BOIES, SCHILLER & FLEXNER LLP

575 LEXINGTON AVENUE • 7th FLOOR • NEW YORK, NY 10022 • PH 212-446-2300 • FAX 212-446-2350

October 7, 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 (collectively, "Defendants"), in response to Plaintiffs' October 2, 2014 letter. As set forth below and in Defendants' October 1, 2014 letter, the Court has the authority to dismiss the sole remaining claim in Plaintiffs' Second Amended Complaint ("SAC"), and reasons for doing so, on grounds in addition to those set forth in the Government's Motion to Intervene.

Plaintiffs were forced to retract false allegations made to the media and to the Court.

Contrary to Plaintiffs' assertions, Defendants have never "abandoned" their published statements, "shifted gears" concerning Restis' business dealings in or with Iran, or failed "to get their facts right." Letter from Abbe Lowell to Hon. Edgardo Ramos (Oct. 2, 2014), at 1. The same cannot be said, however, about Plaintiffs' statements to the media or their allegations filed with the Court.

After UANI disclosed evidence showing that Mr. Restis and his companies were involved in business dealings in Iran, Mr. Restis and EST implemented a strategy intended to convince the world that they did not do business in Iran. They repeatedly, falsely and aggressively asserted that they "have never had dealings with the Iranian government, ministry or any Iranian people, period." *Restis Torpedoes Allegations*, TradeWinds, May 15, 2013, http://www.tradewindsnews.com/finance/317221/restis-torpedoes-allegations; *see also Victor Restis vs. UANI*, New Europe, July 17, 2013, http://www.neurope.eu/article/victor-restis-vs-uani ("New Europe: Do you have or did you ever had any business or other relation with Iran? Victor Restis: No, absolutely not."). They accused UANI of "fail[ing] to check [their] facts" and repeated their claim that "Mr. Restis does not do business with Iran nor does he sanction those who do." Letter from Theodore Margolis to Ambassador Mark Wallace (May 16, 2013). They even charged UANI with engaging in a "false and offensive worldwide campaign of defamation and disparagement" and attempted to silence UANI and infringe its exercise of its First Amendment rights first by threatening, and then by commencing, expensive, protracted litigation

if UANI did not publish "a complete and unqualified Retraction and Apology." Letter from Kerrie Campbell to Ambassador Mark Wallace (July 3, 2013). In his public statements and filings, Mr. Restis even argued that his Jewish ancestry and the legacy of the Holocaust were reasons why he would never do business in Iran. *Targeted by the USA for Business in Iran*, Ethnos, Nov. 2013, http://www.ethnos.gr/article.asp?catid=22768&subid=2&pubid=63864726; Complaint, ¶¶ 10-11; First Amended Complaint, ¶¶ 10-11.

When their efforts to squelch public debate about their Iranian business practices failed, Plaintiffs filed their complaint for defamation based on the express averment that "Mr. Restis does not do business with Iran nor does he sanction others who do." Complaint, ¶¶ 15, 79. Plaintiffs repeated those allegations when they filed their First Amended Complaint. First Amended Complaint, ¶¶ 15, 78. Such statements were false and Plaintiffs knew at the time that they made them that their statements were false.

UANI has since disclosed that on the very day Mr. Restis and EST filed this lawsuit denying that they did "business with Iran [or] sanctioned those who do," Complaint, ¶¶ 15, 79, the Elba Max, a large cargo vessel owned and operated by EST, was making a port of call at Bandar Imam Khomeini, Iran. Since filing their Complaint, EST cargo vessels have called on Iranian ports many times and continue to call on Iranian ports. In fact, according to media reports, the Helvetia One, a large cargo vessel owned and operated by EST, was at port at Bandar Imam Khomeni, Iran in the past several days. *See Evidence Obtained by JPost Shows Alleged Ongoing Violation of Iran Sanctions*, Jerusalem Post (Oct. 7, 2014).

Faced with undeniable proof that Mr. Restis and EST were doing business in Iran, Plaintiffs were forced to concede in open Court that their assertions to the media and the allegations in their Complaint and First Amended Complaint that "Mr. Restis does not do business with Iran nor does he sanction others who do" were false. H'rg Tr. before Hon. Edgardo Ramos 15:9-16:17, Feb. 14, 2014. Plaintiffs were also forced to remove the false allegations from their Second Amended Complaint. Second Amended Complaint, ¶ 9.

Mr. Restis has refused to appear in the Southern District of New York for his duly noticed deposition.

Defendants have never contested that, owing to allegations of serious criminal misconduct, "Mr. Restis remains under travel restrictions based on court proceedings in Greece – period." Letter from Abbe Lowell to Hon. Edgardo Ramos (Oct. 2, 2014), at 1. Rather, Defendants maintain – and Plaintiffs do not and cannot dispute – that Mr. Restis failed to seek permission from Greek authorities to attend his deposition, even while seeking permission to leave Greece for other purposes, and even after having been ordered to do so by Magistrate Fox. Such contumacious conduct alone, which continues to the present day, warrants dismissal of this case.

Plaintiffs rely on (1) a December 3, 2013 order from a Greek court releasing Restis from detention and imposing conditions of release (the "House Arrest Order") and (2) a February 14, 2014 order that denies a petition by Restis seeking permission to travel outside Greece to visit his mother in Germany and to attend to various unspecified business affairs (the "Denial Order"). The House Arrest Order and Denial Order do not show that Restis is prohibited from traveling to New

York for his deposition. To the contrary, they demonstrate that Restis can travel outside Greece so long as he obtains permission from the court presiding over ongoing investigations into his alleged crimes.

More particularly, the Denial Order demonstrates that Restis made a deliberate decision not to ask for permission to travel to the United States for his deposition. On January 9, 2014, Restis' deposition was noticed for February 11, 2014. Even though his deposition had been noticed on January 9, 2014 – almost one month before he filed his February 6, 2014 application to travel outside Greece – Restis did not disclose to the Greek court that a duly noticed deposition issued in the civil litigation pending before this Court commanded him to appear in New York for his deposition. Instead, he told the Greek court that he wanted permission to visit his mother in Germany. On February 11, 2014, without any protective order in place, Restis failed to appear for his deposition. And again in April 2014, after Magistrate Judge Fox awarded Defendants costs and ordered Restis to appear for his deposition in New York "at a time determined by the defendants," Restis still did not tell the Greek authorities that he had been ordered to travel to New York for his deposition and seek their permission to do so. ECF No. 126, at 6. By failing repeatedly to make the necessary disclosures to and application before the Greek courts, and by continuing falsely to use the Denial Order to claim that the rejection of his application to visit his mother proves that he is unable to travel to the United States for his deposition in these proceedings, Restis is attempting to manipulate both the United States and Greek courts to avoid coming to the United States to sit for his deposition. Such conduct evinces the willfulness and bad faith warranting dismissal under Fed. R. Civ. P. 37. *See Sease v Doe*, 04 CIV. 5569 (LTS) (MH), 2006 WL 3210032, at *3 (S.D.N.Y. Nov. 6, 2006) ("Failure to appear for a deposition satisfies the element of willfulness required for dismissal under Rule 37").[1]

For these reasons and for the reasons set forth in our October 1, 2014 letter, the Court should exercise its authority to dismiss the remaining claim in this action.

Respectfully submitted,

/s/ Lee S. Wolosky
Lee S. Wolosky

cc: Counsel of Record (by ECF)

[1] The Court should also dismiss the complaint for Plaintiffs' failure to produce material documents. In their October 2, 2014 letter, Plaintiffs concede they originally collected documents from only one of at least four different email accounts used by Mr. Restis. Despite Defendants' request that Plaintiffs search all relevant email accounts, Plaintiffs argue that they "have had no opportunity to produce such information" because of the stay on party discovery. Letter from Abbe Lowell to Hon. Edgardo Ramos (Oct. 2, 2014), at 2. Yet Plaintiffs had months before the first stay of party discovery in April 2014 to collect, review, and produce emails from Mr. Restis' email accounts. Their failure to comply with straightforward discovery requests should result in dismissal. *See, e.g.*, *Int'l Mining Co. v. Allen & Co.*, 567 F. Supp. 777, 789 (S.D.N.Y. 1983); *cf. Jolly Grp., Ltd. v. Medline Indus., Inc.*, 435 F.3d 717, 720 (7th Cir. 2006).