**IN THE UNITED STATES DISTRICT COURT**
**FOR SOUTHERN DISTRICT OF NEW YORK**

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| JOHN S. SHEPARD FAMILY TRUST, through John S. Shepard and Lawrence Jaffe, as Co-Trustees,<br><br>Plaintiff,<br><br>Vs.<br><br>NH HOTELS USA, INC., NH HOTEL GROUP, S.A., and JOLLY HOTELS U.S.A., INC.,<br>Defendants. | Civil Action No.: 19-cv-9026 (JSR)<br><br>**AMENDED CIVIL ACTION COMPLAINT**<br><br>**DEMAND FOR JURY TRIAL** |

Plaintiff, John S. Shepard Family Trust, through John S. Shepard and Lawrence Jaffe, as Co-Trustees ("Plaintiff"), by and through the undersigned counsel, hereby brings this action against Defendants, NH Hotels, USA, Inc., NH Hotel Group, S.A., and JOLLY HOTELS U.S.A., INC., ("Defendants"), pursuant to the Cuban Liberty and Democratic Solidarity Act ("LIBERTAD Act"), for trafficking in Plaintiff's confiscated property located in Cuba and in support hereof alleges as follows:

## NATURE OF ACTION

1. Plaintiff brings this civil action against Defendants for unlawful trafficking in Plaintiff's confiscated property in violation of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 ("Act"), and specifically Title III of the Act, codified at 22 U.S.C. §§ 6081–6085.

2. Plaintiff holds a certified claim (a copy of which is annexed hereto as **Exhibit 1**) from the Foreign Claims Settlement Commission ("FCSC") for property that was expropriated by the Fidel Castro regime in 1959, including a hotel which is in use today. Plaintiff has never

received any compensation – much less adequate or effective compensation - for the use by Defendants of its property.[1] Defendants use and continue to profit from the confiscated property by, among other things, operating the hotel in cooperation with Grupo Caribe, the state-run tourism company of Cuba.

3. The Act, which became effective March 12, 1996 and Title III of the Act, 22 U.S.C. §§ 6081–6085, permits Plaintiff to bring private actions against any person who knowingly and intentionally traffic in confiscated property without the authorization of any United States national who holds a claim to the property. However, Plaintiff has not yet had the opportunity to pursue compensation for the certified claim because, until recently, private rights of action were suspended pursuant to the authority given to the President of the United States under the Act.

4. As of May 2, 2019, a complete lifting of the suspension became effective permitting assertion of an action under Title III of the LIBERTAD Act.

5. Plaintiff now brings this statutory action based upon its certified claim to obtain the compensation it is rightfully due under the Act as a result of Defendants' trafficking in confiscated property in violation of the Act.

## JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as Plaintiff's claim arises under the laws of the United States, specifically 22 U.S.C. § 6021, *et seq.*, and the amount in controversy exceeds the sum or value of $50,000.00, exclusive of interest, costs, and attorneys' fees.

7. This Court has personal jurisdiction over NH Hotels, USA, Inc. because it is a

[1] Congress established the FCSC, a quasi-judicial, independent agency within the Department of Justice, which adjudicates claims of U.S. nationals against foreign governments for expropriation and other issues.

corporation registered with the Secretary of State of New York, with an office at 22 East 38th, New York, NY 10016, and regularly transacts business within New York, and regularly avails itself of the benefits of its presence in New York, including ongoing construction and renovation of its property in the City, County and State of New York and entering into construction and renovation contracts, and licensing agreements in the City, County and State of New York.

8. This Court has personal jurisdiction over NH Hotel Group, S.A. pursuant to NY CPLR § 302 (1) and (4) (2018) because it transacts business within the state or contracts anywhere to supply goods or services in the state; or it owns, uses or possesses any real property situated within the state. Moreover, NH Hotel Group, S.A. maintains and carries on continuous and systematic contacts with New York, regularly transacts business within New York, and regularly avails itself of the benefits of its presence in New York.

9. Alternatively, in the event that the Defendant NH Hotel Group, S.A. is not subject to jurisdiction in any state's courts of general jurisdiction this Court also has personal jurisdiction over NH Hotel Group, S.A. pursuant to Fed. R. Civ. P. 4(k)(2) since this claim arises under federal law and exercising jurisdiction is consistent with the United States Constitution and laws.

10. This Court has personal jurisdiction over Jolly Hotels U.S.A., Inc., pursuant to NY CPLR § 302 (1) and (4) (2018) because it is a Delaware corporation registered with the Secretary of State of New York with its principal executive office located at 22 East 38th Street, New York, New York 10016. Defendant, Jolly Hotels U.S.A., Inc. transacts business within New York, and regularly avails itself of the benefits of its presence in New York, including ongoing construction and renovation of its property in the City, County and State of New York, entering into construction and renovation contracts, and licensing agreements in the City, County and State of New York.

11. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), because Defendant resides in this District and conducts relevant business and activities in this District.

12. Venue is also proper in this District under 28 U.S.C. § 1391(b)(3).

**PARTIES**

13. Plaintiff, John S. Shepard Family Trust, through its Co-Trustees John S. Shepard and Lawrence L. Jaffe, is a resident of Florida.

14. Plaintiff, John S. Shepard Family Trust, through its Co-Trustees John S. Shepard and Lawrence L. Jaffe, is a U.S. National pursuant to 22 U.S.C. § 6023(15)(B).

15. Defendant, NH Hotels USA, Inc., is a foreign corporation, which maintains a place of business as NH Hotels USA, Inc., c/o Jolly Hotels USA, 22 East 38 Street, New York, NY 10016.

16. Defendant, NH Hotel Group, S.A., is a Spanish corporation with headquarters in Madrid, Spain, operating over 350 hotels in 28 countries, including the NH Collection New York Madison Avenue located at 22 East 38 Street, New York, NY 10016.

17. Defendant, Jolly Hotels U.S.A., Inc., is a foreign corporation, which maintains its principal executive office at 22 East 38 Street, New York, NY 10016.

18. Significantly, all three Defendants maintain their principal office at the same address, share the same officers, directors, employees and/or agents.

19. Specifically, Defendants, NH Hotel Group, S.A. and Jolly Hotels U.S.A., Inc. share the same Chief Executive Officer – Ramon Aragones Marin, located at 22 East 38th Street, New York, NY 10016.

## FACTUAL ALLEGATIONS

20. Julius J. Shepard owned a one hundred (100%) percent ownership interest in Compania Hotelera Shepard, S.A. which operated the Hotel Capri located in Havana, Cuba. The hotel property was unlawfully confiscated by the Castro regime on or about January 1, 1959.

21. As a result, Julius J. Shepard pursued and was awarded Claim No. CU-0407 certified by the FCSC under the International Claims Settlement Act of 1949, as amended, dated April 30, 1969, for damages suffered as a result of the actions of the Government of Cuba. The certified claim is in the amount of $2,033,959.17 with interest accruing at six (6%) percent per annum from January 1, 1959 ("Claim").

22. Subsequently, Julius J. Shepard died on July 12, 2001. Pursuant to the Julius J. Shepard's Last Will and Testament, the Claim passed to the Julius J. Shepard Revocable Trust, established May 24, 1991, and was then distributed to Plaintiff.

### *The Confiscation of the Property*

23. The communist Cuban Government confiscated and nationalized the Hotel Capri ("Property") on or after January 1, 1959. Specifically, the communist Cuban Government ("Government") expropriated and seized ownership and control of the Property. Initially, on or about January 1, 1959, the Government required large numbers of military troops to occupy and stay at the Property without any compensation to Plaintiff. Moreover, the Government required Plaintiff to continue its full operation of the Property at its own expense, without any payment or compensation. Additionally, Plaintiff was required to incur large debts in order to continue operating the Property. Subsequently, the Plaintiff and the Property were nationalized by the Government of Cuba by Resolution 3 of October 24, 1960 (pursuant to Law 851, Official Gazette, July 7, 1960).

24. Control of the Property was never returned to Plaintiff and no adequate, effective or any compensation has been paid to Plaintiff. Further, the Claim has not been settled pursuant to any international claims settlement agreement or other settlement procedure.

25. Plaintiff never abandoned its legitimate interest in the Property.

26. The Act creates a private cause of action and authorizes United States nationals with **claims** to confiscated property in Cuba to file suit in United States courts against persons that may be trafficking in that property. The filing fee for the Title III action is set by United States Courts at $6,458,[2] a level that would discourage all but serious claims.

27. As defined under the Act, the Plaintiff holds a claim to the Property because it is a United States national and the claim has been certified under Title V of the International Claims Settlement Act of 1949.

28. Defendants are persons under the Act, as defined by 22 U.S.C. § 6023(11).

29. Beginning on or about January of 2014, Defendants, knowingly and intentionally began conducting and operating a business using the Property as the NH Capri La Habana Hotel without the authorization of Plaintiff or any U.S. national who holds a claim to the Property.

30. Commencing on or about January 2014, Defendants knowingly and intentionally generated revenues, obtained profits, and participated in other financial benefits due to the Government's possession of, and Defendants' activities relating to, the Property, without the authorization of Plaintiff or any U.S. national who holds a Claim to the Property.

31. Specifically, Defendants knowingly and intentionally continue to traffic in the Property to which Plaintiff owns the certified Claim, as defined by 22 U.S.C. § 6023(13)(A), by operating the NH Capri La Habana Hotel and engaging in commercial transactions involving the

[2] *See* https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule.

use of the Property.

32. Defendants have engaged in trafficking and are in violation of Title III of the Act by (i) managing, possessing, and using the Property; (ii) engaging in commercial activities using or otherwise benefiting from the Property; and (iii) causing, directing, participating in, and profiting from trafficking in the Property by another person, in furtherance of its operations.

33. Section 302(d) of the Act mandates a presumption in favor of the Plaintiff's certified claims:

> "There **shall be a presumption** that the amount for which a person is liable . . . is the amount that is certified [by the FCSC under the International Claims Settlement Act of 1949]." 22 U.S.C. § 6082(a)(2) (emphasis added).

34. The Act's presumption in favor of certified claims extends not only to the amount of liability, but also to the claimant's ownership and entitlement to treble damages. Pursuant to Section 303(a)(1), which deals with the "[c]onclusiveness of certified claims," in any action brought under Title III, "**the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the [FCSC under Title V of the International Claims Settlement Act of 1949]."** 22 U.S.C. § 6083(a)(1) (emphasis added).

35. Under Section 302(a)(3) of the Act, "[a]ny person that traffics in confiscated property for which liability is incurred" shall be liable for treble damages **if a U.S. national *owns a certified claim to that property*.** 22 U.S.C. § 6082(a)(3)(A) & (3)(C).[3](emphasis added).

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[3]One of the purposes of the Act is the "[s]ettlement of outstanding United States claims to confiscated property in Cuba. The 104th Congress, throughout the Act, consistently referred to claims to Property as precisely the claim held by Plaintiff here - those that are held by United States nationals and certified under title V of the International Claims Settlement Act of 1949. *See* Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 110th Cong. § 207 (1996),

36. Congress intentionally conferred these entitlements on **certified claims**. The utilization of the certified claim process was viewed as a positive feature of the Act. The Conference Report from the Committee of Conference states that "courts shall give a strong presumption to the findings of the FCSC." The Conference report continued:

> "The committee of conference recognizes the importance of a decision by the Foreign Claims Settlement Commission in certifying a claim and, accordingly, believes that no court should dismiss a certification in an action brought under [Title III]. The committee of conference also notes the recognized special expertise of the FCSC in determining the amount and validity of claims to confiscated properties overseas."

37. Under the text of the Act and in accordance with the intent of Congress, Plaintiff's certified claim is entitled to (i) a presumption of accuracy with regard to its amount; (ii) **to be treated as conclusive proof with regard to Plaintiff's ownership of the Confiscated Property**; and (3) entry of judgment on the claim that includes treble damages.

38. As a result of Defendants' trafficking in the Property, Defendants are liable to Plaintiff for all money damages allowable under 22 U.S.C. § 6082(a).

**COUNT I**
**(Claim for Damages under Title III of the LIBERTAD Act against NH Hotels USA, Inc.)**

39. Plaintiff incorporates by reference paragraphs 1 through 38 as if fully realleged and set forth herein.

40. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

41. As set forth in Title III and alleged above, beginning in or around January 2014

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https://www.congress.gov/congressional-report/104th-congress/house-report/202/1?overview=closed.

through and including the present, Defendant, NH Hotels USA, Inc., did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Property, which was confiscated by the Government on or after January 1, 1959 and Defendants are therefore liable to Plaintiff, who owns the certified Claim to the Property, for money damages.

42. As of the date of filing this Complaint, the United States Government has ceased suspension of the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

43. Plaintiff is not required to give notice under 22 U.S.C. § 6082(a)(3) as it is a U.S. National which holds a certified claim.

44. Accordingly, Plaintiff is entitled to damages in the amount of the certified claim, plus pre-judgment interest at the rate of six (6%) percent awarded by the FCSC. Plaintiff is also entitled to treble damages, attorneys' fees, costs, and post-judgment interest.

**COUNT II**
**(Claim for Damages under Title III of the LIBERTAD Act against NH Hotel Group, S.A.)**

45. Plaintiff incorporates by reference paragraphs 1 through 38 as if fully realleged and set forth herein.

46. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

47. As set forth in Title III and alleged above, beginning in or around January 2014 through and including the present, Defendant, NH Hotel Group, S.A., did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Property, which was confiscated by the Government on or after January 1, 1959 and Defendants are therefore liable to Plaintiff, who owns the certified Claim to the Property, for money damages.

48. As of the date of filing this Complaint, the United States Government has ceased suspension of the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

49. Plaintiff is not required to give notice under 22 U.S.C. § 6082(a)(3) as it is a U.S. National which holds a certified claim.

50. Accordingly, Plaintiff is entitled to damages in the amount of the certified claim, plus pre-judgment interest at the rate of six (6%) percent awarded by the FCSC. Plaintiff is also entitled to treble damages, attorneys' fees, costs, and post-judgment interest.

**COUNT III**
**(Claim for Damages under Title III of the LIBERTAD Act against Jolly Hotels U.S.A., Inc.)**

51. Plaintiff incorporates by reference paragraphs 1 through 38 as if fully realleged and set forth herein.

52. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

53. As set forth in Title III and alleged above, beginning in or around January 2014 through and including the present, Defendant, Jolly Hotels U.S.A., Inc. did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the Property, which was confiscated by the Government on or after January 1, 1959 and Defendants are therefore liable to Plaintiff, who owns the certified Claim to the Property, for money damages.

54. As of the date of filing this Complaint, the United States Government has ceased suspension of the right to bring an action under Title III, 22 U.S.C. § 6085, which therefore permits Plaintiff to seek the relief requested herein.

55. Plaintiff is not required to give notice under 22 U.S.C. § 6082(a)(3) as it is a U.S.

National which holds a certified claim.

56. Accordingly, Plaintiff is entitled to damages in the amount of the certified claim, plus pre-judgment interest at the rate of six (6%) percent awarded by the FCSC. Plaintiff is also entitled to treble damages, attorneys' fees, costs, and post-judgment interest.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiff, John S. Shepard Family Trust, through John S. Shepard and Lawrence Jaffe, as Co-Trustees, respectfully request that the Court enter judgment in its favor of and against Defendants, NH Hotels USA, Inc., and NH Hotel Group, S.A., as follows:

a. Awarding Plaintiff actual damages in the amount of $2,033,959.17;

b. Awarding Plaintiff pre-judgment interest at the rate of 6% per annum from July 1, 1959, as set forth in the FCSC's award;

c. Awarding Plaintiff treble damages pursuant to 22 U.S.C. § 6082(a)(3);

d. Ordering Defendants to pay Plaintiff's reasonable attorney's fees and costs incurred in this action pursuant to 22 U.S.C. § 6082(a);

e. Awarding Plaintiff post-judgment interest; and

f. Ordering such other and further relief as this Court may deem just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

DATED: January 17, 2020

*/s/ Gary S. Graifman*

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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on January 17, 2020 I sent the foregoing ***via e-mail*** to defense counsel listed on the attached Service List.

*By: /S/ Barbara Perez*

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