

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Ft. Lauderdale Division)

Case Nos. 07-22459 & 08-21063 (COHN/SELTZER)

ELOY ROJAS MAMANI, et al.,)
)
Plaintiffs,)
)
v.)
)
GONZALO DANIEL SÁNCHEZ DE)
LOZADA SÁNCHEZ BUSTAMANTE,)
)
Defendant,)
)
JOSÉ CARLOS SÁNCHEZ BERZAÍN,)
)
Defendant.)
)

**DEFENDANTS' REPLY STATEMENT OF MATERIAL FACTS IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT**

WILLIAMS & CONNOLLY LLP

Stephen D. Raber (*pro hac vice*)
Ana C. Reyes (*pro hac vice*)
James E. Gillenwater (*pro hac vice*)
Suzanne M. Salgado (*pro hac vice*)
Giselle Barcia (*pro hac vice*)
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

BECKER & POLIAKOFF, P.A.

Evan B. Berger
1 East Broward Blvd., Suite 1800
Ft. Lauderdale, FL 33301
(954) 364-6055

Dated: January 12, 2018

Attorneys for Defendants

Pursuant to Federal Rule of Civil Procedure 56, Defendants submit their Reply Statement of Material Facts. Defendants reply to Plaintiffs' responses set forth in their Counterstatement of Material Facts in Part I and to Plaintiffs' "additional material facts" in Part II.

PART I: DEFENDANTS' REPLY IN SUPPORT OF THEIR STATEMENT OF FACTS

Plaintiffs do not dispute paragraphs 1-4, 6-8, 11, 53, 75, 86, 88, 92, 97, 101, 102, 104, 107, 108, 125-27, 130, 133-35, 140, 142-45, 148, 154-58, 167, 169-70, 186-95.

5. Plaintiffs do not dispute the statements in Defendants' Statement of Material Facts ("SMF") ¶ 5. Villalobos concedes that she did not personally apply for or obtain benefits "because [she] did not have official paperwork showing [her] relationship with Lucio." Ex. K (Villalobos Decl. ¶ 6); *see also* Ex. 49 (Villalobos Dep. Tr. 12:4-8, 13:14-17).

9. Plaintiffs did not produce Ex. PPP until filing their opposition. In light of the material disputed fact it creates, Defendants withdraw Statement of Material Fact ¶ 9.

10. The record evidence is that Aguilar's mother applied for benefits for herself and other children, but not for Aguilar. *See* Ex. 24 (MAMANI0002435T, at 2438T (Ministerial Resolution No. 67/2009) (excluding Plaintiff but including his mother and other children); Ex. PPP (same). Plaintiffs do not address this Ministerial Resolution or their own Ex. PPP. Aguilar's concession that he did not ask his mother about the details of what she had done confirms that he cannot create a disputed material fact about his receipt of the compensation based on his personal knowledge. Plaintiffs offer no other evidence.

12. Plaintiffs' evidentiary objections are unfounded. As to relevance, Plaintiffs themselves have put President Sánchez de Lozada's character, political motivation, and actions—during both his first administration and second administration—at issue in this litigation. Second, Plaintiffs have not pointed to which particular statements are hearsay statements or produced any

evidentiary analysis for why the particular statements should be excluded. Nothing in SMF ¶ 12 constitutes inadmissible hearsay statements. Finally, Plaintiffs claim without explanation that “the deposition testimony fails to establish personal knowledge.” The deponent is the former Ambassador of Bolivia to the United States and served as Vice Minister of Foreign Affairs during Sánchez de Lozada’s first term. Ex. 93 (Aparicio Dep. Tr. 25:24-26:6). His testimony was based on having interacted directly with President Sánchez de Lozada in his administration.

13. Plaintiffs’ evidentiary objections are unfounded. As to relevance, Plaintiffs have put President Sánchez de Lozada’s policy goals at issue in relation to the nature and purpose of the 2003 protests. As to Plaintiffs hearsay objection: News articles may be admissible if offered for purposes other than establishing the truth of their contents. *See United States v. Michtavi*, 155 F. App’x 433, 435 (11th Cir. 2005). Defendants rely on the article to establish that it provided notice of the coca eradication program and the effect it had on the government that Evo Morales threatened to paralyze the nation in response. Plaintiffs assert that Comboni has no personal knowledge, but Comboni testified that (i) he was fully briefed on what was happening in the Chapare in his role as Minister of Finance and (ii) he had personally been in the Chapare in early January 2003. Ex. 43 (Comboni Dep. Tr. 144:23-145:12); Ex. FF (Comboni Dep. Tr. 180:14-181:6).

14. Plaintiffs do not dispute the OAS Report, which supports the first three sentences of SMF ¶ 14. Plaintiffs’ evidentiary objections are unfounded. Defendants do not mischaracterize any testimony. Defendants’ three cited deposition excerpts together support SMF ¶ 14.

15. Defendants’ SMF ¶ 15 quotes the findings of the May 2003 OAS Report. *See* Ex. 7 (May 2003 OAS Rep. at 87). Plaintiffs do not dispute those quotes. Plaintiffs cannot rely on Eastman’s testimony about the Amnesty International report both because he had testified he had

no personal knowledge of it, Ex. 94 (Eastman Dep. Tr. 90:23-91:3), and because his testimony as to its contents are hearsay.

16. Plaintiffs' cited paragraphs do not provide evidence disputing the facts in ¶ 16. Further, Plaintiffs' claim that "a decision had been made that the port would be in Chile," mischaracterizes the cited deposition testimony. At no point does Meruvia testify that such "a decision had been made." *See* Ex. NN (Meruvia Dep. Tr. 53:15-21, 54:20-56:23).

17. Plaintiffs' cited paragraphs do not provide evidence disputing the facts in ¶ 17.

18. Plaintiffs' cited paragraphs do not provide evidence disputing the facts in ¶ 18. Further, Meruvia testified that a "group" of "ministers, vice ministers" met "with Sánchez de Lozada every day starting 20 days before he left for the United States in October 2003." Ex. 55 (Meruvia Dep. Tr. 65:7-11); *see also id.* at 77:19-25. Daily meetings are "regular" meetings.

19. Plaintiffs' evidentiary objections are unfounded. As to relevance, Plaintiffs have continually put the question whether the government sufficiently "dialogued" at issue in this litigation. *See* Opp. at 4, 7. Plaintiffs misconstrue Exs. 12 through 14, which are the letters supporting the fact that "letters signed by Sánchez de Lozada" were "seeking dialogue and explaining how no decision had been made regarding the export of gas, and none would be made until consultation with the Bolivian people." SMF ¶ 19.

20. Plaintiffs' evidentiary objections as to the second sentence in ¶ 20 are unfounded. Eastman has personal knowledge, as he testified that he was in Bolivia to assist with the dialogue efforts and spoke directly to representatives of Morales and Quispe. Ex. 57 (Eastman Dep. Tr. 137:13-25). Plaintiffs' representation that Aparicio's testimony "is not related to the OAS, Mr. Quispe or Mr. Morales" is wrong on all points: the cited testimony from Aparicio, who worked at the OAS from 1997-2002, Ex. 93 (Aparicio Dep. Tr. 31:2-5), addresses President Sánchez de

Lozada’s efforts to “follow[] the OAS’s urging to engage in dialogue” and the fact that “Morales was totally opposed to this dialogue,” *id.* at 198:9-199:7, as Morales and Quispe were “conspiring . . . to overthrow the government” and “said publicly that [they] wanted dead people because . . . when people die they have a cause and can attack the government,” *id.* at 60:16-61:3, 68:18-69:3.

21. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 21.
22. Plaintiffs do not dispute the statement in SMF ¶ 22.
23. Plaintiffs do not dispute the statement in SMF ¶ 23.
24. Plaintiffs do not dispute the statement in SMF ¶ 24. President Morales’s control of the judiciary and his use of it for political ends is relevant to Defendants’ motion to exclude evidence from the Trial of Responsibilities. *See* Dkt. No. 360, at 1-6.
25. Plaintiffs do not dispute the statement in SMF ¶ 25. The State Department’s denial of the *Touhy* request is relevant to Defendants’ foreign affairs preemption argument.
26. Plaintiffs do not dispute the statement in SMF ¶ 26. The fact is relevant to admissibility challenges to articles from *La Razón*. The Bjork-James’s testimony confirms the testimony of President Sánchez de Lozada, which testimony Plaintiffs do not challenge.
27. Ex. 11, consisting of the “Three Prosecutors’ Report,” is admissible under the public records exception to the hearsay rule. It is a report by a public office setting out “matter(s) observed while under a legal duty to report” and has “factual findings from a legally authorized investigation.” Fed. R. Evid. 803(8)(A)(ii)-(iii). Plaintiffs do not contest that the prosecutors were under a legal duty to report or that the report is trustworthy. Instead, they argue that the Three Prosecutors’ Report does not fall under the public records exception because it was a “preliminary

report.” CSMF ¶ 27.¹ To the contrary, the findings were presented to the magistrate judge as the prosecutors’ final recommendation, and sent to the Chief Prosecutor, and the Committees of the House of Representatives. *See* Ex. 102 (DEF-0000523, at 524) (Ltr. from Three Pros. to Inter-American Commission on Human Rights). The Report has exceptional indicia of trustworthiness given that the prosecutors “affirmed [their] findings” even after they were subject to “all manner of intimidation, threats, insults, and attacks on [their] dignity and [their] lives” as a result of those findings. *Id.* at 525-26. Plaintiffs provide no support for the proposition that a final investigatory report is outside the Rule 803(8)(A)(iii) exception simply because subsequent litigation occurs. There is also “specific evidentiary basis for” the Report. *See id.* at 523-26 (describing ten-month investigation that led to the conclusion in the report). None of these objections address that the report is admissible under Rule 803(8)(A)(iii).²

28. Plaintiffs seek to create a dispute of fact regarding the statement in SMF ¶ 28 by a cross-reference to their entire “additional statement of facts.” This is improper. By doing so, Plaintiffs avoid their obligation of responding to the *specific* undisputed facts. Moreover, not a single paragraph in Section II identifies, by name or description, the shooter of any of the decedents. Plaintiffs’ failure even to identify a specific paragraph, much less any evidence, concedes the facts in ¶ 28. *See Alcaras v. Hatteras Yachts, Inc.*, No. 14-22115-CIV, 2015 WL

¹ *See Toole v. McClintock*, 999 F.2d 1430, 1434-35 & n.11 (11th Cir. 1993) (involving the inapposite situation in which a preliminary report made only “proposed findings” that were subject to a later final agency decision as to the final findings).

² The Three Prosecutors’ Report also falls under the residual hearsay exception. *See* Fed. R. Evid. 807. The report is signed by the three prosecutors, and submitted to both the judicial and legislative branch of government. Additionally, the prosecutors explained the evidentiary foundation for the report, which included a ten-month investigation in which the prosecutors, among other things, “conduct[ed] on-site inspections where confrontations took place.” Ex. 102 (MAMANI00523, at 524) (Ltr. from Three Pros. to IACRH). Last, the prosecutors had no reason to conduct anything but an impartial investigation.

127900, at *3 n.2 (S.D. Fla. Jan. 8, 2015) (taking as undisputed “paragraphs for which the plaintiffs generally deny, but fail to provide record evidence in opposition”).

29. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 29.

Neither Ex. 67 nor Ex. UUU identify any eyewitness who saw the person who shot any decedent.

30. Hayden is not a mind-reader. There is also no evidence as to whose head he is supposedly in.

31. Hayden acknowledged that, with respect to each purported bullet hole he inspected, he did not “take any tests to assess whether or not, in fact, it was a bullet hole.” Ex. 101 (Hayden Dep. Tr. 102:21-24). Plaintiffs have not identified any other purported physical evidence. Ex. 110 (Pls.’ Resp. Defs.’ Tangible Things Request).

32. Plaintiffs do not dispute ¶ 32 with respect to seven of the decedents. As to Marlene, Hayden, acknowledged that no determination was ever made that the bullet that was tested was the same as the bullet that struck Marlene Nancy Rojas Ramos in 2003. *See* Ex. 65 (Hayden Dep. Tr. 180:24-181:3; 181:11-15).

33. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 33.

34. Plaintiffs seek to create a dispute of fact regarding the statement in ¶ 34 by a cross-reference to their entire “additional statement of facts.” This is improper. By doing so, Plaintiffs avoid their obligation of responding to the *specific* undisputed facts: that there is a complete absence of evidence in the record on this point. *See supra* ¶ 28. No paragraph in Section II identifies any order by either Defendant to shoot any decedent or other civilian. The individuals who worked closely with Defendants in 2003 each testified unequivocally that they never heard from either Defendant any plan to kill civilians. *See, e.g.*, Ex. 56 (Aparicio Dep. Tr. 188:2-9); Ex.

46 (Bedoya Dep. Tr. 187:14-23); Ex. 86 (Comboni Dep. Tr. 133:16-134:11); Ex. 55 (Meruvia Dep. Tr. 104:13-23); Ex. 90 ([REDACTED]); Ex. 53 (Siles Dep. Tr. 184:8-18).

35. Plaintiffs do not dispute the statement in ¶ 35. Quispe's order that the military be ambushed in Warisata is relevant to the existence of an armed uprising and specifically to the death of Marlene. Ex. 11 is admissible. *See supra* ¶ 27.

36. Quispe's roadblocks created the circumstances that led to Marlene's death, as Mamani conceded. Ex. 85 (Mamani Dep. Tr. 210:7-211:2) ("I blame Felipe Quispe. . . . [T]hat blockade also was what caused the death."). Ex. 11 is admissible. *See supra* ¶ 27.

37. Ramirez's testimony speaks for itself. First, he testified extensively to the food shortages in Sorata during the hostage crisis. *See, e.g.*, Ex. 61 (Ramirez Dep. Tr. 43:16-21) (describing how he would "walk around Sorata" "looking for food, looking for something to eat, looking for a way for communication"). Ramirez's testimony is also consistent with the fact that the people in Sorata were held against their will. *See, e.g.*, Ex. 98 (Ramirez Dep. Tr. 50-51 (estimating that there were about 1,500 visitors trapped in Sorata); *id.* at 129:18-23 (testifying that because of the blockades those tourists were trapped in Sorata); *id.* at 132:13-15 (noting that he would have liked the freedom to choose to leave Sorata); *id.* at 133:15-21 (describing the risks in attempt to escape by foot and including "having an encounter" with one of the blockaders)).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] Ex. 11 is admissible. *See supra ¶ 27.*

38. Plaintiffs' evidentiary objections are unfounded. Exs. 1 through 5, the State Department Cables, are admissible under Rules 803(6) (records of regularly conducted activity) and 803(8) (public records). *See United States v. Carter*, 776 F.3d 1309, 1327 (11th Cir. 2015) ("State Department cable . . . constituted an admissible business record."); *Chavez v. Carranza*, 2006 WL 2434934, at *6 (W.D. Tenn. Aug. 15, 2006) ("cables from the United States Embassy in El Salvador" admitted into evidence), *aff'd*, 559 F.3d 486 (6th Cir. 2009); *see Union Pacific R.R. Co. v. Kirby Inland Marine, Inc.*, 296 F.3d 671, 679-80 (8th Cir. 2002). Embassy personnel, including the Ambassador, had a legal duty to report to the State Department on the ongoing developments they observed in Bolivia during the 2003 civil unrest.³ Plaintiffs argue without any specification that the Cables contain hearsay on hearsay, relying on a case in which the court ruled statements made by third parties contained in public documents were inadmissible. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1278 (11th Cir. 2009). Plaintiffs do not identify any such statements by third parties in the challenged Cables.

Further, the State Department Cables also fall under the residual hearsay exception. *See Fed. R. Evid. 807*. The Cables bear exceptional guarantees of trustworthiness: they are signed by the then-U.S. Ambassador and identified as Department of State materials. Furthermore, the State Department has no incentive to do anything but report the political climate of Bolivia fairly and

³ See, e.g., 2 Foreign Affairs Manual § 113.1(c)(10) (including as Chief of Mission duties "[o]bserving, analyzing, and on a highly selective basis, reporting significant political, economic, and societal developments occurring abroad" (emphases added)), available at <https://fam.state.gov/fam/02fam/02fam0110.html>; 22 C.F.R. § 71.1 (protection of Americans abroad), *id.* § 101.4 (economic and commercial reporting).

accurately. Last, the Cables are more probative than other evidence Defendants can procure, because the U.S. government denied Defendants' request to depose the Ambassador. *Id.*

Ex. 11 is admissible. *See supra ¶ 27.*

39. The Government's attempt to dialogue and Quispe's refusal to do so is relevant to explaining why a convoy was required to free the individuals trapped in Sorata.

40. The fact that diplomatic representatives requested that the Government act to safeguard the trapped tourists in Sorata is relevant to explaining why a convoy was required to free the individuals trapped in Sorata. Ex. 11 is admissible. *See supra ¶ 27.* As the Vice Minister of Government, Harb monitored the situation in Sorata and participated in the government's response to that situation. Ex. 95 (Harb Dep. Tr. 88:10-99:18). Harb agreed that the humanitarian convoy to free the tourists was sent in part because of pressure the government faced from foreign consulates. *See id.* at 92:22-93:11.

41. Exs. 1 and 11 are admissible. *See supra ¶¶ 27, 38.*

42. Exs. 1 and 11 are admissible. *See supra ¶¶ 27, 38.*

43. Ex. 11 is admissible. *See supra ¶ 27.* Ramirez testified that, while he was on the convoy, he heard "shots from the hill" and then saw soldiers run up the hill to use "tear gas" and then saw soldiers run to the hill with a stretcher, saying "he's injured, he's injured," referring to a wounded soldier. Ex. 98 (Ramirez Dep. Tr. 140-141). He explained that "community members were armed and very organized and acted with premeditation and aggressiveness." Ex. 107 (MAMANI0014667T) (Ramirez Police Stmt).

44. Exs. 1, 2, and 11 are admissible. *See supra ¶¶ 27, 38.*

45. Ex. 32 is the only exhibit cited in support of Defendants SMF ¶ 45. The Social Conflict Field Diary (Ex. 32), and the Military Report (Ex. 33), are admissible under Rules 803(6)

and 803(8). *Stecyk v. Bell Helicopter Textron, Inc.*, 1998 WL 744087, at *6 (E.D. Pa. Oct. 23, 1998), *aff'd*, 295 F.3d 408 (3d Cir. 2002) ("[M]ilitary report[s] . . . fall within the hearsay exception to Federal Rule of Evidence 803(8)."); *Chavez*, 2006 WL 2434934, at *6 (military intelligence report admitted under Rule 803(6) and 803(8)); *Union Pacific R.R. Co.*, 296 F.3d at 679-80. Ex. 32 is signed by Brigadier General Miguel Angel Vidaurre Noriega, Chief of the III EMO Department, and directed to the General Command of the Army; Ex. 33 is signed by Gen. Juan Véliz Herrera, the head of the Bolivian Army, and directed to the Commander in Chief of the Armed Forces. *See also* Ex. 91 [REDACTED]

[REDACTED]
[REDACTED] "The reports on military operations go from the commander in chief . . . to the President." Ex. 96 (Sánchez Berzaín Dep. Tr. 166:8-22).

Exs. 32 and 33 also fall under the residual hearsay exception. *See Fed. R. Evid. 807*. They both are signed by their authors and bear the seal of the Bolivian military. Bolstering these reliability indicia, Plaintiffs' proffered expert Allen Borrelli conceded that Ex. 32 constituted "an important source of information," Ex. 99 (Borrelli Dep. Tr. 45:9-10), and constituted "evidence of operational activities" of the military, Ex. W (Borrelli Rep. ¶ 86). He relied on Ex. 33 as evidence of the deaths of military members. Ex. W (Borrelli Rep. ¶ 183 & n.149). He further acknowledged that Ex. 32 was "a reliable reflection of what was written or opined about at the time." Ex. 99 (Borrelli Dep. Tr. 49:25-51:3). At the time the reports were authored "the Armed Forces had a functioning chain of command, system of orders and reports" and "during September and October 2003, there was a functioning system of orders/intelligence reporting in place." Ex. W (Borrelli Rep. ¶ 99). Fourteen years later, Exs. 32 and 33 are the only, and most probative record of what

was occurring on a national basis throughout the military during the relevant events. Ex. 96 (Sánchez Berzaín Dep. Tr. 174:15-19). Further, it has not been possible for Defendants to secure live testimony of soldiers who were present during the events of September and October 2003—many are still employed by the Morales-led government, and some have been given preferential positions in Morales's government, *see* Ex. 91 [REDACTED] and many fear reprisals, *see* Ex. 99 (Borrelli Dep. Tr. 87:21-89:16).

There is also a non-hearsay purpose for the admission of Exs. 32 and 33—the effect they had on President Sánchez de Lozada. He testified that he “received all of the reports [from] the military” and took them into consideration in determining how to respond to the violent protests in September and October 2003. Ex. 84 (Sánchez de Lozada Dep. Tr. 263:12-265:23 (May 15, 2015)); *see id.* 212:7-20; Ex. SS (Sánchez de Lozada Dep. Tr. 47:11-48:11 (Oct. 5, 2017)). Sánchez Berzaín testified that military support was sent to Warisata after military intelligence reports were brought to and discussed in a cabinet meeting. Ex. 96 (Sánchez Berzaín Dep. Tr. 165:6-21). When asked on what basis he believed that “the armed forces never shot first,” he replied that “[i]t’s in the reports that the commander in chief . . . submitted to the President.” *Id.* at 205:6-7. As Exs. 32 and 33 reflect a compilation of contemporaneous intelligence that affected the Government’s decision to order military involvement in September and October 2003, and their understanding of the events in making subsequent decisions, they would not be offered for the truth of the matter asserted if not admitted under a hearsay exception.

46. Exs. 1, 11, and 32 are admissible. *See supra ¶¶ 27, 38, 45.* Hayden testified that armed forces and police officers were wounded following civilian instigated armed conflicts. Ex. 65 (Hayden Dep. Tr. 194:18-195:8). Plaintiffs’ other experts agreed. Borrelli, discussing Warisata: “I’ve never denied that there were attacks on the armed forces of Bolivia.” Ex. 99

(Borreli Dep. Tr. 260:17-18; 263:13-15); Ex. 100 (Bjork-James Dep. Tr. 16-18) (“[T]here are reliable reports that people were carrying, if I remember correctly, Mauser rifles in Warisata.”).

47. Ex. 2 is admissible. *See supra ¶ 38.* Felipe Quispe’s statements are admissible as “statements against interest” and under the residual hearsay exception. Rule 804(b)(3) creates a hearsay exception for a statement against interest defined as a statement that “a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it . . . had so great a tendency to . . . expose the declarant to civil or criminal liability; and is supported by corroborating circumstances that clearly indicate its trustworthiness.” *Id.* Quispe’s statements taking credit for violent actions, and orders to ambush government soldiers clearly exposed him to “civil or criminal liability.” Furthermore, Quispe’s inculpatory statements are trustworthy because these statements are consistent with other reports about Quispe’s role in ambushing soldiers. *See Ex. 2 (FOIA-031, at 33); Ex. 100 (Bjork-James Dep. Tr. 179:14-22)* (no “reason to disagree with Felipe Quispe’s statement that he ordered armed guerrillas to ambush a convoy in Warisata”); *see United States v. Daniels*, 465 F. App’x 896, 898, 2012 WL 1192209 (11th Cir. 2012) (statement against interest trustworthy when consistent with separate testimony).

The residual hearsay exception applies when “certain guarantees of trustworthiness exist and when high degrees of probativeness and necessity are present.” *Mazer*, 556 F.3d. at 1279. As explained above, these statements are trustworthy and corroborated by other evidence.

48. That Quispe’s men threatened government officials engaged in dialogue, who were forced to flee for fear of their personal safety, is relevant to the violent nature of the protests.

49. [REDACTED]

[REDACTED]

[REDACTED]

Photographs and videos are not hearsay

because they make no assertion. See *United States v. May*, 622 F.2d 1000, 1007 (9th Cir. 1980).

[REDACTED] corroborated these sources by reference to the official records of soldiers and police officers killed and wounded by firearms in Warisata. Ex. 91 ([REDACTED]). These, too, are not hearsay. Fed. R. Evid. 803(9). [REDACTED]

50. Exs. 1, 11, and 8 are admissible. See *supra* ¶¶ 27, 38. As to Ex. 8, a photograph is not hearsay because it makes no assertion. See *May*, 622 F.2d at 1007. Bjork-James acknowledged that “there are reliable reports that people were carrying . . . Mauser rifles in Warisata,” Ex. 64 (Bjork-James Dep. Tr. 170:16-18), and that one of those sources “said former members of the Tupac Katai Guerrilla Army were armed with rifles that . . . they dusted off,” *id.* at 188:23-189:4. That source was Felipe Quispe’s *Goni’s Downfall: Journal of the “Hunger Strike”* 12 (2013). See Ex. 100 (Bjork-James Dep. Tr. 178:11-21). Bjork-James acknowledged that Quispe was an “EGTK member.” Ex. V (Bjork-James Rep. 28).

51. Ex. 34 is a ballistics report that falls under the Rule 808(3) exception for public records, and otherwise admissible under the residual hearsay exception. Plaintiffs rely on a similar ballistics report in their counter statement of material facts. *See* CSMF ¶ 32 (citing Ex. VVV).

52. The paragraphs cited, *see infra* CSMF ¶¶ 247-56, do not rebut that “Plaintiffs’ proffered experts concede the presence of armed campesinos in Warisata,” SMF ¶ 52. Hayden testified: “[T]here was an armed confrontation up in Warisata. . . . I knew the confrontation was going on up there,” Ex. 65 (Hayden Dep. Tr. 195:12-24); that a “cross-fire between the members

of the military and the persons in the hills . . . was occurring in Warisata,” *id.* at 207:5-7, and that “armed protestors or protestors were in the hill behind Mamani’s home,” *id.* at 209:11-13.

54. Plaintiffs do not dispute the information contained in SMF ¶ 54.

55. Plaintiffs concede that the Mamani house was located approximately 900 to 1000 meters away from Warisata. Mamani testified that there are hills on both sides of his home. Ex. 41 (Mamani Dep. Tr. 93:15-23).

56. Plaintiffs rely on inadmissible speculation. For example, Hayden conceded that he “did not do any calculations” regarding “bullet drop.” Ex. 101 (Hayden Dep. Tr. 61:19-24).

57. Plaintiffs’ response confirms Mamani was not at his house when the shooting occurred and did not see it occur. Thus, he has no personal knowledge as to the identity or description of the person who shot Marlene. Mamani testified that even in the hills there were larger areas that he could not see. Ex. 41 (Mamani Dep. Tr. 86:24-87:1, 132:11-15). For example, he did not see the soldiers and police get wounded. Ex. 85 (Mamani Dep. Tr. 124:21-125:2, 136:23-137:4).

58. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 58.

59. The interpreter explained the concept of chaos to Mamani, as reflected in the transcript, before he agreed that Marlene’s death could have been accidental. Ex. 41 (Mamani Dep. Tr. 86:12-13). Hayden concedes that “armed protestors . . . were in the hills behind [Marlene’s] home” and it was possible for a shooter to “be shooting into the hills and accidentally shoot [Marlene’s] house.” Ex. 65 (Hayden Dep. Tr. 209:11-210:20). When asked, regarding the bullet that struck Marlene, “It could have been an accident, right?” Hayden replied, “There is that possibility.” *Id.* at 135:13-16. As for Bjork-James, when asked, “You relied on the description that she was killed by a stray bullet in reaching your conclusion as to the attribution of her death,

correct?” he responded, “Yes.” Ex. 64 (Bjork-James Dep. Tr. 274:25-275:9). Ex. 1 is admissible.

See supra ¶ 38.

60. The cited paragraph does not provide evidence disputing the facts in ¶ 60.

61. The cited evidence references that La Paz sits in a crater. SMF paragraphs 62-74 provide the evidence to support that opposition implemented blockades in and around the city of La Paz. While Defendants contest Plaintiffs’ assertion that those illegal blockades were consistent with historical civilian protests, it is irrelevant to Plaintiffs’ claims.

62. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 62.

63. Ex. 4 is admissible. *See supra ¶ 38.*

64. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 64. Ex. 5 is admissible. *See supra ¶ 38.*

65. Ex. 2 is admissible. *See supra ¶ 38.* Bjork-James testimony speaks for itself.

66. Ex. 3 is admissible. *See supra ¶ 38.*

67. Ex. 3 is admissible. *See supra ¶ 38.*

68. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 68. Ex. 4 is admissible. *See supra ¶ 38.*

69. Plaintiffs do not contest that La Paz was totally blockaded. Defendants’ testimony supports that people were going hungry in mid-October. The fact that some people had food does not mean that others were not negatively affected by the blockade.

70. Valencia de Carvajal’s testimony speaks for itself.

71. Villalobos testified that “there was nothing to be purchased at the market” and that “it was empty.” Ex. 49 (Villalobos Dep. Tr. 35:7-17). And she later specified that they “didn’t have gas because of the blockades.” *Id.* at 42:12-17.

72. Cutipa did not state he could not remember the dates of the blockade, only that he could not remember their full *date range*. See Ex. 51 (Cutipa Dep. Tr. 69:6-70:8).

73. Plaintiffs do not dispute any of the facts contained in SMF ¶ 73. Defendants did not offer any facts relating to “food.” This is distinct from the fact that Defendants assert “[d]uring that time his wife had difficulty obtaining the goods that she sold at the fairs in El Alto.” Indeed, Plaintiff Teófilo Baltazar Cerro testified exactly to that fact. Ex. 45 (Baltazar Dep. Tr. 34:21-35:9) (“Q. She wasn’t working on October the 12th, 2003 because she couldn’t get goods to sell due to the blockades? A. Yes.”).

74. Harb testified that he had direct personal knowledge of the gas shortage based on, *inter alia*, his “meeting with drivers of gas tankers in October 2003” in his capacity of Vice Minister of Government to discuss the “need to supply gas.” Ex. 58 (Harb Dep. Tr. 52:3-15). Ex. 4 is admissible. *See supra* ¶ 38.

76. Ex. 11 is admissible. *See supra* ¶ 27. The Supreme Decree and Berindoague’s testimony speak for themselves.

77. The Supreme Decree speaks for itself. The drivers’ refusal to transport the gas absent the protections in the Supreme Decree go to the non-hearsay purpose of evidencing the government’s motivation for including those protections in the Supreme Decree.

78. Ex. 2 is admissible. *See supra* ¶ 38.

79. Ex. 32 is admissible. *See supra* ¶ 45. Bjork-James testified: “Q: You’re aware the Molotov cocktails were used protestors in 2003? A. Yes.” Ex. 64 (Bjork Dep. Tr. 195:2-8).

80. Ex. 11 is admissible. *See supra* ¶ 27. Berindoague’s testimony that the tankers were attacked is being offered for the non-hearsay purpose of its effect on him and how it affected the government’s response.

81. Ex. 11 is admissible. *See supra* ¶ 27.

82. Ex. 3 is admissible. *See supra* ¶ 38.

83. Exs. 15, 32, 33 are admissible. *See supra* ¶ 45. As to Ex. 15, police intelligence reports are admissible under FRE 803(8)(A)(ii)-(iii). FRE 803(8) applies to foreign police reports. *See Mike's Train House, Inc. v. Lionel, LLC*, 472 F.3d 398, 412 (6th Cir. 2007) (admitting foreign investigative reports under 803(8)); *Melridge, Inc. v. Heublein*, 125 B.R. 825, 829 (D. Or. 1991) (same); *United States v. Grady*, 544 F.2d 598, 604 (2d Cir. 1976) (same). In 2003, Bolivian law provided for a general bureau of intelligence of the National Police, whose purpose was to assess the country's security situation and report it to government officials. Ex. 95 (Harb Dep. Tr. 102:24-103:11). The police provided the intelligence reports daily to government officials in the Ministry of Government. *Id.* at 103:12-104:2; 104:13-25.⁴

Additionally the reports fall under the residual hearsay exception. Rule 807 permits evidence to be admitted if it has sufficient "circumstantial guarantees of trustworthiness." These reports bear several guarantees of trustworthiness including archive stamps and the signature of archive chief. The police officers had no incentive to provide false information, and, due to the international scope and prolonged nature of this action, these reports are the most reasonable way to obtain this testimony.⁵

⁴ Although "[n]o foundational testimony is required in order to admit evidence under Rule 803(8)," *United States v. Vidacak*, 553 F.3d 344, 351 (4th Cir. 2009), the Vice Minister of Government testified that the reports were done professionally, and the Department relied on them, Ex. 95 (Harb Dep. Tr. 104:3-12); see *United States v. Loyola-Dominguez*, 125 F.3d 1315, 1318 (9th Cir. 1997) ("[P]ublic records exception is one of the few hearsay exceptions that does not require a foundation. Instead, documents that fall under [this] exception 'are presumed trustworthy, placing the burden of establishing untrustworthiness on the opponent of the evidence.'").

⁵ There is also a non hearsay purpose for the admission of the police reports—the effect the reports had on President Sánchez de Lozada. The Vice Minister of Government testified that he conveyed the information he received from these reports directly to President Lozada. *See* Ex. 95 (Harb

84. Exs. 15, 32 and 33 are admissible. *See supra ¶¶ 38, 83.*

85. Ex. 11 is admissible. *See supra ¶ 27. see also* Ex. 103 (Police Intelligence Report).

87. Villalobos testified: “Q. . . [O]n 13 October 12th you didn’t have gas because of the blockades; is that right? A. Yes.” *See* Ex. 49 (Villalobos Dep. Tr. 42:12-17).

89. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 89.

90. When asked if he agreed with the assessment of the Bolivian ballistics investigator that “[i]n the absence of major technical elements it is not possible to establish the point of origin, trajectory, or angle of incidence” of the bullet that struck Ayala, Hayden responded, “I have no reason to disagree with it.” Ex. 65 (Hayden Dep. Tr. 505:14-506:2).

91. When asked, “whoever the shooter was and wherever the shooter was, you don’t know what they were thinking or doing at the time when they shot Mr. Ayala, right?” he responded, “That’s correct, I don’t know.” Ex. 65 (Hayden Dep. Tr. 526:8-17).

93. Cutipa’s testimony speaks for itself. The testimony Plaintiffs cite does not dispute the statement as it is directed to only one of Defendants’ four sources for it.

94. Plaintiffs fail to explain how Defendants mischaracterize Hayden’s testimony and the sources they cite do not dispute the statement. For example, nowhere does Cutipa say that it was light enough outside to see, and none of Hayden’s testimony makes reference to sources suggesting the presence of a sniper, much less a “very well-trained sniper.”

95. Hayden’s testimony speaks for itself. *See* Ex. 101 (Hayden Dep. Tr. 257:7-13). The testimony Plaintiffs cite does not dispute the statement.

96. Plaintiffs provide no evidentiary basis for disputing paragraph 96.

Dep. Tr. 18:7-20:9). To the extent these reports affected the government’s decision to enlist the military to keep the peace, these reports would not be offered for the truth of the matter asserted.

98. The cited testimony from Cutipa does not dispute paragraph 98; he says that soldiers went “through Juan Pablo Segundo” and “adjacent streets,” but is clear that “there were no soldiers on the street where [he] lived.” Ex. 51 (Cutipa Dep. Tr. 24:13-24:20).

99. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 99.

100. The cited testimony from Cutipa does not dispute paragraph 100; in response to the direct question, “Is it possible that the bullet that hit your sister was a stray bullet and not intended to hit her,” he answered “it could be.” Ex. 51 (Cutipa Dep. Tr. 117:2-8). Hayden’s testimony is based solely on speculation and is inadmissible. *See* Dkt. 314.

103. Defendants cite the sworn testimony of Plaintiffs’ expert.

105. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 105.

106. Hayden’s testimony speaks for itself.

109. Plaintiffs do no dispute that Carvajal was alone when he was shot. De Carvajal’s testimony speaks for itself. She testified, “Q. Did it sound like chaos outside your home in the minutes before your husband was killed? . . . A. What is chaos? Q. People running around, people shouting, loud noises. A. Yes.” Ex. 44 (De Carvajal Dep. Tr. 73:2-12).

110. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 33. Carvajal testified only that “a yellow tractor went by.” *See* Ex. 44 (De Carvajal Dep. Tr. 73:16-20) (“Q. Did the military go past your house in the minutes before your husband was shot? A. Before he was shot a yellow [tractor] went by.”).

111. The cited paragraphs do not provide evidence disputing the facts in ¶ 111. The presence of soldiers with arms does nothing to dispute Carvajal’s testimony that Caravajal could have been shot by a stray bullet. Hayden candidly testified he did not know “how you confirm” whether the shooting was accidental or intentional. Ex. 65 (Hayden Dep. Tr. 486:25-487:12).

112. General Antezana's testimony speaks for itself. Further, his testimony is not hearsay because the reports he was receiving of an armed ambush and a soldier's death are offered for the purpose of their effect on him and his instruction to Captain Belmonte and his unit to exit the "death zone" where they were ambushed and "defend themselves." Ex. 60 (Antezana Dep. Tr. 77:14-25, 142:9-25). Plaintiffs' assertion that Gen. Antezana was "not in the chain of command" is inconsistent with his testimony that he was "their natural commander" and his instructions to Cap. Belmonte. Ex. 60 (Antezana Dep. Tr. 77:14-25, 143:14).

113. Plaintiffs do not affirmatively raise any material facts to dispute the facts asserted in ¶ 113. And their statement regarding Gen. Antezana's sources of information is incorrect. The cited testimony only refers to October 13, 2003. When asked about other sources of information that day, he testified he "called to the command" regarding the situation. *See* Ex. 60 (Antezana Dep. Tr. 78:11-18). In the days prior, the troops deployed to Uni were permanently based at the Military College of which he was the Commander, and left from and returned there every day. *Id.* at 70:7-72:5, 139:5-9.

114. Plaintiffs' own declarants locate the ambush of the military and death of a young soldier near the deaths of the two decedents. *See* CSMF ¶¶ 301-07 (citing Ex. M (Limachi Decl.) and Ex. R (Sirpa Decl.) as evidence of the "incidents [that] occurred in the localit[y] of the Animas Valley area," both of which refer to the shooting of a soldier and soldiers' responsive fire in the same locations). Indeed, a police report was filed against Sirpa, who claims he was hiding in the hills near the two decedents, *id.*, accusing him of participating in the murder of the soldier that died in the ambush. Ex. 35 (MAMANI0009729, at 9747); *see* SMF ¶ 120. Gen. Antezana's testimony speaks for itself and is admissible, *see supra* ¶¶ 112-13, and relevant to explain why

troops needed to keep the road unobstructed due to its importance to the functioning of Bolivian food transportation.

115. Plaintiffs do not support their denial with any evidentiary support.

116. Plaintiffs do not support their denial with any evidentiary support.

117. Plaintiffs do not support their denial with any evidentiary support.

118. Exs. 3 and 32, and the testimony are admissible. *See supra ¶¶ 38, 45, 112.*

119. Gen. Antezana’s testimony is admissible, and Plaintiffs’ own declarants locate Gen. Antezana’s testimony regarding the ambush of the military and death of a young soldier near the deaths of the two decedents. *See supra ¶¶ 112, 114.*

120. Exs. 32 and 35 are admissible. *See supra ¶¶ 45, 83.* As to Ex. 35, entries in “a police report which result from [an] officer’s own observations and knowledge may be admitted.” *Mazer*, 556 F.3d. at 1272. Plaintiffs mischaracterize the report in CSMF ¶ 45. The report “assumes” only one detail: “that the draftee belonged to the Military College.” Ex. 35. The rest of the report, including the circumstances of the soldier’s death, is explicitly attributed to the “observation[s]” of the reporting officer—an “Official Investigator” of the Judicial Technical Police—based on witness “statements” and his “investigation.” This police report, like the others, falls under the hearsay exception for public records. *See supra ¶ 83.* Plaintiffs’ own declarants locate the ambush of the military and death of a young soldier near the deaths of the two decedents. *See supra ¶ 114.*

121. Exs. 3 and 32, and Gen. Antezana’s testimony are admissible. *See supra ¶¶ 38, 45, 112.* Plaintiffs’ own declarants locate the ambush of the military and death of a young soldier near the deaths of the two decedents. *See supra ¶ 114.*

122. Plaintiffs do not offer any evidence to dispute the material facts. Plaintiffs' assertion that Gen. Antezana was "not in the chain of command" is inconsistent with his testimony.

See supra ¶ 112.

123. Plaintiffs do not offer any evidence to dispute the material facts. Plaintiffs' assertion that Gen. Antezana was "not in the chain of command" is inconsistent with his testimony.

See supra ¶ 112.

124. Ex. 32, Gen. Antezana's testimony and video stills are admissible. *See supra ¶¶ 45, 49, 112.* Gen. Antezana clearly laid the foundation for the video. Ex. 60 (Antezana Dep. Tr. 135:8-136:24).

128. Plaintiffs do not dispute that Mamani Aguilar did not see who shot his father.

129. Plaintiffs' cited paragraphs do not provide evidence disputing the facts in ¶ 129. None of those paragraphs, or the evidence cited, even purport to establish who shot Mamani, why that person was shooting or what that person was doing or thinking.

131. When asked whether he agreed with the Bolivian ballistics investigator's conclusion that "it is not possible to establish the point of origin, trajectory, position of shooter, or angle of inciden[ce]" of the bullet that struck Mamani, Hayden responded, "I believe it's reasonable, yes." Ex. 65 (Hayden Dep. Tr. 363:5-14).

132. Hayden conceded that "I don't know what [the military] were shooting at and what was going on at the time," and that "I don't know" whether "whoever was shooting thought that they were shooting at armed protestors." Ex. 65 (Hayden Dep. Tr. 444:25-447:20).

136. Mamani Agular's testimony speaks for itself.

137. Plaintiffs do not dispute that Hayden agreed with the conclusions of a Bolivian ballistics investigator that it is not possible to establish the point of origin, trajectory, or angle of

incidence of the bullet that struck Bernabé Roque. Ex. 65 (Hayden Dep. Tr. 443:3-10 (“Q. And you agree with that conclusion, correct? A. I would, yes.”)). As for Ex. 37, Hayden agreed that “[t]his is the investigative report for Mr. Roque.” *Id.* at 448:8-11.

138. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 138. None of those paragraphs, or the evidence cited, even purport to establish who shot Roque, why that person was shooting or what that person was doing or thinking.

139. *See supra* ¶ 132.

141. Plaintiffs do not dispute SMF ¶ 141. Huanca Quispe testified, “Q. Were you aware [that] as of October 11, 2003 that the road from Animas Valley to Palca had [] been blocked for a month? A. Yes.” Ex. 88 (Huanca Quispe Dep. Tr. 25:11-14); *see id.* at 31:7-32:14 (describing, upon being read a document concerning the October 13 blockade” and asked whether it “refresh[ed] [her] memory,” she noted, “That blockade” and continued described the details surrounding of her day); *id.* at 33:10-25 (continuing to discuss the same details of the day and displaying knowledge of the blockades on that day).

146. Plaintiffs do not dispute SMF ¶ 146.

147. Plaintiffs do not dispute SMF ¶ 147. Huanca Quispe testified that there were shots coming from lots of different directions. She testified, “Q. Were there shots coming from lots of different directions? A. “Yes.” Ex. 50 (Huanca Quispe Dep. Tr. 47:2-8).

149. Plaintiffs’ own CSMF makes clear that Ovejuyo is just west of where the military was ambushed on the Palca road. *See* CSMF ¶ 313.

150. Ex. 23 is not hearsay. Fed. R. Evid. 803(8)(C) provides an exception to the hearsay rule for police reports in civil cases. “A police report which result from [an] officer’s own observations and knowledge may be admitted but statements made by third persons under no

business duty to report may not.” *Mazer*, 556 F.3d at 1278. The statement at issue—“according to other versions, your father was carrying a weapon with a group of people provoking the soldiers”—was a statement made by a police officer, not by Quispe. SMF ¶ 150.

151. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 151. None of those paragraphs, or the evidence cited, even purport to establish who shot Mr. Roque, why that person was shooting or what that person was doing or thinking.

152. When asked whether he agreed with the Bolivian ballistics investigator’s conclusion that “In the absence of major technical elements, it is not possible to establish the point of origin, trajectory, or angle of incidence” of the bullet that struck Huanca Márquez, Hayden responded, “yes, I do.” Ex. 65 (Hayden Dep. Tr. 588:20-589:2).

153. Plaintiffs fail to explain how Defendants mischaracterize Hayden’s testimony and the sources they cite do not dispute the statement. For example, Hayden conceded that he “ha[d] no way of knowing whether someone in the military in 2003 could see someone where [he] claim[s] Mr. Marquez was.” Ex. 65 (Hayden Dep. Tr. 583:17-584:2).

159. Defendants’ SMF ¶ 159 quotes the Organic Law of the Armed Forces. *See* Ex. 36 (MAMANI0009992, at 998) (Art. 36, Organic Law of the Armed Forces of Bolivia). Plaintiffs do not dispute those quotes, but instead take issue with the translation, which was their own. Whether the entity discussed is called the Commander in Chief or Command in Chief is immaterial.

160. The fact that police forced were ambushed in Warisata on September 20, 2003, is undisputed. SMF ¶¶ 44-46. Plaintiffs do not dispute that President Sánchez de Lozada issued the relevant order in response to hearing about the ambush. *See also* Ex. 84 (Sánchez de Lozada Dep. Tr. 212:7-14, 240:10-241:14) (May 15, 2015)). As to Sánchez de Lozada’s understanding that the order was prepared by counsel, Plaintiffs’ response does not dispute that he believed that occurred

because that was how these documents were prepared, and due to its formatting and who it came from. *See Ex. 39 (Sánchez de Lozada Dep. Tr. 230:5-11) (May 15, 2015)).*

161. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Defendants' ¶ 161 simply quotes, verbatim, Ex. 6—Supreme Decree No. 27209. It is admissible not only as an official government record, but also for non-hearsay purposes, *e.g.*, the fact that the Supreme Decree was issued and to explain conduct.

162. Exs. 6 and 20 are admissible for the truth of their contents as hearsay exceptions. Borrelli testified: “Q. Can you identify any order or instruction by President Sánchez de Lozada that was unauthorized *under Bolivian law?* . . . A. I do not believe I came across any order by them that I felt was outside of the remit . . . of his authority as the captain general of the Bolivian armed forces.” Ex. 63 (Borrelli Dep. Tr. 164:11-19) (emphasis added). He then later specified that he understood that “unauthorized under Bolivian law” meant that they were discussing whether or not the orders were authorized under “Bolivian law.” *Id.* 165:8-17. Borrelli also has never written a military order or government decree, and has no experience with what should be contained in one. Ex. 99 (Borrelli Dep. Tr. 104:6-25).

163. Plaintiffs do not dispute that the President had authority to issue the relevant orders. Their statement that authorization under Bolivian law “says nothing about whether the power was exercised . . . lawfully” is not supported by the cited report by their preferred expert. That their expert takes issue with the execution of such orders is immaterial.

164. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 164.

165. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 165.

166. Plaintiffs’ cited paragraphs do not provide evidence disputing the facts in ¶ 166.

None of those paragraphs contain any “evidence of any orders from Sánchez de Lozada to the

Armed Forces in September or October 2003.” Indeed, there is only one reference to his name at all. *See ¶ 240.* Plaintiffs assert that “Defendant Sánchez de Lozada then signed a written order dictated by Sánchez Berzaín, which directed General Gonzalo Rocabado, the acting Commander in Chief of the Armed Forces, to use ‘necessary force’ to restore order.” However, as explained below, *none* of the exhibits Plaintiffs cite in fact support the point that “Sánchez Berzaín ‘dictated’ the order.” *See ¶ 240* (citing Ex. OO [REDACTED] (repeatedly answering “no” when asked directly whether Sánchez Berzaín dictated the text of the letter)); Ex. RR (Sánchez de Lozada Dep. Tr. 230:12-233:12 (May 15, 2015)) (explaining that it was his assumption that the document was prepared “by a lawyer” because the President told CSB “specifically to have it prepared, referring to the fact that usually . . . almost always, any document the President sends out would be reviewed by the . . . presidential counsel and Berzaín had been the Minister and he knew the person to contact”); Ex. 20 (DEF-0000066) (Letter to Gen. Rocabado) (containing no reference to Sánchez Berzaín) Plaintiffs’ statement essentially concedes that Sánchez Berzaín himself did not have any direct control to order the Armed Forces.

168. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Defendants’ ¶ 168 simply quotes, verbatim, Ex. 72, Directive No. 27/03. It is admissible not only as an official government record, but also for non-hearsay purposes, *e.g.*, the fact that the directive was issued and to explain conduct.

171. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Defendants’ ¶ 171 simply quotes, verbatim, Exs. 73 and 74—Directive Nos. 33/03 and 34/03, respectively. They are admissible not only as an official government records, but also for non-hearsay purposes, *e.g.*, the fact that the directive was issued and to explain conduct. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection

makes no sense. Ex. 73 is admissible as a hearsay exception and therefore can be introduced for the truth of the matters asserted. *See supra ¶ 171.*

172. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Ex. 73 is admissible as a hearsay exception and therefore can be introduced for the truth of the matters asserted. *See supra ¶ 171.*

173. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Ex. 74 is admissible as a hearsay exception and therefore can be introduced for the truth of the matters asserted. *See supra ¶ 171.*

174. Plaintiffs provide no evidentiary support for their denial. Their evidentiary objection makes no sense. Defendants' ¶ 174 simply quotes, verbatim, Exs. 73 and 74—Directive Nos. 33/03 and 34/03. They are admissible not only as official government records, but also for non-hearsay purposes, *e.g.*, the fact that they were issued and to explain conduct.

175. Plaintiffs do not support their denial with any evidence or legal analysis.

176. Plaintiffs do not support their denial with any evidence. The “purpose of Mr. Borrelli’s expertise” does not change his testimony.

177. Plaintiffs seek to create a dispute of fact regarding the statement in ¶ 177 by a cross-reference to their entire “additional statement of facts.” This is improper. By doing so, Plaintiffs avoid their obligation of responding to the *specific* undisputed facts. Also, *see supra ¶¶ 197-345.*

178. For Paragraphs 178 to 183, *see supra ¶ 177.*

184. Plaintiffs offer no evidence that creates a genuine dispute of fact. They do not—and cannot—dispute that the Attorney General and prosecutors who report to Sánchez de Lozada are independent from the executive branch. That Sánchez de Lozada “request[ed]” that investigations proceed does not change that fact.

185. Plaintiffs do not dispute the statement in ¶ 185. The limited scope of Borrelli’s testimony is relevant to Plaintiffs’ command responsibility claims because they rely on those opinions in support.

196. Plaintiffs do not dispute the statement in ¶ 196. The website speaks for itself. *See* Ex. 78 (“Getting Married in Bolivia,” U.S. Embassy in Bolivia).

PART II: DEFENDANTS’ RESPONSES TO PLAINTIFFS’ ADDITIONAL MATERIAL FACTS⁶

197. The paragraph does not address decedents’ deaths or vicarious liability. Moreover, Canelas does not describe an agreed upon, “plan,” but only alleged comments, recounted without context, by Minister Berzaín. Further, he describes a conversation he claims took place in 2001, over a year before the Lozada administration began and over two years before the events at issue, and states in a conclusory manner that “Sánchez de Lozada indicated that he approved of what Sánchez Berzaín said.” *Id.* ¶ 7. There is no evidence of any plan put in place during the administration. Mr. Canelas is a member of Evo Morales’ MAS party. He has threatened to, “take revenge on Goni [President Sánchez de Lozada] and ruin his image everywhere.” Ex. 92 (Meruvia Dep. Tr. 118:15-23). A third-party deponent has testified that Canelas “is lying” about events described in his declaration. *Id.* at 121:17-122:10. Regardless, Mr. Canelas does not state that he is willing to testify to his declaration’s contents, and on this basis alone it should be rejected. In fact, Plaintiffs have not provided Defendants with notice of any of the individuals located abroad who are reasonably likely to appear for trial in Florida, despite agreement thereto in the Joint Rule 26(f) Report 5, Dkt. 229. Defendants repeatedly asked Plaintiffs to provide this information, but

⁶ Defendants do not concede statements contained in paragraphs that are not relevant to their motion for summary judgment.

they refused to do so contrary to the agreement filed in this Court. Ex. 111 (4/7/17 Reyes Ltr.); Ex. 112 (5/12/17 Reyes Ltr.); Ex. 113 (5/22/17 Schulman Ltr.).

198. The paragraph does not address decedents' deaths or vicarious liability.⁷

199. The paragraph does not address decedents' deaths or vicarious liability.

200. The paragraph does not address decedents' deaths or vicarious liability.

201. The paragraph does not address decedents' deaths or vicarious liability.

Additionally, the cited statements in the Vargas declaration—regarding what other soldiers told him—constitute inadmissible hearsay.

202. The paragraph does not address decedents' deaths or vicarious liability.

Additionally, the cited statements in the Calla's declaration—regarding what the mining executives purportedly told him—constitute inadmissible hearsay.

203. The paragraph does not address decedents' deaths or vicarious liability. Further, the Albarracín declaration does not show personal knowledge as to the purported fact that “Defendant Sánchez Berzaín himself gave instructions” for an alleged “official assault.”

204. The paragraph does not address decedents' deaths or vicarious liability. Further, none of the cited evidence supports (or even references) Plaintiffs' statement that “Defendants altered the legal framework and military code.” *See also* SMF ¶¶ 181-82 (explaining that there is no evidence that either Defendant ever saw either the Manual on the Use of Force or the Republic Plan prior to this litigation). Plaintiffs' statement—“the military had been mobilized as part of the ‘Republic Plan’”—is unsupported by the cited portions of the Flores deposition. Plaintiffs rely on inadmissible Trial of Responsibilities (“TOR”) testimony. *See* Dkt. 337.

⁷ In paragraphs where Defendants note that Plaintiffs do not address decedents' deaths or vicarious liability, Plaintiffs do not raise any genuine dispute as to a material fact. Nonetheless, as appropriate for context, Defendants provide fuller responses to certain of those paragraphs.

205. The paragraph does not address decedents' deaths or vicarious liability.

206. The paragraph does not address decedents' deaths or vicarious liability. In addition, Plaintiffs' statement that "the Manual permits counter-subversive operations against roadblocks, marches, and demonstrations" mischaracterizes the cited document, which lays out the rules of engagement for the use of force in specific "situations of necessity, and as a last resort," regardless of the setting. *See Ex. YYY* (Manual on the Use of Force at 14).

207. The paragraph does not address decedents' deaths or vicarious liability. Further, Plaintiffs mischaracterize the cited Republic Plan, which does not state anything related to calling for "maximum combat power." *See Ex. ZZZ* (Republic Plan at 32). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

208. The paragraph does not address decedents' deaths or vicarious liability. The cited documents do not support the statement that Defendants' approach to protests resulted in deaths in February 2003, when armed rebel police units fired into the Presidential Palace. *See SMF ¶¶ 14-15.* The Albarracín declaration describes a "negotiation," a "tentative agreement," and how "[t]he deal fell apart" "before the agreement had been finalized." Ex. B. (Albarracín Decl. ¶ 16). An unfinalized agreement cannot be repudiated. Plaintiffs rely on inadmissible TOR' testimony. *See* Dkt. 337.

209. The paragraph does not address decedents' deaths or vicarious liability. The declaration from Vargas does not support the cited statements.

210. The paragraph does not address decedents' deaths or vicarious liability. Further, Albarracín does not have personal knowledge regarding the military's purported tactics.

211. The paragraph does not address decedents' deaths or vicarious liability. Additionally, Plaintiffs rely on inadmissible TOR testimony. *See* Dkt. 337. Further, the Albarracín declaration provides no basis for personal knowledge of the cited statements.

212. The paragraph does not address decedents' deaths or vicarious liability.

213. Plaintiffs do not raise a genuine dispute as to any material fact. The cited documents do not support the impermissible legal conclusion that Defendant Sánchez de Lozada exercised *de jure* control over the Bolivian military on both administrative and operational issues. Plaintiffs cite no evidence for the statement that the Armed Forces received their orders from the President through the Defense Minister, and mischaracterize Sánchez de Lozada's cited testimony, which was that he was careful that *his* instructions to the military were in writing to the Commander in Chief, who reported directly to him. *See* Ex. RR (Sánchez de Lozada Dep. Tr. 155:9-11, 154:17-19). The Organic Law distinguishes between the Military High Command, the highest decision-making body of the Armed Forces, from the Commander in Chief, the highest command and decision-making body of a technical/operational nature. *See* Def. Ex. 36 (Arts. 19, 36). Regarding the President's authority to engage the military inside the country, *see* SMF ¶ 158.

214. Plaintiffs do not raise a genuine dispute as to any material fact. The cited documents do not support the impermissible legal conclusion that Defendant Sánchez Berzaín exercised *de jure* control over the Bolivian military on both administrative and operational issues. In fact, Plaintiffs' proffered expert (impermissibly) provided the legal opinion that Sánchez Berzaín *lacked* *de jure* control over the Armed Forces. *See* Ex. W (Borrelli Rpt. ¶ 85). Plaintiffs mischaracterize Supreme Decree 27209 as putting Sánchez Berzaín "in charge of operations in El Alto," when it said only that, "[t]o this end, the Ministry of Defense shall establish the mechanisms necessary for its execution." Ex. 6 (Supreme Decree 27209). The cited documents do not support

the statement that Sánchez de Lozada gave orders to the officer corps through Berzaín. *See Ex.*

OO [REDACTED]

[REDACTED] Ex. RR (Sánchez de Lozada Dep. Tr. 230:12-233:12) (stating

he asked Sánchez Berzaín to have an order prepared by legal counsel); Ex. VV (Sánchez Berzaín Dep. Tr. 122:12) (stating Sánchez de Lozada authorized him to go to Sorata).

215. Plaintiffs do not raise a genuine dispute as to any material fact. The cited source does not support that the President and Minister of Defense set “strategic priorities.”

216. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs rely on documents that do not provide a proper basis for the statements they assert. For example, Borrelli’s report does not cite any documents or explain how he has personal knowledge of the alleged fact. His report should also be excluded for the reasons stated in Defendants’ motion to exclude his testimony. *See Dkt. 334.* Likewise, the Canelas declaration does not support the broad, general statement that “[t]he contours of [Defendants’] strategic objectives were set.”

217. Defendants do not dispute that the Commander in Chief takes general orders from the President of the Republic. *See supra ¶¶ 157, 177.*

218. Undisputed. *See supra ¶ 159.*

219. Plaintiffs do not raise a genuine dispute as to any material fact. The cited sources do not support that Defendants had authority to investigate violations of military law.

220. The paragraph does not address decedents’ deaths or vicarious liability. Castaño’s testimony fails to establish personal knowledge and is mischaracterized, as he says nothing about specialized training, shooting civilians, or any “plan.” Plaintiffs mischaracterize [REDACTED]

[REDACTED] The unit [REDACTED]

was present only in Warisata, and it is undisputed that the unit was never ordered to use lethal force, and did not use any such force that day, Ex. 54 [REDACTED]

221. Plaintiffs do not raise a genuine dispute as to any material fact. The cited testimony does not support Plaintiffs' allegation that the "only" economically viable route was through Chile. No document supports that a plan to export through Chile had been finalized. *See supra ¶ 16.*

222. The paragraph does not address decedents' deaths or vicarious liability.

223. Plaintiffs do not raise a genuine dispute as to any material fact. Plaintiffs mischaracterize Harb's testimony. He testified that the government negotiated with the protestors extensively, but they continued to make new demands. *See Ex. 58 (Harb Dep. Tr. 96:9-97:19).*

224. Plaintiffs do not raise a genuine dispute as to any material fact. The cited deposition testimony does not support or discuss the characterization that the "new statute," which was passed by Congress, "increased the criminal penalties for social protests, including roadblocks."

225. The paragraph does not address decedents' deaths or vicarious liability. The cited statements in del Granado's declaration—regarding what Ministers told him—constitute inadmissible hearsay.

226. The paragraph does not address decedents' deaths or vicarious liability. Additionally, Plaintiffs rely on inadmissible TOR testimony. *See Dkt. 337.*

227. The paragraph does not address decedents' deaths or vicarious liability. Moreover, Vargas confirms that while the protests remained non-violent, the military did not shoot.

228. Undisputed.

229. Plaintiffs do not raise a genuine dispute as to any material fact. The cited statements from Smith's declaration—regarding what other tourists told him—constitutes inadmissible hearsay. Regardless of whether the blockade was effective as to all individuals, and the exact

conditions in Sorata, Plaintiffs do not dispute the material fact: that high-level government officials, including Defendants, received information that the blockade was effective and that there were serious concerns with respect to the safety of the individuals trapped in Sorata. Ex. 84 (Sánchez de Lozada Dep. Tr. 198:16-199:22, 200:14-20) (May 15, 2015); Ex. 59 (Sánchez Berzaín Dep. Tr. 115:12-117:10) (Aug. 16, 2017); Ex. 58 (Harb Dep. Tr. 87:10-88:9, 93:17-94:15).

230. Plaintiffs do not raise a genuine dispute as to any material fact. Herrera states that Minister Berzaín “*did not intervene . . .* in the operation, which was still conducted by the police commander who was in charge, assisted by the military police commander.” Ex. NNN (Herrera TOR Test. at 4) (emphasis added). The testimony confirms that the trip to Sorata “follow[ed] a visit plan previously arranged . . . to visit units and observe the conditions of barrack infrastructure and unit houses,” consistent with Sánchez Berzaín’s administrative duties as Defense Minister. *Id.* Regardless, Plaintiffs rely on inadmissible TOR testimony. *See* Dkt. 337.

231. The paragraph does not address decedents’ deaths or vicarious liability.

232. Plaintiffs do not raise a genuine dispute as to any material fact. The cited deposition testimony does not support that Sánchez Berzaín rejected a non-military alternative. The cited declaration states that *after* the military convoy had arrived to transport the tourists, local leaders spoke with Sánchez Berzaín who conveyed that there were orders to transport the tourists. *See* Ex. N (García Decl. ¶ 4). The García declaration is a sham, and should be stricken. *See infra* ¶ 315.

233. The paragraph does not address decedents’ deaths or vicarious liability. The García declaration is a sham, and should be stricken. *See infra* ¶ 315.

234. Plaintiffs do not raise a genuine dispute as to any material fact. The cited statements from Smith’s declaration—regarding what other tourists told him—constitute inadmissible hearsay. And the declarants lack personal knowledge regarding whether other people felt trapped

or actually left Sorata. *See also supra ¶ 229.* The statements in the declaration lack context. It is not feasible to walk or “hike” from Sorata to, for example, La Paz, absent extreme hardship.

235. The paragraph does not address decedents’ deaths or vicarious liability. The García declaration is a sham, and should be stricken. *See infra ¶ 315.*

236. Plaintiffs do not raise a genuine dispute as to any material fact. The cited sources do not show personal knowledge, rely on inadmissible hearsay, or do not actually support the propositions for which they are cited; nor do they support that Sánchez Berzaín “commanded the military.” According to the cited paragraphs, Sánchez Berzaín explained that “there *were* orders from the government to remove the tourists.” *See Ex. N (García ¶¶ 8-9)* (emphasis added). He allegedly told “the military officers to look for bus drivers to transport the tourists,” which is not an order or indication that he had the ability to control the military’s movements. *Id.* ¶¶ 15-17. Plaintiffs also draw improper and conclusory legal characterizations from cited documents that do not support those characterizations. The Borrelli report should be excluded. *See Dkt. 334.*

237. The paragraph does not address decedents’ deaths or vicarious liability. Moreover, the cited source not only fails to support the statement that Sánchez Berzaín reported the possibility of an ambush despite specific questions about that, but also describes how the ambush was a surprise. Ex. OO ([REDACTED] [REDACTED] [REDACTED] [REDACTED])

238. The paragraph does not address decedents’ deaths or vicarious liability.

239. The paragraph does not address decedents’ deaths or vicarious liability.

240. Plaintiffs do not raise a genuine dispute as to any material fact. The testimony simply confirms that Sánchez de Lozada spoke with Sánchez Berzaín before the order was prepared by legal counsel. *See Ex. OO [REDACTED] Ex. RR* (Sánchez de Lozada Dep. Tr. 230:12-233:12). The additional purported statement that there were no reports of guerilla activities despite the reference thereto in the order is based solely on inadmissible testimony from the TOR. And Plaintiffs present no evidence that disputes Sánchez de Lozada's testimony that he understood "guerilla" in this document to mean "people who have military training and are armed with lethal weapons," and that on that day he received reports that there had been an "armed attack of people who were trained . . . a group that had military training." Ex. 84 (Sánchez de Lozada Dep. Tr. 240:10-241:20).

241. Plaintiffs do not raise a genuine dispute as to any material fact. Directive 27/03 does not instruct any task force to carry out operations against civilian protestors. And neither the García declaration nor the Vargas declaration mention "Defendants' strategic objectives."

242. Plaintiffs do not raise a genuine dispute as to any material fact. [REDACTED]

[REDACTED] the F10/FCTC/Chachapumas did not receive an order to use, and did not use, lethal force on September 20th. Ex. 54 ([REDACTED]). No witness identifies a member of the F10 as used lethal force or any order by President Sánchez de Lozada to the F10. Sánchez de Lozada was not even aware of this group, Ex. 84 (Lozada Dep. Tr. 180:12-18), and the Special Forces was present only in Warisata, and it is undisputed that the unit was never ordered to use lethal force, and did not use any such force that day, Ex. 54 [REDACTED]

243. Plaintiffs do not raise a genuine dispute as to any material fact. Davis and García were not in Warisata on September 20th, and therefore their testimony is not relevant. The Davis declaration says nothing about soldiers, let alone soldiers shooting. Mamani had limited vision

from his home, and could not see what was happening in the hills, so if there were people in the hills shooting at the military, he could not see them. Ex. 85 (Mamani Dep. Tr. 89:4-90:6). Moreover, he was at a distance from the main road and could only hear shots, not see who was shooting. *Id.* at 69:9-25. In Vargas's declaration, he states that on September 20th, as his unit arrived in Warisata, he saw "tear gas and heard sounds of bullets or dynamite blasts or firecrackers." Ex. A (Vargas Decl. ¶ 16). Around 3:00 p.m., he saw that a member of his unit, Sergio Vargas Castro, was injured by a gunshot wound; he ultimately died. Ex. A (Vargas Decl. ¶ 16); Ex. 11 (Three Pros. Rep. at 455). Vargas's prior testimony confirms that an order to shoot occurred only after a fellow soldier had been killed and police injured: "The police were shouting, we saw injured people [including police], and the police wanted us to shoot, but no, at that point we did not have the order." Ex. 109 (Vargas TOR Test. at 10). When the order did come, it was not just to shoot anywhere, it was to shoot "to the hills," precisely where the gunfire was coming from at the police. *Id.* at 33; Ex. 1 (FOIA-025, at 27). Vargas saw "people stationed in trees," Ex. 109 (Vargas TOR Test. at 9), which corroborates military reports that individuals were shooting at the military from trees, SMF ¶ 45. And the scene was chaotic, particularly because the initial response was to use only tear gas: "there was much smoke and the [tear] gas that the police was throwing with the instructors, the wind was blowing against us, and we could not see anything. We could hear the sound of dynamite" coming from in front of the trucks. Ex. 109 (Vargas TOR Test. at 32). Soldiers initially "did not know which one of [their] comrades" had been killed because all those who had been fired on "were covered in blood." *Id.* at 10. Amidst this chaos—with smoke from tear gas clouding views; the sounds of dynamite exploding near the soldiers; protestors stationed in trees and in the hills, injured police and a dead soldier—Vargas claims that a lieutenant ordered as follows: "Anyone who moved, we were to shoot below the

belt. Anyone with dynamite or guns, we were to shoot above the belt.” Ex. A (Vargas Decl. ¶ 18).

244. The paragraph does not address decedents’ deaths or vicarious liability. The García testimony is a sham, and should be stricken. *See infra* ¶ 315. Even if considered, García did not declare that Sánchez Berzaín ordered those shots and Plaintiffs do not allege that a connection exists between his directing of where to fire weapons and the death of plaintiffs’ decedents.

245. The paragraph does not address decedents’ deaths or vicarious liability. Neither of the declarants were in Warisata, where Marlene died.

246. The paragraph does not address decedents’ deaths or vicarious liability. Neither of the declarants were in Warisata, where Marlene died.

247. Plaintiffs do not raise a genuine dispute as to any material fact. *See supra* ¶ 243.

248. Plaintiffs do not raise a genuine dispute as to any material fact. *See supra* ¶ 243. Members of the military were provided with nonlethal and lethal ammunition. Ex. 97 (Antezana Dep. Tr. 57:7-9, 65:24-66:22).

249. Plaintiffs do not raise a genuine dispute as to any material fact. The statements cited from the Vargas declaration do not support the proposition for which they are cited. *See supra* ¶ 43. His statements as to what third parties told him are inadmissible hearsay.

250. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs take out of context the hearsay statement that there was an order to “shoot anything that moved.” Vargas claims that a lieutenant ordered: “Anyone who moved, we were to shoot below the belt. Anyone with dynamite or guns, we were to shoot above the belt,” *id.* ¶ 18; *see also supra* ¶ 243.

251. The paragraph does not address decedents' deaths or vicarious liability. Rojas Mamani does not claim to have seen any advancing shooters shooting; he only "heard the shots." Ex. QQ (Mamani Dep. Tr. 67:9-10). Vargas testified that the military only advanced after police and soldiers had been injured. *See supra ¶ 243.* Hayden's report should be excluded. *See Dkt. 314.*

252. The paragraph does not address decedents' deaths or vicarious liability. Statements from the Vargas declaration regarding what other soldiers told him constitute inadmissible hearsay. The testimony fails to establish personal knowledge, the statement is hearsay communicated to Vargas—he did not witness the events and statements described.

253. The paragraph does not address decedents' deaths or vicarious liability. The statements are not supported with evidence. Hayden's report should be excluded. *See Dkt. 314. See also ¶ 243.*

254. The paragraph does not address decedents' deaths or vicarious liability. *See supra ¶¶ 243, 253.* Additionally, the statements cited from Vargas's declaration—regarding what soldiers purportedly said—constitute inadmissible hearsay. *See CSMF ¶ 254* (citing Ex. A).

255. Plaintiffs do not raise a genuine dispute as to any material fact. The cited evidence does not support the statement that Marlene was struck by a 7.62 caliber bullet. Mamani was not in at his home when Marlene was shot and did not see who shot her, his statement is therefore not based on personal knowledge. *See CSMF ¶ 54* (citing Ex. 41 (Mamani Dep. Tr. 18:24-19:6, 74:17-75:11)). And although he claims not to have seen any armed protestors in the hills, he conceded he was there for only a few minutes and that "there were whole areas" that he could not see. Ex. 85 (Mamani Dep. Tr. 86:24-87:1, 132:11-15). For example, he did not see the police and soldiers get shot in Warisata. *Id.* at 124:21-125:2, 136:23-137:4. Hayden's report should be excluded.

Dkt. 314. Plaintiffs take out of context and mischaracterize Vargas's testimony. *See supra ¶¶ 243, 253.* The cited statements from his declaration are inadmissible hearsay. *See supra ¶ 254* (citing Ex. A (Vargas Decl. ¶ 20-22)).

256. The paragraph does not address decedents' deaths or vicarious liability. The cited statements from Vargas's declaration constitute inadmissible hearsay. The cited testimony does not support the statement that two other civilians were killed that day.

257. The paragraph does not address decedents' deaths or vicarious liability.

258. The paragraph does not address decedents' deaths or vicarious liability.

259. The paragraph does not address decedents' deaths or vicarious liability.

260. The paragraph does not address decedents' deaths or vicarious liability.

261. The paragraph does not address decedents' deaths or vicarious liability. The statements cited from Vargas's declaration—regarding what other soldiers told him—constitute inadmissible hearsay.

262. The paragraph does not address decedents' deaths or vicarious liability.

263. The paragraph does not address decedents' deaths or vicarious liability.

264. The paragraph does not address decedents' deaths or vicarious liability. *See supra SMF ¶¶ 61-77.*

265. The paragraph does not address decedents' deaths or vicarious liability. The statements regarding the purported conversations that del Granado and Albarracín had with others constitute inadmissible hearsay. In addition, Defendants were not acting alone—the Government was divided as to how to proceed. *See Ex. 95 (Harb Dep. Tr. 99:20-101:8).*

266. The paragraph does not address decedents' deaths or vicarious liability.

267. The paragraph does not address decedents' deaths or vicarious liability.

268. The paragraph does not address decedents' deaths or vicarious liability.

269. The paragraph does not address decedents' deaths or vicarious liability.

270. The paragraph does not address decedents' deaths or vicarious liability. *See supra*

¶¶ 17-20, 39, 48; *see also supra* ¶ 223; *infra* ¶ 273.

271. The paragraph does not address decedents' deaths or vicarious liability. There is no evidentiary support for the statement because the TOR testimony is inadmissible, *see supra* ¶ 204. The testimony does not support the first statement of fact: Sanabria testified that he knew of no such order and, to the contrary, the Minister recommended "that the police not drop its task of protecting and guaranteeing life and public security." Ex. LLL (Sanabria TOR Test. at 1-2).

272. The paragraph does not address decedents' deaths or vicarious liability. There is no evidentiary support for the statement because the TOR testimony is inadmissible, *see supra* ¶ 204.

273. The paragraph does not address decedents' deaths or vicarious liability. The citation does not support the statement of fact; it says nothing about refusing to negotiate.

274. The paragraph does not address decedents' deaths or vicarious liability. The statement misrepresents the document: Decree 27209 did not "place Defendant Sánchez Berzaín in charge of" any operation. The Decree states that the Minister of Defense would "establish the mechanisms necessary for its execution." Ex. 6. That role is consistent with his administrative duties. Ex. 10 (DEF-0000235, at 237) (Bol. Const. art. 210).

275. The paragraph does not address decedents' deaths or vicarious liability.

276. The paragraph does not address decedents' deaths or vicarious liability. Loza states that Defendant Sánchez Berzaín answered "[t]here will be deaths, but there will also be gasoline"

in response to concerns that a tanker could “cause an explosion at a gas station,” not in response to any concerns that deaths could be caused by the military. Ex. O (Loza Decl. ¶ 21).

277. The paragraph does not address decedents’ deaths or vicarious liability. The cited testimony does not support the assertion that Sánchez Berzaín approved of any “plan” or conducted “operational planning.” It states only that he “nodded” after a General said that the General would dispatch the military to take the tankers to Senkata. Ex. O. (Loza Decl. ¶ 22).

278. The paragraph does not address decedents’ deaths or vicarious liability. The statement misrepresents the documents; nothing about Directives 33/03 or 34/04 makes any reference to Decree 27209, or “translate[s] it into operational military orders.” Exs. 73-74.

279. The paragraph does not address decedents’ deaths or vicarious liability. The statement misrepresents the cited testimony, which makes no reference to Defendants or any “strategic objectives of suppressing civilians through the use of lethal force.”

280. The paragraph does not address decedents’ deaths or vicarious liability. There is no evidentiary support because the TOR testimony is inadmissible, *see supra* ¶ 204.

281. The paragraph does not address decedents’ deaths or vicarious liability. The cited sources do not support the statement that protestors were unarmed; only that Vargas and Ortega saw no armed protestors. The statement misrepresents the cited testimony: neither Vargas’ nor Ortega’s declarations makes any reference to Defendants much less orders from Defendants, and Vargas’s testimony states that the shooting began after officers believed that “campesinos . . . were shooting, throwing grenades at [the military] and taking [their] munitions.” Ex. A (Vargas Decl. ¶ 34).

282. The paragraph does not address decedents’ deaths or vicarious liability. The cited sources do not support the statement that protestors were unarmed; only that Vargas and Castaño

saw no armed protestors. The statement misrepresents the cited testimony: Vargas testified his commanding officer ordered him to shoot only after reporting that “campesinos . . . were shooting, throwing grenades at [the military] and taking [their] munitions.” Ex. A (Vargas Decl. ¶ 34).

283. The paragraph does not address decedents’ deaths or vicarious liability. Vargas cannot speak to every soldier deployed in Senkata.

284. The paragraph does not address decedents’ deaths or vicarious liability. The cited sources do not support the statement that protestors were unarmed; only that Vargas and Castaño saw no armed protestors. Vargas testified that his commanding officer ordered him to shoot in Senkata only after reporting that “campesinos . . . were shooting, throwing grenades at [the military] and taking [their] munitions.” Ex. A (Vargas Decl. ¶ 34). Plaintiffs do not rebut the substantial evidence that armed protestors were firing at the military in Senkata in the very area where they claim Ayala was shot. SMF ¶¶ 80-81. Plaintiffs do not identify any evidence at all regarding the circumstances of death. They cite only the testimony of Luis Castaño—who “heard a gunshot” and saw an “older man wearing a yellow and green jacket” “get hit.” Ex. I (Castaño Decl. ¶ 19). Castaño did not see who shot the man or under what circumstances. *Id.* And Castaño never identifies Ayala as the man he saw shot. *See id.* There are material discrepancies between the person Castaño saw shot and Ayala, including what part of the body was shot and where the body was found on the avenue. *See* Ex. 101 (Hayden Dep. Tr. 514:15-516:11). Plaintiffs try to link the man Castaño saw with Ayala through a declaration from Sonia Villalobos, but that only provides further evidence that the man Castaño saw was *not* Mr. Ayala. Rather than “an older man,” Villalobos concedes that Ayala was only 33 years old at the time. Ex. K (Villalobos Decl. ¶ 3). Moreover, her new declaration stating that Mr. Ayala was “wearing a colorful yellow, red, and green jacket and a red cap” *id.* ¶ 4, is the first time she has provided that description in any

testimony including her testimony at the Trial of Responsibilities, Ex. 104, and her deposition here, Ex. 49 (Villalobos Dep. Tr. 34:4-7) (“It was a red hat and a jacket, colorful jacket.”).

285. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs do not rebut the substantial evidence that armed protestors were firing at the military in Senkata. SMF ¶¶ 80-81. Vargas also testified that at the same location the night before, protestors had blocked the tankers from moving by placing concrete blocks in the road and had attacked them with dynamite. *See* Ex. 109 (Vargas TOR Test. at 22).

286. The paragraph does not address decedents’ deaths or vicarious liability. Morales asserts only that she did not see protestors with guns outside her window.

287. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs do not identify any shooter of any decedent. On October 12, 2003, in the vicinity of the zone of the Río Seco, individuals armed with Mauser rifles and carbines started to attack the troops from the tops of buildings and church bell towers in this area. *See* SMF ¶¶ 83, 94-95; *see also id.* ¶ 95 (citing Ex. 65 (Hayden Dep. Tr. 236:3-238:7) (conceding that there was evidence of armed protestors on the roofs in the area around Juan Pablo II Avenue “shooting down at” the military)).

288. The paragraph does not address decedents’ deaths or vicarious liability. When Hayden interviewed Morales, she made no mention about seeing soldiers shooting at fleeing civilians. Ex. Y (Hayden Rep. ¶¶ 174-79). Morales did not agree to be deposed voluntarily and there is no indication she will testify at trial. *See* Ex. D (Morales Decl.); Ex. 113 (5/22/17 Schulman Ltr.). Morales states that *earlier* in the day she saw the military “firing on fleeing civilians,” Ex. D (Morales Decl. ¶ 14), but does not state that any civilian was hit, much less killed. From the limited view looking out her window, Morales admits that she saw hundreds of protestors in the Río Seco zone, but claims not to have seen any that were armed. *Id.* ¶¶ 6-

12. Morales cannot know if soldiers shot at what they perceived to be armed protestors. Ex. 33; SMF ¶ 83. Soria does not claim to have seen any soldiers shooting. Ex. T (Soria Decl. ¶¶ 11-13).

289. Plaintiffs do not raise a genuine dispute as to any material fact. Defendants do not dispute the first sentence concerning Mamani being shot, except that the cited evidence does not support that she was shot intentionally. Hayden's report should be excluded. Dkt. 314. Morales's declaration does not state that any soldier fired at the apartment and does not support the statement that soldiers "threatened to shoot members of Morales Mamani's family"; it says only that soldiers yelled "Why are you looking? What are you looking at?" when her father looked out the window. Ex. D (Morales Decl. ¶ 16). When Morales's mother went outside yelling "Shoot me," the soldiers merely told her to go back inside. *Id.* ¶ 26. Nor does her declaration support the statement that "[c]ivilians were not armed with guns"; she asserts only that she did not see protestors with guns outside her window. *See supra* ¶ 288. Morales's statement that her aunt said she saw a soldier shoot a civilian is inadmissible hearsay. Ex. D (Morales Decl. ¶ 14).

290. Plaintiffs do not raise a genuine dispute as to any material fact.

291. The paragraph does not address decedents' deaths or vicarious liability. The declaration of Ortega is a sham. She had previously testified as to the events described herein. When questioned about soldiers' actions, not once did she state that she witnessed a single person get shot (or hear a single racial epithet or order), *see infra* ¶ 295. *See* Ex. 105 (MAMANI003270) (Ortega TOR Test.); *see also* Ex. 108 (MAMANI0020157) (Ortega Police Stmt.). She testified at the so-called Trial of Responsibilities that the military "mostly grabbed men," that she saw "men that were grabbed" and thrown to the ground. Ex. 105 (MAMANI003270) (Ortega TOR Test. at 5). That the soldiers "beat up" a young man. *Id.* at p. 7. And that at that point she heard shooting, but was unsure if the young man was shot. *Id.* She paints the picture of a rough, but non-lethal

military force. Her declaration says the opposite: She now swears, over a decade later and with shocking clarity, that near the Río Seco bridge soldiers shot “in every direction,” Ex. P (Ortega Dec. ¶ 19), that she personally saw an older soldier shoot a man near a kiosk, *id.* ¶ 21, a soldier shoot a younger soldier who refused to shoot at civilians, *id.* ¶ 26, and that soldiers were screaming racial epithets at her and other civilians, *id.* ¶ 37. Ortega says she could not elaborate about what she saw in Río Seco during the TOR. *Id.* ¶ 46. But during the TOR, she was asked several times about military shootings; she was asked directly: “Did you see anything on the Río Seco [bridge]?” Ex. 105 (MAMANI0003270) (Ortega TOR Test. at 10). She responded only: “there were military, the military were already stationed,” and not the alleged shootings she describes today. *Id.* She also did not mention anything about shootings in the police report she filed just three weeks after the events. Ex. 108 (MAMANI0020157) (Ortega Police Stmt.). *See Spadaro v. City of Miramar*, No. 11-61607-CIV, 2013 WL 495780 (S.D. Fla. Feb. 7, 2013) (excluding statement that conflicted with prior sworn testimony as inadmissible hearsay at summary judgment).

292. The paragraph does not address decedents’ deaths or vicarious liability. The cited statements in Zabala’s declarations do not provide evidentiary support for the paragraph because they constitute inadmissible hearsay. The cited sources do not support the assertion that the military’s “tactics” were “unlawful.” Zabala’s declaration does not support the assertion that “not a single Bolivian soldier was killed”; it states only that he was unaware of any soldiers killed. Ex. U (Zabala Decl. ¶ 19). Ortega’s declaration cannot be considered. *See supra* ¶ 291.

293. The paragraph does not address decedents’ deaths or vicarious liability. The cited statements in Ortega’s declaration are inadmissible hearsay. Ortega’s declaration cannot be considered. *See supra* ¶ 291.

294. The paragraph does not address decedents' deaths or vicarious liability. Ortega's declaration cannot be considered because it is a sham. *See supra ¶ 291.* The cited statements in Ortega's and Vargas's declarations are inadmissible hearsay.

295. The paragraph does not address decedents' deaths or vicarious liability. Ortega's declaration cannot be considered. *See supra ¶ 291.* The cited statements in Ortega's declaration are inadmissible hearsay.

296. Plaintiffs do not raise a genuine dispute as to any material fact. Defendants do not dispute the first sentence concerning Carvajal being shot, but the cited evidence does not support that he was shot intentionally. Hayden's report should be excluded. Dkt. 314. None of the cited sources support the statement that the military "was shooting in that area of the avenue at the time of Marcelino's death." Carvajal's wife did not see any soldiers shooting. Ex. 44 (Valencia de Carvajal Dep. Tr. 82:15-22). The cited portions of Zabala's declaration, paragraphs 15 and 17, say nothing of the kind; paragraph 16 says only that he heard gunshots and saw wounded individuals. Ex. U (Zabala Decl.). Mr. Zabala also says that he saw a Red Cross ambulance smashed by civilians because soldiers were inside and saw civilians beating a soldier behind the ambulance. *Id. ¶ 16.* Likewise, the cited paragraphs from the Soria declaration say only that he "heard shots." Ex. T (Soria Decl. ¶¶ 7, 10). Carvajal's wife acknowledged that she did not see the shots come in and no bullets were found in the house, so she has no way of knowing if the holes were made by bullets. Ex. UU (Carvajal Dep. Tr. 78:13-18). And photographs of two holes in a wall in 2006, Pls.' Ex. EEEE, prove nothing because no testing was done to determine they were caused by bullets fired in 2003. Ex. 101 (Hayden Rep. 462:10-463:24). Worse yet, Mr. Hayden admits he never even saw the holes when he visited the house. Ex. 65 (Hayden Dep Tr. 488:2-11).

297. Plaintiffs do not raise a genuine dispute as to any material fact. Plaintiffs do not cite to any admissible source supporting the statement that “the military fatally shot Decedent Roxana Apaza Cutipa.” Hayden’s report should be excluded. Dkt. 314. Neither Hernán Apaza Cutipa nor Guzmán Apaza Cutipa claim to have seen the military shoot Roxana. Hernán testified that he did not see his sister get shot, and he even acknowledged she could have been hit by a stray bullet. *See* SMF ¶ 100; *see also* Ex. 89 (Cutipa Dep. Tr. 18:4-6, 110:20-111:3). As he said, there were “lots of people on the street” near the soldiers “that could have been hit instead [of his sister], yet they were not shot.” Ex. 51 (Cutipa Dep. Tr. 117:8-25). Separately, Plaintiffs offer, but cannot rely on, the hearsay declaration of Roxana’s brother, Guzmán, because he has been denied a visa to the United States and cannot testify at trial. *See* Ex. 113 (5/22/17 Schulman Ltr. at 2). He admits in his declaration, “I did not see who shot Roxana.” Ex. C (Cutipa Decl. ¶ 20). He says nothing about who shot Roxana or why, *i.e.*, deliberately, accidentally, or at a perceived armed protestor on the roof. He also does not specify, regarding these allegedly shooting soldiers, whether they were shooting towards the building he and Roxana were in. *See* Ex. C (Cutipa Decl. ¶¶ 18-20). He does not state that he saw individuals who appeared to be snipers or any soldiers even using sniper scopes. *See id.* As Hayden acknowledged the evidence shows “that there were armed protestors in the area” “on the roofs of buildings” “shooting down” at the military. *See supra* ¶ 287; SMF ¶¶ 83, 94-95; *see also id.* ¶ 95 (citing Ex. 65 (Hayden Dep. Tr. 236:3-238:7)).

298. Plaintiffs do not raise a genuine dispute as to any material fact. None of the statements are supported by the cited sources. Cutipa does not claim to have seen soldiers firing on civilians. Hayden admits that there was no “bullet-hole evidence” on the rooftop where Roxana was struck when he inspected it—he did not see any holes, much less test or measure any. Ex. 101 (Hayden Dep. Tr. 284:11-285:5, 312:20-23) (“I did not see the bullet hole, so I cannot make [any]

determination.”). His testimony is not admissible. *See supra* Dkt. 314. Cutipa does not state that it was still light enough outside to see. Ex. C (Cutipa Decl. ¶ 18). SMF ¶ 94

299. The paragraph does not address decedents’ deaths or vicarious liability. The cited source is inadmissible, *see supra* ¶ 204.

300. The paragraph does not address decedents’ deaths or vicarious liability. Additionally, the cited sources do not support the statements in the paragraph. The evidence instead overwhelmingly supports that President Sánchez de Lozada was continuing extensive efforts to dialogue. *See* SMF ¶¶ 17-20.

301. The paragraph does not address decedents’ deaths or vicarious liability. The cited sources do not support the statement that soldiers “continued to shoot indiscriminately.” Rather, they suggest that soldiers only began shooting when a soldier was killed. Ex. M (Limachi Decl. ¶¶ 10-11) (“I was talking to my friend and fellow soldier, Edgar Lecoña, when I saw him fall down. . . A bullet had entered his eye and exited his helmet in the back.”); Ex. R (Sirpa Decl. ¶ 25) (“The officer asked me if I knew who had killed his soldier.”).

302. The paragraph does not address decedents’ deaths or vicarious liability. The statement that “[t]he protestors . . . were unarmed” is unsupported. Sirpa says only, “I did not see any civilian with a gun that day.” Ex. R (Sirpa Decl. ¶ 8). That a soldier was shot on the road below Sirpa is undisputed. *See supra* ¶ 301; CSMF ¶ 303. A police report was filed on October 13 against Sirpa and other protestors accusing them of murdering the soldier and quoting Sirpa as “stat[ing] that . . . one person carried a firearm (Mauser rifle).” Ex. 35 (MAMANI0009729, at 9747) (Police Rep.); *see* SMF ¶ 120.

303. The paragraph does not address decedents’ deaths or vicarious liability. Moreover, the shooter is not unknown. A police report was filed on October 13 against Sirpa and other

protestors accusing them of murdering the soldier and quoting Sirpa as “stat[ing] that . . . one person carried a firearm (Mauser rifle).”. Ex. 35 (MAMANI0009729, at 9747) (Police Rep.); *see SMF ¶ 120.*

304. The paragraph does not address decedents’ deaths or vicarious liability. The declarations submitted by Plaintiffs confirm that soldiers only began shooting after a soldier was killed. *See supra ¶ 303.* Limachi testified, “I was talking to my friend and fellow soldier, Edgar Lecoña, when I saw him fall down. . . . A bullet had entered his eye and exited his helmet in the back.” Ex. M (Limachi Decl. ¶¶ 10-11). It was only after this that the unit changed to lethal ammunition. *Id.* ¶ 13. The declarations submitted by Plaintiffs further confirm that, for days leading up to the morning of October 13, “[e]verything was peaceful” and “calm,” *i.e.*, no shots at or by the military, along the road as a military convoy travelled west from Uni towards Chasquipampa. *Id.* ¶¶ 5-6. But then the convoy was forced to stop at a ditch protestors had dug in the road, where they were attacked by campesinos and heard a violent explosion. *Id.* ¶ 8. Even then, the soldiers merely “took positions in a single file, with [their] rifles to scare the campesinos.” *Id.* ¶ 9. It was at that point that the soldier was shot through the head and killed. *Id.* ¶ 10. Soldiers *believed* that shots had come from the hills and shot into the hills in response to that belief. *See id.* ¶ 18 (“Officers said that the people were shooting from the hills.”); Ex. R (Sirpa Decl. ¶ 28) (“The soldiers again asked me who had killed their soldier.”). Additionally, the statement that “[o]fficers ordered [soldiers] to change . . . to lethal ammunition [and] . . . to ‘shoot anything that move[d]’” is inadmissible hearsay. Ex. M (Limachi Decl. ¶ 13).

305. The paragraph does not address decedents’ deaths or vicarious liability. The paragraph is not supported by evidence. Plaintiffs concede that a soldier had just been shot through the head and killed. *See supra ¶¶ 303-04.* The declaration cited does not support the statement

that soldiers “were not being attacked.” *See* Ex. R (Sirpa Decl. ¶ 25) (“The officer asked me if I knew who had killed his soldier.”); *id.* at 12 (“Some people were throwing stones at the soldiers.”). Sirpa was accused of being involved in the murder of a soldier that day. *See supra* ¶¶ 302-04. The declarations also show that soldiers shot into the air so as *not* to hit civilians, but rather to “frighten them.” Ex. M (Limachi Decl. ¶ 27). Although soldiers pursued campesinos into the hills, they passed unarmed civilians and did not shoot them; rather, once they found out that the “campesinos had already escaped”—*i.e.*, the ones they believed had attacked them—they retreated and “helped . . . injured civilian[s] climb down the hill.” *Id.* ¶ 23.

306. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs’ concede that any order to shoot came after a soldier was shot through the head and killed. *See supra* ¶¶ 303-04. The statement that officers told the soldiers to climb into the hills and to shoot at civilians, ordering “Whatever head you see, you need to shoot” is inadmissible hearsay. Ex. M (Limachi Decl. ¶ 20).

307. The paragraph does not address decedents’ deaths or vicarious liability. Moreover, the cited declarations establish that soldiers “helped . . . injured civilian[s] climb down the hill.” Ex. M (Limachi Decl. ¶ 23); *see also* Ex. R (Sirpa Decl. ¶¶ 21, 26) (“I approached the soldiers and put my hands up The soldiers made me walk with my hands behind my head, while four soldiers carried Fausto.”). Additionally, the cited declarations do not support the statement that civilians were “tortured.” The statement that soldiers called civilians “fucking Indians” is inadmissible hearsay. Ex. R (Sirpa. Decl. ¶ 40).

308. Plaintiffs do not raise a genuine dispute as to any material fact. The cited deposition testimony does not support the statement that Gonzalo Mamani Aguilar witnessed the shooting of either his father or Bernabé Roque. He said he did not “actually see the bullet hit [his] father”;

rather he “only heard him when he cried out.” Ex. 47 (Aguilar Dep. Tr. 115:21-24). He did not see Jacinto Bernabé get shot; he “just saw when the blood came out.” *Id.* at 91:4-9. In neither instance did he see who shot the decedents. *Id.* at 91:23-25; Ex. 87 (Aguilar Dep. Tr. 110:2-5).

309. Plaintiffs do not raise a genuine dispute as to any material fact.

310. Plaintiffs do not raise a genuine dispute as to any material fact.

311. Plaintiffs do not raise a genuine dispute as to any material fact. The cited deposition testimony does not support the statement that Gonzalo Mamani Aguilar witnessed his father get hit by a bullet. He said he did not “actually see the bullet hit [his] father”; rather he “only heard him when he cried out.” Ex. 47 (Aguilar Dep. Tr. 115:21-24).

312. Plaintiffs do not raise a genuine dispute as to any material fact. The cited deposition testimony does not support the statement that Gonzalo Mamani Aguilar witnessed the shooting of Bernabé Roque. *Id.* at 91:4-9. Nor does it support the statement that he “witnessed the bullet exiting Bernabé Roque’s body”; his testimony refers to the blood coming out of Bernabé’s wound. *Id.* 92:14-18. In neither instance did he see who shot the decedents. *Id.* at 91:23-25; 110:2-5. Mamani Aguilar’s statement that he is sure soldiers were firing towards him is not based on personal knowledge and is inadmissibly speculative. He acknowledges “the gunfire began” before he positioned himself by Bernabé Roque, *see CSMF ¶ 309*; he thus would not have observed the soldier getting shot and that soldiers were shooting in reaction to that shot. *See supra, ¶¶ 303-04.*

313. Plaintiffs do not raise a genuine dispute as to any material fact. Moreover, Plaintiffs acknowledge that the soldiers referenced in the paragraph are the same soldiers who had just been the victims of a lethal ambush in the Animas Valley. *See supra, ¶¶ 303-04.* The declarations also show (i) that the soldiers remained under attack as they passed through Ovejuyo, *see Ex. M (Limachi Decl. ¶¶ 27-28)* (“People threw rocks and bottles from their houses as we passed” and

“hurled objects at us”), (ii) that any orders to shoot followed these attacks and were only to shoot suspected attackers, and (ii) that the “majority” of shots were fired “into the air” “instead of at civilians,” *see id.* ¶¶ 27-31. The cited testimony also discusses a large crowd of protestors burning a military truck. *Id.* ¶ 30. The statements regarding orders to shoot are also inadmissible hearsay.

314. Plaintiffs do not raise a genuine dispute as to any material fact. Plaintiffs cite no admissible testimony supporting the statements that “the military shot and killed Decedent Raúl Ramón Huanca Márquez” or “soldiers intentionally shot Huanca Márquez in the abdomen, and continued firing at other civilians, leaving him to die in the street.” Although Pari identifies Márquez by name, he provides no basis for *how* he knew the man was Márquez. Plaintiffs’ citation to their own interrogatory responses for the proposition that Pari could identify Márquez because he “later helped transport Mr. Huanca Márquez’s body to a nearby church,” is not evidence, and Pari’s declaration contradicts it, stating that after he saw the man fall he “did not go out to help [him].” Ex. Q (Pari Decl. ¶ 15). In fact, Hayden—who interviewed Pari—confirmed that Pari did not identify or describe the man he saw shot at all. Ex. 101 (Hayden Dep. Tr. 544:6-546:4). Pari states only that he “heard what sounded to me like a rifle shot and I saw Huanca [Márquez] grab the pole and fall backwards.” Ex. Q (Pari Decl. ¶ 13). He did not actually see a soldier fire at the man he saw fall down, did not see any soldiers aim at that man, and did not see that man get hit by a bullet. *Id.* Hayden’s opinion is inadmissible, and based entirely on Pari’s account. Ex. 101 (Hayden Dep. Tr. 533:10-535:12). The cited sources also do not support the statement that “soldiers marched through the area, indiscriminately firing”; these soldiers had been, and continued to be, under attack. *See supra* ¶ 313.

315. Plaintiffs do not raise a genuine dispute as to any material fact. None of the eleven sources cited support the statement that “unarmed civilians were repeatedly targeted.” The cited

testimony of (i) Ramos Mamani, (ii) President Sánchez de Lozada, (iii) Zabala, (iv) Soria, and (v) Villalobos says nothing about seeing unarmed civilians targeted. *Id.* Castaño (Senkata), Pari (Southern Zone), Aguilar (Southern Zone) and Sirpa (Southern Zone) were in areas where shooting occurred only after attacks on the military. *See supra ¶¶ 284, 303-04.* Smith and García only reference shootings on the road between Sorata to Warisata, an area where no decedents were shot and where attacks on the military were reported. SMF ¶ 43. Neither declarant establishes that any civilians fired at were unarmed. Smith states that he saw a “soldier or military policeman . . . fire at a group of individuals up the hillside” and that he “did not hear shooting from the mountain or perceive any particular threat,” but his hearing and vision were limited by the fact that he was inside of a bus. Ex. S (Smith Decl. ¶¶ 18-20). García states that he saw soldiers firing from a helicopter, Ex. N (García Decl. ¶ 22), but does not say what they were shooting at. He also states that he saw soldiers shooting at people in the hills, but does not state that he could see whether those people were unarmed. *Id.* ¶¶ 24-25.

In any event, the declaration of García is a sham, and should not be considered, as he gave a sworn statement in June 2004 to Bolivian police investigators regarding the events of Sorata that contrasts starkly with his declaration thirteen years later. *See Ex. 106 (MAMANI0014568) (García Police Stmt.).* His 2017 declaration claims that he followed the convoy after it left Sorata “in a car with some of the other leaders in the community” for the inexplicable purpose of “*help[ing]* escort the tourists” (who were already escorted by the police and military). Ex. N (García Decl. ¶ 20). While following the convoy, he now states that he saw: (i) soldiers shooting from the helicopter, (ii) soldiers shooting from military trucks at people in the hills, (iii) bullets from the helicopter and the trucks “passing by [him],” (iv) bullet shells, which he later collected, (v) an elderly man named Majes who had been shot up in the hills, where García claims he climbed, (vi) a young man who

had been shot on the hill, (vii) an ambulance that he called to pick up the wounded and (viii) “roughly 100” other people in the hills, with whom he “had a meeting.” *Id.* ¶¶ 20-28. In his sworn statement to the police in 2004, however, he mentions precisely *none* of these things. Ex. 106 (MAMANI0014568) (García Police Stmt.). He never mentioned seeing soldiers shooting at all, much less out of a helicopter. *Id.* Although he stated that he “kn[e]w about” people that had been wounded, such as a man named Curaca, he did not claim to have seen anyone wounded. *Id.* And, far from following the convoy after the helicopter took off, he stated that he “returned home.” *Id.* See *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1293 (11th Cir. 2012) (“The possibility that the declarant might change his sworn [] testimony . . . only to a suggestion that admissible evidence might be found in the future, which is not enough to defeat a motion for summary judgment.”)

316. The paragraph does not address decedents’ deaths or vicarious liability. The paragraph takes the cited evidence out of context and it does not support their opposition. Vargas declared that his unit received only an order to respond to an armed attack on police and after a soldier had been mortally wounded. Ex. A (Vargas Decl. ¶¶ 16-17). Limachi declared that his unit was ordered to change to lethal ammunition only as a defensive measure after he saw “[a] bullet had entered [a soldier’s] eye and exited his helmet in the back.” Ex. M (Limachi Decl. ¶¶ 10-13). Paragraph 7 of Davis’s declaration discusses the roadblock in Sorata and says nothing about officers giving orders to shoot unarmed civilians there. Davis claims to have heard such an order in San Isidro, not in any area where any of Plaintiffs’ decedents’ died. Ex. J (Davis Decl. ¶ 13). Ortega’s declaration should be stricken because it is a sham. *See supra* ¶ 291. Moreover, if Plaintiffs’ concede Ortega—who claims to have been near the Río Seco bridge, Ex. P (Ortega Decl. ¶ 18)—was in the area where decedents were killed, then they also concede that there were

armed protestors and a dead soldier in those areas. SMF ¶¶ 83-84. All of the declarants' statements as to orders given by third parties is also inadmissible hearsay.

317. The paragraph does not address decedents' deaths or vicarious liability. None of the twelve sources cited, except the declaration of Ortega, state that the declarant witnessed soldiers shoot unarmed civilians. Ortega's declaration cannot be considered. *See supra* ¶ 291. Moreover, if Plaintiffs' concede Ortega was in the area where decedents were killed, then they also concede that there were armed protestors and a dead soldier in those areas. *See supra* ¶ 316. To the extent the declarations are cited for what a third party told the declarant they saw, that is inadmissible hearsay.

318. The paragraph does not address decedents' deaths or vicarious liability. None of the sources cited suggested that Defendants had knowledge of any civilian deaths caused by soldiers. The cited testimony of General Claros Flores does not state that Defendants had knowledge of civilian deaths, but it does state that the military was "constantly harassed" with "[f]irearms [and] dynamite" and "suffered casualties." Ex. JJJ (Roberto Claros Flores Testimony at 4). "Paragraphs 32-33 of Albarracín's declaration reference a meeting with President Sánchez de Lozada that occurred on October 11 and do not mention a discussion of any civilians that had died. The only decedent who had died prior to that date was Marlene Nancy Rojas Ramos, who had been struck by a bullet in Warisata where the undisputed evidence shows that civilians carried out an armed attack on the police and military. *See* SMF ¶¶ 43-50. Paragraph 38 of Albarracín's declaration states that *he* learned of other deaths "from the media" on October 12, but does not state that he discussed those deaths with Defendants. Likewise, the cited declarations from del Granado and Calla state only that they learned of deaths from the media, not that they discussed those deaths with Defendants. The testimony of Berindoague refers only to his knowledge of

Marlene's death following the armed ambush in Warisata. President Sánchez de Lozada's cited testimony refers only to what newspapers he read. None of the sources cited provide evidentiary support for any "plan to suppress civilian opposition."

319. The paragraph does not address decedents' deaths or vicarious liability. Additionally, both directives, Exs. 73 and 74, include language to use only the force "necessary" to "restore public order and respect for the rule of law." Borrelli has no basis for his opinion that additional instructions are required and he is not qualified to testify to that effect. *See Motion To Exclude at 14-15, Dkt. 339-1.* Moreover, the testimony of Berindoague is taken out of context; he was discussing the risks in connection with bringing fuel from La Paz to Senkata, not in connection with any military directives. Ex. 48 (Berindoague Dep. Tr. 172:25-173:25).

320. The paragraph does not address decedents' deaths or vicarious liability. The source cited does not support the statement. Vargas states that *he* never received such warnings. However, Col. Flores testified that soldiers in the Bolivian military are trained on the rules of engagement, which include avoiding civilian casualties by (1) using nonviolent means of persuasion, like a verbal warning; (2) using nonlethal means like tear gas; (3) firing nonlethal ammunition in the air; (4) firing nonlethal ammunition towards the ground; (5) firing nonlethal ammunition from the waist down. Ex. 91 (Flores Dep. Tr. 101:21-122:3; 162:19-166:9).

321. The paragraph does not address decedents' deaths or vicarious liability. And the paragraph cites to no admissible evidence in support of the assertion that a conscript was executed by a superior officer. Limachi nowhere states that. Ortega's cannot be considered. *See supra ¶ 291.* Vargas's testimony as to what he heard over a radio is inadmissible hearsay.

322. The paragraph does not address decedents' deaths or vicarious liability. Additionally, the paragraph cites to no admissible evidence in support of the assertion that

“soldiers aimed at windows and shot at civilians looking out of windows.” Cutipas’s declaration says no such thing. Vargas’s declaration states that soldiers shot “at house windows,” but only after a fellow soldier had been killed in Warisata and not pursuant to officers’ orders to shoot at residents’ windows. Ex. A (Vargas Decl. ¶¶ 16-18). Sirpa is recounting inadmissible hearsay. Ex. R (Sirpa Decl. ¶ 32). Ortega’s declaration is a sham, and should be stricken. *See supra*, ¶ 291.

323. The paragraph does not address decedents’ deaths or vicarious liability. Moreover, none of the sources cited support the proposition that Mauser rifles cannot fire 7.62 caliber bullets.

324. The paragraph does not address decedents’ deaths or vicarious liability. Plaintiffs cite no evidence for the proposition that “soldiers also shot out of helicopters *at unarmed civilians*.” They cite only García’s declaration, who says that “soldiers in black were shooting out the side doors of the helicopter.” Ex. N (García Decl. ¶ 22). In any event, the testimony of García is a sham, and should be stricken, as he gave sworn testimony in Bolivia regarding the events of Sorata and never mentioned seeing soldiers shooting out of a helicopter. *See supra* ¶ 315. To the contrary, he declared that once the helicopter lifted off, he “returned home.” *Id.* Borrelli’s statement is thus an unsupported, impermissible, and irrelevant legal conclusion.

325. The paragraph does not address decedents’ deaths or vicarious liability. Vargas declared that he saw soldiers beating a civilian only after a soldier had been mortally wounded. Ex. A (Vargas Decl. ¶¶ 16-17, 23). Limachi declared that he saw civilians beaten only after a soldier had been shot and killed. Ex. M (Limachi Decl. ¶¶ 10-13, 23). Sirpa says he was hit by soldiers after they asked him “who had killed their soldier.” Ex. R (Sirpa Decl. ¶ 28). Ortega’s declaration is a sham, and should be stricken. *See supra*, ¶ 291. The cited statements regarding overheard orders are inadmissible hearsay.

326. The paragraph does not address decedents’ deaths or vicarious liability.

327. The paragraph does not address decedents' deaths or vicarious liability.

328. The paragraph does not address decedents' deaths or vicarious liability. That some individuals did not seem armed civilians does not mean there were no armed civilians. Plaintiffs' experts concede that there were armed civilians in Warisata. *See* SMF ¶ 52. Other evidence confirms that admission. *See* SMF ¶¶ 49-51.

329. The paragraph does not address decedents' deaths or vicarious liability. That some individuals did not seem armed civilians does not mean there were no armed civilians. Plaintiffs' experts concede that there were armed civilians in Warisata. *See* SMF ¶ 52. Other evidence confirms that admission. *See* SMF ¶¶ 49-51.

330. The paragraph does not address decedents' deaths or vicarious liability. That some individuals did not seem armed civilians does not mean there were no armed civilians. Plaintiffs' experts concede that there were armed civilians in Warisata. *See* SMF ¶ 52. Other evidence confirms that admission. *See* SMF ¶¶ 49-51.

331. The paragraph does not address decedents' deaths or vicarious liability. There is no evidentiary support for the statement insofar as it relies on inadmissible TOR testimony, *see supra* ¶ 204.

332. The paragraph does not address decedents' deaths or vicarious liability. Moreover, del Granado's cited statement is not based on personal knowledge insofar as it purports to describe what was happening throughout Bolivia.

333. The paragraph does not address decedents' deaths or vicarious liability. There is no evidentiary support for any "plan," by Defendants and the cited evidence does not support the statement. The statement regarding "kill[ing] kollas" is inadmissible hearsay.

334. The paragraph does not address decedents' deaths or vicarious liability.

335. The paragraph does not address decedents' deaths or vicarious liability. The cited press release from the Bolivian Armed Forces is inadmissible hearsay.

336. The paragraph does not address decedents' deaths or vicarious liability. Moreover, these convictions are inadmissible for the reasons set forth in Defendants' Motion to Exclude Material Concerning the 2009 Trial of Responsibilities in Bolivia. Dkt. 337.

Paragraphs 337 to 345 state legal conclusions to which no response is required.

Dated: January 12, 2018

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

/s/ Ana C. Reyes

Stephen D. Raber (*pro hac vice*)
Ana C. Reyes (*pro hac vice*)
James E. Gillenwater (*pro hac vice*)
Suzanne M. Salgado (*pro hac vice*)
Giselle Barcia (*pro hac vice*)
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

BECKER & POLIAKOFF, P.A.

Evan B. Berger
1 East Broward Blvd., Suite 1800
Ft. Lauderdale, FL 33301
(954) 364-6055

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on January 12, 2018, I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record or parties of record on the Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Evan Berger
Evan Berger