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October 1, 2014

BY ECF

Honorable Edgardo Ramos
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***Restis et al. v. American Coalition Against Nuclear Iran, et al.*****,**
No. 13-civ-5032 (ER)

Dear Judge Ramos:

I write on behalf of Defendants, American Coalition Against Nuclear Iran, Inc., Ambassador Mark Wallace, David Ibsen, and Nathan Carleton, in response to the letter of Abbe Lowell dated September 17, 2014 [ECF No. 260] and as directed by the Court in its Order dated September 22, 2014 [ECF No. 261].

With regard to the United States Government's motion to intervene for purposes of asserting the state secrets privilege, its actual assertion of that privilege, and its related motion for dismissal ("Government's Motion") [ECF Nos. 257-259], Defendants do not oppose the relief requested. The privilege the Government invokes belongs solely to the Government and it is the prerogative of the Government to decide whether and when to invoke it. Because some of Defendants are themselves former senior U.S. Government officials, they understand and respect the process necessary to protect the interests of the United States, particularly on issues involving Iran. For this reason, and in specific response to the objections raised by Mr. Lowell in his September 17 letter, Defendants have no position with regard to the level of public disclosure that may be appropriate or advisable in connection with the Government's privilege invocation.

Defendants continue to believe that the Court can and should exercise its authority to dismiss the sole remaining claim in Plaintiffs' Second Amended Complaint ("SAC") on grounds other than those set forth in the Government's Motion. The SAC should be dismissed because Mr. Restis continues to refuse to appear for deposition in the Southern District of New York, where he has elected to file this lawsuit. In filings before Magistrate Judge Fox, Defendants established that Mr. Restis is able leave Greece to appear in New York for his deposition so long as seeks permission from the Greek authorities presiding over ongoing criminal investigations into his conduct. Defendants further established that, despite his ability and opportunity to do so, and despite the Order of this Court requiring him to appear for deposition in New York, [ECF No. 126], Mr. Restis has never sought such permission, which Defendants understand (and Plaintiffs do not dispute) would ordinarily be granted by Greek authorities for purposes of participating in legal proceedings in the United States such as these. Because Plaintiffs are not

prepared to prosecute their claims fully and in good faith, this action should be dismissed. *See Sease v. Doe*, 04 CIV. 5569(LTS)(MH), 2006 WL 3210032, at *2 (S.D.N.Y. Nov. 6, 2006) (when a plaintiffs fails to appear for his duly noticed deposition, Rules 37(b)(2)(C) and 37(d) provide courts authority to sanction the plaintiff by "dismissing the action or proceeding or any part thereof.").

Dismissal is also warranted under Rule 37, because Plaintiffs have steadfastly refused to produce evidence and other discoverable materials from various email accounts used by Mr. Restis (including viresath@gmail.com, vires@attglobal.net, vr@goldenenergy.gr, and vrgroup.gr@gmail.com). Dismissal of a complaint is an appropriate sanction when, as is the case here, plaintiffs willfully fail to produce material documents. *See Int'l Mining Co. v. Allen & Co.*, 567 F. Supp. 777, 789 (S.D.N.Y. 1983).

Respectfully submitted,

/s/ Lee S. Wolosky
Lee S. Wolosky

cc: Counsel of Record (by ECF)