

APPENDIX A

UNITED STATES COURT
OF APPEALS FOR THE
NINTH CIRCUIT

FILED
APR 27 2020

MOLLY C.
DWYER,
CLERK
U.S. COURT
OF APPEALS

JAIRO SEQUEIRA, A
Citizen of the United
States of America,

Plaintiff - Appellant,

v.

THE REPUBLIC OF
NICARAGUA,
a foreign County; et al.,

Defendants-Appellees

No. 18-56269
D.C. No. 2:13-cv-
04332-DMG-FFM
U.S. District Court
for Central
California,
Los Angeles

MANDATE

The judgment of this Court, entered January 28, 2020,
takes effect this date. This constitutes the formal
mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
MOLLY C. DWYER
CLERK OF COURT
By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX B

UNITED STATES COURT
OF APPEALS FOR THE
NINTH CIRCUIT

FILED
APR 17 2020

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JAIRO SEQUEIRA, A
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No. 18-56269

D.C. No. 2:13-cv-
04332-DMG-FFM
U.S. District Court
for Central
California,
Los Angeles

ORDER

Before: FARRIS, D.W. NELSON, and SILVERMAN,
Circuit Judges.

The members of the panel that decided
this case voted unanimously to deny the
petition for rehearing and recommended
denial of the petition for rehearing en banc.

The full court has been advised of the petition for
rehearing en banc and no active judge has requested a

3a

vote on whether to rehear the matter en banc. (Fed.R.
App. P. 35.)

The petition for rehearing and the petition for rehearing
en banc are

DENIED.

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT
OF APPEALS FOR THE
NINTH CIRCUIT

FILED
JAN 28 2020

MOLLY C.
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No. 18-56269
D.C. No. 2:13-cv-
04332-DMG-FFM
U.S. District Court
for Central
California,
Los Angeles

ORDER

Appeal from the United States District Court for the
Central District of California
Dolly M. Gee, District Judge, Presiding

Submitted January 28, 2020**

Before: FARRIS, D.W. NELSON, and SILVERMAN,
Circuit Judges.

Jairo Sequeira appeals pro se from the district court's order dismissing his action against the Republic of Nicaragua, the City of Chinandega, and the City of El Viejo (the "sovereign defendants") for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We review de novo subject matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"). *Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 304-05 (9th Cir. 1997). We affirm.

The district court properly dismissed Sequeira's action against the sovereign defendants for lack of subject matter jurisdiction because Sequeira failed to meet his burden of production to establish an exception to the sovereign defendants' immunity under the FSIA. *See* 28 U.S.C. § 1605(a)(1)-(3),(5); *see also Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012) (setting forth burden-shifting framework of the FSIA when a defendant makes a factual jurisdictional challenge); *In re Republic of Philippines*, 309 F.3d 1143, 1149 (9th Cir. 2002) (a court may only exercise subject matter jurisdiction over a foreign and their agents or instrumentalities when one of the exceptions to immunity under the FSIA applies). In doing so, the district court properly took evidence and resolved factual disputes. *See Bolivarian Republic of Venezuela v. Helmerich & Payne Intern. Drilling Co.*, 137 S. Ct. 1312, 1316-17 (2017) ("[W]here jurisdictional questions turn upon further factual development, the trial judge may take evidence and resolve relevant factual disputes."). Sequeira's contentions that the district court applied the incorrect standard in determining whether the FSIA immunity exceptions applied is unpersuasive, and we reject as unsupported by the record his contentions that the district court erred in its consideration of the parties' declarations.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule

The district court's order the granting sovereign defendants' motion to dismiss did not violate the law of the case doctrine because this court's dismissal of Sequeira's previous action against the sovereign defendants did not decide the issue of whether subject matter jurisdiction existed. *See Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1090 (9th Cir. 2013) (explaining that the law of the case doctrine pertains to reconsideration of "an issue that has already been decided by the same court or a higher court in the same case" (citation and internal quotation marks omitted)).

The district court properly considered the sovereign defendants' motion to dismiss for lack of subject matter jurisdiction. *See In re Apple Iphone Antitrust Litig.*, 846 F.3d 313, 319 (9th Cir. 2017) ("A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction . . . may be made at any time."); Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

The district court did not abuse its discretion in denying Sequeira's motion for reconsideration of the denial of his request for jurisdictional discovery because Sequeira's motion restated the arguments made in support of his original motion without establishing any basis for reconsideration. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Fed. R. Civ. P. 60(b)); C.D. Cal. Local Rule 7-18(c) (setting forth grounds for reconsideration under local rules); *Hinton v. Pac. Enters.*, 5 F.3d 391, 395 (9th Cir. 1993) (setting forth standard of review for compliance with local rules); *see also Packsys, S.A. de C.V. v. Exportadora de Sal, S.A. de C.V.*, 899 F.3d 1081, 1094 (9th Cir. 2018)(affirming denial of discovery request were plaintiff did not identify "specific facts crucial to an immunity determination" that it wished to verify (citation omitted)).

The district court did not abuse its discretion by denying Sequeira's motion for sanctions because Sequeira failed to satisfy the requirements of Federal Rule of Civil Procedure 11. *See Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 819, 826 (9th Cir. 2009) (setting forth standard of review and explaining that a failure to comply with the safe harbor provision under Fed. R. Civ. P. 11(c) precludes awarding sanctions); *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005) (safe harbor provision is strictly enforced).

We do not consider matters not specifically and distinctly raised and argued in the opening brief or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

APPENDIX D

UNITED STATES DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 13-4332-DMG (FFMx)**
Date **August 24, 2018**

Title ***Jairo Sequeira v. The Republic of Nicaragua, et al.***
Page **1 of 16**

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN **NOT REPORTED**
Deputy Clerk **Court Reporter**

Attorneys Present for Plaintiff(s) **None Present**
Attorneys Present for Defendant(s) **None Present**

Proceedings: IN CHAMBERS - ORDER RE DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT; PLAINTIFF'S MOTION FOR RECONSIDERATION, MOTION TO CERTIFY ORDER FOR INTERLOCUTORY REVIEW, REQUEST TO STRIKE, MOTION TO STRIKE, AND MOTION FOR RULE 11 SANCTIONS [138, 157, 160, 163, 188]

I.
PROCEDURAL BACKGROUND

On August 22, 2014, *pro se* Plaintiff Jairo Sequeira filed his Second Amended Complaint (“SAC”) against Defendants the Republic of Nicaragua (“Nicaragua”); the City of Chinandega; the City of El Viejo; and several individuals. [Doc. # 97.] On remand from the Ninth Circuit, the Court dismissed Sequeira’s SAC in its November 20, 2017 Order for failure to comply with

Title ***Jairo Sequeira v. The Republic of Nicaragua, et al.*** Page 1 of 16 (Continue)

Federal Rule of Civil Procedure 8, but held that the SAC survived Defendants' facial challenge to subject matter jurisdiction under the Foreign Sovereign Immunities Act's ("FSIA"), 28 U.S.C. § 1602 *et seq.*, waiver and commercial activity exceptions. See Order re SAC at 7–11, 14–15 [Doc. # 119].¹

On January 31, 2018, Sequeira filed his Third Amended Complaint ("TAC") against Nicaragua, Chinandega, and El Viejo. [Doc. # 132.] The TAC asserts the following claims: (1) "unlawful expropriation of personal and real estate property (illegal taking)"; (2) conversion; (3) restitution (unjust enrichment); (4) torture; (5) "cruel, inhuman, or degrading treatment"; (6) "arbitrary detention"; (7) kidnapping; (8) assault and battery; (9) false imprisonment and false arrest; (10) trespass to land; (11) trespass to chattels; (12) intentional interference with prospective economic advantage and business relationships; (13) negligent interference with prospective economic advantage and business relationships; (14) breach of express written, oral and implied in fact contract; (15) breach of implied covenant of good faith and fair dealing; (16) intentional infliction of emotional distress; and (17) negligent infliction of emotional distress. See TAC at 1–2.

¹ All page references herein are to page numbers inserted by the CM/ECF filing system.

On March 8, 2018, Defendants Republic of Nicaragua, City of Chinandega, and City of El Viejo filed a motion to dismiss the TAC, asserting a factual challenge to this Court's subject matter jurisdiction. [Doc. # 138.] On March 30, 2018, April 2, 2018, and April 5, 2018, Sequeira filed numerous objections, a request to strike, and a motion to strike various exhibits produced by Defendants in support of their motion.² [Doc. ## 146–56, 163, 164.] On April 13, 2018, Sequeira filed his opposition to Defendants' motion ("Opp."). [Doc. # 170.] On May 11, 2018, Defendants replied ("Reply"). [Doc. # 181.]

On March 19, 2018, Sequeira filed an ex parte application for an extension of time to oppose Defendants' motion to dismiss or to stay proceedings to permit jurisdictional discovery. Doc. # 139, 141.] On March 23, 2018, the Court granted an extension of time, but denied Sequeira's request for a stay. [Doc. # 145.] On April 2, 2018, Sequeira moved for reconsideration of the Court's order denying Sequeira's request for a stay or, in the alternative, to certify the order for interlocutory review. [Doc. ## 157, 160.] Defendants opposed both motions on April 20, 2018. [Doc. ## 174, 175.] Sequeira did not reply.

On June 11, 2018, Sequeira filed a motion for Rule 11 sanctions, asserting that Defendants offered falsified evidence in support of their motion to dismiss. [Doc. # 188.] On June 29, 2018, Defendants filed an opposition [Doc. # 191], and Sequeira filed his reply on July 6, 2018. [Doc. # 192.]

² Specifically, Sequeira filed eleven separate evidentiary objections, a Request to Strike, and a Motion to Strike. The Court will rule on the evidentiary objections and motions as the challenged evidence is relevant to this decision. To the extent the Court does not rely on the challenged evidence, the objections are OVERRULED as moot and the motion to strike is DENIED as moot.

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II.
FACTUAL BACKGROUND

Jairo Sequeira is an American citizen who resides in California. TAC ¶ 31. Sequeira is the president of Smith Modular Construction Systems, Inc. ("Smith, Inc.") and its subsidiary Smith S.A. ("Smith Company"). Id. ¶ 79. Smith, Inc. and Smith Company constructed housing panels in Sequeira's processing plant located in El Viejo, Nicaragua ("Multi-Processing Plant"). Id. ¶¶ 11, 79. Sequeira also owned farmland in Cosiguina, Nicaragua (the "Cosiguina" property) and rented a house in Managua (the "Managua" property), where he stored a number of personal items. Id. ¶¶ 5, 20.

According to Sequeira, on November 10, 2006, the mayor of El Viejo worked with the Nicaraguan national police to take possession of the eastern half of the Multi-Processing Plant. Id. ¶ 12. After several months of litigation, Sequeira and Defendants agreed to settle Sequeira's claims over the land on May 29, 2007. Id. ¶ 13. In that settlement, Defendants allegedly agreed to pay Sequeira \$2.5 million. Id. ¶ 84; but see Sequeira Decl., Ex. Y at 1 (only listing El Viejo and

Title *Jairo Sequeira v. The Republic of Nicaragua, et al.* Page 3 of 16

Sequeira as parties to the settlement) [Doc. # 180]. The payments were to be deposited in Sequeira's California bank account. Id. Sometime before November 2012, Defendants seized the western half of the Multi-Processing Plant as well. Id. ¶ 14.

On September 23, 2010, the mayor of El Viejo chased Sequeira off the Cosiguina property with the assistance of the El Viejo and Chinandega branches of the Nicaraguan national police and took possession of the land. Id. ¶¶ 7-9. In 2012, the Nicaraguan national police allegedly took

Sequeira's personal property on the Managua property.
Id. ¶ 21.

After Defendants seized the eastern half of the Multi-Processing Plant, Defendants allegedly began to solicit funds from United States non-profit organizations and private investors, including United States baseball players and teams. Id. ¶ 66. Defendants also allegedly acquired additional funds at an event in California called "Expo Nica." Id. ¶ 72. Sequeira alleged that those funds were used to build a stadium and houses on the Multi-Processing Plant. Id. ¶¶ 67, 72. Some of those houses were purchased with money sent to Nicaragua by individuals with family members living and working in the United States. Id. ¶ 89.

Sequeira also claims that Defendants began operating and managing the western half of the Multi-Processing Plant and Cosiguina properties for personal gain in 2012. Id. ¶¶ 10, 14. Specifically, Sequeira alleges that Defendants sold cattle raised on the Cosiguina property as meat products in the United States. Id. ¶¶ 59–60. Defendants also allegedly collected rent from American tenants, such as Codemet, who rents several warehouses on the western side of the Multi-Processing Plant. Id. ¶ 92.

III.

LEGAL STANDARD

As a threshold matter, a court adjudicating a claim against a foreign state must determine whether the FSIA provides subject matter jurisdiction over the claim. *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 706 (9th Cir. 1992). The FSIA is the sole basis for obtaining jurisdiction over a foreign state in federal courts. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). "A federal court lacks subject matter jurisdiction over a claim against a foreign

Title ***Jairo Sequeira v. The Republic of Nicaragua, et al.*** Page 3 of 16 (Continue)

state unless the claim falls within an exception to immunity under the FSIA.” Siderman, 965 F.2d at 706.

Where a defendant brings a factual attack on subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), “the defendant may introduce testimony, affidavits, or other evidence to ‘dispute[] the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.’” Terenkian v. Republic of Iraq, 694 F.3d 1122, 1131 (9th Cir. 2012) (quoting Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004)). Thus, “no presumptive truthfulness attaches to the plaintiff’s allegations.” Doe v. Holy See, 557 F.3d 1066, 1073 (9th Cir.

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2009) (quoting Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)). Instead, the plaintiff must first offer proof that one of the FSIA exemptions applies. Terenkian, 694 F.3d at 1131 (quoting Siderman, 965 F.2d at 708 n.9); see also Barapind v. Gov’t of the Republic of India, 844 F.3d 824, 830–32 (9th Cir. 2016) (plaintiff failed to prove that exception to sovereign immunity applied). Then, “the defendant bears the burden of proving by a preponderance of the evidence that the exception to sovereign immunity does not apply.” Terenkian, 694 F.3d at 1131. Even if there are material facts in dispute, the trial court “may still evaluate the merits of the jurisdictional claims.” Id.

IV. DISCUSSION

Defendants are presumptively entitled to immunity because Nicaragua is a foreign state and both Chinandega and El Viejo are political subdivisions of Nicaragua. See TAC ¶¶ 32, 35, 38; see also 28 U.S.C. § 1604 (“Subject to existing international agreements to which the United

States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the Courts of the United States and the States except as provided in sections 1605 and 1607 of this chapter.”); id. at § 1603 (defining “foreign state” for most purposes as including “a political subdivision of a foreign state or an agency or an instrumentality of a foreign state”). Sequeira contends, however, that the Court has jurisdiction under the waiver and commercial activity exceptions to the FSIA. See id. ¶¶ 43–94.

Defendants raise a factual challenge to jurisdiction under the FSIA and present evidence purporting to prove that the waiver and commercial activity FSIA exceptions do not apply. See Mot. at 1. They also contend that the TAC should be dismissed for improper venue because the FSIA venue statute, 28 U.S.C. § 1331(f), requires Sequeira to bring his action in the District Court for the District of Columbia. See id. at 24. The Court considers each of these contentions in turn.

A. Waiver Exception

As explained in the Court’s Order re SAC, a foreign state can waive sovereign immunity “either explicitly or by implication.” 28 U.S.C. § 1605(a)(1). “The FSIA’s waiver exception ‘is narrowly construed.’” *Siderman*, 965 F.2d at 720 (quoting *Joseph v. Office of the Consulate Gen.*

of Nigeria

, 830 F.2d 1018, 1022 (9th Cir. 1987)). Thus, an explicit waiver in the FSIA context must be “clear and unambiguous.” *Capital Ventures Int’l v. Republic of Argentina*, 552 F.3d 289, 293 (2d Cir. 2009); see also *Anderman v. Fed. Republic of Austria*, 256 F. Supp. 2d 1098, 1105–06 (C.D. Cal. 2003) (“Explicit waivers may be ascertained simply by reading the document in which an explicit waiver is purportedly made.”). Implied waivers are normally found in three situations: “(1) a foreign state has agreed to arbitration in another country; (2) a foreign state has agreed that a contract is governed by the law of

Title ***Jairo Sequeira v. The Republic of Nicaragua, et al.*** Page 4 of 16 (Continue)

a particular country; and (3) a foreign state has filed a responsive pleading in a case without raising the defense of sovereign immunity.”

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Barapind, 844 F.3d 824, 839 (9th Cir. 2016) (quoting *In re Republic of Philippines*, 309 F.3d 1143, 1151 (9th Cir. 2002)). Ultimately, “the essential inquiry in written agreement cases is whether a sovereign contemplated the involvement of United States courts in the affair in issue.” *Siderman*, 965 F.2d at 721.

Sequeira contends that Defendants waived sovereign immunity by entering into a private written contract (the “Agreement”), which provides that:

In the event of the breach of this agreement, [the mayor of El Viejo] on behalf of the Municipality of El Viejo . . . , municipality in the Department of Chinandega, this authority expressly waives jurisdiction and agrees to submit to the jurisdiction chosen by Mr. Sequeira, who is entirely free to choose the jurisdiction of California, United States, or any other venue deemed convenient to settle civil or criminal disputes, or disagreements over damages or disturbance of possession of the property described above. This agreement will be governed by the Code of Commerce of Nicaragua, Sections 8 and 10, which are in accordance with the laws of the United States on Commerce, as well as international provisions of the Universal Code of commerce [sic].

Rizo Decl., Ex. 5 (“Agreement”) [Doc. # 138-6]; see also Sequeira Decl., Ex. Y [Doc. # 180-1].

First, Defendants contend that the Agreement is fraudulent because El Viejo has no record of the contract or the required Municipal Council approval of the

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contract. See Mot. at 14–15. Defendants provide two declarations—one from the Municipal Council Secretary José Adrián Arias Ruiz and another from the Mayor of El Viejo, María del Tránsito Guevara Rodas—in support of their contention. See Arias Decl. ¶ 4 [Doc. # 138-18]; Guevara Decl. ¶ 16 [Doc. # 138-22]. According to Arias, Nicaraguan law requires the Municipal Council to approve and maintain a record of contracts such as the Agreement. Arias Decl. ¶¶ 5–6. Arias and Guevara could not find any record of the Agreement in municipal records and council minutes. See Arias Decl. ¶¶ 7–13; Guevara Decl. ¶ 16.

Sequeira objects to both declarations, arguing that the declarations lack personal knowledge, foundation, and are unduly speculative, prejudicial, or constitute inadmissible hearsay. Sequeira also claims that both declarations are unqualified expert opinion. See generally Arias Obj. [Doc. # 146]; Guevara Obj. [Doc. # 147]. Sequeira’s objections are meritless. Federal Rule of Evidence 803(10) permits testimony “that a diligent search failed to disclose a public record or statement if . . . the testimony or certification is admitted to prove that . . . a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind” Arias and Guevara’s declarations provide such testimony. See also Fed. R. Civ. P. 44(b); United States v. Lee, 589 F.2d 980, 987 (9th Cir. 1979) (negative records admissible under Fed. R. Civ. P. 44 or Fed. R. Evid. 803(10)); Zhangling Jiang v. Holder, 658 F.3d 1118, 1120 (9th Cir. 2011).

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Moreover, to the extent Sequeira objects to Arias’s recitation of Nicaraguan law, the Court “may consider any relevant material or source, including testimony, whether or not . . . admissible under the Federal Rules of Evidence” to determine an issue of foreign law. Fed. R. Civ. P. 44.1. Accordingly, the Court OVERRULES Sequeira’s objections.

Second, Defendants argue that even if the Agreement is not fraudulent, it is void because its notarization fails to comply with applicable law. Under Nicaraguan law, contracts that purport to be authorized by a notary public are considered public documents. See Rizo Decl., Ex. 3 at 17 (translation of Nicar. Civ. Code § 2364) [Doc. No. 138-6].³ Public documents are void ab initio in their entirety if notarized by a notary public who is “within the fourth degree of consanguinity or second degree of affinity”—i.e., a spouse, parents- or children-in-law, or individuals closely related by blood—with a personally interested party. See *id.* (translation of Nicar. Civil Code § 2372). Section 2372 has an exception: notaries public can notarize public documents in which a closely related family member is a signatory if “the parties are interested parties solely because they possess a holding in corporations, or are managers or directors of the same” *Id.*; see also Illescas Decl. ¶ 131 [Doc. # 169].

³ Sequeira also objects to the Rizo Declaration, arguing that it constitutes impermissible “ultimate issue” opinion. See generally Rizo Obj. [Doc. # 156]. As mentioned above, however, Rule 44.1 permits the Court to consider “any relevant material or source, including testimony, whether or not . . . admissible” to determine an issue of foreign law. Fed. R. Civ. P. 44.1. Moreover, Rizo appears to be a qualified expert in Nicaraguan law given her decades-long experience as a Nicaraguan attorney. See Rizo Decl. at 1. In any event, Sequeira’s own expert witness, Arnoldo Illescas Ibarra, relies on substantially similar translations of Nicaraguan law. See, e.g., Illescas Decl. ¶ 131 [Doc. # 169]. The Court therefore OVERRULES Sequeira’s objections.

Nicaraguan law also requires public documents to satisfy all formalities required for their validity—failure to do so voids the entire document. See *id.* (translation of Nicar. Civ. Code § 2371); see also Rizo Decl., Ex. 4. at 28 (translation of Nicar. Notarial Code § 28). As relevant here, the notary's introduction to the contract must “contain and express . . . whether the parties are acting on their own behalf or in representation of [a corporation]” by citing the corporation's articles of incorporation and any other document necessary to establish representation. See *id.* at 27 (translation of Nicar. Notarial Code § 23).

Here, the Agreement was notarized by Horacio Ramón Sequeira Argeñal. See Rizo Decl., Ex. 5 at 34, 39; Sequeira Decl., Ex. Y at 69, 73. Horacio⁴ and Sequeira are brothers—the second degree of consanguinity. See Rizo Decl., Ex. 7 (Horacio's birth certificate); *id.*, Ex. 8 (Sequeira's birth certificate).⁵ Thus, the Agreement is void *ab initio* unless the Section 2372 exception applies.

⁴ The Court refers to Horacio Sequeira by his first name to distinguish him from Plaintiff.

⁵ Sequeira objects to Rizo's conclusion that he and Horacio are at the second degree of consanguinity. See Rizo Obj. ¶ 24. Sequeira merely repeats generic objections without specific analysis. Sequeira does not dispute that he and Horacio are brothers. See Opp. at 11. The Court OVERRULES Sequeira's objection.

The exception does not apply here. Sequeira entered into the Agreement “on his own behalf and on behalf of [Smith Company.]” Rizo Decl., Ex. 5 at 36; see also Sequeira Decl., Ex. Y at 64 (Sequeira “appears before [Horacio] in his double capacity in his own name . . . and legal representative of [Smith, Inc. and Smith Company.]”). Thus, Sequeira is not an interested party “solely because [he] possess[es] a holding in corporations.” Rizo Decl., Ex. 3 at 18 (emphasis added). Rather, Sequeira signed the Agreement in order to assert his partial, personal ownership of the Multi-Processing Plant. See Rizo Decl., Ex. 5 at 36 (“[Smith Company] and Mr. Sequeira are the owners and possessors of [the Multi-Processing Plant]”); Sequeira Decl., Ex. Y at 65 (“[Smith S.A.] and Mr. Sequeira himself are owners in dominion and possession of [the Multi- Processing Plant]”).

In addition, the Agreement does not meet the requirements of Notarial Code § 28 because Horacio did not cite the Smith companies’ articles of incorporation to establish that Sequeira was authorized to represent those companies. Rizo Decl., Ex. 4 at 28. Rather, Horacio merely referenced a “document produced by [Sequeira].” See Rizo Decl., Ex. 5 at 36.⁶

6 The translation of the Agreement provided by Sequeira does not reference any documents purporting to establish representation on behalf of the Smith companies. See Sequeira Decl., Ex. Y at 64.

Thus, the Agreement is void ab initio. Because it is an invalid contract, the Agreement cannot act as an express or implied waiver of sovereign immunity under the FSIA.⁷ See Terenkian, 694 F.3d at 1131. Therefore, the waiver exception does not apply.

⁷ Additionally, as the Court briefly explained in its Order re SAC, Sequeira still has not shown that the Agreement, if it were valid, waives Nicaragua and Chinandega's sovereign immunity. See Order re SAC at 8. The Agreement states: "Mr. Moncada on behalf of the Municipality of El Viejo (City of El Viejo), and in his capacity as Mayor of El Viejo, municipality in the Department of Chinandega, this authority expressly waives jurisdiction . . ." Rizo Decl., Ex. 5 at 39 (emphasis added); see also Sequeira Decl., Ex. Y at 68. The Agreement's reference to "this authority" indicates that El Viejo is the only Defendant, if any, bound by the alleged waiver. Sequeira presents no evidence to support his contention that the limited language of the Agreement waives Nicaragua or Chinandega's immunity. Moreover, the fact that Nicaragua or Chinandega was allegedly "aware" of the Agreement (see Opp. at 9)—an allegation which Sequeira presents no evidence to support—is insufficient to demonstrate that Nicaragua or Chinandega contemplated the involvement of United States courts. Compare Siderman, 965 F.2d at 722 (waiver found where Argentina "deliberately implicated" United States courts by requesting court assistance in serving papers on the plaintiff) with Blaxland v. Commonwealth Dir. of Pub. Prosecutions, 323 F.3d 1198, 1206–07 (9th Cir. 2003) (no waiver where foreign sovereign made no "direct request of [United States] courts); Barapind, 844 F.3d at 831 ("not . . . reasonable to assume India . . . contemplated that adjudication of disputes would occur in a court of the United States because the entirety of the conduct at issue . . . was reasonably contemplated to occur only in India.").

B. Commercial Activity Exception

“[A] state is immune from the jurisdiction of foreign courts as to its sovereign or public acts (jure imperii), but not as to those that are private or commercial in character (jure gestionis).” *Saudi Arabia v. Nelson*, 507 U.S. 349, 359–60 (1993). Under the FSIA’s “commercial activity” exception, a foreign state is not immune from jurisdiction in any case “in which the action is based upon”: (1) “a commercial activity carried on in the United States by a foreign state”; (2) “an act performed in the United States in connection with a commercial activity of the foreign state elsewhere”; or (3) “an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]” 28 U.S.C. §1605(a)(2).

As the name of the exception implies, plaintiffs asserting jurisdiction under this exception must identify some commercial activity conducted by the sovereign defendant. The FSIA defines “commercial activity” to mean “either a regular course of commercial conduct or a particular commercial transaction or act.” 28 U.S.C. § 1603(d). It instructs courts to determine the commercial character of an activity “by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.” *Id.* As to the meaning of “commercial[,]” the Supreme Court has held that “commercial activity under the FSIA refers to ‘only those powers that can be exercised by private citizens, as distinct from those powers peculiar to sovereigns.’” *Embassy of the Arab Republic of Egypt v. Lasheen*, 603 F.3d 1166, 1170 (9th Cir. 2010) (quoting *Nelson*, 507 U.S. at 360).

Sequeira contends that all three clauses apply. See TAC ¶¶ 51–94. The Court will evaluate each clause *seriatim*.

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1. Clause One and Two

Under the first clause of the commercial activity exception, 28 U.S.C. § 1605(a)(2), a foreign state is not immune from jurisdiction in any case based upon “a commercial activity carried on in the United States by the foreign state.” The FSIA provides that [a] ‘commercial activity carried on in the United States by a foreign state’ means commercial activity carried on by such state and having substantial contact with the United States.” 28 U.S.C. § 1603(e). “Under this definition, the foreign state need not engage in commercial activity in the United States on a regular basis.” Siderman, 965 F.2d at 709. “Instead, the critical inquiry is whether there is ‘a nexus between the defendant’s commercial activity in the United States and the plaintiff’s grievance.’” Id. (quoting Am. W. Airlines, Inc. v. GPA Grp., Ltd., 877 F.2d 793, 796 (9th Cir. 1989)). Courts must “zero[] in on the core of [the] suit: the . . . sovereign acts that actually injured [plaintiff].” OBB Personenverkehr AG v. Sachs, 136 S. Ct. 390, 396 (2015).

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Clause two of the exception applies to cases that are “based upon . . . an act performed in the United States in connection with a commercial activity of the foreign state elsewhere.” See 28 U.S.C. § 1605(a)(2). “A plaintiff must either demonstrate a causal connection between a sovereign’s actions in the United States and those abroad giving rise to the plaintiff’s claims, or the sovereign’s acts in the United States must themselves represent” the core of the plaintiff’s claims. Siderman, 965 F.2d at 709.⁸

8. The full quote from Siderman states: “[a] plaintiff must either demonstrate a causal connection between a sovereign’s actions in the United States and those abroad giving rise to the plaintiff’s claims, or the sovereign’s acts

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Here, Sequeira contends that jurisdiction under clauses one and two of the commercial activity exception is “based upon” three commercial acts: (1) selling Sequeira’s cattle as meat products in the United States (see TAC ¶¶ 58–63); (2) soliciting funds in the United States to build a baseball stadium on the east side of the Multi-Processing Plant (see id. ¶¶ 65–70); and (3) soliciting funds in the United States at Expo Nica to build houses on the east side of the Multi- Processing Plant (see id. ¶¶ 72–74).⁹

in the United States must themselves represent an element in the plaintiff’s cause of action.” Siderman, 965 F.2d at 709 (emphasis added). The Supreme Court in Sachs, however, explicitly disapproved the Ninth Circuit’s “one element” test and endorsed a “core of [the] suit” approach. Sachs, 136 S. Ct. at 396. Although Sachs limited its analysis to the first clause, it is likely that the Ninth Circuit’s one-element approach to the second clause is no longer good law.

9 Defendants briefly contend that these acts cannot serve as the basis for jurisdiction under the commercial activity exception. See Mot. at 18–19 & n.4. Although the Supreme Court overruled the Ninth Circuit’s “one element” test in Sachs (see Sachs, 136 S. Ct. at 396; see also *supra* n.8), this aspect of Siderman remains good law. In Sachs, the plaintiff was injured by unsafe conditions at a train station in Austria. Id. at 393. The Supreme Court held that the defendant’s sale of Eurail passes in the United States was irrelevant for the purposes of the FSIA’s commercial activity exception because “all of her claims turn on the same tragic episode in Austria.” Id. at 396 (citing Nelson, 507 U.S. at 358). Furthermore, to the extent that the plaintiff alleged claims involving activity in the United States, those claims relied on the existence of wrongful acts abroad. Id.

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Because Defendants now raise a factual challenge to jurisdiction, Sequeira must offer proof of his allegations. See Terenkian, 694 F.3d at 1131. He has not done so here with regard to his first claim of commercial activity. Sequeira presents no evidence that Defendants sold his cattle as meat products in the United States. Indeed, the only reference to cattle in the record is a passing mention of “983 milk cows” in a 1999 contract for the sale of land between Sociedad Agricola Y Ganadera Zapata-Sequeira, LLC, represented by Horacio, to Sequeira. See Sequeira Decl., Ex. E at 78 [Doc. No. 180].

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As for Sequeira’s second and third claims of commercial activity, it is not clear that Defendants’ alleged solicitation of investments is sufficient to abrogate their sovereign immunity under the FSIA. Plaintiffs cannot abrogate a “foreign nation’s sovereign immunity under the first clause of the FSIA by pointing to preliminary commercial activities in the United States.”

Terenkian, 694 F.3d at 1133. The alleged solicitation of investment funds are similar to “contract negotiations” and “telephone and wire communications,” which are “preliminary” and “insufficiently significant to meet this exception.” Id.

In contrast, the plaintiffs in Siderman alleged that the sovereign defendant seized their hotel and continued to receive “the profits and benefits that rightfully belong to” the plaintiffs. Siderman, 965 F.2d at 709. Unlike Sachs, where the injury-causing activity was a discrete event, the activity causing the Siderman family harm was the seizure of not only the hotel, but also the continuing deprivation of the “profits and benefits” arising from the hotel. This aspect of Siderman is not “clearly irreconcilable” with Sachs or Nelson. See *Lair v. Bullock*, 798 F.3d 736, 745 (9th Cir. 2015).

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Even if soliciting investment funds could abrogate Defendants' immunity, the Court finds that Sequeira has not met his burden of production with regard to these allegations. The only mention of a baseball stadium in the evidence presented by Sequeira is an article announcing the construction of a stadium in El Viejo. See Sequeira Decl., Ex. N at 136 [Doc. No. 180]. Although that article mentions several United States baseball players, it makes no mention of Defendants soliciting from investors in the United States. See *id.*

To support his allegation that Defendants solicited investments in the United States at "Expo Nica," Sequeira presents a declaration from German Peña. See Peña Decl. [Doc. No. 172]. Peña was a founder of the Expo Nica event series and served as an advisor to the Chamber of Commerce Nicaraguense Americana of California until 2012. See *id.* at 2–3.¹⁰ According to Peña, the Nicaraguan consulate participated in Expo Nica in 2012. See *id.* ¶ 5; see also *id.*, Ex. C at 9 (letter from Peña to Nicaraguan Consulate assigning them a booth at Expo Nica). At one such event, according to Peña, the Nicaraguan consulate collected funds "to build houses in a location known as MOTOSA"¹¹ in El Viejo. *Id.*

10 Peña's declaration appears to be missing a page. The declaration states that Peña was an advisor of "COCANACA" until 2012. See *id.* ¶ 3. "COCANACA" is the aforementioned Chamber of Commerce. See *id.*; see also Sequeira Decl., Ex. FF at 139 [Doc. No. 180-1].

11 In a prior complaint, Sequeira alleged that the Multi-Processing Plant was "commonly known as MOTOSA." See First Amended Complaint ¶ 57 [Doc. No. 74].

Sequeira has not laid a proper foundation, however, for Peña's assertions regarding Defendants' motives for attending the event. It is unclear how Peña would know whether Defendants solicited investments for a housing development in El Viejo at the event—his position as a founder and adviser for Expo Nica does not make him privy to Defendants' investment and funding strategy. Nor did Peña state that he personally saw Defendants soliciting investments.

Moreover, Defendants rebut Peña's assertions with declarations from various Nicaraguan government officials. In particular, Guevara, the mayor of El Viejo, attests that the housing development on the Multi-Processing Plant only used funds from the Nicaraguan Institute for Urban and Rural Housing ("INVUR"). See Guevara Decl. ¶ 24; see also Cano Decl. ¶ 7 [Doc. No.

138-25].¹² Similarly, the El Viejo's finance director, Mivelda del Socorro Zavala Pérez states that there is no record of any funds received from persons or entities in the United States for a housing project.

12 Sequeira objects to Cano's declaration, arguing that the declaration is hearsay. See generally Cano Obj. [Doc. No. 152.] Olivia Margarita Cano Bustamante is the co-director general of INVUR. See Cano Decl. ¶ 1. She states that she reviewed INVUR's internal records and found that the housing development only used funds from INVUR. The business records or public records exception covers her testimony. See Fed. R. Evid. 803(6), (8). The Court OVERRULES Sequeira's objections.

See Zavala Decl. ¶ 7 [Doc. No. 138-24].¹³ Nicaragua’s Counsel General, José Alberto Acevedo Vogl, also attests that, although the Nicaraguan consulate intended to participate in Expo Nica in 2012, the consulate ultimately cancelled its appearance due to security concerns. See Acevedo Decl. ¶¶ 4–6; see also id., Ex. 1 (article explaining Nicaragua’s cancellation) [Doc. No. 181-5].

In sum, the weight of the evidence does not support Sequeira’s claim that Defendants conducted commercial activities within the meaning of the first or second clause of the commercial activity exception. Thus, those clauses do not apply.

2. Clause Three

Under the third clause of the FSIA, a foreign state is not immune from jurisdiction in any case “based upon . . . an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.” 28 U.S.C. § 1605(a)(2). Put differently, to invoke the third clause of the commercial activity exception, a plaintiff must identify: (1) an extraterritorial act by the sovereign defendant; (2) a commercial activity connected to that act; and (3) a direct effect in the United States. Id.

13 Sequeira objects to Zavala’s declaration on the grounds of hearsay and lack of personal knowledge. See generally Zavala Obj. [Doc. No. 149.] Zavala is the finance director of El Viejo. She attests that she reviewed the centralized payments register for El Viejo and found that there was no record of any payments from any United States entities. Federal Rule of Civil Procedure 44(b) and Federal Rule of Evidence 803(10) permits such testimony. The Court OVERRULES Sequeira’s objections.

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An act outside of the United States has a direct effect “if it follows ‘as an immediate consequence of the defendant’s . . . activity.’” Terenkian, 694 F.3d 1133 (quoting *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 618 (1992)). “[A] consequence is ‘immediate’ if no intervening act breaks ‘the chain of causation leading from the asserted wrongful act to its impact in the United States.’” *Id.* (quoting *Lyon v. Augusta S.P.A.*, 252 F.3d 1078, 1083 (9th Cir. 2001)). Further, “[m]ere financial loss” suffered by an individual or corporation in the United States is not sufficient to constitute a “direct effect.” *Siderman*, 965 F.2d at 710 (quoting *Am. W. Airlines*, 877 F.2d at 799–800). Thus, “to establish a ‘direct effect’ in the United States resulting from an act occurring abroad, a plaintiff must establish that ‘something legally significant actually happened

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in the U.S.” *Gregorian v. Izvestia*, 871 F.2d 1515, 1527 (9th Cir. 1989) (quoting *Zedan v. Kingdom of Saudi Arabia*, 849 F.2d 1511, 1515 (D.C. Cir. 1988)).

Sequeira contends that the third clause is implicated in three ways: (1) Defendants disrupted the payment of dividends pursuant to the bylaws of Smith, Inc. and Smith Company; (2) Defendants receive payment remittances to pay for the mortgage on the houses built on the Multi- Processing Plant; and (3) rented out warehouses on the Multi-Processing Plan.¹⁴ See TAC ¶¶ 76–82, 88–94. Sequeira does not present any evidence to support his contentions.

¹⁴ Sequeira also argues that the third clause applies because Defendants failed to pay him \$2.5 million as required by the Agreement. See *id.* ¶¶ 83–87. As explained above, however, the Agreement is void ab initio. See *supra* Part IV.A.

First, Sequeira contends that Defendants' seizure of the Multi-Processing Plant and Cosiguina property disrupted the payment of dividends for Smith, Inc. and Smith Company. See *id.* ¶¶ 76–82. This alleged seizure, however, is insufficient to satisfy the third clause by itself because it is not a commercial activity. See *Lasheen*, 603 F.3d at 1170 (9th Cir. 2010) (commercial activity refers solely to "powers that can also be exercised by private citizens"). The third clause only applies if Defendants seized Sequeira's property "in connection with" some commercial activity. See 28 U.S.C. § 1605(a)(2) (no immunity in cases "based upon . . . an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere . . .").

In its prior Order, the Court accepted as true Sequeira's allegation that Defendants operated the Multi-Processing Plant for personal profit—an undoubtedly commercial act—in connection with the alleged seizure because Defendants raised a facial challenge only. See Order re SAC at 11; see also Ninth Circuit Memorandum at 2 [Doc. No. 112]. On a factual challenge, however, Sequeira must provide evidence to prove his allegations. See *Terenkian*, 694 F.3d at 1131. As explained above, Sequeira submits no evidence that Defendants sold cattle, solicited investments, or otherwise conducted any commercial activity underlying this lawsuit.¹⁵ See *supra* Part IV.B.1.

¹⁵ Defendants argue that Sequeira also cannot show that the alleged takings had a "direct effect" in the United States because neither Smith, Inc. nor Smith Company could pay dividends given that Smith, Inc was suspended by the California Franchise Tax Board in 2009. See Mot. at 22–23. This argument is unconvincing, however, because the first taking occurred in 2006. See TAC ¶ 12. The taking had the "direct effect" of crippling Smith, Inc. such that it could no longer pay its taxes, leading to its suspension in 2009. See Opp. at 20. Nonetheless, the

Second, Sequeira also presents no evidence that Defendants received or continue to receive remittances sent by family members in the United States to pay for mortgages in Nicaragua. Although Sequeira's allegation has a ring of truth, mere allegations are insufficient to survive a factual challenge to jurisdiction no matter how probable. See Terenkian, 694 F.3d at 1131. Sequeira must provide evidence supporting his allegation and he did not do so here. More

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importantly, even if Sequeira could offer evidence of his allegation, remittances by family members do not constitute a "legally significant act" within the meaning of the FSIA. Payment of remittances by United States families is not an "immediate consequence" of Defendants' alleged seizure of Sequeira's property. There are several intervening steps breaking the chain of causation: Defendants must build houses on the Multi-Processing Plant, individuals with families in the United States must purchase those houses, and those families must pay remittances. The alleged remittances are too remote and attenuated from the core of this suit to satisfy the third clause. See *id.* at 1138–39.

Finally, Sequeira presents no evidence that Codemet or any other tenant paid rent to Defendants. Sequeira alleges that Codemet and another entity, Consa, rented warehouses on the eastern half of the Multi-Processing Plant before Defendants seized the property. See Sequeira Decl. ¶¶ 41–52. [Doc. # 168.] Although Sequeira's declaration claims that he has rental contracts with the two entities, Sequeira does not produce any such contracts. See *id.* ¶¶ 46, 48–49.

commercial activity exception requires Sequeira to identify (and now prove) some commercial activity conducted by Defendants. See Terenkian, 694 F.3d at 1132–33. As explained, Sequeira has not done so.

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Sequeira only produced two checks purportedly issued by Consa and Codemet in 2006 and 2008, respectively, but it is not clear that Codemet or Consa issued those checks to pay rent. See *id.*, Ex. S at 154; *id.*, Ex. T at 156 [Doc. No. 180]. Even if Codemet and Consa rented warehouses from Sequeira prior to Defendants' taking, it does not follow that Defendants rented warehouses to Codemet and Consa. Indeed, Defendants' declarations state that there are no records of any such rental payments. See, e.g., Zavala Decl. ¶ 8. Sequeira also presents no evidence that Codemet and Consa are still tenants of those warehouses.

In sum, Sequeira fails to show that the third clause of the commercial activity exception applies.

C. Expropriation and Noncommercial Tort Exceptions

In Sequeira's Opposition, he argues that the expropriation and noncommercial tort exceptions also apply. See Opp. at 21–25. The Court previously dismissed Sequeira's attempt to assert those exceptions and gave Sequeira leave to allege additional facts in support of those exceptions. See Order re SAC at 11–14 (finding that Sequeira alleged insufficient facts to support the expropriation and noncommercial tort exceptions). Specifically, the Court found that although Sequeira sufficiently alleged that Defendants took his property in violation of international law, Sequeira failed to allege sufficient facts to satisfy the first or second clause of the expropriation exception. See *id.* at 11–13. The Court also found that Sequeira failed to allege any facts showing that Defendants' alleged tortious conduct occurred in the United States. See *id.* at 14.

Sequeira's TAC did not re-plead the expropriation and noncommercial tort exceptions. He cannot amend his complaint by way of an opposition to a motion to dismiss.

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In any event, even if leave to amend could be extended once again to do so, Sequeira's arguments fail because he offers no evidence in support of his contention that the expropriation exception applies. Nor did Sequeira

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cure the relevant deficiencies in his prior complaint relating to the noncommercial tort exception—he did not allege or present any evidence that Defendants' tortious conduct occurred within the United States.

Based on the evidence in the record, the Court finds that no exception to sovereign immunity applies. Defendants are therefore entitled to immunity and their Motion to Dismiss is GRANTED.¹⁶

D. Sequeira's Motion for Reconsideration

Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from any prior order or decision for a number of reasons including, but not limited to: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered with reasonable diligence; and (3) any other reason that justifies relief. Fed. R. Civ. P. 60(b)(1), (6).

¹⁶ Because the Court concludes that Defendants are entitled to sovereign immunity, it does not reach Defendants' venue argument.

Under Local Rule 7-18, a party may seek reconsideration “only on the grounds of (a) a material difference in fact or law from that presented to the court before the decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of the decision, or (b) the emergence of new material facts or a change of law occurring after the time of the decision, or (c) a manifest showing of a failure to consider material facts presented to the court before the decision.” C.D. Cal. L.R. 7-18. “No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.” Id. “Whether to grant a motion for reconsideration under Local Rule 7-18 is a matter within the court’s discretion.” *Daghlian v. DeVry Univ., Inc.*, 582 F. Supp. 2d 1231, 1251 (C.D. Cal. 2007).

Sequeira moves for reconsideration of the Court’s Order denying his request for an extension of time to file an opposition. The Court granted Sequeira a three-week extension of time to file his opposition. In any event, Sequeira met the deadline and his request for an extension of time is now moot.

Sequeira also moved for reconsideration of the Court’s Order denying his request for jurisdictional discovery, arguing that discovery is appropriate to verify or test the statements made in Defendants’ supporting declarations. In its Order, the Court stated that it denied Sequeira’s request because he failed “to identify any specific relevant facts that he reasonably believes could be substantiated through jurisdictional discovery.” *Order re Pl. Request* (citing *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1095–96 (9th Cir. 2007) [Doc. # 145.] Other

than a broad and open-ended request for jurisdictional discovery, Sequeira still has not identified any specific facts or allegations that could be substantiated through limited discovery nor is it clear which parts of Defendants' supporting declarations Sequeira intends to verify or test. The fact that Defendants have raised a factual challenge to subject matter jurisdiction does not entitle Sequeira to unspecified discovery.

Accordingly, the Court DENIES Sequeira's Motion for Reconsideration.

E. Sequeira's Motion to Certify Order for Interlocutory Review

Under 28 U.S.C. § 1292(b), a district court may certify for immediate appeal an otherwise unappealable interlocutory order where an order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1291(b); see also *In re Cement Antitrust Litig.* (MDL No. 296), 673 F.2d 1020, 1026 (9th Cir. 1982). Section 1292(b) is narrowly construed. *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002).

Sequeira moves to certify the Court's Order denying limited jurisdictional discovery for interlocutory review. Interlocutory review is not warranted, however, as none of the three requirements of § 1292(b) have been met. First, whether the Court erred in denying jurisdictional discovery does not require the resolution of a controlling question of law. Rather, Sequeira requests review of whether the Court abused its discretion. Second, there is no "substantial ground for difference of opinion," given that the law regarding jurisdictional discovery is well-settled. See *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010) ("That settled law might be applied

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differently does not establish a substantial ground for difference of opinion.”). Finally, interlocutory appeal of the Court’s Order is unnecessary, because Sequeira may now appeal all of this Court’s rulings if he wishes to do so.

Accordingly, the Court DENIES Sequeira’s Motion to Certify Order for Interlocutory Review.

F. Sequeira’s Motion for Rule 11 Sanctions

Federal Rule of Civil Procedure 11(c)(2) provides in pertinent part that a motion for sanctions “must be served under Rule 5, but it must not be filed or presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets.” The Ninth Circuit “enforce[s] this safe harbor provision strictly[,]” such that an award of sanctions will be reversed if the movant “failed to comply with the safe harbor provisions, even [if] the underlying filing is frivolous.” See Holgate v. Baldwin, 425 F.3d 671, 678 (9th Cir. 2005).

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Here, Sequeira’s notice of motion represents that the motion was served on Defense Counsel on April 27, 2018.¹⁷ See Rule 11 Mot. at 2–3 [Doc. # 188]. On that same day, Sequeira filed the motion as an attachment to a declaration supporting his motion to strike. [Doc. # 180 at 8–33.]

¹⁷ On the other hand, Sequeira’s declaration asserts that he somehow served the motion on Defense Counsel on November 27, 2018. See Sequeira Decl. at ¶ 2 [Doc. # 190].

Sequeira thus violated the safe harbor provision by failing to afford Defendants a fair opportunity to withdraw or correct their previous filings before he filed the motion or presented it to the Court. See *Folta v. Winkle*, No. CV 14-01562, 2016 WL 4087103, at *2–3 (D. Ariz. July 28, 2016) (holding that a plaintiff violated Rule 11(c)(2) by filing the sanctions motion as an exhibit to another filing); *Young v. City of Providence*, 404 F.3d 33, 39 (1st Cir. 2005) (“[T]he object of the safe harbor is to allow a party to privately withdraw a questionable contention without fear that the withdrawal will be viewed as an admission of a Rule 11 violation.” (emphasis added)). Accordingly, the Court DENIES Sequeira’s Rule 11 motion.¹⁸

V.
CONCLUSION

In light of the foregoing, Defendants’ motion to dismiss is GRANTED without prejudice for lack of subject matter jurisdiction. See *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988) (“a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court” in a jurisdiction outside of the United States). Sequeira’s Motion for Reconsideration, Motion to Certify Order for Interlocutory Review, Request and Motion to Strike, and Motion for Rule 11 Sanctions are DENIED.

IT IS SO ORDERED.

18 Sequeira states that, “[s]hould the Court find Rule 11 insufficient to provide authority to sanction the conduct at issue here for any reason, [he] also invoke[s] the Court’s inherent power to sanction litigants in order to ensure the integrity of the Court’s processes.” See Rule 11 Mot. at 28 n.2. Yet, Sequeira fails to cite any authority establishing that he may invoke the Court’s inherent authority to excuse his failure to comply with Rule 11(c)(2)’s safe harbor provision. In fact, such an approach would flout the purpose of the safe harbor requirement. See *Young*, 404 F.3d at 39.

APPENDIX E

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAIRO SEQUEIRA, Plaintiff, v. REPUBLIC OF NICARAGUA, et al., Defendants. Case No. CV 13-43332-DMG (FFMx) JUDGMENT

On February 20, 2014, the Court granted the motion to strike or dismiss for lack of personal jurisdiction filed by Defendants Aminta Elena Granera Sacasa, Manuel Zambrana Bermudez, Santiago Cruz, Francisco Aguilera Ferrufino, and Ali Boanerge Espinoza Juarez. On August 24, 2018, the Court granted the motion to dismiss for lack of subject matter jurisdiction filed by Defendants the Republic of Nicaragua, the City of Chinandega, and the City of El Viejo.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that this action is DISMISSED without prejudice for lack of jurisdiction. DATED: August 24, 2018. Signed by DOLLY M. GEE UNITED STATES DISTRICT JUDGE

APPENDIX F

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MAY 30 2017, MOLLY DWYER, CLRK US COURT OF APPEALS,

JAIRO SEQUEIRA, A Citizen of the United States of America, Plaintiff-Appellant, v. THE REPUBLIC OF NICARAGUA, a forign Country; et al., Defendants-Appellees. No. 15-55417 D.C. No. 2:13-cv-04332-DMG-FFM MEMORANDUM*

Appeal from the United States District Court for the Central District of California Dolly M. Gee, District Judge, Presiding Submitted May 24, 2017**

Before: THOMAS, Chief Judge, and SILVERMAN and RAWLINSON, Circuit Judges.

Jairo Sequeira appeals pro se from the district court's orders dismissing his action against the sovereign defendants for lack of subject matter jurisdiction and dismissing his action against the individual defendants for lack of personal jurisdiction. We have jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"), *Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 304-05 (9th Cir. 1997), and determinations as to personal jurisdiction, *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9ht Cir. 2010). We affirm in part, vacate in part, and remand. The district court dismissed Sequeira's first amended complaint against the sovereign defendants with prejudice because Sequeira did not produce evidence that an exception to immunity under the FSIA applied. However, Sequiera was not required to produce such evidence in response to a facial attack on subject matter jurisdiction. See *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012) (setting forth burden-shifting framework of the FISA and explaining that in facial

jurisdictional challenges a presumption of truthfulness attaches to allegations in the complaint). We therefore reverse the dismissal of the claims against the sovereign defendants and remand for further proceedings.

The district court properly dismissed the second amended complaint against the individual defendants for lack of personal jurisdiction because the allegations did not establish that the individual defendants purposefully availed themselves of a United States forum, *see Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 458 (9th Cir. 2007) (Defendants did not assent to the forum selection clause),, or purposefully directed any activities toward the United States, *See Love*, 611 F.3d at 609 (defendant's alleged intentional acts were not directed at the forum state). Sequeira's motion to strike (Docket Entry No. 13) is granted insofar as it request that we limit our review to the district court record. All other requests set forth in that motion (Docket Entry No. 13) are denied. The parties Shall bear their own costs on appeal. AFFIRMED in part, VACATED in part, and REMANDED.

APPENDIX G

EXHIBIT A

(Translation to Exhibit #4 attached to Jairo Sequeira's Declaration Docket 101)

CERTIFIED NOTARIAL ACT LEGAL DOCUMENT NUMBER THREE, Acknowledgment of Debt and Payment Agreement.

At fifty minutes past two O'clock in the afternoon of the twenty-ninth day of the month of May of the year two thousand and seven. Before me; Horacio Ramon Sequeira Argenal, attorney and notary public of the Republic of Nicaragua, authorized by the Honorable Supreme Court of Justice to exercise as a notary within the quinquennium which ends the fifth day of November of the year two thousand and seven. Appears before me: Mr. German Munoz Moncada, an adult, Married Attorney at law, Mayor of the City or Municipality of El Viejo and whose domicile is the city of El Viejo, identified with his Nicaraguan identification card number 081-070761-0000U, and who appears before me in his capacity as the Mayor of the Municipality of El Viejo, as evidenced by the original Certification of Appointment by the Municipal Council of the city of El Viejo and to which I give faith of having seen said original certification and is not inserted within this legal document due to said document has been previously inserted in a previous certification, from here on said person would be referred to as **Mr. Mayor of the city of El Viejo, "The debtor"** and Mr. Jairo Aristides Sequeira Argenal, who is an adult, married, a Merchant domiciled in the City of los Angeles, California, transiting this city and who is identified himself with a passport 0811080 and identification number 081-160869-0002X; who appears before me in his double capacity in his own name as owner of shares or shareholder and legal representative of Smith Modular Construction Systems and as a shareholder and legal representative of the corporation Smith Sociedad Anonima, pursuant to Nicaragua Civil Code Article 2372, which reads in pertinent part: Article 2372C. Notarial instruments

authenticated by a Notary or public official in favor of a family member are valid in a matter in which...the interested parties are interested only because they have a share in corporations, or are managers or directors thereof, the instrument shall be valid, the same as when all interested parties are related or are relatives to the notary within said degrees and the notary has no interest in the instrument Mr. Sequeira is appearing before me as owner of the 50% of shares and legal representative of Smith Modular Construction System and as owner of shares or shareholder and legal representative of the corporation Smith Socieda Anonima. The corporation Smith Sociedad Anonima functions as a subsidiary of the corporation Smith Modular Construction System which is legally incorporated in California as evidenced by the Certificate that is shown to me, and that I give faith to see it before me, from here on said person would be referred to as **Mr. Sequeira "Creditor"** and I give faith to know both parties to this contract personally and to my knowledge they both have the capacity and civil knowledge perfectly to enter into obligations and to enter into contracts, specifically in this contract, who from their free will and with their spontaneous consent through this legal instrument in their own capacity previously expressed as follows: FIRST: Mr. Sequeira the Creditor states, that Creditor states, that the entity he represents Smith Sociedad Anonima, and Mr. Sequeira himself are owners in dominion and possession of two lots of land located in the Municipality of the city of El Viejo, in a semi-urban area toward the east of the city of El Viejo. The first lot consisting of five hectares and four thousand seven hundred square meters (5 Has. 4700 m²) equivalent to seven blocks and seven thousand eighty seven square meters, and said lot number is identified by its City Planning County Record number 2753-1-02-000-08600 and its public Registry number is 7.907, Volume 421, File 75, seat 11. Its Registry City Planning Receipt and its City Planning Certification number is C.C. (R) #03-090 fount in its Soliciting Registry's number 1963, issued by the Chinandega Public City Planning Registry on the twenty third day of June of the year nineteen hundred

seventy of June of the year nineteen hundred seventy seven which corresponds to the number 38874 of the Chinandega Public Registry, said lots' bounds located at the North Street where the train station was located; South towards Silvio Rene Bolainez, East Buenos Aires Villa, West Motosa Corporation, which property used to belong to Mr. Takashi Shimazaki. Mr. Sequeira acquired the possession and the dominium with the improvements inclusive since November fourteenth of the year nineteen hundred and ninety-nine with a lien that was set by the Board of Collection of Debts, which subsequently said debt was cancelled due to a payment made by Mr. Sequeira which original receipt and original documentation of said payment cancelling the lien is demonstrated by Mr. Jairo Aristides Sequeira Argenal, and it contains a seal of the Board of Collection of Debts of the Central Bank, the second lot consist of an approximate area of seven blocks, located where the corporation Motosa operated for several years, it is registered under the number 16535, seat No.3, File 239 and 240 of the Volume 9 and files 81, 83, 84, 110 and 111 of the Volume 344 under the section of Real Estate of the Chinandega Public Registry. Said registrations were registered pursuant to article 3938 of the Nicaraguan Civil Code. **SECOND: Mr. Mayor of The City of El Viejo, "The Debtor,"** Attest that in the Ordinary Session number 47 that took placed in October of the year two thousand and two he declared Public Utility the aforementioned real estate property located towards the east which is located in El Viejo, and under his authority he issued a request to the Chief of the Chinandega Police Department Mr. Jose Francisco Aguilera Ferrufino to evict Mr. Sequeira and said Chief of the Chinandega Police Department conferred the possession in favor of the CITY OR MUNICIPALITY OF EL VIEJO without the need for previous payment for indemnification of said property where the stadium is going to be functioning, a basket ball court, and the rest of the lots for houses to private individuals. Due to the fact that Mr. Jairo Sequeira "The Creditor" currently has possession of both

lots of said property known as Motosa for a period of seven years and due to the fact that the possession of said property has been ratified by the Civil Court of the Second District of Chinandega, the Civil Court of the Second District of Leon and the Local Civil Court of the city of El Viejo. In representation of the City of El Viejo, (the city of El Viejo), Mr. Mayor of the municipality of El Viejo, German Munoz Moncada, agrees to pay the sum of two and a half million American dollars to Mr. Jairo Aristides Sequeira Argenal and the corporation he represents Smith Sociedad Anonia, said payment will be deposited directly into the bank account of Mr. Sequeira or the Corporation Smith Sociedad Anonima in the City of Los Angeles, California where both domiciled, and scheduled payments will be as follows: The thirtieth of June of the year two thousand and eight the payment of one million and two hundred and fifty thousand dollars; And the first payment will take place on August thirtieth of the year two thousand and seven which will consist of a payment of one million two hundred and fifty American dollars via wire transfer to Mr. Sequeira's bank account in a bank located in the United States of America for the payment of the first seven blocks of land where there the stadium is located, and subsequently it will be decided the value of the rest of the property where the shrimp processing plants, the 16 warehouses, the office, the assembly line to build panels for the construction of houses, the warehouses, the weigh station, the office, and the model home are located. Due to the fact that Mr. Sequeira has continually been in possession of said property, and since this part of the property continues to be in dispute, Mr. Sequeria states that his rights have been violated and he bases said statement upon article 617 of the Nicaraguan Civil Code because he has not been indemnified in accordance with said code and due to the fact that he continues in the possession of aforementioned property already described for a period of seven years, The Municipality of El Viejo through the City Hall and under the Mayor's authority agree to pay the sum of the money already described above and in relation to the related lot. Due to the fact that the city has an interest to build houses for sale and rent and to sell lots for the

construction of houses for private individuals and said funds are for the purpose of private purposes. Due to the fact that Mr. Sequeira and the corporation Smith Modular Construction System also is in the business of construction and shipping of houses for low income individuals in the United States, and also in the business of renting of properties, and since Mr. Sequeira "The Creditor", continues having possession of the property subject to this agreement despite the fact that the City of El Viejo previously solicited an order from the Chief of the Chinandega Police Department, Mr. Jose Francisco Aguilera Ferrufino to evict Mr. Sequeira and in that occasion said Chief of Police authorized the possession of the aforementioned property in favor of the City of El Viejo, and due to the fact that Mr. Sequeira entered the property again and took possession again pursuant to several court orders and that recently he has made expensive improvements on said property and he has shown me the orders of the Local Civil Court of El Viejo, who named him Judicial Receivership of the property subject to this agreement and said appointment of Receivership was ratified by Civil Court of the Second District of the City of Leon, and also the Civil Court of the Second District of Chinandega sent an order ratifying these previous orders and due to the fact that said appointment of Judicial Receivership of the aforementioned property was registered in the Chinandega Public Registry, based upon the court orders have given Mr. Sequeira the possession and due to the fact that he has not been indemnified for the lot of land located in the East that this authority (the mayor of El Viejo) declared of public utility and that was previously described, the City of El Viejo through the City Hall of El Viejo and through this authority agrees to this contract of acknowledgement of debt and agrees to indemnify and pay Mr. Sequeira for the seven blocks in accordance with Article 617 of the Nicaraguan Civil Code in the manner and schedule previously stated above. **Third:** In the event that a breach of this contract occurs and a dispute is raised against the City of El Viejo which is being represented by Mr. Moncada (The City of El Viejo), and who is acting in the capacity of the Mayor of the City of El

Viejo, municipality of the Chinandega Department, this authority expressly forfeits the jurisdiction and accepts to submit to the jurisdiction that Mr. Sequeira chose and that he has the plain liberty to choose he competent court in the jurisdiction of California in the United States of America, or wherever the considers convenient to bring any dispute whether that be in the civil or penal or for indemnification of damages or for trespasses to his right of possession related to the aforementioned property subject to this contract. This contract is subject to the Nicaraguan Commerce Code articles 8 and 10 and that are similar to International Commerce laws. **FOURTH:** Mr. Sequeira attest to accept the present Contract of Acknowledgement of Debt and Payment Agreement that is issued to him in this act within the terms and conditions previously mentioned above. This is the manner in which both parties who appeared before me expressed their will and intent and who have been instructed by me the notary whom I made known bout the object, meaning and legal consequences of this act and the meaning and consequences of the general clauses and specifically those clauses that involve renunciations implicit and explicit of all I give faith. And then after I have read to both parties participants to this agreement everything that has been stipulated and subsequently memorialized in this written agreement both parties expressly stated that they find this agreement to conform with their purpose and intent and mutually assent and sign with me the notary which I give faith, declare and attest to this act. (f)(means signature of Licensee German Munoz Moncada.(f) means signature of Jairo Sequeira(f)means signature H. Sequeira A. Attorney and Notary Public. Transfer before me to the font of the file number four and the back of the fifth file of my notarial book number sixteen that belongs to the current year and in response to the solicitation b Mr. Jairo Aristides Sequeira Argenal, I issued and released to him this first Certified Notarial Act or also known as Testimony that consists of two sheets of governmental seal papers Series "L" NO. 00833123 and that I signed and sealed and ratified in the city of Chinandega at fifty minutes past four O'clock in the afternoon of the twenty-ninth of the

month of May of the year two thousand seven
Amendment-five-valid--two-valid.

“SEAL”

Horacio Ramon Sequeira Argenal.
Attorney and Notary Public.

REPUBLIC OF NICARAGUA, CENTRAL AMERICA
STAMP HORACIO SEQUEIRA ARGENAL
Attorney-at-law and Notary Public. Republic of Nicaragua
Central America.

CERTIFIED COPY

DEED NUMBER THREE. Acknowledgement of debt and commitment to pay. Done at 2:50 p.m. on May 29 2007. Before me, Horacio Ramon Sequeira Argenal, attorney-at-law and notary public for the Republic of Nicaragua, duly authorized by the Supreme Court of Justice to exercise notarial duties during the five-year period ending on November 5, 2017, appear the following individuals: German Munoz Moncada, a married lawyer of legal age, Mayor of the city or municipality of El Viejo, domiciled in the city of El Viejo, identified with Nicaraguan citizenship identity card number 081-070761-000U, appearing in his capacity as Mayor of the Municipality of El Viejo, as evidenced by the original copy of the certificate of appointment issued by the Municipal Council of El Viejo, which he produced and I certify to have personally seen, but have not inserted into this as it had already been incorporated into a previous deed, who shall hereinafter be referred to as the Mayor of the city of El Viejo, “The Debtor”; and Mr. Jairo Aristides Sequeira Argenal, a married businessman of legal age domiciled in the city of Los Angeles, California, temporarily in this city, identified with Nicaraguan passport number 081080 and identity card number 081-160869-0002X, who appears on his own behalf and on behalf of Sociedad Anonima Smith, with the scope of powers stated in Section 2372 of the Civil code; the Smith corporation operates as a branch of Sociedad Smith Modular Construction System, which is legally incorporated in California, and he is its

representative according to the document produced by him, which is legally incorporated in California, and he is its representative according to the document produced by him, which I attest to have personally seen, hereinafter referred to as "The Creditor." I personally know both parties, and, to the best of my belief they have full civil capacity as legally necessary to enter into an agreement, in particular for this act, and they freely and spontaneously express their intent through this instrument in their above-stated capacities, and on behalf of the entities they represent hereby state as follows.

FIRST: Mr. Sequeira, "the Creditor," states that the company he represents, Smith Sociedad Anonima, and Mr. Sequeira are the owners and possessors of two plots of land located in the Municipality of El Viejo, in a semi-urban area east of the city of El Viejo. The first has a surface area of five hectares and four thousand, seven hundred square meters (5 ha. 4700 sq. m.), equivalent to seven blocks, seven thousand, five hundred eighty-seven square meters, whose cadastral number is 2753-1-02-000-08600 and record number is 7,907, volume 421, page 75, entry 11, with cadastral appraisal receipt and cadastral data certificate number C.C. #03-090 covered by request number 1963, issued by the Public Cadastre of Chinandega on Jun 23, 1977, recorded under number 38874 of the Public Real Estate Registry of the Chinandega department, with the following boundaries: northern boundary: adjacent to the place where the railway used to be; southern boundary: adjacent to Mr. Silvio Rene Bolainez's property; eastern boundary: Colonia Buenos Aires; and western boundary; Desmotadora (Cotton gin plant) Motosa, formerly owned by Takashi Shimazaki. Mr. Sequeira acquired possession, ownership and improvements as of November 14, 1999, with an encumbrance created by the liquidation board, which was cancelled (the original receipt and documents are produced by Jairo Aristides Sequeira Argenal before me, with the stamp of the Central Bank Liquidation Board). The second plot of land has a surface area of approximately seven blocks and is located where Desmotadora Motosa operated for many years. It is recorded under number 16535, entry 3, pages 239 and 240

of volume 9 and pages 81, 82, 83, 84, 110 and 111 of volume 344, real estate section of the public Registry of Real Estate Property of the department of Chinandega. The record of said instruments is subject to Section 3938 of the civil Code. SECOND: The Mayor of the city of El Viejo, "the Debtor," states that the property located in east El Viejo was declared of public use at Ordinary Session No. 47 held on October 2, 2002. Said authority requested that the Chief of the Chinandega Police, Mr. Jose Francisco Aguilera Ferrufino, evict Mr. Sequeira and give possession to the CITY OR MUNICPALITY OF EL VIEJO, after giving just compensation for the property, where a basketball stadium is going to operate, and in the rest of the field, the Mayor's Office will carry out housing projects to rent and sell plots and houses to individuals. In view of the fact that Mr. Jairo Sequeira, "the Creditor," has possessed the property known as Motosa for seven years and the Second Civil court for the District of Chinandega, the Second Civil Court for the District of Leon and the Local Court of El Viejo have ratified such possession, on behalf of the Municipality of El Viejo (the City of El Viejo), the Municipal Mayor of El Viejo, German Munoz Moncada, undertakes a commitment to pay two million, five hundred United States dollars to Mr. Jairo Aristides Sequeira Argenal and his principal, Smith Sociedad Anonima, which funds shall be directly deposited in either Mr. Sequeira's or Smith Sociedad Anonima's account in the city of Los Angeles, California, where both are domiciled, within the following periods: One Million, two hundred fifty thousand dollars will be paid by June 30, 2008 and the first payment of one million, two hundred fifty thousand dollars will be made by August 30, 2007, via wire transfer to Mr. Sequeira's account in a bank in the United States for the first seven blocks of land where the Stadium has already been built; subsequently, the rest of the property will be appraised, including the shrimp processing plant, the 16 storage sites, the office, the processing plant for house construction, warehouses, the truck scale, the office and the model house. In view of the fact that Mr. Sequeira has continuously possessed said property, and that this part of the property is still in dispute, Mr. Sequeira claims that

Section 617 of the Nicaraguan Civil Code has been violated, since he has not been compensated and has continuously possessed the above-described property for more than seven years, the Municipality of El Viejo, through the Mayor's Office intends to carry out housing projects; in view of the fact that Mr. Sequeira and Smith Modular Construction System are also in the industry of construction and shipping of low-income housing to the United States, and of property leasing; in view of the fact that Mr. Sequeira, "the Creditor," continues to possess the above-described property in spite of the order issued by the Office of the Mayor of El Viejo for the Chief of the Chinandega Police, Mr. Jose Francisco Aguilera Ferrufino, to evict Mr. Sequeira, and that the Chief of the Chinandega Police did give possession of the property to the municipality of El Viejo; in view of the fact that Mr. Sequeira returned to the property and has recently made very valuable improvements under several orders issued by a number of courts of law (given that, according to the documents under several orders issued by a number of courts of law (given that, according to the documents shown by him to me issued by the Local Court of El Viejo, he was appointed official receiver of the property; such appointment was ratified by the Second Civil Court for the District of Leon, and the Second Civil Court for the District of Chinandega ordered compliance with such order); and in view of the fact that an order was issued for the appointment as official receiver of the property be registered with the public Registry of Real Estate Property of Chinandega, since courts have granted Mr. Sequeira possession and he has not been compensate for the property in the east side of the city declared of public use as described above, the city of El Viejo, through the office of the Mayor of El Viejo and through this authority, hereby undertakes a commitment to compensate Mr. Sequeira for seven blocks pursuant to Section 617 of the Nicarguan Civil Code, within the terms and in the manner stated above. Third: in the event of breach of this agreement. Mr. Moncada on behalf of the Municipality of El Viejo (City of El Viejo), and in his capacity as Mayor of El Viejo, municipality in the Department of Chinandega, this authority expressly waives jurisdiction and agrees to

submit to the jurisdiction chosen by Mr. Sequeira, who is entirely free to choose the jurisdiction of California, United States, or any other venue deemed convenient to settle civil or criminal disputes, or disagreements over damages or disturbance of possession of the property described above. This agreement will be governed by the Code of Commerce of Nicaragua, Section 8 and 10, which are in accordance with the laws of the United States on Commerce, as well as international provisions of the Universal Code of Commerce. FOURTH: Mr. Sequeira states that he accepts the acknowledgment of debt and commitment to pay granted hereunder, pursuant to the terms and conditions stated above. The above are the statements of the parties, instructed by me, the notary, as regards the purpose, value and legal relevance of this act, its scope and sense, and the meaning of the general and special clauses involving implicit and explicit waiver and covenants, to which I attest. This document having been read to the parties, they expressed their agreement and signed it with me, the notary, attesting to all of the above./s/ (illegible) by Mr. German Munoz Moncada; /s/Jairo Sequeira/s/ H Sequeira A. attorney-at-law and Notary Public. Before me, from the front of page four and the back of page five of my protocol number sixteen for this year, and at the request of Jairo Aristides Sequeira Argenal, I hereby issue this first certified copy in two pages of letter-headed paper, Series "L" No. 0833123 and 0833124, which I have signed, stamped and sealed in the city of Chinandega at 4:50 pm on May 29, 2007. (list of typographic error in Spanish and their corrections. Signature Horacio Ramon Sequeira Argenal attorney-at-law and Notary Public. Stamp from Republic of Nicaragua Horacio Ramon Sequeira Argenal Republic of Nicaragua, Central America.

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GEOTEXT, Translations, STATE OF NEW YORK,
COUNTY OF NEW YORK, CERTIFICACION- This is to
certify that the attached translation is, to the best of my
knowledge and belief, a true and accurate translation
from Spanish into English of the attached certified copu of
Deed Number Three: Acknowledgement of Debt and
Commitment to Pay. signed. Lynda Green, Senior
Managing Editor Geotext Translations, Inc.-Sworn to and
subscribed before me this 26th day of February 2018.-
signed. KRISTEN DUFFY. NOTARY PUBLIC-STATE OF
NEW YORK NO.01DU6121852.-Qualified In Queens
County My Commission expires 01-31-2021

APPENDIX H

106th CONGRESS H.R 4602 2D Session

To protect United states citizens against expropriations of property
by the Government of the Republic of Nicaragua
IN THE HOUSE OF REPRESENTATIVES

June 8 , 2000

Mr. GILMAN (for himself, Mr. DELAY, Mr. HYDE, Mr. BURTON of Indiana, Mr. McCOLLUM, Mr. HING, Mr. PONDO, Mr. DEUTSCH, and Mr. GONZALEZ) introduced the following bill; which was referred to the committee on international relations, and in addition to the committee on banking and financial services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To protect United State Citizens against expropriations of property by the Government of Republic of Nicaragua.

Be it enacted by the senate and house of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the "Property Protection. Act of 2000".

SEC. 2 PROTECTION OF UNITED STATES CITIZENS AGAINST EXPROPRIATION BY NICARAGUA

(a) BILATERAL ASSISTANCE-----
Notwithstanding section 527 (g) of Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, assistance under the Foreign Assistance Act of 1961 or the Arms Export Control Act for fiscal year 2001 or 2002 may only be provided to the Government of Republic of Nicaragua if the President first makes a certification under subsection (d) for the fiscal year involved.

(2) EXCEPTION.-- For purposes of paragraph (1), the term "assistance under the Foreign Assistance Act of 1961" shall not include---

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- (A) assistance under chapter 1 or chapter 10 of part I of such Act for child survival, basic education, assistance to combat tropical and other diseases, and related activities;
- (B) assistance under section 481 of such Act (relating to international narcotics control assistance); and
- (C) assistance under chapter 9 of part I of such Act (relating to international disaster assistance).

(b) MULTILATERAL ASSISTANCE

(1) **IN GENERAL**--The president shall instruct the United States Executive Director at each multilateral development bank and international financial institution to which the United States is a member to use the voice, vote and influence of the United States to oppose any loan or other utilization of the funds of such bank or institution for the benefit of the Republic of Nicaragua for fiscal year 2001 or 2002 unless the President first makes a certification under subsection (d) for the fiscal year involved.

(2) **EXCEPTION**--Paragraph (1) shall not apply with respect to assistance that is directed specifically to programs which serve the basic human need of the citizens of Nicaragua.

(c) **REPORT**--NOT Later than September 1, 2000, or the date of the enactment of this Act (whichever occurs later) and not later than September 1, 2001, the President shall prepare and transmit to congress a detailed report listing the 50 most urgent property claims by United States citizens against the Government of the Republic of Nicaragua which shall include, but not be limited to, all property claims in which Nicaragua courts have ruled in favor of United States citizens, and property claims by

United States citizens involving Public Sector National Corporations (CORNAP).

(d) **Certification**---- under this subsection is certification to the congress that the Government of the Republic of Nicaragua has returned the nationalized or expropriated property of each United States citizen who has a formally-

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document claim against the Government of Nicaragua listed in the report under subsection (c), or has provided adequate and effective compensation in convertible foreign exchange or other mutually acceptable compensation equivalent to the full value of nationalized or expropriated property of each United States citizen who has formally-documented claim against the Government of Nicaragua listed in the report under subsection (c)

115 TH CONGRESS
1ST SESSION H.R. 1918

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2017

Received" read twice and referred to the Committee of Foreign Relations

AN ACT

To oppose loans at international financial institutions for the Government of Nicaragua unless the Government of Nicaragua is taken effective steps to hold free, fair, and transparent elections, and for other purposes.

Be it enacted by the senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nicaraguan Investment Conditionality Act (NICA) of 2017.

SEC.2.FINDINGS.

Congress makes the following finding:

(1) the house committee on Foreign Affairs convened a congressional hearing on December 1, 2011, entitled "Democracy held Hostage in Nicaragua: Part 1" where former United States Ambassador to Nicaragua Robert Callahan testified, "First, that Daniel Ortega's candidacy was illegal illegitimate, and unconstitutional, second, that the period leading to the elections and elections themselves were marred by serious fraud; third, that Daniel Ortega and his Sandinista party have

systematically undermined the country's fragile governmental institutions".

(2) According to the Organization of American States (OAS) report on the Nicaraguan 2011 Presidential elections, the OAS recommended that the government of Nicaragua take a number of steps to improve its electoral systems, including accrediting poll watchers to ensure political parties and civil society are represented to observe elections, and redesigning the structure of the Nicaraguan electoral council to allow proper registration of the electorate.

(3) On January 25, 2012, a press statement from Secretary of State HILLARY CLINTON said: 'As noted by international observers and Nicaraguan civil society groups, Nicaragua's recent elections were not conducted in a transparent and impartial manner, and the entire electoral process was marred by significant irregularities. The election marked a setback to democracy in Nicaragua and undermined the ability of Nicaraguans to hold their government accountable.".

(4) According to the Department of State's 2015 fiscal Transparency Report: "Nicaragua's fiscal transparency would be improve by including all off-budget revenue and expenditure in the budget, auditing state-owned enterprises, and conducting a full audit of the government's annual financial statements and marking audit reports publicly available within reasonable period of time".

(5) According to the Department of State's Country Report on Human Rights Practices for 2015; "In 2011 the supreme Electoral Council (CSE) announced the re-election of President Daniel Ortega Saavedra of the Sandinista National Liberation Front (FSLN) in elections that international and domestic observers characterized as seriously flawed. International and domestic organizations raised concerns regarding the constitutional legitimacy of Ortega's re-election. The 2011 elections power and the elimination also provided the ruling party with a supermajority in the National Assembly, allowing for changes in the constitution,

including the reach of executive branch power and the elimination of restrictions on re-election for executive branch officials and mayors. Observers noted serious flaws during the 2012 municipal election and march 2014 regional election". (6) According to the Department of State's Country Reports on Human Rights Practices for 2015 in Nicaragua: "The principal human rights abuses were restrictions on citizen' right to vote; obstacles to freedom of speech and press, including government intimidation and harassment of journalists and independent media, as well as increased restriction of access to public information, including national statistics from public offices, and increased government harassment and intimidation of nongovernmental organizations"

(7) The same 2015 report stated: "Additional significant human right abuses included considerably biased polices to promote single-party dominance; arbitrary police arrest and detention of suspects, including abuse during detention; discrimination against ethnic minorities and indigenous persons and communities.

(8)On June 7, 2016, the Department of State's Bureau of Democracy, Human Rights and labor posted on social media: "Disappointed government of Nicaragua said it will deny electoral observers requested by Nicaraguan citizens, church, and private sector* * * We continue to encourage the government of Nicaragua to allow electoral observers as requested by Nicaraguans."

(9) On June 14, 2016, President Ortega expelled three Unite State Government officials (two officials from U.S Customs and Border Professor from the National Defense University) from Nicaragua.

(10) On August 1, 2016, the Department of State issued a press release to express grave concern over the Nicaraguan government limiting democratic space leading up to the election in November and stated that "[o]n June 8, the Nicaraguan supreme Court stripped the opposition Independent Liberal Party (PLI) from its long recognized leader. The Supreme Court took similar action on June 17 when it invalidated the leadership of the citizen Action Party, the only remaining opposition party with the legal standing to present a presidential candidate Most recently, on June 29, the Supreme

Electoral council removed 28 PLI national assembly members (16 seated and 12 alternates) from their popularly-elected position.”

(11) On November 7, 2016, the department of State issued a press release stating: “The United States is deeply concerned by the flawed presidential and legislative electoral process in Nicaragua, which precluded possibility of a free and-fair election on November 6. In advance of election, the Nicaraguan government sidelined opposition candidates for president, limited domestic observation at the polls and access to voting credentials, and took other actions to deny democratic space in the process. The decision by the Nicaraguan government not to invite independent international electoral observers further degraded the legitimacy of the election.”

(12) In November and December of 2016, the Board of Executive Directors of the inter-American

Development Bank postponed consideration of a policy based loan of \$ 65 million to the government of Nicaragua due to the efforts of the United State mission that expressed serious concerns of the absence of transparency, systemic corruption, and the lack of free and fair election in Nicaragua.

(13) According to the department of State’s Country Reports on Human Rights Practices for 2016: “[A]ction by the ruling Sandinista National Liberation Front (FSLN) party, with an authoritarian executive branch exercising significant control over the legislative, judicial, and electoral functions.”

(14) According to the department of state’s Country Reports on Human Rights Practices for 2016 in Nicaragua, “The November 6 election for president, vice president, national assembly members, and representatives for the Central American parliament did not meet the conditions of being free and fair * * * The November 6 presidential and legislative elections were marred by allegations of institutional fraud and the absence of independent opposition political parties. National observers and opposition leaders claimed rates of abstention from 60 to 70 percent.”

(15) According to the Department of State’s Country Reports on Human Practices for 2016: “Companies

reported that bribery of public officials, unlawful seizures, and arbitrary assessments by customs and tax authorities were common* * *. The courts remained particularly susceptible to bribes, manipulation, and other forms of corruption, especially by the FSLN, giving the sense that the FSLN heavily influenced CSJ and lower-lever court actions.”.

SEC 3 STATEMENT OF POLICY.

- (1) It is the policy of United State to support-----
The rule of law and independent judiciary and electoral council in Nicaragua;
- (2)Independent pro-democracy organizations in Nicaragua;
- 3) Free, fair, and transparent election under international and domestic observers in Nicaragua; and
- (4) Anti-corruption and transparency efforts in Nicaragua.

SEC.4. INTERNATIONAL FINANCIAL INSTITUTIONS.

- (a) IN GENERAL--The President shall instruct the United State Executive Director at each international financial institution to use the voice, vote, and influence of the United States to oppose any loan for the benefit of the Government of Nicaragua, other than to address basic human needs or promote democracy, unless the Secretary of State certifies and reports to the appropriate congressional committees that the Government of Nicaragua is taking effective steps to---
Hold free, fair, and transparent elections overseen by credible domestic and international electoral observers;
Promote democracy, as well as an independent judicial system and electoral council;
Strengthen rule of law;
Respect the right to freedom of association and expression;
Combat corruption, including investigating and prosecuting government officials that are credibly alleged to be corrupt; and
Protect the right of political opposition parties, journalist, trade unionists, human right defenders, and other civil society activists to operate without interference.

(b) REPORT----Not later than 180 days after date of the enactment of this Act, the secretary of the treasury shall submit to the appropriate congressional committees a written report assessing

The effectiveness of the international financial institutions in enforcing applicable program safeguards in Nicaragua; and

The effects of the matters described in section 2 on long-term prospects for positive development outcomes in Nicaragua.

(c) DEFINITION----in this section:

APPROPRIATE CONGRESSIONAL COMMITTEES---The term "appropriate congressional committees." Means-----

(A) the committee of Foreign Affairs, the committee on Appropriations, and the committee on financial services of the House of representatives; and

The committee on foreign relations, the committee on Appropriations, and the Committee on banking, Housing, and Urban Affairs of the senate.

INTERNATIONAL FINANCIAL INSTITUTION--- The term "international financial institution" means the International Monetary Fund,

International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development

Bank, Inter-American Development Bank, Bank for Economic Cooperation and development in the Middle East and North Africa, and Inter-American Investment Corporation.

(d) TERMINATION----This section shall terminate on the day after the earlier of-----

(1) the date on which the secretary of State certifies and reports to the appropriate congressional committees that the requirements of subsection (a) are met; or

(2) 5 years after the date of the enactment of this Act.

(e) WAIVER----The President may waive this section if the president determines that such a waiver is in the national interest of the United States.

SEC.5 ORGANIZATION OF AMERICA STATE.

The president shall direct the United States Permanent

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Representative to the OAS to use the voice, vote, and influence of the United States at the OAS to strongly advocate for an Electoral Observation Mission to be sent to Nicaragua in 2017 to observe the possibility of credible election.

SEC.6. SENSE OF CONGRESS

The Department of State and the United States Agency for International Development should prioritize foreign assistance to the people of Nicaragua to assist civil society in democracy and governance programs, including human right documentation.

SEC. 7. REPORT ON CORRUPTION IN NICARAGUA.

(a) REPORT REQUIREMENT---Not later than 90 days after the date of the enactment of this Act, the Secretary of State, in consultation with the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C 3003(4), shall submit to congress a report on involvement of senior Nicaraguan government officials, including members of the supreme Electoral council, the national Assembly and the judicial system, in acts of public corruption or human right violation in Nicaragua.

(b) Form---The report required in subsection (a) shall be submitted in unclassified form, but may contain a classified annex. The unclassified portion of the report shall be made available to the public.

Passed the House of Representative October 3, 2017.

Attest:

KAREN L. HAAS,

CONGRESS OF THE UNITED STATES WASHINGTON,
DC 20315

December 01, 2017

The President

The White House

Dear Mr. President

We appreciate your commitment to implementing the Global Manitsky Human rights Accountability Act ("The Global Magnitsky Act" or "The Act"). As you are aware, the Act authorizes you to impose visa and asset sanctions on foreign persons responsible for gross violations of human rights and government officials or their associates who have engaged in acts of significant corruption. As noted in your April 2017 report on the Act, with the establishment of the Global Magnitsky sanctions program, "the United States is uniquely positioned to lead the international community in pursuing accountability abroad consistent with our values".

The Golobal Magnitsky Act requires the submission of reports to Congress with relevant updates to the list of sanctioned individuals and entities, as well as responses to Congressional requests for specific sanctions investigations pursuant to the law. Pursuant to Section 1263 (d) of the national Defense Authorization Act for Fiscal Year 2017 (P.L. 114-328). we urge you to take immediate action to determine whether Nicaraguan nationals Robrto Jose Rivas Reyes and Francisco Lopez meet the criteria to be sanctioned in accordance with the law for human rights abuses, corruption. and illicit activity. We ask you to use the tools available under the Global Magnitsky Act to reaffirm our unwavering support for democratic principles in Nicaragua and to stand in solidarity with the Nicaraguan people in their fight to end the widespread corruption and human rights abuses under Daniel Ortega.

In July 2017, we supported the administration's effort to sanction National Electoral Council. And we similarly have serious concerns regarding the actions of the Electoral Council in Nicaragua Roberto Jose Rivas Reyes is the President of the Supreme Electoral Council (CSE). In this capacity. Mr. Rivas has worked alongside Daniel

Ortega for over a decade to deny the Nicaraguan people free, fair, and transparent elections monitored by international observers. The following excerpts show how a lack of electoral legitimacy and fraudulent actions by the CSE leadership have been well documented by the Department of State:

According to the department of State's Country Reports on Human rights Practices for 2015: "In 2011 the Supreme Electoral Council (CSE) announced the re-election of President Daniel Ortega Saavedra of the Sandinista National Liberation Front (FSLN) in elections that international and domestic observers characterized as seriously flawed. International and domestic organizations raised concerns regarding the constitutional legitimacy of Ortega's re-election. The 2011 elections also provided the ruling party with a supermajority in the National Assembly. Allowing for changes in the constitution, including extending the reach of executive branch power and the elimination of during the 2012 municipal elections and March 2014 regional elections."

On November 7, 2016, the Department of State issued a press release stating: The United States is deeply concerned by the flawed presidential and legislative electoral process in Nicaragua, which precluded the possibility of a free and fair election on November 6. In advance of the elections, the Nicaraguan government sidelined opposition candidates for president, limited domestic observation at the polls and access to voting credentials, and took other actions to deny democratic space in the process. The decision by the Nicaraguan government not to invite independent international electoral observers further degraded the legitimacy of the election."

According to the Department of State's Country Reports on Human Rights Practices for 2016: "(A)ctions by the ruling Sandinista National Liberation Front (FSLN) party resulted in the facto concentration of power in a single party, with an authoritarian executive branch exercising significant control over the legislative, judicial, and

electoral functions. "The report continues and also states: "The November 6 elections for president, vice president, national assembly members, and representatives for the Central American Parliament did not meet the conditions of being free and fair...The November 6 presidential and legislative elections were marred by allegations of institutional fraud and the absence of independent opposition political parties. National observers and opposition leaders claimed rates of abstention from 60 to 70 percent."

In addition to accusations of electoral fraud and of particular importance to the designations under the Global Magnitsky Human Rights Accountability Act, Roberto Rivas has also been accused of corruption. Concerns regarding how Mr. Rivas gained his fortune while only making \$5,000 a month, according to *Confidential*. Have led various media outlets to investigate his assets:

On September 22nd. 2011 Rivas was accused of "illicit enrichment" by a group called, Grupo de Ciudadanos y Abogados Democraticos. According to a *Confidential* Article release on the same day, the group accuses Rivas of increasing his assets "in a exorbitant way and without any justification." The accusation reads that "through four corporations" Mr. Rivas has gained "valuable assets in a dubious, irregular and unlawful' manner. "Gustavo Garcia, one of the accusers, told prosecutor Armando Juarez that this investigation could lead to a discovery of money laundering.

According to a *La Prensa* article released on September 21th, 2014 and the previously mentioned Confidential article. Mr. Rivas owns a variety of houses, mansions, jets planes and an island. The articles list him owning a condominium valued at over \$6 million dollars in Costa Rica, an islet in front of El Diamante Shipyard in Granada, a summer house in Hermosa Beach, a mansion valued over \$1 million in Costa Rica, a house in San Juan del Sur Valued in \$715,000, and two private planes valued at \$2.3 million

Nest, we firmly believe that Petroleos de Venezuela's (PDVSA) subsidiary in Nicaragua, known as ALBANISA,

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should receive scrutiny from our law enforcement and Treasury Department officials. Earlier this year, U.S. embassy officials helped arrange for OFAC to brief the Nicaraguan business community because PDVSA'S subsidiary in Nicaragua, ALBANISA, does a significant amount of business with Nicaraguan businesses. With that in mind, we believe that Francisco Lopez, Vice-President of ALBANISA, should be considered for designation as well under the Global Magnitsky Human Rights Accountability Act.

According to the Department of State's 2017 Fiscal Transparency Report: "The government has not publicly accounted for the expenditure of significant off-budget assistance from Venezuela and this assistance has not been subject to audit or legislative oversight. Allocations to and earnings from state-owned enterprises were included in the budget on a net basis, but most state-owned enterprises, including ALBANISA, have not been subject to audit

Francisco Lopez is accused of profiting from loans he signed off on. The following media excerpts focus on Mr. Lopez's problematic stewardship as head of ALBANISA.

According to a *Confidencial* article published on January 1st, 2013. Mr. Lopez used his power to grant an almost \$1 million contract to his own family-owned. *Tecnologia y Sistemas S.A.* (Tecnosa, by its designation in

Spanish). The ckeck was given as a "deposit" for a social program, *Calles para el pueblo*. However, after investigating the project, there was little information found. In fact, no municipalities were listed and while asking, none of the municipalities had even heard of Tecnosa.

Confidential also states that the check signed by Mr. Lopez cited in the article, is half of the almost \$1 million contract that comes from the "Venezuelan state cooperation that has been privatized."

Plaza publica published information similar to that contained in the *Confidencial* report on January 28th, 2013, but added that Tecnosa benefited under the Ortega government by receiving tax exemptions and loans from another Nicaraguan agency under scrutiny, Instituto *de seguridad Social*, for the same project named above.

We must not allow for human rights abusers and corrupt officials to continue violating the rights of the people without consequence in Nicaragua. It should also be noted that Nicaragua has very few investigative journalist and independent media is highly censured by the Nicaraguan government, limiting the ability of local sources to further investigate these and other corrupt actors.

Therefore, we urge the Department of State and the Department of Treasury, working with other relevant Executive Branch agencies, to promptly investigate Roberto Jose Rivas Reyes and Francisco Lopez, and, if merited, to sanction them as authorized in the Global Magnitsky Act. This action by the United States would send a powerful message to Daniel Ortega and the Nicaraguan people. We look forward to your response and a continued dialogue with you to support the robust implementation of the Global Magnistky Act.

Sincerely, SIGNED BY; ILEANA ROS-LEHTINEN
Chairman Emeritus House Foreign Affairs Committee;
Ted Cruz Chairman Subcommittee on Oversight. Agency
Action, Federal Rights and Federal Courts Senate
Committee on the Judiciary; EDWARD ROYCE

Chairman House Foreign Affairs Committee; ALBIO
Sires, Ranking Member subcommittee on the Western
Hemisphere House Foreign Affairs Committee; BILL
NELSON Ranking Member Senate Committee on
Commerce, Science & Transportation; ELIOT L. ENGEL
Ranking member House Foreign Affairs Committed;
MARCO RUBIO Chairman Subcommittee on Western
Hemisphere, Transnational Crime, Civilian Security,
Democracy, Human Rights, and Global Women's Issues
Senate Committee on Foreign Relations; COL. PAUL
COOK RET Chairman Subcommittee on the Western
Hemisphere House Foreign Affairs committee; ROBERT
MENENDEZ Ranking Member, subcommittee on
Western Hemisphere, Transnational Crime, Civilian

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Security, Democracy, Human rights, and Global Women's Issues Senate Committee on Foreign Relations; DEBBIE WASSERMAN SCHULTZ, Ranking Member, Military Construction, Veterans Affairs. House and Related Agencies Subcommittee, House Committee on Appropriation.

APPENDIX I

**TRANSLATION OF ARTICLE 2372 OF THE
NICARAGUAN CIVIL CODE
SPANISH**

Arto 2372. Son de Ningun valor los actos de cartulacion autorizados por un Notario o funcioario publico en asunto en que el, su conyuge o sus parientes dentro del cuarto grado de consanguinidad o segundo de afinidad, fueren personalmente interesados: pero si "los interesados" lo fueren solo por "tener parte en sociedades anonimas," o "ser gerentes" o "directores de ellas," "el acto sera valido," lo mismo que cuando todos los interesados fueren parientes del cartulario dentro de dichos grados, y el no tenga en el acto interes alguno. Artos. 3188 C.; XVIII Tit. Prel. C.; 43 no 4 Ley del Notariado.

ENGLISH

Article 2372. The Act of notarization would be invalid only when a Notary or a public officer authorized it for himself or herself or the act of notarization es executed for one of the spouses or some family member up to the fourth grade of consanguinity or second of affinity; but if the family member or relatives of the notary is requesting the notarization because he or she has an "interest in the corporation" or is "part of a corporation" or "is an agent" of or "director of the corporation," the notarization or act would be valid despite the fact that the person or persons requesting the notarization are family members or are relatives on the aforementioned degrees of consanguinity, as long as the Notary himself or herself has no interest in the act being notarized. (emphasis added).

EXHIBIT JJ

EXCERPTS OF THE NICARAGUA CIVIL CODE

Arto. 888.- The necessary possession to prescribe must be:

1. Founded in just title.
2. In good faith
3. Peaceful.
4. Continue

5. Public

Arto. 889- Defines "Just Title" "It is considered a Just title for the prescription, which, being a transfer of ownership, contains some circumstance that makes it an ineffective conveyance, transfer or sale." (emphasis added).

Arto. 897.- (Nicaraguan Civil Code) Adverse Possession
"To acquire ownership of the real estate, or any real right over them by prescription, a possession of ten years is needed. The right to own is prescribed by the possession of ten years is needed. The right to own is prescribed by the possession of one year"

**MANUAL OF THE MAYOR
CHAPTER IV
POWERS OF THE MAYOR**

4.1 GENERALITIES

2c. Collection of Funds Role: To meet the goal of income that has been foreseeable also in the municipal budget, the mayor has to comply with the Role of collecting local taxes, rates, and contributions.

2d. Chief of Personnel: The Mayor, as a matter of law, is responsible for the hiring and firing of the personnel in compliance with the Municipality of the Mayor.

2f. Municipality Legal Representation: The Mayor is the attorney in fact and has the general power of attorney to make decisions on behalf of the municipality legally and to enter and execute or celebrate contracts.

2g. Administrative Role: The public appeal to the mayor to revise local administrative acts.

4. The roles and functions are limited to those previously mentioned above, but there are those that need to be added that other laws vests on the Mayor. The laws might vest other functions as a result of the Mayor's high administrative role, facilitated by the popular vote. Among other laws we mentioned the General Health Law and the law of promoting the youth. In the next chapter or subsequently we will provide more details.

Article. 617. (Nicaraguan Civil Code) -No one can be deprived of property except by virtue of a law or a sentence based on it. Expropriation for reasons of public utility must be qualified by law or by a judgment based on it; and will not be verified without prior compensation. In case of war, it is not essential that the compensation be prior. If they do not precede those requirements, the judges will protect, and in their case, reinstate the expropriated in possession.

Artos. 2531 No. 1 C.; 57 Cn. Bj. 280-728 Cons. II-820 cons. IV-1795-1903-2505 Cons. II-5119-69559660

The nullity and rescission

Article.2201.- (Nicaraguan Civil Code). There is absolute nullity in acts or contracts:

1. When any of the essential conditions for their formation or for their existence are missing
2. When there is a requirement or formality that the law requires for the value of certain acts or contracts, considering the nature of the act or contract and not the quality or status of the person who intervenes in them.
3. When they are executed or celebrated by absolutely incapable people.

Article 2372. Nicaraguan Civil Code. Notarial acts recorded by a Notary Public or civil servant in a matter in which he, his spouse, or his relatives within the fourth degree of consanguinity or second degree of affinity have a personal interest are null and void. However, if the parties are interested parties solely because they possess a holding in corporations, or are managers or directors of the same, the act will be valid, as it will if all the interested parties are relatives of the notary public within said degrees, and he does not have any interest in the act.

Article 2381 of the Nicaraguan Civil Code reads:

“When a public instrument has a defect in form not resulting from the incompetent notary, said public instrument should have the legal effect of a known private document. Articles 2481 C.; 1170 Pr.”

Article 2447 NICARAGUAN CIVIL CODE. There is no

contract unless the following requirements take place: 1. The parties consent.

5. The subject of the contract actually exists.
6. Articles 1832, 1833, 2436 C.; B.J. pag. 986 Cons. II.):

Arto 2472. NICARAGUAN CIVIL CODE. Every person is legally capable. They are incapable in accordance with articles 7 and 8 of this Code, absolutely, the insane, the imbecile and the deaf-mute that

can not be given or understood in writing or otherwise clear or indubitable. Articles. 299 Inc. 3ro, 330, 345, 346, 347, 359, 944, 1833, 2204, 2252, 2367 C.

Their acts do not produce or even natural obligations and do no admit caution. Relatively incapable minor adults who have not obtained the declaration of majors, and those who are under interdiction to administer theirs, by executory sentence. Their acts may have value in certain circumstances and under certain respects determined by law Articles. 8, 9, 244, 245, 248, 249, 277, 363, 366, 369, 1169, 1840, inc. 1st, 2205, 2205, 2564, 2565, 3208, 3456, 3457, 3504, 3798 C.; 54 Pn.

Article 2483. Nicaraguan civil code. The following must be recorded in a notarial instrument: 1) Transactions and contracts intended to create, transfer, modify, or terminate rights in rem over real property.

2) Leases of the same property for four or more years.
3) Prenuptial agreements made by the spouses before or after celebration of the marriage, as well as any modifications that they wish to make to said agreements.
4. Assignment, repudiation and renunciation of inheritance rights or of the husband and wife's community property, if any. Inheritance rights may also be repudiated and renounced in a legal action by means of a document that will be presented to the Judge who will add it to the record of the case and notify the interested parties.

5) Powers of attorney to marry, as provided in the respective agreement, general powers of attorney for litigation, and the special powers of attorney that must be submitted in written proceedings; powers of attorney to administer property and any others whose subject matter

is a transaction that is set forth or that ought to be set forth in a notarial instrument or that will harm a third party.

6) The assignment of shares of stock or of rights arising out of a transaction set forth in a notarial instrument.

7. The assignment of litigious rights, in the manner prescribed in the relevant Chapter.

All other contracts in which the amount of the consideration given by one or both contracting parties exceeds one hundred pesos must also be set forth in writing, including in a private document.

Arto. 2598.-Nicaraguan Civil Code. Whenever a public deed of sale and purchase is declared null and void by the executing court, without the buyer's request, the seller can not sell the thing sold, but must formalize the sale or refund the price to the buyer at the option of the buyer, which will use its right within six months from the time it becomes aware of the sentence, and after this time may only require the seller to return the price, within the period of the ordinary prescription, and in the improvements will be at general disposition.

Section 28. Nicaraguan Notarial law. The Notary must inform the interested parties of the value and legal significance of any specific waivers that they make, or of any clauses involving implicit stipulations or waivers. The Notary shall not proceed to issue an instrument when the parties do not have sufficient legal capacity to assume obligations or are not duly authorized for such purpose, subject to penalty of nullity. They are also prohibited from executing any instrument without the presence of the parties or their counsel of record (procurator) or legal representative, subject to the same penalty. All types of power of attorney documents must specify any special powers that the principal grants to the attorney-in-fact, and it is not lawful, subject to penalty of nullity, to cite only the article or articles of the Code that contains them.

NICARAGUAN CIVIL CODE OF PROCEDURE

Article. 1167.- To make use of the private document created by the Article 2380 C. (Nicaraguan Civil Code), the recognition of the respective signature will be done

having in view the protocol of the cartulary, and always in the office of this one or in which their protocols are legally stored, as the case may be. The Official before whom the recognition is requested, will draw up the style report, copying the document and the signatures that cover it completely. This will be enough to have full recognition.

In the case of the notarized recognition and the party did not appear after the second citation in his case, the officer will be transported at the next hearing, stating the reason for that circumstance, the Notary's office; he will copy the deed and signatures in the proceedings, and will pronounce it immediately. The corresponding resolution.

Article. 1170.- NICARAGUAN CIVIL CODE. To make use in trial, in diligence prejudicial, or otherwise, of the private document recognized created by the Arto. 2381 C., it will suffice to show the corresponding testimony of the deed.

Article. 1684.- NICARAGUAN CIVIL CODE OF PROCEDURE.

EXECUTIVE JUDGMENT is one in which a creditor with a legal title pursues his delinquent debtor, or in which the performance of an act is requested by an instrument that, according to the law, has sufficient force for the purpose. The procedure for executing the sentences is not that of the executive judgment, but that which is established in Book I of this Code; but, in the cases not foreseen in said Book 1, the rules of the executive judgment will be applied, omitting the opposition of the executed one, the term of proof and the sentence of payment or auction.

Articles. 509-934-1693-1695-Pr.; B.J. 1331-1730-5755-6139-6305-6871-7175