

Philip C. Swain (SBN 150322)  
[pswain@foleyhoag.com](mailto:pswain@foleyhoag.com)  
Andrew Z. Schwartz (*pro hac vice*)  
[aschwartz@foleyhoag.com](mailto:aschwartz@foleyhoag.com)  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600  
Telephone: 617-832-1000  
Facsimile: 617-832-7000

Christopher A. Nedeau (SBN 81297)  
NEDEAU LAW FIRM  
154 Baker Street  
San Francisco, CA 94117  
[cnedeau@nedeaulaw.net](mailto:cnedeau@nedeaulaw.net)  
Telephone: 415-516-4010

*Attorneys for Defendants  
Republic of Nicaragua, Daniel Ortega,  
Rosario Murillo, and the Sandinista Party*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Rev. Josephenie E. Robertson, M.T.T., *et al.*,

Plaintiffs,

v.

The Republic of Nicaragua, *et al.*,

Defendants.

Case No. 3:17-cv-00852-JST

**MOTION TO DISMISS AMENDED  
COMPLAINT AND  
INCORPORATED  
MEMORANDUM OF POINTS AND  
AUTHORITIES OF DEFENDANTS  
REPUBLIC OF NICARAGUA,  
DANIEL ORTEGA, ROSARIO  
MURILLO, AND THE  
SANDINISTA PARTY**

Hearing Date: October 12, 2017  
Time: 2:00 p.m.  
Courtroom: 9  
Judge: Hon. Jon S. Tigar

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**NOTICE OF MOTION AND MOTION**

**TO PLAINTIFF:** PLEASE TAKE NOTICE that on October 12, 2017, at 2:00 p.m., or as soon thereafter as they may be heard before the Honorable Jon S. Tigar, in Courtroom 9 of the United States District Court, Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California, Defendants Republic of Nicaragua ("Nicaragua"), Daniel Ortega ("President Ortega"), Rosario Murillo ("Vice President Murillo"), and the Sandinista Party (collectively, "Defendants") will move this Court for an order dismissing the Amended Complaint pursuant to Fed. R. Civ. P. 12(b) (1), (2), (3), (4), (5), and (6).

Defendants' Motion to Dismiss should be granted, and the Amended Complaint should be dismissed with prejudice, for at least the following reasons:

- The Court's Order dated June 26, 2017 dismissed the prior Complaint without prejudice to Plaintiff Robertson filing an amendment to cure the deficiencies identified therein. The Amended Complaint, however, continues to present the same non-justiciable political questions that necessitated dismissal of the prior Complaint, and also continues to request class-wide relief that is not available as a matter of law. Nothing has been added to the Amended Complaint that could overcome the grounds for dismissal upon which the Court relied (or the other grounds presented that the Court did not reach). Ms. Robertson has proven that she cannot correct these deficiencies, such that leave to file a further amendment would be futile.
- The Amended Complaint continues to suffer from numerous other deficiencies raised in Defendants' original motion to dismiss, including lack of jurisdiction, improper venue, and failure to state a claim, among other defects.

This Motion is based upon the foregoing Notice of Motion, the Federal Rules of Civil Procedure, other authorities cited herein, the incorporated Memorandum of Points and Authorities, the proposed order submitted herewith, all pleadings and papers on file in this action, and such further evidence, arguments, and exhibits that may be submitted to the Court at or before the hearing on this Motion. For the foregoing reasons, and as explained below, the Amended Complaint should be dismissed with prejudice.

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. Introduction**

The Court dismissed Plaintiff Josephenie Robertson's original Complaint because she:

1. Cannot pursue claims on behalf of an unrecognized "Miskitu Government-In-Exile";
2. Cannot seek an adjudication concerning the history of the Miskitu people or their territorial claims; and
3. Cannot maintain a class action.

*See* June 26, 2017 Order (Docket Entry ("D.E.") 72).

The Court granted Ms. Robertson leave to file an amended complaint to try "to cure the[se] deficiencies." *Id.* She has now filed an amended pleading. However, her allegations still suffer from the same fatal deficiencies. She has simply ignored the Court's prior rulings.

Further, although Ms. Robertson's amendment purports to join a new corporate defendant and references several additional statutes, none of the new allegations overcome the fundamental defects noted in the Court's prior Order of dismissal. Nor do the new allegations surmount the numerous additional deficiencies identified in the Defendants' prior briefing.

There is no basis for this action to continue. It should be dismissed with prejudice forthwith.

### **II. Procedural History**

Ms. Robertson filed a *pro se* Complaint in February 2017, purporting to assert claims as the "traditional royal representative of the Miskitu Government-in-Exile," as well as on behalf of

1 a class of all “U.S. and non-U.S. citizens who are, or who are direct descendants of, and  
 2 members of the Miskitu (12 tribes) indigenous peoples.” Complaint (D.E. 1) ¶¶31, 69. As the  
 3 Court has explained, “the core of the Plaintiff’s complaint” was “not the redress of particular  
 4 wrongs inflicted upon individuals, but rather a request to adjudicate nearly 200 years of relations  
 5 between the Miskitu people and various sovereign governments as well as the corresponding  
 6 impacts on the territorial integrity of the present-day Republic of Nicaragua.” June 26, 2017  
 7 Mem. & Order (D.E. 72) at 6 (internal quotation marks omitted).

8  
 9 The Court ordered Ms. Robertson to show cause why her *pro se* class claims should not  
 10 be dismissed. May 25, 2017 Order (D.E. 46). Further, the Defendants named in the original  
 11 Complaint, the Republic of Nicaragua, President Daniel Ortega, Vice President Rosario Murillo,  
 12 and the Sandinista political party, moved to dismiss all of Ms. Robertson’s claims on multiple  
 13 grounds, including that claims by or on behalf of an unrecognized government concerning  
 14 foreign political and territorial disputes arising over hundreds of years are inherently non-  
 15 justiciable in our courts. Mot. to Dismiss (D.E. 18).  
 16

17 In an Order dated June 26, 2017, the Court ruled that Ms. Robertson, as a *pro se* litigant,  
 18 “may not maintain a purported class action.” June 26, 2017 Order (D.E. 72) at 3 (citing *Simon v.*  
 19 *Hartford Life, Inc.*, 546 F.3d 661, 664 (9<sup>th</sup> Cir. 2008), and other cases). The Court further  
 20 concluded that Ms. Robertson’s claims on behalf of a purported Miskitu Government-in-Exile  
 21 were non-justiciable where no such government has ever been recognized by the Executive  
 22 Branch of the U.S. government. *See id.* (citing *Baker v. Carr*, 369 U.S. 186, 212 (1962) and  
 23 other cases). Lastly, the Court ruled that Mr. Robertson’s claims regarding the history of the  
 24 Miskitu people, their interactions with foreign governments, and the territorial integrity of  
 25 present-day Nicaragua were also non-justiciable because they raise questions of “policy rather  
 26 than law.” *See id.* at 7 (internal quotation marks omitted). The Court therefore concluded that  
 27  
 28



1 Ms. Robertson’s “lawsuit poses a political question over which the Court has no jurisdiction”  
 2 and dismissed the Complaint without reaching any of the Defendants’ many other arguments.  
 3 *See id.*<sup>1</sup>

4 The Court did, however, authorize Ms. Robertson to file an amended complaint if she  
 5 “wishe[d] to cure the deficiencies” noted in the Order. *See id.*

6 After obtaining an extension of time, Ms. Robertson proceeded to file her *pro se*  
 7 Amended Complaint on August 22, 2017. *See* Am. Cmplt. (D.E. 78). The Amended Complaint  
 8 again asserts claims in Ms. Robertson’s purported capacity as “the Matriarch of the Miskitu  
 9 Nation . . . and a traditional royal representative of the Miskitu Government-in-Exile.” *See, e.g.,*  
 10 *id.* ¶¶40, 62(A)-(H). It again recounts a general summary of the last several hundred years of  
 11 Nicaraguan-Miskitu history. *See, e.g., id.* ¶¶2-33, 68, 83. And it again purports to assert claims  
 12 on behalf of a class comprised of the entire Miskitu people and their descendants. *See, e.g., id.*  
 13 ¶¶77-80. The only allegations of wrongdoing relating to Ms. Robertson personally are that she  
 14 was detained and mistreated by the now-deposed Somoza dynasty (not the Defendants) in  
 15 Nicaragua in 1957 and 1960, after which she emigrated to the United States. *See id.* ¶¶66-68.

16 The Amended Complaint also purports to join Infinity Energy Resources, Inc. as a  
 17 defendant. *Id.* ¶45.<sup>2</sup> Ms. Robertson was not granted leave to do so. Regardless, there are no  
 18 allegations that this entity has in any way harmed Ms. Robertson personally. *See id.* ¶¶45, 88,  
 19 96. Rather, she includes general allegations concerning the company’s energy exploration  
 20 activities in Nicaragua. *See id.*

21 The Amended Complaint amplifies, rather than cures, the deficiencies that required  
 22

23  
 24  
 25  
 26 <sup>1</sup> On September 5, 2017, the Court denied as moot Plaintiff’s motion for leave to file a motion  
 27 for reconsideration of the dismissal of the original Complaint, in light of her filing the Amended  
 28 Complaint. *See* Sept. 5, 2017 Order (D.E. 80) at 2. In that same Order, the Court also denied  
 Plaintiff’s motion to reconsider the Court’s denial of her request for appointed counsel. *See id.*

<sup>2</sup> Undersigned counsel do not represent Infinity Energy Resources, Inc.

dismissal of the original Complaint. Accordingly, the original Defendants move to dismiss the amendment. Further, given that Ms. Robertson has proven unable to state a viable claim even with the benefit of the Court's guidance (with which she made no discernible effort to comply), her claims should now be dismissed with prejudice.<sup>3</sup>

### III. Argument

#### A. Ms. Robertson's Amended Complaint Should Be Dismissed Because She Has Not Corrected The Defects That Resulted In Dismissal Of Her Original Complaint.

Ms. Robertson's Amended Complaint pursues at least three theories of liability that are expressly foreclosed by the Court's rulings in its June 26, 2017 Order. Those same rulings should be applied again to the Amended Complaint. *See Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9<sup>th</sup> Cir. 1988) (affirming dismissal with prejudice where plaintiff filed amendment that failed to correct the deficiencies previously identified by the court).

#### 1. The Court Has Already Ruled That Ms. Robertson Cannot Proceed On Behalf Of An Unrecognized Government.

First, the Amended Complaint continues to assert claims on behalf of a purported "Miskitu Government-in-Exile." *See, e.g.*, Am. Cmplt. (D.E. 78) ¶¶40, 62(A)-(H). Ms. Robertson, a resident of Oakland, California, claims that "the Miskitu Kingdom autonomous government handed the royal staff" to her, such that she is now the "legal representative authority, custodian, guardian, and trustee of the Miskitu territories." *Id.* ¶21. She also challenges the legitimacy of a competing alleged government led by a "king of the Miskitu nation," who she asserts is a "pretender to the throne" and "King of the oompa loompas." Am. Cmplt. ¶97.

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<sup>3</sup> Ms. Robertson's Amended Complaint suggests that she would like to join Ms. Ercell Fleurima as an additional plaintiff. *See* D.E. 78 at 1 n.1. Ms. Robertson made this request previously, *see* D.E. 66, and the Court dismissed the request as moot given the prospect of an amended complaint. *See* D.E. 72 at 2 n.3. It is unclear whether Ms. Fleurima has now been joined as a party to the Amended Complaint, but her presence as a party would not cure the defects in that pleading identified herein. There are no allegations in the Amended Complaint concerning any harm that Ms. Fleurima personally has suffered.

As the Court already has ruled, Ms. Robertson cannot proceed in a sovereign capacity where our Executive Branch has not recognized her “Government-in-Exile.” *See* June 26, 2017 Order (D.E. 72) at 5-6. “[W]ithout executive recognition,” a purported foreign sovereign is “a republic of whose existence we know nothing.” *See Baker*, 369 U.S. at 212. Accordingly, Ms. Robertson’s case continues to present non-justiciable political questions. *See* June 26, 2017 Order (D.E. 72) at 5-7. She cannot sue on behalf of an unrecognized sovereign. Nor can she ask the Court to bar recognition of her alleged competitors for the throne. This case should again be dismissed.

**2. The Court Already Has Ruled that Ms. Robertson Cannot Seek Redress For The Alleged Wrongs Inflicted Upon The Miskitu People By The Various Sovereign Governments.**

Second, the Amended Complaint again asks the Court to adjudicate hundreds of years of alleged political and territorial disputes between the Miskitu people and various governments and economic institutions. *See, e.g., id.* ¶¶2-33, 68, 83. But, as the Court has already ruled, there is no “legal basis” for deciding such disputes, which present questions of policy rather than law. *See* June 26, 2017 Order (D.E. 72) at 4-7 (citing *Saldana v. Occidental Petroleum Corp.*, 774 F.3d 544, 551 (9<sup>th</sup> Cir. 2014) and other cases). The Amended Complaint should therefore be dismissed as non-justiciable. *See id.*

**3. The Court Already Has Ruled that Ms. Robertson Cannot Maintain A Class Action, And She Therefore Has No Standing To Assert Anything But Her Own Personal Claims, If Any.**

Third, Ms. Robertson again purports to pursue a class action. *See, e.g.,* Am. Cmplt. (D.E. 78) ¶¶40, 62(A)-(H). As the Court has ruled, however, *pro se* plaintiffs like Ms. Robertson cannot maintain a class action. *See* June 26, 2017 Order (D.E. 72) at 2-3 (citing *Simon*, 546 F.3d at 664).

Without a class, Ms. Robertson can raise only her own personal claims, if any, against the Defendants. *See, e.g., Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004) (for standing, plaintiff must show that “the conduct of which he complains has caused him to suffer an ‘injury in fact’ that a favorable judgment will redress” and where applicable must overcome

“the general prohibition on a litigant’s raising another person’s legal rights” and “the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches”). Ms. Robertson has no cognizable claims that any of the Defendants harmed her personally. The Amended Complaint’s only allegations concerning Ms. Robertson, as an individual plaintiff, are that the Somoza dynasty (not the Defendants) arrested and mistreated her nearly 60 years ago. *See* Am. Cmplt. ¶¶66, 67. Without more, Ms. Robertson’s Amended Complaint should be dismissed. *See Elk Grove*, 542 U.S. at 12.<sup>4</sup>

**B. Additionally, Ms. Robertson’s Amended Complaint Should Be Dismissed Because She Has Not Overcome Defendants’ Other Arguments For Dismissal.**

Defendants’ Motion to Dismiss the original Complaint (D.E. 18) raised numerous additional grounds for dismissal. The Court found it unnecessary to reach these arguments in its June 26, 2017 Order. *See* D.E. 72 at 7 n.4. These arguments apply with equal force to the Amended Complaint. Defendants will briefly restate them, incorporating by reference the more complete discussion in the prior motion.

**1. The Court Lacks Jurisdiction Over Nicaragua Under The FSIA.**

Nicaragua is presumed categorically immune from suit in the U.S. courts under the Foreign Sovereign Immunities Act (“FSIA”). *See* 28 U.S.C. §§1330(a), 1602 *et seq.*; Mot. to Dismiss (D.E. 18) at 5-10 (citing *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 433 (1989) and others). Here, Ms. Robertson invokes the expropriation exception to the FSIA. *See* Am. Cmplt. (D.E. 78) ¶¶54-58 (citing 28 U.S.C. §1605(a)(3)). However, that exception cannot possibly apply, including because: (1) Ms. Robertson does not allege that any of her own property was expropriated; (2) Ms. Robertson alleges that the expropriated property

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<sup>4</sup> Ms. Robertson claims that, in a case that she used as a “template” for her amended complaint, the plaintiffs “**did NOT** have to prove the Namibian tribal leaders were recognized by the United States or [that] most of the class action plaintiffs resided in the United States when . . . successfully litigating the case.” Am. Cmplt. (D.E. 78) ¶31. The case to which she refers, however -- *Vekuii Rukoro v. Federal Republic of Germany*, U.S. District Court for the Southern District of New York, Case No. 17-cv-00062-LTS -- has not been “successfully litigated.” As the docket reflects, the plaintiffs in that case, who are represented by a lawyer, have not even served Germany, and the court has not addressed any of the issues raised in their complaint.

(land, natural resources, etc.) is located in Nicaragua, and fails to establish the required nexus with the United States under the first jurisdictional nexus clause of §1605(a)(3), *see, e.g., Altmann v. Republic of Austria*, 142 F. Supp. 2d 1187, 1202 (C.D. Cal. 2001), *aff'd*, 317 F.3d 954 (9<sup>th</sup> Cir. 2002); (3) Ms. Robertson does not identify any “agency or instrumentality” of Nicaragua that owns or operates any of the allegedly expropriated property and, therefore, fails to establish jurisdiction under the second jurisdictional nexus clause in §1605(a)(3), *see Gates v. Victor Fine Foods*, 54 F.3d 1457, 1462 (9<sup>th</sup> Cir. 1995) and *Samantar v. Yousuf*, 560 U.S. 305, 316 (2010); and (4) Ms. Robertson has no standing to bring claims arising from any alleged takings from Nicaraguan nationals, which would in any event be non-actionable “domestic takings,” *see, e.g., Siderman de Blake v. Repub. of Arg.*, 965 F.2d 699, 711 (9<sup>th</sup> Cir. 1992).

Because no exception to the FSIA applies, all claims against Nicaragua must be dismissed for lack of subject matter and personal jurisdiction. *See Amerada Hess*, 488 U.S. at 434-39; *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1025 (9<sup>th</sup> Cir. 2010).

Defendants more fully address these FSIA arguments at pages 5-10 of their prior motion to dismiss (D.E. 18).<sup>5</sup>

## **2. The Alien Tort Statute Does Not Provide Jurisdiction Or A Cause Of Action.**

Although Ms. Robertson cites the Alien Tort Statute, it is not an alternative basis for jurisdiction over Nicaragua. *See Amerada Hess*, 488 U.S. at 434-38. It is also not a basis for liability for any defendant, because the alleged conduct occurred entirely in Nicaragua. *See Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659, 1662 (2013) (holding “case seeking relief for violations of the law of nations occurring outside the United States is barred”).

Defendants more fully address these arguments at pages 10-12 of their prior motion to dismiss.

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<sup>5</sup> Ms. Robertson has previously attempted to assert jurisdiction under the FSIA’s terrorism exception (§1605A), but appears to have dropped that contention. In any event, that exception is inapplicable for all the reasons contained in Defendants’ prior Motion to Dismiss (D.E. 18) at 8-10, including because Nicaragua is not now, and has never been, a designated state sponsor of terrorism.

1                   **3. The TVPA Does Not Provide Jurisdiction Or A Cause Of Action.**

2           Plaintiff cites the Torture Victims Protection Act (“TVPA”), but it is equally  
3 inapplicable. For one thing, the TVPA applies only to “natural persons,” not to sovereigns like  
4 Nicaragua or political entities like the Sandinista Party. *See Barapind v. Gov’t of the Republic of*  
5 *India*, 844 F.3d 824, 832 (9<sup>th</sup> Cir. 2016). Further, plaintiff does not allege that she was tortured  
6 by any of the individual Defendants. She claims she was mistreated by others roughly 60 years  
7 ago, Am. Cmplt. (D.E. 78) ¶¶66-67, well beyond the TVPA’s ten-year statute of limitations. *See*  
8 18 U.S.C. §1350 (note), Sec. 2(c). Her claims under the TVPA must be dismissed.

9           Defendants more fully address these arguments at pages 12-13 of their prior motion to  
10 dismiss.

11                   **4. The Complaint Fails To State A Claim For Violation Of Any**  
12 **International Agreement.**

13           Defendants have previously explained why Ms. Robertson cannot assert any private right  
14 of action under the Convention on the Prevention and Punishment of the Crime of Genocide and  
15 the UN Declaration of Rights of Indigenous Peoples. *See* Mot. to Dismiss (D.E. 18) at 13-14.  
16 Ms. Robertson now attempts to rely upon the Treaty of Friendship, Commerce and Navigation  
17 between the United States and Nicaragua (the “CFN Treaty”). Am. Cmplt. (D.E. 78) ¶49.  
18 However, the United States withdrew from that treaty more than 30 years ago, and it therefore  
19 could not possibly provide a cause of action or basis for jurisdiction. *See Osorio v. Dole Food*  
20 *Co.*, C.A. No. 07-22693, 2010 U.S. Dist. LEXIS 12576, at \*8-14 (S.D. Fla. Feb. 12, 2010)  
(holding that the CFN Treaty “has not been in force for over 20 years”).

21                   **5. Ms. Robertson Has Failed To Serve Nicaragua Under The FSIA.**

22           The “exclusive procedure for service on foreign sovereigns” is the method prescribed by  
23 FSIA §1608. *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994).  
24 Here, Mr. Robertson cannot assert that she served Nicaragua as required. There is no indication  
25 that she served a summons directed to Nicaragua, or that such a summons was dispatched by the  
26 clerk to the head of the Nicaraguan foreign ministry, or that any summons served contained a  
27 copy of the original Complaint or the Amended Complaint translated into Spanish, or that any  
28

mailing was actually received. See 28 U.S.C. §1608(a) and (c)(2). Any claims against Nicaragua must therefore be dismissed on this basis. *See, e.g., Hale v. Evidencia Display*, No. 15-0538, 2015 U.S. Dist. LEXIS 10197, at \*14-15 (C.D. Cal. Aug. 3, 2015).

Defendants more fully address these arguments at pages 16-18 of their prior motion to dismiss.

**6. The FSIA Does Not Permit Punitive Damages Or A Jury Trial In These Circumstances.**

Ms. Robertson requests a jury trial and punitive damages for her claims against Nicaragua. The FSIA does not permit punitive damages in these circumstances (i.e., where Ms. Robertson has no claim for wrongful death); nor does it permit jury trials. See 28 U.S.C. §§1330(a) and 1606.

Defendants more fully address these arguments at page 18 of their prior motion to dismiss.

**7. This Case Should Be Dismissed For Improper Venue.**

As explained in Defendants' prior motion to dismiss, the only possible venue for this action is the U.S. District Court for the District of Columbia. *See* Mot. to Dismiss (D.E. 18) at 18.

**8. Ms. Robertson Has Not Alleged Any Basis For The Exercise Of Personal Jurisdiction Over Defendants Ortega, Murillo, Or The Sandinista Party.**

For individuals like President Ortega and Vice President Murillo, and for organizations like the Sandinista Party, there are "two types of personal jurisdiction: 'general' (sometimes called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-linked') jurisdiction." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017). General jurisdiction exists in the forum of a defendant's "individual's domicile" and in the forum where a defendant corporation "is fairly regarded as at home" (i.e., state of incorporation or principal place of business). *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 924 (2011). Specific jurisdiction basically requires that "'the suit' must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers*, 137 S. Ct. at 1780. In other words, specific jurisdiction



requires that “the defendant’s suit-related conduct must create a substantial connection to the forum State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014).

There is no general personal jurisdiction over President Ortega, Vice President Murillo, or the Sandinista Party in the United States, because they are all admitted to be “domiciled” or “at home” in Nicaragua. Am. Cmplt. (D.E. 78) ¶41; *Goodyear*, 564 U.S. at 924. Similarly, there is no specific personal jurisdiction over them, because any claims relating to these Defendants arise out of their alleged activities in Nicaragua, not the United States. *Bristol-Myers*, 137 S. Ct. at 1780; *Walden*, 134 S. Ct. at 1121. All claims against these Defendants should therefore be dismissed.

The Amended Complaint’s purported joinder of Infinity Energy Resources, Inc. (alleged to be a Kansas entity conducting oil and gas exploration in Nicaragua, *see* Am. Cmplt. (D.E. 78) ¶45) as a defendant does not create jurisdiction over President Ortega, Vice President Murillo, or the Sandinista Party. Merely being named as a co-defendant with a U.S. entity does not confer personal jurisdiction over persons located and acting abroad. “[I]t is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him,” and “a defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.” *Walden*, 134 S. Ct. at 1121; *see Bristol-Myers*, 137 S. Ct. at 1781-82. Here, any alleged relationship between these Defendants and Infinity Energy Resources occurred in Nicaragua, *see* Am. Cmplt. (D.E. 78) ¶96, and therefore involved no conduct by President Ortega, Vice President Murillo, or the Sandinista Party in the United States that could confer jurisdiction in the U.S. courts.

Defendants more fully address certain of these arguments at pages 19-20 of their prior motion to dismiss.

### **9. The Court Lacks Jurisdiction Over President Ortega Under Head Of State Immunity.**

As explained in Defendants’ prior motion to dismiss, President Ortega is immune from the jurisdiction of the U.S. courts under the doctrine of head of state immunity. *See* Mot. to



Dismiss (D.E. 18) at 20-21 (citing *Lafontant v. Aristide*, 844 F. Supp. 128, 131-32 (E.D.N.Y. 1994) and others).

**10. Ms. Robertson Cannot Sue President Ortega and Vice President Murillo In Their Official Capacities.**

As also explained in Defendants' prior motion to dismiss, President Ortega and Vice President Murillo are being sued in their capacities as officials and agents of the Nicaraguan government. Therefore, Nicaragua is the real party in interest, and the individual defendants should be dismissed. See Mot. to Dismiss (D.E. 18) at 21-22.

**11. Ms. Robertson Has Failed to Properly Serve President Ortega, Vice President Murillo, And The Sandinista Party.**

Ms. Robertson has failed to serve President Ortega, Vice President Murillo, and the Sandinista Party in compliance with Fed. R. Civ. P. 4(f), including because Ms. Robertson served no summons directed to the Sandinista Party, provided no evidence that these Defendants actually received service, and evidently performed any attempted service by mail (which does not comply with Nicaraguan law). The Defendants' prior motion to dismiss further explains these deficiencies. See Mot. to Dismiss (D.E. 18) at 22-25 and Decl. of Dr. Gerardo Hernandez (attached to that Motion, (D.E. 19)).

**12. Ms. Robertson Has No Claim Against Nicaragua, President Ortega, Vice President Murillo, Or The Sandinista Party Under The Federal Tort Claims Act Or 42 U.S.C. §1985.**

Ms. Robertson also appears to assert claims under the Federal Tort Claims Act (the "FTCA") and 42 U.S.C. §1985 (Conspiracy to Interfere with Civil Rights). Neither is a viable basis for recovery.

Any FTCA claim fails because the FTCA permits "claims against the United States" (not Nicaragua), and in any event does not apply to claims (like those asserted here) "arising in a foreign country." See 28 U.S.C. §1346(b) (jurisdiction for "claims against the United States"); *Sosa v. Alvarez-Machain*, 542 US. 692, 700-12 (2004) (holding "FTCA's foreign country exception bars all claims based on any injury suffered in a foreign country"). Further, the FTCA

1 requires administrative presentment as a jurisdictional prerequisite for suit, which has not  
 2 occurred here. *See Cadwalder v. United States*, 45 F.3d 297, 300 (9<sup>th</sup> Cir. 1995).

3 Similarly, a civil conspiracy claim under 42 U.S.C §1985 must be premised upon a  
 4 cognizable claim of a deprivation of rights by persons acting under color of state law under 42  
 5 U.S.C. §1983. *See Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 930 (9<sup>th</sup> Cir. 2004).  
 6 There is no such claim here. Further, there is no allegation here that any conspiracy occurred in  
 7 a “State or Territory” of the United States, as the statute requires. *See* 42 U.S.C. §1985(3). Ms.  
 8 Robertson instead alleges acts in Nicaragua. *See* Am. Cmplt. (D.E. 78) ¶¶66-67.

#### 9 **IV. Conclusion**

10 This Court has been patient with Ms. Robertson, and has allowed her a lengthy amount of  
 11 time to serve an amended complaint in an attempt to cure the flaws in her original pleading. It is  
 12 apparent that Ms. Robertson has no claims that can withstand dismissal. The claims she has  
 13 attempted to assert in the Amended Complaint are not appropriate for further litigation in this  
 14 forum. They should be dismissed with prejudice and without leave for any further amendment.  
 15

16 For the reasons set forth above, Defendants’ Motion to Dismiss the Amended Complaint  
 17 should be granted and the Amended Complaint should be dismissed, with prejudice.<sup>6</sup>  
 18

19 Dated: September 5, 2017

By: /s/ Philip C. Swain

21 Philip C. Swain (CA Bar No. 150,322)  
 22 Andrew Z. Schwartz (*pro hac vice*)  
 23 FOLEY HOAG LLP  
 155 Seaport Boulevard  
 Boston, Massachusetts 02210-2600  
 Telephone: 617-832-1000  
 Facsimile: 617-832-7000

25 Christopher A. Nedeau (SBN 81297)

26 <sup>6</sup> In addition to the arguments presented above, Defendants again reserve their rights, should it  
 27 ever be necessary, to seek dismissal on *forum non conveniens* grounds and to assert all other  
 28 available defenses to Plaintiff’s claims, including expiration of any relevant statute(s) of  
 limitations not raised in this Motion.

NEDEAU LAW FIRM  
154 Baker Street  
San Francisco, CA 94117  
cnedeau@nedeaulaw.net  
Telephone: 415-516-4010

*Attorneys for Defendants  
Republic of Nicaragua, Daniel Ortega, Rosario  
Murillo, and the Sandinista Party*

**FILER'S ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Philip C. Swain, attest that concurrence in the filing of this document has been obtained.

/s/ Philip C. Swain  
Philip C. Swain

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document, filed through the ECF system,  
was served on the following pro se parties:

**Josephenie Robertson**

**Ercell Hendy Twaska Fleurima**

by regular first class mail, postage prepaid, this 5th day of September, 2017, addressed as follows:

c/o Rev. Josephenie E. Robertson, M.T.T.  
1557 Jackson Street, #301  
Oakland, CA 94612  
(510) 410-1144

/s/ Philip C. Swain  
Philip C. Swain