UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-CV-21630-RNS-EGT

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED.

Defendant.

DEFENDANT TECK RESOURCES LIMITED'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AND MEMORANDUM OF LAW

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

THE PARTIES 2

A. Plaintiff's Claim Under the Helms-Burton Act 2

B. Teck 3

ARGUMENT 4

I. THIS COURT LACKS PERSONAL JURISDICTION OVER TECK 4

A. The Relevant Jurisdiction for Analyzing Personal Jurisdiction Under Helms-Burton is the State of Florida, Not the United States 5

B. Plaintiff Fails to Allege Any Facts That Would Support the Exercise of Personal Jurisdiction Under Florida's Long-Arm Statute 6

1. There is no basis for exercising specific personal jurisdiction in this case 6

2. There is no basis for exercising general personal jurisdiction over Teck 7

C. Even if the National Contacts Test Applied, General Personal Jurisdiction Would Still Be Lacking 8

II. PLAINTIFF LACKS STANDING TO ASSERT ITS CLAIMS. EVEN IF IT DID HAVE SOME STANDING, THE CLAIM IS BARRED BY THE DOMESTIC TAKINGS RULE.. 10

III. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED 13

A. Plaintiff Has Not Pleaded An Actionable Ownership Interest Under the Helms-Burton Act 14

B. Plaintiff Fails to Plead Facts Showing Defendant "Knowingly and Intentionally" Trafficked in Confiscated Property 17

IV. THE AMENDED COMPLAINT SHOULD BE DISMISSED WITHOUT LEAVE TO AMEND 19

CONCLUSION 20

REQUEST FOR HEARING 21

CERTIFICATE OF SERVICE 21

TABLE OF AUTHORITIES

Page(s)

Cases

A1 Procurement, LLC v. Thermcor, Inc.,
No. 11-23978-CIV, 2015 WL 13659312 (S.D. Fla. Jan. 15, 2015) 5

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 13

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398 (1964) 13

Baron v. Acasta Cap.,
No. 16-25118-Scola, 2017 WL 3084416 (S.D. Fla. July 19, 2017) 4

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 13, 14, 18

BNSF Ry. Co. v. Tyrrell,
137 S. Ct. 1549 (2017) 9

Bochese v. Town of Ponce Inlet,
405 F.3d 964 (11th Cir. 2005) 11

Bryant v. Dupree,
252 F.3d 1161 (11th Cir. 2001) 19

Bryant v. Hasbro, Inc.,
No. 8:18-cv-1336-T-36CPT, 2020 WL 224513 (M.D. Fla. Jan. 15, 2020) 7

Canterbury Belts, Ltd. v. Lane Walker Rudkin, Ltd.,
869 F.2d 34 (2d Cir. 1989) 5

Carmouche v. Carnival Corp.,
36 F. Supp. 3d 1335 (S.D. Fla. 2014) 6

Carmouche v. Tamborlee Mgmt., Inc.,
789 F.3d 1201 (11th Cir. 2015) 6, 7, 8

CCTV Outlet, Corp. v. Desert Sec. Sys. L.L.C.,
No. 17-60928-CIV-Cohn/Seltzer, 2017 WL 5640717 (S.D. Fla. Aug. 7, 2017) 19

Consol. Dev. Corp. v. Sherritt, Inc.,
216 F.3d 1286 (11th Cir. 2000) 9

Courboin v. Scott,
596 F. App'x 729 (11th Cir. 2014)..... 6

Daimler AG v. Bauman,
571 U.S. 117 (2014).....8, 9

Del Valle v. Trivago GmbH,
No. 19-22619-Civ-Scola, 2020 WL 2733729 (S.D. Fla. May 26, 2020)..... 4, 6, 7, 12

Fraser v. Smith,
594 F.3d 842 (11th Cir. 2010)..... 8

Future Tech. Today, Inc. v. OSF Healthcare Sys.,
218 F.3d 1247 (11th Cir. 2000)..... 4

Garcia-Bengochea v. Carnival Corp.,
407 F. Supp. 3d 1281 (S.D. Fla. 2019)..... 11

Garcia-Bengochea v. Carnival Corp.,
No. 1:19-cv-21725-JLK, 2020 WL 4590825 (S.D. Fla. July 9, 2020)..... 15

General Cigar Holdings, Inc. v. ALTADIS, S.A.,
205 F. Supp. 2d 1335 (S.D. Fla. 2002)..... 5

Glen v. American Airlines, Inc.,
No. 4:20-cv-482-A, 2020 WL 4464665 (N.D. Tex. Aug. 3, 2020).....14, 15

Gonzalez v. Amazon.com, Inc.,
No. 19-23988-Civ-Scola, 2020 WL 1169125 (S.D. Fla. March 11, 2020).....*passim*

Kozial v. Bombardier-Rotax GmbH,
129 F. App'x 543 (11th Cir. 2005)..... 9

Lee v. Branch Banking & Tr. Co.,
No. 18-21876-Civ-Scola, 2018 WL 5633995 (S.D. Fla. Oct. 31, 2018)..... 8

Martinec v. Party Line Cruise Co.,
No. 07-80098-CIV, 2007 WL 3197610 (S.D. Fla. Oct. 29, 2007)..... 19

McCollough v. Royal Caribbean Cruises, Ltd.,
268 F. Supp. 3d 1336 (S.D. Fla. 2017)..... 9

Mezerhane v. Republica Bolivariana de Venezuela,
785 F.3d 545 (11th Cir. 2015)..... 12

Odebrecht Constr., Inc. v. Prasad,
876 F. Supp. 2d 1305 (S.D. Fla. 2012)..... 12

Oldfield v. Pueblo De Bahia Lora, S. A.,
558 F.3d 1210 (11th Cir. 2009) 4

Omni Cap. Int'l, Ltd. v. Rudolph Wolff & Co.,
484 U.S. 97 (1987) 5

Regent Grand Mgmt., Ltd. v. Tr. Hosp. LLC,
No. 18-21445-Civ-Williams/Torres, 2019 WL 1112553 (S.D. Fla. Jan. 9, 2019) 7, 10

Sinochen Int'l Co. v. Malay. Int'l Shipping Corp.,
549 U.S. 422 (2007) 20

In re Takata Airbag Prods. Liab. Litig.,
396 F. Supp. 3d 1101 (S.D. Fla. 2019) 6

United States v. All Funds in the Account of Prop. Futures, Inc.,
820 F. Supp. 2d 1305 (S.D. Fla. 2011), *aff'd sub nom. United States v. ADT Sec. Servs., Inc.*, 522 F. App'x 480 (11th Cir. 2013) 10

United States v. Belmont,
301 U.S. 324 (1937) 12

United Techs. Corp. v. Mazer,
556 F.3d 1260 (11th Cir. 2009) 4

Wertheim Jewish Educ. Tr., LLC v. Deutsche Bank AG,
Case No. 17-cv-60120-KMM, 2017 WL 6313937 (S.D. Fla. Dec. 6, 2017) 9

Statutes and Codes

United States Code
Title 22 Sections 1621, *et seq.* 2
Title 22 Section 6022(6) 12
Title 22 Section 6023(9) 18
Title 22 Section 6023(13) 18
Title 22 Section 6023(15) 12
Title 22 Section 6081(2) 12
Title 22 Section 6081(5) 13
Title 22 Section 6081(10) 13
Title 22 Section 6081(11) 13
Title 22 Section 6082(a)(1)(A) 17, 18
Title 22 Section 6082(a)(4)(B) 14, 15
Title 22 Section 6082(a)(5)(A) 2, 17
Title 22 Section 6082(a)(6) 13

Cuban Liberty and Democratic Solidarity Act
Helms-Burton Act of 1996, 22 U.S.C. Section 6021, *et seq.* ..... *passim*

Florida Statutes
Section 48.193(1) 6
Section 48.193(2) 6, 7

International Claims Settlement Act of 1949

Title V 17

Rules and Regulations

Federal Rules of Civil Procedure
Rule 4(k)(2) 10
Rule 12(b)(2) 1, 10
Rule 12(b)(6) 1, 3, 14

Southern District of Florida
Local Rule 7.1 1

Other Authorities

House Report
No. 104-468 (1996) 15

Defendant Teck Resources Limited ("Teck") moves to dismiss the Amended Complaint filed by Plaintiff Herederos de Roberto Gomez Cabrera, LLC ("HRGC") and submits its memorandum of law in support of that relief pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) and Southern District of Florida Local Rule 7.1, and in support thereof states:

PRELIMINARY STATEMENT

This is one of many claims recently brought in this District under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 6021, *et seq*. (the "Helms-Burton Act" or "Act"). For at least four separate and independent reasons, the Amended Complaint should be dismissed.

First, this Court lacks personal jurisdiction over Defendant Teck, a Canadian corporation with its principal place of business in Canada. Teck has no jurisdictionally relevant contacts of any kind with the State of Florida, and the Amended Complaint fails to plead that it does.

Second, even if there were some cognizable basis to exercise jurisdiction over Teck, the Amended Complaint should still be dismissed for failure to state a claim upon which relief can be granted. The Amended Complaint alleges that Teck is liable for having "trafficked" in various mining properties in Cuba confiscated by the Cuban government, without compensation, in October 1960. However, according to the Amended Complaint, those mining properties were owned by a corporation named Minera Rogoca S.A. ("Minera Rogoca"). Am. Compl. ¶¶ 3, 8, 11. Putting to one side whether there can be any claim at all under U.S. law for the confiscation of real and personal property *in Cuba* by the *Cuban* government from a *Cuban* corporation, such claim would belong to Minera Rogoca, not HRGC or its alleged predecessors in interest.[1]

[1] The claim is alleged to have derived through inheritance from a late owner of Minera Rogoca, one Roberto Gomez Cabrera, in 1969, and then through "an assignment of claims" from Mr. Gomez Cabrera's heirs to the plaintiff. Am. Compl. ¶¶ 3, 8, 11. Because any claim for confiscation belonged to Minera Rogoca, the plaintiff lacks standing to pursue it, even assuming that a claim under the Helms-Burton Act can be inherited or assigned.

Third, HRGC cannot possibly be a proper plaintiff here. It appears from the records of the Florida Secretary of State that "Herederos de Roberto Gomez Cabrera, LLC" is not even a validly formed entity under Florida, or any other, law.[2] Even if it were, as this Court recently held in *Gonzalez v. Amazon.com, Inc.*, No. 19-23988-Civ-Scola, 2020 WL 1169125, at *1 (S.D. Fla. March 11, 2020), for property confiscated before March 12, 1996, only a U.S. national that acquired ownership of the claim before that date can pursue a claim under the Helms-Burton Act. No such allegation is, or could be, made here.

Fourth, HRGC's alleged claim fails to meet the requirements of the statute and of international law. A claim under the Helms-Burton Act can only be asserted if the property was confiscated from a U.S. national, which is not, and is not alleged to be, the case here. On the other hand, if Mr. Gomez Cabrera had been a U.S. national at the time of the alleged confiscation, then he (or presumably his heirs) would have been eligible to file a claim with the United States Foreign Claims Settlement Commission, established under 22 U.S.C. §§ 1621, *et seq*. (the "FCSC"). No such claim was ever filed, either by Minera Rogoca or Mr. Gomez Cabrera, or by any U.S. national claiming ownership through either of them. The failure to make a claim before the FCSC by one eligible to do so forecloses a claim under the Helms-Burton Act, pursuant to 22 U.S.C. § 6082(a)(5)(A). For these reasons, the Amended Complaint should be dismissed.

THE PARTIES

A. Plaintiff's Claim Under the Helms-Burton Act

HRGC alleges that it is a "Florida limited liability company organized and existing under the laws of the State of Florida." Am. Compl. ¶ 11. As noted above, however, a search of the records of the Florida Secretary of State shows no such entity, which means that HRGC's allegation that it is a Florida limited liability company is not accurate, at least according to the

[2] *See* Sunbiz.org.inquiry/CorporationSeach/SearchResults/EntityName (searching for "Herederos de Roberto Gomez Cabrera," "Roberto Gomez Cabrera," and "Herederos") (last visited September 14, 2020).

official records of the Florida Secretary of State. *See* Declaration of Jennifer Altman, dated September 14, 2020, ¶ 2.

HRGC alleges that in 1960, the Cuban government confiscated twenty-one mines located in or around El Cobre, Cuba (the "Property") from a corporation named Minera Rogoca. Am. Compl. ¶¶ 3, 6-7. Minera Rogoca, in turn, was allegedly owned by an individual named Robert Gomez Cabrera. Am. Compl. ¶¶ 3, 8. HRGC alleges that the heirs of Mr. Gomez Cabrera inherited those claims in 1969, and then assigned the claims at issue, at some unspecified time, to HRGC. Am. Compl. ¶¶ 3, 8, 11. The Amended Complaint does not allege that Minera Rogoca was a United States company at the time of the alleged confiscation in 1960, or that Mr. Gomez Cabrera was a United States citizen at that time, or at any time thereafter.

Plaintiff goes on to allege that Teck "exploited" and "extracted significant valuable minerals and other geological materials" from the Property in accordance with a joint venture with Joutel Resources Limited ("Joutel").[3] *Id.* ¶¶ 24-25. It further alleges that Teck had "actual and constructive knowledge" that it was "trafficking in property that was confiscated by the Cuban government belonging to U.S. citizens" by way of "the Cuban constitution and laws, public records, and through notice given to Joutel" in 1997 by Mr. Gomez Cabrera's children. *Id.* ¶ 31. Plaintiff demands treble damages, court costs and attorneys' fees. Am. Compl. ¶¶ 40-47.

B. <u>Teck</u>

As set out in the moving declaration of Amanda Robinson dated August 19, 2020, and admitted in the Amended Complaint, Teck is a Canadian corporation with its headquarters and principal place of business in Canada. Am. Compl. ¶ 12; Robinson Decl. ¶ 2. Teck is not licensed to conduct business in Florida and does not conduct any business in Florida. Robinson Decl. ¶¶

[3] Although this and various other allegations in the Amended Complaint are untrue, Teck acknowledges that for purposes of a motion pursuant to Fed. R. Civ. P. 12(b)(6), it is accepted as true. Nonetheless, for purposes of clarity Teck has filed the declaration of Amanda Robinson, dated August 19, 2020 ("Robinson Decl."), which makes it clear that Teck never conducted any commercial mining operations at the sites formerly owned by Minera Rogoca. Teck reserves all of its rights arising from the false allegations to the contrary in the Amended Complaint.

4-5. It has no employees or representatives in Florida, does not own or rent any real property in Florida, and has no registered agent for service of process in Florida. *Id*. Indeed, Teck has no ties with Florida whatsoever. *Id*. Rather, Plaintiff attempts to bootstrap personal jurisdiction by claiming that Teck "maintains continuous and systematic affiliations within the United States" through certain mining activities of its subsidiaries in Washington and Alaska, and that it is "publicly traded on the New York Stock Exchange." Am. Compl. ¶¶ 13-18. These allegations are legally insufficient, however.

ARGUMENT

I. THIS COURT LACKS PERSONAL JURISDICTION OVER TECK

"To withstand a motion to dismiss, the plaintiff must plead sufficient facts to establish a prima facie case of jurisdiction over the non-resident defendant's person." *Del Valle v. Trivago GmbH*, No. 19-22619-Civ-Scola, 2020 WL 2733729, at *1 (S.D. Fla. May 26, 2020) (Scola, J.); *accord United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009). Where, as here, the defendant makes a *prima facie* showing that personal jurisdiction does not exist, the burden "shifts back to the plaintiff to produce evidence supporting jurisdiction." *United Techs.*, 556 F.3d at 1274; *accord Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000) ("[T]he plaintiff is required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and not merely reiterate the factual allegations in the complaint."); *accord Baron v. Acasta Cap.*, No. 16-25118-Scola, 2017 WL 3084416, at * 9 (S.D. Fla. July 19, 2017) (Scola, J.) (holding that plaintiff failed to meet its burden regarding personal jurisdiction over a Canadian corporation with its principal place of business in Toronto, despite allegations that defendant caused harm in Florida and had entered into a business arrangement with a Florida citizen). The rule is that "the plaintiff bears the ultimate burden of establishing that personal jurisdiction is present." *Oldfield v. Pueblo De Bahia Lora, S. A.*, 558 F.3d 1210, 1217 (11th Cir. 2009). As explained below, HRGC has not, and cannot, meet its jurisdictional burden.

A. The Relevant Jurisdiction for Analyzing Personal Jurisdiction Under Helms-Burton is the State of Florida, Not the United States

Plaintiff attempts to plead the existence of personal jurisdictional over Teck by alleging that Teck "maintains continuous and systematic affiliations within the United States," based on the business activities of its subsidiaries in Washington and Alaska, Am. Compl. ¶ 13, and its listing on the New York Stock Exchange. Am Compl. ¶ 17. However, Plaintiff addresses the wrong jurisdictional question, because personal jurisdiction over Teck depends on its contacts with Florida, not the United States as a whole.

The rule is that "[g]enerally, a federal court with federal question jurisdiction looks to the state in which it sits. . . . Where the court's jurisdiction is invoked based on a statute that authorizes nationwide or worldwide service of process, however, the applicable forum can be expanded to include the entire United States." *Gen. Cigar Holdings, Inc. v. Altadis, S.A.*, 205 F. Supp. 2d 1335, 1340 (S.D. Fla. 2002) (citations omitted). When a federal statute does expressly provide for nationwide service of process, the Eleventh Circuit has adopted the "national contacts test," under which the relevant jurisdictional question is whether the defendant has sufficient contacts with the United States as a whole. *See, e.g., A1 Procurement, LLC v. Thermcor, Inc.*, No. 11-23978-CIV, 2015 WL 13659312, at *2 (S.D. Fla. Jan. 15, 2015).

However, as the Supreme Court held in *Omni Cap. Int'l, Ltd. v. Rudolph Wolff & Co.*, 484 U.S. 97, 106 (1987), a grant of nationwide personal jurisdiction in a federal statute must be explicit -- as the Court stated, "Congress knows how to authorize nationwide service of process when it wants to provide for it." As the Second Circuit held in *Canterbury Belts, Ltd. v. Lane Walker Rudkin, Ltd.*, 869 F.2d 34 (2d Cir. 1989), citing and relying on *Omni Capital*:

> It has long been the rule that the standard to be applied in determining whether a federal district court has jurisdiction over the person in diversity cases is the law of the state where the court sits. . . . It is now settled that the same rule applies in federal question cases where no federal statute makes specific provision for national service of process. . . . Since no such provision has been made with respect to trademark infringement or unfair competition . . . we accordingly turn to the law of New York.

Id. at 40 (citations omitted).

Accordingly, where a statute "does not contain a nationwide service-of-process provision, [the court must] look to the long-arm statute of Florida to determine whether it authorizes exercising jurisdiction over the defendants." *Courboin v. Scott*, 596 F. App'x 729, 734 (11th Cir. 2014). Here, the Helms-Burton Act does not contain an express provision permitting nationwide service of process and, therefore, there is no basis to exert personal jurisdiction based on contacts with the United States as a whole. Accordingly, Plaintiff must, but cannot, satisfy Florida's long-arm statute before this Court can exercise jurisdiction over Teck.

B. Plaintiff Fails to Allege Any Facts That Would Support the Exercise of Personal Jurisdiction Under Florida's Long-Arm Statute

"A defendant can be subject to personal jurisdiction under Florida's long-arm statute in two ways: first . . . *specific personal jurisdiction*—that is, jurisdiction over suits that arise out of or relate to a defendant's contacts with Florida; and second, . . . *general personal jurisdiction*—that is, jurisdiction over any claims against a defendant, whether or not they involve the defendant's activities in Florida—if the defendant engages in 'substantial and not isolated activity' in Florida." *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203–04 (11th Cir. 2015) (citing Fla. Stat. §§ 48.193(1)-(2)). "Irrespective of which method applies, Florida's long-arm statute is to be strictly construed." *Carmouche v. Carnival Corp.*, 36 F. Supp. 3d 1335, 1340 (S.D. Fla. 2014); *accord In re Takata Airbag Prods. Liab. Litig.*, 396 F. Supp. 3d 1101, 1140 (S.D. Fla. 2019) ("[A]ny doubts about applicability of the [Florida long-arm] statute must be resolved in favor of the defendant and against a conclusion that personal jurisdiction exists.").

1. <u>There is no basis for exercising specific personal jurisdiction in this case</u>.

Plaintiff fails to make a showing of specific jurisdiction under Florida's long-arm statute, failing to even make a conclusory allegation that its asserted cause of action arises from acts occurring in Florida, as required by Fla. Stat. § 48.193(1). *See Del Valle*, 2020 WL 2733729, at *2 (holding that specific jurisdiction requires "a direct affiliation, nexus, or substantial connection

between the basis for the cause of action" and the "business activity" alleged to occur in Florida); *Bryant v. Hasbro, Inc.*, No. 8:18-cv-1336-T-36CPT, 2020 WL 224513, at *4 (M.D. Fla. Jan. 15, 2020) ("[U]nder Florida law there must nevertheless be some 'direct affiliation,' 'nexus,' or 'substantial connection' between the cause of action and the activities within the state"); *Regent Grand Mgmt., Ltd. v. Tr. Hosp. LLC*, No. 18-21445-Civ-Williams/Torres, 2019 WL 1112553, at *6-8 (S.D. Fla. Jan. 9, 2019) (Torres, M.J.)

Moreover, even if Plaintiff had alleged some activity in Florida by Teck that relates to Plaintiff's cause of action, as a matter of statutory and constitutional law, such activity would still need to rise to such a level that Teck "could reasonably anticipate being haled into court in Florida." *Del Valle*, 2020 WL 2733729, at *3 (holding that allegations that defendants' websites were accessible in Florida were insufficient to satisfy Florida's long-arm statute to warrant exercise of personal jurisdiction under Helms-Burton). Plaintiff's Amended Complaint fails to meet the statutory and constitutional standards for establishing specific jurisdiction over Teck under Florida's long-arm statute, and it cannot do so given the facts here.

2. <u>There is no basis for exercising general personal jurisdiction over Teck</u>.

Plaintiff likewise fails to articulate a basis for exercising general jurisdiction under Florida's long-arm statute, as Plaintiff has not alleged that Teck has "substantial and not isolated activity within Florida," under Fla. Stat. § 48.193(2). "It is clear that a very high threshold must be met in order for general jurisdiction to be exercised over a nonresident defendant in Florida." *Del Valle*, 2020 WL 2733729, at *3 (quoting Fla. Stat. § 48.193(2)).

Following that rule, courts in this District have routinely dismissed cases with insufficient contacts with Florida, although, unlike this case, at least some contacts were pleaded. *See, e.g.*, *Carmouche*, 789 F.3d at 1204-05 (holding that court lacked general personal jurisdiction over corporation organized outside Florida where corporation's connections with Florida were "limited to having a Florida bank account and two Florida addresses, one of which is a post-office box, purchasing insurance from Florida companies, filing a financing statement with the Florida

Secretary of State, joining a non-profit trade organization based in Florida, and consenting to the jurisdiction of the Southern District of Florida for all lawsuits arising out of its agreements with Carnival"); *Fraser v. Smith*, 594 F.3d 842, 847 (11th Cir. 2010) (holding that court lacked general personal jurisdiction over commercial tour operator organized under laws of the Turks and Caicos Islands even though tour operator maintained a website accessible from Florida, advertised in Florida, procured liability insurance through a Florida agent, purchased half of its boats in Florida, and sent employees and representatives to Florida for training and to promote its services); *Lee v. Branch Banking & Tr. Co.*, No. 18-21876-Civ-Scola, 2018 WL 5633995, at *3 (S.D. Fla. Oct. 31, 2018) (declining to exercise general jurisdiction even where company did business in Florida by maintaining branches and ATM locations and maintaining an agent in Florida to accept service of process). Here, there are no contacts at all with Florida and, thus, general personal jurisdiction simply does not exist.

C. Even if the National Contacts Test Applied, General Personal Jurisdiction Would Still Be Lacking

HRGC apparently attempts to plead the existence of general personal jurisdiction based on Teck's supposed activities through its subsidiaries in Washington and Alaska. Am. Compl. ¶¶ 13-15, 18. Even if those activities could be imputed to Teck (which is not the case), there is still no basis for exercising general personal jurisdiction over Teck.

As the Supreme Court explained in the leading recent case addressing the constitutional requirements for the exercise of personal jurisdiction, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations," without offending due process "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *accord Carmouche*, 789 F.3d at 1204. "The paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." *Daimler*, 571 U.S. at 118; *accord Carmouche*, 789 F.3d at 1205 ("A foreign corporation cannot be subject to general jurisdiction in

a forum unless the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business."); *see BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (holding that general jurisdiction in Montana was lacking for case under FELA claim brought in Montana against a railroad incorporated and with its headquarters out of state, despite maintaining over 2,000 miles of track and employing over 2,000 individuals within the state).

Plaintiff's remarkably thin attempt to show national general jurisdiction over Teck fails as a matter of law. As *Daimler* teaches, a corporate defendant is typically only subject to general personal jurisdiction in its place of incorporation and principal place of business, and in rare instances in jurisdictions where the corporate defendant's activities are so systematic and substantial that they approximate either of those two. 571 U.S. at 118; s*ee Wertheim Jewish Educ. Tr., LLC v. Deutsche Bank AG*, Case No. 17-cv-60120-KMM, 2017 WL 6313937, at *8-10 (S.D. Fla. Dec. 6, 2017); *McCollough v. Royal Caribbean Cruises, Ltd.*, 268 F. Supp. 3d 1336, 1346-49 (S.D. Fla. 2017). Here, Teck is organized under Canadian law and has its headquarters in Canada. Am. Compl. ¶ 12; Robinson Decl. ¶ 4.[4] Plaintiff's vague allegations that Teck conducts some operations in Washington and Alaska through subsidiaries, Am. Compl. ¶¶ 13-15, and that its securities are listed on the New York Stock Exchange, Am. Compl. ¶ 17, fall far short of establishing any possible basis for the exercise of general personal jurisdiction based on contacts

[4] Even if Plaintiff could rely on Teck's alleged contacts with the United States, the contacts of Teck's subsidiaries could not be imputed to Teck without showing that the subsidiaries' corporate existence was "simply a formality, and that [they were] merely [the parent's] agent." *See Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1293-94 (11th Cir. 2000) (imputation impermissible where the subsidiary "has its own officers and boards of directors, determines its own pricing and marketing practices, has its own bank accounts[,] offices, and employees"); *accord Kozial v. Bombardier-Rotax GmbH*, 129 F. App'x 543, 547 (11th Cir. 2005) ("Even in cases involving a parent and its subsidiary, courts are reluctant to impute the activities of the subsidiary to the parent when some semblance of independence has been maintained."). There is no need to resolve this issue, because even if the conduct of those subsidiaries could be imputed to Teck there is no showing of jurisdiction sufficient to meet the *Daimler* test.

with the United States as a whole, even were that the relevant test. For this reason, Plaintiff's Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).[5]

Finally, it may be that HRGC is attempting to invoke Fed. R. Civ. P. 4(k)(2), the "federal long-arm statute," although it is nowhere referenced in either of HRGC's pleadings. As the Court explained in *Regent Grand Mgmt.*, Rule 4(k)(2):

> was adopted to provide a forum of federal claims in situations where a foreign defendant lacks substantial contacts with any single state but has sufficient contacts with the United States as a whole to satisfy due process standards and justify the application of federal law.

2019 WL 1112553 at *8 (internal quotation marks and citations omitted). Accordingly, for Rule 4(k)(2) to apply, HRGC would have to make a showing that Teck had constitutionally sufficient minimum contacts with the United States to support the exercise of general personal jurisdiction. As shown above, HRGC does not, and could not, meet that test, as set out by the Supreme Court in *Daimler* and the cases that have followed it.

II. PLAINTIFF LACKS STANDING TO ASSERT ITS CLAIMS. EVEN IF IT DID HAVE SOME STANDING, THE CLAIM IS BARRED BY THE DOMESTIC TAKINGS RULE

"It is elementa[ry] that in order to *confer jurisdiction* on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue." *United States v. All Funds in the Account of Prop. Futures, Inc.*, 820 F. Supp. 2d 1305, 1322 (S.D. Fla. 2011) (emphasis in original) (citations omitted), *aff'd sub nom. United States v. ADT Sec. Servs., Inc.*, 522 F. App'x 480 (11th Cir. 2013) Here, although HRGC alleges that it is a "Florida limited liability company organized and existing under the laws of the State of Florida," Am. Compl. ¶ 11, that does not appear to be the case. Indeed, HRGC does not appear to actually

[5] Because no claim could possibly be made that HRGC's claim of "trafficking" has anything to do with Teck's mining operations in Washington and Alaska, any attempt to establish specific personal jurisdiction based on those allegations would likewise fail.

exist, at least according to the records of the Florida Department of State, as set out above at page 3.

Even assuming that the Florida Department of State's records were inaccurate and that HRGC is an actual legal entity, or that its failure to register could be cured *nunc pro tunc*, Plaintiff lacks standing because it cannot demonstrate an injury in fact.

In its Amended Complaint, Plaintiff alleges that the Property was not confiscated from HRGC, but, rather, from Minera Rogoca. Am. Compl. ¶ 7 ("Minera Rogoca S.A. continued to explore and mine the [Property] . . . until its real and personal property . . . were taken without compensation by the communist Cuban government."). Plaintiff's alleged claim to the Property stems from Mr. Gomez Cabrera's alleged stake in Minera Rogoca, *id.* ¶ 3, which was "inherited by his children on or about September[] 1969," *id.* ¶ 8, and then assigned to HRGC, *id.* ¶ 11. Mr. Gomez Cabrera's alleged equity interest in Minera Rogoca cannot confer standing to Mr. Gomez Cabrera, his heirs, or their supposed assignee, HRGC, to assert a claim on Minera Rogoca's behalf. "[I]t is well settled that a plaintiff generally must assert his *own* legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 984 (11th Cir. 2005) (emphasis in original). The only party that conceivably had a claim under the Act premised on confiscation of the Property is Minera Rogoca, not Mr. Gomez Cabrera or any other shareholder of Minera Rogoca.[6]

[6] Teck is aware that Judge King reached an opposite conclusion in *Garcia-Bengochea v. Carnival Corp.*, 407 F. Supp. 3d 1281 (S.D. Fla. 2019), and held that the Helms-Burton Act allows a shareholder of a Cuban corporation whose property was expropriated to a assert a claim for confiscation under the Helms-Burton Act. Teck respectfully submits that the decision in *Garcia-Bengochea* – which, in effect, retroactively pierced the corporate veil of a Cuban corporation for the benefit of its Cuban shareholder with respect to actions taken in Cuba by the Cuban government – is wrong, and that this Court should follow the ordinary rule that a shareholder (let alone the alleged assignee of that shareholder's claimed heirs), lacks standing to assert the claims of the corporation. Teck notes that, as set out below at page 17, *Garcia-Bengochea* was later dismissed for failure to meet another requirement of the Helms-Burton Act.

Further, the Property at issue here was not confiscated from a United States national, whether Minera Rogoca or Mr. Gomez Cabrera. Under long-settled international law, the "domestic takings" rule precludes claims under the Act based on a foreign government's confiscation of property belonging to its nationals in its sovereign territory. *See United States v. Belmont*, 301 U.S. 324, 332 (1937) ("What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here."); *accord Mezerhane v. Republica Bolivariana de Venezuela*, 785 F.3d 545, 549 (11th Cir. 2015) (holding that domestic takings doctrine barred Venezuelan citizen's action alleging that Venezuelan government expropriated his property in Venezuela).

The Helms-Burton Act did not disturb that long-settled rule; as this Court noted in *Del Valle*, "[a] purpose of the Helms-Burton Act is to 'protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro Regime.'" 2020 WL 2733729 at *1 (*quoting* 22 U.S.C. § 6022(6)). Only property confiscated from a United States citizen or company[7] may give rise to a claim. *See Odebrecht Constr., Inc. v. Prasad*, 876 F. Supp. 2d 1305, 1311 (S.D. Fla. 2012) (holding that Title III of the Act "creates a statutory right of action against any person or entity who traffics property confiscated by the Cuban government *from any American citizen or company*.") (emphasis added). Indeed, Section 6022(6) of the Helms Burton Act provides that it is intended "to protect United States Nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime," and the Congressional findings recited in Section 301 of the Helm-Burton Act underline that it does not concern confiscations from Cuban nationals. *See* 22 U.S.C. § 6081(2) ("[T]he wrongful confiscation or taking of property *belonging to United States nationals* by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines

[7] The Act refers to property confiscated from a "United States national," defined as "any United States citizen" or "any other legal entity which is organized under the laws of the United States . . . and which has its principal place of business in the United States." 22 U.S.C. § 6023(15)(A)-(B).

the comity of nations, the free flow of commerce, and economic development.") (emphasis added); 22 U.S.C. § 6081(5) ("The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets *some of which were confiscated from United States nationals*.") (emphasis added); 22 U.S.C. § 6081(10) ("The United States Government has an obligation *to its citizens* to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.") (emphasis added); 22 U.S.C. § 6081(11) ("To deter trafficking in wrongfully confiscated property, *United States nationals* who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States . . . .") (emphasis added). However unsavory the policies of the Cuban government may be, the Helms-Burton Act gives no right of action to Cuban citizens or corporations whose property in Cuba was seized by the Cuban government.[8]

III. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

"Although a pleading need only contain a short and plain statement of the claim showing that the pleader is entitled to relief, a plaintiff must nevertheless articulate 'enough facts to state a claim to relief that is plausible on its face.'" *Gonzalez*, 2020 WL 1169125 at *1 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A pleading should

[8] The Helms-Burton Act does provide that "[n]o court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1)." 22 U.S.C. § 6082(a)(6). That displaces the ordinary rule that the act of state doctrine would preclude a remedy for an expropriation of property in Cuba owned by an U.S. national, in accordance with the holding of *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), but does not purport to create a new legal regime retroactively governing the rights of Cuban nationals vis-à-vis the Cuban government regarding property in Cuba confiscated in accordance with Cuban law.

be dismissed if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555.

Plaintiff's Amended Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim because it merely recites the elements of a cause of action under the Helms-Burton Act, but fails to allege any facts that would make its claim plausible or, for that matter, to come within the terms of the statute. In particular, Plaintiff has not pleaded facts sufficient to establish that: (1) it has an actionable ownership interest under the Act; or (2) Teck knowingly and intentionally trafficked in confiscated property.

A. Plaintiff Has Not Pleaded An Actionable Ownership Interest Under the Helms-Burton Act

Even if HRGC has standing to assert a claim to the Property under Helms-Burton, Plaintiff still has not sufficiently pleaded an ownership interest necessary to assert its claim.

First, under the Helms-Burton Act, a right of action exists for the owners of claims for confiscations that took place before the passage of the Act only if they acquired their ownership interest before that date; "[i]n the case of property confiscated before March 12, 1996, a United States national may not bring an action under [the Helms-Burton Act] . . . unless such national acquires ownership of the claim *before March 12, 1996*." 22 U.S.C. § 6082(a)(4)(B) (emphasis added); *accord Glen v. American Airlines, Inc.*, No. 4:20-cv-482-A, 2020 WL 4464665, at * 4 (N.D. Tex. Aug. 3, 2020) (holding that plaintiff was barred from bringing action under Helms-Burton Act "because plaintiff did not acquire his claim before March 12, 1996," where plaintiff alleged that he inherited his claims to confiscated property from his aunt and mother in 1999 and 2011).

Plaintiff fails to plead this basic element of a claim under the Helms-Burton Act. Even assuming that Plaintiff is an actual existing business entity, it entirely fails to plead when it acquired its claim, or that it even existed before the effective date of the Act. Rather, the Amended Complaint alleges that HRGC obtained its claim by assignment from Mr. Gomez Cabrera's heirs,

who supposedly inherited their interest in or about September 1969, Am. Compl. ¶¶ 8, 11; noticeably absent are allegations as to when the Plaintiff acquired its claim from Mr. Gomez Cabrera's heirs, or how it purportedly did so, other than the bare allegation that it is an assignee of the claims it purports to hold. It is evident that Plaintiff avoids alleging that it acquired its claim before March 12, 1996, because it cannot do so.

Moreover, it is questionable whether inheritance even comes within the scope of the Act's definition of "acquires." "If the Act's definition of 'acquires' does not include inheritance, Plaintiff never 'acquire[d] ownership of the claim' and therefore 'may not bring an action' under the Act." *Glen*, 2020 WL 4464665 at *4 (quoting 22 U.S.C. § 6082(a)(4)(B)). Regardless, as stated above, even if inheritance is included in the definition of acquisition as contemplated by the Act, Plaintiff does not plead that it acquired its claim before March 12, 1996 and, thus, Plaintiff still fails to demonstrate an actionable ownership interest. *See Garcia-Bengochea v. Carnival Corp.*, No. 1:19-cv-21725-JLK, 2020 WL 4590825, at *4 (S.D. Fla. July 9, 2020) (dismissing case under Helms-Burton Act because alleged claim was acquired after March 12, 1996, noting that the legislative history clearly explains that Congress sought "to eliminate any incentive[s] that might otherwise exist to transfer claims to confiscated property to U.S. nationals in order to take advantage of the remedy created by this section.") (citations omitted).

Furthermore, an entity, such as HRGC, claiming rights under the Helms-Burton Act must have been in existence before the effective date of the Act. *See* H.R. Rep. No. 104-468, at 59 (1996) ("Entities that are incorporated in the United States after the date of enactment cannot use the remedy with respect to property confiscated before the date of enactment."). HRGC clearly falls within that excluded category.

Plaintiff also does not plead that Mr. Gomez Cabrera was a United States citizen at the time of confiscation or any time thereafter. The fact that Mr. Gomez Cabrera's heirs (none of whom is identified in the Amended Complaint) may have later become United States citizens is wholly

irrelevant and cannot satisfy Plaintiff's pleading burden.[9] For example, in *Gonzalez*, 2020 WL 1169125 at *1, plaintiff asserted a claim under the Act alleging an ownership interest in agricultural property that was owned by and allegedly confiscated from his grandfather by the Cuban government in 1964. *Id*. Plaintiff alleged that he could not file a claim with the FCSC because he was not a United States citizen at the time the property was taken, but plaintiff's complaint did not contain any allegations about the citizenship of his grandfather when the property was taken. *Id.* Defendant moved to dismiss the complaint on grounds, *inter alia*, that plaintiff failed to plead an actionable ownership interest. This Court agreed, holding that the complaint "lacks allegations regarding when [plaintiff] inherited the claim from his grandfather, when [plaintiff] became a United States citizen, if [plaintiff]'s grandfather was a United States citizen, and, if so, when [plaintiff's] grandfather became a citizen."[10] *Id*. at *2.

Here, Plaintiff's Amended Complaint suffers from the same defects. Thus, even if Plaintiff could rely on Mr. Gomez Cabrera's shareholding in Minera Rogoca, still missing from the Amended Complaint are allegations regarding the identity of Mr. Gomez Cabrera's heirs, when Mr. Gomez Cabrera's heirs became United States citizens, if Mr. Gomez Cabrera was a United States citizen, and, if so, when he became a United States citizen. "Without these allegations, [Plaintiff] has not sufficiently alleged . . . an actionable ownership interest in the confiscated property." *Id*. If Mr. Gomez Cabrera was not a United States citizen at the time of his death, as appears to be the case, then he and his estate had no claim under the Helms-Burton Act, and there was nothing in that respect for his heirs to inherit.

---

[9]Teck separately notes that Plaintiff's bare allegation that Mr. Gomez Cabrera's heirs were United States citizens on March 12, 1996, Am. Compl. ¶ 11, is also facially insufficient to establish their citizenship, even if such citizenship were relevant. Much more detail, including the specific identities of those claimed heirs, is needed to make the claim plausible. *See Gonzalez*, 2020 WL 1169125 at *2.

[10]As noted above, a Cuban citizen and domiciliary whose Cuban property was seized by the Cuban government and who later became a naturalized U.S. citizen would not thereby acquire a right of action under the Helms-Burton Act. Moreover, assuming, *arguendo*, that naturalization did carry with it such rights, there is nothing in the Amended Complaint that would support such a claim.

However, if Mr. Gomez Cabrera had been a United States citizen when the Property was confiscated, Plaintiff's claim would then be barred pursuant to Section 6082(a)(5)(A) of the Act, for failure to file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949. Section 6082(a)(5)(A) of the Act provides:

> In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

In summary, if Mr. Gomez Cabrera was not a United States citizen when the confiscation occurred or anytime thereafter, he had no claim under the Helms-Burton Act, and hence his heirs and their supposed assignee likewise have no claim. If Mr. Gomez Cabrera was a United States citizen when the confiscation occurred, he could have had his claim certified by the FCSC, and his failure to do so bars the claim under the Act. Regardless of Mr. Gomez Cabrera's citizenship, HRGC has no claim based on Mr. Gomez Cabrera's stake in Minera Rogoca.

B. Plaintiff Fails to Plead Facts Showing Defendant "Knowingly and Intentionally" Trafficked in Confiscated Property

A private cause of action under Helms-Burton may only be asserted against a person or company who "traffics in property which was confiscated by the Cuban Government." 22 U.S.C. § 6082(a)(1)(A). Under the Act, "a person 'traffics' in confiscated property if that person *knowingly and intentionally* –

> (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,
>
> (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or
>
> (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person,
>
> without the authorization of any United States national who holds a claim to the property."

22 U.S.C. § 6023(13). Accordingly, "the only companies that will run afoul of [the Act] are those that are knowingly and intentionally trafficking in the stolen property of U.S. citizens." *Gonzalez*, 2020 WL 1169125 at *2 (*quoting* 142 Cong. Rec. H1724-04, at H1737 (Mar. 6, 1996)). The Act defines "knowingly" as "with knowledge or having reason to know." 22 U.S.C. § 6023(9).

Under basic principles of statutory interpretation, the "knowingly and intentionally" requirement precedes, and thus qualifies, all elements of "traffics" under 22 U.S.C. § 6082(a)(1)(A). This means that to be held liable under the Act, the "trafficker" must: know or have reason to know that the property was confiscated, know or have reason to know that the property belongs to a United States national, and intend to traffic in that confiscated property. *See Gonzalez*, 2020 WL 1169125 at *2 (holding that conclusory allegations of knowledge and intent failed to demonstrate that defendants "knew the property was confiscated by the Cuban government nor that it was owned by a United States citizen").

As in *Gonzalez*, here, too, Plaintiff's Amended Complaint relies on purely conclusory allegations to establish that Teck acted with the requisite intent and knowledge under the Act. *See* Am. Compl. ¶ 32 ("Teck knowingly and intentionally commenced, conducted and used the Confiscated Property for commercial purposes . . . ."); *id.* ¶ 33 ("Teck [] knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Confiscated Property . . . ."); *id.* ¶ 34 ("Teck is knowingly and intentionally trafficking confiscated property as defined in 22 U.S.C. § 6023(13)(A)"). Without more, "allegations [that] are conclusory . . . are legally insufficient to state a claim." *Gonzalez*, 2020 WL 1169125 at *2 (citing *Twombly*, 550 U.S. at 557).

Arguably the only non-conclusory allegation regarding Teck's knowledge is the allegation that Teck knew that the Property was confiscated by the Cuban Government "by virtue of . . . the Cuban constitution and laws, public records, and through notice given to Joutel." Am. Compl. ¶ 31. But this threadbare allegation falls far short of demonstrating the requisite intent, as the mere existence of laws cannot demonstrate the requisite intent and knowledge, nor can written notice to

Joutel, which Plaintiff does not even allege was shared with Teck. Moreover, it is impossible to see how Teck could have intentionally and knowingly trafficked in confiscated property belonging to a United States citizen or company where, as here, any Cuban records regarding the property would undoubtedly show that it was confiscated from a Cuban corporation in accordance with Cuban law.[11] Plaintiff's allegations fail to establish that Teck acted knowingly and intentionally under the Act.

IV. THE AMENDED COMPLAINT SHOULD BE DISMISSED WITHOUT LEAVE TO AMEND

The Court should dismiss the case without leave to amend. "A district court need not . . . allow an amendment . . . where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). Courts routinely refuse to permit amendment of a complaint where allegations of personal jurisdiction are so bereft of substance that amendment would be futile. *See CCTV Outlet, Corp. v. Desert Sec. Sys. L.L.C.*, No. 17-60928-CIV-Cohn/Seltzer, 2017 WL 5640717, at *4 (S.D. Fla. Aug. 7, 2017) (holding that allegations of "passive nature of Defendants' website and Defendants' lack of any other meaningful contacts with Florida [demonstrated that] any amendment to the Complaint in an attempt to establish personal jurisdiction would be futile."); *Martinec v. Party Line Cruise Co.*, No. 07-80098-CIV, 2007 WL 3197610, at *3 (S.D. Fla. Oct. 29, 2007) (denying leave to amend complaint where proposed amended complaint would not cure personal jurisdiction deficiencies).

[11] Although at this stage the Court must assume the facts and allegations in the Amended Complaint as true, Teck notes for the record that there are glaring factual misrepresentations that will come to light should this case proceed. Specifically, the Plaintiff's allegations that "Teck and Joutel reached an agreement to jointly engage in exploration and mining activity in lands in Cuba under an agreement with Geominera S.A." (Am. Compl. ¶ 28) and that Teck "complete[d] a formal feasibility study and financed Joutel's share of development costs of bringing the properties to the commercial production stage . . . . [and] operated the mines" (Am. Compl. ¶ 30) are simply and demonstrably false. There is no need to resolve those issues, however, because the Amended Complaint fails on its face.

Plaintiff's Amended Complaint suffers from numerous legal defects, each independently fatal to Plaintiff's cause of action. Most glaring is Plaintiff's failure to allege *any* ties that Teck has to Florida in accordance with the rule that "a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties." *Sinochen Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007). Plaintiff has not alleged any jurisdictional nexus with Florida because it cannot; Plaintiff's attempt to plead around its jurisdictional burden by relying on Teck's alleged national contacts is equally unavailing. No good faith amendment could cure the personal jurisdiction defects in Plaintiff's action, so amendment of the complaint is futile. If personal jurisdiction could somehow be established, the Amended Complaint would still fail as a matter of law, again with no possibility of a cure through amendment. Teck respectfully requests that any request to amend by Plaintiff be denied and that the Amended Complaint be dismissed without leave to amend and, should the Court reach the merits of the case, with prejudice.

CONCLUSION

For the foregoing reasons, Defendant Teck Resources Limited respectfully requests that the Court dismiss Plaintiff's Amended Complaint for lack of personal jurisdiction and failure to state a claim upon which relief can be granted.

REQUEST FOR HEARING

Pursuant to Southern District of Florida Local Rule 7.1, Teck respectfully requests a hearing on its Motion to Dismiss. Oral argument of the issues presented herein may assist the Court in making its ruling as they relate to this Court's lack of personal jurisdiction over Teck, Plaintiff's failure to state a claim, and futility of amendment of Plaintiff's Amended Complaint. Teck estimates that a hearing would require approximately an hour of the Court's time.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on September 15, 2020 via CM-ECF, which will generate Notices of Electronic Filing to all counsel of record.

Respectfully submitted,

By: /s/ *Jennifer Altman*____

Jennifer Altman
Fla. Bar No. 881384
PILLSBURY WINTHROP SHAW PITTMAN, LLP
600 Brickell Avenue, Suite 3100
Miami, FL 33131
Telephone: (786) 913-4900
Facsimile: (786) 913-4901
Jennifer.Altman@pillsburylaw.com

Robert L. Sills
Brian L. Beckerman
Applications for admission *Pro Hac Vice* forthcoming
PILLSBURY WINTHROP SHAW PITTMAN, LLP
31 West 52nd Street
New York, NY 10019-6131
Telephone: (212) 858-1000
Facsimile: (212) 858-1500
Robert.Sills@pillsburylaw.com
Brian.Beckerman@pillsburylaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-cv-21630-RNS-EGT

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.
_____/

DECLARATION OF JENNIFER ALTMAN IN SUPPORT OF DEFENDANT TECK RESOURCES LIMITED'S MOTION TO DISMISS THE AMENDED COMPLAINT

Honorable District Judge Robert N. Scola
Honorable Magistrate Judge Edwin G. Torres

DECLARATION OF JENNIFER ALTMAN

I, Jennifer Altman, declare and state as follows:

1. I am over 18 years of age. I am counsel to Defendant Teck Resources Limited in the above-captioned matter and a partner at the law firm Pillsbury Winthrop Shaw Pittman LLP. This Declaration is submitted in support of Defendant's Motion to Dismiss the Amended Complaint of Plaintiff Herederos de Roberto Gomez Cabrera, LLC.

2. I have searched corporate records maintained electronically by the Division of Corporations, Florida Department of State as of September 14, 2020 and have not found any documents pertaining to Plaintiff's legal status as a business entity. According to this database, the business entity named "Herederos de Roberto Gomez Cabrera, LLC" is unregistered.

Dated: September 14, 2020

_____
Jennifer Altman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-cv-21630-RNS-EGT

HEREDEROS DE ROBERTO GOMEZ CABRERA, LLC,

Plaintiff,

v.

TECK RESOURCES LIMITED,

Defendant.
_____/

DECLARATION OF AMANDA ROBINSON IN SUPPORT OF DEFENDANT TECK RESOURCES LIMITED'S MOTION TO DISMISS THE AMENDED COMPLAINT

District Judge Robert N. Scola
Magistrate Judge Edwin G. Torres

DECLARATION OF AMANDA ROBINSON

Pursuant to 28 U.S. Code §1746, I, Amanda Robinson, declare under the penalty of perjury under the laws of the United States of America that the information contained in this Declaration is true and correct, and further state:

1. My name is Amanda Robinson and I am over the age of eighteen (18). I am the Corporate Secretary of defendant Teck Resources Limited ("Teck"). I make this Declaration on personal knowledge in support of Teck's Motion to Dismiss the Complaint of Plaintiff Herederos de Roberto Gomez Cabrera, LLC.

2. Teck is organized under the laws of Canada; Teck has its headquarters and principal place of business in Vancouver, Canada.

3. In my role as Corporate Secretary of Teck, I am responsible, among other thing, for ensuring that Teck and its subsidiaries comply with all applicable corporate formalities, and for ensuring that Teck's corporate records are accurate and complete.

4. Teck is not licensed to conduct business in Florida. In that regard, Teck does not: conduct any business in Florida; own, rent or possess any real property in Florida, have any other physical presence in Florida; or have any officers, employees or agents in Florida. It has no

registered agent for service of process in Florida, and it is not registered as a foreign corporation in Florida. Teck does not now and, to the best of my knowledge after reasonable inquiry, has never conducted business in the State of Florida other than occasional sales to customers with Florida addresses or shipments delivered at ports in Florida pursuant to a customer's instructions.

5. Teck has no subsidiaries that are incorporated under the laws of Florida, and none of them has a place of business, principal or otherwise, in Florida. None of the company's subsidiaries is registered as a foreign corporation or limited liability company in Florida. None of Teck's subsidiaries is authorized to accept service on its behalf, except in limited circumstances where contractual arrangements are in place with a contractual counterparty in respect to specific agency appointments for limited purposes having to do with that particular contract. None of Teck's subsidiaries currently conducts or, to the best of my knowledge after reasonable inquiry, has ever conducted business in the State of Florida, nor does any of them have any relationship with the State of Florida, other than occasional sales to customers with Florida addresses or shipments delivered at ports in Florida pursuant to a customer's instructions.

6. From my work as Corporate Secretary of Teck, I know that each of the company's subsidiaries is a separate corporation that observes all corporate formalities, and each has its own board of directors, officers, maintains its own books of account, and pays various taxes and fees that it owes.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 19, 2020

Amanda Robinson