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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF LOS ANGELES  
11

12 JOSE ADOLFO TELLEZ, ET AL,  
13 Plaintiffs,

14 vs.

15 DOLE FOOD COMPANY, INC., et al  
16 Defendants.  
17

) Case No. BC312852  
) Assigned for all purposes to  
) Honorable Victoria Chaney, Dept. 1  
)

) AMENDED RETURN TO ORDER TO  
) SHOW CAUSE RE: DOLE AND  
) DOW'S PETITIONS FOR WRIT OF  
) ERROR CORUM VOBIS  
)

) Date: January 25, 2010  
) Time: 9:00 AM  
) Dept: 1, The Hon. Victoria Chaney  
) Complaint Filed: March 26, 2004  
) Trial Date: July 10, 2007  
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21 \*\*\*Redacted Version\*\*\*  
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23 May be filed in public files  
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A. The grand conspiracy of American and Nicaraguan lawyers, doctors and lab technicians, headed by a Nicaraguan judge, publicly celebrated and articulated at a meeting in Chinandega, Nicaragua in March, 2003 was, in fact, a “chimera.” ..... 18

B. “Capitans” – a necessary evil in DBCP case management in Central America. .... 22

C. In 2005 a group of capitans headed by Victorino Espinales - the “Alliance” - broke away from the law firms and entered into direct negotiations with Dole, culminating in an agreement in 2007 which gave them the right to head up an administrative program to compensate DBCP claimants, *as long as those claimants were not represented by American lawyers.* ..... 24

D. As soon as the jury returned a verdict in favor of six plaintiffs in this case, Alliance member Witness X tried to sabotage the case; neither he nor Dole disclosed his financial interest in seeing the judgment vacated and slandering plaintiff’s counsel. .... 26

1 E. The secret “John Doe” depositions begin; John Does 1, 2 and 3 later disclose that contrary  
2 to Dole’s investigator’s sworn testimony in this case, they all were in fact paid for their  
3 testimony and/or discussed being paid with Dole’s investigators. . . . . 29

4 F. Once the veil of complete secrecy was thrown across the process, Alliance members were  
5 produced for secret depositions by Dole, and provided all of the significant evidence  
6 implicating American lawyers and Judge Toruño in participation in the fake  
7 “conspiracy” with testimony which, to the extent it has been made public, has been  
8 exposed as blatant perjury. . . . . 30

9 G. To successfully accomplish their goals, the Alliance had to attack every aspect of the legal  
10 system for compensating victims, to delegitimize it and demonize anyone associated  
11 with processing plaintiff’s claims. . . . . 33

12 H. If the identity of the key secret witnesses were not concealed from everyone but Dole and  
13 a handful of lawyers who are prohibited from effectively investigating them, evidence  
14 would be gathered and presented which would eliminate any question about their being  
15 willing and even eager to commit perjury to advance the fortunes of the Alliance. . . 36

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17 Presented the Evidence They Rely on to the Court Prior to Trial. . . . . 37

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1 ANSWER TO PETITION

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3 Real Parties in Interest answer the allegations in petitioners' petitions as follows:

- 4
- 5 1. The allegations of paragraph 1 of the petition are not contested.
  - 6 2. The allegations of paragraph 2 of the petition are not contested.
  - 7 3. The Real Parties in Interest who are responding in this return are Carlos Enrique Diaz Artiaga,  
8 Jose Anastacio Rojas Laguna, Julio Cesar Calero Gonzalez, Jose Uriel Mendoza Gutierrez,  
9 Matilde Jose Lopez Mercado, and Claudio Gonzalez. The remaining allegations of paragraph  
10 3 of the petition are not contested.
  - 11 4. The allegations of paragraph 4 of the petition are not contested, other than the claim contained  
12 in footnote 4 that the evidence which petitioners assert proves "fraud" "did not become available  
13 until after entry of final judgment" which Real Parties in Interest contest.
  - 14 5. The allegations of paragraph 5 of the petition are not contested.
  - 15 6. The allegations of paragraph 6 of the petition are not contested, but the implication that its  
16 statement of the claims in the underlying action is complete and exhaustive is contested.
  - 17 7. The allegations of paragraph 7 of the petition are not contested.
  - 18 8. The allegations of paragraph 8 of the petition are not contested, except as to the assertion of  
19 the reasons for parties other than Real Parties in Interest taking the actions which they took. Real  
20 Parties in Interest contest the assertion that petitioners or Real Parties have actual knowledge of  
21 the reasons for each of those parties' elections to dismiss their claims.
  - 22 9. The allegations of paragraph 9 of the petition are not contested.
  - 23 10. The allegations of paragraph 10 of the petition setting forth petitioner's statement of its own  
24 "belief" are not contested.
  - 25 11. Real parties in Interest have no information about the nature of records kept or maintained  
26 by Dole. Therefore, for purposes of this proceeding the allegations of paragraph 11 of the  
27 petition are not contested, other than the claim that Dole's lack of records is "due to" the  
28 Sandinista Revolution as Dole continued to operate banana farms after that event, under contract

1 with the Sandinistan government, as described in *Republic of Nicaragua v. Standard Fruit*  
2 *Company, et al.* (9<sup>th</sup> Cir. 1991) 937 F. 2d 469.) There is no evidence in the record to support the  
3 claim that the occurrence of the Sandinista Revolution caused Dole to fail to maintain or keep  
4 records of the employees who worked on its banana farms in the 1970's.

5 12. Real Parties in Interest contest the conclusions stated in paragraph 12. In fact, Dole has  
6 demonstrated no difficulty in defending itself against DBCP claims made by individuals who did  
7 not actually work on Dole's Nicaraguan banana farms. Dole's investigators interviewed over 200  
8 witnesses regarding the prior employment of just the 12 plaintiffs in this case, without difficulty.  
9 Witnesses told Dole's investigators that they did or did not remember a particular claimant  
10 having worked at banana farms, and whether or not they are "sure" that a particular claimant did  
11 not. (E.g. "He is certain that Daniel Altamirano or "Macario" Altamirano was not employed at  
12 'Candelaria'" Boone Declaration, Exhibit 7, p. SFC13-0005915) Dole has been able to cross-  
13 reference the hundreds of interview reports it has amassed over the years to obtain reliable  
14 evidence regarding which claimants actually did work at the banana farms they had identified.  
15 The only people whose ability to identify legitimate plaintiffs has been "gravely harmed" are the  
16 plaintiff's lawyers, as Dole has elected to conceal from them the information it has regarding this  
17 matter, and has consistently refused and resisted doing so, providing only the minimum  
18 information and only when specifically ordered to do so by the Court.

19 13. Real parties in Interest deny the allegations of paragraph 13 that "plaintiff's conceded that  
20 there were no government or employment records that would show that plaintiffs had worked on  
21 Dole-affiliated banana farms during the 1970s." The actual statement made by plaintiffs' counsel  
22 at the part of the record cited to "prove" this claim was "Dole has been telling us since day one  
23 in this case they have no employment records whatsoever regarding the Nicaraguan employees."  
24 (RT-K95:19-21) A description of Dole's claims is not a concession of their truth. Real Parties  
25 do not contest the balance of this paragraph of the petition other than the argumentative and term  
26 "purported."

27 14. The allegations of paragraph 14 as to Dole's awareness of issues of proof and its "concerns"  
28 with regard to them are not contested.

1 15. Real Parties in Interest deny that most people in Nicaragua are unwilling to testify truthfully  
2 regarding their knowledge or opinions regarding the employment bona fides of DBCP claimants.  
3 Dole's investigator's self-serving claims, provided without specifics, are not reliable proof of  
4 these allegations. In fact, even the limited disclosure of a portion of the numerous reports  
5 amassed by Dole's investigators of people who did cooperate with them, and who did provide  
6 them with information regarding suspect DBCP claims, and the ease with which they obtained  
7 sworn statements and deposition testimony regarding the plaintiffs in the *Mejia* case bely Dole's  
8 claims. (Boone Declaration, Exhibit 7, p. SFC13-0005915, SFC13-0005923; 1 Appendix  
9 112:15-16, 152:18-20, 153:1-3, 166:19-21, 184:9-17, 190-191, 198:8-21)

10 16. The allegations of paragraph 16 of the petition are not contested.

11 17. Real Parties deny the allegations of paragraph 17 to the extent that they characterize Judge  
12 Bendix' comments as rejecting a request from Dole for assistance in obtaining evidence to  
13 confirm its suspicions. The comments made by Judge Bendix are taken out of context. At no  
14 time did any judge in this case ever reject a request from Dole for assistance - even  
15 unprecedented and extraordinary assistance - in investigating Dole's claims of fraud, and also in  
16 approving Dole's requests for orders which effectively prevented plaintiffs' counsel from  
17 investigating Dole's sources. The portion of the record cited by Dole does not support the  
18 assertion made in this paragraph.

19 18. Real Parties in Interest contest the claim in paragraph 18 that petitioners had no ability to test  
20 the veracity of plaintiff's claims, that petitioners had no records which might serve to confirm  
21 or deny those claims, or that the trial court "admonished" Dole not to raise claims of fraud by the  
22 plaintiffs at any time that Dole made any such claim in anything approaching a coherent manner.

23 There is no evidence which supports those assertions in the record. Real Parties do not contest  
24 the fact that this case proceeded to trial.

25 19. The allegations of paragraph 19 of the petition are not contested.

26 20. The allegations of paragraph 20 of the petition are not contested.

27 21. The allegations of paragraph 21 of the petition are not contested.

28 22. The allegations of paragraph 22 of the petition are not contested.

- 1 23. The allegations of paragraph 23 of the petition are not contested.
- 2 24. The allegations of paragraph 24 of the petition are not contested.
- 3 25. The allegations of paragraph 25 of the petition are not contested.
- 4 26. Real Parties in Interest object to the attempt to inject third party hearsay into the petition as  
5 an affirmative allegation of fact, and contests those allegations of fact. Real Parties in Interest  
6 deny that Witness X actually feared that he or his family would be attacked if his allegations  
7 became known in Nicaragua; his actual concern was that he would lose the financial benefit he  
8 hoped to realize if he were able to successfully sabotage the workings of the legal system in  
9 DBCP cases if the fact that he had testified falsely against bona fide DBCP claimants became  
10 known in Nicaragua. Real Parties do not contest that Dole moved for a new trial.
- 11 27. The allegations of paragraph 27 of the petition are not contested, except for the assertion that  
12 Witness X only asked for money in exchange for his testimony "at one point." Real Parties do  
13 not contest that Witness X demanded a substantial sum in exchange for his proffered testimony.
- 14 28. Real Parties do not contest that Witness X was not paid, and did not testify. Real Parties do  
15 contest petitioner's assertion of the motivation for Witness X electing not to testify.
- 16 29. The allegations of paragraph 29 of the petition are not contested.
- 17 30. The allegations of paragraph 30 of the petition are not contested.
- 18 31. The allegations of paragraph 31 of the petition are not contested.
- 19 32. The allegations of paragraph 32 of the petition are not contested, except for the  
20 characterization of the *Mejia* case as "nearly identical" to this case.
- 21 33. The allegations of paragraph 33 of the petition are not contested other than to the extent that  
22 they imply that Real Parties have participated in fraud.
- 23 34. The allegations of paragraph 34 of the petition are not contested
- 24 35. Real Parties in Interest do not contest that evidence was obtained by Dole with regard to  
25 plaintiffs in the *Mejia* case which raised questions about the legitimacy of their claims. Real  
26 Parties contest petitioner's characterization that that evidence "confirmed" the alleged unsworn  
27 claims of Witness X.

28

1 36. Real Parties do not contest that the trial Court issued a protective order on October 6, 2008,  
2 pursuant to an *ex parte* application filed by Dole, but contests the conclusory assertion of a “fraud  
3 being perpetrated” by plaintiffs or others and petitioners characterization of the motives of  
4 persons other than petitioners. Real Parties in Interest further deny that the evidence cited  
5 demonstrated that “if the identities of the witnesses [were] revealed that pressure would be placed  
6 on them and they [would] not testify.” In fact, Dole was pressuring witnesses with vague threats  
7 of “consequences” if they did not sign statements for Dole, including at least one statement which  
8 was filed in support of this order which the declarant had not even read. (11 Appendix 2849,  
9 2861)

10 37. The allegations of paragraph 37 as to what Judge Chaney stated are not contested.

11 38. The allegations of paragraph 38 as to what Judge Chaney stated are not contested.

12 39. The allegations of paragraph 37 as to the order issued by Judge Chaney are not contested.

13 The allegation of the mental or emotional state of third parties is contested.

14 40. The allegations contained within paragraph 40 of the petition with regard to the “flood” of  
15 witnesses unleashed by the “powerful protective order” of October 6, 2008 are not contested;  
16 however, Real Parties in Interest deny that 17 John Doe witnesses provided sworn deposition  
17 testimony “about the fraud” or that the declarations filed by additional persons “provided similar  
18 declarations.” In fact, many of the “John Doe” witnesses provided no testimony about anything  
19 resembling fraud, other than the fact that they, themselves had filed DBCP claims despite having  
20 no health problems they attributed to working at banana farms (E.g., John Doe 19, deposition not  
21 included in the Appendix) or was limited in relevant part to testimony that they did not remember  
22 one or more of the *Mejia* or *Rivera* plaintiffs working at a given banana farm 30 years before.  
23 (E.g., John Doe 10; also not included in the Appendix, and John Does 1, 3, 5 and 8, at 5  
24 Appendix tab 54, 6 Appendix tab 56, 8 Appendix tabs 59 and 60) Most of the declarations filed  
25 by Dole were little more than gossipy backbiting against Nicaraguans with no direct involvement  
26 with either this case or *Mejia* or *Rivera* at all, by people with obvious grudges against them who  
27 were emboldened by the opportunity to make damaging statements against others with absolute  
28 impunity and anonymity. (E.g 4 Appendix tabs 42, 43, 44, 45 and 46.)



1 In fact, the only witnesses who implicated any American attorneys, including Real Parties'  
2 former counsel, Juan J. Dominguez, in any fraudulent activities were John Does 13, 17 and 18 -  
3 the undisclosed members of the capitan's Alliance which has a financial interest in sabotaging  
4 the ability of legitimate DBCP claimants' ability to seek compensation through the courts, as  
5 discussed below in section C. Indeed, two secret witnesses, John Doe 11 and John Doe 14,  
6 testified that Juan J. Dominguez in fact did not know about the claimants who were not  
7 legitimate. (7 Appendix 1762, 1809, 1867, 1873, 1897, 1945) The only witness who implicated  
8 any of the Real Parties in participation in fraud was Witness X - who was also a member of the  
9 capitan's Alliance - a fact known to Dole but not disclosed to the Court.

10 41. Real Parties in Interest deny the truth of the allegations contained in paragraph 41, which are  
11 supported only by the self-serving declaration of Dole's investigator and by the equally (if not  
12 more) self-serving claims of the secret Alliance member, Witness X. Furthermore, the assertion  
13 made in footnote 8 that the Court of Appeal's summary denial of MAS's writ petition seeking  
14 to head off the secret deposition process indicates an opinion of its merits is, of course, wrong  
15 as a matter of law.

16 42. Real Parties contest the characterization of the secret testimony. As noted above in paragraph  
17 40, most of the testimony given by the secret witnesses did not describe any fraud committed by  
18 anyone with any connection to this case. Some of the testimony described potentially unethical  
19 conduct by persons unconnected with this case; some of it described efforts by capitan's and  
20 claimants to fool the American attorneys into taking bogus cases. (E.g. 4 Appendix 1031:11-13,  
21 7 Appendix 1706) The only "wide ranging scheme of fraud" involving Real Parties or their  
22 counsel of record was that described by Witness X and John Does 13, 17 and 18, the Alliance  
23 witnesses.

24 43. The allegations of paragraph 43 are not contested. (Note: Under standard principles of  
25 pleading the heading is not a factual allegation, and hence is ignored, both in this paragraph and  
26 hereafter.)

27 44. The allegations of paragraph 44 are contested. The assertion that "Dominguez' office"  
28 selected people to recruit people willing to falsely claim that they had worked on banana farms

1 is supported only by the testimony of the Alliance witnesses: John Does 13, 17 and 18 and  
2 Witness X, and is contradicted by Witness 14, who testified that Dominguez hired an assistant,  
3 Roberto Rosales, to review and weed out bad claims. (7 Appendix 1706, 1762, 1769)

4 45. The allegations of paragraph 37 suggesting that Juan J. Dominguez directed a process for  
5 recruiting “fraudulent” plaintiffs is contested. That capitans encouraged men to sign up as  
6 plaintiffs is not. The only testimony supporting that accusation comes from the Alliance witness,  
7 John Doe 13.

8 46. Real Parties in Interest dispute the allegations of paragraph 46. Although various allusions  
9 were made to a per capita payment system, other witnesses reported that payment was actually  
10 in the form of a monthly salary. (7 Appendix 1806, 11 Appendix 2801)

11 47. Real Parties in Interest dispute the allegations of paragraph 47. The evidentiary support made  
12 for those claims are solely the assertions of the Alliance witnesses Witness X and John Doe 13.  
13 In contrast, John Doe 14 testified that Juan J. Dominguez only sought legitimate banana workers.  
14 (7 Appendix 1762)

15 48. Real Parties in Interest dispute the allegations of paragraph 48. The testimony of John Doe  
16 2 cited in fact shows that the law firms directed him only to recruit legitimate former banana  
17 workers. (11 Appendix 2800:2-14) The allegation that the law firms were “disappointed” by the  
18 number of plaintiff’s thus signed up comes exclusively from the Alliance witnesses, John Doe  
19 17 and John Doe 18.

20 49. Real Parties contest the allegations of paragraph 49 to the extent that those allegations might  
21 be seen as referring to Real Parties. John Doe 6 refers to statements made to him by unidentified  
22 “recruiters” with no information as to who they were working with or for. (13 Appendix 3549-  
23 3551) The other testimony cited is that of a mentally challenged plaintiff in the *Mejia* case.

24 50. Real Parties contest the allegations of paragraph 50. John Doe 11 testified that claimants  
25 were told to lie to Juan J. Dominguez, and repeatedly testified that Juan J. Dominguez only  
26 directed the recruitment of bona fide plaintiffs and that none of the shady activities he observed  
27 happened in Juan J. Dominguez presence. (7 Appendix 1809, 1867, 1897, 1873, 1945.) The only  
28

1 evidence linking Juan J. Dominguez to those activities comes from the Alliance witnesses, John  
2 Doe 13, John Doe 17 and John Doe 18.

3 51. Real Parties contest the allegations of paragraph 51 to the extent that it states that capitans  
4 were paid by Juan J. Dominguez “to recruit fraudulent plaintiffs”. The only evidence that  
5 supports the accusation that Juan J. Dominguez ever tolerated the recruitment of plaintiffs who  
6 were not legitimate plaintiffs comed from the Alliance witnesses, John Does 13, 17 and 18.) As  
7 to the actions of others, the Real Parties do not dispute that some capitans did exactly what is  
8 described in this paragraph.

9 52. Real Parties contest the allegations of paragraph 51 to the extent that it states that Juan J.  
10 Dominguez paid anyone to generate false documents. Petitioner’s use of the term  
11 “Dominguez/Ordeñana” to create the contrary impression is dishonest and misleading. None of  
12 the evidence cited supports that assertion; in fact, both John Does 11 and John Doe 14 were clear  
13 in stating that the activities they described regarding work certificates was done behind Mr.  
14 Dominguez’ back and without his knowledge. (7 Appendix 1762, 1897)

15 53. Real Parties contest the allegations of paragraph 53 to the extent that those allegations might  
16 be perceived as referring to Real Parties. Real Parties in Interest furthermore dispute the  
17 characterization of “agreements” with Nicaraguan labs, including the “Hospital España”, with  
18 which Juan J. Dominguez actually terminated his relationship and established an independent and  
19 reliable testing system. (7 Appendix 1722-1723.)

20 54. Real Parties in Interest do not contest the allegations of paragraph 54 as to the actions of  
21 some of the capitans. To the extent that this paragraph suggests that Juan J. Dominguez knew  
22 of those actions or endorsed them, Real Parties dispute that accusation, for which no evidence  
23 is cited.

24 55. Real Parties contest the allegations of paragraph 55 to the extent that those allegations might  
25 be perceived as referring to Real Parties. Real Parties in Interest do not contest the allegations  
26 of paragraph 54 as to the actions of some of the capitans. To the extent that this paragraph  
27 suggests that Juan J. Dominguez knew of those actions or endorsed them, Real Parties dispute  
28

1 that accusation. In fact, the evidence is to the contrary: capitans instructed claimants to lie to  
2 Juan J. Dominguez about their children. (7 Appendix 1867.)

3 56. Real Parties contest the allegations of paragraph 55, which are based exclusively on perjured  
4 testimony given by John Doe 13, 17 and 18 which is patently false. To the extent that the three  
5 Alliance witnesses provide any specifics which have been made public, they have been  
6 debunked. Benton Musselwhite, who the Alliance witnesses place at two meetings in the first  
7 few months of 2003, was not even in Nicaragua when those events supposedly occurred. (See  
8 Plaintiff's Evidence, Tab 1, Exhibit M, and copies of his passport attached thereto.)

9 57. The allegations of paragraph 57 are not contested by Real Parties.

10 58. Real Parties in Interest contest the allegations of paragraph 58 to the extent that they accuse  
11 the "DBCP firms" of complicity in the activities of some capitans who were engaged in  
12 fraudulent activities with regard to the recruitment of DBCP plaintiffs. The only evidence which  
13 supports that accusation comes, again, from Alliance witness John Doe 17.

14 59. Real Parties contest the allegation that Judge Socorro Toruño is "involved in [a] rampant  
15 scheme of fraud." Real Parties further object to this claim as being inflammatory, libelous, and  
16 irrelevant to this case. Real Parties in Interest expressly deny that the meeting described by John  
17 Does 13, 17 and 18 ever took place, and assert that their description of that fictitious event is  
18 clear and convincing evidence of their willingness to commit blatant perjury to advance the cause  
19 of the Alliance and to slander and attack the law firms prosecuting DBCP claims by fraudulent  
20 testimony in order to destroy the ability of legitimate Nicaraguan DBCP claimants to seek  
21 compensation through the judicial system. (See Declaration of Socorro Toruño, Plaintiff's  
22 Evidence, Tab 1, plaintiff's opposition to Dole's motion in the case of *Osorio v. Dole* attached  
23 to the Real Parties in Interests Request for Judicial Notice, and the declarations and affidavits of  
24 Mark Sparks, Claudia Salazar, Benton Musselwhite, Jose Francisco Palacios Ramos, and Juan  
25 Ramon Torres attached thereto. See also [REDACTED]

26 [REDACTED] There is no evidence that any  
27 Nicaraguan laboratory has ever produced "results" which even remotely resemble the false results  
28 Judge Socorro Toruño supposedly dictated at this meeting.

1 60. Real Parties contest the allegations of paragraph 60 and 61. While many of the John Doe  
2 witnesses spoke of a general concern that individuals who might feel threatened by their  
3 testimony might retaliate against them, that fear was expressed as a general fear of what might  
4 happen in Nicaragua in any emotionally charged situation. John Doe 1 described a situation in  
5 which a man at a public meeting challenged the right of women to seek compensation for DBCP  
6 injuries, in response to which a woman threatened him with her shoe. (8 Appendix 2144) John  
7 Doe 16 referred to “those people from the fields, from the boonies” who might assault someone  
8 they disagreed with. (13 Appendix 3402) John Doe 8, ironically, singled out Victorino Espinales,  
9 the leader of the Alliance which has provided all of the key evidence against Real Parties and  
10 their counsel of record, as someone he feared might retaliate against him (6 Appendix 1605.)  
11 However, many witnesses expressly stated that they were not intimidated, discouraged from  
12 testifying, or afraid because of anything caused by or involving Juan J. Dominguez. (6 Appendix  
13 1507-4508, 7 Appendix 1902, 8 Appendix 2022, 2053, 2150, 2183, 11 Appendix 2789, 2868.)  
14 Of course, the Alliance witnesses, John Does 13 and 17, both claim to have been personally  
15 threatened by persons affiliated with the law firms litigating DBCP claims, and even produced  
16 threatening written notes which they claimed were from the “Group of 8.” Dole’s investigator’s  
17 self-serving (and vague) claims that “many people” were afraid to talk lacks any evidentiary  
18 value as it is so non-specific to be unverifiable. But even those unverifiable claims from  
19 witnesses with a financial interest in slandering plaintiff’s former counsel and destroying the  
20 ability of legitimate DBCP claimants from pursuing their claims in court arise from events which  
21 took place after the trial in this case was long over. There is no evidence that any witness with  
22 any information relevant to this case was ever threatened, discouraged, or afraid to provide  
23 statements or testimony to any investigator for Dole at any time prior to the trial in this case.

24 62. Real Parties contest the allegations of paragraph 62 to the extent that those allegations accuse  
25 the attorneys of engaging in fraud, threatening witnesses, etc. and note that the sole source of  
26 these claims are two Alliance witnesses who produced threatening notes which they claim were  
27 delivered to them, which conveniently contained the helpful identification that they come from  
28 the “Group of 8.” Even if the Alliance witnesses had not fabricated these tales along with their

1 story about grand conspiracy meetings hosted by Judge Toruño, etc., the fact remains that all of  
2 those actions are alleged to have taken place long after the trial in this case ended.

3 63. Real Parties contest the allegations of paragraph 63 to the extent that they purport to refer  
4 to Real Parties or any actions undertaken on their behalf. None of the events described took place  
5 before the trial in this case, and the claims that the attorneys in Nicaragua sought any means of  
6 retaliation against Dole's investigators other than pursuing their legal remedies in court come  
7 from the Alliance witnesses.

8 64. The allegations of paragraph 64 as to what Judge Chaney stated are not contested, but the  
9 characterization that she made those comments about this case - which is clearly contradicted by  
10 the cited transcript - is contested.

11 65. The allegations of paragraph 65 up to the words "extensive discovery"; the portion following  
12 those words is contested.

13 66. The allegations of paragraph 66 as to what Judge Chaney stated are not contested.

14 67. The allegations of paragraph 67 as to what Judge Chaney stated are not contested.

15 68. The allegations of paragraph 68 as to what Judge Chaney stated are not contested, except to  
16 the extent that the use of the term "plaintiffs" might be viewed as referring to real parties.

17 69. The allegations of paragraph 69 as to what Judge Chaney stated are not contested.

18 70. The allegations of paragraph 70 as to what Judge Chaney stated are not contested.

19 71. The allegations of paragraph 71 as to what Judge Chaney stated are not contested.

20 72. The allegations of paragraph 72 as to what Judge Chaney stated and ordered are not  
21 contested.

22 73. The allegations of paragraph 73 as to what Judge Chaney stated are not contested.

23 74. The allegations of paragraph 74 as to what Judge Chaney stated are not contested. To the  
24 extent that the allegation purports to report Judge Chaney's mental processes the allegations are  
25 contested.

26 75. Real parties do not contest the allegations of paragraph 76 to the extent that they state that  
27 the John Doe depositions are the first and only proceedings which purport to describe fraud in  
28 Nicaragua in connection with DBCP cases, and contest that the depositions "catalogue" anything,

1 rather than having provided a platform for members of the Alliance to slander real parties and  
2 their former counsel, and to commit blatant, obvious perjury with absolute impunity.

3 76. Real parties contest the allegations of paragraph 76.

4 77. Real parties do not contest that the interrogatory responses produced by the plaintiffs in their  
5 case were prepared by their lawyers. Real parties do contest the rather remarkable assertion that  
6 that fact constitutes proof of fraud, or of a “machine of fraud.”

7 78. Real Parties in Interest do not contest that Witness X, an Alliance member [REDACTED]  
8 [REDACTED], [REDACTED]  
9 [REDACTED] made up a [REDACTED] story slandering [REDACTED] of the Real Parties. Real Parties deny that  
10 Witness X’s declaration is true.

11 79. Real Parties deny that they have “conceded” that there were no employment records for  
12 former Dole banana farm employees. All Real Parties know is that Dole denies having such  
13 records. Real Parties contest the accusation that their proof of having worked on Dole’s banana  
14 farms was based on documents; none of the Real Parties introduced a “work certificate” into  
15 evidence at trial as proof of their prior employment, and Dole conducted over 200 interviews  
16 with their friends, relatives, neighbors and former co-workers to determine whether they worked  
17 on those farms. Real Parties have no direct information about the generation of the work  
18 certificates, which was not performed by them.

19 80. To the extent that paragraph 80 suggests that Real Parties are not sterile, Real Parties contest  
20 that allegation, which is belied by competent evidence produced at trial and ably litigated by  
21 counsel for both sides. Real Parties also dispute that lab reports from the Hospital España,  
22 which were not introduced as evidence at their trial, were relied upon by anyone connected with  
23 their trial. Real parties also dispute that their own lab reports from the Hospital España were  
24 “fraudulent” and note that there is no evidence that all lab reports generated from that facility  
25 were “fraudulent”, as defendants claim; indeed, the testimony was to the contrary. (6 Appendix  
26 1533)

27 81. Real Parties in Interest expressly deny the allegations of paragraph 81. Every bit of evidence  
28 supporting the claim that Juan J. Dominguez was involved in, knew about, directed or approved

1 any fraudulent activity in connection with the DBCP cases his firm brought in this court comes  
2 from the three Alliance witnesses, John Does 13, 16 and 17. Furthermore, much of it consists  
3 of their tall tales of grand conspiracy meetings at which they place Benton Musselwhite, who was  
4 not in Nicaragua at the time those meetings supposedly took place. (Declaration of Benton  
5 Musselwhite, paragraph 4 and passport copies attached thereto.

6 82. Real Parties in Interest expressly deny the allegations of paragraph 82, which is exclusively  
7 based on the claims of Witness X, Alliance member [REDACTED]

8 [REDACTED] Real Parties also note that Witness X did not even actually claim that  
9 Juan J. Dominguez was responsible for the fear he claimed to feel.

10 83. Real Parties do not contest the allegations of paragraph 83.

11 84. Real Parties contest the allegations of paragraph 84 for which no evidence is cited. Real  
12 Parties in Interest deny that their claims were “manufactured” or that there is any credible  
13 evidence of that claim. Real Parties deny that their former counsel, Juan J. Dominguez was a  
14 party to or condoned any fraud or threats.

15 85. Real Parties contest the allegations of paragraph 85. There is no evidence of any “fraud”  
16 which has any connection with this case in the great majority of the depositions and declarations.  
17 What credible evidence of fraud was presented relates to the activities of a group of capitans, not  
18 of their former counsel Juan J. Dominguez, which had no connection to this case. The only  
19 evidence which implicated Juan J. Dominguez, Real Parties, or the evidence in this case comes  
20 exclusively from the Alliance witnesses, Witness X and John Does 13, 17 and 18, each of whom  
21 had a hidden motive, known to Dole but not disclosed to the court, to slander Juan J.  
22 Dominguez, attack the judgment of this court, and destroy the ability of legitimate DBCP  
23 claimants to pursue compensation through the courts, forcing them to resort to the administrative  
24 process Dole had agreed to establish with the Alliance.

25 86. Real Parties do not contest the allegations of paragraph 86 up to the words “trial court” and  
26 contest the assertion that the evidence presented by Dole in the petition “did not become  
27 available” until after entry of judgment. (See below, section II)

28 87. Real Parties contest the allegations of paragraph 87. (See below, section II)



1 88. The allegations of paragraph 88, for which no evidence is cited, are contested by Real  
2 Parties.

3 89. Real Parties contest the allegations of paragraph 89. See below, section II)

4 90. Real Parties contest the allegations of paragraph 90 that the secret witnesses testified “under  
5 penalty of perjury.” The terms of the Court’s order protected those witnesses from any adverse  
6 consequence of testifying falsely, including punishment for perjury, which many of them in fact  
7 engaged in with impunity. Real Parties do not contest Dole’s description of the legal actions  
8 taken by defendants..

9 91 Real Parties contest the claims of paragraph 91.

10 92. Real Parties do not contest the allegations of paragraph 92.

11  
12 FIRST AFFIRMATIVE DEFENSE

13 Violation of Due Process

14  
15 Use of the secret evidence procured by petitioners in the combined proceedings in *Mejia*  
16 *v. Dole Food Company, Inc., et al.* BC340049, and *Rivera v. Dole Food Company, Inc., et al.* BC  
17 379821 (hereafter collectively referred to as “*Mejia*”) as a basis for overturning the judgment in  
18 favor of the judgment creditors in this case would violate real parties’ constitutional right to due  
19 process of law. Real parties object to the use of evidence provided by witnesses whose identities  
20 are withheld from them against them in this proceeding, whose veracity cannot be investigated  
21 because of the Court’s order prohibiting counsel from disclosing the identity of the secret  
22 witnesses to anyone, anywhere, and whose testimony has been rendered immune from effective  
23 investigation by the Court’s order that the substance of that testimony, save for the portions the  
24 Court has made public, may not be disclosed to anyone, anywhere, at any time. These parties  
25 object to the Court’s reliance on any evidence in any form which is not admissible in open court  
26 under the provisions of the California Evidence Code, and which has not been subjected to  
27 investigation and bona fide adversarial process.

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SECOND AFFIRMATIVE DEFENSE

Failure to raise claims relied upon for relief to the Court's attention prior to entry of judgment

The petitions fail to state that they are based on facts which were unknown to petitioners prior to trial, fail to disclose the information petitioners had before judgment was entered regarding the facts upon which they are based, and fail to set forth facts which would justify the dismissal of this action as to these demurring parties under the legal limitations of the writ of coram vobis under California law.

STATEMENT OF FACTS IN OPPOSITION TO PETITION AND IN SUPPORT OF  
AFFIRMATIVE DEFENSES.

**I. Statement of Facts in Opposition to Petition's Claims of Fraud and in support of Real Parties defense of denial of Due Process.**

**Preface: Attorney's compliance with the Court's order.**

I am the attorney for the plaintiffs in whose favor judgment was entered in this case pursuant to the jury's verdict after trial: Carlos Enrique Diaz Artiaga, Jose Anastacio Rojas Laguna, Julio Cesar Calero Gonzalez, Jose Uriel Mendoza Gutierrez, Matilde Jose Lopez Mercado, and Claudio Gonzalez. I have obeyed the Court's orders in this case at all times since coming within their ambit. Specifically, I have not communicated anything to anyone other than the attorneys at Miller, Axline and Sawyer (MAS) which might provide information as to the identity of any of the secret witnesses in this case, or of the substance of their secret testimony other than those portions which were made public by the Court in April, 2009, even if I believed that that information would not provide a clue as to the identity of the secret witnesses. Adherence to those strictures has, of course, crippled my ability to provide my clients with a vigorous defense to the claims and accusations which have been made by Dole through the

1 mechanism of the secret witnesses, just as it crippled the ability of MAS to do so in the *Mejia*  
2 case. I have not been able to obtain any information or evidence relevant to the issues in this case  
3 other than that which is already in the court file, publicly available (as over the internet) and  
4 whatever was voluntarily provided to me by third parties without my prompting. In this latter  
5 category are transcripts of sworn testimony from legal proceedings in Nicaragua which were sent  
6 to me, unbidden, by Rosa Ivania Martinez, who I believe to be affiliated with the Oficines  
7 Legales Para Los Bananeros in Chinandega, Nicaragua. In addition, I have spoken with Benton  
8 Musselwhite and Mark Sparks with regard to the declarations they had previously filed in the  
9 case of *Osorio v. Dole* (SDFL Case No. 07-22693) and obtained their consent to republishing  
10 those statements here. I have been “cold called” by a number of individuals who identified  
11 themselves as having information or theories helpful to my clients’ case; lacking any ability to  
12 vet these individuals and hampered by the order not to disclose any information other than what  
13 has been previously publicized by the court, I have been unable to obtain any “actionable  
14 evidence” from that source.

15  
16 The extent of the restriction on my ability to seek out information - let alone evidence -  
17 which might help me impeach the testimony the Court relied on in the *Mejia* case was driven  
18 home at the hearing held in the case on November 19. I had noted that [REDACTED], an  
19 American resident of Southern California who I will refer to as “Witness A” was among the  
20 individuals whom a secret witness had claimed was present at a significant event which the Court  
21 had found, by “more than clear and convincing evidence” to have occurred, and who was  
22 identified generally as a person involved with relevant events and likely to be knowledgeable  
23 about them. However, Witness A’s name was redacted from all portions of the secret witnesses’  
24 testimony which was made public. I wanted to call Witness A and ask him about the event: Had  
25 he been at such an event? Did he have information as to whether such an event ever took place?  
26 From his personal experience in Nicaragua, and contacts with the other persons who were  
27 allegedly at the event, was it plausible to him that such an event had occurred? Did the stated  
28 details of the event correspond or conflict with objective evidence or information he knew about?

1 I don't know what information or evidence Witness A could have provided me, because I was  
2 prohibited from contacting him.

3  
4 Because I believe that one of the most significant legal issue in this case is the propriety  
5 and legality of a decision-making process in which one litigant's ability to obtain information  
6 needed to identify, secure and present to the court evidence supporting their position and  
7 impeaching or disproving the claims being made by their opponent is almost completely  
8 prohibited by court order I am presenting in this return all of the facts which I believe to be true  
9 and which I believe are either a) supported by what limited additional evidence I have been able  
10 to secure without violating the court's orders and/or which is already in the case file, or b) for  
11 which I believe evidence exists and could be obtained and presented to the court, but that cannot  
12 be obtained without violating the court's protective order. I will cite to the evidence which  
13 supports the facts where such evidence is available, and identify what evidence is unavailable and  
14 why the court's order prevents its presentation.

15  
16 I am attempting to provide the court with a semblance of an adversarial process, a process  
17 which I believe was utterly lacking in the final months of the *Mejia* case due to the intimidation  
18 and professional emasculation of the MAS firm which caused it to abandon my clients under  
19 circumstances which I believe, after lengthy discussions with the principals of that firm,  
20 constituted a clear violation of their professional responsibilities to their clients in this case. I  
21 like, admire and respect the attorneys of MAS, and I understand and do not criticize their  
22 decision to withdraw from the *Mejia* case and their desire to escape the intolerable conditions  
23 they were required to work under in this case, but the fact remains that they abandoned my six  
24 clients without securing ongoing representation for them despite having no basis for concluding  
25 that their individual cases were not just, relying on a vague "confidence" that some attorney  
26 would step in to represent them. As it happens, I did; but the circumstances of that happening  
27 were nothing which MAS anticipated; had I not fortuitously been brought into this case as a  
28

1 collateral result of Dole's filing an ill-considered SLAPP suit against a documentary film maker,<sup>1</sup>  
2 these six men's valid cases and justly won judgments would have been forfeited. Mr. Axline's  
3 declaration confirming that, contrary to the assertions made in multiple court filings and press  
4 briefings by Dole's counsel, MAS' decision to withdraw from this case was not based on any  
5 secret information in MAS' possession regarding my clients in any way is filed herewith.

6  
7 **A. The grand conspiracy of American and Nicaraguan lawyers, doctors and lab**  
8 **technicians, headed by a Nicaraguan judge, publicly celebrated and articulated at a meeting**  
9 **in Chinandega, Nicaragua in March, 2003 was, in fact, a "chimera."**

10  
11 1. Based on the testimony of secret witnesses - the description of events provided by John Does  
12 13, 17 and 18 - the Court described a criminal conspiracy centered in Nicaraguan DBCP  
13 litigation thus: "...in Greek mythology there was a chimera... with the head of a lion, a body of  
14 a goat, and a tail of a snake. A truly fearsome creature.... Here we also have a chimera that is  
15 truly heinous and repulsive. It's been created from separate organisms cemented together by  
16 human greed and avarice. ... It's made up of groups of attorneys who actually designed this  
17 creature, which is the neural system, the brain of this creature. These attorneys have been both  
18 in Nicaragua and some in the United States. ... There are groups of corrupt Nicaraguan judges  
19 devouring bribes and to award judgments based on trumped-up allegations and facts." (Court's  
20 oral statement of findings in *Mejia v. Dole* April 23, 2009) The Court later issued written  
21 findings specifying that Nicaraguan judge Socorro Toruño, American attorneys Juan J.  
22 Dominguez, Mark Sparks, Benton Musselwhite, and the Texas law firm of Provost Umphrey  
23 were all active participants in a criminal conspiracy.<sup>2</sup> (Findings of fact and conclusions of law  
24

25  
26 <sup>1</sup>  
*(Dole Food Company v. Gertten, BC417435 – Dole dismissed its complaint on October 23, 2009 while the anti-SLAPP motion against it was pending)*

27 <sup>2</sup>The Court also identified Bob Roberts as an American attorney co-conspirator. I have  
28 been unable to confirm that Bob Roberts is either an American citizen or licensed to practice law in the United States, and I believe that he is currently neither of those things.

1 filed in *Mejia v. Dole* on June 18, 2009, paragraphs 3, 6 and 80.) The court described a meeting  
2 held in March, 2003 in the Monserrat neighborhood of Chinandega, presided over by Judge  
3 Socorro Toruño, attended by Benton Musselwhite, Mark Sparks, Juan J. Dominguez, and others  
4 at which Judge Socorro Toruño directed laboratories to “fix” the results of sterility tests for use  
5 in DBCP cases by generating results in specified percentages - 40% azoospermatic, 30%  
6 oligospermatic, and 30% other.” Those findings were based entirely on the testimony of three  
7 men who, unbeknownst to the Court, were members of an organization whose financial fortunes  
8 depended on destroying the ability of Nicaraguan DBCP claimants to secure compensation in  
9 court, represented by the American lawyers targeted by that testimony.

10  
11 2. One thing all parties can agree upon is that this conspiracy was truly a “chimera.” However,  
12 it is the second meaning of chimera which truthfully applies. Not a fearsome, multi-featured  
13 ravaging beast, but rather: “a creation of the imagination”, “a fanciful mental illusion or  
14 fabrication”, “a grotesque product of the imagination.” **There was no meeting in March 2003**  
15 **or at any other time hosted by Judge Socorro Toruño and attended by various lawyers,**  
16 **doctors and lab technicians for the purpose of engaging in a conspiracy to manufacture**  
17 **evidence in DBCP cases.** There is no credible evidence of a conspiracy between that judge and  
18 American lawyers of any sort in connection with DBCP cases. No Nicaraguan laboratory ever  
19 produced lab results anywhere close to the purported mandated percentages - and specifically,  
20 did not do so in connection with the identified cases which Judge Toruño reportedly referenced  
21 in her alleged remarks. All of the alleged participants in this meeting adamantly deny - in public,  
22 in their own names, subject to actual adverse consequences for lying - that they ever attended any  
23 such meeting. **The story of this event is a clear fabrication.** Additional details of the evidence  
24 debunking this tale are as follows:

25 i. **Benton Musslewhite**, a licensed Texas attorney who was identified as a participant  
26 by each of the three “John Does” who described the conspiracy meeting of March 2003, filed an  
27 affidavit in which he swore, at risk of actual adverse consequences if he was untruthful (unlike  
28 the John Doe witnesses) that: “...to my knowledge, no such meeting ever took place. I hereby

1 state, swear and affirm that I was never at such a meeting with Judge Toruño or anyone else in  
2 March 2003, or at any other time or place. ... I never attended any meetings with anyone where  
3 an agreement was reached or any discussion was had regarding falsifying lab reports or training  
4 false plaintiffs. In (Plaintiff's Evidence, Tab 1, Exhibit M) In fact, Mr. Musslewhite swore that  
5 he was *not even in Nicaragua* at the time of the alleged meeting, and submitted his passport  
6 records as evidence to prove that fact. (Plaintiff's Evidence, Tab 1, Exhibit M)

7       ii. **Mark Sparks**, another licensed Texas attorney who was counsel *pro hac vice* in the  
8 Florida case and who was identified by one of the John Doe witnesses as having participated in  
9 the conspiracy meeting of March 2003, filed a sworn affidavit in which he stated: "I never  
10 attended any meeting with Judge Socorro Toruño, the lab directors, J.J. Dominguez, and anyone  
11 else in the "exclusive neighborhood" of Chinandega, Nicaragua, nor did I ever attend any  
12 meeting with Judge Socorro Toruño where there was an agreement to "fix" lab results or banana-  
13 workers cases along with J.J. Dominguez....I never attended any such meeting, nor did I conspire  
14 with anyone to fix lab results or defraud any court.." (Plaintiff's Evidence, Tab 1, Exhibit A)  
15 Mr. Sparks added that the outline of the claimed conspiracy doesn't make any sense - the various  
16 different American law firms involved in DBCP are rivals who would hardly be expected to work  
17 together, with his firm and the Dominguez firm engaged in litigation against each other in 2002.  
18 Further, Mr. Sparks attested that one of the purported participants at the March 2003 conspiracy  
19 meeting on behalf of his firm was a man - Pablo Garcia - who had been terminated from working  
20 for his firm prior to that time, and another lawyer listed as a participant - Jacinto Obregon  
21 Sanchez - had referred cases to his firm in a different court in Managua, but was not involved in  
22 the Chinandega-based litigation before Judge Socorro Toruño.

23       iii. **Claudia Patricia Salazar Maineri** is an operator of a clinical laboratory in  
24 Nicaragua. In an affidavit she swore out in May, 2008, well prior to any of the events which  
25 flowed from the powerful protective order, she described a visit to her laboratory by two of  
26 Dole's investigators, including Luis Madrigal. They asked her if she had "attended a meeting in  
27 Reparto Monserrat at a home of Judge Socorro Toruño where other lab owners, Jose Sanchez,  
28 Doctor Ortiz were asked to meet, since they [claimed they] had affidavits from four people

1 confirming my attendance.... In terms of the meeting at the Judge's house, I don't even know the  
2 Hon. Socorro Toruño, and I was upset at there being people who said that I was in attendance at  
3 that meeting because they cannot mistake me for someone else, since I am the only one working  
4 at a clinical lab and using a wheelchair." (Plaintiff's Evidence, Tab 1, Exhibit N)

5       iv. **Jose Francisco Palacios Ramos** and **Juan Ramon Ruiz Torres** both swore out  
6 affidavits in which they stated that in 2003 they were "capitans" and that if any meeting such as  
7 the 2003 conspiracy meeting had taken place they would have been invited and certainly would  
8 have heard about it, but swore that they had not attended any such meeting and had not heard of  
9 its occurrence later, either. (Plaintiff's Evidence, Tab 1, Exhibits H and I) They were both listed  
10 as attendees by the John Does.

11       v. **Irvin Jacinto Castro Agüero** swore out an affidavit in which he described the process  
12 of being contacted and then taken to Managua for his deposition by Dole. Apparently, one of the  
13 first three "John Does" was a client of the Provost Umphries firm, so felicitously they were able  
14 to discover the means by which the "John Doe" depositions were carried out as soon as the news  
15 of Judge Chaney's April hearings became public. While Mr. Agüero's substantive testimony -  
16 both in his own name and as John Doe 3 - is pedestrian, one aspect of his John Doe deposition  
17 as described in his later affidavit is interesting: When he was returned home from his deposition  
18 at a hotel in Managua by Dole representative Luis Carrizales he was paid "the sum of four  
19 thousand Cordobas equal to his salary for one month." (Plaintiff's Evidence, Tab 1, Exhibit E)

20       vi. In addition to the substantial evidence submitted in direct contradiction of the secret  
21 deposition testimony in *Osorio*, the attorneys in that action had experience in Nicaragua, unlike  
22 MAS. The analysis in their memorandum in opposition to Dole's attempt to secure another  
23 "powerful protective order" is cogent, but their dissection of the portions of the testimony of the  
24 March 2003 conspiracy meeting which this Court made public is most pertinent here: (Plaintiff's  
25 Evidence, Tab 1, p 41 - 44.) They noted the fundamental improbability of such a meeting being  
26 convened in the first place. It literally makes no sense that the dozens of people listed by the  
27 John Does -- many of them strangers to each other -- who supposedly participated in this overt  
28 conspiracy would gather under such circumstances even though many of them had nothing to



1 do with the litigation in Judge Socorro Toruño's court - including the counsel for the *Mejia* and  
2 *Rivera* cases, and for the judgment creditors who are the real parties in interest in this proceeding.  
3 Furthermore, the sole concrete "Agreement" the conspirators supposedly arrived at was that  
4 Judge Toruño directed the labs to falsify their results so that they would show that 40% of the  
5 testees were azoospermatic, 30% oligospermatic, and 30% "other." However, as John Adams  
6 stated: "Facts are stubborn things." The actual results of the lab reports are known, and they are  
7 nowhere near the purportedly agreed-upon 40-30-30 split. In the Florida case, the lab results (for  
8 hundreds of clients) were actually: azoospermia - 4.4%, oligospermia - 22.9%, and "other" 73%.  
9 No evidence that lab results of the specified proportions - or anything approaching those  
10 proportions - were ever generated in connection with any lawsuit over DBCP is present in the  
11 unredacted portion of the petition. (And of course, the azoospermia of the judgment creditors  
12 in this case has been confirmed by American doctors and laboratories.)

13  
14 3. But I'm getting ahead of myself. To understand why the witnesses committed this perjury,  
15 and why they told this particular tall tale, it is necessary to understand the events which led to a  
16 group of Nicaraguans having a financial interest in sabotaging DBCP litigation against Dole in  
17 Nicaragua. And to do that, we must address the phenomenon of the "capitans" - men whose role  
18 in Nicaragua was, for the most part, fairly accurately described in the Court's findings.

19  
20 **B. "Capitans" – a necessary evil in DBCP case management in Central America.**

21  
22 4. Nicaragua is a poor country. As the evidence in this case bore out, many Nicaraguans have  
23 no telephones. Many cannot read or write. This is particularly true of people who would have  
24 been manual laborers on banana plantations in the 1970s. As a result, the only way to maintain  
25 attorney-client contact is via personal, face to face meetings. And maintaining contact with large  
26 numbers of potential claimants in a mass-tort situation such as the DBCP litigation required the  
27 law firms involved to hire group leaders, or "capitans" to contact and maintain communication  
28 with the claimants.

1 5. The capitans were paid a monthly salary by the four law offices handling DBCP claims in  
2 Nicaragua, funded by Juan J. Dominguez, Provost Umphrey, and the other American law firms  
3 backing the cases. (11 Appendix 2800) But, as the Court noted in its findings in *Mejia*, based  
4 upon the testimony of John Doe 16, some of the capitans developed a sideline business - creating  
5 "study guides" to sell to men they signed up who had never actually worked on banana  
6 plantations, and holding mandatory meetings at which admission was charged. Although the  
7 documents and admission fees were only a few dollars apiece, a capitan could easily double his  
8 legitimate income from the law firms by selling documents to his group of hundreds of claimants  
9 and pocketing the proceeds. Obviously, the more claimants a capitan signed up, the more money  
10 he made. The greedy capitans also sold tickets for bus rides to assemblies and rallies, and in  
11 various other ways fleeced their "clients."

12  
13 6. Key secret witnesses in the *Mejia* case were among the earliest and most rapacious  
14 practitioners of this scam. Although John Doe 17 claimed that the study guides had been prepared  
15 by the Nicaraguan attorneys affiliated with the Provost Umphrey office (10 Appendix at p. 2563)  
16 John Doe 13 admitted that it was actually he and John Doe 17 who were among the group of men  
17 who created the original version of these study guides - "We were the first ones from the  
18 beginning." (11 Appendix at p. 2925)

19  
20 7. Juan J. Dominguez spoke out repeatedly and publicly in his radio broadcasts in Nicaragua  
21 against the practice of charging DBCP claimants for anything, and repeatedly warned claimants  
22 not to pay anyone for anything in connection with DBCP claim along with stressing that only  
23 actual former banana plantation workers should sign on as plaintiffs. His Nicaraguan affiliate,  
24 the Oficines Legales Para los Bananeros or OLPLB issued written fliers with the same  
25 admonitions. (E.g. 13 Appendix at p. 3513 and Exhibit 1736) The secret witnesses, on the other  
26 hand, claim that while that was the public stance of the law firms, they were actually authorized  
27 and directed to produce these guides by the law firms. The credibility of that claim is a  
28

1 significant issue. A rational assessment of that question has been prevented by the restrictions  
2 of the Court's order, which prevent any significant investigation into those claims.

3  
4 8. I believe that if the Court's order prohibiting the disclosure of the identities of the secret  
5 witnesses and the substance of their claims did not prevent an investigation into those allegations,  
6 evidence would be readily obtainable to prove that John Doe 13 - described by defendant's  
7 counsel as ██████████" - was in fact one of the most rapacious of the capitans preying on the  
8 gullible Nicaraguans whom they promised riches to - as long as the 20 Cordoba, 40 Cordoba, 200  
9 Cordoba payments were collected by the capitan on demand ██████████  
10 ██████████ engaged in the activities he claimed  
11 were not merely condoned but directed by the law firms ██████████

12 ██████████  
13 ██████████  
14  
15 9. In addition to selling study guides and employment cards, the capitans also issued "advice"  
16 to their marks on how to cheat the sterility tests - producing a sperm sample ahead of time and  
17 then presenting it at the clinic as a fresh sample, for example. (13 Appendix at 3450-3453) Of  
18 course, the attorneys, not being as gullible as the capitan's Nicaraguan marks, knew - as the Court  
19 may also be aware - the "tricks" taught to the marks *would not actually work*. The crude ploys  
20 were adequate to keep the capitan's little scam running, but were in fact worthless as a bona fide  
21 effort to game the system - a fact the lawyers would have known, if they had been knowing  
22 participants in the scam as claimed by the secret witnesses.

23  
24 **C. In 2005 a group of capitans headed by Victorino Espinales - the "Alliance" -**  
25 **broke away from the law firms and entered into direct negotiations with Dole, culminating**  
26 **in an agreement in 2007 which gave them the right to head up an administrative program**  
27 **to compensate DBCP claimants, as long as those claimants were not represented by American**  
28 **lawyers.**

1  
2 10. The contempt the capitans felt for the attorneys was evident in unguarded moments of their  
3 deposition testimony. [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7  
8 11. In 2005 group of capitans led by Victorino Espinales, chafing under the hierarchy which  
9 required them to answer to the attorneys, eventually split off and formed their own organization,  
10 to negotiate directly with Dole. Dole took them up on it; after over a year of negotiations Dole  
11 entered into an agreement with the capitans, embodied in the June 28, 2007 letter to the  
12 Nicaraguan government which sets forth the agreement between Dole and the capitans regarding  
13 the process they wished to embark upon for compensating Nicaraguan DBCP victims which they  
14 jointly wished to see the government facilitate. (7 Appendix 1926, Plaintiffs' Evidence, Exhibit  
15 9) The capitans who were identified as the principles on their side of the deal list their affiliations  
16 as being with three organizations - Espinales' ASOTRAEXDAN, a smaller group called  
17 AOBON, and, as to the majority of the capitan signatories, "Alianza Nacional" or "National  
18 Alliance." No specific title appears to have been given to the combined group. For purposes of  
19 this document I will refer to the individuals who joined in this enterprise - Espinales and his  
20 ASOTRAEXDAN members, the AOBON leadership and members, and all the others who  
21 elected to work with them in competition with the law firms simply and collectively as members  
22 of "the Alliance."  
23

24 12. It is clear from the June 28, 2007 document that the Alliance leadership would benefit greatly  
25 if DBCP claimants' ability to secure compensation through the courts were to be destroyed. The  
26 terms of the agreement expressly exclude the Alliance from representing any claimant who was  
27 represented by an American attorney. If a DBCP claimant could win a six-figure court judgment  
28 against Dole and Dow, they would have little interest in obtaining an administrative award such

1 as those granted by Dole's similar DBCP compensation program in Honduras, where the  
2 maximum recovery is less than \$10,000. The Dole-Alliance deal was struck just two weeks  
3 before the trial in this case was scheduled to start. A lot was riding on the outcome of the trial  
4 for the Alliance. If Dole won (as Dole expected to) the Alliance's role as the sole effective  
5 source of compensation for DBCP injuries would be greatly augmented. DBCP claimants would  
6 be encouraged to fire their lawyers and sign on with the Alliance instead. On the other hand, if  
7 the plaintiffs in this case won, the Alliance would lose its allure for the claimants they were eager  
8 to represent, given the disparity in compensation between court judgments and administrative  
9 awards. Dole continued to meet with the Alliance throughout the trial, with Alliance members  
10 flown to America at Dole's expense to meet with Dole's representatives. (Testimony of  
11 Victorino Espinales, Plaintiff's Evidence Exhibit 6, [REDACTED])

12  
13 **D. As soon as the jury returned a verdict in favor of six plaintiffs in this case,**  
14 **Alliance member Witness X tried to sabotage the case; neither he nor Dole disclosed his**  
15 **financial interest in seeing the judgment vacated and slandering plaintiff's counsel.**

16  
17 13. In November, 2007, the jury returned a verdict in favor of six of the plaintiffs in this case -  
18 six figure awards, with punitive damages awarded by the jury as well. That outcome had the  
19 potential for sounding the death knell for the Alliance. Promptly, an Alliance member -  
20 "Witness X", Sergio Garcia Gomez, who was a signatory to the June 28, 2007 agreement after  
21 having participated in the lengthy negotiations with Dole leading up to the striking of that deal,  
22 was presented to this Court as a witness who was basically unknown to Dole previously and  
23 "believed to be credible", claiming that he had worked at the Candelaria banana plantation and  
24 that two of the victorious plaintiffs in this case who had stated that they worked there were lying.  
25 (3 Appendix 684, 725, 732.) Although Dole knew that Witness X was a member of the Alliance  
26 - he stood right behind Dole's Nicaraguan spokesman at the press conference given to announce  
27 the Dole-Alliance deal - Dole did not disclose that fact to the Court, concealing the fact that  
28 Witness X, far from being an idealistic stranger who stepped in to expose fraud from pure

1 motives, actually had a substantial financial interest in sabotaging the outcome of any successful  
2 DBCP trial.

3  
4 14. Witness X had a dilemma, however. He could not continue his role with the Alliance, [REDACTED]  
5 [REDACTED] if it became known that he had actively worked for Dole  
6 in attacking an entirely valid court judgment in favor of actual victims. Accordingly, he  
7 demanded that his identity be kept secret.

8  
9 15. No one who has appeared before the Court in this case could be unaware of the Court's  
10 profound concern for the safety of witnesses, arising from the Court own tragic prior experience  
11 with the homicide of a witness connected with South American litigation presided over by the  
12 Court. Given that "Witness X" could hardly disclose his real reason for demanding anonymity -  
13 he was lying, and would defeat his own goals if his actions became public - Witness X claimed  
14 to be in fear of the lawyers litigating DBCP cases. If he couldn't have anonymity, he demanded  
15 money - \$500,000 according to Dole's counsel; fair compensation for what he would forfeit by  
16 having to leave the Alliance. When that didn't come through, he went back to Nicaragua -  
17 where, despite the fact that the Nicaraguan DBCP lawyers (and pretty much everyone else in  
18 Nicaragua who might be interested) in fact did know who he was, and what he had done, no one  
19 ever harmed him in any way.

20  
21 16. Dole's actions with regard to Witness X and his claims deserves comment. Dole presented  
22 Witness X to the Court as a source of evidence Dole "believed to be credible" (3 Appendix 684)  
23 But despite having reliable and voluble sources in Nicaragua, particularly with regard to the bona  
24 fides of individuals claiming to have worked at the Candelaria farm, even after MAS produced  
25 graphic evidence that Witness X had claimed at an earlier time - on camera - to have worked at  
26 a different banana farm during the time he was now claiming to have worked at Candelaria, Dole  
27 has failed to produce any record of having asked anyone - anyone at all - in Nicaragua to confirm  
28 or deny Witness X's claims of having worked there in response to the Court's order to do so. I

1 have reviewed the documents produced by Dole in response to the Courts order of November 19,  
2 2009. There are no reports of any witnesses being asked about "Witness X." When Dole began  
3 taking the "John Doe" depositions in the fall of 2008, the first witness was [REDACTED]  
4 [REDACTED], who has worked with Dole for years,  
5 providing reports and opinions regarding the bona fides of various DBCP claimants - who, for  
6 the most part, he denied remembering having worked at Candelaria. Dole's counsel did not ask  
7 [REDACTED] any questions about Witness X, who would later sign a declaration in which he  
8 claimed that he came to know [REDACTED] very well." (3 Appendix 795)

9 Ironically, he followed that statement by [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14  
15 17. Dole has produced dozens of interview reports regarding the plaintiffs in this case; none  
16 regarding Witness X. This would appear to suggest that although Dole was arguing to the Court  
17 that Witness X's story was a sufficient basis to throw out a judgment based on a jury verdict  
18 rendered after four months of trial, including a month of jury deliberations, Dole either (a) did  
19 not believe that Witness X's story was important enough to take even the most minimal effort  
20 to verify, (b) did make the inquiries but decided not to write down (or produce) the answers; or  
21 (c) knew what the answer was already and accordingly did not ask anyone.

22  
23 18. Witness X failed to produce the desired results. The Court denied the motion for new trial in  
24 February, 2008. But the seeds had been planted for the second stage of Dole's strategy:  
25 attacking and neutralizing any opposing counsel who stood in Dole's way, and utilizing the  
26 Court's concern over witness safety to cast a veil of secrecy over the proceedings to give them  
27 the opportunity to present evidence like Witness X's proposed testimony without their opposing  
28 counsel having any opportunity to effectively investigate either the witnesses or their stories.

1 Those tactics would prove effective in enabling Dole to present slanted, manipulated, and  
2 outright false evidence to the Court without fear of effective opposition and exposure.

3  
4 **E. The secret “John Doe” depositions begin; John Does 1, 2 and 3 later disclose that**  
5 **contrary to Dole’s investigator’s sworn testimony in this case, they all were in fact paid for**  
6 **their testimony and/or discussed being paid with Dole’s investigators.**

7  
8 19. Dole secured the first protective order covering the depositions of John Does 1, 2 and 3. (1  
9 Appendix tab 2) The substance of their testimony was not particularly dramatic - each identified  
10 one or more plaintiffs in *Mejia* which they did not remember having worked in the jobs they  
11 described at Dole’s banana farms. In fact, John Doe 3, contrary to the declaration prepared by  
12 Dole’s attorneys which he signed after receiving vague threats about the “consequences” he was  
13 facing, was not instructed by the Nicaraguan attorney he had briefly worked for to sign up  
14 plaintiffs who were not actual former banana farm workers, and had not done so. (11 Appendix  
15 2799-2801, 2862)

16  
17 20. As noted above, on April 22, 2009, when the public hearing in the *Mejia* case took place,  
18 Irvin Castro swore out an affidavit reporting that he was one of the witnesses deposed by Dole  
19 at the time of the depositions of John Does 1, 2 and 3, and that he had been paid 4,000 Cordobas -  
20 about \$200 - by Dole’s investigators after completing his testimony. (Plaintiff’s Evidence, Tab  
21 1, Exhibit E) In July he repeated that report to a reporter for the Los Angeles Times. Dole’s  
22 reporters have denied paying him.

23  
24 21. In September, 2009, Juan Herrera Jarquin testified under oath that he had testified at a  
25 deposition for Dole, and admitted that he was paid by Dole’s investigators for his testimony, in  
26 his case two small payments of about \$25 before his deposition, one payment of \$325 afterwards.  
27 (Plaintiffs’ Evidence Exhibit 6) Filimon Herrera also testified in open court in routine Nicaraguan  
28 proceedings that month, and related that he had testified at a deposition for Dole, and that he had



1 discussed working for Dole for \$50,000 prior to his deposition, although they had not taken him  
2 up on the offer to date, and only paid him 500 Cordobas (about \$25) for his efforts. (Plaintiff's  
3 Evidence Exhibit 6)

4  
5 22. In sum, all three of the first set of John Doe witnesses who testified in October 2008 were  
6 either in negotiations with Dole over payment, and/or actually were paid for their testimony. All  
7 denied it at their depositions; all admitted it later, under oath, but only after the Court had made  
8 a series of critical findings in *Mejia*. (Another witness, Fabiola de los Angeles Davila, has also  
9 testified in open court in Nicaragua that she was a secret deposition witness, and that she, too was  
10 paid for her testimony, and in fact had been a paid informant for Dole since 2005. She was not  
11 one of the first three, however. (Plaintiff's Evidence Exhibit 6)

12  
13 **F. Once the veil of complete secrecy was thrown across the process, Alliance**  
14 **members were produced for secret depositions by Dole, and provided all of the significant**  
15 **evidence implicating American lawyers and Judge Toruño in participation in the fake**  
16 **"conspiracy" with testimony which, to the extent it has been made public, has been exposed**  
17 **as blatant perjury.**

18  
19 23. The Court next tightened the protective order even further, permanently cutting MAS off  
20 from any avenue of information about the remaining deponents. That order would prove to be  
21 the key to the massive flow of perjury which followed. It is worth detailing the exact amount  
22 of information which would be made available to MAS throughout this process and the  
23 restrictions on what they could do with that information: Ten days prior to each Nicaraguan  
24 deposition, they would be given the names of the deponents - each of which was a complete  
25 stranger to MAS, and about which they knew nothing. The (redacted) notes of Dole's  
26 investigator's descriptions of what the witnesses had told them previously - to the extent that such  
27 notes were made and kept - were given to MAS. However, MAS could not make any inquiries  
28 about the witnesses. Anything which might even indirectly let anyone know the identities of the

1 witnesses was expressly prohibited. Furthermore, MAS also could not make any such inquiries  
2 into the substance of the information in the investigator's notes, or as to any testimony given by  
3 the witnesses. MAS was essentially kept in a locked room, with no access to any outside  
4 information which might explain, contradict, or call into question any testimony any of the  
5 following secret witnesses might give. As none of the witnesses were known to MAS before the  
6 depositions, and as MAS had no background or familiarity with Nicaraguan society or events,  
7 all they could do was ask obvious questions and listen to the replies, without knowing or having  
8 any opportunity to learn of facts which would impeach, disprove, or discredit those witnesses.  
9 (1 Appendix 11-13, 74-75)

10  
11 24. The next witness who testified, in November 2008, was John Doe 13. [REDACTED]  
12 [REDACTED] If not prevented from doing so by the terms of the protective order,  
13 I believe that evidence could be obtained and presented that [REDACTED]  
14 [REDACTED] - a close associate known to be willing [REDACTED]  
15 [REDACTED], and a member of and operative for the Alliance. Furthermore, as noted above, John  
16 Doe 13 was one of the worst scam artists among the early group of dishonest "capitans" - so bad  
17 that he [REDACTED] Of course, MAS had no  
18 way of knowing that; to them [REDACTED] was simply a name with no information  
19 whatsoever behind it.

20  
21 25. John Doe 13 backed up the truck and dropped a load of bombshells at his deposition. He  
22 was the first of three secret Alliance witnesses to tell the story about the infamous Chinandega  
23 conspiracy meeting headed Judge Socorro Toruño with Benton Musselwhite, Mark Sparks, Juan  
24 Dominguez and others in attendance. (There were no investigator's notes of his ever having  
25 mentioned this event to Dole's investigators before - Boone Declaration, Exhibit 8, SFC13-  
26 0005972-974) He presented a handwritten note which he claimed had come from the "Group of  
27 Eight" - the law firms prosecuting DBCP cases in Nicaragua - and claimed they were threatening  
28 his life. He outlined all of the dirty activities of the capitans - which, in fairness, he certainly

1 knew all about, having being, in his own words, among the initiators of many of them - but  
2 carefully twisted them around into things he claimed the attorneys had made him do, rather than  
3 [REDACTED] His testimony regarding these incendiary claims about the American  
4 attorneys and the Nicaraguan judge stood alone until the very end of the process, when the  
5 depositions of John Doe 17 and John Doe 18 were taken at the end of February, 2009.

6  
7 26. MAS, of course, had no clue about what was going on behind their backs. Under the terms  
8 of the protective order they could not take such basic steps as picking up the telephone and  
9 calling Mark Sparks, Benton Musselwhite, Juan Dominguez, or any of the other alleged  
10 participants, to see what they had to say about it. MAS had no access to the lab reports in case  
11 214 and 215 so as to be able to detect that the conspiracy meeting story made no sense on a basic  
12 level - and could not get that information without violating the protective order. Nor could they  
13 acquire any background information regarding John Doe 13, such as his involvement in the  
14 Alliance, [REDACTED]

15 [REDACTED]. None of that information was, or could have been, available to MAS without violating the  
16 terms of the protective order.

17  
18 27. [REDACTED] Witness X and John Doe 13, John Doe 17 and John Doe 18 are [REDACTED] members  
19 of the Alliance. [REDACTED]

20 [REDACTED]  
21 [REDACTED] a matter which is provable, but not without violating  
22 the terms of the Court's order. Thus it is unsurprising that all of the most important,  
23 incriminating and inflammatory evidence all comes from those four witnesses. Analyzing their  
24 testimony, and in particular the testimony they gave which can be proven by external evidence  
25 to have been false, as opposed to "he said - she said" type of claims, reveals the goal and purpose  
26 of the Alliance: not simply to attack the judgments won in this case, but the permanently destroy  
27 the ability of legitimate DBCP claimants to seek compensation for their injuries in court, forcing  
28 them into the hands of the Alliance.

1           **G. To successfully accomplish their goals, the Alliance had to attack every aspect of**  
2 **the legal system for compensating victims, to delegitimize it and demonize anyone**  
3 **associated with processing plaintiff's claims.**

4  
5 28. In assessing the evidence Dole has amassed and submitted in support of its petition, one  
6 thing that stands out is how much of the evidence had literally nothing to do with this case. The  
7 appendix contains declarations which discuss the activities of a Nicaraguan lawyer who is not  
8 affiliated with these cases, but rather worked with a competing law firm. Those declarations  
9 detail numerous alleged faults of that man, from [REDACTED] to  
10 suggestions of impropriety in his relationship with a judge - not Socorro Toruño, who actually  
11 has nothing to do with this case, but a different judge - who also has nothing to do with this case.  
12 (See generally Appendix tabs 42, 43, 46) That shotgun attack is echoed in the findings made by  
13 this court last Spring, declaring numerous American attorneys who were not involved with this  
14 case or *Mejia* in any way, as well as a foreign judge, Socorro Toruño, who also was not involved  
15 in this case or *Mejia* in any way, to be participants in a criminal conspiracy - all based on the  
16 testimony of three men, about whom MAS was not allowed to know anything other than what  
17 they said at their depositions, and without notice or any opportunity provided for those found by  
18 the court to be guilty of these acts to defend themselves.

19  
20 29. A comparison of the testimony of the three known Alliance members who were "John Doe"  
21 witnesses reveals discrepancies which would have made a starting point for any attorney with the  
22 ability and motivation to procure evidence to impeach or disprove it - and who was not prevented  
23 by Court order from doing so. The story about the grand conspiracy meeting, for example, shows  
24 hallmarks of having been invented and then shared between three associates, rather than having  
25 merely the ordinary discrepancies that an event observed by three separate people would  
26 generate. They all give the basic outline the same: Judge Socorro Toruño spoke first, dictating  
27 that the lab results had to be 40% azoospermatic, 30% oligospermatic, and 30% something else,  
28 and that she was followed by another speaker. All of the lawyers who had actually attended the

1 public conference regarding DBCP resolution held earlier in Managua were supposedly there,  
2 along with all of the lab personnel from the Chinandega area. So far, so good. But the  
3 discrepancies between their stories after they go past that basic outline are hard to explain. John  
4 Doe 17 said that after Judge Toruño spoke, Bob Roberts spoke, giving a stirring speech in  
5 Spanish including reference to the Viet Nam War, etc. (9 Appendix 2505-2507) John Doe 13  
6 also testified that Bob Roberts spoke after Judge Socorro Toruño spoke. (11 Appendix 2977-  
7 2978) But John Doe 18, who knew [REDACTED] (12 Appendix 3139, 3143, 3199-3201)  
8 when asked if anyone spoke after Judge Socorro Toruño spoke, responded “a man, a man, but  
9 I don’t recall his name.” If Bob Roberts was the speaker who followed the judge, why would  
10 John Doe 18 not “recall his name?” [REDACTED]  
11 [REDACTED] This is not the sort of discrepancy  
12 which can be brushed aside.

13  
14 30. The testimony regarding the only other alleged conspiracy meeting to have been described  
15 by the secret witnesses which was made public suffers from the exact same inexplicable conflict  
16 in testimony: John Doe 17 and John Doe 18 both described a conspiracy meeting between all of  
17 the American lawyers prior to the fictional meeting presided over by Judge Toruño at a date and  
18 location which was redacted from the publicly disclosed testimony. John Doe 17 gave a graphic  
19 description of Benton Musselwhite standing up to give a speech - translated into Spanish - about  
20 how they would commit fraud, with his financial backing. (9 Appendix 2490-2491)

21  
22 31. John Doe 18 also claimed to have been at this meeting. But he said Benton Musselwhite  
23 wasn’t even there. (12 Appendix 3204-3205) John Doe 17 says that John Doe 13 was at the  
24 meeting, but John Doe 13 never mentioned it, either to the investigators or at his deposition. (9  
25 Appendix 2486, Boone Declaration Exhibit 8 SFC13-0005972-974 ) Points to John Doe 18: The  
26 meeting at which Mr. Musselwhite supposedly stood up and declared that he was going to  
27 finance fraudulent lawsuits took place at a time when Mr. Musselwhite was not even in  
28 Nicaragua - as evidenced by his passport. (Plaintiff’s Evidence, Tab 1, Exhibit M)

1 32. John Doe 17 started to give lengthy interviews to Dole's investigators after the Dole-  
2 Alliance negotiations had begun, including a lengthy statement in June, 2006. The first time the  
3 grand conspiracy meeting of March, 2003 was ever mentioned by anyone was in an interview  
4 John Doe 17 gave to Dole's investigators following the signing of the Dole-Alliance agreement,  
5 and prior to [REDACTED] although at that  
6 point he said the meeting actually happened in 2004, which would have made even less sense in  
7 relation to the status of the lawsuits it was supposed to be "fixing" - cases 214 and 215. (Boone  
8 Declaration, Exhibit 11.) No previous mention of this rather dramatic event appears anywhere  
9 in any reports prior to that time - including in the interviews with John Doe 13.

10  
11 33. Three Nicaraguans have stepped forward to describe their interviews with Dole's  
12 investigators about the supposed grand conspiracy meeting of March, 2003. (Plaintiff's  
13 Evidence, Tab 1, Exhibit H, p. 5, Exhibit I, p. 5, and Exhibit N, po. 5). All three, of course,  
14 denied having attended any such meeting. The third witness - Claudia Salazar, a clinical lab  
15 worker who uses a wheelchair for mobility, set forth in an affidavit she swore out in **May, 2008**,  
16 shortly after meeting with Dole's investigator Luis Madrigal, that she had not only informed him  
17 that she did not even know Judge Socorro Toruño, but that she had also told him that the  
18 approximate percentage of azoospermatic findings by her lab was 10% - not the 40% purportedly  
19 dictated by Judge Toruño. Luis Madrigal has admitted that he did interview Ms. Salazar on May  
20 14, 2008, as she had stated in her affidavit, and that she did tell him that she did not attend any  
21 such meeting, but claims not to remember speaking with her about the lab results. Mr. Madrigal  
22 also discusses his interviews with the other two witnesses, but does not deny or confirm (or  
23 mention) their reports that he had asked them about, and they had denied attending or hearing  
24 about, any grand conspiracy meeting chaired by Judge Toruño. (Plaintiff's Evidence, Tab 2,  
25 Declaracion de Luis Madrigal, p. 8-10) I have reviewed Dole's response to the Court's order  
26 to produce its investigators' memoranda of witness statements relating to this event. There are  
27 no records of these three interviews contained in those documents. Dole's lack of records of  
28

1 these matters is reminiscent of Dole's lack of evidence of having made any inquiry into Witness  
2 X's story of having worked at Candelaria, and raises the same questions.

3  
4 **H. If the identity of the key secret witnesses were not concealed from everyone but**  
5 **Dole and a handful of lawyers who are prohibited from effectively investigating them,**  
6 **evidence would be gathered and presented which would eliminate any question about their**  
7 **being willing and even eager to commit perjury to advance the fortunes of the Alliance.**

8  
9 34. This is only a partial listing of facts which I believe are true about the key Alliance  
10 witnesses, but as to which the gathering of evidence by any attorney adverse to Dole is  
11 impossible without violating the Court's protective order:

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 d. John Doe 13 claimed to have been invited to and attended the March 2003 conspiracy  
22 meeting [REDACTED]

23 [REDACTED]  
24 [REDACTED] There  
25 would have been no reason for him to be invited to a conspiracy meeting in 2003 - either the  
26 grand meeting with Judge Toruño or the previous meeting [REDACTED] which John  
27 Doe 17 placed him at.

1 e. John Doe 13 didn't quit working for Provost and OLPLB because his conscience  
2 "blossomed" as he claimed, [REDACTED]

3 [REDACTED]  
4  
5 35. [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10  
11 36. I have no information about the secret witnesses other than the four I have identified as  
12 Alliance members, and the four who have admitted under oath that they either negotiated with  
13 Dole for payment for their testimony or were actually paid for it. The remaining secret witnesses  
14 may or may not have been paid for their testimony, and may or may not be members of the  
15 Alliance. It is impossible for me to investigate those questions without violating the court's  
16 protective order.

17  
18 37. It is also impossible to know what additional facts and evidence might come to light to further  
19 disprove, impeach, and discredit the testimony given in secret which was designed to, and did,  
20 destroy the ability of legitimate Nicaraguan DBCP victims to have recourse to the courts to seek  
21 compensation, forcing them into the hands of the Alliance. That is the problem with relying on  
22 secret evidence.

23  
24 **II. Statement of Facts in Opposition to Petitioners' Claim That They Could Not Have**  
25 **Presented the Evidence They Rely on to the Court Prior to Trial.**  
26

27 38. Dole has known all of the facts behind every element of the fraudulent activities of some  
28 Nicaraguan capitans since before the trial in this case, and elected not to disclose them to the



1 Court until after losing at trial. Dole has failed to allege anything which excuses it from its  
2 mandatory duty to notify the Court as to all potential defenses known to it before the entry of  
3 judgment instead of waiting to see if they won the trial before disclosing those facts to the Court  
4 and opposing counsel. That failure is fatal to Dole's attempt to reverse the judgment by a post-  
5 trial collateral attack.

6 39. A coram vobis petitioner has a mandatory obligation to disclose the knowledge or lack of  
7 knowledge it had relevant to the "new evidence" prior to trial, the reasons for the claimed lack  
8 of knowledge, and explain why it did not alert the Court to any knowledge it had of the matter  
9 at that time. The disappointed litigant simply may not raise new evidence or a new legal theory  
10 of defense post-judgment which it could have raised at trial, but didn't. Miller, Axline and  
11 Sawyer collated the relevant information which had been disclosed by Dole since the trial ended  
12 and submitted it to the Court in its opposition to Dole's "Motion for Indication." Real Parties  
13 requested that the Court take judicial notice of those documents in connection with their  
14 demurrer, but the Court denied the request. Real Parties hereby reiterate the request that the  
15 Court take judicial notice of the documents in its files, specifically the Declaration of Daniel  
16 Boone in Support of Plaintiffs' Opposition to Dole/Standard Defendants' Motion for Indication  
17 (hereafter Boone declaration.)<sup>3</sup>, and consider that evidence in connection with this portion of  
18 this return, which raises the issue of Dole's election to conceal from the Court the extent of its  
19 pre-judgment knowledge of the facts upon which it relies in this petition as an affirmative  
20 defense.

21 40. As ably organized by Mr. Boone, Dole's disclosures regarding its prior contacts with the  
22 individuals who would later become the "John Doe" witnesses reveal that each of them had  
23 shared with Dole information regarding the Nicaraguan fraud before this case went to trial, and  
24 that Dole was fully briefed, in detail, on the fraudulent activities in Nicaragua prior to the entry  
25 of judgment in this case. Specifically, before trial in this case, Dole had been apprised as  
26 follows:

27 \_\_\_\_\_  
28 <sup>3</sup>All parties received a copy of this document previously so a duplicate will not be served unless requested.

1 i. That the capitans had initially recruited only actual former banana farmworkers, but at  
2 some point the different law firms turned to signing up people they knew had not worked on a  
3 banana farm during Dole's operations in Nicaragua or who did not claim to have been injured  
4 by DBCP, as reported by [REDACTED] on November 11, 2005,  
5 Boone declaration exhibit 8, pages SFC13-0005972-73, [REDACTED] on  
6 January 16, 2006, Boone declaration Exhibit. 10, pages SFC13-0006025-6026, [REDACTED]  
7 [REDACTED] March 26, 2006, Boone declaration Exhibit 11, page SFC13-0006088, and [REDACTED]  
8 [REDACTED] March 28, 2006, Boone declaration Exhibit 8, page SFC13-0005964.

9 ii. That fake "work certificates" had been prepared for some claimants, as reported by  
10 [REDACTED] on November 11, 2005, Boone declaration exhibit  
11 8, pages SFC13-0005973, [REDACTED] on March 28, 2006, Boone declaration  
12 Exhibit 8, page SFC13-0005967, and [REDACTED] on March 26, 2006, Boone  
13 declaration Exhibit 11, page SFC13-0006089.

14 iii. That bogus claimants had been coached about 1970's plantation personnel and  
15 operations, etc., reported in detail by both [REDACTED] on January 16, 2006,  
16 Boone declaration Exhibit. 10, pages SFC13-0006025-6026, ([REDACTED] provided Dole with  
17 copies of the plantation "study guides" in 2006, eighteen months before trial commenced -  
18 [REDACTED] Appendix Tab 69, pp 3517) and [REDACTED] in July and  
19 August, 2007. Boone declaration Exhibit. 8, p. SFC13-0006092.

20 iv. That false lab results of azoospermia and other sterility issues had been generated in  
21 various ways, from the submission of substituted or altered samples to the outright falsification  
22 of results, reported by [REDACTED] on August 9, 2004, Boone  
23 declaration Exhibit 15, page SFC13-0006187, [REDACTED] on January 16,  
24 2006 (Boone declaration, Exhibit 10, pages SFC13-0006027, [REDACTED] on  
25 March 28, 2006, Boone declaration Exhibit 8, page SFC13-0005965, 966, 968, [REDACTED]  
26 [REDACTED] on May 30, 2006, Boone declaration Exhibit 8, page SFC-0005971, [REDACTED]  
27 [REDACTED] on May 9, 2007, Boone declaration Exhibit 8, page  
28

1 SFC13-0005979, and [REDACTED] July and August, 2007, Boone declaration Exhibit  
2 11, page SFC13-0006090 .

3 v. That various unethical contacts and agreements had reportedly been made between  
4 Nicaraguan judges and Nicaraguan lawyers and America lawyers, with varying degrees of  
5 relevance to the DBCP cases, reported by [REDACTED] on  
6 February 17, 2005, Boone declaration Exhibit 15, pages SFC13-0006182-184 [REDACTED]  
7 [REDACTED] on April 14, 2007, Boone declaration Exhibit 15, pages SFC13-0006177-179,

8 vi. The alleged grand conspiracy meeting of March, 2003 which the Court found to have  
9 been proven by clear and convincing evidence from the secret testimony of John Does 13, 17,  
10 and 18 was first recorded in Dole's investigator's notes of his interview with John Doe [REDACTED] during  
11 the trial of this case, in July and August, 2007, following which John Doe [REDACTED] the person who  
12 told Dole's investigator the story of the alleged meeting was [REDACTED] Dole's head  
13 investigator, Douglas Beard, [REDACTED] Dole personnel, [REDACTED] while the  
14 trial of this case was in process. (Boone declaration Exhibit 11, page SFC13-0006096-098, 10  
15 Appendix 2699 - 2705). Dole never mentioned anything about that before the judgment was  
16 entered in this case.

17 41. Dole's failure to disclose the information it had possessed without disclosing until after  
18 judgment was repeated in the new trial motion as well as in this petition. When Witness X  
19 cropped up shortly after the jury's verdict was rendered, offering to testify that he was one of the  
20 capitans who had recruited and coached bogus plaintiffs, he described the exact same events that  
21 Dole had learned of in detail from John Does [REDACTED] and [REDACTED] in 2006, adding only the claim that  
22 plaintiffs Rojas Laguna and Calero Gonzalez were among his group of fake claimants, this is  
23 what Dole told the Court:

24  
25 "The Dole and Standard defendants could not, with reasonable diligence,  
26 have discovered or produced this new evidence at trial. ... Defendants diligence  
27 notwithstanding, **defendants could not have uncovered plaintiff's plans to**  
28 **defraud the court until now**, when this new witness finally came forward to  
disclose the truth about plaintiff's schemes" (Notice of intent to move for new trial,  
Appendix to petition tab 29, p 691, emphasis added)

1           **“The Dole defendants could not and did not discover this evidence of**  
2 **plaintiff’s fraud prior to the Witness coming forward post-verdict,** despite  
3 more than reasonable diligence in investigating the case. ... Despite the difficulties  
4 involved, Dole’s investigators conducted 273 interviews of 239 witnesses  
5 potentially relevant to the *Tellez* case... Despite such efforts, **the Dole parties**  
6 **were unable to discover plaintiffs’ carefully orchestrated fraudulent scheme.”**  
7 (Defendants’ points and authorities in support of motion for new trial, Appendix  
8 to petition tab 30, p 713. Emphasis added)  
9

7 But that was false. Dole had been briefed fully on the activities of some of the capitans, and even  
8 had some of the documents used to train bogus plaintiffs, supplied to them by ██████████ in  
9 2006.

10 41. The only thing about Witness X which was “new” was his claim that Rojas Laguna and  
11 Calero Gonzalez were implicated in involvement in the fraud. But despite Dole’s assurance in  
12 its notice of intention to move for new trial that Witness X was “believed to be credible”  
13 (Appendix tab 29, p. 684) as outlined below, Dole was concealing its knowledge of facts which  
14 would have made any reasonable person have grave doubts as to Witness X’s credibility on the  
15 subject of his having worked at Candelaria and having personal knowledge that Rojas Laguna  
16 and Calero Gonzalez had not.

17 42. In the instant petition Dole has instead avoided the question by redefining the “no pretrial  
18 knowledge” requirement into a “no actionable evidence” requirement and, while ignoring the  
19 former, asserted that it lacked the latter. (See petition, paragraphs 14-20, 87-88 p. 16-19, 51)  
20 Dole represents that:

21           “...Dole raised its suspicions regarding fraud multiple times, and asked the court’s  
22 assistance on multiple occasions in order to obtain evidence on this issue.  
23 However, the trial court declared that it did not want to hear from Dole without  
24 actionable evidence, and that it had no power to enable Dole to obtain such  
25 evidence.”<sup>4</sup> (Petition, paragraph 87, page 51.)

26 \_\_\_\_\_  
27           <sup>4</sup>  
28 The Court is probably surprised to learn that, according to Dole, it is the Court’s fault that no  
mention was made of the Nicaraguan fraud before the Court presided over four months of trial  
in this case, and that Dole was prevented by the Court from raising that issue before trial.

1 43. Dole did not include in the appendix to the current petition any of the numerous investigator  
2 reports which were in its possession prior to trial which show that Dole did not merely have  
3 “suspicions” but rather had detailed information about every aspect of the fraud it is now raising  
4 as a basis for its collateral attack on the judgment, which Dole elected not to disclose to this  
5 Court before trial.

6 44. Neither this Court nor Judge Bendix prevented Dole from following up on the information  
7 it had regarding the Nicaraguan fraud; rather, as soon as Dole presented the Court with any of  
8 the information it had regarding the activities of the capitans and lawyers in Nicaragua the Court  
9 authorized extraordinary steps to assist Dole in formally memorializing that evidence. The record  
10 cited by Dole as proof that its hands were tied by “declarations” from the trial court - both this  
11 Court and Judge Bendix - which required Dole to produce “actionable evidence” of the  
12 Nicaraguan fraud scheme while refusing to provide Dole with assistance in doing so fails to  
13 support that claim. Dole makes the claim of “reasonable diligence” in paragraph 87 of the  
14 petition, and cites as evidence a series of innocuous interactions with the two judges presiding  
15 over the case which do not even remotely resemble the claimed asking for “the court’s  
16 assistance...to obtain evidence on this issue” or being rebuffed by declarations that the Court “did  
17 not want to hear from Dole without actionable evidence.”

18 45. This is what Dole cites as proof of this claim:

19 i. Dole first cites a hearing held March 18, 2005 before Judge Bendix, at which,  
20 ironically, plaintiff’s counsel Mr. Miller was trying to get Dole to provide a list of the people  
21 Dole believed had worked on the banana farms. As Mr. Miller put it: “Quite frankly, if I develop  
22 credible information that one of my clients is lying to me and he’s not a worker, I want to get him  
23 out of the case early before I spend money and time whether its their or mine. I want the list  
24 now.” (Appendix, tab 84, p. 4175) In fact, Dole’s counsel was resisting providing Mr. Miller  
25 with the information he was seeking. Earlier, she had stated “There’s a huge potential for abuse  
26 if we were to give a list of every person we are aware of that was ever a banana worker on any  
27 of these Nicaraguan farms.” (Appendix, tab 84, p. 4171) When it became clear that Dole might  
28 be required to divulge some information about who they thought were actually former banana

1 workers, Doe's counsel commented rather obliquely, "What's going on behind the scenes isn't  
2 coming out. What we know is our employment records are admittedly scant. We're hunting for  
3 employment records. We're hoping to find some. We at this point have very real concerns about  
4 whether all of his clients actually worked there." (Appendix, tab 84, p. 4176)

5 ii Judge Bendix's both correct and appropriate response was: "You have no proof right  
6 now. Just a concern." She proceeded to address the mechanism of Dole producing whatever  
7 records they had to Miller Axline and Sawyer<sup>5</sup>. (Appendix, tab 84, p. 4176) That comment is  
8 the evidence proffered by Dole to prove that the trial judges in this case somehow prevented them  
9 from meeting their obligation of raising the fraud issue before or at trial: a calm response to an  
10 utterly uninformative comment by an attorney who was resisting a discovery order, at a time  
11 when Dole may indeed not yet have had any evidence of any fraud. Dole certainly did not  
12 disclose any such evidence to the court at that point.

13 iii. Dole also cites a series of even more innocuous comments from discovery conferences  
14 as "evidence" of the trial court's prevention of their efforts to obtain "actionable evidence" of  
15 the Nicaraguan fraud. (Dole cites to the trial record on appeal for these references, but did not  
16 include those transcripts in their appendix. Real Parties copied the relevant portion of the record  
17 for the Court and prepared a real parties in interest demurrer appendix, filed with the demurrer  
18 and referred to hereafter as "RA." It has been paginated, and references to "RA [number]" refer  
19 to the appendix page number in the lower right hand corner.) The hearings cited are in  
20 chronological order (the citations in the petition are jumbled) and each quantum of "evidence"  
21 of this claim by Dole is addressed in order:

22 iv Dole cites a discussion held in December, 2004 over how to best obtain copies of  
23 Nicaraguan medical records (2RT-A10, RA 2) There is nothing in this congenial discussion even  
24  
25

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26 5

27 Dole never disclosed any of the evidence it had about which plaintiffs were or were not actually  
28 former banana farmworkers before trial, although it is now clear that Dole had amassed a  
significant amount of information on that subject through interviews with hundreds of  
cooperative witnesses in Nicaragua.

1 remotely suggestive of Dole alerting the Court to Nicaraguan fraud or the Court erecting a barrier  
2 to Dole's obtaining evidence of fraud.

3 v. Next up is a discussion regarding the cost of depositions held in January, 2005 in which  
4 the parties are bargaining over whether the depositions of the plaintiffs' common law wives will  
5 be take in the United States or Nicaragua, and who will pay what expenses in connection with  
6 that and the defendant's depositions and medical examinations of plaintiffs; plaintiff's counsel  
7 had offered to encourage the women to agree to be deposed voluntarily but costs were an issue.  
8 (2RT-B4-6, 20-24, RA 3-10) There is nothing in that discussion which supports Dole's claim that  
9 Judge Bendix somehow prevented them from pursuing "actionable evidence." (The depositions  
10 were eventually taken in California.)

11 vi. Next, chronologically, is a March 3, 2006 discovery conference in which Miller,  
12 Axline and Sawyer again offered to voluntarily provide evidence which they were not required  
13 by law to disclose - tape recordings of their retained medical experts' examinations of their own  
14 clients. (3RT-G32, RA 14-15) The next record cited shows Dow's counsel, Mr. Brem,  
15 addressing the Court's in limine motion ruling on June 19, 2007 excluding evidence that lawyers  
16 advertised for plaintiffs in Nicaragua - without so much as hinting that the defendants might have  
17 evidence of solicitation of bogus plaintiffs by Nicaraguan capitans. (7RT-BB25-27, RA 17-19)

18 vii. The final "evidence" Dole offers to support its claim of exemption from the  
19 requirement to have acted on its knowledge of the fraud before trial is a mid-trial conference held  
20 September 7, 2007 discussing Dole's motion to exclude evidence of a sperm sample taken in  
21 Nicaragua on the grounds of chain of custody of the sample. (The sample in question was not  
22 that of any of these six men.) Mr. Miller pointed out that plaintiffs had shared their evidence  
23 with defendants and "They gave those slides to their expert early on in the case. They did not  
24 choose to depose the lab director. We did so after applying to this court over their opposition."  
25 (30RT 4144-4146; RA 21-23) How this is supposed to prove that the Court prevented Dole from  
26 meeting its obligation to raise the fraud issue before or at trial is entirely unexplained.

27 46. Stated simply: neither this Court nor Judge Bendix ever rejected a claim of fraud made by  
28 Dole due to a lack of "actionable evidence" or did anything to prevent Dole from pursuing and

1 presenting evidence of the Nicaraguan fraud which Dole in fact had ample evidence of, before  
2 trial. Dole's failure to do so was an entirely voluntary, strategic decision on Dole's part - exactly  
3 the kind of sandbagging that the "diligence" requirement is designed to prohibit.

4 47. Everything Dole did in September, 2008 in *Mejia* could have been done in this case before  
5 trial, as the testimony of the "John Doe" witnesses was simply a rehashing and elaboration on the  
6 statements those individuals' had given to Dole's investigators years earlier. Furthermore, while  
7 waxing poetic over the danger in Nicaragua and people's general reluctance to testify, Dole has  
8 not produced any evidence that any of the John Doe witnesses refused to sign a declaration or  
9 appear at a deposition before trial. No notation of any such refusal appear in any of the  
10 investigator's notes of any of their conversations with any of the John Doe witnesses.

11 48. Indeed, the "John Doe" process was initiated when Dole submitted [REDACTED] declarations to the  
12 Court which witnesses in Nicaragua had voluntarily signed for Dole, and was kicked off with  
13 three depositions of witnesses who agreed to appear to testify at depositions before the Court  
14 issued its October 2008 protective order. (1 Appendix, p 112.) The only evidence cited by Dole  
15 in its points and authorities in support of its claim that witnesses refused to provide them with  
16 "actionable" evidence are witness X and a declaration from its investigator, Francisco Valadez,  
17 discussing two witnesses who did speak with him - one of whom actually did sign a declaration  
18 stating that one of the *Mejia* plaintiffs had not worked at the plantation at which the witness had  
19 been a foreman.. (See petition at p. 71; Valadez declaration is at 4 Appendix 984-985.) Dole  
20 has provided no explanation for not doing that same thing it did in *Mejia* in this case, before trial.

21 49. Significantly, Dole did not appear to have any difficulty in located numerous witnesses  
22 willing to state, under oath, with no protective order issued, that to their personal knowledge  
23 various *Mejia* plaintiffs had not actually worked on banana farms. (See 1 Appendix 152  
24 exposing [REDACTED]

25 [REDACTED]  
26 [REDACTED]  
27 50. In contrast, while Dole admits to having successfully conducted over 270 interviews of over  
28 230 discrete Nicaraguans with regard to the *Tellez* plaintiffs, including Real Parties, the only



1 thing Dole has proffered in support of the claim that these six men were involved in the  
2 Nicaragua fraud is the declaration of Witness X, the truth of which Dole has elected not to  
3 investigate.

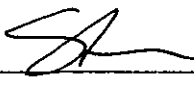
### 5 **Conclusion**

7 The procedure used to gather evidence in the *Mejia* case was inadequate to ensure reliable  
8 vetting of testimony and information provided to the Court. Indeed, it virtually invited the  
9 presentation of perjury by defendants, free of any realistic ability on the part of MAS to detect  
10 and expose the lies told by the Alliance witnesses and the other lesser witnesses who were paid  
11 by Dole to slant their remarks in a way which both encouraged the Court to continue and extend  
12 the veil of secrecy thrown over the process, and also to tend to support the claims of the Alliance  
13 witnesses. Four secret John Doe witnesses have admitted being paid for their testimony; four  
14 more are known or confidently believed by Real Parties to be members of the Alliance and  
15 therefore to have had a secret motivation for slandering all American attorneys involved in DBCP  
16 litigation in Nicaragua - a motivation which was unknown to the Court or to MAS during the  
17 John Doe deposition process. There is no way of knowing if the same is true of the rest of the  
18 secret witnesses as their identities have been kept secret from anyone who might be in a position  
19 to expose them or their stories to critical scrutiny. None of the evidence which implicates Real  
20 Parties or their previous counsel of record in any fraud is unbiased, vetted or reliable. There is  
21 no credible evidence suggesting that any fraudulent activities engaged in in Nicaragua by anyone  
22 had any impact or effect on the trial in this case, or that the judgment entered in Real Parties  
23 favor is unjust or unwarranted.

25 Defendants have concealed the extent of their knowledge of the facts relied on in this  
26 proceeding from the Court, and do not qualify for coram vobis relief because of their failure to  
27 raise their claims before trial.

1           The petitions should be denied, and the Order to Show Cause discharged, so that Real  
2 Parties may defend and enforce the judgment entered in their favor pursuant to the jury's verdict  
3 in this case.

4  
5 December 17, 2009



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6  
7 Steve Condie,  
8 Attorney for Real Parties in Interest Carlos  
9 Enrique Diaz Artiaga, Jose Anastacio Rojas  
10 Laguna, Julio Cesar Calero Gonzalez, Jose  
11 Uriel Mendoza Gutierrez, Matilde Jose  
12 Lopez Mercado, and Claudio Gonzalez.  
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Verification

I, Steve Condie, declare:

I am the attorney for real parties in interest Carlos Enrique Diaz Artiaga, Jose Anastacio Rojas Laguna, Julio Cesar Calero Gonzalez, Jose Uriel Mendoza Gutierrez, Matilde Jose Lopez Mercado, and Claudio Gonzalez herein. I have read the foregoing Return. The facts alleged in the Return which I state to be true of my own knowledge are true of my own knowledge, and I know those facts to be true. The matter which I have stated I believe to be true but have been prevented by the terms of the Court's order from obtaining evidence to prove I believe to be true. Because I have greater familiarity with the relevant facts pertaining to the various court proceedings, I, rather than real parties in interest, verify this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on December 17, 2009 at Oakland, California.



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Steve Condie