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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In Re:

GUSTAVO ESCAMILLA, an individual

Petitioner,

UNITED STATES OF AMERICA, THROUGH THE UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Real Party in Interest.

Case No.: CV26-5207-MWF-Ex

Emergency Petition For The Enforcement of The Crime Victim's Rights Act, 18 U.S.C. § 3771(d)(3), and For Relief Under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(d)(5)

(Pursuant to In re Davis, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025))

(Notice of Related Cases filed concurrently herewith pursuant to C.D. Cal. L.R. 83-1, and General Order No. 08-05 § 5.2)

NOTICE OF EMERGENCY PETITION

TO THE COURT, THE UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA, AND ALL INTERESTED PARTIES: PLEASE TAKE NOTICE that Petitioner Gustavo Escamilla, appearing in pro se, respectfully petitions this Court for immediate enforcement of rights under the Crime Victims' Rights Act, 18 U.S.C. § 3771, and related relief under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(d)(5).

This Petition is brought under 18 U.S.C. § 3771(d)(3), which provides that the rights described in § 3771(a) may be asserted in the district court where a defendant is being prosecuted or, if no prosecution is underway, in the district court in the district where the crime occurred, and that the district court shall take up and decide any motion asserting a victim's right forthwith. Petitioner seeks prospective enforcement of statutory victims' rights, disclosure necessary to determine whether restitution proceedings occurred, an opportunity to confer with the appropriate attorney for the Government, and any other relief this Court deems proper under 18 U.S.C. § 3771 and 18 U.S.C. § 3664(d)(5).

This Emergency Petition is based on this Notice, the Petition and Memorandum below, the accompanying exhibits, the concurrently filed declaration regarding notice, the proposed order, and all matters of record properly before the Court.

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I. INTRODUCTION AND PRELIMINARY STATEMENT

United States Department of Homeland Security Special Agent Shawn Gibson; leading Operation Software Slashers (OSS), one of the largest transnational counterfeit goods prosecutions in DOJ history — sat across from Petitioner Gustavo Escamilla in a recorded face-to-face recorded government interview in Burbank, California and told Petitioner his company, Greenway Nutrients, Inc. (Greenway) was identified as the Lead Victim, alongside Adobe Systems and Microsoft Corporation. That sealed federal indictments had been filed against the primary bad actors causing harm to Petitioners company; over $20 million had been recovered. Petitioner's company Greenway could recover damages from an established victims' restitution fund. Petitioner need not worry about having to file another costly federal civil lawsuit. The government would protect them.

It did not. For years, federal officials bearing a statutory obligation to accord Petitioner victims' rights under the Crime Victims' Rights Act, 18 U.S.C. § 3771(CVRA), has failed to discharge them.

This Petitioner is brought on multiple independent grounds, as referenced below, each of which, are sufficient alone to afford this Court's forthwith adjudication under § 3771(d)(3).

The First Ground: The April 2, 2021, Dismissal of Petitioner's § 3771 Enforcement Action Was Entered Without Subject Matter Jurisdiction Over

That Action — A Defect Established on the Face of This Court's Own Published Orders, Confirmed by Independent Counsel, and Never Raised, Waived, or Forfeited by Petitioner Before Any Court.

The underlying procedural history included in this Petition is offered for contextual purposes only. This Petition begins with the confirmation Petitioner received by independent counsel, that no procedural bar can foreclose.

The April 2, 2021, dismissal of Petitioner's § 3771 enforcement action was entered without subject matter jurisdiction over that action — a defect established not by inference or argument, but on the face of this Court's own published orders.

In 2018, this Court dismissed Petitioner's civil rights action under 42 U.S.C. § 1983 against DHS officials for lack of subject matter jurisdiction. (*See* April 4, 2018, Order, Ex. M at 22.) Three years later, when Petitioner filed a separate enforcement action under 18 U.S.C. § 3771, the Court Sua-sponte dismissed the CVRA petition by reaffirming and applying that same 2018 § 1983 subject matter jurisdiction ruling — without applying § 3771(d)(3)'s independent and express jurisdictional grant. (*See* April 2, 2021, Order, Ex. N at 2 ("The Court reaffirms its April 4, 2018, Order dismissing this matter with prejudice.").) The Court applied a § 1983 jurisdictional determination to a § 3771 enforcement action governed by an entirely different statutory framework.

Section 1983 requires state action and a deprivation of constitutional rights and provides a civil rights cause of action seeking monetary damages against state

actors. Section 3771(d)(3) is a federal victims' rights enforcement statute that expressly grants crime victims the right to assert CVRA rights in the district court where the crime occurred — authority that is self-executing, independent of any prior civil proceeding, and entirely separate from any § 1983 framework. The Court never applied § 3771(d)(3) to Petitioner's 2021 enforcement action. That jurisdictional defect has never been raised as an issue, waived, or forfeited by Petitioner, or examined by any court at any prior stage of these proceedings.

The Ninth Circuit in *In re Davis*, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), held that 18 U.S.C. § 3771(d)(3)'s "if no prosecution is underway" clause permits crime victims to assert their CVRA rights via motion after prosecution has concluded in the district court in the district where the crime occurred. *Davis* further held that 18 U.S.C. § 3771(d)(5)'s 14-day "motion to reopen" deadline does not apply to motions to amend restitution brought under 18 U.S.C. § 3664(d)(5), confirming that § 3664(d)(5) operates as an independent statutory pathway for victim restitution amendment. *Davis* is binding Ninth Circuit authority that was unavailable to any court at either prior stage of these proceedings, and it confirms the correct statutory framework the 2021 order never applied.

No vacatur is sought. No challenge to either prior order is made. That "lack of subject matter jurisdiction" discovery is provided for procedural and contextual

purposes only – – even though that jurisdictional defect has never been raised as an issue, waived, or forfeited by Petitioner, or examined by any court at any prior stage of these proceedings.

The Second Ground: Petitioner Is Independently Entitled to Relief Under 18 U.S.C. § 3664(d)(5) Pursuant to *In re Davis* — A Statutory Cause of Action That Was Unavailable Before June 2, 2025.

The Mandatory Victims Restitution Act, 18 U.S.C. § 3663A(c)(1)(A), mandates restitution for any offense committed by fraud or deceit. The Ninth Circuit confirmed this in *United States v. Kovall*, 857 F.3d 1054, 1064 (9th Cir. 2017). The federal offenses committed against Petitioner's company Greenway — including trademark infringement, trade secret theft, and securities fraud — fall within that category. The government has never disclosed to Petitioner whether any restitution determination was made in the OSS prosecution.

Separate from the CVRA enforcement claims enumerated elsewhere in this Petition, Petitioner asserts an independent statutory cause of action under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(d)(5), as construed by the Ninth Circuit in *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025). *Davis* holds that § 3664(d)(5) authorizes a crime victim to petition for an amended restitution order where the victim "subsequently discovers" losses omitted from the initial restitution determination, with the 60-day clock running from the victim's discovery of the government's failure –– not from the date of the

underlying error. *Davis* further holds that government institutional failure supplies good cause under § 3664(d)(5), that § 3771(d)(5)'s procedural limitations do not apply to such petitions, and that denial of this relief on a qualifying factual record constitutes legal error reviewable by mandamus.

Petitioner has never been notified, at any time, whether any restitution determination was made in connection with the OSS prosecution or its contents. The 60-day clock under § 3664(d)(5) has not begun to run, because the triggering discovery event — the government's disclosure of the restitution determination — has not occurred. This Petition requests the threshold disclosure order that will start that clock, and upon disclosure, authorization to file a § 3664(d)(5) petition to amend any OSS restitution order to include Petitioner's documented losses.

This Second Ground is structurally independent of the CVRA violations enumerated in the subsequent Grounds. The § 3664(d)(5) cause of action — as construed by *In re Davis* on June 2, 2025 — was not controlling in this Circuit before that date, could not have been raised in any prior proceeding concluded before that date, and is asserted in this Petition for the first time. Restatement (Second) of Judgments § 26(1)(c) (1982). *In re Davis* confirms this Court's authority to grant the relief sought.

The Third Ground: In May June 2025, Petitioner Filed A Formal Complaint with Department of Homeland Security Office of The Inspector General (DHS-OIG), Supporting Allegations of DHS Officials Fabricated Material Evidence Used To Dissuade A Federal Victim of Crime From Offering

Evidence or Testimony During Criminal Proceedings; Resulting In The Deprivation of Petitioner' Victims' Rights Under The CVRA.

In May - June 2025, Petitioner included the Court's lack of subject matter jurisdiction statutory incompatibility with the filing of a formal complaint with DHS-OIG documenting DHS officials' fabrication of material evidence and facts used to mislead the Lead victims in DHS's OSS criminal proceedings. From offering evidence or testimony during active criminal proceedings, thereby depriving Petitioner of all protection, or victim's rights, and years of CVRA violations. Including the primary accused criminal defendants' continued harm, occurring within this District.

DHS-OIG officials did NOT respond. Petitioner had expressly notified DHS-OIG that failure to act would result in a formal CVRA enforcement action. Six months passed. This Petition is that action.

That discovery did not arise in a vacuum. It commenced with DHS Special Agent Gibson (Gibson) fabricating a civil court ruling, representing to Petitioner that a Colorado federal court had ruled against his company Greenway and in favor of the primary accused criminal defendant in the OSS prosecution, specifically regarding Greenway's civil trademark claims.

Which was untrue and is a non-existent fabricated ruling that directly contradicted actual judicial findings, by the Honorable Colorado Chief Judge Marcia S. Krieger, overseeing a previously filed federal civil trademark

infringement civil lawsuit. Petitioner's company Greenway filed in Colorado district Court, against the same Primary accused criminal Defendant, and others identified and included in DHS's OSS criminal prosecution.

DHS Agent Gibson's fabrication became the stated legal basis for failing to provide Petitioner's company Greenway with any protection or victims' rights, under the CVRA, simultaneously excluding Greenway from the OSS prosecution and its restitution proceedings for years.

The Fourth Ground: When Placed on Specific Written Notice of Five Documented Acts of Alleged Wrongdoing Before This District Court, USAO-CDCA Attorneys Filed No Denial of Any Allegation on the Merits.

What followed is what this Petition places before this Court is started in July 2021, United States Attorney's Office for the Central District of California (USAO-CDCA) attorneys; with awareness of DHS Agent Gibson' fabrication of material court records, did not correct it, did not distance themselves from it, and did not disclose it. They not only adopted it, but they mischaracterized and republished it, regarding Greenway civil trademark infringement claims. That this District Court relied upon as one of multiple misleading determining factors to dismiss Petitioner's underlying civil rights lawsuit. That in turn, deprived Petitioner of all victims' rights and protection under the CVRA, referenced below.

During this initial July 2021 through November 9, 2021, window — culminating in this Court's November 9, 2021, sua sponte dismissal of Petitioner's

Rule 60(d)(3) motion (See Ex. L) — identified USAO-CDCA attorneys appeared in active post-dismissal proceedings before the same District Court, in Petitioner Escamilla's separate and underlying 42 U.S.C. § 1983 civil rights Rule 60(d)(3) proceedings, with actual documented knowledge of every CVRA violation in this Petition. And made a choice: not to invoke an available § 3771(d)(4) cure mechanism, not to correct the republication DHS Agent Gibson's fabrication of material evidence or a single prior misrepresentation or discharge their best-efforts obligation, which it is not merely precatory.

If the alleged misconduct caused those rights to be withheld, misrepresented, or defeated, that conduct supports a claim that the government failed to satisfy its CVRA obligations. The statute says that officers and employees of the DOJ and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime "shall" make their best efforts to ensure victims are notified of and afforded CVRA rights to protect Petitioner § 3771(c)(1) imposed on them at every moment they stood before this Court. These are not background facts. They are independent, timely, post-dismissal CVRA violations; committed by named attorneys, in active proceedings, with full knowledge before this Court.

Additionally, USAO-CDCA pressed forward with additional alleged material misrepresentation(s) to support one of several declarations, presented to

the Court under penalty of perjury, which was also critical and central to the victims underlying 42 U.S.C § 1983 civil rights lawsuit. That this District Court relied upon as another one of the primary determining factors to dismiss Petitioner's underlying civil rights lawsuit. This too, in turn, was used to later deprive Petitioner of all victims' rights and protection under the CVRA.

Regarding Petitioners documented discovery date of Greenway's former attorney and the primary accused criminal defendant, had embezzled Greenway's confidential insider business information, intellectual property, and plans to take its business model public for their self-dealing gain. During the same period DHS' criminal investigation involving Petitioner's company, was ongoing at that time, and placed it under their own signatures in numerous sworn filings submitted to this Court.

In other words, aside from the Court noting it lacked subject matter jurisdiction, the governments entire defense in Petitioner's underlying 42 U.S.C § 1983 civil rights lawsuit, rests on the repeated misuse of multiple false and materially misleading motions, and false declarations, and the repeated mischaracterization and republishing of Gibson's fabricated civil trademark infringement ruling evidence used to deprive Petitioners of his victim's rights under the CVRA.

When Petitioner's counsel subsequently placed USAO-CDCA attorneys on notice of each specific act of alleged misconduct before this Court identified in Petitioner's Rule 60(d0(3) motion, with supporting material evidence and PACER citations documenting the contradiction(s), USAO-CDCA filed a response to the subsequent Rule 60(d)(3) motion addressing only procedural ground(s)(Local Rules 7-3 and 11-6, alleged a failure to meet and confer, and challenged the length of Petitioner's Rule 60(d)(3) motion exceeding 25 pages). Not one act of fabrication. Not one republication. Not one sworn misrepresentation. Substantively unaddressed. Uncontested. Undenied. Before any court. To this day.

This Petition in no way asks this Court to find fraud on the court, vacate any prior order, or impose sanctions for past conduct. It provides this Court with the contextual background, regarding what the documented record establishes: that USAO-CDCA's deliberate adoption and republication of DHS's fabricated evidence, that was included, as part of numerous other alleged acts of wrongdoing. Was the direct and proximate mechanism by which Petitioner's enumerated CVRA rights were denied, his victim status suppressed, his restitution rights withheld, his countless protection requests ignored, and his victim's notifications never issued.

That deprivation is what the CVRA was enacted to remedy.

The Fifth Ground: Independent, Timely, and Fully Documented CVRA Violations.

Beginning on December 18, 2025, Petitioner contacted First AUSA Bill Essayli, advising Mr. Essayli, USAO-CDCA, and DOJ officials of the formal notification of documented material evidence supported their multiple instances of alleged misconduct and violations of Petitioner's victims' rights, under the CVRA. Petitioner notified First AUSA Bill Essayli of his concerns, regarding potential acts of retaliation to discourage Petitioner's pursuant of his victim's rights, by former Acting U.S. Attorney Hanna, and other USAO-CDCA officials. Petitioner received no response.

Beginning on December 30, 2025, through February 2026, Petitioner engaged USAO-CDCA Supervisory Victim-Witness Coordinator (VWC) Allison Stafford across eight written submissions over seventy-four days. Stafford confirmed receipt and review of the complete evidentiary record, this Court's April 4, 2018, published order acknowledging Petitioner's Victim status, the 2021 CVRA petition, the subsequent Rule 60(d)(3) motion naming her own office's attorneys, the DHS-OIG complaint, and counsel's Rule 11-certified acknowledgment that the misconduct evidence met the applicable high standard.

Stafford's four written responses applied the wrong statute, searched the wrong district, and directed the formally identified Lead Victim in a $20 plus million federal prosecutions to call 1-800-CALLFBI. When Petitioner issued a four-point written cure request and demand identifying each specific obligations

under the CVRA and United States Attorney General Guidelines for Victim's and Witness Assistance (AG Guidelines) by name, Stafford either failed to address or declined each point in writing. These violations are recent, documented, independent of every prior proceeding, and have never been adjudicated on their merits.

The Contradiction This Petition Seeks To Resolve.

This Court's own April 4, 2018, published order acknowledged Petitioner's formal identification as a Victim by DHS, the OSS prosecution in the Western District of Missouri, the government's recovery of over $20 plus million in forfeited assets, and Petitioner' company Greenway's eligibility as victims for compensation from the established victims' restitution fund. USAO-CDCA Supervisory VWC Stafford's January 28, 2026, written determination states: "It does not appear that you are an identified crime victim in a federal criminal proceeding." Both documents are on this Court's own docket. They cannot coexist. Section 3771(d)(3) affords this Court ability to resolve that contradiction forthwith.

Petitioner seeks no damages. He seeks no vacatur of any prior order. He challenges no charging decision. 18 U.S.C. § 3771(d)(6). He seeks only what the statute guarantees and what eleven years of documented institutional failure has denied him: prospective enforcement of rights that attached in March 2015 and have never once been discharged or accorded. In re Davis, Nos. 24-3090 & 24-

3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), confirms this Court's jurisdiction. The record confirms the violation. The statute commands the remedy.

I. JURISDICTION AND AUTHORITY

BINDING NINTH CIRCUIT AUTHORITY — DECIDED AFTER THE PRIOR PROCEEDINGS

In re Davis, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025): § 3771(d)(3)'s "no prosecution is underway" clause independently authorizes crime victims to assert CVRA rights after prosecution has concluded, in the district where the crime occurred. The word "any" in § 3771(d)(3)'s forthwith mandate is "broad and all-encompassing." Olympic Forest Coal. v. Coast Seafoods Co., 884 F.3d 901, 906 (9th Cir. 2018). § 3771(d)(5)'s procedural limitations do not bar post-judgment restitution petitions — the final sentence of § 3771(d)(5) expressly exempts restitution petitions brought under § 3664(d)(5) from all of § 3771(d)(5)'s requirements. The 60-day clock under § 3664(d)(5) runs from the victim's discovery of losses omitted from the final restitution determination — including where the government's own failures caused the omission. § 3664(g)(1) reliance on the government to manage restitution, combined with the government's failure to do so, likely constitutes good cause under § 3664(d)(5), subject to this Court's

determination. This authority was decided June 2, 2025 — it was not available at the time of any prior proceeding in this matter.

Petitioner Gustavo Escamilla's company Greenway Nutrients, Inc., a Colorado corporation, with its principal place of business in located in and doing business within the jurisdiction of this Court. The accused criminal Defendants David Dragan Selakovic (Selakovic), Steven Blackburn, and Selakovic's affiliated entities systematically (hereinafter, Selakovic Defendants) targeted Greenway through trademark infringement, counterfeit goods trafficking, embezzlement, securities and commodities fraud under 18 U.S.C. § 1348, and wire fraud under 18 U.S.C. § 1343.

18 U.S.C. §3771(d)(3) provides that: "The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith." Selakovic Defendant's committed these crimes within the jurisdiction of the Central District of California.

18 U.S.C. § 3771(d)(3) vests this Court with jurisdiction to "take up and decide" any motion asserting a victim's right "forthwith." The word "shall" in § 3771(d)(3) is non-discretionary. Kenna v. U.S. Dist. Court for C.D. Cal., 435 F.3d

1011, 1013 (9th Cir. 2006) (cited for mandatory character of § 3771(d)(3) and victim-participation principles; standard of review governed by 2015 JVTA amendment to § 3771(d)(3)). In re Davis, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025), confirms this jurisdiction persists after prosecution has concluded, in the district where the crime occurred. No exhaustion of administrative remedies is required.

This Court has jurisdiction over this motion under 18 U.S.C. § 3771(d)(3). No prosecution arising from the crimes against Petitioner is currently underway absent any government disclosure, regarding sealed criminal proceedings, described herein. The crimes occurred within this district and within the meaning of § 3771(d)(3). In re Davis, Nos. 24-3090 & 24-3092, 146 F.4th 710, 715 (9th Cir. 2025).

This Court has jurisdiction over this Petition under 18 U.S.C. § 3771(d)(3). The OSS prosecution was filed in the Western District of Missouri; no disclosure by the government of any prosecution of the OSS defendants named herein is underway. Under § 3771(d)(3)'s "no prosecution is underway" clause, jurisdiction lies in the district where the crimes occurred. The crimes occurred here: Petitioner and Greenway are located in Los Angeles County, California, within this district, and the trademark counterfeiting, wire fraud, securities fraud, embezzlement, and theft of trade secrets that constitute the predicate federal offenses were directed at

and caused harm to Petitioner within this district. In re Davis, Nos. 24-3090 & 24-3092, 146 F.4th 710, 715 (9th Cir. 2025).

This Court has additional and independent authority to grant the substantive relief sought under 18 U.S.C. § 3664(d)(5) as construed by *In re Davis*, 146 F.4th 710, 720, 722–23 (9th Cir. 2025). *Davis* holds that a petition to amend a restitution order under § 3664(d)(5) is "any motion asserting a victim's right" within the meaning of § 3771(d)(3), that § 3771(d)(5)'s procedural limitations do not apply to § 3664(d)(5) petitions, 146 F.4th at 724–28, and that denial of § 3664(d)(5) relief on a qualifying record constitutes legal error reviewable by mandamus, *id.* at 735. Section 3664(g)(1) authorizes Petitioner's reliance on the government to manage the MVRA restitution process; government institutional failure to discharge that obligation supplies good cause under § 3664(d)(5). *Id.* at 732.

The United States, through the United States Attorney's Office for the Central District of California, is the opposing party to this Petition in its capacity as the government bearing responsibility for CVRA compliance under 18 U.S.C. § 3771(c)(1).

II. STATEMENT OF FACTS

The following facts are established by documentary evidence. Each core allegation is either verifiable on the public docket, confirmed in writing by the government's own officials, or independently certified by licensed counsel subject

to Rule 11. Describing a multi-year sequence of alleged misconduct described in Sections I through XIV; that USAO-CDCA officials did not specifically address or deny when presented with a Rule 60(d)(3) motion, described in further detail herein, resulting in the ongoing violations of Petitioner's inalienable victim's rights under the CVRA, and United States Attorney Guidelines for Victim's and Witness Assistance (AG Guidelines).

I. DHS Formally Identifies Petitioner's Company Greenway as Lead Victim

In March 2015, following a referral from Microsoft attorney Michael A. Sink (Perkins Coie), DHS Special Agent Shawn Gibson, DHS Field Agent Carlos Suarez, and one additional agent arranged a recorded, face-to-face meeting with Petitioner in Burbank, California. See, *Gustavo Escamilla et al, vs., Department of Homeland Security, et al*, Case No. 2:17-cv-07748, DE 1, Exh. 3, attached as Ex. A

At that recorded meeting, DHS officials advised Petitioner:

- Selakovic and Blackburn were the ringleaders of Operation Software Slashers ("OSS"), one of the DOJ's single largest criminal counterfeit goods prosecutions, targeting Microsoft, Adobe, and Greenway.
- DHS and the USAO-MO had recovered over $20 million in civilly forfeited assets from six defendants who had already pleaded guilty.
- Petitioner would be added as a named Lead Victim and would be eligible for compensation from the victims' restitution fund.
- Federal criminal indictments against Selakovic and Blackburn had

been filed under seal in or about January 2015 in the Western District of Missouri.

- Petitioner need not worry about having to file any further civil lawsuit — the government's prosecution would protect him; and
- Any prosecution of the politically connected Selakovic required careful handling due to U.S.-Serbian government relations.

Gibson's specific representation that Petitioner would be eligible for compensation from an established victims' restitution fund was not incidental. It established Petitioner's documented reliance on the government to manage the Mandatory Victims Restitution Act process on his behalf; reliance the statute itself expressly authorizes. 18 U.S.C. § 3664(g)(1) ("No victim shall be required to participate in any phase of a restitution order.").

Compounding this deprivation, DHS, United States Attorney's Office for the Western District of Missouri (USAO-MO), and DOJ officials have failed to disclose, concealed, and withheld all material information regarding case number, or any outcome of their sealed criminal proceedings and prosecution of Selakovic, and those acting in concert with him. Including whether any deferred prosecution agreement (DPA), non-prosecution agreement (NPA), plea, conviction, or restitution order was ever entered.

GIBSON'S OWN MARCH 2015 REPRESENTATION FORECLOSES THE CIVIL PREREQUISITE — AND THE CVRA CONFIRMS IT

At the recorded March 2015 meeting, DHS Agent Gibson specifically advised

Petitioner that he need not file any further civil lawsuit — the government's prosecution would protect him. That representation was legally correct. The CVRA contains no civil litigation prerequisite for victim status or victim rights — not one word. 18 U.S.C. § 3771(e)(2)(A) defines a crime victim as "a person directly and proximately harmed as a result of the commission of a Federal offense." Three elements: person, direct harm, federal offense. Civil litigation success is not among them. The AG Guidelines define victim identification by the nature of the offense — not by civil proceedings. CVRA rights attach at investigation initiation. Kenna, 435 F.3d at 1013. When Gibson sent his October 2016 email imposing civil litigation success as the prerequisite for further government action, he imposed a condition he had told Petitioner eighteen months earlier did not apply, a condition the statute expressly forecloses, and a condition that — even if satisfied — would have had no legal effect whatsoever on his mandatory obligations under the CVRA.

This Court acknowledged Gibson's representations in its April 4, 2018, order. See Escamilla v. DHS, Case No. 2:17-cv-07748, Order at 3–4 (C.D. Cal. Apr. 4, 2018) (Ex. M).

At no point during the March 2015 meeting or in any subsequent communication did Gibson ever inform Petitioner of the CVRA or the AG

Guidelines. Under 18 U.S.C. § 3771(c)(1) and the AG Guidelines, Gibson's obligation to notify Petitioner of his company's CVRA rights attached at the moment of formal victim identification. That obligation is discharged only by performing it, not by the passage of time, or the transmission of a fabricated email. It has never been discharged.

As of October 2016, Gibson additionally violated 18 U.S.C. § 3771(a)(9) independently and directly; by sending Petitioner a false and materially misleading email, and subsequent emails containing fabricated evidence that actively concealed the existence and status of sealed OSS proceedings against Selakovic Defendants, from the formally identified Lead Victim.

In April 2020, Petitioner reported directly to Gibson that James Ryan; Greenway's former attorney, who previously valued Petitioner's company above $25 million during his representation of Greenway, whose fiduciary duties remained fully operative, was then serving as interim CEO of Vegalab Inc., the Selakovic publicly traded entity built on Greenway's stolen intellectual property.

Petitioner also advised DHS Gibson, that James Ryan also conspired with Selakovic to embezzle from Greenway, appeared to be operating noting more than an ongoing criminal racketeering enterprise, and that James Ryan had a lengthy – decades long history of defending Selakovic Defendants in numerous civil trademark and theft related civil lawsuits, involving Adobe, Microsoft, and

Greenway. Gibson did not respond to or notify Petitioner of any CVRA rights, or protection, triggered by that April 2020 notification under §§ 3771(c)(1), 3771(a)(1), 3771(a)(2), and 34 U.S.C. § 10607. That occurred after DHS Agent Gibson advised Petitioner of Selakovic's involvement in OSS proceedings, and USAO-MO's sealed criminal indictment of Selakovic Defendants. *See attached* Ex. O

II. DHS Agent Gibson Fabricates a Court Ruling — The Triggering Act of Financial Destruction (Oct.–Nov. 2016)

VERIFIABLE ON PACER — THE "AUGUST 17, 2015" RULING DOES NOT EXIST

The Colorado docket in Greenway Nutrients, Inc. v. Blackburn et al., Case No. 1:13-cv-01088 (D. Colo.), contains no order dated August 17, 2015, in favor of Selakovic. Colorado Chief Judge Krieger ruled the exact opposite — against Selakovic and in favor of Greenway — on March 31, 2015 (DE-129). A June 13, 2016, ruling (DE-155) confirmed Greenway's trademark claims were "still viable." Gibson's email inverted the March 31, 2015, ruling. USAO-CDCA then republished Gibson's fabrication in five successive sworn filings to this Court while the actual PACER record remained publicly accessible throughout.

On October 28, 2016, Petitioner received the following email from DHS

Special Agent Gibson's official government account:

> *"Mr. Escamilla,*
>
> *We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, we have been advised that on August 17, 2015, a District Court found in* ***favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark****. While we understand that you may disagree with this judgement,* ***our agency is bound by decision of the court and therefor are restricted on what we can do in regards to your claims that they continue to sell your products illegally****. My suggestion is to seek legal alternatives such as an appeal of the decision and* ***if you should receive an affirmative decision we can revisit our involvement against the distribution of the Greenway products****. Regardless,* ***we continue to investigate the alleged criminal activities in regards to his alleged distribution of counterfeit software****. Please let me know if you have any questions." See attached Ex. B, and Gustavo Escamilla et al, vs., Department of Homeland Security, et al, Case No. 2:17-cv-07748, DE 1, Exh. 9*

And again, on November 21, 2021, Gibson pressed forward with his fabrication of a non-existent August 17, 2017, Court ruling narrative, advising Petitioner

> *"Why I understand your frustration and concerns,* ***our agency cannot move forward with any investigation involving your trademark until***

> ***you resolved this issue with the District Court in Colorado that issued the decision***... *In this circumstance I have been not only been on official travel* ***in regards to this investigation***,... ***Additionally, we have made attempts to look into the alleged misuse of the Greenway Nutrients logo, but because of the court decision, in a case you were a party to in Colorado, would not be able to file charges at this time***. ***Attached is a selection of the case history from the court case showing a decision in favor of Selakovic***, *which as I advised in my prior email you should be able to seek an appeal if you disagree with the decision...* ***We would be happy to take a second look if that decision is reversed***... *See attached Ex. C, and Gustavo Escamilla et al, vs., Department of Homeland Security, et al, Case No. 2:17-cv-07748, DE 1, Exh. 10*

Every material statement in these emails is false, fabricated, or legally impossible. The record establishes this through publicly verifiable court documents requiring no credibility findings and no expert testimony.

III. DHS Agent Gibson Fabricated A Non-Existent August 17, 2015, Negative Ruling, Contradicting Court Records, Specifically Regarding Greenway's Civil Trademark Infringement Claims

On October 28, 2016, Gibson falsely claimed that "on August 17, 2015, a District Court found in favor of Selakovic against Greenway Nutrients in regard to the assertion of the Greenway trademark." No such ruling exists. The Colorado federal docket for Greenway Nutrients, Inc. v. Blackburn et al., Case No. 1:13-cv-01088 (D. Colo.), August 17, 2015, order was due to Greenway's failure to

prosecute its Colorado civil case. Due to a lack of financial resources, as a direct result of Selakovic Defendants continuing to divert Greenway's revenues, through their unlawful manufacturing, distribution, and sales, of copious amounts of fake, counterfeit, unauthorized, or knock off versions of Greenway's products, bearing Greenway's trademark, worth millions of dollars at that time.

Greenway's Colorado civil court record contains NO order finding in favor of Selakovic, that Gibson falsely asserted, regarding Greenway's civil trademark infringement claims at any date. The fabricated civil trademark infringement ruling Gibson cited as the stated sole and phony underlying legal basis for imposing a suspension of DHS's criminal investigation of the primary criminal defendant in OSS proceedings, Selakovic; conditioning any reconsideration of criminal charges against Selakovic. Predicated on Petitioner first obtaining a favorable civil court ruling specifically regarding Greenway's civil trademark claims, that on March 31, 2015, had already occurred, was unnecessary.

Moreover, Gibson's fabricated ruling's date of August 17, 2015, falls between two written confirmations Gibson personally made to Petitioner. In June 2015 and again in August 2015, that his DHS team was still actively investigating Greenway's criminal complaint against Selakovic.

Both confirmations were submitted as exhibits by Petitioner, reviewed by the Court, and acknowledged in Wright's own April 4, 2018, published order. See

Order at 3–4 (C.D. Cal. Apr. 4, 2018) (citing Compl., Exs. 5, 6). There is no innocent explanation for fabricating a fake prosecution-suspending civil trademark infringement Court ruling dated to a period falling between two of Gibson's own documented written confirmations that the investigation against Selakovic, and others, was actively continuing.

False Statement Two — The Inversion of Colorado Chief Judge Krieger's Actual Ruling:

The only ruling in the Colorado docket that remotely corresponds to what Gibson described is Chief Judge Marcia Krieger's March 31, 2015, Order (DE-129); issued nearly five months before the date Gibson fabricated. That order ruled in *favor* of Greenway regarding its civil trademark infringement claims, the exact opposite of what Gibson represented.

Chief Judge Krieger stated, in relevant part:

> *"For purposes of personal jurisdiction analysis,* ***trademark infringement and false designation of origin are considered tortious acts****. See, e.g., Impact Productions, Inc. v. Impact Productions, LLC, 341F.Supp.2d 1186, 1190 (D. Colo. 2004)."*
>
> *"****Mr. Selakovic argues that under the Calder effects test, Greenway has not alleged that he 'expressly aimed' any tortious activity at Colorado****."*
>
> *"****The Court disagrees. Trademark infringement turns on whether customers are likely to be confused, mistaken, or deceived by the use***

> ***of a trademarked product***. *15 U.S.C. §§ 1114(1).... Thus, the effects of an infringement will be felt wherever the infringing products are marketed or sold because that is where the confusion, mistake, or deceit will occur."*
>
> *"Accordingly, the Court agrees with the Magistrate Judge that at this early stage of litigation,* ***Greenway has met its burden of making prima facie showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic****."*
>
> *— Chief Judge Marcia Krieger, Greenway Nutrients, Inc. v. Blackburn et al., Case No. 1:13-cv-01088 (D. Colo., DE-129, Mar. 31, 2015), See attached Ex. D*

The court ruled against Selakovic and in favor of Greenway on every point Gibson claimed had been decided in Selakovic's, OSS's alleged masterminds favor. Chief Judge Krieger did not find against Greenway's civil trademark infringement claims. She found against Selakovic's motion to dismiss and in favor of Greenway's prima facie showing of its civil trademark infringement claims and personal jurisdiction over Selakovic. The exact opposite conclusion from the one Gibson attributed to the Colorado court.

Gibson inverted that ruling entirely; converting a judicial finding against Selakovic into a fabricated judicial finding against Greenway; and deployed that fabricated inversion as the stated legal basis for imposing a suspension of the criminal investigation and prosecution of Selakovic pending Petitioner's satisfaction of a fabricated and non-existent August 17, 2015, civil trademark

infringement court ruling and litigation hurdle prerequisite that does not exist under the CVRA and factually already satisfied eighteen months earlier.

False Statement Three — The Fabricated Civil Court Victory Prerequisite: In October 2016, and again in November 2016.

Gibson wrote that "if you should receive an affirmative decision we can revisit our involvement against the distribution of the Greenway products." And again, in November 2016, "We would be happy to take a second look if that decision is reversed" These sentences did not merely impose a restriction on DHS activity.

Because Gibson's fabrication regarding Greenway's civil trademark infringement claims against Selakovic, had already been satisfied.

Moreover, the CVRA contains no provision permitting a federal agent to condition the continuation of a criminal investigation based on a favorable civil litigation outcome. The AG Guidelines contain no such provision. No controlling authority permits it.

The civil litigation victory condition Gibson imposed had already been satisfied: Chief Judge Krieger ruled in Greenway's favor on March 31, 2015, as it specifically relates to Greenway's favorable civil trademark infringement claims against Selakovic personally. That contradicted Gibson's fabrication, and his civil litigation condition was satisfied, approximately eighteen (18) months before Gibson's October 2016, email.

Gibson's deprivation constituted an independent violation of Petitioner's victim's right to proceedings free from unreasonable delay under 18 U.S.C. § 3771(a)(7); a right triggered precisely by Petitioner's August 2015 contact with Gibson expressing frustration about the length of DHS's criminal investigation, which Gibson acknowledged and responded to not with a CVRA notification but with an admonishment. Gibson reasonably knew or had to know; no civil lawsuit victory against Selakovic Defendants regarding Greenway's civil trademark infringement claims was required: he told Petitioner so in March 2015.

The civil trademark infringement claim prerequisite was fabricated twice; once as a factual predicate (the nonexistent August 17, 2015, ruling), and once as a legal requirement (the fabricated condition that a civil trademark infringement claim victory was necessary before criminal charges would resume), neither of which had any basis in fact or law.

Lastly, and most critically: "Regardless, we continue to investigate the alleged criminal activities in regard to his alleged distribution of counterfeit software." Gibson's own words confirm the OSS prosecution was continuing as of October 28, 2016. He did not close the investigation. He did not suspend the prosecution. He selectively excluded the Lead Victim from the prosecution's benefits; telling Petitioner DHS's criminal case was on hold pending a favorable civil outcome, while simultaneously confirming the investigation continued for

other purposes. The investigation proceeded. The prosecution proceeded. Sentencing proceeded. Any restitution proceedings under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A, proceeded. The Lead Victim was excluded from every stage. That exclusion was not an oversight. It was the direct, documented consequence of a fabricated email that told the Lead Victim to disengage from a prosecution that Gibson's own words confirmed had not stopped.

III. DHS-OIG Simons Corroborates the Fabrication — Refusing To Accept Material Evidence And Closes the Petitioner's OIG Complaint Advising The Victim "You Can File Anything You Want To, Because I'm Not Going To Do Anything With Any of It Anyway!"

On Jul 27, 2017, Petitioner reported Gibson's fabrication to DHS-OIG Resident Agent in Charge Russell Simons. Simons independently confirmed he could find no publicly accessible record of Gibson's stated August 17, 2015, ruling; corroborating at the outset that Gibson's stated basis did not exist. *Gustavo Escamilla et al v. United States of America, Case No. 2:21-cv-01910, , DE 1, Exh. 1*

Petitioner advised Simons that the possessed documented material evidence of the Phase Two scheme: Greenway's former attorney Michael Ryan's March 2016 SEC registration of Selakovic's newly formed (at that time) publicly traded company, HPC Acquisitions, Inc. (Vegalab Inc. - VEGL).

Demonstrating Michael Ryan had assisted Selakovic to intentionally interfere with Greenway's exclusive distribution relationship with its former raw

product supplier named Ecowin. And That Michael Ryan assisted Selakovic to purchase a majority interest in Ecowin for a purported $30 million. Using confidential insider business information Michael Ryan obtained during his representation of Greenway. That far-exceeded Petitioner Escamilla and Greenway's original criminal trademark infringement complaint against Selakovic Defendants, whose alleged acts of misconduct were still ongoing.

Which occurred after Gibson sent Petitioner his October 2016, email, fabricating a non-existent Colorado Court ruling, requiring Petitioner's to prevail in the same civil litigation. After conferring with Gibson, the agent whose conduct Simons was nominally overseeing; Simons applied Gibson's same fabricated civil litigation prerequisite, refused to accept or review the newly presented Micheal Ryan SEC-documented evidence, and closed his DHS-OIG complaint without investigation.

He told Petitioner: "You can file anything you want, because I'm not going to do anything with any of it anyway."

This statement: made by a federal oversight official to a formally identified federal crime victim who had advised Simons possessed material evidence of further ongoing multi-actor federal criminal conspiracy, including Greenway's former attorneys and Selakovic, has never been investigated, retracted, or denied in any proceeding.

IV. USAO-CDCA Pre-2017 Violations: Decker, Brown, Wilkerson (2016–2017)

The USAO-CDCA's CVRA obligations did not begin in 2018. They began no later than June 2016. In June 2016, Petitioner filed a formal civil rights complaint directly with then-U.S. Attorney Eileen Decker, after notifying Decker's office seeking protection from Selakovic's criminal enterprise, who dismissed Petitioner's complaint within 24 hours of receipt; without contacting Petitioner, without providing any CVRA notification, without referring the matter to the Victims' Rights Ombudsman, while claiming that the USAO-CDCA lacked jurisdiction, over Petitioner's request for protection from Selakovic's alleged criminal acts occurring within this District. At the same time DHS's OSS criminal investigation and prosecution was still ongoing.

Following Petitioner's contact with Decker and USAO-CDCA officials, Petitioner observed on multiple occasions the presence of unmarked vehicles bearing California government-exempt registration plates parked at and near his residence. These vehicles; including California Exempt plate numbers 1416327 and 1475954, and at least one Ford Taurus Police Interceptor (a vehicle manufactured exclusively for law enforcement use) — were documented in contemporaneous photographs. These photographs were formally submitted to

Supervisory VWC Stafford on January 12, 2026, with an explicit written invocation of § 3771(a)(1).

Stafford did not respond. Throughout July–December 2016 and again in April–August 2017, after Petitioner discovered Greenway's former attorney Michael Ryan's involvement in the scheme to embezzle Greenway's intellectual property and business model in coordination with Selakovic, Petitioner continued documented email contacts with Acting U.S. Attorney Sandra Brown, Tracy Wilkerson, Deputy Chief Renee Katzenstein, and Thomas Mrozak. None responded. None provided CVRA notification, victim notification, Ombudsman referral, or any CVRA service.

V. USAO-CDCA Attorneys Are Documented to Have Engaged in Five Acts of Wrongdoing — Central to Petitioner's Claims — That Undermined and Harmed the Integrity of the Judicial Process (January 2018 – November 2021); AUSA Finn's October 25, 2021, Opposition Failed to Controvert Any of the Allegations on the Merits, Resulting in the Denial of Petitioner's Victim's Rights Under the CVRA

When Petitioner filed his 42 U.S.C. § 1983 civil rights lawsuit in October 2017, Case No. 2:17-cv-07748, four USAO-CDCA attorneys; then-United States Attorney Nicola T. Hanna, AUSA Dorothy A. Schouten (Chief, Civil Division), AUSA Robyn-Marie Lyon Monteleone (Chief, General Civil Section), and AUSA Grace Y. Park — appeared as counsel for DHS defendants.

Their January 29, 2018, motion to dismiss, was supported by two sworn declarations filed the same day, is the origin of a documented pattern of misrepresentation to this Court that continued across four filings through November 2021. Each filing is verified from this Court's own docket.

On October 25, 2021, none of the specific allegations documented below were addressed or denied in USAO-CDCA's opposition when subsequently presented with a Rule 60(d)(3) motion in the underlying civil rights proceedings. This continues to be the sole asserted legal basis upon which Petitioner has been denied all rights or protections afforded to crime victims under the Crime Victims' Rights Act, 18 U.S.C. § 3771.

Act One — Ramey's Misleading Declaration of Non-Existence: Searching the Wrong Database to Manufacture Non-Exhaustion of Administrative Remedies (January 29, 2018 — Dkt. 9-1, Case No. 2:17-cv-07748)

Actor: AUSA Robert A. Ramey, Associate Legal Advisor, ICE

Attached to the January 29, 2018, MTD was a sworn declaration by Associate Legal Advisor Robert A. Ramey, employed by the District Court Legal Division (DCDL), Office of The Principal Legal (OPLA), U.S. Customs and Immigration Enforcement (ICE), U.S. Department of Homeland Security, signed under penalty of perjury, stating that his search had "identified no electronic or hardcopy record of any administrative tort claim from either Mr. Escamilla or Greenway Nutrients transmitted to ICE." Ramey Decl. ¶¶ 2–3, Dkt. 9-1 (Jan. 29, 2018).

That declaration was false. On May 1, 2017, Petitioner filed a formal civil rights complaint with DHS-CRCL; the Department of Homeland Security's Office for Civil Rights and Civil Liberties. On May 2, 2017, DHS-CRCL issued a written acknowledgment of receipt, and an immediate denial of Petitioner's civil rights complaint against DHS Agent Gibson and Simons, claiming that DHS's Office for Civil Rights and Civil Liberties, "does not have jurisdiction over your concerns."

That complaint was simultaneously transmitted to more than twenty DHS and DOJ officials in the Western District of Missouri and the USAO-CDCA, including Tracy Wilkison, Sandra Brown, and Renée Katzenstein, among others.

Ramey did not query DHS-CRCL — the agency that received and issued the written acknowledgment the following day. He did not query any of the more than twenty officials who received Petitioner's DHS-CRCL complaint. He queried only the DCLD Litigation Database — ICE's administrative tort claims database — and personnel within that office. A civil rights complaint filed with DHS-CRCL would not appear in ICE's administrative tort claims database. Ramey knew or had to know this. The July 19, 2021, opposition filed by the same USAO-CDCA office later acknowledged that "undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply." Dkt. 15 at 3 (July 19, 2021). That acknowledgment — that USAO-CDCA counsel received, confirming

Petitioner's CRCL complaint existed; directly contradicts Ramey's sworn declaration of non-existence in the prior filing.

This Court relied on Ramey's declaration as one of the primary determining factors for dismissing the 2017 lawsuit with prejudice, stating: "ICE asserts by affidavit that there is no record of a formal complaint. (Ramey Decl. ¶¶ 2–3.)" Case No. 2:17-cv-07748, Order at [page 11], Dkt. 13 (Apr. 4, 2018). A sworn declaration of non-existence, made without querying the issuing agency, in the face of a contemporaneous written acknowledgment issued the following day and known to USAO-CDCA counsel, directly caused this Court's finding of non-exhaustion of administrative remedies. *United States v. Estate of Stonehill*, 660 F.3d 415, 444 (9th Cir. 2011).

Act Two — Park's False And Materially Misleading Substitution Regarding Greenway's former Attorney Michael J. Ryan, and the "Renewed Attention" Admission: Manufacturing a False "Prior Knowledge" Defense (January 29, 2018, and February 16, 2018 — Dkts. 9-2 and 11, Case No. 2:17-cv-07748)

Actors: AUSA Grace Y. Park (declaration and brief); Hanna, Schouten, Monteleone, and Park (brief)

Also filed on January 29, 2018, AUSA Grace Y. Park submitted a sworn declaration under penalty of perjury attaching a June 28, 2013, and a Motion for Sanctions and Protective Order that Thomas Ryan, his ex-wife Wendy Ryan, and their daughter Jessie Ryan, filed in the early stages of Greenway's Colorado civil lawsuit. Misleading the Court to believe that Petitioner Escamilla's March 2017 discovery of Greenway's former attorney, Micheal J. Ryan—who violated

Greenway's NDA, breached his fiduciary duty, and embezzled confidential insider business information, and executed Greenway's plans to take its business model public with Selakovic instead of Greenway, causing millions of dollars in damages for their self-dealing gain—was "rather old," which was untrue.

Based off of email communications that Petitioner sent in June 2013 to Thomas F. Ryan, his ex-wife, Wendy Ryan, and their daughter Jessie Ryan. Wherein, AUSA Park, and stated in the relevant part,

> *"as far back as **June 11, 2013**, Escamilla sent threatening and profanity-laced communications to **Ryan, his ex-wife, and daughter**."*

Park's misrepresentation that Petitioner's June 2013 emails were sent to Michael Ryan, was materially false and misleading and is verifiable on the face of the document itself.

Petitioner's June 2013, email communications were, in fact, sent to **Thomas F. Ryan, his ex-wife Wendy Ryan, and their daughter Jessie Ryan** — entirely different individuals from Michael J. Ryan, Greenway's former fiduciary attorney.

The motion submitted by AUSA Park, never once mentions Michael J. Ryan anywhere. Park knew or had to have known; Thomas F. Ryan is not Michael J. Ryan. Because the documents she submitted to the Court are clearly in the name, and were filed on behalf of Thomas F. Ryan, his-ex-wife Wendy Ryan, and daughter, Jessie Ryan. They are different people with different relationships to

Greenway and to the Selakovic scheme. *See attached Ex. E, and* Case No. 2:17-cv-07748, Park Decl., Exh. 4, Dkt. 9-2 (Jan. 29, 2018).

Most importantly, Michael J. Ryan did not register HPC Acquisitions, Inc. (later Vegalab, Inc. – VEGL) with the SEC until March 2016. His role in the Selakovic scheme; using Greenway's confidential insider business information included in its PPM, and reverse merger strategy to take Selakovic's company public instead — was physically impossible to discover before that date. Petitioner independently discovered Michael Ryan's misconduct in March 2017 upon reviewing VEGL's public SEC filings. Park's substitution of Thomas F. Ryan's 2013 sanctions motion as the materially false and fabricated evidentiary predicate for a "prior knowledge defense" regarding Michael J. Ryan's 2016 SEC conduct is not a typographical error. It is a documented identity substitution in a sworn declaration. That was material and central to Petitioner's prior civil rights lawsuit (42 U.S.C. §1983) against DHS officials.

Further, on February 16, 2018, Hanna, Schouten, Monteleone, and Park filed a supplemental brief repeating the fabricated Michael J. Ryan substitution in their own voice — not merely in Park's declaration — stating:

> *"plaintiffs' purportedly 'new' evidence regarding Greenway's former attorney, Michael J. Ryan, is not new... "As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter." Case No. 2:17-cv-*

> *07748, Dkt. 11 at [page 6] (Feb. 16, 2018) (citing Park Decl., Exh. 4).*

That sentence in a brief signed by four attorneys is a separate and independent misrepresentation to this Court.

This Court relied on the Ryan substitution as a primary basis for its April 4, 2018, findings, stating:

> *Defendants correctly note that Plaintiffs' had knowledge of their "new information" regarding Greenway's attorney as early as June 2013, if not earlier, and chose not to share it with law enforcement until they sought to produce "new evidence" to demand renewed attention for their case. (Declaration of Grace Y. Park ("Park Decl."), Ex. 4, ECF 9-2)." Case No. 2:17-cv-07748,Order at [page16], Dkt. 13 (Apr. 4, 2018).*

The same order then articulated the government's own mischaracterization of Petitioner's conduct; that Petitioner "chose not to share [new information] with law enforcement until they sought to produce 'new evidence' to demand "renewed" attention for their case." Order at 16 (citing Park Decl., Ex. 4, ECF 9-2).

That phrase — "renewed attention for their case" — could be considered a judicial admission embedded in this Court's own published order. "Their case" has only one referent in the record: the OSS federal investigation and prosecution in the Western District of Missouri, the only federal case in which Petitioner had any

established relationship with DHS officials. When USAO-CDCA attorneys characterized Petitioner's April 2017 notification to Gibson as an attempt to demand "renewed attention for their case," they simultaneously confirmed:

(1) the OSS prosecution was Petitioner's case, acknowledging his formal relationship to it as the Lead Victim DHS had identified in March 2015;

(2) Petitioner was attempting to provide new material evidence of Selakovic's
and Michael Ryan's expanded scheme to the government agents responsible
for that prosecution, precisely the conduct of a crime victim engaging with the investigation under the CVRA; and

(3) that was material, ongoing, and relevant to Petitioner's status at the moment of his April 2017 notification.

The government's argument contains an internal contradiction. On one hand, they claimed DHS Agent's Gibson's non-existent and fabricated civil court ruling and civil prerequisite suspended it.

While, on the other hand, characterizing Petitioner's April 2017 discovery of Micheal J Ryan's recent SEC filing disclosures (at that time) and his direct role in the scheme to defraud Greenway, as "*rather old*" and an illegitimate attempt by Petitioner's to demand "*renewed attention*" in that same case. Case No. 2:17-cv-07748, Park Decl., Exh. 4, Dkt. 9-2 (Jan. 29, 2018).

These two positions are mutually exclusive. The "*renewed attention*" characterization is the government's own acknowledgment, in this Court's

published order, regarding Petitioner's interactions with DHS officials and Greenway's involvement as a victim in OSS, that Petitioner had a recognized relationship to it, and that new evidence was being presented to the agents responsible for it.

The 2013 sanctions motion AUSA Park and USAO-CDCA attorneys presented to the court, bears Thomas F. Ryan's name, not Michael J. Ryan's. Every filing that adopted the "*rather old*" characterization, the February 16, 2018, supplemental brief and the July 19, 2021, opposition, referenced below — was material to the government's "prior knowledge" defense, rested on a materially false Ryan name substitution regarding Petitioner's March 2017, discovery date of Michael J. Ryan's involvement in the scheme to defraud Greenway. Verifiable from the face of the document itself, SEC records, and this Court's own docket. See *Gustavo Escamilla et al, vs., Department of Homeland Security*, et al, Case No. 2:17-cv-07748, DE's 9, and 11

Act Three — Hanna, Schouten, Monteleone, and Park Republish Gibson's Fabricated Colorado Ruling Under Oath (January 29, 2018, and February 16, 2018 — Dkts. 9 and 11, Case No. 2:17-cv-07748)

Actors: Hanna, Schouten, Monteleone, Park (both filings)

In both the January 29, 2018, MTD and the February 16, 2018, supplemental brief, Hanna, Schouten, Monteleone, and Park misrepresented to this Court that Greenway's trademark ownership was legally "in doubt" following Gibson's concocted negative Colorado civil court ruling in favor of Selakovic, and against

Greenway, regarding Greenway's meritorious civil trademark infringement claims, against Selakovic personally.

Not only has Greenway's ownership of its valid US trademark never been in doubt, Gibson's August 17, 2015, negative court ruling in favor of Selakovic never occurred, and is contradicted by Colorado Chief Judge Krieger's judicial findings on the record.

However, Hanna, Schouten, Monteleone, Park adopted, mischaracterized , and republished DIIS Agent Gibson's fabricated August 17, 2015, civil trademark infringement narrative under their own signatures. Case No. 2:17-cv-07748, Dkt. 9 at [page 11]; Dkt. 11 at [page 6]. *See attached* Ex. F and G

The actual Colorado record was publicly accessible on PACER and said the exact opposite. On March 31, 2015, Chief Judge Marcia Krieger ruled against Selakovic and in favor of Greenway, finding that Greenway had established a prima facie showing of personal jurisdiction over Selakovic on its trademark infringement claims. Greenway Nutrients, Inc. v. Blackburn et al., No. 1:13-cv-01088 (D. Colo.), DE-129 (Mar. 31, 2015).

Further, Greenway's ownership of its registered U.S. trademark, Serial No. 85124269, has never been in doubt, and remains valid today through the United States Patent and Trademark Office.

USAO-CDCA attorneys advancing the false "trademark ownership in doubt" argument was not merely republishing a false factual claim. It misled the Court to rely upon their republication as the stated reason for DHS suspending their criminal investigation, based on Gibson's fabrication, regarding Greenway's civil trademark infringement claims, against Selakovic personally, that they collectively knew, or had the means to have known, was untrue.

Critically, they had before them, in their own case file, and submitted as part of AUSA Park's declaration, Greenway's 2013 Colorado civil docket, DHS Agent Gibson's June and August 2015 written confirmations to Petitioner that the OSS investigation into the theft of Greenway's products, and misuse of Greenway's trademark, was actively continuing during the precise period bracketing Gibson's fabricated August 17, 2015, ruling. They had the means to verify the fabrication as false. They republished it anyway, under their own signatures, across two successive filings. A single attorney's misstatement may be error. A coordinated multi-attorney republication after the contradicting record was available in counsel's own case file is not error — could be considered a scheme. *United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1168 (9th Cir. 2017).

Act Four — Wilkison, Harris, Osinoff, and Park (July 19, 2021 Opposition, Dkt. 15): Affirmatively Raised Petitioner's CVRA Victim Status, Triggering § 3771(c)(1), Then Adopted, Mischaracterized, and Republished DHS Agent Gibson's Fabricated Court Ruling Narrative in the Office's Own Voice After Specific Notice of the Fabrication.

Actors: Tracy L. Wilkison (Acting USA), David M. Harris (AUSA Chief Civil Division), Joanne S. Osinoff (AUSA Chief General Civil Section), Grace Y. Park (AUSA)

It is essential to note; Petitioner's CVRA enforcement action focuses squarely on the numerous alleged independent and ongoing violations of Petitioner's victims' rights, under the CVRA, and AG Guidelines. That commenced in July 2021-November 2021 and persisted through February 2026. Based on Petitioner's then March 2021, recent discovery of USAO-CDCA attorneys filing multiple false and materially misleading motions and declarations, within this District Court, that occurred during Petitioner's 2017 civil rights lawsuit. Under an entirely different statutory framework pursuant to 42 USC § 1983.

Those filings and their alleged misrepresentations have further undermined and displaced Petitioner's victim's rights, under the CVRA. That persisted after Petitioner's initial March 2021, CVRA action against DHS officials was dismissed. When Petitioner sought to file a Rule 60(d)(3) motion for fraud on the Court, to address the alleged underlying misconduct in the underlying civil rights proceedings (42 USC § 1983), that the Court relied upon to dismiss Petitioner' initial March 2021 CVRA action, resulting in the deprivation Petitioner victim's rights under the CVRA.

On July 19, 2021, after Petitioner's March 2021, CVRA petition was dismissed, and while Petitioner's CVRA appellate proceedings were still pending, regarding Petitioner's specific interactions with DHS officials at that time. Four USAO-CDCA attorneys, including AUSA Park (who also appeared in Petitioner's same 2017 civil rights proceedings), filed an opposition to Petitioner's preemptive motion for disqualification, and proceeded to raise Petitioner's victims' status under the CVRA, during Petitioner's underlying Rule 60(d)((3) proceedings. *See attached* Ex. H

Instead of affording Petitioner any protection or victims' rights, or DOJ officials electing to invoke a voluntarily mechanism to cure their alleged errors before the Court, pursuant to 18 U.S.C. 3771(d)(4), the record reflects that the opposite occurred.

USAO-CDCA attorneys elected not to correct, retract, or acknowledge a single alleged prior misrepresentation. Dkt. 15, Case No. 2:17-cv-07748 (Jul. 19, 2021). It republished all of them.

Specifically, the July 19, 2021, opposition adopted, mischaracterized, and republished Gibson's negative civil trademark infringement court ruling narrative and civil litigation prerequisite in the office's own voice, not as a historical account of what Gibson told Petitioner, but as the correct legal basis for this District Court's initial April 2, 2021, dismissal of Petitioner's CVRA action; stating:

> "Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits." Case No. 2:17-cv-07748, Dkt. 15 at 2–3.

That representation was made after Petitioner's March 2021 notification had specifically identified Gibson's fabricated August 17, 2015, court ruling narrative, specifically regarding civil trademark infringement claims, and the non-existent civil litigation prerequisite as false justification with no basis in the CVRA.

Additionally, according to the A.G. Guidelines, under "In-Court Enforcement Mechanisms", DOJ U.S. Attorneys may assert as error "any" denial of victims' rights to which the appeal relates, which is did in this instance, according to 18 U.S.C. § 3771(d) (4), that states in relevant part,

> "'In addition, on direct appeal, the government may assert as error any denial of victims' rights in the proceeding to which the appeal relates. (18 U.S.C. § 3771(d) (4)). A government attorney seeking to file a petition for a writ of mandamus or a direct appeal must obtain written authorization from the Solicitor General, in addition to the approvals required by that attorney's office or section. See 28 C.F.R. § 0.20(b)."…

USAO-CDCA attorneys elected to republish Gibson's fabricated court ruling narrative, after receiving court-record notice that it had been specifically identified that, and multiple other documented allegations of misconduct; based on

multiple material misrepresentations central to Petitioner's underlying civil rights claims against DHS officials, establishing the intentional element standard, under *Stonehill*, 660 F.3d at 444; Sierra Pac., 862 F.3d at 1168.

The same July 19 opposition simultaneously and affirmatively raised Petitioner's CVRA victim status; specifically referencing Petitioners failure to "identify the existence of criminal proceedings affecting them as victims." Case No. 2:17-cv-07748, Dkt. 15 at 2.

Four USAO-CDCA attorneys thus had actual, documented knowledge of Petitioner's initial CVRA victim status claim against DHS officials, and of the alleged misconduct that occurred and continues to deprive Petitioner of his victims' rights at the precise moment they chose to republish Gibson's fabricated narrative. Under 18 U.S.C. § 3771(c)(1), that knowledge should have triggered a statutory "best-efforts" obligation to accord Petitioner victim's rights under the CVRA and AG Guidelines. They did not discharge it. The records reflect; they filed a brief republishing the same fabricated predicate that had suppressed those rights since 2016.

Act Four (a) — Post-Hoc Rationalization of a Materially False Sworn Declaration Through Procedurally Inapplicable Documents."

Furthermore, on July 19, 2021, USAO-CDCA attorneys not only elected to raise Petitioner's victims' status in their opposition to Petitioner's motion for disqualification, but they doubled-down on their alleged misrepresentations

regarding Petitioner's March 2017 discovery date of Greenway's former attorney Michael J. Ryan' involvement in the scheme to defraud Greenway, previously asserted in Petitioner's underlying civil rights proceedings.

Only this time, USAO-CDCA attorneys conflated and contradicted their initial judicial admissions regarding Petitioner Escamilla's June 2013 email communications with Thomas F. Ryan, his ex-wife Wendy Ryan, and their daughter Jessie Ryan. That AUSA Park and multiple senior USAO-CDCA attorneys initially presented to the Court as evidence of their "prior knowledge" defense, which was supported by a motion Thomas F. Ryan filed, which was false and materially misleading.

Which was based solely on AUSA Park's January 2018 false declaration, and Park's and USAO-CDCA's February 2018, misleading pleadings. And later including in their July 2021, opposition, wherein AUSA Park and multiple senior USAO-CDCA officials, pressed forward with those same misrepresentations.

Only now on July 19, 2021, contrary to their initial material representations, AUSA Park, and multiple other senior USAO-CDCA officials, now claimed they advised the Court that Petitioner Escamilla's 2013 email communications were sent to Thomas F. Ryan, his ex-wife Wendy Ryan, and their daughter Jessie Ryan.

Who then pointed to a 2017 Florida Bar complaint Petitioner filed against Greenway's former attorneys, as a replacement and the "new and different reason"

for their "prior knowledge defense," regarding Petitioner's March 2017, discovery date of Michael Ryan's March 2016 SEC filings, was "rather old," and somehow withheld by Petitioner to draw "renewed attention" to DHS's criminal investigation.

In doing so, USAO-CDCA attorneys essentially contradicted their initial misrepresentations already on the Court record, regarding Escamilla's 2013 email communications sent to Thomas F. Ryan. Who directed the Court's attention to now reference Petitioner's 2017 Florida State Bar complaint. Even though USAO-CDCA attorneys did not previously raise, reference, or point to it; nor did the Court ever reference or rely upon Petitioner's 2017 Florida State Bar complaint as a determining factor to dismiss Petitioner's 2017 civil rights lawsuit against DHS officials.

Which is problematic because not only does Petitioner's 2017 Florida Bar complaint memorialize and support Petitioner's March 2017, discovery date of Michael J Ryan's involvement in the scheme to defraud Greenway. The record clearly reflects the Court relied upon AUSA Park's declarations, Former U.S. Attorney Hanna's, and multiple other senior USAO-CDCA attorneys 2018 pleadings, and their alleged material misrepresentations regarding Petitioner's June 2013, email communications with Thomas F. Ryan, presented to this Court.

That was included in a motion Thomas F. Ryan and Wendy Ryan filed during Greenway's Colorado civil lawsuit. That never once mentioned Michael Ryan anywhere. That USAO-CDCA attorneys knew or had to have known, the Court relied upon as one of the primary determining factors to dismiss petitioners 2017 civil rights lawsuit

Act Five — Finn's Non-Denial: The Government's Complete Failure to Contest Any Substantive Allegation on the Merits (October 25, 2021 — Dkt. 23, Case No. 2:17-cv-07748)

Actor: AUSA Kevin Finn

On October 25, 2021, AUSA Kevin Finn filed the government's opposition to Petitioner's Rule 60(d)(3) motion (See Ex. I) for fraud on the court, in Petitioner' underlying civil rights lawsuit against DHS officials. See Ex. J, Dkt. 23, Case No. 2:17-cv-07748 (Oct. 25, 2021). AUSA Finn did not factually deny any of the documented acts of alleged misconduct on the merits. See attached Ex. J

Even though Finn had months between Petitioner's March 2021, initial notification of alleged USAO-CDCA misconduct — and receipt of Petitioner's Rule 60(d)(3).

Supported by multiple documented instances of USAO-CDCA attorneys relying on relevant misrepresentations that went directly 'to the central issue,' which improperly influenced the Court in its decision, to acquire a dishonest favorable court ruling, during Petitioner's 2017 civil rights lawsuit against DHS officials.

Describing Petitioner's initial March 2021, discovery of specific instances of alleged misconduct with specific PACER citations — and his opposition. AUSA Finn's Opposition raised two procedural grounds (Local Rule 7-3 meet-and-confer and Local Rule 11-6 page length). Finn did not factually deny any of the documented acts of alleged misconduct on the merits or address the additional allegations of misrepresentations included in USAO-CDCA attorneys' July 19, 2021, opposition.

That included multiple misrepresentations pertaining to; 1) Ramey's misleading declaration regarding Petitioner's DHS-CRCL civil rights complaint; 2) Park's false declaration and Ryan substitution; 3) and USAO-CDCA attorneys and Park's subsequent reaffirmance of the false Ryan substitution, misleading the Court regarding Petitioner's March 2017, initial discovery date of Michael J. Ryan's involvement in the scheme to defraud Greenway. Which they falsely claimed occurred in June 2013, based on Park's "Ryan" substitution, and USAO-CDCA's and Park's subsequent misrepresentations that Petitioner's March 2017, discovery was "rather old." To make it appear as if Petitioner had "prior knowledge" in June 2013, of Michael Ryan's March 2016, SEC filings on behalf of Selakovic's newly formed publicly traded company, Vegalab, Inc.

Which was physically impossible for Petitioner to have had any prior knowledge of Michael Ryan's involvement in June 2013, for misconduct that

hadn't occurred until March 2016, and is untrue. 4) DHS Agent Gibson's fabricated narrative regarding his inverting Greenway's favorable Colorado civil trademark infringement Court ruling against Selakovic, and Greenway's valid ownership of its registered trademark, aggravated by USAO-CDCA attorneys republishing Gibson's fabrication, further misrepresenting that Greenway's "ownership of its trademark was in doubt," which is also false and untrue.

Wright dismissed the Rule 60(d)(3) motion Sua-sponte on a disputed procedural ground citing Petitioner's counsel's failure to meet and confer. Notwithstanding that Petitioner's counsel had submitted a sworn affidavit directly signed under penalty of perjury, contradicting AUSA Finn's meet-and-confer representation. That sworn contradiction was never examined or resolved by any court.

On November 1, 2021, Petitioner's counsel filed a reply citing the controlling standards for fraud on the court and asserting that the documented acts met each element on the record before the Court. Although AUSA Finn cited Sierra Pacific and Pumphrey in his October 25, 2021, Opposition, he applied those authorities narrowly — invoking Sierra Pacific's "central issue" and "significantly change the picture" materiality tests and Pumphrey's after-discovered-fraud framework only to argue that the alleged fraud was legally insufficient to disturb the 2018 jurisdictional dismissal. Finn did not apply Sierra Pacific's adverse-

inference framework to the documented pattern of conduct by multiple government attorneys across multiple filings; did not cite or engage with United States v. Estate of Stonehill, 660 F.3d 415, 444 (9th Cir. 2011), which governs the totality-of-conduct framework; and did not factually deny that any of the documented acts occurred. Those specific factual allegations remain unrefuted on the merits in any sworn government filing to this date. See Ex. K

Notably, Footnote 2 of the July 19, 2021, USAO-CDCA attorneys' opposition had already preemptively cited *Sierra Pacific*, 862 F.3d at 1168, in anticipation of the Rule 60(d)(3) motion; confirming that USAO-CDCA attorneys knew the controlling authority before the motion was filed. When Finn addressed Sierra Pacific in his October 25 Opposition, he did so narrowly — invoking its procedural-timeliness, due-diligence, and "central issue" materiality holdings while declining to apply its adverse-inference framework to the documented totality-of-conduct pattern.

That selective application, not inadvertence, explains the absence of any factual denial of the specific acts on the merits. That same footnote predicted, without qualification, that Petitioner's "planned motion under Rule 60(d)(3) of the Federal Rules of Civil Procedure will also fail."

That merits prediction was never tested — the motion was dismissed on a disputed procedural ground before any merit's examination, and Finn's October

2021 opposition addressed only procedural defenses while leaving every specific factual allegation substantively unanswered.

An AUSA who places the controlling fraud-on-court standard in the record in July, cites the same authority again in his October Opposition, but applies it only to argue procedural-timeliness and due-diligence defenses — without ever factually denying the specific acts alleged or engaging with the totality-of-conduct framework — has made a deliberate analytical choice. Under Sierra Pacific and Stonehill, that selective application across six named attorneys and multiple filings over more than three years eliminates any inference of inadvertence and supports the inference that the specific factual allegations cannot be defended on the merits. *Sierra Pac.*, 862 F.3d at 1168; *Stonehill*, 660 F.3d at 444; *Berger v. United States*, 295 U.S. 78, 88 (1935).

Petitioner's documented acts have never been adjudicated on their merits, or factually denied in the government's October 25, 2021, Opposition (Dkt. 23) or in the accompanying Finn Declaration, before any court. The motion that would have required a merits response was closed on a disputed procedural ground before the substance could be reached. This history is presented on a contextual basis only — as essential background explaining why Petitioner's prior attempt could not resolve Petitioner's current CVRA rights enforcement action, and as the factual predicate

for the § 3771(f)(2)(C) Ombudsman referral consideration, should the Court find it appropriate.

VI. Wright's 2021 Order Failed to Recall the Existence of "Any Criminal Proceedings" Involving DHS and Greenway — Directly Contradicting The Same Court's Prior Findings

THE SELF-CONTRADICTION — BOTH ORDERS ON THIS COURT'S OWN DOCKET

APRIL 4, 2018, ORDER *(2:17-cv-07748 at 3–4): "On March 3, 2015, Plaintiffs met with Shawn Gibson... Gibson explained that the Greenway investor defendants had already been subject to extensive investigation for criminal trademark infringement... ICE and the United States Attorney's Office had recovered over $26 million in the investigation... He also informed Plaintiffs that they may be able to recover from an established victims' fund... the Kansas City U.S. Attorney's Office for the Western District of Missouri agreed that Greenway would be added as a victim in the government's case." The same order further acknowledged that in June 2015, Gibson confirmed to Petitioner that his DHS team was still actively investigating Greenway's criminal complaint against Selakovic (Compl., Ex. 5), and that in August 2015, Gibson again confirmed his team was actively continuing that investigation (Compl., Ex. 6).*

APRIL 2, 2021, ORDER (2:21-cv-01910): "The Complaint also fails to state a valid claim for relief under 18 U.S.C. § 3771 because it fails to (1) identify the existence of any criminal proceeding that would grant Plaintiff rights ...""... Most notably,..., they failed to specifically identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents.

These orders cannot coexist. Wright reviewed and acknowledged Gibson's June and August 2015 written confirmations of DHS's active investigation in his own 2018 order — findings that bracket the fabricated August 17, 2015, ruling date. Three years later the same judge failed to recall the existence "any" criminal proceedings, involving Greenway and DHS or DOJ officials, and dismissed Petitioner's initial CVRA action against DHS officials, based on its acknowledgment referenced in its April 2, 2021, order that it lacked subject matter jurisdiction.

The April 2, 2021, Sua sponte dismissal applied a "lack of subject matter jurisdiction" finding transplanted from the prior, and independent § 1983 civil rights action against DHS officials: without briefing, without oral argument, and without addressing Petitioner's March 29, 2021, OSC Response. This subject

matter jurisdiction issue or sequence has never been examined or addressed by any court and is provided for contextual purposes only. See attached Ex. M and N

VII. Michael J. Ryan's Embezzlement — Federal Predicate Offenses Discovered March 2017

DISCOVERY DATE IS DISPOSITIVE

Michael J. Ryan did not register VEGL/HPC Acquisitions, Inc. with the SEC until March 2016. Discovery of his role was physically impossible before that date. Petitioner discovered Ryan's scheme in March 2017 upon reviewing SEC filings — not June 2013. AUSA Park's substitution of Tom Ryan for Michael J. Ryan in her sworn declaration manufactured a "prior knowledge" date, falsely claiming Petitioner knew about Greenway's former attorney in June 2013, that is physically impossible on the face of the SEC record. This is verifiable from EDGAR without any expert testimony.

Michael J. Ryan served as Greenway's retained attorney, paid $50,000 (confirmed by email notification of wired funds) specifically to draft Greenway's Private Placement Memorandum (PPM). As Greenway's fiduciary attorney, Michael Ryan had full access to Greenway's most sensitive proprietary information: trade secrets, product formulations, customer lists, Greenway's exclusive Ecowin distribution agreement, that Michael Ryan helped draft, and,

most critically, its confidential reverse merger strategy involving the HPC Acquisitions, Inc. shell corporation, which Petitioner and Ryan had discussed as the vehicle by which Greenway would take its business model public.

During his representation, Michael Ryan evaluated Greenway's business model at $25 million, was legally bound by attorney-client privilege, fiduciary duty, and a non-disclosure agreement. In or about March 2016; while his duty of confidentiality to Greenway remained fully operative, Michael Ryan, acting on behalf of David Selakovic, registered Vegalab, Inc. (VEGL)(formerly HPC Acquisitions, Inc., the precise shell corporation he and Petitioner had discussed for Greenway's use) with the SEC. He obtained a managing member position and stock ownership in VEGL and assisted Selakovic in executing Greenway's confidential reverse merger plans for Selakovic's direct financial benefit.

Ryan simultaneously drafted a similar PPM for Selakovic's company using Greenway's confidential business model as the template. This is not attorney malpractice. It is embezzlement of confidential intellectual property and insider business information for personal financial gain while bound by attorney-client fiduciary duty.

Michael Ryan's, and Selakovic defendants conduct constitutes the following independent federal predicate offenses, each of which directly and proximately harmed Petitioner within the meaning of 18 U.S.C. § 3771(e)(2)(A): Wire Fraud,

18 U.S.C. § 1343; Securities Fraud, 18 U.S.C. § 1348; and Embezzlement and Theft of Trade Secrets, 18 U.S.C. §§ 645, 1832 (Ryan's extraction of Greenway's PPM, Ecowin distribution agreement, reverse merger strategy, and customer lists while bound by fiduciary and attorney-client duties). The SEC filings establishing Ryan's managing member role and stock ownership are public government records.

VIII. Greenway's Meritorious 2018 Florida Lawsuit Established That Selakovic, Michael Ryan, and James Ryan, And the Other Bad Actors Unlawfully Benefited from Over $100 Million in Retail Product Value Without Any Compensation to Petitioner's Company, Establishing the Continuing Harm from the Original Federal Offense and Confirming Petitioner's "Direct and Proximate" Injury Under 18 U.S.C. § 3771(e)(2)(A) (2018–Present)

Gibson's fabricated civil prerequisite forced Petitioner into years of costly federal civil litigation to obtain the same protection the CVRA guaranteed him through the criminal justice system at no cost. That litigation was systematically destroyed by the same actors who built their enterprise on Greenway's stolen intellectual property.

In August 2018, Petitioner retained counsel to filed *Greenway Nutrients, Inc. v. Selakovic et al.*, Case No. 9:18-cv-81104 (S.D. Fla.), against Selakovic, former Greenway attorneys Michael J. Ryan and James D. Ryan, raw products supplier Ecowin — now majority-owned by Selakovic — and Selakovic's publicly traded alter-ego entity, Vegalab, Inc, and others.

The lawsuit alleged that Michael J. Ryan, while serving as Greenway's retained attorney and paid $50,000 specifically to develop Greenway's reverse-merger business plan, embezzled Greenway's confidential business information, trade secrets, and public offering strategy — then transferred them to Selakovic, who used them to build Vegalab, Inc. on Greenway's stolen intellectual property and take it public. Selakovic's alter-ego relationship with these entities was independently confirmed in *Adobe Systems Incorporated v. Bea's Hive LLC, David Selakovic*, Case No. 9:14-cv-81102.

On February 14, 2019, the court sustained Greenway's claims — finding adequately pled that the Michael Ryan and James Ryan disclosed Greenway's confidential information and trade secrets to Selakovic in breach of their fiduciary duties, that trademark infringement claims against Ecowin were viable, and that Selakovic's enterprise was built on the displacement of Greenway's exclusive distribution rights. *(See DE-81, Feb. 14, 2019.)*

On March 6, 2019, the clerk entered default against Ecowin — positioning Greenway for a multi-million-dollar judgment requiring only proof of damages. Petitioner had provided material evidence that Ecowin's direct participation in manufacturing and distributing Greenway's stolen products generated over **$100 million in retail sales value** — all without a dollar of compensation to Greenway or Petitioner.

That case was then destroyed. On March 29, 2019 — the same day retained counsel John Pierce filed a materially false motion to withdraw — Virage SPV-1, LLC executed a $28.5 million loan agreement with Pierce Bainbridge, Pierce's law firm, perfected by UCC-1 Financing Statement No. 197705050246 filed with the California Secretary of State on April 2, 2019, collateralized against Pierce Bainbridge's entire case portfolio including Greenway's pending litigation. Pierce accepted a $28.5 million bribe the same day he abandoned Greenway's meritorious case. No default judgment was ever entered against Ecowin. Selakovic was never served. No discovery was conducted against the Ryan Brothers. Zero damages were awarded to Greenway.

IX. Petitioner's April 2020 Discovery — James Ryan's Ongoing Breach of Fiduciary Duty as Interim CEO of Selakovic's Publicly Traded Company Vegalab, Inc. and Gibson's Continuing CVRA Non-Compliance

After Petitioner's Florida lawsuit was dismissed, in April 2020, Petitioner notified Gibson directly that James Ryan — Greenway's former attorney, who had valued Greenway above $25 million during his representation and whose fiduciary duties to Greenway remained fully operative — was then serving as interim CEO of Vegalab, Inc., the publicly traded entity Selakovic built on Greenway's stolen intellectual property.

Petitioner further advised Gibson that James Ryan had conspired with Selakovic to embezzle from Greenway, that James Ryan maintained a decades-

long history of defending Selakovic in civil trademark and intellectual property theft litigation involving Adobe Systems, Microsoft, and Greenway, and that the enterprise appeared to constitute an ongoing racketeering operation. Gibson did not respond. Gibson did not notify Petitioner of a single CVRA right triggered by that notification — not protection under § 3771(a)(1), not notice under § 3771(a)(2), not conferral under § 3771(c)(1), not any obligation under 34 U.S.C. § 10607 — notwithstanding that Gibson had previously advised Petitioner of Selakovic's involvement in OSS and the sealed USAO-MO indictment of the Selakovic defendants. *See attached Ex. O*

The harm from the original federal offense is not historical. It is ongoing, present tense, and unaddressed — precisely because the government failed to notify Petitioner of the OSS prosecution's outcome and failed to protect him as required by 18 U.S.C. §§ 3771(a)(1), (a)(9), and 34 U.S.C. § 10607(c)(2).

X. Gerard Fox Rule 11-Certified Independent Corroboration

In March 2022, Gerard P. Fox (SBN 151649) of Gerard Fox Law, P.C. — a licensed California attorney; filed an original complaint in Los Angeles Superior Court on behalf of Greenway and Petitioner against John Pierce (Pierce), Pierce Bainbridge, Virage Master LP, Virage SPV-1 LLC, Pravati Capital LLC, and others, asserting twelve causes of action including Breach of Fiduciary Duty, Conspiracy, Aiding and Abetting Securities Fraud (CA 9), Misappropriation of

Trade Secrets (CA 10), Violation of the Tom Bane Civil Rights Act (Cal. Civ. Code § 52.1), and Declaratory Judgment.

A First Amended Complaint was filed January 20, 2023. Alleging, that Pierce, and his now defunct law firm, aided and abetted Greenway's former attorney's Michael Ryan, James Ryan, Ecowin, Selakovic, and Selakovic's publicly traded company, Vegalab , Inc, to avoid any liability for their joint role in scheme to defraud Petitioner's company Greenway.

Surrounding Pierce's March 29, 2019, misconduct and abandonment of Greenway's meritorious 2018 Florida lawsuit, on the same day Pierce's newly formed law firm, received $28.5 in litigation funding from Virage Capital, as part a much larger $100 million dollar litigation funding transaction, between Pierce Bainbridge and Virage. And that Selakovic, and those acting in concert with Selakovic, through Selakovic's alleged ties to a major transnational drug trafficking criminal enterprise, paid off or bribed Pierce, and his law firm, to abandon Greenway's 2018 Florida lawsuit. Facilitated though an offshore Cayman Island accounts.

Across both filings spanning nearly two years of active litigation, no defendant; including Pierce himself, a licensed attorney; filed a substantive denial of the core bribery allegations on the merits. Causes of Action 9 and 10, by independent counsel, establish that the underlying conduct constitutes cognizable

securities fraud and trade secret misappropriation; the precise categories of federal predicate offense from which 18 U.S.C. § 3771(e)(2)(A) victim status flows.

That case was dismissed on procedural grounds without discovery, without evidence production, and without any merit's adjudication. The procedural dismissal — like every prior proceeding — was obtained without ever engaging the documented factual record.

The enterprise Selakovic built on Greenway's stolen intellectual property continues operating today through Vegalab, Inc., Vegalab S.A., Ecowin, and Vegalab LLC — as confirmed by *MR Innovation Co. Ltd. v. David Selakovic*, Case No. 1:25-cv-01554-UNA (D. Del. 2025). When Petitioner reported this new lawsuit to USAO-CDCA Supervisory VWC Stafford and DHS-OIG, no assistance was offered and no protective action was taken — a direct, documented violation of 18 U.S.C. § 3771(c)(1) and 34 U.S.C. § 10607(c)(2).

XI. Throughout 2022–2025, Petitioner Actively and Continuously Sought Federal Assistance and Protection Through Available Channels Prior to Filing the June 2025 DHS-OIG Complaint

From 2022 through early 2025, prior to filing a criminal complaint against DHS Agent Gibson and DHS OIG employee Simons, Petitioner repeatedly reported and sought assistance and protection from the FBI tip line, the office of Congresswoman Laura Friedman, Senator Dianne Feinstein's office (prior to her

retirement), Congressman Anthony Cardena's office (prior to his leaving office) and local law enforcement. Every one of those efforts proved to be unsuccessful.

In June 2025, after confirmation of the Court's April 2, 2021, dismissal of Petitioner's CVRA action, was based on the Court's use of its "lack of subject matter jurisdiction" determination, that is regretfully based on USAO-CDCA attorneys providing the Court with multiple false and materially misleading motions, pleadings, and declarations, that the Court relied upon to dismiss Petitioner petitioner's 2017 civil rights lawsuit.

Petitioner filed a formal complaint with DHS-OIG documenting Gibson's fabrication, and DHS-OIG employee Simons' conspiring with Gibson to cover-up for Gibson's fabrication, who Simon's also represented that he knew Gibson, and that he (Simons) had previously worked with, and that Gibson told him (Simon's) everything he needed to hear about Petitioner's DHS-OIG complaint, at that time.

Petitioner DHS-OIG complaint also included material evidence and information regarding the curious timing of the alleged $28.5 million dollar bribery scheme, as part of a much larger, $100 million dollar litigation funding deal, that prompted Greenway's former attorney John Pierce, and his law firm, to file a false and materially misleading motion to withdraw and abandoned Greenway's meritorious Florida civil lawsuit. As a direct result of DHS Agent Gibson's initial fabrication of a non-existent August 17, 2015, Colorado court ruling, that has

infected and tainted Petitioner's victims' rights, resulting in a subsequent ten-year pattern of CVRA violations, and costly federal litigation.

The complaint was carbon-copied to AG Bondi, DOJ-OIG, and the Victims' Rights Ombudsman. As of the date of this filing, not one has responded.

The June 2025 DHS-OIG complaint expressly notified DHS-OIG that if it failed to respond within a reasonable period, Petitioner would file a formal enforcement action under the Crime Victims' Rights Act, 18 U.S.C. § 3771. DHS-OIG received that notice and allowed more than six months to pass without any response. This Petition is the enforcement action Petitioner warned was coming.

On December 30, 2025, Petitioner submitted the DHS-OIG Complaint in its entirety to Supervisory VWC Stafford, who confirmed receipt and review on December 31, 2025. Every statutory obligation Stafford subsequently violated was triggered specifically by the contents of that complaint, which she acknowledged reviewing before issuing any substantive determination.

XII. Stafford's Complete CVRA Violation Record (Dec. 30, 2025–Feb. 12, 2026)

STAFFORD VIOLATION SUMMARY — 74 DAYS — 8 SUBMISSIONS — 4 WRITTEN RESPONSES — ZERO MANDATORY ACTIONS

(1) Dec. 31: Characterizes CVRA enforcement petition as "two civil cases which were dismissed" — directs to generic civil rights portal — after

confirming review of Rule 60(d)(3) fraud motion naming her own office's attorneys, their non-denial opposition, prior counsel's Rule 11-certified acknowledgment, and the 2021 CVRA petition.

(2) Jan. 12: Asks for docket number she confirmed receiving 13 days prior. Ignores § 3771(a)(1) protection request entirely.

(3) Jan. 28: Cites wrong statute (28 C.F.R. § 45.10(a)); denies victim status contradicted by this Court's own 2018 order she confirmed reviewing; directs confirmed federal crime victim to call 1-800-CALLFBI.

(4) Feb. 12: Searches CDCA instead of WDMO; leaves January 12 protection request (31 days outstanding) unaddressed; third consecutive Ombudsman deflection in response to written cure demand requiring (according to A.G. Guidelines – upon receipt of credible evidence of alleged misconduct) her to escalate; all four cure points declined in writing.

December 18, 2025: Petitioner submitted formal written notification to First AUSA Bilal Essayli identifying USAO-CDCA alleged attorney misconduct, ongoing CVRA violations, allegations of retaliation, and reporting obligations to DOJ-OIG and DOJ-OPR, under AG Guidelines; copied to the Pam Bondi (AG), DOJ-OIG, DOJ-OPR, the DOJ Ombudsman, Harmeet Dhillon (DOJ Civil Rights),

DHS Secretary Kristi Noem, Congresswoman Laura Friedman's office, and the House Judiciary Committee. Zero responses from any recipient. *See attached* Ex. P

December 30, 2025: Petitioner submitted to Stafford the Rule 60(d)(3) fraud motion naming her own office's attorneys, AUSA Finn's October 25, 2021, non-denial opposition, prior counsel's acknowledgment that the alleged fraud evidence met the applicable high standard, the 2021 CVRA petition, and the June 2025 DHS-OIG Complaint.

December 31, 2025 — Response 1: Stafford confirmed:

> "We have reviewed it and the attachments." Her complete substantive determination: "It seems to be related to two civil cases which were dismissed. If you believe you have been the victim of a civil rights crime… please submit a report to the US Department of Justice Civil Rights Division through its complaint's portal." See attached Ex. Q

This determination was issued with confirmed, acknowledged review of: a Rule 60(d)(3) fraud-on-the-court motion naming Hanna and multiple other USAO-CDCA attorneys in her own office; the October 25, 2021, non-denial opposition USAO-CDCA attorneys filed; prior counsel's November 1, 2021, reply, demonstrating Rule 60(d)(3) evidence met the applicable high standard; and a CVRA enforcement petition under 18 U.S.C. § 3771(d)(3) that Stafford mischaracterized as a civil case.

The institutional relationship between USAO-CDCA Supervisory VWC Stafford and the USAO-CDCA office whose attorneys' conduct she was asked to review is documented on the official DOJ website. In October 2018 — nine months after Hanna's office filed the January 29, 2018, MTD containing the Ramey and Park sworn declarations — Stafford received the Attorney General Award for Excellence in victim services at a ceremony in Washington, D.C. at which then-United States Attorney Nicola T. Hanna was personally present.

The official DOJ announcement is accompanied by a photograph captioned: "Victim-Witness Specialist Allison Stafford with Deputy Attorney General Rod Rosenstein and United States Attorney Nick Hanna." (66th Annual Attorney General's Awards, USAO-CDCA, Oct. 24, 2018, https://www.justice.gov/archives/usao-cdca/blog/66th-annual-attorney-general-s-awards).

On December 31, 2025, seven years later, Stafford reviewed a Rule 60(d)(3) fraud motion, that undermined Petitioner's victims' rights and status, naming Hanna's and USAO-CDCA attorneys and determined that it involved "two civil cases that were dismissed."

January 12, 2026; Response 2:

> "Are you a CVRA victim from a case charged in the Central District of California? If so, please respond with the court docket number so that I may

find the case."

Issued thirteen days after she confirmed receiving and reviewing *Gustavo Escamilla et at., vs. United States of America*, Case No. 2:21-cv-01910, identifying interactions with DHS officials, Petitioner's victim status, and DHS's and USAO-MO's criminal proceedings in the Western District of Missouri. *See attached* Ex. R

January 23, 2026; Submission 5 (Subject Matter Jurisdiction and Misconduct): Petitioner submitted a formal written supplement to Stafford; carbon-copied to First AUSA Bilal Essayli and Assistant Attorney General Harmeet Dhillon (DOJ Civil Rights Division); titled "Supplement — Credible Allegations of .... Misconduct, and CVRA Denials; For DOJ OPR/OIG And Oversight Review." *See Attached* Ex. S

The submission expressly raised the subject matter jurisdiction issue: "Judge ... knew or reasonably should have known; based on his own prior rulings; that he 'lacked subject matter jurisdiction' over the victims' rights and status claims, a fundamental jurisdictional defect the victims only recently discovered."

Attached to this submission were: The Court's April 4, 2018, dismissal order; April 2, 2021, CVRA dismissal; and Petitioner's October 18, 2021, Rule 60(d)(3) motion for fraud on the court; every material document establishing the jurisdictional defect and the binary contradiction between the Court's own orders.

Stafford received this submission. It was copied to three senior DOJ officials. It raised a precise, documented, non-waivable jurisdictional defect supported by specific controlling authority. Under 18 U.S.C. § 3771(c)(1), Stafford's obligations included immediate escalation to DOJ-OPR and DOJ-OIG as credible allegations of misconduct, and coordination with the USAO-MO regarding Petitioner's victim status. Stafford discharged none of them.

January 28, 2026; Response 3:

> "The CVRA rights become available to federal crime victims only when federal criminal proceedings are initiated by complaint, information or indictment… 28 CFR § 45.10(a). It does not appear that you are an identified crime victim in a federal criminal proceeding. We cannot assist you." *See attached* Ex. S

Three independent legal errors: (1) 28 C.F.R. § 45.10(a) governs Ombudsman complaint filings; it does not define victim status; (2) the determination that federal criminal proceedings had not been initiated is directly contradicted by this Court's own April 4, 2018 Order; which she confirmed reviewing; (3) directing a confirmed federal crime victim to call a generic FBI tip line inverts 18 U.S.C. § 3771(c)(1), which places the obligation to use her best efforts" to protect the Petitioner on DOJ, not on the victim.

February 5, 2026; Submission 7 (Legally Precise Cure Demand): Petitioner submitted a detailed legal response to Stafford's January 28 determination; the

most legally precise submission in the entire Stafford correspondence record. Petitioner correctly identified that 28 C.F.R. § 45.10(a) governs Ombudsman complaint procedures, not victim status. *See attached* Ex. T.

Petitioner correctly cited 18 U.S.C. § 3771(e)(2)(A)'s three-element victim definition. Petitioner correctly identified that sealed indictments do not extinguish victim status and that DHS's March 2015 formal conferral of victim status constitutes initiation of federal criminal proceedings under the CVRA. Petitioner cited the December 2025 Delaware action, regarding similar intellectual property theft allegations involving another company's trademark protected products, in MR Innovation Co., Ltd. v. Vegalab S.A., Case No. 1:25-cv-01554-UNA (D. Del. 2025), as further evidence of Selakovic's ongoing enterprise trading on Greenway's stolen assets and intellectual property.

Petitioner then issued four written cure demands: (1) written confirmation of victim status based on the DHS conferral and ongoing harm in this district; (2) request for protection assessment and coordination with appropriate authorities regarding Selakovic (3) escalation of credible allegations of USAO-CDCA misconduct to DOJ-OPR, DOJ-OIG, and the Victims' Rights Ombudsman with written confirmation of referral; and (4) notification regarding Petitioner's victim rights and status continued to be denied, specifically addressing the sealed indictments, DHS conferral, and ongoing predicate acts in CDCA. Each cure

demand, factually documented, and directly responsive to a specific obligation under the CVRA and AG Guidelines. Stafford's February 12 response declined everyone in writing. *See attached* Ex. U.

February 12, 2026; Response 4:

> "I searched for charged criminal cases in the Central District of California but cannot find any case matching the defendant's names listed below. If you believe your rights have been violated, please file a complaint with the Victims' Rights Ombudsman."

Four simultaneous failures: wrong district searched (CDCA instead of WDMO); January 12 protection request (31 days outstanding) not acknowledged; third consecutive Ombudsman deflection in response to a cure demand requiring Stafford herself to escalate; all four requests for protection, or cure demands declined in writing.

XIII. USAO-MO Sealed Indictment and Active Government Concealment

As of this filing, Petitioner has never been notified of any case number or OSS prosecution outcome information. Filing charges under seal does not suspend the government's CVRA notification obligation, it creates an enhanced obligation. Independent counsel's complaint independently alleges that Selakovic and Blackburn "may have potentially reached a deferred prosecution or plea agreement

with the DOJ." *See Gustavo Escamilla et al v. United States of America*, case# 2:21-cv-01910, DE 1

IV. LEGAL ARGUMENT

I. THE CRIME VICTIMS' RIGHTS ACT MAKES CRIME VICTIMS INDEPENDENT PARTICIPANTS THROUGHOUT THE CRIMINAL JUSTICE PROCESS

Pursuant to 18 U.S.C. § 3771, Crime victims' have the following rights: (a) RIGHTS OF CRIME VICTIMS. A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

> (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
> (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice. The Crime Victim's Rights Act, 18 USC § 3771 ("CVRA") gives Crime Victims' Rights to participate in Federal criminal proceedings. Congress was concerned that in the Federal system crime.

The Crime Victim's Rights Act, 18 USC § 3771 ("CVRA") gives Crime Victims' Rights to participate in Federal criminal proceedings. Congress was concerned that in the Federal system crime victims were "treated as non-participants in a critical event in their lives. They were kept in the dark by prosecutors too busy to care enough…and by a court system that simply did not have a place for them." 150 Cong. Rec. S4262 (April 22, 2004)(Sen. Feinstein).

To remedy this problem, Congress gave victims "the simple right to know what is going on, to participate in the process where the information that victims and their families can provide may be material and relevant…" Id.

In the case at bar, Petitioner Escamilla is the victims of multiple crimes committed by the Selakovic defendants, and later Greenway's former attorneys, aggravated by DHS Agent Gibson's and Simon's fabricating a non-existent civil

litigation victory prerequisite for DHS and USAO-MO to continue their criminal enforcement action and prosecution of the Selakovic defendants.

And attempted to coerce and deceive Petitioner Escamilla confusing and misleading him. His company has gone from identified the "Lead Victim" to being told that his company Greenway would have to prosecute, pay-for, and prevail in the same Colorado federal civil trademark infringement case against the Selakovic. Contradicting court records, demonstrating Greenway had already done so. ***Nowhere in the CRVA is there even a suggestion that victims have to maintain their own action as a contingency of receiving the rights afforded under the CRVA.***

Moreover, the CRVA gives victims of Federal crimes a series of rights, including the right to notice of court proceedings, to be heard at plea and sentencing hearings, and to reasonably "confer with the attorney for the Government in the case." 18 U.S.C. § 3771(a). Victims also have a "right of access to the terms of a plea agreement…" In re Interested Party 1, 530 F. Supp. 2d 136, 2008 WL 134233 at 7 (DDC 2008). The CVRA also assures victims broadly that they will be "treated with fairness." 18 U.S.C. § 3771(a)(8).

To ensure that victims are notified of their rights, the CVRA directs employees of the Justice Department "and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime" to

use their "best efforts to see that crime victims are notified of…the rights described [in the CVRA]." 18 U.S.C. § 3771(c)(1). Clearly, if DHS Agent Gibson, Simons, and DHS-OIG, USAO-CDCA, or other DOJ officials, have used "best efforts" to assist Petitioner pursuant to the law, this Petition would be unnecessary.

II. THE CVRA GIVES VICTIMS RIGHTS DURING THE INVESTIGATION OF A CRIME

The CVRA gives victims the right to confer with the attorney assigned to represent the government prosecution. The Fifth Circuit recently spoke to Victim's Rights:

> (The district court acknowledge that "[t]here are clearly rights Under the CVRA that apply before any prosecution is underway. " " United States v. BP Prods. N. Am. Inc., No. H-07-434, 2008 WL 501321, at *11 (S.D. Tex. Feb. 21, 2008). Logically, this Includes the CVRA's establishment of victims' "reasonable right to confer with the attorney for the Government."
>
> 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we Do not speculate on the applicability to other situations), the Government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims 'views on the possible details of a plea bargain. In re Dean, 527 F.3d 391, 394 (5th Cir. 2008)

The position that CVRA rights apply before charges have been filed is consistent with DOJ's regulations under the CVRA, which explains that government officials "must advise a victim [about their rights under the CVRA]…at the earliest opportunity at which it may be done without interfering

with an investigation." A.G. Guidelines for Victim and Witness Assistance (May 2005). The plain language of the CVRA undergirds this conclusion, as it applies not simply to prosecutors but to government agencies "engaged in the detection [and] investigation…of crime…" 18 U.S.C. § 3771(c)(1). Indeed, if there were any doubt, the plain language of the CVRA extends victims' right to situations "in which no prosecution is underway." 18 U.S.C. § 3771(d)(3).

If no underlying prosecution is required, why did DHS Agent Gibson fabricate a non-existent ruling and civil litigation victory pre-requisite for Petitioner Escamilla to maintain his own civil action and prevail therein to trigger the protections of the CRVA?

Moreover, the 11th Circuit held that the CVRA affords crime victims the opportunity to meet or confer with federal prosecutors only after criminal charges had been filed against the accused suspects by stating in relevant part; see In re: COURTNEY WILD, Petitioner - On Petition for Writ of Mandamus to the United States District Court for the Southern District of Florida, D.C. Docket No. 9:08-cv-80736-KAM, April 14, 2020.

> "we conclude that the CVRA is best understood—in accordance with its terms and the context in which it was enacted—to apply only after the initiation of criminal proceedings. To the extent the Act's language and structure leave any doubt about its proper scope, we must assume that Congress "acted against the backdrop of long-settled understandings about the independence of the Executive with regard to charging decisions." Fokker Servs., 818 F.3d at 738. Had Congress intended to upend (rather than reinforce)

> those "long-settled understandings," we can only assume it would have expressed itself more clearly. See, e.g., Puerto Rico v. Franklin California TaxFree Trust, 136 S. Ct. 1938, 1947 (2016) ("Congress 'does not, one might say, hide elephants in mouseholes.'" (quoting Whitman v. American Trucking Assns., Inc., 531 U.S. 457, 468 (2001))."
>
> The district court acknowledge that "[t]here are clearly rights Under the CVRA that apply before any prosecution is underway." United States v. BP Prods. N. Am. Inc., No. H-07-434, 2008 WL 501321, at *11 (S.D. Tex. Feb. 21, 2008). Logically, this includes the CVRA's establishment of victims' "reasonable right to confer with the attorney for the Government." 18 U.S.C. § 3771(a)(5). At least in the posture of this case (and we Do not speculate on the applicability to other situations), the Government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims ' views on the possible details of a plea bargain. In re Dean, 527 F.3d 391, 394 (5th Cir. 2008)

In the aforementioned proceedings the 11th Circuit Court denied petitioner's request for relief on the ground that she had failed to show "continuing, present adverse effects" or any "real and immediate" threat of future CVRA violations."

In the case at hand, the Petitioner's 'emergency CVRA petition clearly demonstrates that there is "continuing, present adverse effects" and a very "real and immediate" threat of future CVRA violations.

During Petitioner and his business partners face to face meeting with DHS officials, this District Court and USAO-CDCA attorneys acknowledged and referenced Petitioner's initial recorded interview with DHS officials, and Petitioner Escamilla's email communications with DHS Agent Gibson. During their meeting,

Gibson advised Escamilla and his business partner, that criminal charges and sealed federal criminal indictments had been filed against the Selakovic Defendants, the alleged ringleaders responsible for OSS.

Petitioner Escamilla is a victim of a federal crime, who has continued to be needlessly victimized by the well-heeled and politically connected Selakovic Defendants, and alter-ego entities operated and controlled by the Selakovic, and to the continued unlawful actions of his former lawyers Michael J Ryan, and James D. Ryan, who conspired with and embezzled confidential insider information obtained while representing Greenway during the confidential reverse-merger discussions with representatives VEGL. This was in direct violation of the following federal criminal statutes, including, but not limited to, embezzlement, 18 U.S.C. § 645, securities and commodities fraud, 18 U.S.C. § 1348, mail and wire fraud, 18 U.S.C. § 1343.

III. PETITIONER IS A "VICTIM" PROTECTED BY THE CVRA

Under the CVRA the crime victim is defined as "a person directly and proximately harmed as a result of the commission of a Federal offense…" 18 U.S.C. § 3771(e). Not only must the CVRA as a whole be interpreted liberally, but its definition of "crime victim" requires a generous construction. "[T]his is an intentionally broad definition because all victims of crime deserve to have their rights protected…" 150 Cong. Rec. S10912 (October 9, 2004).

Petitioner Escamilla was "directly and proximately" harmed by these crimes, thereby making him a victim under the CVRA. It should be emphasized that the CVRVA "was designed to be a 'broad and encompassing' statutory victims' bill of rights." *United States v. Degenhardt*, 405 F.Supp.2d 1341, 1342 (D. Utah 2005) (quoting 150 Cong. Rec. S4261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein)).

Congress intended the CVRA to dramatically rework the federal criminal justice system. In the course of construing the CVRA generously, the Ninth Circuit observed: "The criminal justice system has long functioned on the assumption that crime victims should behave like good Valedictorian children -- seen but not heard. The Crime Victims' Rights Act sought to change this by making victims independent participants in the criminal justice process." *Kenna v. U.S. Dist. Court/or CD. Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006). Accordingly, because the CVRA is remedial legislation, courts should interpret it "liberally to facilitate and accomplish its purposes and intent." *Elliott Industries Ltd. Partnership v. BP America Production Co.*, 407 F.3d 1091, 1118 (10th Cir. 2005) (noting remedial legislation should be "interpreted liberally to facilitate and accomplish its purposes and intent"). The CVRA itself suggests this conclusion by requiring that courts must treat crime victims with "fairness." *United States v. Patkar*, 2008 WL 233062

at *3 (D. Haw. 2008) (citing *United States v. Turner*, 367 F.Supp.2d 319,335 (E.D.N.Y. 2005)).

Not only must the CVRA as a whole be interpreted liberally, but its definition of "crime victim" requires a generous construction. After reciting the direct-and-proximate-harm language at issue here, one of the Act's two co-sponsors -- Senator Kyl -- explained that "(t]his is an intentionally broad definition because all victims of crime deserve to have their rights protected...." 150 Cong. Rec. S10912 (Oct. 9, 2004) (emphasis added).

Furthermore, an individual qualifies as a victim under the CVRA even when not the target of a crime, so long as that individual is harmed as a result of the crime's commission. As the Eleventh Circuit has explained, a "crime victim" need not even be included in the charging document:

> "[The CVRA] does not limit the class of crime victims to Those whose identity constitutes an element of the offense or who happen to be identified in the charging document. The statute rather, instructs the district court to look at the offense itself only to determine the harmful effects the offense has on parties. Under the plain language of the statute, a party may qualify as a victim, even though it may not have been the target of the crime, as long as it suffers harm as a result of the crime's commission. *In re Stewart, 552 F.3d 1285,1289 (11th Cir. 2008)*

The description of the victim definition as "intentionally broad" was in the course of floor colloquy with the other primary sponsor of the CVRA and therefore

deserves significant weight. See Kenna, 435 F.3d at 1015-16 (discussing significance of CVRA sponsors= floor statements).

The definition of "crime victims" must thus be construed broadly in favor of Petitioner. Escamilla is the formulator, developer, and owner of Greenway, who qualifies as "victim" under the CVRA. Petitioner Escamilla has been misled, deceived, and ignored and has been kept in the dark even though his company continues to be victimized Selakovic Defendants, and alter-ego entities operated and ultimately controlled by the Selakovic, who created a similar PPM utilizing Greenway's confidential information, that Michael Ryan, and Selakovic embezzled to execute an unlawful and competing reverse-merger while taking Vegalab, Inc public for their self-dealing gain, destroying Escamilla's opportunity to take Greenway public. Yet the government has sat idly by and failed to inform Petitioner of any plea bargains, deferred prosecution agreements, restitution orders, or conferred with Petitioner or informed Escamilla of any of his rights under the CVRA.

IV. PETITIONER IS ENTITLED TO NOTICE OF HIS RIGHTS, AN OPPORTUNITY TO CONFER WITH THE PROSECUTORS AND TO BE TREATED WITH FAIRNESS

Because Petitioner Escamilla is a "victim" under the CVRA, he has been deprived of certain protected rights under the Act. Most important, the Act promises that Petitioner Escamilla will have an opportunity to "confer with the

attorney for the Government in the case." To date, Petitioner has NEVER once been offered or given that right.

This raises the very real possibility that, not only did DHS Agent Gibson fabricate evidence, but the Government may also have negotiated and concluded a plea or a confidential deferred prosecution agreement with Selakovic or alter-ego entities operated or ultimately controlled by the Selakovic, in essence further violating Petitioner Escamilla's rights.

Petitioner was entitled to have this conference with prosecutors before any final plea agreement is reached. The Fifth Circuit reached this conclusion in *In re Dean*, 527 F.3d (5th Cir. 2008), the Government negotiated a plea agreement with the well-heeled corporate defendant without conferring with the victims. When the Government's failure was challenged in the Fifth Circuit, the Fifth Circuit observed: "In passing the [CVRA], Congress made the policy decision-which we are bound to enforce-that victims have a right to inform the plea negotiation by conferring with prosecutors before a plea is reached." Id. At 394.

Over the course of the last 11 years, Petitioner Escamilla have been needlessly denied the right to confer, have been given no notice of any court proceedings or plea bargains, based on DHS Agent Gibson's fabricated Court ruling, that DHS OPR Resident Agent Simons, failed to act on. In addition, both agents created an unlawful civil trademark infringement lawsuit victory barrier,

specifically regarding Greenway's meritorious civil trademark infringement claims, which was completely unnecessary because Petitioner's company Greenway had already received it.

That DHS Agents Gibson and Simons falsely claimed by doing so, that would somehow allow Petitioner to re-earn victim status by filing and prevailing in another costly federal civil lawsuit against Selakovic, to cure a fabricated and non-existent August 17, 2015, Colorado civil trademark infringement, that never occurred, was false, and contradicted the Court record.

This shifted the burden of prosecution to Petitioner and his company Greenway which is completely against the letter and the spirit of the CVRA. This Court is obligated to protect Petitioner rights. The CVRA directs that "[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in [the CVRA]." 18 U.S.C. § 3771(b)(1).

The CVRA also confers on crime victims the right to "assert the rights in [the CVRA]." 18 U.S.C. § 3771(d)(1). Therefore, this Court has its own independent obligation to intercede and ensure that the Government respects the rights of Petitioner under the CVRA. As of the date of this Petition, Petitioner have not been afforded their rights under the CVRA and respectfully ask this Court for relief, as they have no other remedy.

V. EMOTIONAL OR PHYSICAL OR PSYCHOLOGICAL HARM IS SUFFICIENT HARM TO TRIGGER CVRA VICTIMS' STATUS

While a movant seeking to establish CVRA victim status must demonstrate "harm" from a defendant's crime, the requisite "harm" can be of any type—including, for example, intangible harms such as emotional distress, affront to dignity, or invasion of privacy.

The CVRA's plain language leads directly to the conclusion that sufficient "harm" to establish "victim" status exists whenever an identifiable individual is harmed in any way from a defendant's crime. Congress used the broad term "harm," which is commonly defined as "physical or mental damage: injury" Webster's Third New International Dictionary 1034 (2002) (emphasis added). "Mental damage" or "injury" can broadly include many kinds of impacts on crime victims.

For example, an affront to dignity by itself has been found to confer "crime victim" status under the CVRA. See, e.g., *United States v. Monzel*, 746 F.Supp.2d 76, 84 (D.D.C. 2010) (finding that a defendant's viewing of a child sex abuse image harmed the child depicted).

The CVRA nowhere requires additional physical or tangible consequences to follow from the "harm." The Ninth Circuit has confirmed that the CVRA was designed to dramatically rework the federal criminal justice system by uprooting the long-held "assumption that crime victims should behave like good Victorian

children—seen but not heard." Kenna v. U.S. Dist. Court for C.D. Cal., 435 F.3d 1011, 1013 (9th Cir. 2006). Where federal officials inflict dignitary or emotional harm on a victim under color of statutory protection, that harm is itself the injury Congress legislated against.

The federal officials statutorily charged with protecting Petitioner failed to do so, resulting in Selakovic enterprise, and Greenay's former attorneys, generating millions of dollars in illicit gains, built on Greenway's stolen intellectual property and assets. Who instead, inflicted years of mistreatment (lack of respect) in an affront to his dignity or to be treated with fairness. Resulting in the ongoing traumatic and life-altering psychological harm and repeated instances of incomprehensible depths of emotional distress and despair — eroding his trust in federal law enforcement and in the judiciary itself and producing precisely the harm Congress sought to foreclose when it codified the victim's right to be treated with fairness, respect, and dignity under 18 U.S.C. § 3771(a)(8).

Therefore, this Court has its own independent obligation to intercede and ensure that the Government respects the rights of Petitioner under the CVRA.

VI. PETITIONER IS INDEPENDENTLY ENTITLED TO RELIEF UNDER 18 U.S.C. § 3664(d)(5) PURSUANT TO IN RE DAVIS — A STATUTORY CAUSE OF ACTION THAT WAS UNAVAILABLE BEFORE JUNE 2, 2025

STATUTORILY COMPELLED RELIEF UNDER IN RE DAVIS — NINTH CIRCUIT CONTROLLING AUTHORITY

In re Davis, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), holds that 18 U.S.C. § 3664(d)(5) authorizes a crime victim to petition for an amended restitution order where the victim "subsequently discovers" losses omitted from the initial restitution determination, with the 60-day clock running from discovery of the government's failure. Denial of such relief on a qualifying factual record is legal error reviewable by mandamus. § 3771(d)(5)'s procedural limitations do not apply. Petitioner's losses from the Operation Software Slashers prosecution have never been disclosed, and the 60-day clock has not begun to run.

Petitioner Escamilla's company Greenway, formally identified by DHS as the Lead Victim of the Operation Software Slashers ("OSS") prosecution in March 2015, whose documented losses have never been disclosed to him as included in or excluded from any restitution determination — is entitled under 18 U.S.C. § 3664(d)(5) and pursuant to *In re Davis*, 146 F.4th 710 (9th Cir. 2025), to an order (i) requiring Respondents to disclose whether any restitution determination was made in the OSS prosecution and its contents, and (ii) upon disclosure, authorizing Petitioner to file a petition to amend that restitution order, with the 60-day clock under § 3664(d)(5) running from the date of the required disclosure.

The Mandatory Victims Restitution Act. The Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. §§ 3663A, 3664, establishes mandatory restitution for qualifying federal offenses and prescribes the procedural framework for its determination. As the Ninth Circuit confirmed in *United States v. Kovall*, 857 F.3d 1054, 1064 (9th Cir. 2017), Congress enacted the MVRA to make restitution mandatory for certain crimes, including "any offense committed by fraud or deceit." 18 U.S.C. § 3663A(a)(1), (c)(1)(A).

The federal offenses committed against Petitioner's company Greenway — including trademark infringement, trade secret theft, and securities fraud by Selakovic and Michael J. Ryan — constitute offenses committed by fraud or deceit within the meaning of § 3663A(c)(1)(A), making restitution mandatory. Under § 3663A(b)(1)(B), the district court must order restitution equal to the greater of "the value of the property on the date of the damage, loss, or destruction" or "the value of the property on the date of sentencing."

Under § 3664(d)(1), the attorney for the government must "consult" with all identified victims before submitting restitution amounts to the probation officer. Under § 3664(g)(1), "[n]o victim shall be required to participate in any phase of a restitution order," codifying the principle that victims may rely on the government to discharge the restitution process on their behalf.

Section 3664(d)(5) provides that "[i]f the victim subsequently discovers further losses; the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief."

On June 2, 2025, the Ninth Circuit, in *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025) (Koh, J.), resolved multiple questions of first impression governing post-judgment restitution relief in this Circuit. *Davis* establishes five propositions material to this argument.

The Pre-Davis Legal Unavailability Principle. A cause of action that was not legally available to a petitioner at the time of a prior proceeding is not barred by preclusion in a subsequent proceeding in which that cause of action becomes available. Restatement (Second) of Judgments § 26(1)(c) (1982) (general rule of claim preclusion does not apply where plaintiff was "unable to rely on a certain theory of the case" because of restrictions on the forum's authority to entertain the theory). Before *In re Davis* was decided on June 2, 2025, the § 3664(d)(5) post-judgment restitution amendment theory was not controlling in this Circuit. The district court in *Davis* itself adopted the contrary construction, 146 F.4th at 717, and the Ninth Circuit was required to reverse that construction as legal error, *id.* at

734. A claim that did not exist as controlling law in this Circuit until June 2, 2025, could not have been raised in any prior proceeding concluded before that date.

Denial of § 3664(d)(5) relief on a qualifying factual record is legal error reviewable by mandamus. "[W]e must issue the writ whenever we find that the district court's order reflects an abuse of discretion or legal error." *Davis*, 146 F.4th at 735 (quoting *Kenna v. U.S. Dist. Court for C.D. Cal.*, 435 F.3d 1011, 1017 (9th Cir. 2006)).

Each element of the *Davis* framework is established by the documentary record already before this Court.

Element One — "No Prosecution Is Underway" in the District Where the Crime Occurred. The OSS prosecution against Selakovic and Blackburn was filed under seal in the Western District of Missouri in or about January 2015. No government official has ever disclosed to Petitioner whether that prosecution remains active, whether it resulted in a deferred prosecution agreement, whether it resulted in a plea, or whether it resulted in a restitution order. *See* Statement of Facts Section IX.

No prosecution arising from the crimes against Petitioner has been confirmed as underway in this or any other district. Under *Davis*, 146 F.4th at 720, and § 3771(d)(3)'s "no prosecution is underway" clause, jurisdiction lies in the district where the crimes occurred. The predicate federal offenses — trademark

counterfeiting, wire fraud, securities fraud, embezzlement, and theft of trade secrets — were directed at and caused harm to Petitioner and Greenway in the Central District of California, where Petitioner resides and Greenway is located. *See* Jurisdiction and Authority, *supra*. The ongoing CVRA violations at the core of this Petition — Stafford's documented non-disclosure over seventy-four days and eight written submissions, the USAO-CDCA attorneys' republication of Gibson's fabrication, and the DHS-OIG's failure to respond to the June 2025 complaint — were committed in, directed into, or issued from offices located within the Central District of California. Venue lies in this Court on both the underlying-offense-conduct theory and the proximate-cause-of-CVRA-violations theory.

Element Two — A § 3664(d)(5) Petition Is "Any Motion Asserting a Victim's Right." *Davis* holds that a post-judgment motion to amend a restitution order under § 3664(d)(5) "fall[s] comfortably within 'any motion'" for purposes of § 3771(d)(3). 146 F.4th at 722–23.

That statutory path confers upon this Court both the jurisdictional authority and the forthwith-adjudication obligation to decide the § 3664(d)(5) question Petitioner now presents. The word "any" in § 3771(d)(3) is "broad and all-encompassing." *Id.* at 722. Petitioner's request for the relief authorized by § 3664(d)(5) is therefore before this Court as a "motion asserting a victim's right" within the meaning of § 3771(d)(3).

Element Three — "Subsequently Discovered Further Losses." *Davis* expressly holds that "further losses" includes losses the victim always knew about but did not know had been omitted from the restitution determination. 146 F.4th at 732. That holding controls here.

Petitioner has known at all times the magnitude of Greenway's losses from the Selakovic enterprise — the counterfeiting, the trademark infringement, the embezzlement by Greenway's former attorney Michael J. Ryan of confidential insider business information used to build Selakovic's enterprise and his Vegalab entities, and the continuing harm documented in the December 2025 Delaware action. *See* Statement of Facts Sections I, VIII, X.

What Petitioner has never known — because the government has never disclosed it — is whether those losses were included in, excluded from, or never addressed by any OSS restitution determination. Under *Davis*, 146 F.4th at 732, the victim's discovery of the omission from the restitution claim is itself the "discover[y]" of "further losses" that triggers § 3664(d)(5). That discovery has not yet occurred as to the contents of any OSS restitution determination, because DHS and DOJ officials have never disclosed that content. The disclosure order this Argument seeks is the mechanism by which that discovery event will occur.

Element Four — Good Cause for Non-Inclusion. *Davis* holds that government institutional failure supplies good cause under § 3664(d)(5). 146 F.4th

at 732. Petitioner's good cause showing exceeds that recognized in *Davis* in two independently sufficient respects.

First, in March 2015, DHS Special Agent Gibson expressly represented to Petitioner in a recorded face-to-face meeting that Greenway would be eligible for compensation from an established victims' restitution fund in the OSS prosecution. *See* Statement of Facts Section I.

That representation established Petitioner's documented reliance on the government to manage the MVRA restitution process on his behalf — reliance that 18 U.S.C. § 3664(g)(1) expressly authorizes.

Second, on October 28, 2016, Gibson transmitted to Petitioner an email fabricated and inverted the actual March 31, 2015 ruling of Colorado Chief Judge Krieger, representing that a non-existent "August 17, 2015" ruling had been entered against Greenway and conditioning further government action on Petitioner's satisfaction of a civil-litigation prerequisite that had already been satisfied, that had no basis in the CVRA, and that was verifiably non-existent on the Colorado federal docket. *See* Statement of Facts Sections II, III.

Gibson's fabrication did more than fail to notify Petitioner of restitution proceedings — it affirmatively severed Petitioner's engagement with the prosecution by falsely representing that further government action was contingent on a civil litigation outcome Petitioner had already achieved. Under *Davis*, 146

F.4th at 732, where government institutional failure suffices to establish good cause, government affirmative misrepresentation that manufactured the conditions of the victim's exclusion establishes good cause *a fortiori*.

The USAO-MO additionally and independently violated § 3664(d)(1)'s mandatory consultation obligation by proceeding through any restitution determination without ever contacting the formally identified Lead Victim of the prosecution. Stafford's seventy-four-day, eight-submission, four-response record of non-disclosure has compounded and continued that institutional failure through February 12, 2026. *See* Statement of Facts Section XIII.

Element Five — Timeliness Under the 60-Day Clock. Section 3664(d)(5) requires that a petition for amendment be filed within 60 days after discovery of further losses. *Davis* holds that clock runs from the victim's discovery — not from the date of the underlying government error. 146 F.4th at 732. Two independently sufficient timing propositions follow.

First, the 60-day clock has not yet begun to run, because the government has never disclosed to Petitioner whether any OSS restitution determination was made or its contents. A clock that has not started cannot be missed. The threshold disclosure order this Argument seeks is the event that will start the clock; once disclosure is made, Petitioner will have 60 days to file his § 3664(d)(5) petition, and this Petition preserves his right to do so.

Second, Petitioner's § 3664(d)(5) cause of action — as construed by *In re Davis* — was not legally available in this Circuit before June 2, 2025. Before *Davis*, the district court's contrary construction, 146 F.4th at 717, was the position the government itself advanced, *id.* at 734, and the Ninth Circuit had to reverse that construction as legal error.

Under Restatement (Second) of Judgments § 26(1)(c) (1982), a claim that was not legally available at the time of a prior proceeding is not barred by preclusion in a subsequent proceeding. The § 3664(d)(5) theory could not have been raised in any proceeding concluded before June 2, 2025. This Petition is the first procedural vehicle in which Petitioner has been able to assert it.

No § 3771(d)(5) Limitation Applies. *Davis* resolves, in agreement with the Second Circuit's decision in *Federal Insurance Co. v. United States*, 882 F.3d 348 (2d Cir. 2018), that § 3771(d)(5)'s procedural gates — the prior-assertion-of-the-right-to-be-heard requirement, the 14-day mandamus deadline, and the no-plea-to-highest-offense rule — do not apply to § 3664(d)(5) petitions. *Davis*, 146 F.4th at 724–28.

The final sentence of § 3771(d)(5) states: "This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code." The Ninth Circuit held that sentence "exempted parties challenging restitution orders through § 3664(d)(5) from the procedural hurdles in § 3771(d)(5)." *Id.* at 725. No

procedural limitation under § 3771(d)(5) bars Petitioner's request for § 3664(d)(5) relief.

Every element of the *Davis* framework is satisfied on the documentary record before this Court. Petitioner is a formally identified federal crime victim whose losses from the OSS prosecution have never been disclosed to him as included in or excluded from any restitution determination. The government's institutional failure, compounded by Gibson's affirmative fabrication, USAO-CDCA officials documented acts of alleged misconduct from 2018 through 2021, and their subsequent October 25, 2021, Rule 60(d)(3) non-denial response to any of specific acts of alleged fraud, on the merits, and Stafford's documented non-assistance, establishes good cause *a fortiori*.

The 60-day clock under § 3664(d)(5) has not begun to run. The § 3664(d)(5) theory, as construed by *In re Davis*, was not controlling in this Circuit before June 2, 2025, and could not have been raised in any prior proceeding. Section 3771(d)(5)'s limitations do not apply.

VII. CONCLUSION

Petitioner Gustavo Escamilla is a federal crime victim under 18 U.S.C. § 3771(e)(2)(A). The rights enumerated in § 3771(a)(1)–(10) attached when the United States Department of Homeland Security formally identified him as Lead

Victim of Operation Software Slashers in March 2015. Those rights have never been discharged, accorded, or extinguished by any court at any prior stage.

The documentary record before this Court establishes the violations the Petition asserts. DHS Agent Gibson's October and November 2016 fabrication of a non-existent Colorado civil ruling — directly contradicted by the actual March 31, 2015, ruling of Chief Judge Marcia S. Krieger — supplied the stated basis for excluding Petitioner from CVRA protection. DHS-OIG Agent Simons told Petitioner, "you can file anything you want, because I'm not going to do anything with any of it anyway," and closed the resulting OIG complaint without investigation. Beginning in January 2018, USAO-CDCA filings republished the fabricated narrative through sworn declarations submitted in support of the government's motion to dismiss.

Between July 19, 2021, and November 1, 2021, USAO-CDCA attorneys appeared before this District Court with documented sworn-record notice of these acts and elected to defend rather than acknowledge them. The October 18, 2021, Rule 60(d)(3) motion (Ex. I) placed five specific acts before the Court with supporting material evidence. USAO-CDCA's October 25, 2021, opposition (Ex. J) addressed only procedural grounds and did not engage the documented allegations on the merits. The Department's own Attorney General Guidelines confirm that CVRA obligations apply to "all personnel in the Department who are engaged in or

support investigative, prosecutorial, correctional, or parole functions... regardless of title, grade, or job description."

From December 2025 through February 2026, Petitioner provided formal written notice of the documented conduct to First Assistant U.S. Attorney Bilal Essayli (Ex. P) and engaged Supervisory Victim-Witness Coordinator Allison Stafford in eight written exchanges (Exs. Q–U). Stafford's substantive responses applied the wrong statute, searched the wrong district, and directed a federally identified Lead Victim to a general FBI tip line.

In re Davis, 146 F.4th 710, 716 (9th Cir. 2025), confirms this Court's jurisdiction under 18 U.S.C. § 3771(d)(3) and Petitioner's independent entitlement to relief under 18 U.S.C. § 3664(d)(5). Because the predicate OSS federal offenses include offenses committed by fraud or deceit, 18 U.S.C. § 3663A imposed a mandatory restitution obligation regarding Petitioner as a documented federal crime victim, and 18 U.S.C. § 3664(d)(1) established a mandatory procedural framework for the restitution determination. Neither obligation was discharged as to Petitioner.

DHS Agent Gibson's October–November 2016 fabrication of a non-existent Colorado civil ruling supplied the sole stated basis for suspending the criminal investigation in which Petitioner was the federally identified Lead Victim — affirmatively excluding Petitioner from any restitution determination and

foreclosing any procedural compliance with § 3664(d)(1) as to him. Petitioner respectfully requests prompt consideration of the Petition under § 3771(d)(3). The Petition is properly before this Court, the documentary record establishes the violations the Petition asserts, and the relief Petitioner seeks is the relief the statute provides.

REQUESTED RELIEF

Pursuant to 18 U.S.C. § 3771(d)(3), 18 U.S.C. § 3771(a), 18 U.S.C. § 3771(e)(2)(A), 18 U.S.C. § 3663A(c)(1)(A)(ii) (offenses committed by fraud or deceit), 18 U.S.C. §§ 3664(d)(1) and 3664(d)(5) (as construed by *In re Davis*, 146 F.4th 710 (9th Cir. 2025)), and 34 U.S.C. § 10607, Petitioner respectfully requests that this Court enter an order:

1. Taking up and deciding this Petition forthwith pursuant to 18 U.S.C. § 3771(d)(3), the United States District Court for the Central District of California being the district in which the relevant conduct occurred and continued between July 2021 and February 2026;
2. Recognizing Petitioner's status as a federal crime victim under 18 U.S.C. § 3771(e)(2)(A) — directly and proximately harmed by the original federal offenses formally identified by DHS in March 2015 — and recognizing that Petitioner's CVRA rights have never been discharged or accorded;
3. Directing the United States, through the U.S. Attorney's Office for the

Central District of California and any other appropriate component of the Department of Justice, to provide Petitioner — within fourteen days of this Court's order — written notice of his rights under 18 U.S.C. § 3771 and the Attorney General Guidelines for Victim and Witness Assistance, and a meaningful opportunity to confer with the attorney for the Government concerning the matters identified in this Petition;

4. Directing the United States to disclose to Petitioner — within fourteen days of this Court's order — pursuant to 18 U.S.C. § 3771(a)(2) and 18 U.S.C. §§ 3663A, 3664(d)(1), and 3664(d)(5), whether any criminal prosecution, plea agreement, deferred prosecution agreement, non-prosecution agreement, sentencing, forfeiture, restitution determination, restitution order, amended restitution order, or victims' fund determination has been entered or is currently pending in OSS proceedings, relating to or arising from the conduct against Petitioner and Greenway Nutrients, Inc. that gave rise to Petitioner's federal crime-victim status under 18 U.S.C. § 3771(e)(2)(A), and to identify the case number, docket status, and victim-rights status of any such proceeding;

5. Referring any appropriate compliance issue under 18 U.S.C. § 3771(f) to the Department of Justice Victims' Rights Ombudsman or other proper supervisory authority, if this Court finds such referral appropriate; and

6. Granting such other and further relief as this Court deems just and proper.

DATED: May 14, 2026

Respectfully submitted,

/s/ Gustavo Escamilla

GUSTAVO ESCAMILLA
gescamilla@ymail.com
1315 Highland Avenue
Glendale, California 91202
Telephone: (818) 355-0062
Petitioner in Pro Se

CERTIFICATE OF SERVICE

I certify that on _____, 2026, I served a true and correct copy of the foregoing EMERGENCY PETITION FOR ENFORCEMENT OF RIGHTS UNDER THE CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771, AND FOR RELIEF UNDER 18 U.S.C. § 3664(d)(5), together with all supporting papers, on the following by the method indicated below:

United States Attorney's Office Central District of California Civil Division / Victim-Witness or Appropriate Recipient

[Address / Email]

☐ Email ☐ U.S. Mail ☐ Personal Delivery ☐ CM/ECF

Department of Justice / Victims' Rights Ombudsman or Appropriate Recipient

[Address / Email]

☐ Email ☐ U.S. Mail ☐ Personal Delivery ☐ CM/ECF

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

DATED: _____, 2026

_____

GUSTAVO ESCAMILLA

gescamilla@ymail.com
1315 Highland Avenue
Glendale, California 91202
Telephone: (818) 355-0062
Petitioner in Pro Se

Exhibit A

Bea's Hive conspiracy

From: "Suarez Carlos" <Carlos.Suarez@ice.dhs.gov>

To: "pescamilla@ymail.com" <pescamilla@ymail.com>

Mr. Escamilla,

I was given your information by representatives with Adobe Systems and the Microsoft Corporation. If it all possible, I would like to conduct an interview with you either on 3/2/2015 or 3/3/2015, concerning the information you included in an email sent on October 5, 2014, to Michael A. Sink at his email address, MSink@perkinscoie.com. We have a criminal investigation open out of the Kansas City Office and I will only be in town on the days I noted above.

I attempted to leave you a message on the phone listed on the email (818-358-0052), but when I tried it today, it seems to be disconnected. My contact information is listed below. Please reach out to me at your earliest convenience so we can set a time and date.

Thanks,

Carlos Suarez
Special Agent
Homeland Security Investigations
HSI Kansas City
Office (816) 802-8526
Cell (816) 914-4959
E-mail: Carlos.Suarez@ice.gov

Exhibit B

On Oct 28, 2016, at 6:38 AM, Gibson, Shawn S <Shawn.S.Gibson@ice.dhs.gov> wrote:

Mr. Escamilla,

We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, we have been advised that on August 17, 2015 a District Court found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark. While we understand that you may disagree with this judgement, our agency is bound by decision of the court and therefor are restricted on what we can do in regards to your claims that they continue to sell your products illegally. My suggestion is to seek legal alternatives such as an appeal of the decision and if you should receive an affirmative decision we can revisit our involvement against the distribution of the Greenway products. Regardless, we continue to investigate the alleged criminal activities in regards to his alleged distribution of counterfeit software.! Please let me know if you have any questions.!!!!

Shawn Gibson | Operations Manager
DHS – ICE | Homeland Security Investigations-Domestic Operations
500 12th Street SW, 6th Floor MS-5106 (6161) | Washington D.C. 20536
> email-shawn.gibson@dhs.gov

Exhibit C

On Mon, 11/21/16, Gibson, Shawn S
<Shawn.S.Gibson@ice.dhs.gov> wrote:
From: Gibson, Shawn S <Shawn.S.Gibson@ice.dhs.gov>
Subject: RE: Ongoing and illegal Amazon.com sales of Greenway Nutrients® products

To: "Gustavo Escamilla" <gescamilla@ymail.com>,
"shawn.gibson@dhs.gov" <shawn.gibson@dhs.gov>
Cc: "Carlos Suarez" <carlos.suarez@dhs.gov>
Date: Monday, November 21, 2016, 10:24 AM

Why I understand your frustration and concerns, our agency cannot move forward with any investigation involving your trademark until you resolved this issue with the District Court in Colorado that issued the decision. I take offense to the insinuation that I am avoiding your email to deprive your rights. I have never once avoided your emails or questions, in fact because you are emailing from a ymail account they often go into a junk or quarantine box, which I find and then respond to. In this circumstance I have been not only been on official travel in regards to this investigation, but also had more pressing matters to take care of which hasn't afforded me the time to check those folders.

You assert allegations against this department, as well as myself and my staff, that we have ignored you and proactively tried to take advantage of you, which couldn't be further from the truth. We have, and continue too, since the day we met with you to seek charges against Selakovic in Singapore for his alleged sale of illicit software. Additionally, we have made attempts to look into the alleged misuse of the Greenway Nutrients logo, but because of the court decision, in a case you were a party to in Colorado, would not be able to file charges at this time. Attached is a selection of the case history from the court case showing a decision in favor of Selakovic, which as I advised in my prior email you should be able to seek an appeal if you disagree with the decision. Contact the court and get an in depth copy of the decision, which as you can see they tried to send you but was returned undeliverable just over a year ago. We would be happy to take a second look if that decision is reversed.

If you feel that you have been wronged and feel these are just allegations against the department, my staff or myself, please seek any remedies afforded to you based on your rights.

Shawn Gibson | Operations Manager
DHS – ICE | Homeland Security Investigations-Domestic Operations
500 12th Street SW, 6th Floor MS-5106 (6161) | Washington D.C. 20536
email-shawn.gibson@dhs.gov

With honor and integrity, we will safeguard the American people, our homeland, and our values.

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Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger

Civil Action No. 13-cv-01088-MSK-KMT

GREENWAY NUTRIENTS, INC.,

Plaintiff,

v.

STEVE BLACKBURN,
DAVID SELAKOVIC,
FULFILLMENT SOLUTIONS SERVICES, LLC,
SUPREME GROWERS, LLC,

Defendants.

OPINION AND ORDER ADOPTING
RECOMMENDATION AND GRANTING IN PART
AND DENYING IN PART MOTION TO DISMISS

THIS MATTER comes before the Court on the Recommendation (**#124**) of the Magistrate Judge that the Defendants' Motion to Dismiss (**#109**) be granted in part and denied in part. Defendants Steve Blackburn, David Selakovic, and Fulfillment Solutions Services, LLC, filed timely Objections (**#126**) to the Recommendation.

I. Background

The underlying facts of this case have been repeated in several orders. In sum, Greenway, a Colorado corporation, is a supplier of plant nutrients and organic pesticides. It owns the trademark "Greenway Nutrients," which it includes on its line of products. As alleged in the Amended Complaint (**#107**), at some unknown point in time, Greenway discovered overseas suppliers for two new products: "No Powdery Mildew" is a product that eliminates powdery mildew on agricultural products, and "No Spider Mites" is a product that eliminates

spider mites. Greenway began importing the products and selling them under the "Greenway Naturals" trademark.

Later, Greenway, through its principles, and Defendant Steve Blackburn and "his company," Defendant Fulfillment Solutions Services (FSS). Greenway and Mr. Blackburn entered into a business relationship whereby FSS was to assist Greenway in expanding its operations and market share. Greenway understood FSS to be a product fulfillment center in Florida that could bottle and ship products throughout the United States. Mr. Blackburn subsequently introduced Greenway to Mr. Selakovic, who was Mr. Blackburn's business partner.

In furtherance of their business relationship, Greenway and FSS through Mr. Blackburn executed a Fulfillment Agreement. The agreement provided that FSS would provide fulfillment services to Greenway for its new products. Mr. Selakovic purchased some of the product with his credit card, presumably to begin fulfillment services. Greenway also executed Nondisclosure Agreements[1] with Mr. Blackburn and Mr. Selakovic so that it could share its confidential information with them during the course of business.

Later, Mr. Blackburn and Mr. Selakovic allegedly fabricated a dispute with Greenway allegedly for the purpose of reneging on the contract and to keep the inventory of product they had acquired. In an attempt to resolve the fictional dispute, Mr. Blackburn represented to Greenway that Mr. Selakovic was interested in investing in Greenway. Mr. Blackburn went to Greenway's office, representing that he needed to conduct due diligence for the investment.

[1] The Defendants allege that the Nondisclosure Agreement purportedly entered into by Mr. Selakovic and attached to the Amended Complaint is a forged. The Court does not have occasion to address that issue today, as the Nondisclosure Agreement is not relevant to its ruling. However, the Court warns that the affirmative submission of false evidence is, at a minimum, akin to fraud on the Court, for which for which severe sanctions may be imposed. *See Garcia v. Berkshire Life Ins. Co. of America*, 569 F.3d 1174, 1182 (10th Cir. 2009).

During that time, Mr. Blackburn had access to all of Greenway's proprietary and confidential information.

Greenway alleges that Mr. Blackburn and Mr. Selakovic used the confidential information that they obtained to reverse engineered Greenway's No Spider Mites product and that they began selling the reproduced, counterfeit product with the Greenway trademark. Further, Mr. Blackburn and Mr. Selakovic allegedly began selling Greenway's stock of No Spider Mites and No Powdery Mildew, which bore the Greenway trademark, without authorization. These sales took place through FSS and Defendant Supreme Growers, LCC, a Colorado limited liability company. Greenway alleges that the Defendants used Greenway's internal customer notes to sell the infringing products to Greenway's own customers.

Greenway asserts claims for breach of contract against Mr. Blackburn, FSS, and Mr. Selakovic; unjust enrichment against Mr. Blackburn, FSS, and Mr. Selakovic; and violations of the Lanham Act (trademark infringement under 15 U.S.C. § 1114, and false designation of origin under 15 U.S.C. § 1125) against all Defendants. Greenway asserts federal subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1331, and requests that the Court exercise supplemental jurisdiction over the attendant state law claims.

The Defendants move to dismiss all claims for lack of personal jurisdiction and failure to state a claim for which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(2) and (6). The matter was referred to the Magistrate Judge for a report and recommendation.

The Recommendation issued by the Magistrate Judge recommends that the Motion to Dismiss be granted with respect to the breach of contract claims and all claims against Supreme Growers, LLC. No party objects to that part of the Recommendation. The Court therefore reviews that part of the Recommendation only for clear error. *See* Fed. R. Civ. P. 72. Advisory

Committee Note. Having reviewed the Recommendation and seeing no clear error, the Court adopts the Recommendation that the Motion to Dismiss be granted, in part, with respect to the breach of contract claims and all claims against Supreme Growers, LLC. Accordingly, the breach of contract claims against Mr. Blackburn and Mr. Sefakovic, and all claims against Supreme Growers, LLC, are dismissed.

The Magistrate Judge also recommends that the Motion to Dismiss be denied with respect to the claims under the Lanham Act (trademark infringement and false designation of origin) and for unjust enrichment. The Magistrate Judge found that Greenway made a *prima facie* showing of personal jurisdiction over these Defendants and that the First Amended Complaint sufficiently pled the claims. On the issue of personal jurisdiction, the Magistrate Judge determined that Mr. Blackburn, FSS, and Mr. Sefakovic waived their right to contest specific personal jurisdiction pursuant to forum selection clauses found in the contracts entered into by the parties.

The Defendants filed timely Objections to the Recommendation. The Defendants object only to the Magistrate Judge's finding that the Court has personal jurisdiction over them with regard to the Lanham Act claims.

II. Standard of Review

When a Magistrate Judge issues a Recommendation on a dispositive motion, the parties may file specific, written objections within fourteen days after being served with a copy of the Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). This Court shall make a *de novo* determination of those portions of the Recommendation to which timely and specific objection is made. *U.S. v. One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Federal Rule of Civil Procedure 12(b)(2) provides that a defendant may move to dismiss a claim for lack of personal jurisdiction over the person. The Plaintiff bears the burden of establishing personal jurisdiction over the Defendants. *See OMI Holdings, Inc. v. Royal Ins. Co.*, 149 F.3d 1086, 1091 (10th Cir. 1998). In the preliminary stages of litigation, the Plaintiff's burden is light. Where, as here, there has been no evidentiary hearing, and the motion to dismiss for lack of personal jurisdiction is decided on the basis of the Complaint and affidavits, the Plaintiff need only make a *prima facie* showing that jurisdiction exists. *See Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995).[1]

For purposes of reviewing a motion to dismiss, the Court accepts all well-pled facts alleged in the Complaint as true – that is, factual allegations that are plausible, non-conclusory, and non-speculative. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). If jurisdictional allegations in the Complaint are challenged by an appropriate pleading, the Plaintiff has the duty to support its allegations by competent proof. *See Pytlik v. Prof'l Res., Ltd.*, 887 F.2d 1376, 1376 (10th Cir. 1989). If the parties present conflicting affidavits, all factual disputes must be resolved in the Plaintiff's favor. *See Wenz*, 55 F.3d at 1505.

III. Analysis

As the Court understands it, the Defendants argue that any forum selection clauses contained in the contracts attached to the complaint apply only to the breach of contract claims and do not establish a consent to personal jurisdiction for purposes of the federal Lanham Act claims. The Defendants argue that because this is a federal question case, Greenway must

[1] Of course, even if the Plaintiff meets its burden of establishing personal jurisdiction on the pleadings and by affidavit, it may be reviewed again at subsequent stages in the proceedings as evidence accumulates. *See FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992). Ultimately, at trial, the Plaintiff must establish that personal jurisdiction exists by a preponderance of the evidence. *See Dennis Garberg & Assocs., Inc. v. Pack-Tech Int'l Corp.*, 115 F.3d 767, 773 (10th Cir. 1997).

establish an independent basis for personal jurisdiction over them with regard to the Lanham Act claims. They argue that Greenway has not alleged sufficient facts to show that the Defendants had minimum contacts with Colorado that gave rise to the Lanham Act claims.

1. Consent to Personal Jurisdiction

A party may consent to jurisdiction by assenting to a forum selection clause contained in a contract. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985). By consenting to jurisdiction, a party waives any due process challenges that it could have otherwise brought. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 590 (1991). Forum selection clauses are "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." *See The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953, 957 (10th Cir. 1992). To overcome the presumption that a forum selection clause provision is valid, a party must make "a showing of inconveniences so serious as to foreclose a remedy, perhaps coupled with a showing of bad faith, overreaching, or lack of notice." *See Riley*, 969 F.2d at 958.

Here, only the Fulfillment Agreement, entered into by Greenway and FSS through Mr. Blackburn, contains a forum selection clause.[1] The clause provides:

> This Agreement shall be deemed to have been negotiated and executed in the State of Colorado, who shall have exclusive jurisdiction over this matter with venue in Denver, CO. The laws of the State of Colorado shall govern this Agreement and all matters arising out of or otherwise relating to this Agreement. The parties hereby submit to the personal jurisdiction of the state and federal courts of the State of Colorado.

[1] The Non-Disclosure Agreements, purportedly entered into by Mr. Blackburn and Mr. Sefakovic, contain only a provision that provides that the agreements will be governed by the law of the State of Colorado. This is a choice of law provision, not a forum selection clause. The provision does not provide for the location of dispute resolution, nor does it purport to bind the parties to the jurisdiction of a particular court. Thus, the execution of these contracts alone do not confer personal jurisdiction over Mr. Blackburn or Mr. Sefakovic.

The Defendants do not dispute the validity of this clause or argue that enforcement would be unreasonable or unjust. The Defendants argue only that the clause does not operate to consent to personal jurisdiction with regard to the Lanham Act claims asserted here.

Although the Tenth Circuit has not addressed the issue of whether a forum selection clause applies to non-contract claims, the Supreme Court has applied a forum selection clause in a case involving tort claims. *See Carnival Cruise Lines*, 499 U.S. at 588. Other Circuit Courts have held that where tort claims "ultimately depend on the existence of a contractual relationship" between the parties, such claims are covered by a contractually-based forum selection clause, despite the "pleading of alternative non-contractual theories of liability." *See Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 203 (3d Cir. 1983), *overruled on other grounds*, *Lauro Lines v. Chasser*, 490 U.S. 495 (1989); *Lambert v. Kysar*, 983 F.2d 1110, 1121-22 (1st Cir. 1993) (holding that "contract-related tort claims involving the same operative facts as a parallel claim for breach of contract should be heard in the forum selected by the contracting parties.").

Here, the Court is persuaded that the Lanham Act claims depend on the existence of the contractual relationship between Greenway and the Defendants and involve the same operative facts as a parallel breach of contract claim. Greenway alleges that the Defendants sold the stock of Greenway product without authorization and in violation of Greenway's trademark rights. Prior to that, however, the parties entered into the Fulfillment Agreement, which provided that the Defendants would carry out fulfillment and distribution services for Greenway. This obligation required the Defendants to purchase product and bottling materials and to fulfill customer orders on behalf of Greenway. Thus, in order to determine whether the Defendants acted in violation of Greenway's rights, or rather, in accordance with the contract, will

necessarily rely on an interpretation of the Fulfillment Agreement. Because the Lanham Act claims are related to the Fulfillment Agreement, which expressly provides consent to jurisdiction in Colorado, the Court finds that the FSS and Mr. Blackburn have waived their right to contest personal jurisdiction in Colorado on due process grounds.

2. Due Process Analysis

The Court proceeds with the traditional due process analysis to determine whether it may exercise personal jurisdiction over Mr. Schlukwat.

Before a federal court can assert personal jurisdiction over a non-resident defendant in a federal question case, the Court must determine (1) whether any applicable statute potentially confers jurisdiction by authorizing service of process on the defendant, and (2) whether the exercise of jurisdiction comports with due process. *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006). Because the Lanham Act does not, by itself, provide for nationwide service of process, Fed. R. Civ. P. 4(k)(1)(A) refers the Court to the Colorado long-arm statute. Colorado's long-arm statute confers maximum jurisdiction permissible consistent with the Due Process Clause. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1193 (Colo. 2005); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008). Thus, the statutory inquiry effectively collapses into the second, constitutional inquiry. The Court therefore proceeds directly to the constitutional issue.

The due process analysis is a two-step inquiry. First, the Court examines whether the non-resident defendant has "minimum contacts" with the forum state. *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1065 (10th Cir. 2007). Second, the Court considers whether the exercise of jurisdiction over the defendant offends "traditional notions of fair play and substantial justice," — in other words, whether the exercise of jurisdiction is reasonable under the circumstances. *Id.*

To have sufficient minimum contacts for "specific" personal jurisdiction,[4] the out-of-state defendant must have (1) purposefully directed activities at forum residents, and (2) the litigation must result from alleged injuries that arise out of those forum-related activities. *See Dudnikov*, 514 F.3d at 1071 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472). The touchstone of this analysis is whether the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The aim of the "purposeful direction" doctrine has been said to ensure that the defendant is not bound to appear to account for merely "random, fortuitous, or attenuated contacts" with the forum state. *Dudnikov*, 514 F.3d at 1071 (quoting *Burger King*, 471 U.S. at 475). The question of whether a non-resident defendant has sufficient minimum contacts with the forum state to establish personal jurisdiction must be decided on the particular facts of each case. *See Benton v. Cameco Corp.*, 375 F.3d 1070, 1076 (10th Cir. 2004).

In *Calder v. Jones*, 465 U.S. 783 (1984), the Supreme Court set forth what is now known as the "*Calder* effects test." The Court held that, where a defendant intentionally engages in tortious actions outside the forum state, and her actions are expressly directed at causing a harmful effect within the forum state, a sufficient nexus exists between the defendant and the state so as to satisfy due process and constitute "purposeful directing" under the "minimum contacts" analysis. *Id.* The Tenth Circuit has refined the *Calder* test to three elements, explaining that a defendant has "purposefully directed" its activities at Colorado or its residents

[4] The minimum contacts standard is also satisfied based on a defendant's "continuous and systematic" general business contacts with the forum state. *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 415 (1984). Such contacts would establish that the Court has general personal jurisdiction over the defendant. Here, however, the Amended Complaint does not allege that any of the Defendants were engaged in systematic and continuous activity in Colorado. Thus, the Court concludes that it does not have general personal jurisdiction over the Defendants.

when the defendant has (1) taken intentional tortious action, (2) that was expressly aimed at Colorado, (3) with the knowledge that the brunt of the injury from the action would be felt in Colorado. *Dudnikov*, 514 F.3d at 1071. Further, the Tenth Circuit takes a "restrictive" approach when analyzing whether a defendant expressly aimed his activities at the forum, explaining that the "express aiming" requirement looks at the "focal point" of the defendant's intentional action, and holding that the forum state itself must be the focal point of the tort. *Id.* at 1075.

Indeed, the mere fact that an out-of-state defendant has committed a tort that causes economic injury to a forum resident does not necessarily establish that the defendant engaged in the constitutionally required minimum contacts with the forum state. *See Far W. Capital, Inc. v. Towne*, 46 F.3d 1071, 1077-80 (10th Cir. 1995). Rather, the plaintiff must show that there was "something more" than the mere foreseeability of economic injury. *Id.*

For purposes of personal jurisdiction analysis, trademark infringement and false designation of origin are considered tortious acts. *See, e.g. Impact Prods. Inc. v. Impact Products, LLC*, 341 F.Supp.2d 1186, 1190 (D.Colo. 2004). Mr. Sefakovic argues that under the *Calder* effects test, Greenway has not alleged that he "expressly aimed" any tortious activity at Colorado.

The Court disagrees. Trademark infringement turns on whether customers are likely to be confused, mistaken, or deceived by the use of a trademarked product. 15 U.S.C. §§ 1114(1). Thus, the effects of an infringement will be felt wherever the infringing products are marketed or sold because that is where the confusion, mistake, or deceit will occur. Here, Greenway alleges that the Defendants sold counterfeit and unauthorized product through a Colorado distributor, Supreme Grocers, LLC. It is therefore reasonable to infer that the effects of the Defendants' allegedly infringing acts would be felt in Colorado. Further, Greenway alleges that Mr.

Selakovic used his credit card to purchase raw product for the benefit of Greenway, a forum resident, and in furtherance of their business relationship. Mr. Selakovic therefore took affirmative acts to establish a business connection in Colorado. The Court finds that the Amended Complaint sufficiently alleges that Mr. Selakovic expressly aimed his conduct at Colorado.

Accordingly, the Court agrees with the Magistrate Judge that at this early stage of litigation, Greenway has met its burden of making a *prima facie* showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic.

IV. Conclusion

For the foregoing reasons, the Recommendation (#124) of the Magistrate Judge that the Defendants' Motion to Dismiss (#109) be granted in part and denied in part is **ADOPTED**. The Motion to Dismiss is **GRANTED** with respect to the breach of contract claims and all claims against Supreme Growers, LLC. The motion is **DENIED** in all other respects.

Dated this 31st day of March, 2015.

BY THE COURT:

Marcia S. Krieger

Marcia S. Krieger
Chief United States District Judge

Exhibit E

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DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
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Attorneys for Defendants the United States of America and Department of Homeland Security

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al., Plaintiffs, v. DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	No. CV 17-7748 ODW (MRWx) DECLARATION OF GRACE Y. PARK IN SUPPORT OF MOTION TO DISMISS COMPLAINT Hearing Date: March 5, 2018 Hearing Time: 1:30 p.m. Location: First Street Courthouse 350 W. 1st Street Courtroom 5D, 5th Floor Hon. Otis D. Wright II

I, Grace Y. Park, do hereby declare and state as follows:

1. I am an Assistant United States Attorney employed by the United States Attorney's Office for the Central District of California and the attorney primarily responsible for defending this action.

2. Attached as Exhibit 1 is a true and correct copy of the January 22, 2018, meet and confer letter I sent to opposing counsel.

3. Attached as Exhibit 2 is a true and correct copy of the Saturday, January 27, 2018, email I received from plaintiffs' counsel, Mainak D'Attaray, in response to my meet and confer letter. In that letter, Mr. D'Attaray seeks to amend the Complaint and give defendants thirty (30) days to respond to the amended complaint. Given: (a) the lack of time to file a stipulation to amend the Complaint; and (b) the futility of plaintiffs' claims, however, defendants have decided to file their motion to dismiss.

4. Attached as Exhibit 3 is a true and correct copy of the docket in Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.).

5. Attached as Exhibit 4 is a true and correct copy of the June 28, 2013 Motion for Sanctions and Protective Order filed in Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of January 29, at Los Angeles, California.

/s/ Grace Y. Park
GRACE Y. PARK

Exhibit 1

United States Department of Justice

United States Attorney's Office
Central District of California

GRACE S. PARK
Assistant United States Attorney
Phone: (213) 894-1851
E-mail: Grace.Park@usdoj.gov

Federal Building
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January 22, 2018

VIA U.S. MAIL and E-MAIL

Mainak D'Attaray
Law Offices of Mainak D'Attaray
111 West Ocean Blvd., Suite 400
Long Beach, California 90802

Re: Gustavo Escamilla, et al. v. Department of Homeland Security, et al.
C.D.CA Case No. CV 17-7748 ODW (MRWx)

Dear Mr. D'Attaray:

In advance of the January 29, 2018, deadline to respond to your clients' Complaint, pursuant to Local Rule 7-3, this letter sets forth the reasons why defendants the United States of America ("United States") and Department of Homeland Security ("DHS", and with the United States, "defendants") will prevail on their motion to dismiss. Defendants accordingly request that plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc. ("Greenway," and with Escamilla, "plaintiffs"), dismiss their Complaint in its entirety. For your convenience, a voluntary notice of dismissal is attached.

First, the Complaint does not give defendants fair notice of the claims asserted against them pursuant to Rule 8 of the Federal Rules of Civil Procedure. The Complaint does not identify whether plaintiffs assert each of their claims against the United States, DHS, or both. (See Dkt. 1, Complaint at pp. 17-18, 20-23). Moreover, despite the fact that plaintiffs allege the United States "is sued under the Federal Tort Claims Act [("FTCA")]," (see id. at ¶¶ 6, 7), plaintiffs do not assert any FTCA claims. (See id. at pp. 17-23).

Second, to the extent plaintiffs assert state law claims for violations of the Bane Act, Cal. Civ. Code § 52.1, negligent and intentional infliction of emotional distress, and declaratory and injunctive relief, (see Dkt. 1, Complaint at ¶¶ 97-112), those claims may be maintained, if at all, only pursuant to the FTCA. See F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998) ("The FTCA is the exclusive remedy for tortious conduct by the United States, and it only allows claims against the United States."). A tort claim may be filed in district court, however, only after "receiving a conclusive denial of the claim from the agency or waiting for six months to elapse without a final disposition of the claim being made." Jerves v. United States, 966 F.2d 517, 519 (9th Cir. 1992); see 28 U.S.C. § 2675(a). Here, plaintiffs make no attempt to allege that they satisfied the jurisdictional requirement by filing any administrative claim. (See generally, Dkt. 1, Complaint).

Nor does United States Immigration and Customs Enforcement ("ICE"), the relevant agency under the jurisdiction of DHS, have any record indicating that any administrative claim was filed by either Greenway or Escamilla. Accordingly, the action must be dismissed with respect to the state law claims for lack of subject matter jurisdiction.

Third, with respect to plaintiffs' claims pursuant to 42 U.S.C. § 1983, "[f]ederal officers acting under federal authority are immune from suit under section 1983." Gibson v. United States, 781 F.2d 1334, 1343 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); see Russell v. U.S. Dep't of the Army, 191 F.3d 1016, 1019 (9th Cir. 1999) (section 1983 "provides no right of action against federal (rather than state) officials"). And to the extent plaintiffs attempt to allege claims pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971) ("Bivens"), "no Bivens like cause of action is available against federal agencies," such as DHS or the United States. Ibrahim v. Dep't of Homeland Sec., 538 F.3d 1250, 1257 (9th Cir. 2008). Accordingly, these claims must also be dismissed for lack of subject matter jurisdiction.

Finally, plaintiffs' principal contention appears to be that a subset of Greenway investors have not been found civilly or criminally liable for infringing Greenway's products. I want to note, however, that you served as counsel for Greenway in the Colorado action, Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.), which was dismissed without prejudice for failure to prosecute. Nothing alleged in the Complaint suggests that plaintiffs are precluded from asserting continuing infringement claims against the Greenway investors in that Colorado action.

Please let me know if you have any questions, or would like to further discuss any of the matters raised above.

Respectfully,

NICOLA T. HANNA
United States Attorney

GRACE Y. PARK
Assistant United States Attorney

Enclosure

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GUSTAVO ESCAMILLA, et al.	CASE NUMBER
Plaintiff(s),	CV 17-7748 ODW (MRWx)
v.	
DEPARTMENT OF HOMELAND SECURITY, et al.	**NOTICE OF DISMISSAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 41(a) or (c)**
Defendant(s).	

PLEASE TAKE NOTICE: (*Check one*)

☑ This action is dismissed by the Plaintiff(s) in its entirety.

☐ The Counterclaim brought by Claimant(s) _____ is dismissed by Claimant(s) in its entirety.

☐ The Cross-Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ The Third-party Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ **ONLY** Defendant(s) _____

_____

leave dismissed from (*check one*) ☐ Complaint, ☐ Counterclaim, ☐ Cross-claim, ☐ Third-Party Claim brought by _____

This dismissal is made pursuant to F.R.Civ.P. 41(a) or (c).

_____ _____
Date *Signature of Attorney/Party*

NOTE: F.R.Civ.P. 41(a): This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.

Exhibit 2

Park, Grace (USACAC)

From: Mamak D'Attaray <mdattaray@dattaraylaw.com>
Sent: Saturday, January 27, 2018 8:01 AM
To: Park, Grace (USACAC)
Subject: Re: Escamilla v. Dept of Homeland Security, CV 17-7748 ODW

Dear Ms. Park,

We received your correspondence outlining your reasons why a motion to dismiss is likely to be successful against Mr. Escamilla's complaint. We believe the complaint can be cured by amendment to rename individuals as parties and alleging different claims based on the same facts. Because of the press of other matters that are slated for trial and oral arguments next week, I will be unable to amend the complaint until after then. We will gladly postpone the time for you to respond to the complaint until after we amend it. We will likely file our amendment after February 5 and we will grant you an additional 30 days from the date of the filed amended complaint to file your response.

Let me know if you agree; I will draft up a stipulation and proposed order for the Court if necessary.

Very truly yours,
Mamak D'Attaray, Esq.

d'Attaray Law | law office of mamak d'attaray

111 West Ocean Boulevard, Suite 400
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NOTICE: The contents of this message and/or its attachments may be protected by law by the attorney-client privilege, the attorney work product doctrine or other privileges. If you are not the intended recipient of this message, please forward a copy to the sender and delete the message and its attachments from your computer. Thank you.

On Mon, Jan 22, 2018 at 4:18 PM, Rosecia, Zenaida (USACAC) <Zenaida.Rosecia@usdoj.gov> wrote:

Counsel:

Attached please find a letter from AUSA Grace Park pertaining to the above-referenced action. Please contact Ms. Park directly if you have any questions.

Thank you!

Zan Kreaux

Legal Assistant

Exhibit 3

US District Court Civil Docket

U.S. District - Colorado
(Denver)

1:13cv1088

Greenway Nutrients, Inc. v. Blackburn et al

This case was retrieved from the court on Thursday, January 18, 2018

Date Filed: **04/23/2013**
Assigned To: **Chief Judge Marcia S. Krieger**
Referred To: **Magistrate Judge Kathleen M. Tafoya**
Nature of Suit: **Other Statutory Actions (890)**
Cause: **Racketeering (RICO) Act**
Lead Docket: **None**
Other Docket: **None**
Jurisdiction: **Federal Question**

Class Code: **CLOSED**
Closed: **08/17/2015**
Statute: **18:1962**
Jury Demand: **Both**
Demand Amount: **$0**
NOS Description: **Other Statutory Actions**

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Greenway Nutrients, Inc.	Greenway Nutrients, Inc.

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Defendant

Chris Kohlhagen
[Term: 04/09/2014]
Defendant

Bea's Hive, Llc
[Term: 04/09/2014]
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Vegalab, Llc
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Charles Wender

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Josh Gill
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Date	#	Proceeding Text	Source
04/23/2013	1	MOTION to Restrict Access by Plaintiff Greenway Nutrients, Inc.. (sphil,) (Additional attachment(s) added on 4/24/2013: # 1 Civil Cover Sheet) (Filing Fee $350.00; Receipt No. 55043 (sphil,). Modified on 4/24/2013 (sphil,). (Entered: 04/24/2013)	
04/23/2013	2	RESTRICTED DOCUMENT - Level 1: by Plaintiff Greenway Nutrients, Inc.. (sphil,) Modified on 4/24/2013 (sphil,). (Entered: 04/24/2013)	
04/23/2013	22	COMPLAINT against Bee's Hive, LLC, Stacy Blackburn, Steve Blackburn, Ecomin, LLC, Fulfillment Solutions Services, LLC, Josh Gill, Gringo Dosio Hydro, Grower Trust, LLC, James Hall, Hoops Enterprise, LLC, Chris Kohlhagen, Koo Kyung-Bon, New Edit Media, LLC, David Y.S. Park, David Seracovic, Supreme Growers, LLC, Dave Thompson, Vegalah, LLC, filed by Greenway Nutrients, Inc.. (Public Entry for Restricted Document - Level 1 2) (Text only entry) (sbpn,) (Entered: 05/20/2013)	
04/24/2013	3	Case assigned to Chief Judge Marcia S. Krieger and drawn to Magistrate Judge Kathleen M. Tafoya. Text Only Entry (sphil,) (Entered: 04/24/2013)	
04/24/2013	4	SUMMONS issued by Clerk. Magistrate Judge Consent Form attached. (Attachments: # 1 Magistrate Judge Consent Form) (sphil,) (Entered: 04/24/2013)	
05/02/2013	5	SUMMONS REQUEST as to Josh Gill, dli by Plaintiff Greenway Nutrients, Inc (D'Attorey, Mainak) (Entered: 05/02/2013)	
05/06/2013	6	SUMMONS Issued by Clerk. (sbpn,) (Entered: 05/06/2013)	
05/08/2013	7	SUMMONS Returned Executed upon Steve Blackburn (D'Attorey, Mainak) (Entered: 05/08/2013)	
05/08/2013	8	SUMMONS Returned Executed upon Fulfillment Solutions Servs. c/o Steve Blackburn (D'Attorey, Mainak) (Entered: 05/08/2013)	
05/08/2013	9	SUMMONS Returned Executed upon Grower Trust, LLC c/o Dave Thompson (D'Attorey, Mainak) (Entered: 05/08/2013)	
05/08/2013	10	SUMMONS Returned Executed upon David Seracovic (D'Attorey, Mainak) (Entered: 05/08/2013)	
05/08/2013	11	SUMMONS Returned Executed upon Stacy Blackburn (D'Attorey, Mainak) (Entered: 05/08/2013)	

05/08/2013	12	SUMMONS Returned Executed upon Dave Thompson (D'Attorey, Mainak) (Entered: 05/08/2013)
05/08/2013	13	SUMMONS Returned Executed upon Vegalab, LLC c/o David Selakovic (D'Attorey, Mainak) (Entered: 05/08/2013)
05/09/2013	14	SUMMONS Returned Executed upon Josh Gil (D'Attorey, Mainak) (Entered: 05/09/2013)
05/16/2013	15	MOTION for Extension of Time to File Answer or Otherwise Respond by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wensler, Charles) (Entered: 05/16/2013)
05/20/2013	16	PARAGRAPH V STRICKEN - Opposition to Defendants' 15 MOTION for 5-Day Extension to File Response to Complaint by Plaintiff Greenway Nutrients, Inc. (D'Attorey, Mainak) Modified on 5/20/2013 to correct title of document pursuant to chambers request and PDF(klyon,). Modified on 5/28/2013 to strike paragraph V pursuant to Minute Order dated 5/28/2013. (klyon,). (Entered: 05/20/2013)
05/20/2013	17	ORDER granting in part and denying in part 1 Motion to Restrict. No later than 5/30/2013, Plaintiff shall file a public version of its Complaint that redacts only the last two pages of Exhibit 2. Plaintiff is advised that, should it fails to file a redacted Complaint by that date, the original Complaint will be unrestricted in its entirety on 5/31/2013. By Magistrate Judge Kathleen M. Tafoya on 5/20/2013. (klyon,) (Entered: 05/20/2013)
05/20/2013	18	ORDER REFERRING CASE to Magistrate Judge Kathleen M. Tafoya: IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate Judge to: (1)Convene a scheduling conference under Fed. R. Civ. P. 16(b), enter a Scheduling Order meeting the requirements of D.C.COLO.LCivR 16.2, enter such orders as appropriate to enforce the Scheduling Order, and resolve discovery matters;(2)ADR: Court sponsored alternative dispute resolution is governed by D.C.COLO.LCivR 16.6. On the recommendation or informal request of the magistrate judge or on the request of the parties by motion, the Court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding;(3)Hear and determine referred matters in accordance with 28 U.S.C. § 636(b)(1)(A) and (B). by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	19	MEMORANDUM regarding 15 MOTION for Extension of Time to File Answer or Otherwise Respond filed by Stacy Blackburn, Dave Thompson, Steve Blackburn, Vegalab, LLC, Fulfillment Solutions Services, LLC, David Selakovic, Grower Trust, LLC. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	20	MEMORANDUM regarding 16 Counter MOTION for Extension of Time to File Answer or Otherwise Respond re 15 MOTION for Extension of Time to File Answer or Otherwise Respond Opposition filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	21	MINUTE ORDER granting 15 Motion for 5-Day Extension to File Response to Complaint. Defendants may answer or otherwise respond to Plaintiff's Complaint no later than 5/30/2013. By Magistrate Judge Kathleen M. Tafoya on 5/20/2013. (klyon,) (Entered: 05/20/2013)
05/21/2013	23	ORDER REGARDING CUSTODY OF EXHIBITS AND DEPOSITIONS USED IN EVIDENTIARY HEARINGS AND TRIALS: Any exhibits and depositions used during evidentiary hearings or trials, counsel for the parties shall retrieve the originals of such exhibits and depositions from the Court following the evidentiary hearing or trial, and shall retain same for 60 days beyond the later of the time to appeal or conclusion of any appellate proceedings. The Court will retain its copy of the exhibits for the same time period after which the documents will be destroyed. By Chief Judge Marcia S. Krieger on 5/21/13. Text Only Entry (mskcd) (Entered: 05/21/2013)
05/21/2013	24	MOTION for Sanctions and to Strike Par. V of Plaintiff's Motion in Opposition by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC,

Josh Gill, Grower Trust, LLC, David Sekakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 05/21/2013)

05/21/2013	25	MEMORANDUM regarding 24 MOTION for Sanctions and to Strike Par. V of Plaintiff's Motion in Opposition filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gill, Steve Blackburn, Vegalab, LLC, David Sekakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/21/13. Text Only Entry (mskser,) (Entered: 05/21/2013)
05/21/2013	26	MINUTE ORDER denying 24 Motion for Sanctions and to Strike V of Plaintiff's Motion in Opposition for failure to comply with D.C.COLO.LCivR 7.1A's duty to confer. By Magistrate Judge Kathleen M. Tafoya on 5/21/2013. Text Only Entry (kmtsc2) (Entered: 05/21/2013)
05/21/2013	27	MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss for Failure to State a Claim by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Sekakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Continuation of Main Document, # 2 Continuation of Main Document)(Wender, Charles) (Entered: 05/21/2013)
05/22/2013	28	ORDER Setting Scheduling Conference for 8/14/2013 09:30 AM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya, by Magistrate Judge Kathleen M. Tafoya on 5/22/13. (sgrim) (Entered: 05/22/2013)
05/23/2013	29	Joint MOTION to Strike Paragraph V of Plaintiff's Opposition to Defendant's Motion for an Extension of Time by Plaintiff Greenway Nutrients, Inc.. (D'Attorey, Mainak) (Entered: 05/23/2013)
05/24/2013	30	MEMORANDUM regarding 29 Joint MOTION to Strike Paragraph V of Plaintiff's Opposition to Defendant's Motion for an Extension of Time filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/24/13. Text Only Entry (mskser,) (Entered: 05/24/2013)
05/28/2013	31	MINUTE ORDER granting 29 Joint Motion to Strike Paragraph V of Plaintiff's Opposition to Defendants' Motion for an Extension of Time. Paragraph V of Plaintiff's "Opposition to Defendants' Motion for 5-Day Extension to File Response to Complaint" [Doc. No. 26] is STRICKEN. By Magistrate Judge Kathleen M. Tafoya on 5/28/2013. (klyon,) (Entered: 05/28/2013)
05/28/2013	32	Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs. by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit Exhibits in Support of Emergency Motion)(D'Attorey, Mainak) (Entered: 05/28/2013)
05/28/2013	33	Emergency MOTION for Temporary Restraining Order re Steve Blackburn by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion)(D'Attorey, Mainak) (Entered: 05/28/2013)
05/28/2013	34	Emergency MOTION for Temporary Restraining Order re Growers Trust by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion) (D'Attorey, Mainak) (Entered: 05/28/2013)
05/28/2013	35	Emergency MOTION for Temporary Restraining Order re Supreme Growers by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion, # 2 Exhibit In Support of Motion, # 3 Exhibit In Support of Motion, # 4 Exhibit In Support of Motion)(D'Attorey, Mainak) (Entered: 05/28/2013)
05/28/2013	36	AMENDED COMPLAINT REDACTED Complaint pursuant to Court Order dated May 20, 2013 against All Defendants, filed by Greenway Nutrients, Inc..(D'Attorey, Mainak) (Entered: 05/28/2013)
05/29/2013	37	ORDER denying 32 , 33 , 34 , 35 Motions for Temporary Restraining Order. Fed. R. Civ. P. 65(b) permits the Court to grant a Temporary Restraining Order, on an ex parte basis, upon the movant making two showings: (1) a showing, made in either an affidavit or a verified complaint, of "immediate and irreparable injury, loss, or damage [that will result] before the adverse party can be heard in opposition; and (2) a written showing demonstrating any efforts made to give notice to the adverse party and reasons why it should not be required. Fed. R. Civ. P. 65(b)(1)(A), (B). The Plaintiffs motions fail to make both showings. The Plaintiff has not supplied an affidavit supporting its request for Temporary Restraining Order, and the Amended Complaint is not verified, as required by Rule

65(b)(1)(A). Further, although the Court understands that Defendants' counsel may be aware of this matter by notification through CM/ECF, the Plaintiffs' counsel has not given any indication of attempts made to contact the Defendants about the filing of this matter, nor has he shown reasons why notice should not be required. Thus, to the extent the motions request a Temporary Restraining Order, that request is DENIED. The Court deems the remainder of the motions as Motions for Preliminary Injunction under Rule 65(a). The Defendants shall file a response to the appropriate motions within 14 days of the date of this Order. A non-evidentiary law and motion hearing is set for 6/20/2013 at 04:30 PM in Courtroom A 901, for purposes of setting an evidentiary hearing on the Motions for Preliminary Injunction. Parties may appear by telephone if arrangements are made with the Courtroom Deputy at least 48 hours before the hearing. By Chief Judge Marcia S. Krieger on 05/28/13. Text Only Entry(mskic3,) (Entered: 05/29/2013)

06/11/2013	38	RESPONSE to 33 Emergency MOTION for Temporary Restraining Order re Steve Blackburn, 32 Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs., 34 Emergency MOTION for Temporary Restraining Order re Growers Trust, 35 Emergency MOTION for Temporary Restraining Order re Supreme Growers filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC. (Wender, Charles) (Entered: 06/11/2013)
06/11/2013	39	BRIEF in Opposition re 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Opposition filed by Plaintiff Greenway Nutrients, Inc.. (D'Alleray, Mainak) (Entered: 06/11/2013)
06/17/2013	40	MOTION for Leave to Appear Telephonically by Plaintiff Greenway Nutrients, Inc. (D'Alleray, Mainak) (Entered: 06/17/2013)
06/18/2013	41	ORDER denying 40 Motion for Leave to Appear. The motion is moot in light of 37 , where the Court previously authorized parties to appear by telephone at the hearing set for 6/20/2013, provided that arrangements are made with the Courtroom Deputy. By Chief Judge Marcia S. Krieger on 06/18/2013. Text Only Entry(mskic3,) (Entered: 06/18/2013)
06/18/2013	42	REPLY to Response to 33 Emergency MOTION for Temporary Restraining Order re Steve Blackburn, 32 Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs., 34 Emergency MOTION for Temporary Restraining Order re Growers Trust, 35 Emergency MOTION for Temporary Restraining Order re Supreme Growers filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 06/18/2013)
06/20/2013	43	MINUTE ENTRY for Law and Motion Hearing held before Chief Judge Marcia S. Krieger on 6/20/2013. Matters addressed are set forth in the Minutes. Court Reporter: Terri Lindblom. (mskicd) (Entered: 06/21/2013)
06/28/2013	44	NOTICE of Entry of Appearance on behalf of Thomas Ryan and Wendy Ryan by Charles Wender on behalf of Steve Blackburn (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	45	MOTION for Sanctions , MOTION for Protective Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Pages continuation of motion)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	46	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	47	MEMORANDUM regarding 45 MOTION for Sanctions MOTION for Protective Order filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gil, Steve Blackburn, Vegalab, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 6/28/13. Text Only Entry (mskicec,) (Entered: 06/28/2013)
06/28/2013	48	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)

06/28/2013	49	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, 48 Exhibits, Exhibit B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	50	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, 48 Exhibits, 49 Exhibits, Exhibit C by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	51	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 49 Exhibits, Exhibit F by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	52	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, Exhibit G by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	53	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 9 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	54	Exhibits in Support of 53 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-A, B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	55	Exhibits in Support of 53 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-C, D by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part C) (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	56	Exhibits in Support of 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-E by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	57	MINUTE ORDER Setting Hearing on Motion 45 Motion for Sanctions and Protective Order, Forthwith Motion Hearing set for 7/12/2013 at 1:30 PM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya. Plaintiff may file a response to Defendants' Motion no later than 7/8/2013. By Magistrate Judge Kathleen M. Tafoya on 6/28/2013. (Ryan,) (Entered: 06/28/2013)
07/01/2013	58	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 11-A, B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 07/01/2013)
07/01/2013	59	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 12-A, B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC,

Interested Parties Thomas Ryan, Wendy Ryan. (Attachments: # 1 Exhibit Part B) (Wender, Charles) (Entered: 07/01/2013)

07/01/2013	60	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit C, Console Record of Gustavo Escamilla by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Sefakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	61	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit D, emails to Charles Wender by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Sefakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	62	Exhibits in Support of 56 Exhibits, 53 Exhibits, 61 Exhibits,, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit E, Sample of email to David Sefakovic by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Sefakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	63	Exhibits in Support of 56 Exhibits, 53 Exhibits, 61 Exhibits,, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 62 Exhibits,, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit F, Copies of cites by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Sefakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/08/2013	64	MEMORANDUM regarding 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gil, Steve Blackburn, Vegalab, LLC, David Sefakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/8/13. Text Only Entry (ensisec,) (Entered: 07/08/2013)
07/08/2013	65	BRIEF in Opposition to 45 MOTION for Sanctions MOTION for Protective Order filed by Plaintiff Greenway Nutrients, Inc.. (D'Ananay, Manak) (Entered: 07/08/2013)
07/12/2013	66	COURTROOM MINUTES for Motion Hearing held on 7/12/2013 before Magistrate Judge Kathleen M. Tafoya: ORDERED: Parties are directed to exchange initial disclosures with respect to a list of potential witnesses on or before July 16, 2013 by 5:00 p.m. (MST). Mr. Escamilla is ORDERED to not have any communication or contact, direct or indirect, with any of defendants disclosed witnesses, including Thomas Ryan, Wendy Ryan, their daughter Jessica Campbell, and Jessica Campbell's employer. Court advises Mr. Escamilla that further communications, if necessary, must be through his attorneys. Mr. Escamilla further advised that any more direct communications of the kind and nature made previously will result in a recommendation that this case be considered for dismissal for abuse of the court system. Defendants' Motion for Sanctions and Protective Order 45 is GRANTED IN PART, as stated on record. Defendants are awarded reasonable costs with respect to the preparation and presentation of the motion, including attorneys fees. Defendants are directed to file a declaration of costs and fees and file with the court on or before July 22, 2013. Any objections to the amounts claimed shall be filed on or before August 1, 2013. Plaintiff's oral motion to exclude travel costs is DENIED. Defendant's attorney is awarded his own reasonable travel costs for appearance at this hearing, however will not be awarded attorney's fees for his travel time. FTR: S. Grimm. (sgrim) (Entered: 07/15/2013)
07/15/2013	67	SUMMONS Returned Executed by Greenway Nutrients, Inc., Supreme Growers, LLC served on 6/26/2013, answer due 7/17/2013. (D'Ananay, Manak) (Entered:

07/19/2013)

07/17/2013	68	MOTION to Dismiss Adopting Prior Motion by Defendant Supreme Growers, LLC (Wender, Charles) (Entered: 07/17/2013)
07/18/2013	69	MEMORANDUM regarding 68 MOTION to Dismiss Adopting Prior Motion filed by Supreme Growers, LLC. Motions referred to Magistrate Judge Kathleen H. Tafoya by Chief Judge Marcia S. Krieger on 7/18/13. Text Only Entry (mskrec,) (Entered: 07/18/2013)
07/19/2013	70	AFFIDAVIT in Support of Attorney's Fees by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gil, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/19/2013)
07/19/2013	71	MOTION to Dismiss Party Defendant Josh Gil by Plaintiff Greenway Nutrients, Inc.. (O'Meara, Mainak) (Entered: 07/19/2013)
07/19/2013	72	Notice to Court re Attorney Wender's Representation of Defendant Josh Gil by Plaintiff Greenway Nutrients, Inc. (O'Meara, Mainak) Modified on 7/22/2013 to correct text (mskrec,). (Entered: 07/19/2013)
07/22/2013	73	ORDER granting 71 Motion to Dismiss Party Party Josh Gil terminated. All captions shall omit Mr. Gil. by Chief Judge Marcia S. Krieger on 7/22/13. Text Only Entry(mskrec,) (Entered: 07/22/2013)
08/01/2013	74	OBJECTIONS to 70 Affidavit, by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 08/01/2013)
08/07/2013	75	Proposed Scheduling Order Filed Unilaterally by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Affidavit ISO Prop. Sched. Order)(O'Meara, Mainak) (Entered: 08/07/2013)
08/09/2013	76	WITHDRAWN - MOTION for Leave to File Unilateral Civil Scheduling Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Confirmation of Main Document)(Wender, Charles) Modified on 8/15/2013 to withdraw pursuant to chambers instructions as per Notice at 78 (klyon,) (Entered: 08/09/2013)
08/09/2013	77	Proposed Scheduling Order Submitted Jointly (w/ consent of Defendants Blackburn, et al.) by Plaintiff Greenway Nutrients, Inc.. (O'Meara, Mainak) (Entered: 08/09/2013)
08/13/2013	78	Notice of Withdrawal of 76 Motion to File Unilateral Civil Scheduling Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) Modified on 8/13/2013 to terminate Motion and correct title as this is not a Motion but a Notice (klyon,). (Entered: 08/13/2013)
08/13/2013	79	Renewed MOTION to Dismiss by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit)(Wender, Charles) (Entered: 08/13/2013)
08/13/2013	80	MEMORANDUM regarding 76 MOTION for Leave to File Unilateral Civil Scheduling Order filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Steve Blackburn, Vegalab, LLC, Supreme Growers, LLC, David Selakovic, Motions referred to Magistrate Judge Kathleen H. Tafoya by Chief Judge Marcia S. Krieger on 8/13/13. Text Only Entry (mskrec,) (Entered: 08/13/2013)
08/13/2013	81	Exhibits in Support of 79 Renewed MOTION to Dismiss Transcript of 7/12/13 Hearing by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 08/13/2013)
08/14/2013	82	MEMORANDUM regarding 79 Renewed MOTION to Dismiss filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Steve Blackburn, Vegalab, LLC, Supreme Growers, LLC, David Selakovic Motions referred to Magistrate Judge Kathleen H. Tafoya by Chief Judge Marcia S. Krieger on 8/14/13. Text Only Entry (mskrec,) (Entered: 08/14/2013)

08/14/2013	83	COURTROOM MINUTES for Telephonic Scheduling Conference held on 8/14/2013 before Magistrate Judge Kathleen M. Tafoya. Discovery due by 3/14/2014. Dispositive Motions due by 4/14/2014. ORDERED: A Telephonic Final Pretrial Conference is set for June 17, 2014 at 9:30 a.m. The parties shall initiate a conference call and contact chambers at (303) 335-2780 at the time of the Final Pretrial Conference. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference. FTR: S. Colom. (sgrom) (Entered: 08/14/2013)
08/14/2013	84	SCHEDULING ORDER by Magistrate Judge Kathleen M. Tafoya on 8/14/13. (sgrom) (Entered: 08/14/2013)
08/15/2013	85	TRANSCRIPT of Motion Hearing held on 7/12-13 before Magistrate Judge Tafoya. Pages: 1-54. NOTICE - REDACTION OF TRANSCRIPTS: Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of Transcripts document at www.cod.uscourts.gov. Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. Release of Transcript Restriction set for 11/18/2013. (Avery Woods Reporting,) (Entered: 08/15/2013)
08/16/2013	86	TRIAL PREPARATION ORDER - CIVIL by Chief Judge Marcia S. Krieger on 8/16/13. (mslmsc,) (Entered: 08/16/2013)
09/03/2013	87	BRIEF in Opposition to 79 Renewed MOTION to Discuss filed by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit Declaration of Zachary Levine)(Levine, Zachary) (Entered: 09/03/2013)
09/11/2013	88	SUPPLEMENT/AMENDMENT to 72 MOTION to Disqualify Notice to Court re Attorney Wender's Representation of Defendant Josh Gill by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Declaration of Josh Gill, # 2 Exhibit)(Levine, Zachary) (Entered: 09/11/2013)
09/20/2013	89	RESPONSE to 72 MOTION to Disqualify Notice to Court re Attorney Wender's Representation of Defendant Josh Gill, 88 Supplement/Amendment, RESPONSE TO PLAINTIFF'S FILING by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 09/20/2013)
12/04/2013	90	ORDER re: 70 Sworn Declaration of Charles Wender. ORDERED Plaintiff shall pay to the Defendants, through their counsel Charles Wender, the total sum of $8,925.00 in certified funds within thirty days of the entry of this ORDER, by Magistrate Judge Kathleen M. Tafoya on 12/4/13. (sgrom) (Entered: 12/04/2013)
12/05/2013	91	ORDER denying 79 Defendants' Renewed Motion to Discuss, by Magistrate Judge Kathleen M. Tafoya on 12/5/13.(sgrom) (Entered: 12/05/2013)
01/07/2014	92	ORDER TO SHOW CAUSE. ORDERED that, on or before January 21, 2014, Plaintiff shall show cause in writing why its claims against Defendants Brown, LLC; New Epic Media, LLC; Chris Kohlhagen; Bees Hive, LLC; Gringo Diablo Hydro; Hoops Enterprise, LLC; James Hale; David Y.S. Park; and Kim Kyung Bon should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service, by Magistrate Judge Kathleen M. Tafoya on 1/7/14. (sgrom) (Entered: 01/07/2014)
01/17/2014	93	SUMMONS REQUEST as to Bee's Hive, LLC; New Epic Media, LLC by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 01/17/2014)
01/17/2014	94	SUMMONS REQUEST as to Brown, LLC by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 01/17/2014)
01/21/2014	95	SUMMONSES issued by Clerk. (Attachments: # 1 Summons) (klvon,) (Entered: 01/21/2014)
01/21/2014	96	RESPONSE TO ORDER TO SHOW CAUSE re 92 by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit)(Levine, Zachary) (Entered: 01/21/2014)
02/06/2014	97	MOTION to Dismiss by Defendant Hoops Enterprise, LLC. (Wender, Charles) (Entered: 02/06/2014)

02/06/2014	98	NOTICE of Change of Address/Contact Information by Charles Wender (Wender, Charles) (Entered: 02/06/2014)
02/10/2014	99	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE re: Defendants Steve Blackburn, Stacy Blackburn, David Selakovic, Fulfillment Solutions Services, LLC, Vegalab, LLC, Grower Trust, LLC, and Dave Thompson's Motion to Dismiss 27 be GRANTED; Defendant Supreme Growers, LLC's Motion to Dismiss Adopting Prior Motion (D.E. 27) 68 be GRANTED; Motion to Dismiss on Behalf of Defendant Hoops Enterprises, LLC 97 be GRANTED; and that the case be dismissed in its entirety, by Magistrate Judge Kathleen M. Tafoya on 2/10/14. (cgvin) (Entered: 02/10/2014)
02/24/2014	100	OBJECTION to 99 Report and Recommendation Filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 02/24/2014)
02/24/2014	101	First MOTION for Leave to File First Amended Complaint by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Proposed Document, # 2 Exhibit, # 3 Proposed Order (PDF Only))(Levine, Zachary) (Entered: 02/24/2014)
02/25/2014	102	MEMORANDUM regarding 101 First MOTION for Leave to File First Amended Complaint filed by Greenway Nutrients, Inc. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 2/25/14. Text Only Entry (mskrec,) (Entered: 02/25/2014)
02/26/2014	103	RESPONSE to Objection to 99 RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE re 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, G filed by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 02/26/2014)
02/26/2014	104	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE that Plaintiff's claims against Defendants Chris Kohlhagen; Bees Five, LLC; Gerego Diablo Hydro; Hoops Enterprise, LLC; James Hom; David Y.S Park; and Kyo Kyung-Soo be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service. The Order to Show Cause [Doc. No. 92] is DISCHARGED to the extent it concerns Plaintiffs failure to serve Defendants Ecowin, LLC and New Epic Media, LLC. Plaintiff is granted an extension of time through April 17, 2014 to serve Ecowin and New Epic Media. By Magistrate Judge Kathleen M. Tafoya on 2/26/2014. (klyon,) (Entered: 02/26/2014)
03/13/2014	105	RESPONSE to 101 First MOTION for Leave to File First Amended Complaint filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Exhibit A - Affidavits, # 2 Exhibit Exhibit B - Blogs, # 3 Exhibit Exhibit C - Criminal History, # 4 Exhibit Exhibit D - Greenway Website)(Wender, Charles) (Entered: 03/13/2014)
03/26/2014	106	OPINION AND ORDER ADOPTING RECOMMENDATION AND GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE TO AMEND COMPLAINT. The Court ADOPTS the Recommendation 99 that the Motions to Dismiss (# 27 , 68 , 97) filed by Defendants Steven Blackburn, Stacy Blackburn, David Selakovic, Fulfillment Solutions Services, LLC, Vegalab, LLC, Grower Trust, LLC, Dave Thompson, Supreme Growers, LLC, and Hoops Enterprises, LLC, be GRANTED. The Plaintiff's First Motion for Leave to file First Amended Complaint 101 is GRANTED IN PART AND DENIED IN PART. The Plaintiff is granted leave to amend. However, the Court does not accept the proposed Amended Complaint filed at Docket #101. Within 14 days, the Plaintiff is directed to re-file an Amended Complaint, clarifying its breach of contract claim as directed by the Court in its analysis. Failure to comply with this Order will result in dismissal of the Complaint in its entirety. by Chief Judge Marcia S. Krieger on 3/26/14.(mskrec,) (Entered: 03/26/2014)
04/09/2014	107	AMENDED COMPLAINT against Stacy Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC, filed by Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit)(Levine, Zachary) (Entered: 04/09/2014)
04/21/2014	108	ORDER adopting 104 Report and Recommendation that claims against unserved Defendants be dismissed. Proper notice having been given and no timely objection having been filed, the Recommendation is adopted and shall become the

		order of the court. The caption shall be amended in accordance herewith. by Chief Judge Marcia S. Krieger on 4/21/2014.(msk,) (Entered: 04/21/2014)
04/23/2014	109	MOTION to Dismiss for Lack of Jurisdiction by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Wender, Charles) (Entered: 04/23/2014)
04/23/2014	110	Exhibits in Support of 109 MOTION to Dismiss for Lack of Jurisdiction by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit A-Defendants' Affidavits, # 2 Exhibit B-Sworn Declaration, # 3 Exhibit C-Notice of Suspension, # 4 Exhibit D-Press reports, # 5 Exhibit E-News Article/Minutes, # 6 Exhibit F-Website clip, # 7 Exhibit G-Summary, # 8 Exhibit H-Escamilla's Declaration, # 9 Exhibit I-Trudeau's Declaration, # 10 Exhibit J-Blogs, # 11 Exhibit K-License Revocation, # 12 Exhibit L-Court Records)(Wender, Charles) (Entered: 04/23/2014)
05/06/2014	111	MEMORANDUM regarding 109 MOTION to Dismiss for Lack of Jurisdiction filed by Steve Blackburn, Supreme Growers, LLC, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/6/14. Text Only Entry (mskse,) (Entered: 05/06/2014)
05/07/2014	112	RESPONSE to 109 MOTION to Dismiss for Lack of Jurisdiction filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/07/2014)
05/15/2014	113	REPLY to Response to 109 MOTION to Dismiss for Lack of Jurisdiction filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit PRESS RELEASES, # 2 Exhibit BLOGS)(Wender, Charles) (Entered: 05/15/2014)
05/30/2014	114	MINUTE ORDER: At the Scheduling Conference in this matter, the parties indicated they would be consenting to the jurisdiction of the magistrate judge. However, the parties never consented. Therefore, the Final Pretrial Conference set for June 17, 2014, is vacated, to be reset by Chief District Judge Marcia S. Krieger by Magistrate Judge Kathleen M. Tafoya on 5/30/14. Text Only Entry (kmtsc1,) (Entered: 05/30/2014)
07/23/2014	115	MOTION for Sanctions and Indirect Criminal Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit A. Sworn Declaration, # 3 Exhibit B. Blogs, # 4 Exhibit C. Counterfeit Emails)(Wender, Charles) (Entered: 07/23/2014)
07/24/2014	116	MEMORANDUM regarding 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Steve Blackburn, Supreme Growers, LLC, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/24/14. Text Only Entry (mskse,) (Entered: 07/24/2014)
08/06/2014	117	BRIEF in Opposition to 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 08/06/2014)
08/18/2014	118	REPLY to Response to 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Sworn Declaration of Charles Wender, # 2 Exhibit Blog w/ Link to Bar Complaint, # 3 Exhibit Link to Escamilla's Response to Bar)(Wender, Charles) (Entered: 08/18/2014)
10/06/2014	119	AFFIDAVIT by Interested Party Thomas Ryan. (Attachments: # 1 Exhibit)(Ryan, Thomas) (Entered: 10/06/2014)
10/06/2014	120	MOTION for Contempt by Interested Party Thomas Ryan. (Attachments: # 1 Exhibit)(Ryan, Thomas) (Entered: 10/06/2014)
10/07/2014	121	MEMORANDUM regarding 120 MOTION for Contempt filed by Thomas Ryan. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 10/7/14. Text Only Entry (mskse,) (Entered: 10/07/2014)
10/08/2014	122	NOTICE OF ADOPTING AFFIDAVIT OF THOMAS RYAN by Defendants Stacy Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC (Wender, Charles) (Entered: 10/08/2014)

10/21/2014	123	BRIEF in Opposition to 120 MOTION for Contempt filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 10/21/2014)
02/13/2015	124	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE that 109 Motion to Dismiss First Amended Complaint be granted in part and denied in part. By Magistrate Judge Kathleen M. Tafoya on 2/20/15. (dkels,) (Entered: 02/21/2015)
02/26/2015	125	ORDER denying 113 Motion for Sanctions and Indirect Criminal Contempt and 120 Motion to Hold Gus Escamilla and Marc Kent in Contempt of Court by Magistrate Judge Kathleen M. Tafoya on 2/26/15.(dsals,) (Entered: 02/26/2015)
03/03/2015	126	OBJECTION to 124 Report and Recommendations filed by Defendants Steve Blackburn, David Selakovic. (Wender, Charles) (Entered: 03/03/2015)
03/11/2015	127	OBJECTION/Appeal of Magistrate Judge Decision to District Court re 125 Order on Motion for Sanctions, Order on Motion for Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Wender, Charles) (Entered: 03/11/2015)
03/23/2015	128	RESPONSE to 127 Objection/Appeal of Magistrate Judge Decision filed by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Affidavit Gustavo Escamilla)(Levine, Zachary) (Entered: 03/23/2015)
03/31/2015	129	ORDER adopting Report and Recommendations re 124 that the Motion to Dismiss for Lack of Jurisdiction 109 be GRANTED in part and DENIED in part. The Motion to Dismiss is GRANTED with respect to the breach of contract claims and all claims against Supreme Growers, LLC. The motion is DENIED in all other respects by Chief Judge Marcia S. Krieger on 3/31/15.(pgray) (Entered: 03/31/2015)
04/01/2015	130	RESPONSE to 127 OBJECTION/Appeal of Magistrate Judge Decision to District Court re 125 Order on Motion for Sanctions, Order on Motion for Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Samples of "Bags", # 2 Exhibit Email from Escamilla - Exhibit 26 at Motion Hearing, # 3 Exhibit Excerpts from Letter to Florida Bar)(Wender, Charles) (Entered: 04/01/2015)
04/07/2015	131	Defendants' ANSWER to 107 Amended Complaint by Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic.(Wender, Charles) (Entered: 04/07/2015)
05/13/2015	132	MINUTE ORDER: Status Conference set for 6/2/2015 at 10:30 AM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya. No later than 5/27/2015, the parties shall file Status Reports advising the court of the need for scheduling in this case. By Magistrate Judge Kathleen M. Tafoya on 5/13/2015. Text Only Entry (kmtsc2) (Entered: 05/13/2015)
05/19/2015	133	Unopposed MOTION for Leave to Appear BY TELEPHONE by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wender, Charles) (Entered: 05/19/2015)
05/19/2015	134	STATUS REPORT by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wender, Charles) (Entered: 05/19/2015)
05/19/2015	135	MEMORANDUM regarding 133 Unopposed MOTION for Leave to Appear BY TELEPHONE filed by Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/19/15. Text Only Entry (mskrsc,) (Entered: 05/19/2015)
05/19/2015	136	MINUTE ORDER granting 133 Motion to Appear by Telephone. Defendants' counsel may appear at the Status Conference by telephone by calling chambers, 303-335-2780, at the scheduled time. By Magistrate Judge Kathleen M. Tafoya on 5/19/2015. Text Only Entry (kmtsc2) (Entered: 05/19/2015)
05/21/2015	137	First MOTION to Withdraw as Attorney by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/21/2015)
05/21/2015	138	First MOTION for Leave to Appear by Telephone by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/21/2015)
05/21/2015	139	First STATUS REPORT by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Filed: 05/21/2015)

05/22/2015	140	MEMORANDUM regarding 137 First MOTION to Withdraw as Attorney filed by Greenway Nutrients, Inc.Motion referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (jmckee,) (Entered: 05/22/2015)
05/22/2015	141	MEMORANDUM regarding 138 First MOTION for Leave to Appear by Telephone filed by Greenway Nutrients, Inc. Motion referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (mckee,) (Entered: 05/22/2015)
05/22/2015	142	MINUTE ORDER granting 138 Motion to Appear by Telephone. Counsel for Plaintiff and Defendant may attend the Status Conference telephonically by initiating a conference call and contacting chambers, 303-335-2769, at the scheduled time. By Magistrate Judge Kathleen M. Tafoya on 5/22/2015. Text Only Entry (kmtsc2) (Entered: 05/22/2015)
06/02/2015	143	COURTROOM MINUTES for Telephonic Status Conference held on 6/2/2015 before Magistrate Judge Kathleen M. Tafoya. ORDERED: Plaintiff shall secure new counsel and file an entry of appearance on or before June 22, 2015. If an entry of appearance is not filed, an order to show cause will be issued. Plaintiff's Attorney's Motion to Withdraw as Counsel 137 is GRANTED. Attorney Zachary Levine is relieved of any further representation, subject to the discussion held at today's hearing. Based upon the representation of counsel, Attorney Manish O'Bharay has left the law firm of Wolk Gamp; Levine and should be terminated from this case. FTR: KMT C701. (sgmin) (Entered: 06/02/2015)
06/26/2015	144	ORDER TO SHOW CAUSE: On or before 7/10/2015, Plaintiff shall show cause in writing, by and through legal counsel, whose appearance for Plaintiff has been entered properly in this case, why this case should not be dismissed with prejudice as permitted by D.C.COLO.LCivR 41.1 and Ehrenhaus v. Reynolds, 965 F.2d 916 (10th Cir. 1992). Plaintiff is hereby warned that failure improperly responds to this Order to Show Cause will result in a recommendation that this case be dismissed in its entirety, pursuant to D.C.COLO.LCivR 41.1 and Ehrenhaus, by Magistrate Judge Kathleen M. Tafoya on 6/26/15. (mcrtl,) (Entered: 06/26/2015)
07/08/2015	145	Mail Returned as Undeliverable: 144 Order to Show Cause addressed to Greenway Nutrients, Inc. (dkals,) (Entered: 07/08/2015)
07/21/2015	146	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE. The Court respectfully RECOMMENDS that this case be dismissed in its entirety, with prejudice, by Magistrate Judge Kathleen M. Tafoya on 7/21/15. (mcrtl,) (Entered: 07/21/2015)
08/14/2015	147	ORDER adopting 146 Report and Recommendation of Dismissal for the Plaintiff's failure to prosecute and to obtain counsel within a reasonable period of time. Notice of the Recommendation was given and no timely objection was made. However, previous attempts to give the Plaintiff notice have resulted in mail returned to the Court as undeliverable to the address of record. Because the Plaintiff has neither maintained a valid address in the court records nor obtained counsel as is required for the Plaintiff (a corporation) to proceed, dismissal of the action without prejudice is appropriate. It is so ordered. by Chief Judge Marcia S. Krieger on 8/14/2015. Text Only Entry(cmsk,) (Entered: 08/14/2015)
08/17/2015	148	JUDGMENT in favor of defendants and against Greenway Nutrients, Inc. re: 147 Order on Report and Recommendations, entered by Clerk on 8/17/15. (jglov) (Entered: 08/17/2015)
09/02/2015	149	MOTION for Attorney Fees , MOTION for Reconsideration re 147 Order on Report and Recommendations,, by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wonder, Charles) (Entered: 09/02/2015)
09/02/2015	150	Mail Returned as Undeliverable: 148 Judgment addressed to Greenway Nutrients, Inc. (dkals,) (Entered: 09/02/2015)
10/27/2015	151	OPINION AND ORDER denying 149 Motion for Reconsideration of Final Judgment and an Award of Attorney Fees by Chief Judge Marcia S. Krieger on 10/27/15. (dkals,) (Entered: 10/27/2015)
11/04/2015	152	Amended MOTION for Attorney Fees by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Attachments: # 1 Affidavit Attorney

Fees)(Wender, Charles) (Entered: 11/04/2015)

11/06/2015	153	Mail Returned as Undeliverable. 151 Order addressed to Greenway Nutrients, Inc (dkab,) (Entered: 11/06/2015)
06/09/2016	154	NOTICE of Supplemental Authorities re: 152 Amended MOTION for Attorney Fees by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Sekakovic (Wender, Charles) (Entered: 06/09/2016)
06/13/2016	155	ORDER by Judge Otis D. Wright, II denying 152 Motion for Attorney Fees. The Defendants seek an award of attorney fees in this matter pursuant to the Lanham Act, 15 U.S.C. § 1117(a), or alternatively, pursuant to Colo. Rev. Stat. § 13-17-102. Under § 1117(a), the Court may award reasonable attorney fees to the prevailing party in exceptional cases. To determine whether the case is exceptional, the Court must consider whether the suit was unfounded or brought for harassment and the like. King v. PA Consulting Group, 485 F.3d 577, 592 (10th Cir. 2007); see also Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S.Ct. 1749, 175 (2014). Factors to consider include the lack of foundation, the plaintiffs bad faith in bringing the suit, the unusually vexatious and oppressive manner in which it is prosecuted, or other reasons. King, 485 F.3d at 592. Similarly, C.R.S. § 13-17-102 provides that in any civil action the Court shall award reasonable attorney fees against any attorney or party who has brought a civil action that lacked substantial justification, meaning substantially frivolous, groundless, or vexatious. Having reviewed the Defendants motion and the record, the Court finds that the Defendants have failed to establish that this is an exceptional case under the Lanham Act or that it lacked substantial justification under § 13-17-102. The Court notes that at the time the case was dismissed for the Plaintiffs failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin and unjust enrichment were still viable. These claims were not adjudicated on the merits and the Court therefore cannot find that the suit was unfounded or groundless. Further, although the Court agrees that some of the Plaintiffs litigation tactics may have pushed the envelope, it does not find that the Plaintiffs manner of conduct in litigation was unusually oppressive or vexatious. Accordingly, the Court finds that an award of attorney fees is not warranted and the 152 Motion for Attorney Fees is DENIED. by Chief Judge Marcia S. Krieger on 06/13/2016. Text Only Entry(mskin3,) (Entered: 06/13/2016)

Judgments

Date	In Favor Of	Against	Amount	Interest	Court Cost	Status	Status Date
08/17/2015	Steve Blackburn	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	Fulfillment Solutions Services, LLC	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	David Sekakovic	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	Supreme Growers, LLC	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015

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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Honorable Marcia S. Krieger

Civil Action No. 13-cv-01088-MSKJ-KMT

GREENWAY NUTRIENTS, INC.,

Plaintiff,

v.

STEVE BLACKBURN, STACY BLACKBURN, DAVID SELAKOVIC, FULFILLMENT SOLUTIONS SERVICES, LLC, VEGALAB, LLC, GROWER TRUST, LLC, DAVE THOMPSON, et al.,

Defendants.

MOTION FOR SANCTIONS AND PROTECTIVE ORDER

PLEASE TAKE NOTICE that the Defendants, **STEVE BLACKBURN, STACY BLACKBURN, DAVID SELAKOVIC, FULFILLMENT SOLUTIONS SERVICES, LLC, VEGALAB, LLC, GROWER TRUST, LLC, DAVE THOMPSON, JOSH GILL,** *et al.*, and on behalf of two material witnesses, **THOMAS RYAN,** and **WENDY RYAN,** move this Court for Sanctions, including dismissal of this action, and for Orders protecting the two material witnesses from any contact and harm from Plaintiff's President and CEO, GUS ESCAMILLA, a/k/a GUS ESCAMILLA ISQUIERDO, and in support thereof would state:

1. This Motion contains serious allegations of misconduct by the Plaintiff's PRESIDENT and CEO, GUS ESCAMILLA ("Escamilla"). These allegations concern e-mail communications from ESCAMILLA to the Defendants, their counsel and to two material witnesses in this case, THOMAS RYAN ("Tom") and his former wife, WENDY RYAN ("Wendy"). This motion is being made at the urging and request of both TOM and WENDY RYAN. Since ESCAMILLA's actions impact upon the integrity of the judicial system and administration of justice, the Defendants seek a dismissal of this action and other appropriate sanctions in the exercise of this Court's discretion. The main focus of this motion concerns the threats and intimidation of the RYANS -- although, as will be noted, they have not been the only ones being targeted by ESAMILLA.

2. The allegations contained herein, for the most part, do not come from the Defendants, but from two material witnesses, TOM and WENDY RYAN, who have supported this motion with their own separate sworn affidavits, which are annexed hereto. The affidavits and accompanying emails sent from ESCAMILLA "speak for themselves", and raise genuine concerns by the RYANS, that as witnesses they are being tampered with, harassed and put in fear for their physical safety and the safety of their daughter. Most disturbing is an email dated June 19, 2013 from ESCAMILLA to WENDY RYAN and their daughter which, in essence, threatens criminal prosecution if they do not execute an affidavit prepared by ESCAMILLA. This email and the threats contained therein portend blackmail and attempted subordination of perjury.

BACKGROUND

3. GUS ESCAMILLA, is the Chief Executive Officer of the Plaintiff, GREENWAY NUTRIENTS, INC. TOM RYAN is an attorney and was counsel to both GREENWAY NUTRIENTS, and GUS ESCAMILLA. At one point, they were good friends with TOM RYAN, actually living in ESCAMILLA'S house.

4. TOM RYAN is named in Plaintiff's Complaint as the individual who introduced GREENWAY NUTRIENTS (presumably MR. ESCAMILLA) to STEVE BLACKBURN (¶ 39) and, based on MR. RYAN vouching for BLACKBURN, GREENWAY NUTRIENTS and MR. BLACKBURN began a business relationship which gave rise to this lawsuit. MR. RYAN has first-person knowledge concerning many aspects of the case and is a material witness. In addition, MR. RYAN assisted in the business arrangement between the Plaintiff and the Defendant, FULFILLMENT SOLUTIONS SERVICES, and was to be called as a witness by the Defendants.

5. WENDY RYAN is TOM RYAN's former wife. She was an employee of the Plaintiff, GREENWAY NUTRIENTS. She has first-hand knowledge concerning several material aspects of this case.

TOM RYAN'S AFFIDAVIT

6. Mr. RYAN reflects that in October of 2012 he was terminated as counsel for GREENWAY. Approximately two (2) months ago he started to receive a series of emails from MR. ESCAMILLA - which "switched from professional to vulgar and threatening very quickly." The emails contained threats "against myself, my ex-wife and my daughter, along with threats to the Defendants in this action and people who had worked at GREENWAY NUTRIENTS in the past".

7. Thereafter, MR. RYAN contacted Plaintiff's counsel, MR. LEVINE, for help. MR. LEVINE never responded. MR. RYAN then contacted the undersigned for assistance who, in turn, reached out to Plaintiff's counsel without any results and who was essentially "blown off". MR. RYAN then contacted the United States Marshall Service in California, and he was advised that this matter be brought to the Court's attention. MR. RYAN specifically requested that this Court be made aware what was transpiring and seek protection of the Court.

8. Initially, MR. RYAN did not save the e mails received from MR. ESCAMILLA but, more recently, has done so. He has transmitted the emails to the undersigned. The Emails and the copies submitted annexed to TOM RYAN's affidavit are from GUS ESCAMILLA to TOM RYAN and/or WENDY RYAN and were transmitted to the undersigned.

9. The emails sent to TOM RYAN contain vile and vulgar language, implicit and explicit threats, and have caused both TOM RYAN and WENDY RYAN fear for their physical safety. They both feel intimidated, harassed and threatened. One of the more typical emails is reproduced below in order that this Court can appreciate the seriousness of what has occurred, and sense the tone and magnitude of the harangues:

---Original Message---
From: 15617235725 <15617235735@myfreefaxes.com>
To: tyanlaw <tyanlaw@aol.com>
Sent: Tue, Jan 11, 2013 10:22 am
Subject: Fwd:

DO YOU "SEE" THESE FUCKER ID1972777 YOUR ARMS ARE BROKE!!! GUILTY THIS IS NOT A CIVIL MATTER ANY LONGER!!!! IT'S CRIMINAL!!!!NOW YOUR STUPID ASSES SHOULD READ THE THEFT OF TRADE SECRETS ACT OF 2012, THE ECONOMIC ESPIONAGE ACT OF 1996, WIRE FRAUD, MAIL FRAUD AND ON AND ON!!! JESSIE CAMPBELL AKA JESSIE RYAN SHOULD GET TO KNOW THESE LAWS EXCEPTIONALLY WELL!!! IF I WONDER HOW LONG OR HOW MUCH PRESSURE SHE CAN TAKE!!!! IM ABOUT TO FIND OUT!!!! SHE TOO AND ALL YOU MOTHER FUCKER TRIGGS ARE GUILTY AS FUCK!!!!! YOU STUPID STUPID FOOLS!!!!! IM GOING TO JAIL, YOUR STUPID IGNORANT ASSES!!!! YOUR ALL FUCKED!!!! NOW YOUR A FOOL A STUPID STUPID PATHETIC FOOL!!!!!

10. MR. RYAN further notes in his affidavit that, based on his personal knowledge of GUS ESCAMILLA, MR. ESCAMILLA is on "drugs" - "shooting up steroids, taking self-daily doses of Adderol and a sleeping pill I believe was Lunesta or a generic thereof.... He was also smoking approximately 1/8th of medicinal marijuana a day". Based upon the approximate number and nature of the email (as many as 38 in one day) and

ESCAMILLA's state of mind, he is afraid that matters will spin out of control and harm will come to him and his family at the hands of ESCAMILLA. TOM RYAN states in his affidavit:

> "I have requested that Mr. Wender file a motion for protection from the defamation, threats, fear of violence on me and my family and/or some type of restraining order. I have also requested that Mr. Wender inform the court [that] numerous Witness[es] believe that Mr. Escamilla is dangerous and trying to tamper with their testimony as witnesses."

SWORN DECLARATION OF WENDY RYAN

11. WENDY RYAN has independently submitted her own Sworn Declaration (the original of which is annexed hereto). WENDY RYAN related that she was a former employee of GUS ESCAMILLA, having been employed from December 2010 through December 2011 at Greenway University/GREENWAY NUTRIENTS.

12. On April 30, 2013 she received her first email from ESCAMILLA concerning this matter and has annexed the communication as Exhibit 1 to her sworn declaration. WENDY RYAN responded by email, informing ESCAMILLA that she would be contacting the Defendant, STEVE BLACKBURN, and offering to testify in BLACKBURN'S behalf. (Exhibit 2 of her Sworn Declaration.) ESCAMILLA responded with an apologetic email and stated he would not "reach out" to her again. (Exhibit 3 of her Sworn Declaration.)

13. On June 1, 2013 ESCAMILLA copied WENDY RYAN on a rambling, vile and profane email that he had sent to her former husband, TOM RYAN, and DAVID SELAKOVIC (a Defendant herein). (Exhibit 4 of her Sworn Declaration.)

14. On June 7, 2013 ESCAMILLA sent WENDY RYAN, TOM RYAN, and JULIAN ROLAND a series of very threatening and profane emails. He threatened to

put WENDY RYAN'S daughter in prison for imaginary reasons. (Exhibit 5 of her Sworn Declaration.) WENDY RYAN did not respond to MR. ESCAMILLA.

15. Starting on the same day, June 7, 2013, ESCAMILLA unleashed upon WENDY RYAN and TOM RYAN an onslaught of filthy and disgusting emails filled with accusations, threats and foul language. (True copies of the emails are annexed to WENDY RYAN's Sworn Declaration as Exhibit 6.)

16. On June 7, 2013, WENDY RYAN, attempted to contact ESCAMILLA's attorney, MR. LEVINE. She called his office and spoke with the receptionist, leaving a message to be followed up with an email. MR. LEVINE responded, stating that he would speak with his client.

17. On June 8, 2013 WENDY RYAN received another intimidating and menacing email from ESCAMILLA, with more threats of criminal prosecution. (Exhibit 7 of her Sworn Declaration.)

18. On June 11, 2013 WENDY RYAN received more intimidating and profane emails from ESCAMILLA. (Exhibit 8 of her Sworn Declaration.) ESCAMILLA even "dared" WENDY RYAN to provide copies to the Court.

19. On June 12, 2013 there were more threats and profane emails from ESCAMILLA. (Exhibit 9 of her Sworn Declaration.)

20. On June 18, 2013 there were still more filthy and threatening emails sent, some sent five (5) times. (Exhibit 10 of her Sworn Declaration.)

21. On June 19, 2013 more filthy and threatening emails, stating that ESCAMILLA's life's goal was to see the witnesses in prison. (Exhibit 11 of her Sworn Declaration.)

22. On June 19, 2013 GUS ESCAMILLA sent an email stating that he did not "really want" to send WENDY RYAN and her daughter to prison. (Exhibit 12 of her Sworn Declaration.) This email was followed by another email, in which he gave WENDY RYAN and her daughter until 5:00 p.m. PST to sign an affidavit that he had prepared. The statement, according to WENDY RYAN, was untrue, and she felt that she was being

blackmailed. Because of the seriousness of these particular allegations, suggesting subordination of perjury, witness-tampering and blackmail, portions of that email are reproduced below.

Dear Wendy and Jessie Ryan aka Jessie Campbell:

First it is important to note that I am accusing you of VIOLATING MY RIGHTS AS A CITIZEN OF THE UNITED STATES OF AMERICA.

THIS IS A CRIMINAL MATTER AND A CRIMINAL MATTER ONLY. It appear that you have unintentionally involved yourself in a conspiracy to defraud Greenway.

I AM ACCUSING BOTH OF YOU OF COMMITTING CRIMINAL ACTIVITY.

I AM ADVISING YOU THAT IT IS MY INTENTION TO PROVIDE INSURMOUNTABLE FACTUAL EVIDENCE TO SUPPORT THAT YOU HAVE IN FACT, COMMITTED WIRE FRAUD, MAIL FRAUD AS WELL AS VIOLATIONS OF THE TIH Racketeer Influenced and Corrupt Organizations ACT, THEFT OF TRADE SECRETS ACT OF 2012, ECONOMIC ESPIONAGE ACT OF 1996.

* * *

Notwithstanding the above, I wish to put this matter behind me.

Therefore, I am looking for acknowledgment of the following statement in order assist Greenway being closure to this matter today.

Statement of Wendy and Kyle Ryan:

We, Wendy Ryan and Jessie Ryan were duped by Tom Ryan into the entire legal mess which is the subject of the Greenway v. Blackburn, et al litigation. Tom Ryan asked me Jessie Ryan, to accept a $5,000.00 wire to my Paypal account from Steve Blackburn and/or David Dragoo Solutions. At no time, did Tom Ryan ever indicate or mention that this activity was in fact, a ruse to surreptitiously get money from Blackburn to Tom.

* * *

This is not an admission of guilt but an admission of any wrongdoing. We are simply acknowledging this statement as 100% factual as it relates to the potential criminal activity to which Tom Ryan may have exposed myself and my daughter. Even though Jessie did participate in the above activity, and no time did she or I have any knowledge of the legal consequences of participating in said activity.

Date:

I declare under the penalty of perjury that the foregoing is true and correct.

Wendy Ryan Jessie Ryan aka Jessie Campbell.

Dear said Wendy, I do not wish you harm. I also do not wish to have to go down this ugly road. I do believe that somehow Tom got you caught up in this mess. I can only imagine as I guess how you must feel. I know you Wendy, you are smarter than this. Let's put the blame squarely on the person who caused you to be involved in this litigation. By signing the above statement it will go a long way to evidence who's to blame.

I have had it with this case. I have had it with people stealing from me. It is traumatic to me that there is no "quid pro quo" here. We are simply trying to get to the truth. I am giving you until 5pm PST to acknowledge this statement by signing this email an returning it to Greenway.

Gustavo Pazzulla
President, Greenway Partners, Inc.

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OTHER TARGETS OF MR. ESCAMILLA'S RANTS

23. Previous to the email attack on the RYANS, GUS ESCAMILLA targeted the Defendants and their counsel with similar vitriolic diatribes. Using the same method -- emails -- ESCAMILLA unleashed his rantings upon the Defendants and Counsel with profanity, threats, challenges, and imaginary and paranoid raving. In light of recent events concerning the RYANS, the Defendants and their counsel have grave concern for their safety. GUS ESCAMILLA is a "loose cannon", and there is a well-founded fear that when he learns of this motion there is no telling what he will do. His attorney's unwillingness to even recognize that ESCAMILLA is acting inappropriately, and his attorney's unwillingness to do anything about it is giving ESCAMILLA a license to continue. Rather than condemn their client's actions, his counsel has apparently given their tacit approval. (Samples of emails to the Defendants and Defendants' counsel are annexed hereto.)

24. Clearly, GUS ESCAMILLA should and does know better, as he was previously convicted of witness tampering in the State of California in 2009. On March 24, 2009 ESCAMILLA plead to and was convicted in the Superior Court of California, County of Los Angeles under Case No. 8WA04249 of two counts of domestic violence (§§ 273.5 and 243(E)(1), California Penal Code) and one count of witness tampering (§ 136.1(B)(1). ESCAMILLA was sentenced to 365 days in County jail, followed by a minimum of three (3) years probation, and an anger management course. ESCAMILLA violated his probation, and the court ordered two post-plea bench warrants. ESCAMILLA was actually a fugitive from February 2, 2010 through February 9, 2012 – a period of over two years – which coincides with the period in which ESCAMILLA has accused the Defendants in this case of misconduct. (A certified copy of the California Clerk's criminal minutes is annexed hereto.)

LEGAL BASIS FOR RELIEF

25. The Defendants seek dismissal of this action due to the gross misconduct of the Plaintiff's representative toward the RYANS, the Defendants and the Defendants' counsel. The RYANS seek an Order of Protection, prohibiting the Plaintiff and

its officers and directors from contacting the RYANS or their daughter.

26. This Court has the unquestionably inherent authority to control its cases and docket to "prevent [its] proceeding and judgment in the course of discharging [its] traditional responsibilities". Degen v. United States, 517 U.S. 820 (1996) (a federal court has the inherent authority to sanction a litigant for bad faith conduct). *See*, Shepherd v. American Broadcasting, 62 F.3d 1469, 1472 (D.C. Cir. 1995) ("these powers are 'governed not by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the order and expeditious disposition of cases'."); Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991), quoting Link v. Wabash RR Co., 370 U.S. 626, 630-631 (1962). Sanctions, such as shifting attorney fees and default judgment, may be imposed under the court's inherent authority. *See*, Dietrich v. Northwest Airlines, 168 F.3d 961, 964 (7th Cir. 1999) (inherent power "permit[s] a court to impose the ultimate sanction of a grant of judgment; DFB Healing Court, v. American General LLC, 764 F. Supp. 2d 974 (N.D. Ill. February 8, 2011) (dismissal appropriate for egregious litigating misconduct under inherent authority of the court). As stated in United States v. Mousseau, 483 F.3d 220, 236 (4th Cir. 2007) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)):

> "It has long been recognized that federal courts possess certain implied or inherent powers that are necessary to the exercise of all other. Inherent powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases... In accordance with these principles, the Supreme Court has... held that federal courts possess the inherent authority ... to dismiss a lawsuit *sua sponte* for failure to prosecute[.] ...[A] court has the inherent authority to control various aspects of the cases *before that court* so that they can protect their proceedings and judgments in the course of

> discharging their traditional responsibilities. *See also*, United States v. Carrigan, 804 F.2d 595 (10th Cir. 1986)]

27. A corollary to controlling its own proceedings is the inherent power to protect witnesses. See, United States v. Ciccarelli, 441 F. 2d. 344 (9th Cir. 1971); Cudio v. United States, 288 F. 2d. 282 (9th Cir. 1961); United States v. Kirk, 534 F.2d. 672 (6th Cir. 1975). As noted in Wheeler v. United States, 640 F. 2d. 1116, 1123 (9th Cir. 1981):

> "This inherent power to protect witnesses stems from the "indisputably... broad powers [of the trial judge] to ensure the orderly and expeditious progress of a trial." Bitter v. United States, 389 U.S. 15, 16, 88 S.Ct. 6, 7, 19 L.Ed.2d 15 (1976). More generally stated, the trial judge has the broad discretion to protect the administration of justice from 'abuses, oppression and injustice'. *Id.* at 16, 88 S.Ct. at 7; Wood v. Georgia, 370 U.S. 375, 383, 82 S.Ct. 1364, 1369, 8 L.Ed. 2d 569 (1962); Quinbet v. Pilkin, 124 U.S. 131, 143, 8 S.Ct. 379, 383, 31 L.Ed. 374 (1888)."

DISMISSAL IS AN APPROPRIATE SANCTION FOR WITNESS INTIMIDATION

28. In Lee v. Detective Lieutenant Sass, (E.D. March 29, 2006), the plaintiff was "caught" actively soliciting and suborning perjury from a material witness. In considering appropriate sanctions, the court held that any sanction short of dismissal would be insufficient.

> "A primary aspect of [the federal court's inherent authority] is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.... [O]utright dismissal of a lawsuit.. is a "particularly severe sanction, yet is within the court's discretion. Chambers v. Nasco, 501 U.S. 32, 44-45 (1991).

> "Here, the defendants contend that Lee's attempt to subom a material witness in this litigation warrants an outright dismissal of the complaint. The court agrees.
>
> "It is difficult to contemplate a clearer or more abhorrent example of a litigant's attempt to abuse and subvert the integrity of the judicial process than an effort to subom perjury from a material witness. 'Coercing or seeking to obtain or manufacture false testimony strikes at the heart of the judicial system. Lying cannot be condoned in any formal proceeding.... Our legal system is dependent on the willingness of the litigants to allow an honest and true airing of the real facts.' *See*, Young v. Office of the United States Senate Sergeant At Arms, 217 F.R.D. 61, 71 (D.D.C. 2003)."

Similarly, in Fidelity Nat'l. Title Ins. v. Intercounty Title Ins., (N.D. Ill. July 1, 2002), the district court found that a litigant had sent letters attempting to influence witnesses and had lied under oath concerning sending the letters. As to appropriate sanctions concerning the threats to a party's attorney, dismissal was more than appropriate:

> "After careful consideration of alternative sanctions, the court finds dismissal of Cornell's counterclaims against Fidelity is warranted. Cornell's February 8th letter was a direct attempt to influence the outcome of this action to thwart Fidelity's prosecution of its claims by threatening its attorney. *See*, In re Golant, 239 F.3d at 935-38 (default judgment appropriate where a party exhibits bad faith conduct); Ocela, 2000 WL 656681, at *2 (sanction of default judgment is warranted where defendant acted in bad faith and provided false testimony). Cornell cannot circumvent the judicial process and employ improper means of defense against Fidelity's claims. Brady v. United States, 877 F. Supp. 444,

> *453 (C.D. Ill. 1994) ('Litigants must know that the courts are not open to persons who would seek justice by fraudulent means'). The record clearly and convincingly supports the magistrate judge's conclusion that Cornell's conduct was willful and in bad faith. Further, the record establishes clearly and convincingly that Cornell lied at his deposition. A monetary fine is insufficient to remedy the disruption and delay caused by litigation of collateral misconduct issues. *See*, Qwela, 202 WL 799750 at *2 ('Entering default judgment will send a strong message to other litigants, who scheme to abuse the discovery process and lie to the court, that this behavior will not be tolerated and will be severely punished'). Dismissal with prejudice of Cornell's counterclaims against Fidelity is an appropriate sanction. In addition, Fidelity is awarded reasonable attorneys' fees and expenses incurred in connection wit its motion for sanctions. United States v. Fidelity Deposit, 986 F.2d 1110, 1120 (7th Cir. 1993) (court's inherent authority to sanction includes shifting attorneys' fees and expenses); Quad, Inc. v. ALN Associates, 781 F. Supp. 561 (N.D. Ill. 1992)."

There, as in the case at bar, the letters threatened a witness with a federal indictment and contained "abusive and vulgar language". Here, the attempted intimidation of the RYANS was far more egregious and calculated than anything attempted in the above cited Fidelity case.

29. In Young v. Office of the United States Senate Sergeant-at-Arms, 218 F.R.D. 61 (D.C. 2003), the Plaintiff had committed various discovery violations as well as tampering with a witness. In imposing the sanction of dismissal, the court weighed the adequacy of sanctions against the sanctions available to the court and concluded that dismissal, rather than a monetary fine or issue preclusion, was appropriate, and stated that

in addition to the discovery violation the attempted witness tampering required the strongest of sanctions:

> "...clear and convincing evidence has been presented that plaintiff attempted to influence the testimony of two witnesses in bad faith. She is therefore subject to the ultimate sanction, dismissal, pursuant to the court's inherent power."

30. A District Court ordered the plaintiff's case dismissed with prejudice when the plaintiff was caught "coaching" a witness during a telephone deposition. Johnson v. Jani-King, (N.D. Tex., March 3, 2008). The court opined that a dismissal with prejudice was the only appropriate remedy because "...when dismissing a case for fraudulent litigation conduct, the court does so not only as a remedy for harm incurred by other parties, but also as a deterrent to future litigants who might consider engaging in similar conduct", citing Jiminez v. Madison Area Tech. College, 321 F 3d 652, 657 (7th Cir. 2003) and Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir. 1989). It is suggested that GUS FSCAMILLA's conduct pales in comparison to the Johnson coaching of a witness during a deposition. In fact, no case thus reported arises to the level of USAMILLA's incessant campaign of harassment, intimidation and gangsterism.

31. Finally, in United States v. Novak, (S.D. Ill. 3-3-2009), (copy of Memo and Order annexed hereto), the District Court issued a rule to show cause why the relator's case should not be dismissed and why the relator should not be held in contempt of court for witness tampering, and wrote:

> "'Trying improperly to influence a witness is fraud on the court and on the opposing party.'" Ty, Inc. v. Softbelly's, Inc., 517 F.3d 494, 498 (7th Cir. 2008). Allegations of witness tampering are serious, and the Court does not take them lightly. Therefore, the Court **ORDERS** Tucker to **SHOW CAUSE** on or before March 13, 2009, why the Court should not use its inherent authority to sanction misconduct to dismiss her case, to assess

the defendant's attorney's fees, or to impose some other lesser sanction. See Chambers v. NASCO, Inc., 501 U.S. 32, 44-46 (1991). The Court **WARNS** Tucker that it may dismiss this lawsuit pursuant to Federal Rule of Civil Procedure 41(b) or the Court's inherent authority to manage its docket, see In re: Rhodgin & Co., 68 F.3d 1022, 1025 (7th Cir. 1995), if she fail to timely respond to this order to show cause.

ARGUMENT

32. The misconduct of the Plaintiff through its owner, President and Chief Executive Officer, is palpably vile, odious and improper. In a series of emails, first sent to numerous Defendants, then to their counsel, and then to two witnesses, the RYANS, GUS ESCAMILLA has crossed the line of not only decency, but legality. GUS ESCAMILLA is clearly attempting to silence TOM RYAN and corrupt and suborn the perjury of WENDY RYAN and her daughter by threatening baseless criminal prosecutions if they "would only sign" an affidavit he prepared, which MS. RYAN categorically states was false and was not something she would sign. ESCAMILLA then had the arrogance to "dare" WENDY RYAN to bring the matter before the Court. ESCAMILLA attempted to embarrass Defendants' counsel in the eyes of his clients and interfere with that relationship. He has threatened the parties and witnesses with bizarre allegations.

33. The Defendants and the RYANS would simply ask that this Court review the rantings of GUS ESCAMILLA and decide, as suggested, that his conduct was so outrageous, so gross and so beyond the pale of decency as to warrant the ultimate sanction of dismissal. His actions are an affront to this Court and the due administration of justice. His attempt to "shake down" two witnesses strikes at the very core of the judicial system of justice. The Plaintiff should not be permitted to badger the Defendants or their counsel, nor torment and intimidate witnesses and then solicit false evidence under the threat of becoming criminal defendants. The impertinent attempt to create a wedge between the Defendants and

their counsel is inexcusable. ESCAMILLA has forfeited his right to seek redress before this Court on behalf of his business, GREENWAY NUTRIENTS. Anything short of a dismissal would validate and condone ESCAMILLA's hooligan-like conduct.

RELIEF SOUGHT

WHEREFORE, the Defendants herein and the Witnesses, THOMAS RYAN and WENDY RYAN, seek the following relief:

a. dismissal of this action with prejudice;

b. an award of attorney fees;

c. an Order, backed by a power bond, prohibiting GUS ESCAMILLA, or anyone on behalf of Plaintiff GREENWAY, contacting, either directly or indirectly, any party, their attorney and/or the RYANS;

d. to impose a fine;

and pray for such other and further relief that would be considered fair, just and proper to protect the integrity of the courts and the physical safety of the Defendants, their counsel and the RYANS.

Respectfully submitted,

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By: _____
Charles Wender, Esquire
Florida Bar No. 246271

CERTIFICATION OF GOOD FAITH EFFORTS TO RESOLVE THIS DISPUTED MATTER PRIOR TO FILING THIS MOTION

D.C.Colo.L.Civ.R 7.1

Pursuant to D.C.Colo.L.Civ.R 7.1, the undersigned hereby certifies that prior to filing this motion he has conferred on several occasions, both in writing and by telephone, with Plaintiff's counsel, and has made a good faith effort to resolve this disputed matter.

In writing and by telephone, attempts were made to obtain an informal curb on GUS ESCAMILLA and to get him not to contact the Defendants directly. This request had the opposite effect, as the emails escalated and the undersigned was then targeted by ESCAMILLA.

A further attempt was made by letter and telephone for an agreement to obtain a protective Order preventing ESCAMILLA from contacting any party, attorney or witness in this matter. That effort was rejected. Thereafter, further attempts were made to resolve what was perceived as escalating conduct by GUS ESCAMILLA, and those attempts with Plaintiff's counsel came to naught.

Finally, defense counsel requested that in light of the most recent emails, the Plaintiff voluntarily dismiss the case. That request was rejected. In fact, no effort by Plaintiff's counsel to resolve any part of this motion, especially the need for a protective Order, has been met with any success.

By: _____
Charles Wender, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via facsimile and/or U.S. Mail to Zachary Levine, Esquire, zl@wvllawyers.com, and Mainak D'Attaray, Esquire, md@wvllawyers.com, WOLK & LEVINE, LLP, 550 N. Brand Boulevard, Suite 625, Glendale, CA 91203, on this 28 day of June 2013.

By: _____
Charles Wendez, Esquire

Exhibit F

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al.,	No. CV 17-7748 ODW (MRWx)
Plaintiffs,	NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT WITHOUT LEAVE TO AMEND
v.	
DEPARTMENT OF HOMELAND SECURITY, et al.,	Hearing Date: March 5, 2018 Hearing Time: 1:30 p.m. Location: First Street Courthouse 350 W. 1st Street Courtroom 5D, 5th Floor
Defendants.	Hon. Otis D. Wright II

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that, on March 5, 2018, at 1:30 p.m., or as soon thereafter as they may be heard, defendants the United States of America ("United States"), and the Department of Homeland Security ("DHS") (collectively, "defendants") will, and hereby do, move this court for an order dismissing the action in its entirety, without leave to amend. This motion will be made in the United States Courthouse before the Honorable Otis D. Wright II, United States District Judge, located at 350 W. 1st Street, Los Angeles, California, 90012, Courtroom 5D, 5th Floor.

Defendants bring this motion pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the court lacks subject matter jurisdiction, and plaintiff fails to state a claim for relief.

This motion is made upon this notice, the attached memorandum of points and authorities, the declarations of Robert A. Ramey and Grace Y. Park, and all pleadings, records, and other documents on file with the court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3, which was held on January 22, 2018.

Dated: January 29, 2018

Respectfully submitted,

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DOROTHY A. SCHOUTEN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 17, 2015, the District Court of Colorado dismissed without prejudice a trademark infringement suit between plaintiff Greenway Nutrients, Inc. ("Greenway") and a subset of Greenway's investors for Greenway's failure to prosecute that action. As a result of that dismissal, the United States Attorney's Office for the Western District of Missouri ("USAO-MO") declined to continue its ongoing criminal investigation of infringement against the Greenway investors.

Rather than refile the complaint in the District Court of Colorado, Greenway and its principal, plaintiff Gustavo Escamilla ("Escamilla," and with Greenway, "plaintiffs"), filed this action against the Department of Homeland Security ("DHS") and the United States of America ("United States") (collectively "defendants"), asserting the following claims: (1) federal violations of 42 U.S.C. § 1983 under the Fifth and Fourteenth Amendments, (see Dkt. 1, Complaint at ¶¶ 76-96); and (2) state law claims for (a) violation of the Bane Act, Cal. Civ. Code § 52.1; (b) negligent and intentional infliction of emotional distress; and (c) declaratory and injunctive relief. (See id. at ¶¶ 97-112).

The Complaint is not a model of clarity, but it appears that plaintiffs make two principal allegations. First, plaintiffs appear to contend that defendants declined to resume their criminal investigation by refusing to consider purportedly newly discovered evidence of ongoing infringement by the Greenway investor defendants in the Colorado action.[1] (See, e.g., Dkt. 1, Complaint at ¶¶ 84, 98, 103, 107). Second, plaintiffs contend that defendants "acted in a discriminatory manner, with the intent to discriminate, in that plaintiff Escamilla is a Mexican-American small businessman and was not represented by private legal counsel." (Id. at ¶ 92). For the reasons below, the court lacks subject matter jurisdiction over this action, and, even if it did have jurisdiction, the action should be dismissed, without leave to amend, for failure to plausibly allege any entitlement to relief.

[1] The allegations in the Complaint are taken as true solely for the purposes of this motion. See Salch v. Bush, 848 F.3d 880, 892 (9th Cir. 2017).

A. Colorado Action

On April 23, 2013, Greenway filed a civil action in the District of Colorado, Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.) ("Colorado action"), alleging trademark infringement and other claims against multiple defendants, including a subset of Greenway's investors. (See Declaration of Grace Y. Park ("Park Decl."), Exh. 3 at Dkts. 22, 36).[3] Shortly after an answer to the operative complaint was filed, (see id. at Dkt. 131), Greenway's counsel filed a motion to withdraw as counsel, (see id. at Dkt. 137), which the court granted. (See id. at Dkt. 143). On July 21, 2015, the magistrate judge issued a report and recommendation dismissing the action, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, in light of Greenway's failure to retain new counsel, noting that "[i]t has been the law for the better part of two centuries [] that a corporation may appear in the federal courts only through counsel." (Id., Dkt. 146 at 1-2) (citing Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02, 113 S.Ct. 716, 721 (1993)). On August 14, 2015, the district court judge adopted the report and recommendation, dismissed the action without prejudice, (see id. at Dkt. 147), and entered judgment on August 17, 2015. (See id. at Dkt. 148). Because Greenway's action was dismissed without prejudice, Greenway remains free to refile its complaint or assert similar claims for infringement occurring after August 17, 2015.[4] See Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Ctr., 492 F.3d 1158, 1162 (10th Cir. 2007) ("Employing Rule 41(b) to dismiss a case without prejudice [] allows the plaintiff another go."); Gonzales v. Bernalillo Cty. Dist. Ct., 640 Fed. App'x 759, 763 (10th Cir. 2016) ("[A] Rule 41(b) dismissal without prejudice is not an extreme sanction because the remedy is simply to cure the defect and refile the

[3] "[I]t is well established that [the court] may take judicial notice of judicial proceedings in other courts." Gonzalves by & through Gonzalves v. Rady Children's Hosp. San Diego, 865 F.3d 1237, 1257 n. 6 (9th Cir. 2017).

[4] Notably, plaintiffs' counsel in this action, Mainak D'Attaray, served as counsel for Greenway in the Colorado action. (See Park Decl., Exh. 3 at p. 2 & Dkt. 143). If Mr. D'Attaray can represent plaintiffs in this action, it is unclear why he cannot represent plaintiffs in a renewed trademark infringement action in the District of Colorado.

complaint.") (internal quotation marks omitted); see also Montes v. United States, 37 F.3d 1347, 1350 (9th Cir. 1994) ("the effect of a dismissal without prejudice may be to end the litigation in the court involved, but not to act as an adjudication on the merits or to bar the filing of a similar action in another court.") (internal quotation marks omitted).

B. U.S. Immigration and Customs Enforcement's Investigation

On March 3, 2015, plaintiffs met in Burbank, California with Shawn Gibson, Operations Manager for the United States Immigration and Customs Enforcement ("ICE"), an agency under the jurisdiction of defendant DHS. (See Dkt. 1, Complaint at ¶¶ 6, 14). At that meeting, Gibson explained that ICE and USAO-MO had been investigating the Greenway investor defendants in the Colorado action for criminal trademark infringement. At that meeting, Gibson explained that ICE and USAO-MO had already recovered $26 million from the Greenway investors for infringing other companies' products, (see id. at ¶ 18), and informed plaintiffs that they may be able to recover as well. (See id. at ¶ 20). Plaintiffs communicated with Gibson again in June 2015, August 2015, and October 2016, (see id. at ¶¶ 22, 24-27), but on October 28, 2016, Gibson told plaintiffs that ICE and USAO-MO would no longer investigate the Greenway investors' infringement of plaintiffs' products because plaintiffs did not prevail in the Colorado action. (See id. at ¶ 27).

On April 11, 2017,[3] plaintiffs notified Gibson of "just discovered new and compelling evidence" regarding Greenway's former attorney, Michael J. Ryan, and his "unlawfully divulging, sharing, as well as disclosing Greenway ['s] confidential business information as well as trade secrets." (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70). When Gibson stated that ICE and USAO-MO would decline to restime their investigation in light of the evidence regarding Ryan, on July 27, 2017, plaintiffs raised their concerns with Russell Simons, Resident Agent in Charge at ICE's Office of Professional Responsibility, at a meeting in Los Angeles, California. (See id. at ¶¶ 7, 38-39). After

[3] The Complaint states "April 11, 2016," (see Dkt. 1, Complaint at ¶ 32), but read in context, it appears that plaintiffs mean April 11, 2017.

multiple exchanges between plaintiffs and Simons on August 3, 2017, and August 4, 2017, Simons explained to plaintiffs that in light of the dismissal in the Colorado action, ICE and USAO-MO would not resume their investigation because the dismissal without prejudice in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt. (See id. at ¶¶ 40-42, 44-46). In other words, ICE and USAO-MO determined that the Greenway investors could assert that they are not criminally liable for infringement because Greenway could not conclusively establish that they were civilly liable for infringement in the Colorado action.

II. LEGAL STANDARD

A. Subject Matter Jurisdiction

A defendant may seek to dismiss a complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. "Rule 12(b)(1) jurisdictional attacks can be either facial or factual." White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004), cert. denied, 544 U.S. 1018 (2005). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Id. "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." Id. "[The court] also need not presume the truthfulness of the plaintiffs' allegations." White, 227 F.3d at 1242. "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty., 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003), cert. denied, 541 U.S. 1009 (2004).

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B. Failure to State a Claim

Evaluating a complaint pursuant to Rule 12(b)(6) involves a two-step process. See Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014) ("While recognizing some tension" among the Supreme Court cases, Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955 (2007), Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009), Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197 (2007), and Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 122 S.Ct. 992 (2002), the Ninth Circuit has "settled on a two-step process for evaluating pleadings.").

First, "[t]o be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." Levitt, 765 F.3d at 1135. A complaint must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]" Twombly, 550 U.S. at 555, 127 S.Ct. at 1964-65; see Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 ("the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.").

Second, "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Levitt, 765 F.3d at 1135. "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." Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949. In determining whether the complaint states a plausible claim for relief, the court must "draw on its judicial experience and common sense[.]" Iqbal, 556 U.S. at 679, 129 S.Ct. at 1950, and consider "obvious alternative explanation[s]." Id. at 682, 129 S.Ct. at 1951. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." United States v. Corinthian Colls., 655 F.3d 984, 991 (9th Cir. 2011).

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III. ARGUMENT

A. Plaintiffs Fail to Comply with Rule 8 of the Federal Rules of Civil Procedure

Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," see Iqbal, 556 U.S. at 677-78, 129 S.Ct. at 1949; Twombly, 550 U.S. at 555, 127 S.Ct. at 1964, in order to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Unlike v. Multnomah Cty., 870 F.3d 939, 952 (9th Cir. 2017). "If plaintiff fails [] to provide defendants with notice of which defendant is being sued on which theory and what relief is being sought against them, the complaint fails to comply with Rule 8." Wash. v. Cty. of Los Angeles, No. CV 03-5921-DSF (PLA), 2003 WL 27377620, at *4 (C.D. Cal. Dec. 15, 2003).

The Complaint fails to meet the Rule 8 standard in multiple ways. First, with respect to the defendants in this action, plaintiffs do not identify whether each of their claims is against the United States, DHS, or both. (See Dkt. 1, Complaint at pp. 17-18, 20-22).

Second, with respect to the theory of relief, although plaintiffs allege that defendant United States "is sued under the Federal Tort Claims Act on behalf of" Shawn Gibson and Russell Simons, (see Dkt. 1, Complaint at ¶¶ 6, 7), plaintiffs do not assert any claims pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 1671, et seq.[5] (See id. at pp. 17-23). Third, it is unclear whether some or all of plaintiffs' state tort claims are barred by the applicable statute of limitations. See 28 U.S.C. § 2401(b) ("A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing"). Although plaintiffs contend that their

[5] To the extent plaintiffs assert FTCA claims against defendant the United States, plaintiffs' allegations are insufficiently clear to exhaustively ascertain whether certain defenses apply, such as the independent contractor or discretionary function exceptions. See 28 U.S.C. § 2671 (independent contractor exception); 28 U.S.C. § 2680(a) (discretionary function exception).

emotional distress claims arise from conduct from "July 27, 2017, through August 4, 2017." (See Dkt. 1, Complaint at ¶¶ 103, 107), plaintiffs first communicated with DHS employees in March 2015, (see id. at ¶ 13), which is more than two years before the Complaint was filed on October 24, 2017. (See id.).

Third, with respect to the relief sought against any defendant, to the extent plaintiffs seek "exemplary and punitive damages," a "declaration that Defendants' obvious and inadequate respect for following proper law enforcement protocols are unconstitutional,"[6] and "an injunction requiring Defendants to remedy immediately the Constitutional violations," (Dkt. 1, Complaint at Prayer for Relief), these are not available under the FTCA. See Scott v. United States, 884 F.2d 1280, 1285 (9th Cir. 1989) (under the FTCA, "if the local law provides for punitive damages, [] then only the compensatory damages may be awarded"); Westbay Steel, Inc. v. United States, 970 F.2d 648, 651 (9th Cir. 1992) ("the only relief provided for in the FTCA is money damages") (internal alteration and quotation marks omitted); Moon v. Takisaki, 501 F.2d 389, 390 (9th Cir. 1974) (the FTCA "does not submit the United States to injunctive relief"); Thompson v. U.S. Postal Serv., No. C 12-0301 PJH, 2012 WL 3583134, at *3 (N.D. Cal. Aug. 20, 2012) ("the FTCA waives sovereign immunity only as to claims for 'money damages,' and not for declaratory or injunctive relief"); Nhia Kao Vang v. Decker, No. 2:12-CV-01226-MCE, 2012 WL 5020491, at *11 (E.D. Cal. Oct. 17, 2012) (similar).[7] Because defendants do not have sufficient notice of the claims asserted and the relief sought against them to adequately defend against this action, plaintiffs' Complaint should be dismissed.

B. Plaintiffs' State Tort Claims Fail

Plaintiffs attempt to assert state law claims for violation of the Bane Act, Cal. Civ.

[6] Somewhat contradictorily, plaintiffs assert that defendants exhibited an "obvious and inadequate respect for following proper law enforcement reporting protocols," (Dkt. 1, Complaint at ¶ 110), but nevertheless demand that "those policies and practices are enjoined by the Court," (Id. at ¶ 112).

[7] For these reasons, plaintiffs' claims seeking declaratory and injunctive relief regarding defendants' "standards," "mechanisms," "custom[s], polic[ies], and/or practice[s]." (see Dkt. 1, Complaint at ¶¶ 79, 85, 87, 110-12), should be dismissed.

Code § 52.1, negligent and intentional infliction of emotional distress, and declaratory and injunctive relief. (See Dkt. 1, Complaint at ¶¶ 97-112). These state law claims may be maintained, if at all, only pursuant to the FTCA. See F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998) ("The FTCA is the exclusive remedy for tortious conduct by the United States, and it only allows claims against the United States."). The FTCA is a limited waiver of sovereign immunity for tort actions against the United States "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); see Foster v. United States, 522 F.3d 1071, 1074 (9th Cir. 2008) (it is a "well-established principle that waivers of sovereign immunity must be construed strictly in favor of the sovereign").

1. Plaintiffs Failed to Exhaust Their Administrative Remedies

Under 28 U.S.C. § 2675(a),[5] "[s]uit against the Government under the [FTCA] is not permitted unless a claim has first been filed with the agency." Avery v. United States, 680 F.2d 608, 609 (9th Cir. 1982). The content of that claim to the agency does not have to be detailed; rather, "a skeletal claim form, containing only the bare elements of notice of accident and injury and a sum certain representing damages, suffices to overcome an argument that jurisdiction is lacking." Id. at 610; see Shipek v. United States, 752 F.2d 1352, 1354 (9th Cir. 1985) (same). A tort claim may be filed in district court only after "receiving a conclusive denial of the claim from the agency or waiting for six months to elapse without a final disposition of the claim being made." Jerves v. United States, 966 F.2d 517, 519 (9th Cir. 1992); see 28 U.S.C. § 2675(a). "The FTCA's exhaustion

[4] Additionally, the action should be dismissed because the court lacks subject matter jurisdiction over DHS as "the United States is the only proper party defendant in an FTCA action." Kennedy v. U.S. Postal Serv., 145 F.3d 1077, 1078 (9th Cir. 1998). "A claim against [DHS] in its own name is not a claim against the United States." Id. (affirming dismissal of action against USPS and USPS employee because they were not properly named defendants pursuant to 28 U.S.C. § 2679(a)).

[5] Section 2675(a) provides: An FTCA claim "shall not be instituted . . . against the United States . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency [or t]he failure of an agency to make final disposition of a claim within six months after it is filed."

requirement is jurisdictional and may not be waived." D.L. by & through Junio v. Vassilev, 858 F.3d 1242, 1244 (9th Cir. 2017). "[P]laintiff bears the initial burden of proving subject matter jurisdiction under the FTCA." Sabow v. United States, 93 F.3d 1445, 1451 (9th Cir.), as amended, (Sept. 26, 1996).

Here, plaintiffs make no attempt to allege that they satisfied the jurisdictional requirement by filing any administrative claim. (See, generally, Dkt. 1, Complaint). Nor does ICE have any record indicating that any administrative claim was filed by either Greenway or Escamilla. (See Declaration of Robert A. Ramey at ¶¶ 2, 3). Accordingly, the action should be dismissed with respect to the state law claims for lack of subject matter jurisdiction.

2. The Discretionary Function Exception Applies to Plaintiffs' State Tort Claims

Even if plaintiffs fully exhausted their administrative FTCA claims, the court would nevertheless lack subject matter jurisdiction. Under the FTCA, the United States allows a limited waiver of its sovereign immunity only with respect to certain injuries caused by government employees who are acting within the scope of their employment. See 28 U.S.C. § 1346(b). However, there is no waiver of immunity for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function." 28 U.S.C. § 2680(a).[9] "This exception prevents judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." Gonzalez v. United States, 814 F.3d 1022, 1027 (9th Cir. 2016) (internal quotation and alteration marks omitted). As such, "[the court] lack[s] jurisdiction over any claim to which the discretionary-function exception applies." Alfrey v. United States, 276 F.3d 557, 561 (9th Cir. 2002); see Sabow, 93 F.3d at 1451 ("Where the discretionary function exception to the FTCA applies, no federal subject matter

[9] 28 U.S.C. § 2680(a) provides that the FTCA does not apply to: "Any claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."

jurisdiction exists.").

"The Supreme Court has created a two-step test for courts that governs the applicability of this exception." Bailey v. United States, 623 F.3d 855, 860 (9th Cir. 2010), cert. denied, 565 U.S. 1079 (2011). First, "[a]n agency does not retain discretion whether to act where a statute or policy directs mandatory and specific action and the agency has no lawful option but to adhere to the directive." Id. Second, "[o]nly discretionary decisions that are susceptible to public policy analysis confer immunity on the government under the FTCA; [t]he challenged decision need not be actually grounded in policy considerations." Id. at 861 (internal quotation marks omitted).

With respect to the first prong, "[t]he decision whether or not to prosecute a given individual is a discretionary function for which the United States is immune from liability." Gen. Dynamics Corp. v. United States, 139 F.3d 1280, 1283 (9th Cir. 1998); Gonzalez, 814 F.3d at 1028 ("[t]he investigation and prosecution of crime has long been a core responsibility of the executive branch.") (citation omitted); Dichter-Mad Family Partners, LLP v. United States, 707 F.Supp.2d 1016, 1037 (C.D. Cal. 2010), aff'd, 709 F.3d 749 (9th Cir. 2013) ("[r]efusal to prosecute is a classic illustration of a decision committed to agency discretion"). Indeed, even "[o]utside of the FTCA context, the Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Gonzalez, 814 F.3d at 1028 (citation and internal quotation marks omitted). Moreover, plaintiffs cannot evade the absolute discretion afforded to prosecutors by asserting negligence claims against the investigating agencies. See Gen. Dynamics, 139 F.3d at 1283 (discretionary function exception applies to investigating agency's negligent preparation of report, because "the persons who actually caused the damage [were] the prosecutors[], who were pushing a criminal (and civil) attack upon General Dynamics and its employees.").

Here, plaintiffs do not point to any statute, regulation, rule, or policy that prescribes or mandates any specific course of conduct by defendants. (See, generally, Dkt. 1,

Complaint). Nothing required that defendants consider purportedly newly[3] discovered evidence of ongoing infringement and compel resumption of their criminal investigation. (See, generally, id.). Rather, plaintiffs allege that ICE and USAO-MO decided not to resume their investigation because the dismissal without prejudice in the Colorado action left plaintiffs' valid ownership of Greenway's trademarks in doubt with respect to the Greenway investors' past or continuing infringement. (See id. at ¶¶ 40-42, 44-46). This is precisely the kind of decision that falls within the executive branch's absolute discretion. See Gonzalez, 814 F.3d at 1028 ("an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion") (citation and internal quotation marks omitted). Plaintiffs cannot circumvent USAO-MO's absolute discretion by asserting claims against the investigating agency, ICE, instead. See Gen. Dynamics, 139 F.3d at 1283 (discretionary function exception applies to investigating agency's purported negligence).

With respect to the second prong, defendants' decision to not resume their investigation or review plaintiffs' "new" evidence "clearly require investigative officers to consider relevant political and social circumstances in making decisions about the nature and scope of a criminal investigation." Sabow, 93 F.3d at 1453. Indeed, "[d]oing nothing may be the most constructive use of [DHS's and USAO-MO's] resources," because "Congress gives [these agencies] a budget, setting a cap on its personnel." Dichter-Mad Family Partners, 707 F.Supp.2d at 1037-38. "Agencies must compare the value of pursuing one case against the value of pursuing another," id. at 1038, and even "may find it worthwhile to give short shrift to a particular claim if the aggrieved party can file its own suit [], for turning the subject over to private litigation frees up time without

[3] Plaintiffs' purportedly "new" evidence that Greenway's former attorney, Michael J. Ryan, "unlawfully divulge[ed], share[d], as well as disclos[ed] Greenway's [] confidential business information as well as trade secrets," (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70), is actually rather old. As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11).

necessarily diminishing the enforcement of [a particular] statute." Id.

Here, ICE and USAO-MO had to consider the relevant political and social implications of using scarce resources to resume a criminal investigation where plaintiffs did not prevail on the same claims in civil proceedings. See Dichter-Mad Family Partners, 707 F.Supp.2d at 1038 (and agency may "find it worthwhile to give short shrift to a particular claim if the aggrieved party can file its own suit"). Defendants had to balance plaintiffs' ability to refile (or abandon) claims against the Greenway investors in Colorado against the risk that other victims lack the resources to file their own civil claims. See id. ("Agencies must compare the value of pursuing one case against the value of pursuing another"). ICE and USAO-MO further had to consider their likelihood of prevailing against the Greenway investors under a higher criminal "beyond reasonable doubt" standard when Greenway determined that it could not prevail against the Greenway investors under a more lenient "preponderance of the evidence" civil standard. In other words, defendants' decisions constituted discretionary judgments that are "at the core of the executive branch." Gonzalez, 814 F.3d at 1033.

Ultimately, plaintiffs' demand that the court direct USAO-MO and ICE to resume their investigation, (see Dkt. 1, Complaint at ¶¶ 84, 98, 103, 107), would involve precisely the type of judicial second-guessing the discretionary function exception is designed to prevent. See Gonzalez, 814 F.3d at 1027 ("This exception prevents judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort."). Courts are not well-suited for that role, because courts and agencies function differently and courts have little visibility into an agency's inner workings. "Judges compare the case at hand against a rule of law or an abstract standard of diligence and do not see the opportunity costs of reallocations within the agency." Dichter-Mad Family Partners, 707 F.Supp.2d at 1038. As such, "[c]ourts cannot intelligently supervise the [agency's] allocation of its staff's time, because although judges see clearly the claim the [agency] has declined to redress, they do not see at all the tasks the staff may accomplish with the time released." Id. "That

fundamental difference in the perspectives of the two bodies is why agencies (and other prosecutors) rather than courts must make the decisions on pursuing or dropping claims." Id. Because the discretionary function exception applies, the court should dismiss the state court claims for lack of subject matter jurisdiction, without leave to amend.

3. Plaintiffs Fail to State any State Tort Claim

a. *Plaintiffs' Claim for Violation of the Bane Act, Cal. Civ. Code § 52.1, Fails*

Even if plaintiffs properly exhausted their administrative FTCA claims, and even if the discretionary function exception did not apply to bar their claims, plaintiffs' claim for violation of the Bane Act ("Bane Act"), Cal. Civ. Code § 52.1, nevertheless fails. The Bane Act imposes liability against individuals who interfere or attempt to interfere by threats, intimidation, or coercion the exercise or enjoyment of rights secured by the Federal or California Constitutions. See Cal. Civ. Code § 52.1(a)-(b). "The statute requires a showing of *coercion* independent from the coercion inherent in the [constitutional violation]." Shoyoye v. Cnty. of Los Angeles, 203 Cal.App.4th 947, 959 (2012); see Jones v. Kmart Corp., 17 Cal.4th 329, 334 (1998) (section 52.1 "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion"). "The act of interference with a constitutional right must itself be deliberate or spiteful." Shoyoye, 203 Cal.App.4th at 959. "Speech alone is not sufficient to support [a Bane Act violation], except upon a showing that the speech itself threatens violence." Cal. Civ. Code § 52.1(j).

To the extent plaintiffs' Bane Act claim is based on interference with plaintiffs' Fifth and Fourteenth[12] Amendment rights, (see Dkt. 1, Complaint at ¶ 98), the court lacks

[12] Because plaintiffs allege claims against federal entities, the United States and DHS, plaintiffs' Fourteenth Amendment Bane Act claim arises, if at all, under the Due Process Clause of the Fifth, rather that the Fourteenth, Amendment. See Davis v. Passman, 442 U.S. 228, 230, 99 S.Ct. 2264, 2269-70 (1979) (discussing equal protection claims under the Fifth Amendment); Consejo de Desarrollo Economico De Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n.4 (9th Cir. 2007) (holding Fifth Amendment "subjects the federal government to constitutional limitations that are the equivalent of those imposed on the states by the Equal Protection Clause of the Fourteenth

subject matter jurisdiction because the United States has not waived its sovereign immunity with respect to constitutional tort claims. Pursuant to 28 U.S.C. § 1346, the United States waives its sovereign immunity "where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." "By definition, [then, plaintiffs] cannot allege as to [the United States] that state law, the requisite 'law of the place where the act or omission occurred,' was the source of liability for a claim alleging the deprivation of a federal constitutional right." Meadows v. United States, No. 15CV1528-JAH (BGS), 2017 WL 4286907, at *7 (S.D. Cal. Sept. 27, 2017) (citing F.D.I.C. v. Meyer, 510 U.S. 471, 477-78, 114 S.Ct. 996, 1001 (1994)).

To the extent plaintiffs' Bane Act claim is premised on interference with plaintiffs' rights under the California Constitution, (see Dkt. 1, Complaint at ¶ 98), it also fails for failure to state a claim. Plaintiffs' Complaint is bereft of any allegation, conclusory or otherwise, that defendants intentionally used any threats, intimidation, or coercion, see Cal. Civ. Code § 52.1(a)-(b), separate and apart from any alleged constitutional violation. (See, generally, Dkt. 1, Complaint); see also Shoyoye, 203 Cal.App.4th at 959 ("The act of interference with a constitutional right must itself be deliberate or spiteful."); Jones, 17 Cal.4th at 334 (section 52.1 "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion"). At most, plaintiffs allege defendants admonished them, (see, e.g., Dkt. 1, Complaint at ¶ 24) ("Gibson scolded Plaintiffs for inquiring about DHS' ongoing criminal investigation"), but absent an actual threat, "[s]peech alone is not sufficient to support [a Bane Act violation]." Cal. Civ. Code § 52.1(j). Accordingly, plaintiffs' Bane Act claim fails.

b. *Plaintiffs' Intentional and Negligent Infliction of Emotional Distress Claims Fail*

Even if plaintiffs properly exhausted their administrative FTCA claims, and even if

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Amendment.") (citing Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954)). This is yet another reason why plaintiffs' Bane Act claims should be dismissed.

the discretionary function exception did not apply, plaintiffs' intentional and negligent infliction of emotion distress claims fail. "A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Hughes v. Pair, 46 Cal.4th 1035, 1050 (2009) (internal quotation marks omitted). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." Id. at 1050-51 (internal quotation marks omitted). "Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Id. at 1051. "Negligent infliction of emotional distress is a form of the tort of negligence, to which the elements of duty, breach of duty, causation and damages apply." Huggins v. Longs Drug Stores Cal., Inc., 6 Cal.4th 124, 129 (1993).

Plaintiffs fail to allege any conduct by defendants that approaches negligence, much less outrageous conduct. Rather, plaintiffs contend that, from July 27, 2017 through August 4, 2017, defendants "were aware Plaintiffs were in possession of new evidence that was critical to a successful resolution to Plaintiffs' criminal allegations;" (Dkt. 1, Complaint at ¶¶ 103, 107), but that defendants refused to consider plaintiffs' purportedly new evidence, causing plaintiffs "severe emotional distress and mental suffering." (Id. at ¶¶ 105, 109). As previously explained, ICE and USAO-MO, in their discretion, made the reasoned decision that they would not resume their investigation because the dismissal without prejudice in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt.[15] (See id. at ¶¶ 40-42, 44-46). Moreover, plaintiffs' purportedly "new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new. (See

[15] Moreover, as all of plaintiffs' claims arise, if at all, out of litigation or incidents surrounding litigation, defendants are immune from suit under Cal. Civ. Code § 47(b). See Rubin v. Green, 4 Cal.4th 1187, 1195 (1993) (litigation privilege pursuant to Cal. Civ. Code § 47(b) applies to pre-litigation communications).

Dkt. 1, Complaint at ¶¶ 32, 52, 63-70). As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11). In other words, defendants made reasoned, evidence-based decisions that do not remotely approach negligence or outrageous conduct, and plaintiffs' negligent and intentional infliction of emotional distress claims should be dismissed.

C. Plaintiffs' Claims for Violations of 42 U.S.C. § 1983 Fail

With respect to their § 1983 claims, plaintiffs take issue with defendants' purported "refusal to review, admit, or allow Greenway's new evidence [] that clearly demonstrated that Greenway was in fact, the victim of an ongoing federal crime," (Dkt. 1, Complaint at ¶ 84), and purportedly discriminatory acts "with the intent to discriminate, in that plaintiff Escamilla is a Mexican-American small businessman and was not represented by private legal counsel."[14] (Id. at ¶ 92; see id. at ¶ 30). However, "[f]ederal officers acting under federal authority are immune from suit under section 1983." Gibson v. United States, 781 F.2d 1334, 1343 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); Russell v. U.S. Dep't of the Army, 191 F.3d 1016, 1019 (9th Cir. 1999) (Section 1983 "provides no right of action against federal (rather than state) officials"). Accordingly, these claims should be dismissed for lack of subject matter jurisdiction.

D. Plaintiffs' Claims are Futile

Rule 15 of the Federal Rules of Civil Procedure provides that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). However, "[c]ourts are not required to grant leave to amend if a complaint lacks merit entirely." Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Whether to grant leave to amend is guided by several factors, including: (1) whether the amendment causes the

[14] Other than plaintiffs' conclusory allegations that defendants acted in a racially discriminatory manner, (see Dkt. 1, Complaint at ¶¶ 30, 92), the Complaint does not contain any facts supporting that contention. (See, generally, id.).

opposing party prejudice; (2) whether the amendment is sought in bad faith; (3) whether the amendment causes undue delay; (4) whether the amendment constitutes an exercise in futility; and (5) whether the plaintiff has previously amended his or her complaint. See DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 & n. 3 (9th Cir. 1987).

Liberally construing the allegations in the Complaint, it is clear that giving another opportunity to amend would be futile. Even if plaintiffs administratively exhausted their FTCA claims, the discretionary function exception applies to defendants' investigative and prosecutorial decision not to resume their criminal investigation based on purportedly newly discovered evidence. And as previously explained, see supra at § III.C, plaintiffs § 1983 claims must fail because they cannot be asserted against federal officers or agencies. Accordingly, plaintiffs' Complaint should be dismissed without leave to amend.

IV. CONCLUSION

For the foregoing reasons, defendants respectfully request that the court grant their motion to dismiss and dismiss the action in its entirety without leave to amend.

Dated: January 29, 2018

Respectfully submitted,

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al., Plaintiffs, v. DEPARTMENT OF HOMELAND SECURITY, et al., Defendants.	No. CV 17-7748 ODW (MRWx) DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT Hearing Date: March 5, 2018 Hearing Time: 1:30 p.m. Location: First Street Courthouse 350 W. 1st Street Courtroom 5D, 5th Floor Hon. Otis D. Wright II

In their Opposition to Defendants' Motion to Dismiss (Dkt. 10, "Opp'n"),[1] plaintiffs Greenway Nutrients ("Greenway") and Gustavo Escamilla ("Escamilla") (collectively, "plaintiffs") "concede their missteps in hastily filing their Complaint,"[2] (id. at 2), but nevertheless assert that they should be given leave to amend.[3] While the court "should freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a)(2), in this instance, amendment would be futile, and plaintiffs' Complaint should be dismissed without leave to amend.

Plaintiffs assert that "a Bivens claim, as well as the state tort claims, based on the same facts can survive against the federal officers identified in the Complaint if granted leave to amend." (Dkt. 10, Opp'n at 2). In other words, instead of asserting state law tort and § 1983 claims against the United States and DHS, plaintiffs seek leave to assert the same state law tort claims and Bivens claims against federal officers Russell Simons and

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[1] Plaintiffs filed their Opposition one day after the February 12, 2018, deadline. See L.R. 7-9 (opposition must be filed "not later than twenty-one (21) days before the date designated for the hearing of the motion"). "The Court may decline to consider any memorandum or other document not filed within the deadline set by order or local rule." L.R. 7-12; see Christian v. Mattel, Inc., 286 F.3d 1118, 1129 (9th Cir. 2002) ("The district court has considerable latitude in managing the parties' motion practice and enforcing local rules that place parameters on briefing.").

[2] Somewhat contradictorily, plaintiffs contend that despite their "haste" and "missteps," (Dkt. 10, Opp'n at 1, 2), their Complaint complies with Rule 8(a) of the Federal Rules of Civil Procedure. (See id. at 2, 3). But as explained in defendants' Motion to Dismiss Plaintiffs' Complaint (Dkt. 9, "Motion"), the Complaint does not address even the most basic requirements of Rule 8, (see id. at 6, 7), such as whether each of plaintiffs' state tort claims and § 1983 claims are asserted against defendant the United States of America ("United States"), defendant the Department of Homeland Security ("DHS"), or both (collectively, "defendants"). (See id. at 6).

[3] Nothing precludes plaintiffs from filing an amended complaint by February 20, 2018. See Fed. R. Civ. P. 15(a)(1)(B) ("A party may amend its pleading once as a matter of course within [] 21 days after service of a motion under Rule 12(b)"); (Dkt. 9, Motion) (filed January 29, 2018). So plaintiffs' contention that "[t]his entire exercise in motions practice could have been avoided by Defendants delaying the filing of the motion until Plaintiffs amended their Complaint," (Dkt. 10, Opp'n at 1), lacks merit. Moreover, plaintiffs have not given defendants (or the court) enough time to accommodate their requests. Plaintiffs for the first time offered defendants a 30-day extension to respond to an amended complaint (which has not yet been filed), on the Saturday morning before the Monday deadline for filing defendants' Motion. (See Dkt. 9-2, Declaration of Grace Y. Park ("Park Decl.") at ¶ 3 & Exh. 2).

Shawn Gibson.[4]

Asserting state law tort claims of negligent and intentional infliction of emotional distress and violation of the Bane Act, Cal. Civ. Code § 52.1, (see Dkt. 1, Complaint at ¶¶ 97-109), against Simons and Gibson – rather than the United States and DHS – would be futile. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671, et seq., is the exclusive remedy for common law tort claims arising out of the acts or omissions of a federal employee, see 28 U.S.C. § 2679(b)(1), "and it only allows claims against the United States." F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998). As such, the court lacks subject matter jurisdiction to consider such state law tort claims asserted against Simons and Gibson. See Kennedy v. U.S. Postal Serv., 145 F.3d 1077, 1078 (9th Cir. 1998) (dismissing FTCA claim against U.S.P.S. employee acting within scope of his employment "[b]ecause the United States is the only proper party defendant in an FTCA action."). Accordingly, plaintiffs' proposed assertion of state law tort claims against federal officers Simons and Gibson would be futile.[5]

In light of the Supreme Court's decision in Ziglar v. Abbasi, 137 S.Ct. 1843 (2017), and the Ninth Circuit's decision in Vega v. United States, No. 13-35311, 2018 WL 740184 (9th Cir. Feb. 7, 2018), asserting claims against Simons and Gibson pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388, 91 S.Ct. 1999 (1971) ("Bivens") would also

[4] Defendants still do not understand why plaintiffs have not simply refiled their civil infringement claims in the District of Colorado. (See Dkt. 9, Motion at 2); Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Ctr., 492 F.3d 1158, 1162 (10th Cir. 2007) ("Employing Rule 41(b) to dismiss a case without prejudice [] allows the plaintiff another go."); Gonzales v. Bernalillo Cty. Dist. Ct., 640 Fed. App'x 759, 763 (10th Cir. 2016) ("[A] Rule 41(b) dismissal without prejudice is not an extreme sanction because the remedy is simply to cure the defect and refile the complaint.") (internal quotation marks omitted). Notably, plaintiffs' counsel in this action, Mannak D'Attaray, served as counsel for Greenway in the Colorado action, (see Dkt. 9-2, Park Decl., Exh. 3 at p. 2 & Dkt. 143), so it is unclear why plaintiffs insist on filing suit against the United States and DHS, and now for the first time – federal officers Simons and Gibson – rather than the "criminal usurpers," (Dkt. 10, Opp'n at 3), themselves.

[5] Moreover, plaintiffs' proposed assertion of state law tort claims against Simons and Gibson (rather than the United States or DHS) does not overcome the fact that plaintiffs failed to administratively exhaust their claims, (see Dkt. 9, Motion at 8-9), nor does it overcome the discretionary function exception, which bars plaintiffs' proffered state law claims. (See id. at 9-13).

be futile.

In Abbasi, the Supreme Court noted that "three cases [] represent the only instances in which the Court has approved of an implied damages remedy under the Constitution itself," 137 S.Ct. at 1855, which are: "(1) police search and seizure in violation of the Fourth Amendment, see Bivens, 403 U.S. 388, 91 S.Ct. 1999; (2) gender discrimination by a congressman in violation of the Fifth Amendment for an employee not covered by Title VII, see Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264 (1978); and (3) deliberate indifference toward a prisoner in violation of the Eighth Amendment, see Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468 (1980)." Arvizu v. Acosta, No. 1:17-CV-219-LJO-EPG, 2017 WL 3421976, at *7 n. 7 (E.D. Cal. Aug. 9, 2017). "[E]xpanding the Bivens remedy [beyond these three instances] is [] a 'disfavored' judicial activity," Abbasi, 137 S.Ct. at 1857, which the Supreme Court "has consistently refused to extend [] to any new context or new category of defendants . . . for the past 30 years." Id. (internal quotation marks and citation omitted).

In light of this, the Supreme Court has articulated a two part test as to whether a plaintiff can assert a Bivens claim. "[T]he first question a court must ask [] is whether the claim arises in a new Bivens context, i.e., whether the case is different in a meaningful way from previous Bivens cases decided by this Court." Abbasi, 137 S.Ct. at 1864 (internal quotation marks omitted). "[T]he new-context inquiry is easily satisfied," id. at 1865, even when the meaningfulness of the differences are "small . . . in practical terms." Id. A non-exhaustive list of meaningful differences that a court may consider, include: "the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous Bivens cases did not consider." Id. at 1860.

If the answer to the first question is in the affirmative, the second question is whether

"there are special factors counselling hesitation in the absence of affirmative action by Congress." Id. at 1857. "The answer most often will be [that] Congress" – rather than the courts – "should decide whether to provide for a damages remedy" under the Constitution. Id. (internal quotation marks omitted).

Here, plaintiffs seek leave to assert Bivens claims against Simons and Gibson for "declin[ing] to investigate the criminal usurper of Plaintiffs' trademarks," (Dkt. 10, Opp'n at 3), and declining to consider purportedly newly discovered evidence of infringement, (see id. at 4), thus "depriv[ing] Plaintiffs of their most basic fundamental civil rights of Due Process under the Fifth and Fourteenth[6] Amendments of the United States Constitution." (Id.).

Plaintiffs' proposed Bivens claim involves a "new category of defendants," agents from U.S. Immigration and Customs Enforcement ("ICE"), (see Dkt. 10, Opp'n at 3-4; Dkt. 1, Complaint at ¶¶ 6, 14), as opposed to the police officers, congressman, or prison guards implicated in previously recognized Bivens cases. And to the extent plaintiffs' proposed Bivens claim is grounded on Fifth Amendment Due Process grounds in the prosecutorial investigation context, it is meaningfully different from previous Bivens claims. See, e.g., Vega, 2018 WL 740184, at * 5 (Fifth Amendment procedural due process claims arising out of a prison disciplinary process "plainly present[s] a 'new context' under Abbasi"). Because "the new-context inquiry is easily satisfied," where even differences that are "small . . . in practical terms," are "meaningful," Abbasi, 137 S.Ct. at 1865, the first factor under Abbasi is satisfied.

The second factor of the Abbasi inquiry favors defendants as well. See Abbasi, 137

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[6] Because plaintiffs propose claims against federal employees, their due process claims arise, if at all, under the Due Process Clause of the Fifth, rather that the Fourteenth, Amendment. See Davis, 442 U.S. at 230, 99 S.Ct. at 2269-70 (discussing equal protection claims under the Fifth Amendment); Consejo de Desarrollo Economico De Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n.4 (9th Cir. 2007) (holding Fifth Amendment "subjects the federal government to constitutional limitations that are the equivalent of those imposed on the states by the Equal Protection Clause of the Fourteenth Amendment.") (citing Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954)). Accordingly, plaintiffs' proposed Bivens claims based on Fourteenth Amendment violations fails as a matter of law.

S.Ct. at 1857 ("a Bivens remedy will not be available if there are special factors counselling [judicial] hesitation in the absence of affirmative action by Congress"). "[I]f there is an alternative remedial structure present in a certain case, that alone may limit the power of the Judiciary to infer a new Bivens cause of action." Id. at 1858

Here, multiple alternative remedial structures exist, counseling judicial hesitation in recognizing a Bivens remedy in this instance. First, plaintiffs have "state law claims as an alternative remedy." Vega, 2018 WL 740184, at *6 (declining to recognize a Bivens remedy when plaintiff sought state law and FTCA claims). Plaintiffs have asserted state law claims for negligent and intentional infliction of emotional distress and violation of the Bane Act, Cal. Civ. Code § 52.1. (See Dkt. 1, Complaint at ¶¶ 97-109). Even if plaintiffs' state law tort claims under the FTCA fail, that does not mean plaintiffs may seek Bivens claims in the alternative. "[N]o court has held that the plaintiff's lack of success due to inadequate pleading while pursuing alternative remedies provides a basis for Bivens relief." Vega, 2018 WL 740184, at *6. "To do so would require the court to necessarily prove the plaintiff's alternative remedies for him, or be forced to create a new remedy through Bivens." Id. Second, within DHS, the Office for Civil Rights and Civil Liberties ("CRCL"), "investigate[s] complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General." 6 U.S.C. § 345(a)(6). Again, plaintiffs concede that they sought available alternative remedies when they "report[ed] civil rights violations" to the CRCL. (See Dkt. 1, Complaint at ¶ 33 & Exh. 11). In other words, because multiple alternative remedial structures exist to address plaintiffs' grievances, which procedures plaintiffs pursued, the court should hesitate in recognizing a Bivens remedy in this case.

Finally, even if plaintiffs could state a valid Bivens claim, Gibson and Simons are entitled to qualified immunity. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096 (1986). The qualified immunity inquiry involves two questions:

"Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 2156 (2001). Second, "if a violation could be made out on a favorable view of the parties' submissions, the next [] step is to ask whether the right was clearly established . . . in light of the specific context of the case." Id. Only if the answer to both questions is in the affirmative, then qualified immunity does not apply. See id.; see also Pearson v. Callahan, 555 U.S. 223, 236, 129 S.Ct. 808, 818 (2009) (although following the Saucier protocol sequentially is "often beneficial," it "should not be regarded as mandatory").

Here, as for the first prong, to the extent plaintiffs contend that Simons and Gibson "refused to provide any type of federal law enforcement intervention whatsoever," (Dkt. 10, Opp'n at 4), plaintiffs cite no legal authority that plaintiffs have a constitutional right to federal criminal prosecution to vindicate personal injuries. (See, generally, id.). To the extent plaintiffs contend that Simons and Gibson "refused to investigate plaintiffs' claims." (Id. at 3), such contentions are belied by the allegations in the Complaint. Plaintiffs allege that Gibson and Simons made the reasoned, evidence-based decision not to resume their investigation because the dismissal without prejudice of Greenway's trademark infringement suit in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt, (see Dkt. 1, Complaint at ¶¶ 40-42, 44-46), and plaintiffs' purportedly "new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new. (See id. at ¶¶ 32, 52, 63-70). As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Dkt. 9-2, Park Decl., Exh. 4 at 4, 11). As for the second-prong, having failed to identify any violated federal constitutional right, plaintiffs cannot plausibly allege that Gibson or Simons violated a "clearly established" constitutional right. Saucier, 533 U.S. at 201, 121 S.Ct. at 2156.

Although plaintiffs contend that their Complaint, containing "75 paragraphs, across

17 pages," (Dkt. 10, Opp'n at 4), can be amended to adequately assert claims against federal officers Gibson and Simms, for the foregoing reasons, it is clear that additional paragraphs and pages will not help plaintiffs, and defendants' motion to dismiss should be granted without leave to amend.

Dated: February 16, 2018

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, and GREENWAY NUTRIENTS, Plaintiffs, v. DEPARTMENT OF HOMELAND SECURITY; UNITED STATES OF AMERICA, Defendants.	No. LACV 17-7748 ODW (MRWx) DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO DISQUALIFY THE HONORABLE OTIS D. WRIGHT Hearing Date: None noticed by plaintiffs Hearing Time: None noticed by plaintiffs Location: None noticed by plaintiffs Hon. Otis D. Wright

OPPOSITION[1]

Plaintiffs Gustavo Escamilla's and Greenway Nutrients' ("plaintiffs") motion to disqualify the Hon. Otis D. Wright ("Judge Wright") is not a model of clarity, but defendants Department of Homeland Security and the United States of America ("defendants") discern three reasons why plaintiffs seek to disqualify Judge Wright from this action:

(1) Plaintiffs contend Judge Wright made statements in his April 2, 2021, order in a related action, *Escamilla v. United States of America*, LACV 21-1910 ODW (JEMx) ("Related Action") (Dkt. 10, Court's Order of April 2, 2018), that contradict statements in his April 4, 2018, order dismissing the complaint in this action. (Dkt. 13, Court's Order of April 4, 2018);

(2) Plaintiffs contend that Judge Wright overlooked undersigned counsel's submission of "false and materially misleading declarations, pleadings, and filings" to improperly obtain a favorable ruling in this action; and

(3) Plaintiffs contend that Judge Wright made comments in the related action that demonstrate or suggest bias against plaintiffs.

Each of these three allegations lack merit. Judge Wright has not exhibited "personal bias or prejudice," 28 U.S.C. §§ 144, 455(b)(1), nor can his "impartiality [] reasonably be questioned." 28 U.S.C. § 455(a). Accordingly, plaintiff's motion to disqualify Judge Wright should be denied.

1. Judge Wright Made Statements in the Related Action that are Consistent with this Action

Plaintiffs contend that Judge Wright improperly dismissed the related action for plaintiffs' failure to identify the existence of criminal proceedings affecting them as victims. (*See* Related Action) (Dkt. 10, Court's Order of April 2, 2021, at 2). Plaintiffs contend this is borne out by the fact that, in this action, Judge Wright previously acknowledged that a criminal investigation involving the same criminal defendants was

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[1] Plaintiffs' motion fails on procedural grounds as well. Plaintiffs' motion does not contain a hearing date and, therefore, has not been noticed at least 28 days before that hearing date. *See* Local Rule 6-1. Nor have plaintiffs made any attempt to meet and confer to resolve any disputes prior to the filing of their motion. *See* Local Rule 7-3. Plaintiffs further bring their motion pursuant to 28 U.S.C. § 144, but plaintiffs' affidavit is not "accompanied by a certificate of counsel of record stating that [plaintiffs' motion] is made in good faith."

underway. (See Dkt. 13, Court's Order of April 4, 2018, at 2-4; see, e.g. Dkt. 14, Motion at 10-11).

Judge Wright's statements in the April 4, 2018, order and the April 2, 2021, order, however, are entirely consistent. In the April 4, 2018, order, Judge Wright cited plaintiffs' complaint, which alleged that defendants commenced a criminal trademark infringement investigation in March 2015. (See Dkt. 13, Court's Order of April 4, 2018, at 2) (citing Dkt. 1, Complaint at 14). When plaintiffs' related civil trademark infringement complaint was dismissed without prejudice in August 2015, (see id. at 3), defendants told plaintiffs that they would not move forward with any investigation involving plaintiffs' trademark until the parallel civil trademark infringement lawsuit was resolved on the merits. (Id.) (citing Dkt. 1, Complaint at ¶ 30 at Exh. 10).

In the April 2, 2021, order, Judge Wright dismissed the action for plaintiffs' failure to "identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents." (Related Action) (Dkt. 10, Court's Order of April 2, 2021, at 2). In other words, Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, (id.), in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits. (See Dkt. 13, Court's Order of April 4, 2018, at 3).

As plaintiffs cannot point to any inconsistency between Judge Wright's two orders, plaintiffs cannot tenably assert bias or the appearance of bias.

II. Undersigned Counsel and USAO Provided the Court Accurate Documents

Plaintiffs contend that, in three instances, undersigned counsel and the USAO misled the court by providing "false and materially misleading declarations, pleadings, and filings" to improperly obtain a favorable ruling in this action. (See, e.g. Dkt. 14, Motion at 5). Each lack merit.

First, plaintiffs contend that Robert A. Ramsey, Associate Legal Advisor for U.S.

Immigrations and Customs Enforcement ("ICE") failed to adequately search for plaintiffs' May 1 2017, administrative civil rights complaint, which they filed with the Department of Homeland Security's ("DHS") Office of Civil Rights and Civil Liberties ("CRCL"). (Dkt. 14-1, Declaration of Gustavo Escamilla ("Escamilla Decl.") at ¶ 25; *see id.* at ¶¶ 19-24). However, Ramey stated in his declaration that his search was narrow: he "queried the DCLD Litigation Database, which is the Division's electronic database that identifies any administrative tort claim that any person or party has filed with or transmitted to ICE." (Dkt. 9-1, Declaration of Robert A. Ramey ("Ramey Decl.") at ¶ 2). Plaintiffs do not explain how an administrative *civil rights* complaint can be found in an administrative *defensive tort* litigation database. (*See* Dkt. 14-1, Escamilla Decl. at 19).

Second, plaintiffs contend that undersigned counsel and the USAO "conceal[ed] ESI and the existence of [plaintiffs'] formal civil rights complaint [he] filed with DHS's CRCL and DHS's OIG." (*Id.* at ¶ 27). Far from concealing the existence of plaintiffs' administrative civil rights complaint, undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply. (*See* Dkt. 11, Reply at 5) ("plaintiffs concede that they sought available alternative remedies when they 'report[ed] civil rights violations' to the CRCL.").

Third, plaintiffs contend that undersigned counsel "improperly represented" that plaintiffs had sent Michael J. Ryan profanity-laced communications in June 2013 when, in fact, plaintiffs had sent *Tom* Ryan and his wife, Wendy Ryan, profanity-laced communications in June 2013. (*See* Dkt. 14-2, Escamilla Decl. at ¶ 30; *see also id.* at ¶¶ 30-31). But plaintiffs' complaint refers to "Greenway's former attorney named Michael J. Ryan (Ryan)," (Dkt. 1, Complaint at ¶ 32), as well as Greenway's former attorney Tom Ryan. (*Id.*, Exh. 13 at ECF 83) (plaintiffs' complaint to Florida bar against his former attorneys James D. Ryan, Thomas F. Ryan, and Michael J. Ryan).

As plaintiffs cannot demonstrate that undersigned counsel or the USAO submitted "false and materially misleading declarations, pleadings, and filings," they cannot demonstrate that Judge Wright overlooked misconduct that did not occur.

III. Plaintiffs Have Alleged no Facts Supporting the Existence of a Secret Plea Agreement or Deferred Prosecution Agreement

Plaintiffs contend that Judge Wright displayed a "high-degree of personal-bias and deep-seated antagonism" towards plaintiff by, among other things, holding that plaintiffs assertions of a secret plea agreement and/or deferred prosecutions agreements are "merely speculation pulled from the ether." (Dkt. 14, Motion at 10) (emphasis in original) (citing April 2, 2021, Order). But "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display," do not establish the appearance of bias or partiality subject to disqualification under 28 U.S.C. § 455(a). *Liteky v. United States*, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1157 (1994). Here, plaintiffs have yet to provide any additional facts supporting their contention of any secret plea or deferred prosecution agreement. (*See generally* Dkt.; Related Action).

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IV. Conclusion[5]

For the reasons above, plaintiffs' motion to disqualify the Hon. Otis D. Wright from this action should be denied.

Dated: July 19, 2021

Respectfully submitted,

TRACY L. WILKISON
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
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Assistant United States Attorney
Chief, General Civil Section

/s/ Grace Y. Park
GRACE Y. PARK
Assistant United States Attorney
Attorneys for Defendants

[5] As plaintiffs cannot demonstrate that undersigned counsel or the USAO provided "false and materially misleading declarations, pleadings, and filings" to improperly obtain a favorable ruling in this action, (*see, e.g.*, Dkt. 14, Motion at 5), their planned motion under Rule 60(d)(3) of the Federal Rules of Civil Procedure will also fail, particularly as plaintiffs' must meet a very high burden to set aside a judgment under that provision. *See United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1168 (9th Cir. 2017) (fraud on the court "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision.") (internal citations omitted). "In addition, the relevant misrepresentations must go 'to the central issue in the case,' and must 'affect the outcome of the case.' In other words, the newly discovered misrepresentations must 'significantly change the picture already drawn by previously available evidence.'" *Id.*

Exhibit I

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

GUSTAVO ESCAMILLA, an individual; and GREENWAY NUTRIENTS, a Colorado corporation,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY; THE UNITED STATES OF AMERICA; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 2:17-cv-07748

PLAINTIFFS GUSTAVO ESCAMILLA'S AND GREENWAY NUTRIENTS' MOTION FOR RECONSIDERATION FOR FRAUD ON THE COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(D)(3)

DATE: **October 18, 2021**

TIME: **1:30 p.m.**

CTRM: **5D**

TO THE COURT, PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 18, 2021 at 1:30 p.m., in the above-entitled Court, located at 350 West First Street, Los Angeles, California 90012, in Courtroom 5D, pursuant to Federal Rule of Civil Procedure section 60(D)(3), Plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc. ("Greenway") (collectively, "Plaintiffs") hereby respectfully move to set aside the judgment of dismissal in this action based on defendants' actual fraud on the

Court.

This motion is based on this notice, the attached memorandum of points and authorities, and the declaration of Gustavo Escamilla, and any further oral argument or evidence that the Court may allow.

DATED: September 18, 2021 LAW OFFICE OF MAINAK D'ATTARAY

__/s/Mainak D'Attaray_____
Mainak D'Attaray
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Rule 60(d)(3) motion stems from Plaintiff Escamilla's recent March 2021 and July 2021 discovery that several high-ranking U.S. Attorneys employed by the United States Attorney's Office for the Central District of California ("USAO-CDOC") violated their sworn duties to uphold the law. Instead, these government attorneys provided the Court with a phony narrative and filed multiple false and materially misleading declarations, pleadings, and filings to obtain a dishonest favorable court ruling during the Plaintiffs previously filed civil rights lawsuit according to 42 U.S. Code § 1983 in *Gustavo Escamilla, et al. v. Department of Homeland Security, et al.* 2:17-cv-07748 DE-1 (the "2017 Civil Rights Lawsuit").

On July 19, 2021, USAO-CDOC U.S. Attorneys' fraud on the Court, was exacerbated by their filing an additional false and materially misleading motion in opposition to the Plaintiffs disqualification motion [DE-15]. On information and belief, USAO-CDOC Attorneys may have potentially engaged in the misconduct above to protect and cover-up for a high-profile, politically and New York mob-boss connected ringleader named David Dragan Selakovic ("Selakovic").[1] Federal law enforcement officials employed by the United States Department of Homeland

[1] Selakovic is the older brother of a high-ranking Serbian politician named Nikola Selakovic. Who serves as the acting Secretary to the President of Serbia named Alexander Vucic ("Vucic"), with ties to a U.S. sanctioned Serbian weapons dealer named Slobodan Tesic ("Tesic"), and Plaintiff's recent August 2021 discovery of Selakovic's alleged substantial connections to Mileta Miljanic, the alleged New York Mob boss and ringleader of a brutal yet low-profile Serbian-American drug trafficking organization dubbed "**Group America**," a network with historical links to the Serbian secret police that multiple international law enforcement authorities accused of receiving protection from the Central Intelligence Agency ("CIA") or other U.S. intelligence agencies. They were compounded by Plaintiffs repeatedly advising USAO-CDOC U.S. Attorneys and other federal law enforcement officials that Selakovic's massive transnational illicit sales activities have purportedly financially supported numerous violent Mexican drug cartels with untold millions of dollars in illegally obtained profits for years.

Security ("DHS") were responsible for conducting a massive multimillion-dollar transnational counterfeit goods scheme.

More importantly, USAO-CDOC U.S. Attorneys failed to address that after the Plaintiffs 2017 Civil Rights Lawsuit was dismissed, as requested by the government, Greenway later filed another civil lawsuit against Selakovic, Greenway's former attorneys, the other bad actors in Florida and prevailed. There, Plaintiffs presented material evidence to the Court and DHS officials demonstrating Greenway's former attorney(s) Michael J. Ryan, his brother James Ryan, and Greenway's former product supplier now owned by a corporate entity solely owned by Selakovic, along with other bad actors in question, had participated in unlawfully hijacking Greenway's products and business model. Unlawfully benefitting from the sales of more than one hundred million dollars ($100,000,000.00) worth of retail product value without any compensation to Escamilla or Greenway.

Moreover, the Plaintiffs presented this Court with material evidence of their January of 2020 discovery of Greenway's former attorney, James Ryan, who had previously evaluated Greenway's business model at approximately twenty-five-million dollars ($25,000,000) during James Ryan's representation of Greenway, was then acting as interim CEO of the same publicly traded entity that Greenway's former attorneys, Escamilla, and Greenway had previously held confidential reverse-merger discussions about with the intentions to take its business model public at a later date. James Ryan, Selakovic, and others had unlawfully embezzled from Greenway for their own gain. *See Gustavo Escamilla, et al.. v. United States of America*, CV 21-1910 (DE-1, Exh. V).

Subsequently, DHS and the United States Attorneys' Office for the Western District of Missouri ("USAO-MO") officials failed to respond and concealed all case information regarding DHS's and the USAO-MO's sealed criminal indictments and prosecution of Selakovic, and others from being disclosed to