The Dominican Republic notes that the Ballantines acknowledge that they have submitted evidence regarding Wesley Proch's and Rachel Ballantine's move back to Jarabacoa for Mr. Proch's Operations Manager position, yet at the same time they claim that such fact is immaterial. It is difficult to reconcile these positions.	The Request is granted . *** Se concede la solicitud.

			requested are relevant and material to assess the timing of the plans related to Mountain Lodge and the extension of the Jamaca de Dios development.	can argue that the Ballantines have not met their burden.	The Proch couple's move back to Dominican Republic, and specifically its timing, is relevant and material to assess the timing of the plans related to Mountain Lodge and the extension of the Jamaca de Dios development. Such timing is in turn relevant to an assessment of damages, particularly in regard to mitigation and contribution.	
67.	Any document related to the hiring of mason workers, drivers, carpenters, project managers, and administrative assistants; the purchase of earth-moving equipment, trucks for earthmoving and material transportation, power tools, tool sheds, a gasoline tank for machinery, and shipping containers filled with extra on-site materials for	Proch 1st Statement ¶ 6 Amended Statement of Claim ¶ 52	The documents requested are relevant and material to damages calculations. The documents requested are relevant and material to assess the expenditures made in connection with Mountain Lodge and	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any document related to" the multiple issues listed in the request. Notwithstanding these objections, the Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Dominican Republic withdrew this request. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search related to the referenced expenditures.	The Tribunal takes note. *** El Tribunal toma nota.

	building; and the signing of a 5-year lease for a warehouse in Jarabacoa in connection with the expansion of the Jamaca de Dios real estate development.		the extension of the Jamaca de Dios development, and to the extent of works carried out related thereto.			
68.	Any document related to the preparation of the “second apartment project” to be built by the Ballantines’ in the lower part of the mountain; in particular evidence of contracting of individuals and payment of their fees for the development of that concept.	Proch 1st Statement ¶ 9 Amended Statement of Claim ¶¶ 6, 25	The documents requested are relevant and material to damages calculations. The documents requested are relevant and material to assess the timing of the plans related to the Second Apartment complex, and to the extent of works carried out	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Dominican Republic withdrew this request.	The Tribunal takes note. *** El Tribunal toma nota.

			related thereto.			
69.	Any document related to the engagement of Hospitality Management Services for the management of the Lower Apartment Complex’s pool of rental units; including but not limited to contracts, engagements, letters of intent, memoranda of understanding, communications, emails, correspondence, etc.	Amended Statement of Claim ¶¶ 6, 72 Farrell 1st Report at 18	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from management of the Lower Apartment Complex’s pool of rental units.	The Ballantines object to this request as overly broad and burdensome to the extent it seeks "any document related to" the engagement of HMS. Notwithstanding this objection, the Ballantines will undertake a reasonable search for documents establishing intended and potential engagement of this service provider to promote and manage the hotel.	No order requested — the Dominican Republic withdrew this request. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search “for documents establishing intended and potential engagement of this service provider to promote and manage the [property].” Please note that this request refers to the Lower Apartment Complex, which we understand is an apartment complex, not a hotel.	The Tribunal takes note. *** El Tribunal toma nota.
70.	Any supporting documents related to the projected construction costs of the Lower Apartment Complex.	Amended Statement of Claim ¶¶ 6, 72 Farrell 1st Report at 17 FN 58	The documents requested are relevant and material to damages calculations. The Ballantines	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Dominican Republic withdrew this request.	The Tribunal takes note. *** El Tribunal toma nota.

			are seeking damages for lost profits from the sales of units in the Lower Apartment Complex.			
71.	Documents related to the timing of the Ballantines' decision to carry out the expansion of the Aroma de la Montaña restaurant. These would include, but are not limited to, business plans, drawings, and contracts for engaging of contractors to make the drawing and complete the works.	Notice of Arbitration ¶ 40 Amended Statement of Claim ¶¶ 5, 68 Ex. C-048	The Ballantines have alleged that the Aroma de la Montaña restaurant was expanded in anticipation of the expansion of the project. The documents requested are relevant to the Ballantines' damages claims, in particular the issue of the reasonable	The Ballantines object to this request and overly broad and unduly burdensome in that every document relating to the expansion of the restaurant is in some way "related to" the timing of the expansion. It is unclear how the specific documents included in the second half of the request relate to the issue of timing. As such, the Ballantines object to this request as vague and irrelevant to the issues in dispute in this proceeding	The Amended Statement of Claim boldly states that "[t]he Ballantines undertook the restaurant expansion <i>solely</i> in anticipation of the increasing number of homeowners and visitors to Jamaca De Dios with its Phase 2 expansion." (Amended Statement of Claim ¶ 68). Hence, the timing of the Aroma expansion efforts is particularly important to test the Ballantines' case. Regarding documents listed as potential examples of responsive documents (that is, business plans, drawings, and contracts for engaging of contractors to make the drawing and complete the works), one would assume that if contractors were engaged to make the drawings and complete the works, it was because at that time the decision had already been made. However, this list is intended to be merely illustrative.	The Request is granted . *** Se concede la solicitud.

			ss of any alleged investment made in expanding the restaurant.			
72.	Documents, including applications and permits received, related to the permitting of the expansion of the Aroma de Montaña Restaurant.	Amended Statement of Claim ¶ 300	<p>The Ballantines are claiming costs for the expansion of the Aroma de Montaña Restaurant.</p> <p>The documents requested are relevant to determining whether they in fact obtained the required permits for expansion works for which they are claiming damages.</p>	The Ballantines object to any request for documents relating to permitting as the DR should be in possession of such documents. Moreover, restaurant expansion permitting issues are irrelevant to the claims and defenses and damages presented in this proceeding.	The Ballantines are claiming damages for expansion costs. Expansion would have required a permit under Dominican law to be legal. The Dominican Republic has no record of such permit having been requested, much less granted. If the expansion works were undertaken illegally, the Ballantines cannot purport to now claim to obtain reimbursement from the Dominican Republic for such expenses.	<p>The Request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>

73.	Documents related to the expansion of the Aroma de Montaña Restaurant, including but not limited to purchase orders, invoices and payment records.	Amended Statement of Claim ¶¶ 300, 301 Ex. C-048	The Ballantines are claiming costs for the expansion of the Aroma de la Montaña Restaurant. The documents requested are relevant to determining whether the expansion works were actually carried out and the costs incurred related thereto.	The Ballantines object to this requests as overly broad and burdensome to the extent it seeks "documents related to expansion" of the restaurant as that is not a narrowly defined request. Notwithstanding this objection, The Ballantines will undertake a reasonable search for documents in their possession that document the costs of the expansion.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search related to the referenced expenditures.	The Tribunal takes note. *** El Tribunal toma nota.
74.	Documents related to leases, offers to lease, letters of intent, memoranda of understanding relating to the management and operation of the	Amended Statement of Claim ¶¶ 300, 301 M. Ballantine 1st Statement ¶ 85.	The Ballantines are claiming costs for the expansion of the Aroma de la Montaña Restaurant.	The Ballantines object to this request as seeking information irrelevant and immaterial to this proceeding. The Ballantines have made no damage claim for lost income relating to operation of the restaurant. The requested documents bear no relation to the expansion of the restaurant.	The Dominican Republic requests that the Tribunal order the Ballantines to produce documents responsive to this request. <i>Relevance and Materiality:</i> As noted by the Dominican Republic's damages expert, the Ballantines cannot both seek reimbursement from the	The Request is granted. *** Se concede la solicitud.

	Aroma de Montaña Restaurant.		The documents requested are relevant and material to damages calculations.		Dominican Republic of the costs for the expansion of the Aroma de la Montaña Restaurant <i>and</i> collect rent from its new operators for the expanded restaurant.	
75.	Any document, including agreements, letters of intent, memoranda of understanding, related to the joint venture plans between [REDACTED] and the Ballantines.	Amended Statement of Claim ¶¶ 39 a), 305 Rodriguez 1st Statement at 1 M. Ballantine 1st Statement at ¶ 32-36	The Ballantines are claiming lost profits from the [REDACTED] lost opportunity. The documents requested are relevant and material to determine what such opportunity consisted of, its timing, and the causes for the failure of the transaction.	The Ballantines object to this requests as overly broad and burdensome to the extent it seeks "any document" related to ... joint venture plans" between [REDACTED] and the Ballantines. Notwithstanding this objection, the Ballantines will undertake a reasonable search for documents in their possession that document the negotiated terms of such venture.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search for documents in their possession that document the negotiated terms of the [REDACTED] venture.	The Tribunal takes note. *** El Tribunal toma nota.

76.	Any document, including agreements, letters of intent, and memoranda of understanding, that would suggest that ██████ was included within the ██████ venture.	Farrell 1st Report at 20 FN 69	The Ballantines are claiming lost profits from the ██████ lost opportunity. The documents requested are relevant and material to determine what such opportunity consisted of.	This is an example of a fishing expedition by Respondent. The Ballantines object to this request as irrelevant and immaterial to the matters at issue in this proceeding. The Ballantines have presented evidence of their intended venture with ██████. The DR has provided no reason to believe that any document would exist that concerns a specific portion of the ██████ project.	The Ballantines' expert included specific damages for the "Las Tetas" development. According to Mr. Farrell, that development is somehow related to the ██████ venture. The documents requested would allow the Dominican Republic to understand what such opportunity consisted of. The Ballantines are claiming damages for such venture, hence documents related thereto are both relevant and material.	The Request is granted . *** Se concede la solicitud.
77.	Any document, including agreements, letters of intent, and memoranda of understanding showing that the letter of intent was extended beyond its initial term.	Amended Statement of Claim ¶ 39 a) Rodriguez 1st Statement at 1 M. Ballantine 1st Statement at ¶ 32-36 Farrell 1st Report at 20	The Ballantines are claiming lost profits from the Paso Alto lost opportunity. The documents requested are relevant and material to determine	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note. *** El Tribunal toma nota.

			the relevant timing and the causes for the failure of the transaction.			
78.	Any document related to the projected construction costs of the infrastructure related to [REDACTED]	Farrell 1st Report at 20	The documents requested are relevant and material to damages calculations. The Ballantines are seeking damages for lost profits from the sales of [REDACTED] lots.	The Ballantines object to this requests as overly broad and burdensome to the extent it seeks "any document" related to costs. Notwithstanding this objection, the Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines have agreed to undertake a reasonable search for documents related to the projected construction costs of the infrastructure related to [REDACTED].	The Tribunal takes note. *** El Tribunal toma nota.
79.	Any document, related to other mountain property owners having sought assistance and/or to partner	M. Ballantine 1st Statement ¶¶ 30, 31	The Ballantines state that other mountain property owners in	Again, the Respondent cannot assert as a document request documents that are designed to prove the case of the Ballantines. If Respondent maintains that the Ballantines have	No order requested — the Ballantines agreed to produce responsive documents. The Dominican Republic notes that, despite their objections, the Ballantines	The Tribunal takes note. ***

	with the Ballantines.		Jarabacoa wanted to work with them. The documents requested are relevant and material to damages calculations related to brand diminution.	not met their burden, they should say so. Nevertheless, the Ballantines will undertake a reasonable search for documents in their possession.	have agreed to undertake a reasonable search for documents in their possession related to other mountain property owners who sought assistance from, and/or the opportunity to partner with, the Ballantines.	El Tribunal toma nota.
80.	Any document/studies /marketing analyses that suggest that the public perception of the Ballantines and Jamaca de Dios’ reputation has been tainted.	Farrell 1st Report at 21	The documents requested are relevant and material to damages calculations related to brand diminution.	Respondent is free to argue that the Ballantines have not met their burden with respect to this issue. But a request demanding that the Ballantines prove their allegations is not a proper document request. In addition, the request is overly broad and ill-defined. This request talks about documents which “suggest” something about a public perception. Such a request is not for a narrow category of documents and as such should be rejected.	The Ballantines have made a claim for damages related to brand diminution, which must be based on something other than mere belief. If such documents exist, the Dominican Republic asks that they be shared.	The request is denied for being too vague. *** Se deniega la solicitud por ser demasiado vaga.
81.	Documents related to the “Phase 1” road expenditures, including but not	Amended Statement of Claim ¶¶ 308, 309	The documents requested are relevant and	The Ballantines will undertake a reasonable search for documents in their possession.	No order requested — the Ballantines agreed to produce responsive documents.	The Tribunal takes note.

	limited to purchase orders, invoices, and payment records.	Farrell 1st Report at 23 Farrell 1st Report Schedule 12	material to damages calculations. The Ballantines are requesting damages based on those expenditures.			*** El Tribunal toma nota.
82.	Documents related to the “Phase 2” road expenditures, including but not limited to purchase orders, invoices, and payment records.	Amended Statement of Claim ¶¶ 308, 309 Farrell 1st Report at 23 Farrell 1st Report Schedule 12	The documents requested are relevant and material to damages calculations. The Ballantines are requesting damages based on those expenditures.	The Ballantines object to this request because their application for permission to expand to Phase 2 was denied, and the road was not constructed. Nevertheless, the Ballantines have presented evidence that supports their claim that the construction costs for Phase 2 would have been less than those incurred for Phase 1.	No order requested — the Dominican Republic withdrew this request. The Dominican Republic withdraws its request under this category, on the understanding that the Ballantines have clarified that the Phase 2 Road was not constructed, and that expenditures in connection thereto were in fact <i>not</i> incurred.	The Tribunal takes note. *** El Tribunal toma nota.
83.	Documents related to the assets, other than lands —which are covered above— that were	Proch 1st Statement ¶ 6	The documents requested are relevant and material to	The Ballantines object to this request as being overly broad and ill-defined. This request when examined asks for any and all “Documents related to the assets” This could ostensibly	As stated above, under the Dominican Republic’s theory of damages, the relevant parameter for damages calculation in this case would be investment amount. Insofar as an asset	The request is granted partially .

	<p>alleged to have been originally purchased for the developments of the Jamaca de Dios projects but have been subsequently sold.</p>	<p>Amended Statement of Claim ¶ 52 M. Ballantine 1st Statement ¶ 85</p>	<p>damages calculations.</p>	<p>mean any manner of document related to anything. The Ballantines assets are plenary here and thus any document related to an asset is any document in this case.</p> <p>The Ballantines further object to this request as irrelevant and immaterial to the damage calculations asserted in the proceeding.</p>	<p>has been subsequently sold, the value received from such sale would offset the investment amount. This information is therefore relevant and material.</p>	<p>The Claimants will produce documents but limited to the specific purchases of equipment mentioned in paragraph 6 of Proch's witness statement.</p> <p>***</p> <p>La solicitud se concede parcialmente.</p> <p>Los Demandantes entregarán los documentos pero se limitarán a las compras específicas del equipo mencionado en el párrafo 6 de la declaración testimonial de Proch.</p>
--	---	--	------------------------------	---	---	---

84.	Any document, not otherwise covered above, that substantiate the alleged investment amounts, projections or alleged costs for which the Ballantines are claiming damages and that were used as a basis for the damages calculations of the Ballantines' damages expert.	Statement of Defense ¶ 326 Farrell 1st Report Exhibit 2	The documents requested are relevant and material to damages calculations.	<p>The Ballantines object to the request as vague and nonspecific, and as an inappropriate "catch-all" request that is inconsistent with the IBA rules . The Ballantines have presented evidence sufficient to establish the amount of their damages resulting from the Treaty violations of the DR.</p> <p>The Respondent is free to argue that the Ballantines have not met their burden of proof with regard to damages. But a request that seeks any and all document in any way related to damages that we have already not asked for is improper.</p> <p>This request shows the improper nature of Respondent's requests generally. Respondent essentially every document – and to the extent that a fish might have been missed in the expedition, Respondent wants to make clear that it demands any document. This is not how document requests work.</p>	<p>Contrary to what the Ballantines would like to believe, the Dominican Republic is simply attempting to obtain information that would enable it to test the assumptions, projections and parameters that have led to the Ballantines' damages calculations. At this time those calculations are entirely unsupported and based on pure conjecture. For the preparation of Tim Hart's expert report on damages, the Dominican Republic asked the Ballantines for the relevant background information, but received documents that for the most part consisted merely of internally produced documents and references to conversations.</p>	<p>The Request is granted.</p> <p>***</p> <p>Se concede la solicitud.</p>
85.	Financial documentation to confirm that the Ballantines had the capital or access to funding to execute the expansion of	Statement of Defense ¶ 326	The documents requested are relevant and material to damages calculations.	<p>The Ballantines object to this request of overly broad and vague. The documents request simply do not impact the "degree of certainty" of projections presented and are irrelevant and immaterial to the issues in this proceeding.</p>	<p>The Ballantines' damages projections are based on the assumption that they had the capital to make the future investments they were planning. The Ballantines' damages expert even goes as far as to say that he did not include a cost of debt component in his</p>	<p>The Request is granted.</p> <p>***</p>

	Jamaca de Dios in the way proposed.		The Ballantines are seeking damages for lost profits from several ventures. The documents requested are relevant to the degree of certainty of the relevant projections.		projections. This request is relevant and material to assess the Claimants' damages projections, and particularly the assumption that there would be no debt.	Se concede la solicitud.
--	-------------------------------------	--	--	--	---	---------------------------------