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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

**REPLY MEMORANDUM IN
SUPPORT OF MOTION OF
DEFENDANTS REPUBLIC OF
NICARAGUA, DANIEL ORTEGA,
ROSARIO MURILLO, AND THE
SANDINISTA PARTY TO DISMISS
THE AMENDED COMPLAINT**

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

1 Defendants Republic of Nicaragua, Daniel Ortega, Rosario Murillo, and the Sandinista
2 Party (“Defendants”) reply to the opposition of Plaintiff Josephenie E. Robertson to Defendants’
3 Motion to Dismiss the Amended Complaint.

4 Ms. Robertson’s opposition offers no meaningful response to the arguments in
5 Defendants’ Motion to Dismiss. At most, she purports, in a single sentence, to “annex, absorb,
6 and apply” unspecified “previous defenses.” Docket Entry (“D.E.”) 84, p. 5. By that, Ms.
7 Robertson presumably means the same defenses that failed to prevent dismissal of her original
8 Complaint and that equally fail to salvage her substantially identical Amended Complaint.

9 Ms. Robertson appears to devote her opposition to arguing that the Court is somehow
10 violating her due process rights by denying her a “meaningful opportunity to be heard.” D.E. 84,
11 p. 3. The record belies any such suggestion. The docket, now comprising more than 80 entries,
12 demonstrates that Ms. Robertson has been given every opportunity to defend her original
13 Complaint, including full briefing on the question of dismissal and a hearing last June. *See, e.g.,*
14 D.E. 20; D.E. 70. The Court then entered a seven-page memorandum explaining why it was
15 dismissing the original Complaint and generously affording Ms. Robertson an opportunity to try
16 to correct those deficiencies by filing an amended pleading. *See* D.E. 72. The Court also
17 subsequently granted Ms. Robertson’s request for an extra month to prepare and file her
18 Amended Complaint. *See* D.E. 75. Ms. Robertson has now been afforded a full opportunity to
19 defend her Amended Complaint from dismissal. She has received abundant due process and
20 opportunities to be heard. *See Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) (*pro se*
21 parties not entitled to be “treated more favorably” than other litigants); *Ghazali v. Moran*, 46
22 F.3d 52, 54 (9th Cir. 1995) (*pro se* litigants are “bound by the rules of procedure”).

23 Further, Ms. Robertson’s “due process” criticism appears to be based upon an incorrect
24 premise. She asserts that the Court’s Order on her motion for reconsideration or clarification
25 (D.E. 80) did not adequately address whether her daughter, Ercell Fleurima, could join the
26 action. D.E. 84, p. 2. However, as the Court explained in its Order on the motion to dismiss Ms.
27 Robertson’s original Complaint, any such request was rendered moot by the opportunity to
28

1 amend the Complaint. *See* D.E. 72, p. 2 n.3. In any event, neither the Amended Complaint nor
 2 Ms. Robertson's opposition to Defendants' Motion to Dismiss suggests that Ms. Fleurima has
 3 any personal claim that she could possibly assert. *See* D.E. 81, p. 5 n.3. Rather, Ms. Robertson
 4 persists with her position that she and/or Ms. Fleurima can proceed in a representative capacity
 5 as a "traditional authority" of an unrecognized Miskutu government-in-exile. *See* D.E. 84, pp. 5-
 6 6. The Court has already rejected that argument. *See generally* D.E. 72, p. 6 - 7 (Court
 7 concluding that the core of Plaintiff's case is not the redress of particular wrongs against
 8 individuals, but rather a request to adjudicate 200 years of relations between the Miskitu people
 9 and various sovereign governments, which is not justiciable in a United States court).

10 Ms. Robertson's opposition does not mount a serious effort to defend her Amended
 11 Complaint or to argue that it asserts justiciable claims or otherwise complies with the Court's
 12 previous instructions. She has instead resorted to a desperate attempt to accuse this Court and
 13 the Defendants of misconduct. *See* D.E. 82 (Plaintiff's Motion for Sanctions). At this point,
 14 dismissal of this action with prejudice is warranted.

15
 16 Dated: September 22, 2017 By: /s/ Philip C. Swain

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 27 *Murillo, and the Sandinista Party*
 28

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 22nd 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