

**APPENDIX A**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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No. 19-11656-JJ

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**HORACIO SEQUEIRA,**  
a citizen of the United States of America  
Plaintiff-Appellant,  
versus

**THE REPUBLIC OF NICARAGUA,**  
a foreign country  
**CITY OF CHINANDEGA,** a political subdivision of the  
foreign Country of the Republic of Nicaragua,  
**EDUARDO JOSE CALLEJAS CALLEJAS,**  
an individual citizen of the United States of America,  
**ESTRELLITA DEL CARMEN TROZ MARTINEZ,**  
**CHIEF OF PUBLIC RECORDS OF CHINANDEGA,**  
**NICARAGUA,**  
Defendants-Appellees.

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Appeal from the United States District Court  
For the Southern District of Florida

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**ON PETITION(S) FOR REHEARING AND PETITION(S)  
FOR REHEARING EN BANC**

**BEFORE: WILSON, BRANCH, and TJOFLAT, Circuit  
Judges. PER CURIAM:**

The Petition for Rehearing En Banc is **DENIED**, no judge  
in regular active service on the Court having requested  
that the Court be polled on rehearing en banc. (FRAP 35)  
The Petition for Panel Rehearing is also denied. (FRAP  
40)

**ORD-46**

**APENDIX B**

**In THE DISTRICT  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**No. 19-11656  
Non-Argument Calendar**

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**D.C. Docket No. 1:16-cv-25052-JEM**

**HORACIO SEQUEIRA  
a citizen of the United States of America,**

**Plaintiff-Appellant,**

**Versus**

**THE REPUBLIC OF NICARAGUA,  
a foreign country,  
CITY OF CHINANDEGA  
a political subdivision of the foreign country of the  
Republic of Nicaragua,  
EDUARDO JOSE CALLEJAS CALLEJAS,  
an individual citizen of the United States of America,  
ESTRELLITA DEL CARMEN TROZ MARTINEZ,  
an individual Chief Public Records of Chinandega,  
Nicaragua  
CHIEF OF PUBLIC RECORDS OF CHINANDEGA,  
NICARAGUA**

**Defendants-Appellees.**

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Appeal from the United States District Court  
for the Southern District of Florida

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( May 14, 2020 )

Before WILSON, BRANCH, and TJOFLAT, Circuit  
Judges.

PER CURIAM:

Horacio Sequeira appeals *pro se* the District Court's order dismissing his action against the Republic of Nicaragua, the City of Chinandega, Eduardo Jose callejas callejas, and Estrellita Del Carmen Troz Martinez ( "Troz") for lack of subject matter jurisdiction. The Foreign Sovereign Immunities Act ( "FSIA") " provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country". *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 393 (2015)\_(quotation marks omitted). "Under the FSIA, a foreign state in presumptively immune from suit unless a specific exception applies." *Permanent Mission of India to the U.N. City of N.Y.*, 551 U.S. 193,197,127 S. Ct. 2352, 2355 ( 2007). The District Court determined that sovereign immunity barred suit against Nicaragua and Chinandega and dismissed Sequeira's amended complaint against those parties. In additional, because both Callejas and Sequeira are resident of Florida, the Court dismissed the action for lack of complete diversity. In broad strokes, Sequeira alleged that Nicaragua and Chinandega contracted with Callejas, who in turn contracted with Sequeira, to illegally take Sequeira's farmland in Nicaragua and sell the livestock as meat products in the

United States. Sequeira also sued Troz, the Chief of Public Records in Chinandega, for her participation in this alleged scheme.

On appeal, Sequeira alleges that Nicaragua and Chinandega are subject to suit in the United States because the purported contract they had with Callejas included an arbitration provision, thus waiving their sovereign immunity. He first contends that the District Court erred in concluding the contract was inauthentic as it assessed evidence at the motion-to-dismiss stage instead of weighing the evidence in the light most favorable to him. In addition, Sequeira argues that the District Court erred when it found that Nicaragua and Chinandega were not subject to suit based on either the commercial-activity exception or the expropriation exception to the FSIA. Sequeira also contends that the District Court erred when it found that, absent FSIA jurisdiction, there could be no subject matter jurisdiction over Callejas and Troz due to lack of complete diversity among the parties. Finally, Sequeira argues that the magistrate judge abused his discretion in denying Sequeira's request for jurisdiction discovery.

We affirm.

#### I.

Sequeira originally filed suit in 2016, alleging that Appellees had breached a contract, illegally took his farmland in Nicaragua, and illegally sold his livestock as meat products. In the complaint, Sequeira alleged that "Nicaragua through its political subdivision of Chinandega waived its sovereign immunity by entering into a private contract with the defendant Eduardo Jose Callejas Callejas." The complaint alleged that Sequeira and Callejas are both domiciled in Florida and that Troz,

the Chief of Public Records in Chinandega, is a resident of Nicaragua.

The District Court dismissed that the complaint for lack of subject jurisdiction because there were no allegations that a contrast existed between Nicaragua and Sequeira. Furthermore, the Court concluded that it lacked subject matter jurisdiction over Sequeira's other claims because the parties were not completely diverse.

Sequeira moved leave to amend his complaint. In his motion, Sequeira included a translated declaration from Mariano Guerra Morales ("Guerra") who purported to be the Executive Director of the Cattle Raising Program under the Nicaraguan Rural Development ("IDR"). Guerra's declaration claimed that in 2001 or 2002, Nicaragua, through the IDR, entered a contract with Sequeira and others to raise livestock at the El Pital farm. Sequeira did not provide a copy of the contract. He did provide a copy of rental agreement between himself and Callejas, which reference an agreement between Sequeira, Nicaragua, and the IDR. The District Court granted Sequeira's motion for leave to amend.

In his amended complaint, sequeira alleges that Nicaragua waived its sovereign immunity because the IDR contract included an arbitration provision, and that, therefore, the District Court has subject matter jurisdiction. He also alleges that the Appellees engaged in commercial activities in the United States, including selling meat products in the United States, retaining and paying American attorney, paying the salary of "front men" located in the United States, and because Callejas paid rent from Florida. Sequeira alleges that Troz and Callejas acted on behalf of Nicaragua and Chinandega to illegally take his property.

The Appellees moved to dismiss. Callejas moved to dismiss each claim as being barred by the statute of limitations. Nicaragua, Chinandega and Troz moved to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, failure of service of process, improper venue, and failure to state claim. In their motion to dismiss, Nicaragua and Chinandega submitted several declarations. Notably, they submitted a declaration from Miguel Angel Baca Jimenez, a legal advisor for the IDR record keeping organization, who found no record of any contract between Sequeira and the IDR.

Sequeira moved for limited jurisdictional discovery, seeking to subpoena documents held by the Defendants attorneys in Washington, inspect records in Nicaragua, and request admissions from six individuals regarding Appellees commercial activities in the United States. The District Court denied the motion, concluding that sovereign- immunity interests outweighed Sequeira's vague and improper requests for discovery.

In his response to the motions to dismiss, Sequeira repeated his jurisdictional arguments and submitted a translation of a purported modification to his alleged contract with the IDR. He did not submit a copy of the original contract, nor did he submit a copy of the original modifications.

Thereafter, the Court dismissed Sequeira's amended complaint, finding that it lacked subject matter jurisdiction. Sequeira appeals.

## II.

A plaintiff who seeks to sue a foreign state has the burden of establishing subject matter jurisdiction by "producing evidence" that one of the FSIA's sovereign-

immunity exceptions applies. *Bulter v. Sukhoi Co.*, 579 F.3d 1307, 1312-13 (11<sup>th</sup> Cir. 2009). A district court determines whether a plaintiff has satisfied this burden by examining the allegations in the complaint and any undisputed facts that the parties submit. *Id.* at 1313. If the plaintiff satisfies this burden, the foreign state then has the burden of providing by a preponderance of the evidence that the exception cited by the plaintiff does not apply. *Id.*

We review a district court's determination that it lacks subject matter jurisdiction under the FSIA *de novo* and its factual findings for clear error. *Calzadilla v. Banco Latino Internacional*, 413 F.3d 1285, 1287 (11<sup>th</sup> Cir. 2005). We consider a factual finding clearly erroneous when we are left with a "definite and firm conviction that a mistake has been committed" after reviewing all the evidence. *U.S. Commodity Futures Trading Comm'n v. Hunter Wise Commodities, LLC*, 749 F.3d 967, 974 (11<sup>th</sup> Cir. 2014) (quotation marks omitted). We will not consider a factual finding clearly erroneous if it is plausible based on the record viewed in its entirety. *Odyssey Expl., inc. v. Unidentified Shipwrecked vessel*, 657 F.3d 1159, 1169 (11<sup>th</sup> Cir. 2011). We will not consider a factual finding clearly erroneous if is based on one of two permissible views of the evidence. *Commodity Futures Trading Comm'n v. Gibraltar Monetary Corp.*, 575 f. 3d 1180, 1186 (11<sup>th</sup> Cir. 2009).

### III.

#### A.

Sequeira claims that the arbitration provision in the purported contract between the IDR, Callejas, and him impliedly waived Nicaragua's, and thus Chinandega's,

sovereign immunity.<sup>1</sup> The District Court determined that the purported contract was not authentic. It also concluded that the signatory of the purported contract lacked the authority to waive Nicaragua's and Chinandega's sovereign immunities. Sequeira contends that the District Court improperly weighed the evidence in favor of the Appellees. We conclude that the District Court did not clearly err in determining that the contract was inauthentic

The Appellees challenged the authenticity of the contract, mounting a factual attack on Sequeira's allegations of waiver. In cases involving a factual attack on subject matter jurisdiction, the district court "is free to independently weigh facts" and resolve the jurisdictional issue on the merits, even when there are disputed material facts. *Morrison v. Amway Corp.*, 323 F.3d 920, 924-25 (11<sup>th</sup> Cir. 2003) (contrasting the standard of review used for factual attacks on subject matter jurisdictional with the standard applied to summary judgment motions). This means that a district court may go beyond the four corners of a complaint when determining whether subject matter jurisdiction exists under the FSIA. See *Comparelli v. Republica Bolivariana De Venez.*, 891 F.3d 1311, 1322 (11<sup>th</sup> Cir. 2018).

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<sup>1</sup> A foreign state can impliedly waive its sovereign immunity when it (1) agrees to arbitration in another country, (2) agrees that the law of a particular country should govern the contract, or (3) files a responsive pleading without raising sovereign immunity as a defense. *Calzadilla*, 413 F.3d at 1287.



The District Court did not err when it determined that the contract was inauthentic. The District Court's conclusion that the submitted document "appears to be a sham contract created by Plaintiff for the purpose of defeating dismissal of his complaint" is more than plausible. As the District Court noted, the timing of Sequeir'as submission was highly suspect; it was only after the Court pointed out that there could be no waiver without an agreement and after Sequeira requested--and was denied--discovery to find the contract that a copy of the agreement "magically appeared" in his possession. In addition, the content of the agreement raises suspicion. The record supports the District Court's conclusion that "specific details believed to satisfy exceptions under the FSIA or to prevent dismissal were haphazardly compiled to form a contract." The translated modification includes suspicious "Insertion of an Arbitration Clause" language and references an amendment that is not otherwise mentioned.<sup>2</sup> The purported agreement also mandated arbitration under CAFTA or a "Federal Court in Miami Florida" but failed to specify what law applies or what happens when the parties do not agree. The District Court also found it suspicious that the agreement included a provision that subsequent agreements need not be notarized considering the circumstances surrounding a similar lawsuit by Sequeira's brother in a different court.<sup>3</sup>

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<sup>2</sup> The District Court also found that it was "highly suspect that Guerra makes no mention of the 2005 amendment in his purported declaration." (emphasis in original).

<sup>3</sup> Specifically, the Magistrate Judge found that the provision "appears to be in response to the California federal court's finding in Jairo Sequeira's case that the contract submitted was void under Nicaraguan law because it was notarized by Jairo's brother, the Plaintiff here. The Undersigned also finds it suspicious that Plaintiff was the notary for the contract submitted by his

We also note that the substance of the agreement is questionable. The agreement lacks clear terms and does not explain why a Nicaraguan—based—cattle-raising arrangement provided for exclusive distribution to Miami.

Given the record, the District Court did not clearly err in finding that the contract was inauthentic and, consequently, the Nicaragua and Chinandega did not waive their sovereign immunities.

B

The District Court also did not err in concluding that the commercial-activity exception did not apply. The FSIA provides that a foreign state is not entitled to sovereign immunity in any case that is

Based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or 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). A foreign state engages in commercial activity when it participates in a transaction as a private party would. *Beg v. Islamic Republic of Pak.*, F.3d 1323, 1325 (11th Cir. 2003). Thus, “Public acts,” such as takings, are not considered commercial activities. See *Id.* at 1325—26. In addition, for a suit to be “based on” commercial activities in the United States, the alleged

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brother, which was found to be void.” See *Sequeira v. Republic of Nicaragua*, No. CV13-4332, 2018 WL 6267835, at \*5 (C.D. Cal. Aug. 24, 2018), *aff’d*, 791 F. App’x 681 (9th Cir. 2020).

commercial activity must be “the gravamen” of the plaintiff’s complaint. *OBB Personenverkehr*, 136 S. Ct at 395 (quotation marks omitted). In ascertaining the gravamen of a complaint, courts are to focus on the core conduct giving rise to the suit rather than individually analyzing the elements of each cause of action. *Id.* at 396. This approach prevents plaintiff’s from side-stepping the FSIA’s limitations “through artful pleading.” *Id.*

The commercial-activity exception does not apply here because Sequeira’s amended complaint was based on the alleged taking of his land, which is not a commercial activity. See *Beg*, 353 F.3d at 1326. The other activities that allegedly occurred in the United States, such as selling meat and paying “front men,” do not constitute the “gravamen” of Sequeira’s complaint. See *OBB Personenverkehr*, 136 S. Ct. at 395.

### C.

The FSIA provides that a foreign state is not entitled to sovereign immunity in a case where “rights in property taken in violation of international law are in issue and that property or any property exchange for such property is present in the United States in connection with a commercial activity carried on in the United States for the foreign state.” 28 U.S.C. §1605(a)(3).

“[A]n amended complaint supersedes and replaces the original complaint unless the amendment specifically refers to or adopts the earlier pleading.” *Varnes v. Local 91, Glass Bottle Blowers Ass’n*, 674 F.2d 1365, 1370 n.6 (11th Cir. 1982). Thus, the allegations in an initial pleading are abandoned and “no longer a part of the pleader’s averments” once an amended pleading has been filed. *Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1215 (11th Cir. 2006) (quotation marks

omitted).

Sequeira did not re-allege in his amended complaint that the expropriation exception applied. In addition, Sequeira never requested permission to add such an allegation to his amended complaint, even though he had ample time to do so. Therefore, the District Court did not err when it did not consider the expropriation exception because Sequeira did not properly raise the expropriation exception as a possible basis for subject matter jurisdiction.

### III.

Because the District Court did not have FSIA jurisdiction over Nicaragua and Chinandega, there was no basis for supplemental jurisdiction over the claims against Troz and Callejas. The District Court did not have an independent basis for subject matter jurisdiction as to the claims against Troz and Callejas because those claims were based on state law and the parties lacked diverse citizenship. Thus, the District did not err in dismissing Sequeira's complaint.

### IV.

We review a district court's denial of jurisdictional discovery for abuse of discretion. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280—81 (11th Cir. 2009). This standard provides a range of choice for the district court. *Alliant Tax Credit 31 v. Murphy*, 924 F.3d 1134, 1145 (11th Cir. 2019). Accordingly, when applying this standard, we will affirm unless we find that the district court made a clear error of judgment or applied the wrong legal standard. *GDG Acquisitions LLC v. Gov't of Belize*, 849 F.3d 1299, 1312 (11th Cir. 2017).

In determining whether jurisdictional discovery should be permitted against a foreign state, a district court is "to balance the need for discovery to substantiate exceptions to statutory foreign sovereign immunity against the need to protect a sovereign's or sovereign agency's legitimate claim to immunity from discovery." *Butler*, 579 F.3d at 1314 (quotation marks omitted) (alteration adopted). This balancing test is designed to ensure that jurisdictional discovery is used only to confirm specific factual allegations and does not cause the undue burdens that foreign sovereign immunity is designed to prevent. *Id.*

Given the breadth and lack of detail involved in Sequeira's request for jurisdictional discovery, it was reasonable for the District Court to conclude that the request was not consistent with the permissible scope and purposes of jurisdictional discovery against a foreign state. Therefore, the District Court did not abuse its discretion in denying Sequeira's request.

## V.

Because Nicaragua, Chinandega, and Troz mounted a factual attack on Sequeira's stated bases for subject matter jurisdiction, the District Court was permitted to rule on the validity of the purported contract and was not required to weigh the evidence in the light most favorable to Sequeira. The District Court also appropriately determined that Sequeira had not demonstrated that another exception allowed for subject matter jurisdiction. The District Court also reasonably concluded that Sequeira's broad request did not justify jurisdictional discovery. We affirm.

**AFFIRMED.**

APPENDIX C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 16-250052-CIV-MARTINEZ/GOODMAN

HORACIO SEQUEIRA,  
Plaintiff,

v.

THE REPUBLIC OF NICARAGUA, et al.,  
Defendants,

**OMNIBUS REPORT AND RECOMMENDATIONS  
ON DEFENDANTS' MOTIONS TO DISMISS FIRST  
AMENDED COMPLAINT**

*Pro se* Plaintiff Horacio Sequeira file his first amended complaint against Defendants The Republic of Nicaragua ("Nicaragua"), City of Chinandega ("Chinandega"), Eduardo Jose Callejas Callejas ("Callejas"), and Estrellita del Carmen Troz Martinez ("Troz"). [ECF N.79]. Plaintiff's prior complaint was dismissed without prejudice for lack of subject matter jurisdiction.[ECF Nos.57;69].

Callejas filed a motion to dismiss [ECF No.84], Plaintiff filed a response [ECF NOS.85;86], and Callejas filed a reply [ECF No.88]. Troz also filed a motion to dismiss, and Plaintiff filed a response.[ECF Nos.87;119]. Nicaragua and Chinandega (the "State Defendants") filed a joint motion to dismiss. [ECF No.89]. Plaintiff responded in opposition [ECF No.119], and the State Defendants filed a reply [ECF No.124]. United States Judge Jose E. Martinez referred all pretrial matters to the Undersigned. [ECF No.82].

For the reasons stated below, the Undersigned respectfully recommends that the District Court grant

Defendants' motions [ECF Nos.84;87;89] and dismiss Plaintiff's first amended complaint without prejudice. The Undersigned recommends that Judge Martinez find that the State Defendants are sovereign defendants immune from suit, and because of this, the Court lacks federal question jurisdiction. The Undersigned also recommends that Judge Martinez find that the Court lacks subject matter jurisdiction over the remaining individual defendants, Callejas and Troz, based on lacks subject matter jurisdiction over the remaining individual defendants, Callejas and Troz, based on lack of diversity jurisdiction.

## **I. BACKGROUND**

### **a. Plaintiff's First Complaint**

In his first complaint, Plaintiff alleged that he is the rightful owner of 1000 acres of farmland located in Chinandega, Nicaragua called "El Pital." [ECF No.1, ¶¶ 10-11]. He also claimed that he owns the farm animals that live on El Pital. [ECF No.1, ¶ 7]. Although the specifics were unclear due to Plaintiff's conclusory, inconsistent, and often incomplete allegations, it appeared that Plaintiff was alleging that Callejas, an American citizen and Florida resident, failed to make some unspecified payments and failed to relinquish control of El Pital. [ECF No. 1, ¶¶ 6,25,30 118-121]. Plaintiff also alleged that Callejas sent an individual to "invade" El Pital and that Callejas is responsible for violent attacks and death threats against Plaintiff. [ECF No.1, ¶¶ 31,87,92,132].

Plaintiff also claimed that Troz, an employee of Nicaragua's Office of Public Record, filed forged documents stating that Callejas was the rightful owner of El Pital, an action which allegedly interfered with Plaintiff's supposed contract with Callejas [ECF No. 1, ¶¶

I, 30,48-53]. Plaintiff further claimed that Defendants disobeyed a Nicaraguan court order (which allegedly found that Plaintiff was the rightful owner of El Pital). [ECF No. 1 ¶ 47].

Plaintiff claimed that Callejas and Troz worked together in carrying out the threats and forgery so that the State Defendants could take Plaintiff's property from him. He further alleged that the State Defendants then sold the seized animal meal from the farm animals at El Pital in the United States. [ECF No.1, ¶¶29,41,47,51,53,60,66-67]. Plaintiff alleged 14 state law counts against Defendants.<sup>1</sup> [ECF No.1].

Defendants move to dismiss Plaintiff's first complaint. [ECF Nos.16; 25; 26]. The Undersigned recommended that Plaintiff's complaint be dismissed. [ECF No.45]. First, the Undersigned determined that the State Defendants are sovereign defendants immune from suit under the Foreign Sovereign Immunities Act ("FSIA"), and thus the Court lacked federal question jurisdiction. [ECF No.45, pp.6-7]. Under the FSIA, foreign states and their agencies or instrumentalities are immune from suit

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<sup>1</sup> Plaintiff alleged the following count (1) "unlawful expropriation (illegal taking) of personal and real property"; (2) conversion; (3) unjust enrichment; (4) torture; (5) cruel, inhumane, or degrading treatment"; (6) assault and battery; (trespass to land; (8) trespass to chattels; (9) intentional interference with prospective economic advantage and business relationship; (10) negligent interference with prospective economic advantage and business relationship; (11) breach of express written and oral contract and implied-in fact contract; (12) breach of the implied covenant of good faith and fair dealing; (13) intentional infliction of emotional distress; and (14) injunctive relief. [ECF No. 1].



in the United States unless an FSIA statutory exception applies. See 28 U.S.C. §§ 1603, 1604, 1605; *Mezerhane v. Republica Bolivariana de Venezuela*, 785 F.3d 545, 548 (11<sup>th</sup> Cir. 2015). Plaintiff asserted that the following exceptions to FSIA immunity applied: waiver, § 1605(a)(1); commercial activity, 1605(a)(2); expropriation, 1605(a)(3); and tort, § 1605(a)(5). [ECF No. 1, ¶¶ 2, 5-14].

With regard to waiver, the Undersigned found that Plaintiff did not allege facts supporting a theory that the State Defendants explicitly waived, in a contract or otherwise, their sovereign immunity. [ECF No. 45 pp. 12-14]. Plaintiff did not allege that he entered into any contract with Nicaragua and Chinandega, and even if he had, the Undersigned pointed out that “[t]he contract would need to contain an applicable arbitration provision or choice of law provision that proves that the contracting parties agreed to have lawsuits or arbitrations in the U.S. or that U.S. law would govern all disputes arising from the contract.” *Id.* at p. 14.

In order to meet the commercial activity exception, Plaintiff was required to allege conduct by Nicaragua and Chinandega

Based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or 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.

§ 1605(a)(2); [ECF No. 45, p. 14].

Plaintiff did not satisfy this exception. [ECF No. 45, pp. 14-18]. The Undersigned found that the gravamen of

Plaintiff's complaint was the alleged illegal taking of his property in Nicaragua, which is not a commercial activity and does not have a direct effect in the United States. *Id.* The Undersigned found that Plaintiff's claim that the State Defendants were selling meat in the United States derived from the livestock located at El Pital did not satisfy the commercial activity exception because it was not the gravamen of Plaintiff's complaint, *Id.*

The expropriation exception applies where it is alleged that:

Rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.

§1605(a)(3); [ECF No.45, p. 18].

The Undersigned found that while Plaintiff made conclusory allegations that the State Defendants sold animal products in the United States, the alleged taking did not violate international law because Plaintiff's allegations stem from the conduct of individual actors, not the State Defendants. [EFC No.45, pp.23-26].

And finally, as to the tort exception to immunity under the FSIA, the Undersigned found that none of the State Defendants were alleged to have engaged in tortious conduct that occurred in the United States, as in required

under the tort exception. § 1605(a)(5) [ECF No. 45, p. 26].

Because the exceptions to the FSIA did not apply, the Undersigned recommended that the complaint be dismissed against the State Defendants. [ECF No. 45, p. 26] Further, the Undersigned found that because there was no longer subject matter jurisdiction arising under the FSIA for Plaintiff's claims, the only possibility for jurisdiction would be diversity jurisdiction. [ECF No. 45, p. 27]. Diversity jurisdiction was found not to exist because Plaintiff and Callejas were alleged to both be Florida residents. [ECF No. 45, p. 28].

Judge Martinez adopted the Undersigned's Report and Recommendations, and Plaintiff was given leave to amend his complaint. [ECF No. p. 57; 69; 78].

#### **b. Plaintiff's First Amended Complaint**

Plaintiff filed his amended complaint and alleges 13 state law claims against Defendants.<sup>2</sup> [ECF No. 79].

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<sup>2</sup> Plaintiff alleges the following counts: (1) unlawful expropriation or illegal taking of property against Nicaragua; (2) breach of contract against Nicaragua; (breach of implied covenant of good faith and dealing against Nicaragua; (3) breach covenant of good faith and fair dealing against Nicaragua; (4) breach of contract against Callejas; (5) breach of implied covenant of good faith and fair dealing against Callejas; (6) conversion against Nicaragua, Chinandega and Callejas (7) restitution against Nicaragua, Chinandega and Callejas (8) trespass to land against Nicaragua, Chinandega and Callejas; (9) trespass to chattels against Nicaragua, Chinandega, and Callejas; (10) intentional interference with prospected economic advantage and business relationship against Nicaragua, Chinandega, and Callejas; (11) negligent interference with prospected

Plaintiff argues that there is subject matter jurisdiction for his claims against the State Defendants under the waiver and commercial activities exceptions to the FSIA. [ECF No. 79, app. 10-18]. Again, Plaintiff's allegations are disjointed and unclear, but, in substance, he reasserts the same allegation as his first complaint, i.e.: (1) that El Pital and the livestock on the property were illegally taken from him and (2) that Callejas and Troz participated in "unlawful activities in order to assist Nicaragua and Chinandega in the illegal taking" of his property, including by the "use of death threats, forging registry documents, [and] disobeying court orders, among other things." [ECF No. 79, ¶¶17-18, 23,25].

Plaintiff also makes some additional allegations that appear to be an attempt to address the shortcomings identified in the Undersigned's early report and recommendations. Plaintiff alleges that the State Defendants took over his business to engage in "commercial activities" in the U.S. and that these activities "are now carried out through Nicaragua's front men living in the U.S.A. and are under Nicaragua's direction and control." [ECF No. 79, ¶ 3].

Plaintiff states that Nicaragua has "transmuted" his real estate and personal properties by selling his cattle as meat product in the United States. [ECF No. 79, ¶¶ 20-23] He also alleges that some of the profits gained by the sale of his cattle as meat product have been used "to pay for the Salary of their front men or straw men located in the U.S.A. to commit illegal activities such as money

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economic advantage and business relationship against Nicaragua, Chinandega, and Callejas; (12) intentional infliction of emotional distress against Nicaragua, Chinandega and Callejas.

laund[ering]" and "Nicaragua and Chinandega have used some attorney[']s trust accounts located in the U.S.A. to commit such activities." [ECF No. 79, ¶ 26]. Plaintiff also states that some of these profits have been used to fund the State Defendant's counsel in this matter, Silverio & Hall. [ECF No. 79, ¶ 49].

Most notably, Plaintiff now alleges that in May 1998, he entered into a written contract with Instituto de Desarrollo Rural ("IDR"), and alleged entity of Nicaragua regarding the raising of cattle and the selling and exportation of meat into the United States. [ECF No. 79 ¶ 45]. In addition, Plaintiff alleges:

[I]n December 2005...Nicaragua and Mr. Sequeira modified in writing their agreement and included in it an International Arbitration Clause.... Under the terms of the contract, Nicaragua agreed to and clearly revealed its intention to waive its jurisdiction by agreeing to an international arbitration in the U.S.A. under the DR-CAFTA's rules or under the ICSID's rules or under any U.S.A. District Court rules.

[ECF No. 79, ¶ 45].

As to Callejas and Troz, Plaintiff further alleges that Callejas brings Plaintiff's cattle from El Pital to the Chinandega slaughterhouse, which is operated by the Chinandega Registry, where Troz is Chief Registrar. [ECF No. 79, ¶ 54]. Nicaragua then processes the meat and sells the beef in the United States. [ECF No. 79, ¶54].

Plaintiff also alleges that Callejas sends "monthly payments" from the U.S. to Chinandega; "[h]owever, he deducts from that payment part of his salary that Nicaragua pays him as a front man acting on Nicaragua's behalf and for its benefits in the U.S.A." [ECF No. 79,

¶68].

**c. Request for Jurisdictional Discovery**

After Defendants moved to dismiss Plaintiff's first amended complaint, Plaintiff moved for limited jurisdictional discovery to prove disputed facts relating to subject matter jurisdiction. [ECF No.95]. Specifically, Plaintiff sought the following discovery:(1) to serve a subpoena on Defendants' attorneys,(2)to inspect Nicaragua's records in order to demonstrate the waiver exception since Nicaragua has represented that it has no record of any contract with Plaintiff, and (3) to serve requests for admissions to six unidentified individuals to demonstrate activity exception. [ECF No.95,pp11-12]. The Undersigned denied the motion for jurisdictional discovery because Plaintiff failed to identify what specific facts would be verified through these requests and because, even if he had, his proposed requests were improper.[ECF No.104,p.4].

**d. Jairo Sequeira's California Case**

A factually analogous lawsuit was filed in the Central District of California by Jairo Sequeira, whom Defendants believe to be Plaintiff's brother. The lawsuit which is against Nicaragua, Chinandega, another Nicaraguan city and five Nicaraguan officials, involves a similar land dispute in Nicaragua and the alleged the sale of meat in the United States from confiscated farm animals, and also alleges that the sovereign defendants collected rental income from individuals in the United Sates. Jairo Sequeira v. Republic of Nicaragua, et al., U.S. District Court for the Central District of California, Case No.13-CV-4332, ECF No.195,p.3.

Just like Horacio Sequeira alleges in this case, Jairo Sequeira argued that the waiver, commercial activity, expropriation, and tort exceptions applied to the sovereign's immunity under FSIA. *Id.* at p.4. The California District Court disagreed and recently dismissed Jairo Sequeira's third amended complaint against the sovereign defendants.<sup>3</sup> *Id.* As to the waiver

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<sup>3</sup> The California District Court had previously dismissed the Plaintiff's complaint as facially deficient. The Ninth Circuit Court of Appeals reversed the dismissal, finding that Jairo "was not required to produce such evidence in response to a **facial attack** on subject matter jurisdiction." Jairo Sequeira v. Republic of Nicaragua, et al., U.S District Court for the Central District of California, Case No.13-CV-4332, ECF No.112, p. 2(emphasis added). As discussed further below, a **factual attack** on subject matter jurisdiction is different from a **facial attack** and requires a court to consider matters outside the pleadings because no presumption of truthfulness attaches to the plaintiff's allegations. Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir.1990)(internal citations omitted). Jairo later amended his complaint, and defendants raised a factual challenge to subject matter jurisdiction. *Id.* at ECF No.195.

exceptions, Jairo provided the Court with a written contract that provided that Chinandega agreed to submit to the jurisdiction chosen by Jairo Sequeira. *Id.* at 5. The agreement was notarized by the Plaintiff in this action, Horatio Sequeira. *Id.* The defendants there contended that the agreement was fraudulent and filed affidavits stating that no such agreement existed. *Id.* The Court Found the agreement was invalid under Nicaraguan law, and thus the waiver exception to FSIA immunity did not apply. *Id.* at 7.

As to the commercial activity exception, the Court found that Jairo Sequeira Presented no evidence that the defendants sold his cattle as meat products in the United States or that the defendants received rental profits from individuals in the United States. *Id.* at 9,13. Thus Sequeira failed to satisfy the commercial activity exception. *Id.* at 13. Finally, as to the expropriation and tort exceptions, the California federal district court concluded that Jairo Sequeira failed to present any evidence supporting his allegation that the defendant's tortuous conduct occurred in the United States. *Id.* at 13-14.

Defendants in the instant case point out that many of the allegations added to Plaintiff's amended complaint here were taken verbatim from Jairo Sequeira's third amended complaint, including that Jairo Sequeira's contract with the IDR was amended in 2005 to add an arbitration provision and that illegal profits are being used by Defendants to pay their "front men" in the United States.[ ECF No.89,p.7].

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## II. LEGAL STANDARD

Under the FSIA, foreign states are immune from suit unless an FSIA statutory exception applies. See 28 U.S.C. §§ 1603, 1604, 1605; *Mezerhane v. Republica Bolivariana de Venezuela*, 785 F.3d 545, 548 (11th Cir.2015). "If sovereign immunity exists, then the court lacks both personal and subject matter jurisdiction to hear the case and must enter an order of dismissal." *De Sanchez v. Banco Cent. De Nicaragua*, 770 F.2d 1385, 1389 (5th Cir.1985)(internal citations omitted). However, "[i]f an exception does apply, the district court has jurisdiction *Butler v. Sukhoi Co.*, 579 F.3d 1307, 1312-13(11th Cir.2009) (citing 28 U.S.C. §1330 (a));<sup>4</sup> see also *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989)(stating FSIA provides "sole basis for obtaining jurisdiction over a foreign state in [U.S] courts").

To establish subject matter jurisdiction under the FSIA, a plaintiff must overcome the presumption that the foreign state is immune from suit by producing evidence that "the conduct which forms [the] complaint falls within one of the statutorily defined exceptions." *S & Davis Int'l, Inc. v. The Republic of Yemen*, 218 F.3d. 1292, 1300 (11th Cir.2000)(internal citations omitted). Once a plaintiff demonstrates that one of the statutory

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<sup>4</sup> Section 1330 (a) provides that "district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement". §1330(a).

exceptions to FSIA immunity applies, the burden then shifts to the defendant to prove by a preponderance of the evidence that the plaintiff's claims do not fall within that exception. See *Butler*, 579 F.3d at 1312-13; *S. & Davis Int'l*, 218 F.3d at 1300.

Attacks on subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) such as under the FSIA, come in two forms: (1) "facial attacks" on the complaint, which require the court to draw all reasonable inferences in favor of the plaintiff to see if the plaintiff has sufficiently alleged a basis for subject matter jurisdiction; and (2) "factual attacks," which "challenge the existence of subject matter jurisdiction in fact" and require the court to consider matters outside the pleadings because no presumption of truthfulness attaches to plaintiff's allegations. *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir.1990)(internal citations omitted).

Here, Defendants factually attack the FSIA exceptions that Plaintiff alleges in his complaint. Plaintiff responded to the factual attacks with evidence, i.e., affidavits and a purported contract, filed in an attempt to prove that the FSIA exceptions apply. Accordingly, the Undersigned will not automatically regard Plaintiff's allegations as true. Instead, the Undersigned will "regard the pleadings as mere *evidence* on the issue" of subject matter jurisdiction. *Trigeant Ltd. v. Petroleos de Venezuela S.A.*, No. 08-80584-CIV, 2010 WL 11505968, at \*10 (S.D. Fla. Jan. 5, 2010) (internal citation omitted) (emphasis added).

The undersigned first considers whether Plaintiff has presented evidence supporting the waiver exception to the FSIA. This exception applies if "the foreign state has waived its immunity either explicitly or by implication." §1605(a)(1). For purposes of the FSIA, a foreign state expressly waives its right to immunity only where its intent to do so is clear and unambiguous. *Architectural Ingenieria Siglo XXI, LLC v. Dominican Republic*, 788 F.3d 1329, 1338 (11th Cir. 2015) (internal citations omitted). Implicit waiver applies if "the foreign state reveals its intent to waive its immunity by: (1) agreeing to arbitration in another country, (2) agreeing that the law of a particular country should govern a contract, or (3) filing a responsive pleading in an action without raising the defense of sovereign immunity. "Id. (internal quotations omitted).

Upon review of Plaintiff's first complaint and the parties' submissions, the Undersigned determined that the waiver exception did not apply because there was no alleged agreement between Plaintiff and Nicaragua and/or Chinandega, much less an agreement including a provision that all disputes would be resolved in the United States. [ECF No. 45, pp. 12-14].

Plaintiff then amended his complaint and added an allegation stating that he did in fact enter into a contract with IDR, alleged to be an entity of Nicaragua, regarding raising cattle and selling meat in the United States and that the contract "clearly revealed [IDS's] intention to waive its jurisdiction by agreeing to an international arbitration in the U.S. A. under the DR-CAFTA's rules or under the ICSID's rules or under any U.S.A. District Court rules." [ECF No. 79, ¶45]. Plaintiff did not attach a copy of this agreement to his amended complaint, however.

Nicaragua and Chinandega then filed their motion to

dismiss and attached a declaration from Miguel Angel Baca Jimenez, Legal Advisor of the Ministry of Family, Community, Cooperative, and Associative Economy, which is the custodian of records of IDR. [ECF No. 89-3, pp. 4-5]. Baca states, under penalty of perjury, that there is no record of any contract between the IDR and Plaintiff and/or Callejas. [ECF No. 89-3, p. 5]. He also states that there

is no record of any model contract of the Institute for Rural Development that includes an arbitration clause selecting the International Centre for Settlement of Investment Disputes [ICSID] as an arbitral forum for the resolution of disputes, a forum selection clause selecting the United States as a forum for the resolution of disputes, or a waiver of immunity in a foreign forum.

[ECF No. 89-3, p.5 (emphasis added)].

Additionally, the State Defendants submitted a declaration in support of their motion to dismiss from Maria Xiomara Mena Rosales, the Executive Director of the Center for the Processing of Exports of the Republic of Nicaragua, which keeps the records of all legal and natural persons authorized to export goods, including meat and meat products, from Nicaragua. [ECF No. 89-5, p.4]. Mena states, under penalty of perjury, that she conducted a search of all records from January 1, 2002 to August 31, 2018, and there were no records of any export found in the name of Plaintiff and that Plaintiff is not an authorized exporter. [ECF No. 89-5, p.5]. Chinandega, IDR, Callejas, and Nicaragua also do not appear as authorized exporters. *Id.* Further, Mena states that only registered industrial slaughterhouses may export beef, and there are no slaughterhouses authorized to export beef in the Department of Chinandega. *Id.*

Subsequently, before filing his response in opposition to the State Defendants' motion to dismiss, Plaintiff sought jurisdictional discovery and argued that he needed to inspect Nicaragua's record in light of its representation that no such contract existed between IDR and Plaintiff. [ECF No. 95, p. 11]. However, after the undersigned denied Plaintiff's request for jurisdictional discovery, Plaintiff filed his response in opposition to the State Defendants' motion to dismiss and attached what the now says is a copy of a contract providing that Nicaragua waived immunity from suit in the United States. [ECF No. 119-1, pp. 30-40].

Plaintiff claims that the contract is an amendment to a prior contract entered into on May 9, 1998. [ECF No. 119-1, p. 10]. The purported contract is in Spanish, but the State Defendants provided a certified translation of the purported contract. [ECF No. 119-1, pp. 30-40; 124-1, pp. 11-16].

Because the State Defendants have **factually** attached the existence of a waiver agreement under the FSIA, Plaintiff's allegations in his amended complaint are not presumed to be true, and the Undersigned must consider the evidence presented by the parties and make factual findings. *See Trigeant*, 2010 WL 11505968, at \*10, *see also Comparelli v. Republica Bolivariana De Venezuela*, 891 F.3d 1311, 1319 (11th Cir. 2018) (stating that "district court must **resolve relevant factual disputes**" when presented with factual challenge to jurisdiction under the FSIA) (emphasis added).

Therefore, the Undersigned must make factual findings about whether the State Defendants entered into a contract with Plaintiff waiving immunity under the FSIA. *See Phoenix Consulting Inc. Republic of Angola*, 216 F.3d 36, 41 (D.C. Cir. 2000) (remanding to district court to

resolve factual dispute where sovereign defendant presented evidence in support of its motion to dismiss that written contract purporting to contain waiver agreement was forged and that sovereign defendant never agreed to waive immunity).

The Undersigned has considered Plaintiff's first amended complaint, along with the parties' submissions, in order to issue factual findings. As explained below, the Undersigned finds that the agreement is not authentic and that the signatory of the purported contract would not have authority to waive immunity for the State Defendants anyway.

First, the Undersigned finds the timing of Plaintiff's submission of the purported contract to be highly suspect. Plaintiff made no mention of this agreement in his first complaint. After it was pointed out that there could be no waiver by the State Defendants if there was no agreement, Plaintiff added an allegation that there was an agreement to arbitrate. When the State Defendants produced an affidavit stating that there was no such contract, Plaintiff requested jurisdictional discovery to confirm this. When his request for discovery was denied, a copy of the contract magically appeared.

Second, a cursory review of the language in the agreement raises even more suspicion that the purported contract is a sham. The title of the contract is "Amendment of the Contract for the Breeding and Development of Heavy Livestock and the Sale of Livestock and Products Thereof within the United States and Insertion of an Arbitration Clause." [ECF No. 124-1, p. 11]. Other than the reference in the title to an "amendment," there is no mention of an original contract anywhere in the contract, and the text of the agreement does not specify which sections or terms of the original agreement are being amended [ECF No. 124-1, pp. 11-16].

Further, while there are vague references to the number of cows on the El Pital property, there are no clear terms in the contract regarding what the parties' alleged agreement was and what consideration was provided by each party. Rather, it appears that specific details believed to satisfy exceptions under the FSIA or to prevent dismissal were haphazardly compiled to form a contract.

For example, there are a number of references to producing livestock that would be sold "exclusively" in Miami, Florida and that the export of the meat would be to Miami, Florida only. [ECF No. 124-1, pp. 13-14]. It seems highly unlikely that parties to an agreement regarding cattle-raising in Nicaragua would limit the export of the cattle meat to only one city; Miami.

The "arbitration" clause is also illogical. It provides:

Both parties agree to submit any legal dispute resulting from the performance of this contract to an Arbitration process...and in the event of a disagreement with the Award given by said arbitrators...both parties may file their claims in Federal Court in Miami Florida or in an Arbitration Court of the Central America-United States of America -Dominica Republic Free Trade Agreement (CAFTA-DR) in the United States of America. Both parties agree that everything related to this contract is subject to the rules of the... CAFTA-DR or to the laws of the United States of America.

[ECF No. 124-1, pp. 14-15]. It is unclear why the parties would explicitly subject themselves to arbitration under CAFTA or a "Federal Court in Miami Florida" when the contract was allegedly entered into in Nicaragua relating

to land and cattle in Nicaragua. It is also odd that the parties would not specify what law of the United States would apply, i.e., Florida Law or New York law, and that there is no provision addressing what happens if the parties cannot agree on whether they should arbitrate or go to a "Federal Court in Miami Florida."

There is also a provision in the so-called contract stating that any subsequent agreement do not need to be notarized. [ECF No. 124-1, p.15]. This appears to be in response to the California federal court's finding in Jairo Sequeira's case that the contract submitted was void under Nicaraguan law because it was notarized by Jairo's brother, the Plaintiff here. *Jairo Sequeira v. Republic of Nicaragua, et al.*, U.S. District Court for the Central District of California, Case No. 13-CV-4332, ECF No. 195, pp. 6-7. The Undersigned also finds it suspicious that Plaintiff was the notary for the contract submitted by his brother, which was found to be void.

Based on the timing of the submission of the contract and its terms, the Undersigned finds that the contract purported to be between Plaintiff and the IDR is likely a sham contract created by Plaintiff for the improper purpose of preventing the dismissal of his case. However, even if Plaintiff were able to demonstrate that the waiver exception applied through the submission of the suspect contract, the State Defendants have proven by a preponderance of evidence that the waiver exception does not apply. *See Butler*, 579 F.3d at 1312-13; *S & Davis Int'l*, 218 F.3d at 1300.

The Undersigned finds compelling the declaration submitted under penalty of perjury by Baca and Mesa, stating that no such contract exists; that the IDR has no similar model contract including any such arbitration provision; and that Plaintiff, Chinandega, and Nicaragua



are not registered exporters of beef to the United States. Plaintiff has submitted no evidence to contradict these declarations other than the contract, which appears to be a sham contract created for the purposes of defeating dismissal.

Further, as pointed out by the State Defendants, even if the contract were authentic, the signatory for the IDR, Mr. Guerra, who allegedly entered into the contract as "Executive Director" of the livestock restocking program, would not have authority to waive sovereign immunity on behalf of the IDR or Nicaragua [ECF No. 124, pp. 5-6]. The State Defendants submitted declaration from a Nicaragua constitutional law expert and lawyer, Dr. Navarro, who stated that the "IDR was not authorized to bind any person, any other decentralized institution, Chinandega or any other municipality, or the Republic of Nicaragua to any obligations to any third party, since it only has functional autonomy." [ECF No. 89-10, p.24]. Navarro further states:

No provision of Law 290 authorizes the IDR to waive sovereign immunity of the IDR, Chinandega or any other municipality, or Nicaragua or to submit any of those entities to the jurisdiction of a foreign court or arbitral institution. If the IDR were to attempt to do so, it would be in violation of the principle of legality of Article 130 of the Constitution, Law 290 and its regulation, Decree No. 71-98.

[ECF No. 89-10, p. 24].

Further, the provision in the contract stating that it was "published in the official gazette with the consent and ratification of the President of the Republic of Nicaragua and the approval of the National Assembly" is outlandish

considering it relates to a cattle-raising agreement for 200 heads of livestock. [See ECF No. 124-1, pp. 11-12] And Navarro's declaration provides that he was not aware of any legislative or executive act waiving Nicaragua's or Chinandega's sovereign immunity with respect to plaintiff's claims here. [ECF No. 89-10, p.25]. Plaintiff has provided no evidence to dispute this, such as the alleged publication in the gazette. Surely, if the president and the legislative branch of Nicaragua approved plaintiff's cattle-raising contract, then there would be record of it somewhere.

Thus, even if plaintiff did enter into the purported contract with Guerra, Guerra would not have authority to bind Nicaragua and Chinandega and there could be no waiver of immunity. See *Packsys, S.A de C.V.v. Exportadora de sal, S.A. de C.V.*, 899F.3d 1081, 1093(9th Cir. 2018) (finding there was no waiver of immunity where signatory to agreement lacked actual authority to enter into the contract).

Accordingly, the Undersigned finds that the waiver exception to immunity under the FSIA is not satisfied here.

## ii. Commercial Activity Exception

Plaintiff also argues there is jurisdiction for this claims against the state Defendants under the commercial activity exception to the FSIA. [ECF No. 79, pp.11-18]. The commercial activity exception applies if

[1] the action is based upon a commercial activity carried on in the United State by the foreign state, or [2] upon an act performed in the United State in connection with a commercial activity of foreign state elsewhere; or [3] 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.

\$1605(a)(2).

Just like in Plaintiff's original complaint, Plaintiff alleges in the first amended complaint that his property, El Pital, and the livestock on it were illegally taken from him through action by Callejas, Troz, and the State Defendants. Plaintiff includes some additional details, likely in an attempt to satisfy the commercial activity exception. Plaintiff claims that Callejas brings Plaintiff's cattle from El Pital to the Chinandega slaughterhouse, which is operated by the Chinandega Registry, where Troz is Chief Registrar. [ECF No. 79, ¶54]. Nicaragua then processes the meat and sells the beef in the United State. [ECF No.79, ¶54].

Plaintiff claims that some of the profits gained by selling his cattle as meat product have been used "to pay for the salary of their front men or straw men located in the U.S.A.to commit illegal activities such as money laund[ering]" and "Nicaragua and Chinandega have used some attorney[']s trust accounts located in the U.S.A. to commit such activities." [ECF No.79, ¶26].

Additionally, Plaintiff claims that Callejas sends "monthly rental payments" from the United States to Chinandega, [h]owever, he deducts from that payment part of his salary that Nicaragua pays him as a front man acting on Nicaragua's behalf and for its benefits in the U.S.A." [ECF No.79, ¶68].

As discussed above, the State Defendants have submitted declarations from Baca (custodian of records

for the IDR) and Mena(Executive Director of Center for the Processing of Exports of the Republic of Nicaragua) providing that Nicaragua and Chinandega are not registered exporters of beef to the United States and that there are no slaughterhouses authorized to export beef in the Department of Chinandega.[ECF Nos.p.5;89-5,pp.4-5].

Additionally, the State Defendants provided a declaration from Aura Lyla Padilla Alvarez, the Mayor of the Municipality of Chinandega. [ECF No.90-2, p.5]. Padilla state under penalty of perjury that Chinandega is distinct from El Viejo, where El Pital is located, and that Chinandega does not occupy, own, operate, or manage any properties, including El Pital, in El Viejo; nor does it receive rental payments for El Pital. [ECF No. 90-2,p.7]. Further, Padilla states that she has reviewed municipal records, and Chinandega does not engage in the sale of the United States or operate slaughterhouse. [ECF No.90-2,p.8].

Because the State Defendants have factually attacked Plaintiff's allegations, the allegations in Plaintiff's first amended complaint are not presumed to be true, and the Undersigned must consider the evidence presented by the parties and make factual finding. *See Comparelli*, 891 F.3d at 1319 (stating that "district court must resolve relevant factual disputes" when presented with factual challenge to jurisdiction under the FSIA).

The Undersigned has considered Plaintiff's first amended complaint, along with the parties' submissions, and finds that Plaintiff has not demonstrated that the commercial activity exception applies, and even if it did, the State Defendants have proven by a preponderance of the evidence that the claims do not fall within that exception. *See Butler*, 579F.3d at 1312-13.

A cursory review of plaintiff's allegations calls into question their veracity as they are outlandish and appear to be based purely on speculation, such as Plaintiff's allegation that the State Defendants use money from the sale of meat products for "money laundering" and attorney's fees in the United States. Putting this aside, Defendants have produced compelling evidence to refute Plaintiff's allegations.

The Undersigned finds compelling the declarations from Baca and Mena, which provide that Nicaragua and Chinandega are not authorized to export beef to the United State and that Chinandega does not have a slaughterhouse. [ECF Nos. 89-3, p.5, 89-5 pp.4-5]. This is further corroborated by Padilla, the Mayor of Chinandega, who declares under penalty of perjury that Chinandega does not have a slaughterhouse and does not sell beef in the United State. [ECF No. 90-2 pp.7-8]. The Undersigned also finds compelling Padilla's declaration that Chinandega has no connection to El Pital, which is located in another municipality, and that Chinandega does not receive rental proceeds from Callejas for the use of El Pital. [ECF No. 90-2, p.7].

Plaintiff has not submitted any evidence that negates these declarations, other than the sham contract purporting to be a cattle-raising agreement between the IDR and Plaintiff.

But even assuming that plaintiff's allegations were not negated by the State Defendants' evidence, Plaintiff's allegations are nevertheless still insufficient to satisfy the commercial activity exception.

As explained in the Undersigned's earlier-issued report and recommendations recommending dismissal of plaintiff's first complaint, the illegal taking of Plaintiff's

land and cattle in Nicaragua does not satisfy the commercial activity exception [ECF No. 45, pp. 15-17]. The illegal taking of Plaintiff's land and cattle is not a commercial activity, and further, it was not carried out in the United State, as is required under the first two prongs of the commercial activity exception. See *Beg v. Islamic Republic of Pakistan*, 353 F.3d 1323, 1325 (11th Cir. 2003) (finding that "illegal taking" or expropriation does not constitute commercial activity because it is an extension of government power that is considered public in nature).

Additionally, Plaintiff's allegation that the United State Defendants are selling meat in the United States that is derived from his illegally taken cattle does not satisfy the commercial activity exception because it is not the gravamen of Plaintiff's complaint. [ECF No. 45, p. 17]; see *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 395 (2015) (stating that the alleged commercial activity must be equivalent to the gravamen of the complaint and that rather than individuality analyzing each claim, the court must zero in on the core of the suit to determine whether exception applies). Plaintiff's explanation of what the State Defendants allegedly do with the profits they receive from the meat sales, i.e., for money laundering or attorney's fees, does not change the fact that the gravamen of the complaint is the taking of Plaintiff's land and cattle.

Further, Plaintiff's allegations still do not satisfy the third prong under the commercial activity exception: "an act outside the territory of the United State in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United State" §1605(a)(2) (emphasis added). A direct effect for purposes of this prong is "an immediate consequence of the defendant's activity." *Guevara v. Republic of Peru*, 608 F.3d 1297, 1309 (11th Cir. 2010).

While the taking of Plaintiff's cattle may have had direct effect on Plaintiff, who lives in the United States, this loss by Plaintiff does not satisfy the third prong. *Araya Solorzano v. Gov't of Republic of Nicaragua*, 562 F.App'x 901, 904 (11th Cir. 2014)(internal citations omitted)("Mere financial loss by a person—individual or corporate—in the U.S. is not, in itself, sufficient to constitute a 'direct effect'"). Again, the alleged sale of meat in the United States is an indirect effect of the taking of Plaintiff's cattle, as are the profits from the sale of this meat, such as those alleged to be used for money laundering and attorney's fees.

To the extent Plaintiff argues that the alleged breach of the cattle raising contract constitutes commercial activity under the FSIA, as discussed above, the cattle raising contract submitted by Plaintiff appears to be a sham document created for the purposes of defeating dismissal here and has been refuted by the State Defendants. Regardless, again even if by Plaintiff's allegation is that Nicaragua is not sharing profits from beef sales in the United States as required by the contract, Plaintiff's core complaint remains that his property and the cattle raising agreement) was illegally taken from him.

Accordingly, Plaintiff has not demonstrated that the commercial activity exclusion applies here.<sup>5</sup>

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<sup>5</sup> Unlike Plaintiff's original complaint, Plaintiff does not appear to argue that the expropriation and tort exceptions to the FSIA apply here. Thus, the Undersigned will not consider these exceptions in detail. However, the Undersigned notes that Plaintiff has not alleged any new facts or presented any new evidence that would satisfy these exceptions, which were previously found by the Undersigned not to apply. [See ECF No. 45, pp. 18-26]. As

Thus, because there is no subject matter jurisdiction under the FSIA against the State Defendants, the Undersigned recommends that judge Martinez dismiss the claims against the State Defendants.

**b. Subject Matter Jurisdiction for  
Individuals Callejas and Troz.**

Because there is no subject matter jurisdiction under the FSIA for Plaintiff's claims against the State Defendants, there is no remaining basis for federal question jurisdiction for Plaintiff's claims against Callejas and Troz given that the claims all arise under state law.<sup>6</sup> Thus, for the court to have jurisdiction must be present. Diversity jurisdiction over the individual defendants, diversity jurisdiction must be present. Diversity jurisdiction requires complete diversity, meaning that every plaintiff must be diverse from every defendant. *Triggs v. John Crump Toyota, Inc.*, 154F.3d 1284,1287 (11th Cir.1998).

Plaintiff alleges that he is a resident of Florida and Callejas is resident of Florida.[ECFNo.79, ¶¶ 31,40]. Thus, because Plaintiff and Callejas are both Florida residents, complete diversity does not exist, and the Undersigned therefore also recommends that Judge Martinez dismiss the claims against Callejas and Troz.<sup>7</sup>

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to expropriation, Plaintiff has attempted unsuccessfully to tie the State Defendants into what appears to be a contract dispute with Callejas. Plaintiff's purported

<sup>6</sup> In fact, the Undersigned notes that Plaintiff does not actually bring any counts against Troz in his first amended complaint.

<sup>7</sup> Because there is no jurisdiction over Callejas, The Undersigned will not address Calleja's argument that



#### IV. CONCLUSION

Accordingly, because there is no subject matter jurisdiction over the State Defendants and no diversity jurisdiction over the individual defendants, the Undersigned respectfully recommends that the District Court grant Defendants' dismissal motions and dismiss Plaintiff's first amended complaint for lack of subject matter jurisdiction without prejudice. *See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) ("A dismissal for lack of subject matter jurisdiction is not a judgment on merits and is without prejudice.").

#### V. OBJECTIONS

The parties will have fourteen (14) days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with United States District Judge Jose E. Martinez. Each party may file a response to the other party's objection within fourteen (14) days of the objection. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this report except upon grounds of plain error if necessary in interest of justice. *See* U.S.C. § 636(b)(1);

*Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

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Callejas's alleged breach of contract in 2008 would be statutorily time barred. [ECF No. 84, pp. 1-2].

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**RESPECTFULLY RECOMMENDED, in Chambers,  
Miami, Florida, on February 14, 2019.**

**Jonathan Goodman**

**UNITED STATES MAGISTRATE JUDGE**

**Copies furnished to:  
The Honorable Jose E. Martinez  
All Counsel of record  
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**APPENDIX D**

**UNITED STATES DISTRICT OF FLORIDA COURT FOR  
THE  
SOUTHERN DISTRICT OF FLORIDA**

**Miami Division**

**Case Number: 16-25052-CIV-MARTINEZ-GOODMAN**

**HORACIO SEQUEIRA,**

**Plaintiff,**

**VS.**

**THE REPUBLIC OF NICARAGUA, et al.,**

**Defendants.**

**ORDER            ADOPTING            REPORT            AND  
RECOMMENDATION**

**THIS MATTER** was referred to magistrate Judge Jonathan Goodman for a ruling on all pre-trial non dispositive matter, and for report and recommendation on al dispositive matters [ECF Nos. 5] plaintiff's complaint was previously dismissed for lack of federal subject matter jurisdiction [ECF Nos. 57, 69]. On August 8, 2018, Plaintiff filed his first Amended Complaint [ECF No. 79]. Defendants Eduardo Jose Callejas ("callejas"), Estrellita del Carmen Troz Martinez ("Troz"), the Republic OF Nicaragua and City of Chinandega (collectively, "Defendant") filed their motions to dismiss [ECF Nos. 84, 87, 89]. Magistrate Judge Goodman subsequently filed an omnibus report and recommendation on defendants' Motions to Dismiss First Amended Complaint [ECF No. 126] (hereinafter "Omnibus Report and Recommendation"), recommending that this Court: (1) grant Defendants' motions to dismiss [ECF Nos. 84, 87, 89]; (2) dismiss Plaintiff's First Amended Complaint without prejudice; (3) find that Defendants Republic of Nicaragua and City of Chinandega are

sovereign Defendants immune from suit, and, therefore, this Court lacks federal question jurisdiction; and (4) find that this Court lacks subject matter jurisdiction over Defendants CALLEJAS and TROZ based on lack of diversity jurisdiction.

Plaintiff then moved to stay his objections to Magistrate Judge Goodman's Omnibus Report and Recommendation or, in the alternative, for and order enlarging the time for him to file objections [ECF No. 127]. This Court denied plaintiff's request to stay the filing of this objections to the Omnibus Report and Recommendation but granted Plaintiff's motion for an extension of time to file his objections and ordered him to file his by March 15, 2019 [ECF No. 130]. Plaintiff's objections were timely filed on March 15, 2019 [ECF No. 132, at 1]. Defendants Republic of Nicaragua, City of Chinandega, and Troz filed a "Statement...Concerning Magistrate Judge's Recommendation that the court dismiss Plaintiff's Amended Complaint 'Without Prejudice'" (the "Statement") [ECF No. 128], stating that this Court should clarify that any dismissal without prejudice of plaintiff's action should be "'Without prejudice' to refiling in a court of competent jurisdiction outside of the United States, if there is one" [ECF No., 128, at 3]. Defendants Republic of Nicaragua, City of Chinandega, and Troz also filed a response to plaintiff's objections [ECF No.134].

The Court has reviewed the entire record, has made a *de novo* review of the issues that Plaintiff's objections to the Omnibus Report and Recommendations [ECF No. 132]<sup>1</sup> and Defendants Republic of Nicaragua, City of

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<sup>1</sup> The Court did so notwithstanding the fact that Plaintiff's objections can be stricken because he filed objections in excess of twenty (20) pages in violation of Rule 4(b) of the Magistrate Judge Rules. M.J.R. 4(b). Rule

Chinandega, and Troz's Statement present [ECF No. 128], and is otherwise fully advised in the premises.

### **Plaintiff's Objections**

After a *de novo* review of Plaintiff's objections, this Court finds them to be without merit and largely conclusory in nature, failing to adequately address the factual and legal findings contained in Magistrate Judge Goodman's Omnibus Report and Recommendation. Namely, plaintiff fails to adequately address the factual findings made by Magistrate Judge Goodman that led him to the conclusion that Plaintiff's contract was a "sham contract created by plaintiff for the purpose of defeating dismissal of his complaint"[ECF No.126, at 13-14]. Rather, plaintiff claims that Magistrate Judge Goodman failed to consider or ignored his submissions, such as the declaration of Mariano Guerra [ECF No.75], a declaration that includes no certified translation.<sup>2</sup> with respect to plaintiff's other submissions, a note by Defendants Republic of Nicaragua, City of Chinandega, and Troz in their response to the objections, it does not appear that the 'ILLESCAS' expert witness's declaration" and "Alvarez declaration" are apart of the record in this matter Accordingly, this Court finds that Plaintiff's objections, it does not appear that the "Illescas' expert witness's declaration" and "Alvares declaration" are apart

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4(b) provides in relevant part that "[a]bsent prior permission from the Court, no party shall file any objections or responses to another party's objections exceeding twenty (20) pages in length."

<sup>2</sup> Assuming the translation provided by Plaintiff is accurate, the Court finds it highly suspect that Guerra makes no mention of the 2005 amendment in his purported declaration.

of the record in this matter. Accordingly, this Court finds that plaintiff's contract is sham.<sup>3</sup>

Moreover, plaintiff also fails to adequately address Magistrate Judge Goodman's finding that even if the contract was authentic, "The signatory of the purported contract would not have authority to waive immunity for the State Defendants anyway"[ECF No. 126, at 18]. Plaintiff's objection to this finding are all conclusory in nature [ECF No. 132, at 12]. For example, plaintiff states that not authorization of the contract at issue is needed because once it is signed by a government official, "it automatically becomes a public instrument." *Id.*, in this regard, Plaintiff wholly fails to address the Magistrate Judge Goodman's findings as they relate to the declaration of Dr. Karlos Navarro, a Nicaraguan constitutional law expert and lawyer [ECF No. 126, at 21]. Accordingly, after careful consideration, this court overrules plaintiff's objection.<sup>4</sup>

Defendants Republic of Nicaragua, City of Chinandega, and Troz's Statement

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<sup>3</sup> Notably, as Magistrate Judge Goodman so eloquently put it, "it appears that specific details believed to satisfy exceptions under the FSIA or to prevent dismissal were haphazardly compiled to form a contract" [ECF No. 126, at 19]. Upon reviewing the contract [ECF No. 124-1], this Court agrees.

<sup>4</sup> To the extent that Plaintiff's objections were not specifically addressed herein, such objections are overruled for the reasons stated in Magistrate Judge Goodman' well-reasoned Omnibus Report and Recommendation.

In their Statement, Defendants Republic of Nicaragua, City of Chinandega, and Troz request that this Court adopt Magistrate Judge Goodman's Omnibus Report and Recommendation and 'state that Plaintiff's amended complaint is dismissed without prejudice to Plaintiff attempting to reassert his claims' against them "in a jurisdiction outside of the United States" [ECF No.128,at7]. This Court has reviewed Defendants Republic of Nicaragua, City of Chinandega, and Troz's Motions to Dismiss [ECF No.87,89], which both seeks dismissal of Plaintiff's First Amended Complaint with prejudice. "Courts in other jurisdiction have noted that the decision of a Magistrate Judge' should not be disturbed on the basis of arguments not presented to" the Magistrate Judge. *Papapanos v. Lufthansa German Airlines*, No.94-2667,1996 WL 33155438, at \*11 (S.D.Fla.Apr.16,1996) (citing cases);see also *Topp, Inc. v. Uniden Am. Corp*, 483 F.Supp.2d 1187,1190 (S.D. Fla. 2007). "This rule is based upon the same concept which prevents parties from arguing in the appellate courts issues and arguments not raised below." *papapanos*, 1996 WL 33155438, at \*11. Accordingly, this court declines to supply the additional language these defendants seek to include to a dismissal without prejudice by this Court. Thus, after careful consideration, it is ORDERED and ADJUDGED that Magistrate Judge Goodman's Omnibus Report and Recommendation [ECF No.126]. is AFFIRMED and ADOPTED. Plaintiff's objections [ECF No.132] are hereby OVERRULED. Accordingly, it is

1. Defendants' motion to dismiss [ECF Nos. 84, 87, 89] are GRANTED.
2. Plaintiff's First Amended Complaint is DISMISSED without prejudice.
3. This court finds that Defendants Republic of Nicaragua and City of Chinandega are sovereign defendants immune

from suit, and therefore, this court lacks federal question jurisdiction.

4. Accordingly, this court lacks subject matter jurisdiction over Defendants Callejas and Troz based on lack of diversity jurisdiction.

5. This case is CLOSED and all pending motions are DENIED as MOOT.

DONE AND ORDERED in Chambers at Miami, Florida , this 29th day of March, 2019.

JOSE E MARTINEZ  
UNITED STATES DISTRICT JUDGE

Copies provided to:  
Magistrate Judge Goodman  
All Counsel of Record  
Horacio Sequeira, *pro se*



**APPENDIX E**

**TRANSLATION    EXHIBIT    A            NICARAGUAN  
CONSTITUTION**

**LEGAL NORMS OF NICARAGUA**

**Subject:** Constitutional and other Fundamental Standards

**Rank:** Political Constitution of Nicaragua

**Approved on** November 19, 1986

**Published in** La Gaceta, Official Gazette No. 05 of January 9, 1987

**THE PRESIDENT OF THE REPUBLIC**

Let the people of Nicaragua know that the National Constituent Assembly has consulted with the people, discussed and approved the following Political Constitution:

**FIRST:** WE, Representative of the People of Nicaragua, gathered in the National Constituent Assembly

**SAYING THAT** The Struggle of our indigenous ancestors. The spirit of Central American unity and the combative tradition of our people, inspired by the example of General JOSE DOLORES ESTRADA...

**Art. 15.** Qualifications to be a Minister, Deputy Minister, President or Director of entities autonomous or Governmental and Ambassadors.

To be a Minister, Deputy Minister, President or Director of Autonomous and Governmental entities and Ambassadors, the following qualities are required:

1. Be a national of Nicaragua, pursuant to Article 152, paragraph 1, of the Political Constitution.
2. Be in full enjoyment of their political and civil rights.
3. Having turned twenty-five years of age...

Article 16. Ministerial functions the Ministerial Functions are the following:

To Comply and enforce the provisions established by law.

b. Formulate and propose to the president of the Republic the policies of the ministerial sector correspondent.

c. **Formulate and propose to the President of the Republic the preliminary draft laws, decrees, regulations, agreements, resolutions and orders; endorse the decrees and orders of in accordance with the provisions of article 151 of the Political Constitution.**

d. Formulate, propose, coordinate and direct the work plans and budgets the ministry and the entities to positions in their sector and Channel through the competent body the requests and negotiations related to cooperation technical and financial aspects of the ministry and sector, drafting, preparing, authorizing, ratifying, and or adherence to agreements and other international legal instruments.

Arto. 151. The President of the Republic determines the number, organization and competence of the Ministers and Presidents or Director of autonomous and governmental entities enjoy immunity.

The undersigned in the witness of thereof sworn that the translation is true and correct. And signed in the state of Florida at July 5, 2019.

Signed by Horacio Sequeira

**APPENDIX F**

**Translation Decree I-90**

**DECREE-LAW No. I-90, Approved on April 25, 1990**

**Published in La Gaceta, Official Gazette No. 87 of May 8, 1990**

**The President of the Republic of Nicaragua in regard to the powers conferred by Article 151 of the Political Constitution,**

**Considering:**

**In Order to Comply with the Government Program, it is essential to restructure the Executive Power to adapt it to the economic, political and social realities of the country in order to democratization and integral development.**

**Decree: The following Organization of State Ministries**

**Chapter I**

**Of the Ministries of State**

**Article 1.- The Ministries of State will be the following:**

**Ministry of the Interior.**

**Ministry of the Exterior**

**Ministry of Defense**

**Ministry of Education**

**Ministry of Agriculture and Livestock**

**Ministry of Economy and Development**

**Ministry of Construction and Transport**

**Ministry of Health**

**Ministry of Labor**

**Ministry of Presidency**

**Chapter VII**

**From the Ministry of Agriculture and Livestock**

**Article 8.- Te Ministry of Agriculture and Livestock Shall have the following attribution:**

**5. Promote the Industrialization and commercialization of agricultural product**

6. Obtain economic aid and international technical assistance for the development of their plans and programs.

7. Without prejudice to everything contained herein, all functions and attributions are assumed, laws and decrees have been established for the Ministry of Agricultural Development, of which this Ministry will be legitimate successor without continuity solutions.

8. The others established by laws and decrees  
Article 2.- For each State Ministry, the president of the Republic shall appoint a Minister and the Vice-Ministers that he deems appropriate.

The undersigned in the witness of thereof sworn that the translation is true and correct. And signed in the State of Florida at July 5, 2019

Signed by Horacio Sequeira

**APPENDIX G****MODIFICATION OF CONTRACT, DEVELOPMENT OF LIVESTOCK AND COMMERCIALIZATION OF LIVESTOCK AND THE SAME WITHIN THE UNITED STATES AND INSERTION OF ARBITRATION CLAUSE.**

In the city of Managua at three o'clock on the afternoon of the nine of December of two thousand and five, meeting at the home of Mr. Reynaldo Aguado Montealegre, Mr Horacio Ramon Sequeira Argenal, hereinafter referred to as "Mr. Sequeira" and Mariano Guerra Morales from now on referred to as the "Mr. Guerra" both of legal age, Married, Merchants of the domicile of Managua. Mr. Sequeira says to act in his own name and representation and Mr. Guerra expresses that he acts on behalf of the Rural Development Institute known as (IDR) whose entity is an instrumental body of the Republic of Nicaragua. Mr. Guerra expresses being the Executive Director of the cattle repopulation program, whose representation of Mr. Guerra is authorized by the Ministry of Agriculture and Livestock according to decree 1-90 of 1993 and in that capacity acts in favor of Nicaragua, says Mr. Horacio Ramon Sequeira Argenal, and demonstrates Mr. Guerra according to the documentation presented, which gives him the Legal Capacity and authority to sign this contract, which shows as certified by the Attorney General of the Republic of Nicaragua, published in the official gazette and after having received the consent and ratification of the President of the Republic of Nicaragua, and with the approval National Assembly. Mr. Sequeira says, and it demonstrates in accordance with the original public deed which expresses the following: **FIRST** : That he owns the domain and possession of 95 percent and the remaining 5 percent in favor of his son Horacio Ramon Sequeira

Alvarez, of a property located in the sector of the congo, El Viejo, Registered in favor of Mr. Horacio Ramon Sequeira Argenal, in the public Registry of real estate in the department of Chinandega, under registry numbers 33905, 2<sup>nd</sup> Seat, Folios 94, 95, of Volume 161, of the property registry. The aforementioned property is known as El Pital of five hundred manzanas of surface area equivalent to approximately one thousand acres, which is valued at one thousand dollars per manzanas or five hundred dollars per acre of land. SECOND: Both declare that within said property there are two hundred and fifty heads of cattle among the sixty-eight heads of Brahman breed, White and Red, belong to the Institute of Rural Development, destined for production and export to the United States of America. Among the prayers given to Mr. Sequeira there are three purebred Pardo Brahman bulls, The Big Cattle Lot is valued at seventy-five thousand and five hundred dollars, which were given to Mr. Sequeira for production and marketing to the United States, the purpose of both it is apparent that the seventy-eight recesses are owned by the IDR and Mr. Sequeira at a rate of fifty-five percent for the IDR and forty-five percent in favor of Mr. Sequeira, the offspring are for production and export of meat in the United States, the City of Miami. THIRD: Mr. Guerra says that on behalf of the IDR and on behalf of the Republic of Nicaragua as Minister, he commits to give veterinary care to said cattle in favor of Nicaragua and with due knowledge and ratification, through his team periodically and that the object of cattle production is to market it to the United States, exclusively in the City of Miami Florida. Continues Mr. Guerra expressing his commitment that together with Mr. Sequeira coordinate the export with the authorities of the government of Nicaragua. Also Mr. Guerra on behalf of the IDR and as Minister in representation of the Republic of Nicaragua, agrees to give him forty-five percent of the profits for the export of said cattle to Mr. Sequeira. Mr.

Sequeira accepts the 78 reces of cattle that are already inside the property El Pital and that is owned by Mr. Sequeira and accepts that the production of said cattle will be destined exclusively for commercialization in the United States, in Miami Florida, QUARTER: This contract will be renewable and subject to the consent of the parties, at any time, to extend and modify clauses by mutual agreement, leaving the previous contract with additional clauses. Both parties will have a period of twenty years to file the claim for breach of contract without prescribing the civil action. FIFTH: ARBITRATION. Both parties jointly agree to submit any legal dispute that results from the fulfillment of this contract to an arbitration process, whose arbitrators will be appointed by the authorities of the jurisdiction where the arbitration process takes place, and the Award issued by said arbitrators, regarding compliance of the obligation of this contract, in case of disagreement under 3267 c. of this contract both parties may exercise their claims in a Federal Court in Miami Florida or in a Court of Arbitration of the Treaty of the Republic of Nicaragua, agrees to give him forty-five percent of the profits for the export of said cattle to Mr. Sequeira. Mr. Sequeira accepts the 78 reces of cattle that are already inside the property El Pital and that is owned by Mr. Sequeira and accepts that the production of said cattle will be destined exclusively for commercialization in the United States, in Miami Florida, QUARTER: This contract will be renewable and subject to the consent of the parties, at any time, to extend and modify clauses by mutual agreement, leaving the previous contract with additional clauses. Both parties will have a period of twenty years to file the claim for breach of contract without prescribing the civil action. Fifth: ARBITRATION. Both parties jointly agree to submit any legal dispute that results from the fulfillment of this contract to an arbitration process, whose arbitrators will be appointed by the authorities of

the jurisdiction where the arbitration process takes place, and the Award issued by said arbitrators, Regarding compliance of the obligation of this contract both parties may exercise their claim in a Federal Court in Miami Florida or in a Court of Arbitration of the Treaty of Free Trade Central America- United States of America- Dominican Republic(CAFTA-DR) in the United States of America, which one filed in the court against the state of Nicaragua or Mr. Sequeira, is interrupted the prescription of this contract in accordance with Article 930 of the civil code of Nicaragua and whose arbitrators shall be appointed by the authorities of that body pursuant to Article 958 et seq. of the code of civil procedure of the Republic of Nicaragua(Pr). By common agreement both parties accept that everything related to this contract is subject to the rules of the Central America-United States of American –Dominican Republic Free Trade Agreement (CAFTA-DR) or the laws of the United States of America. According to Decree 4371 of the National Assembly of Nicaragua Gaceta 199 of October 14, 2005. Both agree that any subsequent agreement must be made in writing and it will not be necessary to draft them by means of a public deed since Mr. Guerra according to the laws of Nicaragua, this contract will have the character of a public document because of his position as Minister of the Republic of Nicaragua and as director of the IDR. The fact that Mr. Sequeira initiated a lawsuit in Nicaragua involving the cattle does not mean that Mr. Sequeira can not initiate another lawsuit against the Republic of Nicaragua the United States of America. The main is the commercialization of cattle in the City of Miami in the United States of America. SIXTH: Mr. Guerra, says he accepts this contract on behalf of the Rural Development Institute (IDR) with due authorization of the President of Nicaragua and the Ministry of Industry and Trade Promotion(MIFIC) expressing the consent, direct knowledge of the parties, its beneficiaries and in the



terms and conditions previously described and related. This contract is in three original copies, one copy will be kept by Mr. Sequeira and another copy will be kept by Mr. Guerra in the private confidential files of the IDR, and in the files of the Executive representing the Republic of Nicaragua, which as a public document is ratified by the Minister of the Republic of Nicaragua and because it is confidential and private. The both parties expressed that they ratify and sign the present contract in the City of Managua on the ninth day of the month of December of the two thousand and five.

Signed by, Horacio Ramon Sequeira Argenal  
Cedula No.001-230861-0058B

Signed by, Mariano Guerra Morales  
Minister and Executive Director. IDR  
ID. No.561-260647-0000W

## APPENDIX H

## LEASE RENEWAL AGREEMENT WITH OPTION TO PURCHASE THE COMMERCIAL PROPERTY OF EL PITAL AND VENTURE CAPITAL AGREEMENT FOR THE COMMERCIALIZATION OF LIVESTOCK AND PRODUCTS WITHIN THE UNITED STATES.

In the City of Miami Florida at eleven o'clock in the morning of the eighteen days of January of the year two thousand eight, Mr. Horacio Ramon Sequeira Argenal, referred at times in this agreement as Mr. Sequeira, Eduardo Jose Callejas Callejas and Milagros E. Callejas, referred at times in this agreement as "The Callejas" all adults, married, merchants, domiciled in Miami Florida, United States of America. The first contracting party, Mr. Horacio Ramon Sequeira Argenal, states: FIRST that he has dominion, control, possession and is the owner of ninety percent (95%) percent of land El Pital, and the remaining five percent (5%) is owned by his son Horacio Ramon Sequeira Argenal Alvarez, of a real property located in the sector of the congo, El Viejo, registered in a favor of Mr. Horacio Ramon Sequeira Argenal, in Public Registry of real property record, in the department of Chinandega, under registry numbers 33905, 2<sup>nd</sup> seat, pages 94, 95, of Volume 161, of the real property public registry. the aforementioned property known as El Pital of five hundred square blocks of surface area equivalent of one thousand acres, which is valued at one thousand dollars per square block or five hundred dollars per acre of land, within said property there are four hundred and seventy head of cattle. Red and white Brahman, sixty of these cows belongs to the Institute of Rural Development. Ten bulls Raze Jersey valued at fifteen thousand dollars each, which belongs to Mr. Sequeira, are handed to Mr. Callejas, for administration and exportation. All the cattle, the offspring are for production and export of meat

to the United States in the City of Miami, also Mr. Sequeira give the property to Callejas for administration and with option to buy such property in one thousand dollar per square block. SECOND: Mr. Eduardo Jose Callejas Callejas and Mrs. Milagros E. Callejas, say they commit to raise the cattle handed to them by Mr. Sequeira in Nicaragua for the purpose and intent to commercialize it in the United States, exclusively in the City of Miami Florida, together with Mr. Horacio Ramon Sequeira Argenal. Also "The Callejas" agreed to purchase El Pital property from Mr. Horacio Ramon Sequeira in the amount and price of one thousand dollars each block of land of said property, which will be paid in installments for a period of approximately of ten years. The cattle that are inside said property are property of Mr. Horacio Ramon Sequeira Argenal and will be destined exclusively for the commercialization of said cattle in the United States, in Miami Florida, with help of Mr. Luis Callejas Callejas, brother of Mr. Eduardo Jose Callejas Callejas. In this act and in consideration for this agreement, Mr. Eduardo Jose Callejas Callejas, together with Mrs. Milagros E. Callejas pay Mr. Sequeira the amount of six thousand dollars, as an advance to the option to purchase said property known as El Pital. THIRD: This contract is valid, when the Callejas make their first payment. The contract is automatically renewable when any payment is made in the future, to extened and modify clauses by mutual agreement. This contract does not cancel previous contracts. FOURTH: In the event of a material breach of this contract, the parties will have a period of thirty years to file any claim for said breach of contract or ten years pursuant to the Nicaragua civil code articles 905 and 906 to file any civil action related to the breach of this contract. FIFTH: In the event of any dispute for breach of this contract, the parties to this contract shall have the right to bring suit in any Federal, State or Administrative Court in Miami Florida, United States of America, which

once the suit is filed in any court against Mr. Eduardo Jose Callejas Callejas, the statute of limitation is suspended. Also in case of filing suit against Mr. Eduardo Jose Callejas by Horacio Ramon Sequeira Alvarez, who owns five (5) percent of the El Pital property, the statute of limitations gets suspended. In the event that any claim is initiated in another jurisdiction in which part of the el Pital property is involved would not preclude Mr. Horacio Ramon Sequeira Argenal to file suit in any court in the United States, especially the city of Miami Florida, since it is where the products resulting from El Pital property will be exclusively marketed. SIXTH: In the event of a breach of this contract, the parties may request a court to issue an order to place a lien against the property or properties of the breaching party whether these properties are located inside or outside in the United States, or even if these properties are held in community with their spouse or another family member, within the fourth degree of consanguinity and second of affinity. SEVENTH: Mr. Eduardo Jose Callejas Callejas and Mrs. Milagros E. Callejas and Mr. sequeira, agree and accept the present renewal of this contract in the terms and condition previously described and related above. This is how the parties expressed, ratify and sign the present contract in the City of Miami on the eighteenth day of the month of January of the year two thousand and eight. Mr. Eduardo Jose Callejas Callejas signed this agreement on his behalf and on behalf his spouse, Mrs. Milagros E. De Callejas, whom has consented that all payments are to be with joint bank account she has with Mr. Eduardo Jose Callejas Callejas. All payments will be made exclusively in the City of Miami in a favor of Mr. Horacio Sequeira.

Signed By: Horacio Ramon Sequeira Argenal and  
Eduardo Jose Callejas Callejas