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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY

**Gustavo Escamilla**
**1315 Highland Avenue**
**Glendale, California, 92102**
**(818) 355-0062**
**gescamilla@ymail.com**
**Petitioner in Pro Se**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**In Re:**

**GUSTAVO ESCAMILLA, an individual**

Petitioner,

v.

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

Real Party in Interest.

**Case No.: 2:26-cv-05207-MWF-E**

**NOTICE OF FILING OF LEGIBLE COPIES OF EXHIBITS A THROUGH U IN SUPPORT OF EMERGENCY PETITION FOR ENFORCEMENT OF RIGHTS UNDER THE CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771, AND FOR RELIEF UNDER THE MANDATORY VICTIMS' RESTITUTION ACT, 18 U.S.C. § 3664(d)(5) Pursuant to *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025)**

[Legible Copies of Exhibit Volume Filed Concurrently Herewith]

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, hereby files legible copies of Exhibits A through U in support of his Emergency Petition for Enforcement of Rights Under the Crime Victims' Rights Act, 18 U.S.C. § 3771, and for Relief Under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(d)(5), filed May 14, 2026, as Document 1 in the above-captioned action.

The originally filed Exhibit Volume (Document 1-1 and Part 2 to Petition) contains the same exhibits being filed concurrently herewith, in the same sequence (Exhibit A through Exhibit U), supporting the same Petition. With the exception of Exhibit I, addressed below, the exhibits filed concurrently herewith are the same documents and their substantive content is unchanged. The purpose of this filing is to provide the Court with more legible copies of those exhibits, sourced from native PACER filings and original email accounts, to facilitate the Court's review. The legible copies submitted herewith reflect the following sources:

- Exhibits A and B: native Yahoo Mail print of the original Carlos Suarez (Feb. 26, 2015) and Shawn Gibson (Oct. 28, 2016) emails.
- Exhibit C: original filed scan preserved without substitution.
- Exhibit D: native PACER PDF of the March 31, 2015, Opinion and

Order of Chief Judge Marcia S. Krieger in *Greenway Nutrients, Inc. v. Blackburn et al.*, No. 1:13-cv-01088-MSK-KMT (D. Colo.).

- Exhibits E, F, G, H, J, K, and L: native PACER PDFs of filings in *Escamilla et al. v. Department of Homeland Security et al.*, No. 2:17-cv-07748-ODW (MRWx) (C.D. Cal.), namely Documents 9-2, 9, 11, 15, 23, 24, and 25, respectively.
- Exhibits I, M, N, O, and P: clean-scan reproductions of the underlying documents.
- Exhibits Q, R, S, T, and U: native Yahoo Mail prints of the Petitioner / Stafford / USAO-CDCA correspondence dated December 30, 2025; January 12, January 28, February 5, and February 12, 2026.

Exhibit I is Petitioner's October 18, 2021, motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(d)(3) (Doc. 21), as referenced in the Petition. That motion was subsequently stricken by the Court's November 9, 2021, Order (Doc. 25, filed in Case No. 2:17-cv-07748-ODW (MRWx)), which is included herewith as Exhibit L.

Except as stated above with respect to Exhibit I, this Notice does not amend, supplement, or modify the Emergency Petition or the originally filed Exhibit Volume. No new exhibits are added, and no exhibits are deleted. Petitioner respectfully requests that the Court accept the concurrently filed legible copies for

purposes of its review of the pending Petition.

Petitioner reserves all rights under 18 U.S.C. § 3771(d)(3) and 18 U.S.C. § 3664(d)(5) and reserves the right to supplement the record as it develops.

Executed this 20th day of May 2026, at Glendale, California.

/s/ Gustavo Escamilla
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: gescamilla@ymail.com

Date: Thursday, February 26, 2015 at 08:50 AM PST

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 l noted above.

I attempted to leave you a message on the phone listed on the email (818-355-0062), 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) 802-8586
Cell (816) 914-4959
E-mail: Carlos.Suarez@dhs.gov

# Exhibit B

# RE: Ongoing and illegal Amazon.com sales of Greenway Nutrients® products

From: Gibson, Shawn S (shawn.s.gibson@ice.dhs.gov)

To: gescamilla@ymail.com; shawn.gibson@dhs.gov; carlos.suarez@dhs.gov

Date: Friday, October 28, 2016 at 06:38 AM PDT

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

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

UNCLASSIFIED // LAW ENFORCEMENT SENSITIVE //OFFICIAL USE ONLY

-----Original Message-----
From: Gustavo Escamilla [mailto:gescamilla@ymail.com]
Sent: Wednesday, October 12, 2016 5:56 PM
To: shawn.gibson@dhs.gov; Carlos Suarez
Subject: Ongoing and illegal Amazon.com sales of Greenway Nutrients® products

Dear Mr. Gibson and Suarez,

I hope that you are both in good spritis and going well. David Selakovic and Steve Blackburn are still illegally selling my companies US Trademark protected products via Amazon.com and Anthony Kornrumpf' company named Lookoutdeals.com.

Below is an advertisement of Lookoutdeals.com' ongoing and illegal sales of my companies products through Amazon.com.

https://www.amazon.com/gp/aw/d/B0068WCIMM/ref=mp_s_a_1_7?ie=UTF8&qid=1476308381&sr=8-7&pi=AC_SX236_SY340_QL65&keywords=Greenway+Nutrients&dpPl=1&dpID=413XunGT84L&ref=plSrch

Mr. Kornrumpf was also sued by Adobe Systems for the ongoing and illegal sales of Adobe Systems products as well.

http://cdn.ca9.uscourts.gov/datastore/memoranda/2014/06/02/12-16616.pdf

I thought that this information would be helpful as it pertains the statute of limitations.

It appears as if all of these gentlemen continue to have zero respect, and or fear of of the law , as well as from any type of federal law enforcement criminal action for all of their ongoing and highly illegal business conduct.

Thank you.

Sincerely,

Gus Escamilla
President
Greenway Nutrients®
135 East Olive Ave. #4103
Burbank, CA. 91503
(818) 355-0062 Direct

# 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.**

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

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**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 Nutrients" trademark.

Later, Greenway, through its principles, met 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 invest plan.

[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. Selakovic, 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. Selakovic 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).[2]

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.3d 1371, 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

[2] 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 & Assoc., 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 Breman 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.[3] 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.

[3] The Non-Disclosure Agreements, purportedly entered into by Mr. Blackburn and Mr. Selakovic, 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. Selakovic.

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 as 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. Selakovic.

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 direction" 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 Productions, Inc. v. Impact Productions, LLC*, 341 F.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. Here, Greenway alleges that the Defendants sold counterfeit and unauthorized product through a Colorado distributor, Supreme Growers, 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.

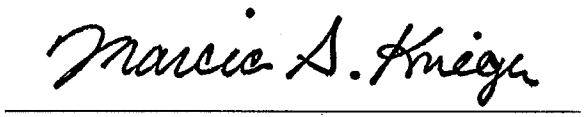
Accordingly, the Court agrees with the Magistrate Judge that at this early stage of litigation, Greenway has met its burden of making a *prima facie* showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic.

## IV. Conclusion

For the forgoing reasons, the Recommendation **(#124)** of the Magistrate Judge that the Defendant's 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
Chief United States District Judge

# Exhibit E

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section
GRACE Y. PARK (Cal. Bar No. 239928)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-3551
Facsimile: (213) 894-7819
E-mail: Grace.Park@usdoj.gov

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 Y. PARK*
*Assistant United States Attorney*
*Phone: (213) 894-3551*
*E-mail: Grace.Park@usdoj.gov*

*Federal Building*
*300 N. Los Angeles Street, Suite 7516*
*Los Angeles, California 90012*

January 22, 2018

**VIA U.S. MAIL and E-MAIL**

Mainak D'Attaray
Law Office 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, 20-22). 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), these 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

GRACE Y. PARK
Assistant United States Attorney

Enclosure

Maintak D'Attaray
Law Office of Mainak D'Attary
111 West Ocean Blvd., Suite 400
Long Beach, California 90802
Telephone: (424) 703-5294; Facsimile: (855) 706-5294
mdattaray@dattaraylaw.com

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

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

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 Claimants(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) _____

_____

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

The 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:** Mainak 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,
Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray

111 West Ocean Boulevard, Suite 400
Long Beach, California 90802

mdattaray@dattaraylaw.com
Office: (424) 703-LAW4 [5294]
Fax: (855) 706-LAW4 [5294]
Mobile: (310) 497-2216

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, Rosacia, Zenaida (USACAC) <Zenaida.Rosacia@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!

*Zen Rosacia*

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** |

| Litigants | Attorneys |
|---|---|
| Thomas Ryan<br>Interested Party | Charles Wender<br>ATTORNEY TO BE NOTICED<br>Charles Wender, Attorney At Law,Chartered<br>190 West Palmetto Park Road<br>Boca Raton , FL 33432-3828<br>USA<br>561-368-7004<br>Fax: 561-368-5798<br>Email:Wenderlaw@aol.Com<br><br>Thomas Francis Ryan , IV<br>ATTORNEY TO BE NOTICED<br>Thomas F. Ryan, Attorney at Law<br>961 North Highway A1a<br>Lot 351<br>Jupiter , FL 33477<br>USA<br>561-723-5725<br>Email:Ryantlaw@aol.Com |
| Wendy Ryan<br>Interested Party | Charles Wender<br>ATTORNEY TO BE NOTICED<br>Charles Wender, Attorney At Law,Chartered<br>190 West Palmetto Park Road<br>Boca Raton , FL 33432-3828<br>USA<br>561-368-7004<br>Fax: 561-368-5798<br>Email:Wenderlaw@aol.Com |
| Greenway Nutrients, Inc. | Greenway Nutrients, Inc. |

Plaintiff

PRO SE
405 Platte River Drive
Denver , CO 80223
USA
888-694-2033

Zachary James Levine
LEAD ATTORNEY
[Term: 06/02/2015]
Wolk & Levine, LLP
550 North Brand Boulevard Suite 625
Glendale , CA 91203
USA
818-241-7499
Fax: 323-892-2324
Email:Zjl@wltlawyers.Com

Mainak D'Attaray
[Term: 06/02/2015]
Mainak D'Attaray, Law Office of
111 West Ocean Boulevard Suite 400
Long Beach , CA 90802
USA
424-703-5294
Fax: 855-706-5294
Email:Mdattaray@dattaraylaw.Com

Steve Blackburn
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

David Selakovic
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Fulfillment Solutions Services, Llc
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Supreme Growers, Llc
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004

Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Stacy Blackburn
[Term: 03/26/2014]
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Ecowin, Llc
[Term: 04/09/2014]
Defendant

New Epic Media, Llc
[Term: 04/09/2014]
Defendant

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

Bea's Hive, Llc
[Term: 04/09/2014]
Defendant

Vegalab, Llc
[Term: 03/26/2014]
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Gringo Diablo Hydro
[Term: 04/09/2014]
Defendant

Grower Trust, Llc
[Term: 03/26/2014]
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

Hoops Enterprise, Llc
[Term: 03/26/2014]
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

James Halk
[Term: 04/09/2014]
Defendant

Dave Thompson

Charles Wender

[Term: 03/26/2014]
Defendant

ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

David Y.S. Park
[Term: 04/09/2014]
Defendant

Koo Kyung-Bon
[Term: 04/09/2014]
Defendant

Josh Gill
[Term: 07/22/2013]
Defendant

Charles Wender
ATTORNEY TO BE NOTICED
Charles Wender, Attorney At Law,Chartered
190 West Palmetto Park Road
Boca Raton , FL 33432-3828
USA
561-368-7004
Fax: 561-368-5798
Email:Wenderlaw@aol.Com

| 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 Bea's Hive, LLC, Stacy Blackburn, Steve Blackburn, Ecowin, LLC, Fulfillment Solutions Services, LLC, Josh Gill, Gringo Diablo Hydro, Grower Trust, LLC, James Halk, Hoops Enterprise, LLC, Chris Kohlhagen, Koo Kyung-Bon, New Epic Media, LLC, David Y.S. Park, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC, filed by Greenway Nutrients, Inc. (Public Entry for Restricted Document - Level 1 2 ) (Text only entry) (klyon, ) (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, dft by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 05/02/2013) | |
| 05/06/2013 | 6 | SUMMONS issued by Clerk. (klyon, ) (Entered: 05/06/2013) | |
| 05/08/2013 | 7 | SUMMONS Returned Executed upon Steve Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013) | |
| 05/08/2013 | 8 | SUMMONS Returned Executed upon Fulfillment Solutions Servs. c/o Steve Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013) | |
| 05/08/2013 | 9 | SUMMONS Returned Executed upon Grower Trust, LLC c/o Dave Thompson (D'Attaray, Mainak) (Entered: 05/08/2013) | |
| 05/08/2013 | 10 | SUMMONS Returned Executed upon David Selakovic (D'Attaray, Mainak) (Entered: 05/08/2013) | |
| 05/08/2013 | 11 | SUMMONS Returned Executed upon Stacy Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013) | |

| | | |
|---|---|---|
| 05/08/2013 | 12 | SUMMONS Returned Executed upon Dave Thompson (D'Attaray, Mainak) (Entered: 05/08/2013) |
| 05/08/2013 | 13 | SUMMONS Returned Executed upon Vegalab, LLC c/o David Selakovic (D'Attaray, Mainak) (Entered: 05/08/2013) |
| 05/09/2013 | 14 | SUMMONS Returned Executed upon Josh Gill (D'Attaray, 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. (Wender, 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'Attaray, 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 Selakovic, 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 Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/21/13. Text Only Entry (msksec, ) (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 (kmtlc2) (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 Selakovic, 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'Attaray, 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 (msksec, ) (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. 16 ) 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'Attaray, 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'Attaray, 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'Attaray, 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'Attaray, 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'Attaray, 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 05/29/13. Text Only Entry(msklc3, ) (Entered: 05/29/2013)

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| 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 to 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'Attaray, Mainak) (Entered: 06/11/2013) |
| 06/17/2013 | 40 | MOTION for Leave to Appear Telephonically by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, 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(msklc3, ) (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. (mskcd) (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 Gill, 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 Gill, 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 Gill, 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 (msksec, ) (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 Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013) |

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| 06/28/2013 | 49 | Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, 48 Exhibits, Exhibit 6 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 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 | 51 | Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 48 Exhibits, 49 Exhibits, Exhibit 7 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 8 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. Plaintiffmay file a response to Defendants' Motion no later than 7/8/2013. By Magistrate Judge Kathleen M. Tafoya on 6/28/2013. (klyon, ) (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, 11-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)

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| 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, Criminal Record of Gustavo Escamilla 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. (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 Gill, Grower Trust, LLC, David Selakovic, 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 Selakovic 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. (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 Gill, Grower Trust, LLC, David Selakovic, 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 Gill, Steve Blackburn, Vegalab, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/8/13. Text Only Entry (msksec, ) (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'Attaray, Mainak) (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 itemization 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'Attaray, Mainak) (Entered: |

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| | | 07/15/2013) |
| 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 M. Tafoya by Chief Judge Marcia S. Krieger on 7/18/13. Text Only Entry (msksec, ) (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 Gill, 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 Gill by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 07/19/2013) |
| 07/19/2013 | 72 | Notice to Court re Attorney Wender's Representation of Defendant Josh Gill by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) Modified on 7/22/2013 to correct text (mnfsl, ). (Entered: 07/19/2013) |
| 07/22/2013 | 73 | ORDER granting 71 Motion to Dismiss Party Party Josh Gill terminated. All captions shall omit Mr. Gill. by Chief Judge Marcia S. Krieger on 7/22/13. Text Only Entry(msksec, ) (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)(D'Attaray, 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 Continuation 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.. (D'Attaray, 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 M. Tafoya by Chief Judge Marcia S. Krieger on 8/13/13. Text Only Entry (msksec, ) (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 M. Tafoya by Chief Judge Marcia S. Krieger on 8/14/13. Text Only Entry (msksec, ) (Entered: 08/14/2013) |

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| 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. Grimm. (sgrim) (Entered: 08/14/2013) |
| 08/14/2013 | 84 | SCHEDULING ORDER by Magistrate Judge Kathleen M. Tafoya on 8/14/13. (sgrim) (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. (msksec, ) (Entered: 08/16/2013) |
| 09/03/2013 | 87 | BRIEF in Opposition to 79 Renewed MOTION to Dismiss 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, though 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. (sgrim) (Entered: 12/04/2013) |
| 12/05/2013 | 91 | ORDER denying 79 Defendants' Renewed Motion to Dismiss, by Magistrate Judge Kathleen M. Tafoya on 12/5/13.(sgrim) (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 Ecowin, LLC; New Epic Media, LLC; Chris Kohlhagen; Beas Hive, LLC; Gringo Diablo Hydro; Hoops Enterprise, LLC; James Halk; David Y.S. Park; and Koo 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. (sgrim) (Entered: 01/07/2014) |
| 01/17/2014 | 93 | SUMMONS REQUEST as to Bea'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 Ecowin, LLC by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 01/17/2014) |
| 01/21/2014 | 95 | SUMMONSES issued by Clerk. (Attachments: # 1 Summons) (klyon, ) (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) |

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| 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 2/10/13. (sgrim) (Entered: 02/10/2014) |
| 02/24/2014 | 100 | OBJECTION to 99 Report and Recommendations 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 (msksec, ) (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; Beas Hive, LLC; Gringo Diablo Hydro; Hoops Enterprise, LLC; James Halk; David Y.S Park; and Koo Kyung-Bon 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, David 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 its 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.(msksec, ) (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 agains unserved Defendants be dismissed. Proper notice having been given and no timely objection having been filed, the Recommendation is adopted and shall become the |

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| | | order of the court. The caption shall be amended in accordance therewith. 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 (msksec, ) (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 (kmtlc1 ) (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 (msksec, ) (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 (msksec, ) (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) |

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| 10/21/2014 | 123 | BRIEF in Opposition to 120 MOTION for Contempt filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 10/21/2014) |
| 02/23/2015 | 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. (dkals, ) (Entered: 02/23/2015) |
| 02/26/2015 | 125 | ORDER denying 115 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.(dkals, ) (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.(pglov) (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 Random Samples of "Blogs", # 2 Exhibit Email from Escamilla - Exhibit 16 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 (kmtlc2) (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 (msksec, ) (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 (kmtlc2) (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) (Entered: 05/21/2015) |

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| 05/22/2015 | 140 | MEMORANDUM regarding 137 First MOTION to Withdraw as Attorney filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (msksec, ) (Entered: 05/22/2015) |
| 05/22/2015 | 141 | MEMORANDUM regarding 138 First MOTION for Leave to Appear by telephone filed by Greenway Nutrients, Inc. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (msksec, ) (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, 303-335-2780, at the scheduled time. By Magistrate Judge Kathleen M. Tafoya on 5/22/2015. Text Only Entry (kmtlc2) (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 Mainak D'Attaray has left the law firm of Wolk & Levine and should be terminated from this case. FTR: KMT C201. (sgrim) (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 toproperly respond 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. (morti, ) (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. (morti, ) (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(msk, ) (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. (pglov) (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. (Wender, 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)

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| 11/06/2015 | 153 | Mail Returned as Undeliverable: 151 Order addressed to Greenway Nutrients, Inc. (dkals, ) (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 Selakovic (Wender, Charles) (Entered: 06/09/2016) |
| 06/13/2016 | 155 | ORDER 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(msklc3, ) (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 Selakovic | 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.

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**MOTION FOR SANCTIONS AND PROTECTIVE ORDER**

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**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.

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-----Original Message-----
From: 15617235725 <15617235725@mymetropcs.com>
To: ryantlaw <ryantlaw@aol.com>
Sent: Tue, Jun 11, 2013 10:22 am
Subject: Fwd:

DO YOU "SEE" THESE FUCKEN IDIOTS??? YOUR ASSES ARE NEXT!!' ONLY THIS IS NOT A CIVIL MATTER ANY LONGER!!!! IT'S CRIMINAL!!!!BTW 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!! !! I WONDER HOW LONG OR HOW MUCH PRESSURE SHE CAN TAKE!!!! IM ABOUT TO FIND OUT!!!! SHE TOM AND ALL YOU MOTHER FUCKEN IDIOTS ARE GUILTY AS FUCK!!!!! YOU STUPID STUPID FOOLS!!!! IM GOING TO NAIL YOUR STUPID INGRATE ASSES!!!! YOUR ALL FUCKED!!!! TOM 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 CRIMNAL MATTER AND A CRIMINAL MATTER ONLY.** It appears 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 VIOLATION OF THE THE 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 bring closure to this matter today.

**Statement of Wendy and Jessie Ryan:**

We, Wendy Ryan and Jessie Ryan were duped by Tom Ryan into this 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 Dragan Selakovic. 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 nor 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:

Tom and 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 parents 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 is to blame.

I have had it with this case. I have had it with people stealing from me. It is important to emphasize 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 Escamilla
President, Greenway Nutrients, Inc.

## 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 "protect [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 s 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*, Diettrich 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; JFB Heating Cont. 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. Moussaoui, 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)l

27. A corollary to controlling its own proceedings is the inherent power to protect witnesses. See, United States v. Cozzetti, 441 F. 2d. 344 (9th Cir. 1971); Carbo 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); Gumbel v. Pitkin, 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 suborn 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 suborn 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); Quela, 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*, Quela, 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-Arm, 218 F.R.D. 61 (D.C. 2005), 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. Johnese 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 ESCAMILLA's conduct pales in comparison to the Johnese coaching of a witness during a deposition. In fact, no case thus reported arises to the level of ESAMILLA's incessant campaign of harassment, intimidation and gangsterism.

31. Finally, in United States v. Nayak, (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: Bluestein & 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 peace 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,

CHARLES WENDER
Attorney-at-Law, Chartered
190 West Palmetto Park Road
Boca Raton, Florida 33432
(561) 368-7004
(561) 368-5798 facsimile
wenderlaw@aol.com (primary)
lindaleegal@aol.com (secondary)

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, zjl@wltlawyers.com, and Mainak D'Attaray, Esquire, md@wltlawyers.com, WOLK & LEVINE, LLP, 550 N. Brand Boulevard, Suite 625, Glendale, CA 91203, on this 28 day of June 2013.

By: _____
Charles Wender, Esquire

# Exhibit F

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section
GRACE Y. PARK (Cal. Bar No. 239928)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-3551
Facsimile: (213) 894-7819
E-mail: Grace.Park@usdoj.gov

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)

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT WITHOUT LEAVE TO AMEND

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

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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,

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section

*/s/ Grace Y. Park*
GRACE Y. PARK
Assistant United States Attorney

Attorneys for Defendants the United States of America and Department of Homeland Security

## 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 Saleh 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).[2] 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.[3] 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

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

[3] 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,[4] 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 resume 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

[4] 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." Updike 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 ¶ 111), 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.").[8] 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),[9] "[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

[8] 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)).

[9] 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).[10] "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

[10] 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[11] 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 the[se 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

[11] Plaintiffs' purportedly "new" evidence that Greenway's former attorney, Michael J. Ryan, "unlawfully divulge[ed], shar[ed], 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." Mendoza 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.[13] (See id. at ¶¶ 40-42, 44-46). Moreover, plaintiffs' purportedly "new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new. (See

[13] 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,

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section

/s/ *Grace Y. Park*
GRACE Y. PARK
Assistant United States Attorney

Attorneys for Defendants the United States of America and Department of Homeland Security

# Exhibit G

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section
GRACE Y. PARK (Cal. Bar No. 239928)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-3551
Facsimile: (213) 894-7819
E-mail: Grace.Park@usdoj.gov

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)

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

---

[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

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[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, Mainak 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 Simons, 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

Respectfully submitted,

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section

*/s/ Grace Y. Park*
GRACE Y. PARK
Assistant United States Attorney

Attorneys for Defendants the United States of America and Department of Homeland Security

# Exhibit H

TRACY L. WILKISON
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section
GRACE Y. PARK (Cal. Bar No. 239928)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-3551
Facsimile: (213) 894-7819
E-mail: grace.park@usdoj.gov
Attorneys for Defendants

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.

### I. 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. Ramey, 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[2]

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
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section

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

[2] 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

d'attaraylaw | law office of mainak d'attaray
Mainak D'Attaray (Bar No. 283999)
3780 Kilroy Airport Way, Suite 200
Long Beach, California 90806
Telephone: (424) 703-5294
Facsimile: (855) 706-5294
Email: mdattaray@dattaraylaw.com
*Attorneys for Plaintiffs Gustavo Escamilla and Greenway Nutrients*

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); DECLARATION OF MAINAK D'ATTARAY**

**DATE:** November 15, 2021

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

**CTRM:** 5D—350 W. First St., Los Angeles, Calif. 90012

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

**PLEASE TAKE NOTICE** that on November 15, 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.

Plaintiffs satisfied the meet and confer requirement pursuant to Local Rule 7-3 prior to bringing this motion, as set forth in the Declaration of Mainak D'Attaray, attached hereto.

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: October 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

[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

(continued...)

law enforcement officials employed by the United States Department of Homeland 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*

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(...continued)
financially supported numerous violent Mexican drug cartels with untold millions of dollars in illegally obtained profits for years.

*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 Plaintiffs. Selakovic's alleged criminal conduct has negatively impacted thousands of innocent and unsuspecting consumers across the U.S. and within this District, but specifically Plaintiffs. *See Gustavo Escamilla, et al.. v. United States of America*, CV 21-1910 (DE-1).

Plaintiffs seek relief from this Court under Federal Rule of Civil Procedure 60(d)(3), and submit this motion addressing the following issues:

1. Did the Court violate Plaintiffs constitutional rights of due process by failing to take action or address bad faith misconduct committed by U.S. Attorneys who falsified facts, concealed material evidence, fabricated a phony narrative, supplied the Court with multiple misleading motions to dismiss, and filed two false sworn declarations under penalty of perjury during the Plaintiffs 2017 Civil Rights Lawsuit?

2. Did U.S. Attorneys utilize the aforementioned and alleged falsification of material facts taint or spoil the Plaintiffs' 2017 Civil Rights Lawsuit to gain an unfair advantage obtaining a dishonest favorable court ruling further depriving the Plaintiffs of their constitutional rights to their property and due process of federal law?

3. Did U.S. Attorneys perpetrate a fraud on the Court during the Plaintiff's 2017 Civil Rights Lawsuit unnecessarily violate the Plaintiffs civil rights thereby depriving the Plaintiffs of any available relief, thereby causing the Plaintiffs additional financial damages?

4. Did U.S. Attorneys false narrative and bad faith misconduct demonstrate a near total dereliction of professional responsibility and utter

disregard for the Plaintiffs civil rights of due process warrant an extinction of Defendant's claims?

5. Did U.S. Attorneys provide the Court with multiple false materially misleading statements included in their recent July 19, 2021 Opposition To Disqualify The Honorable Otis. D. Wright?

## II. STATEMENT OF FACTS

### A. Plaintiffs Discover USAO-CDOC Attorneys' Misconduct That Occurred During the Plaintiffs 2017 Civil Rights Lawsuit According to 42 U.S.C. § 1983

On March 1, 2021, plaintiff Escamilla on behalf of his company Greenway, filed an emergency CVRA petition for the enforcement of the Crime Victims Rights Act, according to 18 U.S.C § 3771 ("Plaintiffs CVRA Case") in the Central District of California. *Gustavo Escamilla, et al.. v. United States of America*, case no. 21-cv-01910 [DE-1].

On March 2, 2021, the Clerk assigned the Plaintiffs CVRA case to the Honorable Judge Christina A. Snyder, who shortly thereafter, assigned the Plaintiffs CVRA case back to the Court Clerk for random reassignment. The Plaintiffs CVRA case was then assigned to the Honorable Judge Michael W. Fitzgerald.

On March 5, 2021, the Honorable Michael W. Fitzgerald, signed an order transferring the Plaintiffs CVRA case, to the Honorable Judge Otis D. Wright, who had presided over and had dismissed, with prejudice and without leave to amend, the Plaintiffs 2017 Civil Rights Lawsuit.

On March 22, 2021, the Court issued an Order to Show Cause ("OSC") why the Plaintiffs emergency CVRA petition should not be similarly dismissed for failure to state a claim under 18 U.S.C. § 3771. *See id.* [DE-8].

Specifically, the Court ordered the Plaintiffs to show cause why the relief sought in the CVRA petition is not barred by issue and claim preclusion, as a result

of the Court's dismissal of the Plaintiffs 2017 Civil Rights Lawsuit.

On March 29, 2021, the Plaintiffs filed a timely response to the OSC, arguing that the 2017 Civil Rights Lawsuit was brought under an entirely different statute, 42 U.S.C. § 1983. *See id.* [DE-9]. The 2017 Civil Rights Lawsuit was not similar and not relevant to Plaintiffs' status as a federal crime victim under the CVRA. *See* Declaration of Gustavo Escamilla ("Escamilla Decl."), Exh. B.

Plaintiffs stated in response that in the CVRA petition, Plaintiffs do not need to show that they filed and prevailed in a civil lawsuit against the people and entities that victimized them. They do not need to have exhausted administrative remedies against the Government. In fact, all of the points the Court made in its decision to dismiss the Plaintiffs' 2017 Civil Rights Lawsuit, were not relevant and did not apply to the Plaintiffs' status as crime victim according to 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).

More importantly, included in the Plaintiffs' March 29, 2021 response to the OSC was newly discovered material evidence demonstrating USAO-CDOC U.S. Attorneys fabricated a false narrative, concealed evidence and filed multiple false and materially misleading declarations, pleadings, and filings during the Plaintiffs 2017 Civil Rights Lawsuit before this same Court, who previously stated in relevant part:

> DHS officials subsequently contacted Plaintiffs in or about March 2015. (Compl. ¶ 13.) On March 3, 2015, Plaintiffs met with Shawn Gibson ("Gibson"), Operations Manager for the United States Immigration and Customs Enforcement ("ICE"), a DHS agency, and several other special agents. (Compl. ¶ 14; Mot. 3.) . . .
> Gibson explained to Plaintiffs that the Greenway investor defendants (Selakovic and Blackburn) in Plaintiffs' civil suit (Petitioners 2013 Colorado civil lawsuit) had already been subject to extensive investigation for criminal trademark infringement. (Compl. ¶¶ 17–18; Mot. 3.) . . .
> Plaintiffs allege that Gibson also promised them that the Kansas City U.S. Attorneys' Office for the Western District of Missouri ("USAO-MO") agreed that Greenway would be added as a victim in the government's case and that they "would no longer ever need to worry about having to hire another private attorney . . . to pursue the accused

suspects[']' ongoing theft" of Greenway's products. (Compl. ¶¶ 19, 21.)

On April 2, 2021, the Court contradicted its previous findings or failed to recall the existence of "*any criminal proceedings*" or DHS's and the USAO-MO's "sealed" criminal indictment and prosecution of Selakovic, Blackburn, and others, occurring in the Central District of California that included Greenway being part of the prosecution of Operation Software Slashers ("OSS") in the Western District of Missouri federal district court, that the Court also previously recognized may have granted the Plaintiffs rights stating in relevant part:

> Most notably, while plaintiffs claim to be victims in an on-going criminal proceeding, 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. As support for the existence of a criminal proceeding demonstrating that plaintiffs are victims, Plaintiffs state: the "Government filed a criminal case under seal against SELAKOVIC, BLACKBURN and others with respect to their criminal acts against PLAINTIFFS. The PLAINTIFFS became part and parcel of an existing and ongoing criminal proceedings pursuant to DHS and DOJ's criminal proceedings being conducted in the Western District of Missouri." (Response to OSC at p.4)
>
> 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**; or (2) **allege facts suggesting that the underlying crimes occurred in this District.** See 18 U.S.C. § 3771(d)(3).

Escamilla Decl., Exh. C [emphasis added].

The Court previously noted DHS's and the USAO-MO's criminal investigation regarding Greenway's criminal trademark infringement complaint, which it previously recognized may grant the Plaintiffs monetary relief:

> He [DHS agent Gibson] told them that, as of the meeting date, ICE and the United States Attorney's Office had recovered over $26 million in the investigation. (Compl. ¶ 18; Mot. 3.) . . .
>
> He [DHS agent Gibson] also informed Plaintiffs that they may be able to recover from an established victims' fund. (Id.).

The Court failed to acknowledge or address the Plaintiffs' newly discovered material evidence demonstrating USAO-CDOC Attorneys acted in bad faith and

concealed or falsified material facts during the 2017 Civil Rights Lawsuit, and dismissed the Plaintiffs' CVRA Petition *sua-sponte* based on the Court's prior April 4, 2018, incorrect ruling, stating in relevant part:

> The Court reaffirms its April 4, 2018 Order dismissing this matter with prejudice. For the same reasons, the Court discharges the OSC and sua sponte dismisses the Victim's Emergency Petition. [DE-1]

**B. Events That Triggered Plaintiffs' 2017 Civil Rights Lawsuit**

**1. Escamilla discovered that Greenway's former attorney Michael J. Ryan and Selakovic embezzled Greenway's confidential and attorney-client privileged information and reverse merger plans for their self-dealing gain.**

During Plaintiffs 2017 Civil Rights Lawsuit, the Court acknowledged that on April 11, 2017, Escamilla notified DHS agent Gibson via email that Escamilla had discovered Michael J. Ryan ("MJR"), who was hired by Greenway to assist with the formal drafting and preparation of a Private Placement Memorandum ("PPM") had violated Greenway's NDA. And that MJR had intentionally breached his fiduciary obligations to keep Greenway's information confidential and privileged after Escamilla discovered and reviewed S.E.C. filings MJR made on behalf of Selakovic's newly formed publicly traded company named VEGL (then named HPC Acquisitions, Inc.) in March 2016.

Escamilla informed DHS officials that before performing any legal work on behalf of Greenway, Escamilla required MJR to execute his company's NDA that contractually obligated MJR to keep Greenway's business information confidential in perpetuity. After MJR assisted Escamilla in completing Greenway's PPM, his brother James D. Ryan ("JDR"), also an attorney became involved, and both determined Greenway's estimated market value at approximately $25,000,000 at that time. The valuation was supported by a private stock solicitation letter offering a 17.5% equity interest stake in exchange for a $4,500,000 investment in

Greenway's PPM that JDR prepared and sent to his clients during MJR's and JDR's representation of Greenway.

Escamilla provided evidence to DHS agent Gibson, and other DHS agents, that Escamilla engaged MJR to assist Greenway with a proposed reverse-merger deal with HPC Acquisitions, Inc. Escamilla's March 2017 review of S.E.C. filings, showed that MJR had switched sides, interfered with Greenway's confidential business relationship with its former raw product supplier, Ecowin Co., LTD ("Ecowin"), and unlawfully assisted Selakovic in taking a publicly traded shell company named HPC Acquisitions, Inc. (now named Vegalab, Inc., "VEGL"), with which Greenway's former attorneys, Escamilla, and Greenway previously held confidential reverse-merger discussions with the intention to take Greenway's business model public at a later date.

Instead, in March 2016, unbeknownst to the Plaintiffs at the time, MJR and Selakovic had taken VEGL public instead, in place of Greenway. This was a blatant violation of Greenway's NDA, MJR's fiduciary duties as an attorney, and multiple federal criminal statutes. DHS agent Gibson, the USAO-MO, and other DHS agents failed to respond to or protect Plaintiffs, depriving Plaintiffs of their constitutional rights to their property and due process of law.

**2. After receiving no response from DHS or the USAO-MO, Escamilla filed a formal civil rights complaint pursuant to the FTCA with DHS's Office of Civil Rights and Civil Liberties and DHS's Office of The Inspector General.**

On May 1, 2017, Escamilla filed a formal civil rights complaint with DHS's Office of Civil Rights and Civil Liberties ("CRCL"), pursuant to the Federal Tort Claims Act ("FTCA"). The complaint alleged that DHS agent Gibson and other DHS officials were depriving Plaintiffs of any lawful due process or rights to their property and were ignoring newly discovered material evidence regarding

Escamilla's March 2017 discovery of Greenway's former attorney Michael J, Ryan, Selakovic, and others embezzling Greenway's confidential information and executing Greenway's reverse merger public entity formation strategy with VEGL for their self-dealing gain. *See* Escamilla Decl., Exh. D.

Escamilla also sent his May 1, 2017 civil rights complaint filed with CRCL to over 20 other DHS, and DOJ officials in the USAO-CDOC as well as the USAO-MO identified below:

- U.S. Attorney Tammy Dickinson, USAO-MO in charge of OSS prosecution
- U.S. Assistant Attorney Curt Bohling, USAO-MO OSS Prosecutor
- U.S. Attorney Tom Larson, Former Acting United States Attorney for USAO-MO U.S.
- Attorney Sandra Brown, Former Acting United States Attorney, CDOC
- U.S. Attorney Ranee Katzenstein, Deputy Chief of the Major Frauds Section CDOC
- U.S. Attorney Tracy Wilkison - CDOC
- U.S. Attorney Traci Webb - CDOC
- DHS - ICE Officer - Scott D. Titus - OSS Investigator
- DHS - ICE Officer Jonathan Polner - OSS Investigator
- DHS - ICE Officer Rosalinda Estrada - OSS Investigator
- DHS - ICE Officer Brian T. Psenak - OSS Investigator
- DHS - ICE Officer Robert C. Patterson - OSS Investigator
- DHS - ICE Officer Christopher Armstrong - OSS Investigator
- DHS - ICE Officer Megan Pollock - OSS Investigator
- DHS - ICE Officer Ryder K. Wells - OSS Investigator
- DHS - ICE Officer Kristin M. Norton - OSS Investigator
- DHS - ICE Officer Melissa A. Shanahan - OSS Investigator
- DHS - ICE Officer Susan Welsh - OSS Investigator

- DHS - ICE Officer Patrick Daly - OSS Investigator
- DHS - ICE Officer Carlos Suarez - OSS Investigator
- DHS - ICE Officer Shawn S. Gibson - OSS Investigator

According to the CRCL's comprehensive civil rights complaint process protocols, once a complaint is deemed to include allegations of civil rights violations against DHS personnel, CRCL personnel are required to send a copy of the complainant's civil rights complaint to DHS's Office of the Inspector General ("OIG"), who also oversaw, reviewed, and declined Escamilla's civil rights complaint filed with CRCL.

Moreover, according to CRCL's civil rights complaint process flowchart, which contains no less than seven steps, including investigating the complainant's allegations of civil rights violations before CRCL issues a denial letter to the complainant. The CRCL did not do even the most basic investigation, when issued a denial within 24 hours of Escamilla filing his complaint.

On May 2, 2017, CRCL acknowledged receipt and advised Escamilla that the department did not have jurisdiction over his civil rights complaint. CRCL and OIG made this hasty decision without ever interviewing Escamilla. DHS agent Gibson, U.S. attorneys with the USAO-MO and USAO-CDOC, multiple other DHS agents, and CRCL officials, who received Escamilla's May 1, 2017 civil rights complaint, ignored and failed to protect the Plaintiffs from the accused Defendants who have continued to cause harm to Escamilla's company Greenway.

**3. Escamilla filed a civil rights lawsuit in the Central District of California pursuant to 42 U.S.C. § 1983, decided by the Honorable Otis D. Wright.**

On October 24, 2017, Escamilla filed a civil rights lawsuit against the United States alleging the constitutional deprivations he and Greenway suffered at the hands of DHS agent Gibson, and OPR agent Simons. Escamilla alleged that the

aforementioned DHS agents racially discriminated against Escamilla because he is a Mexican American small businessman who was not represented by private legal counsel at that time depriving the Plaintiffs' rights to property and due process.

The Plaintiffs' 2017 Civil Rights Lawsuit further alleged DHS agent Gibson and OPR agent Simons contradicted each other in their attempts to coerce and deceive Escamilla regarding Greenway's criminal trademark infringement complaint and a magistrates overruled August of 2015 recommendation to dismiss a civil lawsuit Greenway filed in Colorado. Agents Gibson and Simons ignored newly discovered material evidence of Greenway's former attorney MJR, Selakovic, and entities owned or controlled by Selakovic, embezzling Greenway's attorney-client privileged, and insider business information obtained during confidential reverse-merger discussions and had taken VEGL public instead of Greenway for their personal gain. The 2017 Civil Rights Lawsuit further alleged that the DHS agents and others had ignored evidence that MJR had violated Greenway's NDA, switched sides, took stock ownership in VEGL, and was now unlawfully representing Selakovic and VEGL.

On April 4, 2018, the Court dismissed Plaintiffs' 2017 Civil Rights Lawsuit with prejudice, without leave to amend.

**4. Based on DHS agent Gibson's and OPR agent Simon's misleading advice that Plaintiffs had to obtain a favorable civil court ruling, Greenway filed civil suit in the Southern District of Florida to prove that the bad actors benefitted from the unlawful sales of $100 million in retail product value without compensating Greenway.**

On August 18, 2018, Greenway filed civil lawsuit in the Southern District of Florida ("Greenway's Florida Suit") against Greenway's former attorneys MJR and JDR, as well as Selakovic, Blackburn, Ecowin, VEGL, and other entities operated and ultimately controlled by the Selakovic Defendants,. *See Greenway Nutrients,*

*Inc. vs. Selakovic et al.*, case no. 9:18-cv-81104.

Escamilla engaged a high-profile civil attorney, John M. Pierce ("Pierce") and his firm Pierce Bainbridge Beck Price & Hecht, LLP ("Pierce Bainbridge"), to represent Greenway. Pierce Bainbridge partner Jonathan Sorkowitz ("Sorkowitz") acted as co-counsel with Pierce in the Florida Suit. Attorney Ronald Nisonson ("Nisonson") with Ward, Damon, Peterson and Bleau, PLC, ("WDPB") served as local Florida counsel.

Greenway's Florida suit focused on JDR's and MJR's violations of Greenway's NDA, conspiracy with Selakovic, Ecowin, and representatives of VEGL to intentionally interfere with Greenway's exclusive distribution agreement with Ecowin, causing Plaintiffs millions of dollars in financial losses and devastating Greenway's opportunity to go public.

**5. Plaintiffs' former attorneys MJR and JDR committed fraud on the Court, engaged in dishonest behavior, and denied ever representing Greenway.**

On September 5, 2018, after being served with Greenway's Florida Suit, JDR sent Greenway's former attorneys an email denying that he or his brother MJR had ever received or reviewed any confidential information or represented Plaintiffs or any entity owned by Escamilla, which was contradicted by the signed. JDR stated:

> I am in receipt of your complaint and I want to be clear I am going to be very short on the courtesy I extend before I begin pursuing sanctions . . . Your allegation that my brother Michael, my firm or I ever represented Greenway Nutrients, Inc. (Greenway) is false. That never happened. Nor did we receive any confidential information from Greenway, or any other entity operated by Mr. Escamilla . . .

JDR and MJR made the same false representations in Greenway's Florida Suit.

In response, Greenway submitted 14 exhibits—email communications, distribution agreements, and various contracts drafted on behalf of Greenway by the Ryan brothers, during their representation of Greenway. *See Greenway Nutrients, Inc. vs. Selakovic et al.*, case no. 9:18-cv-81104 [DE-102].

Escamilla submitted to the Florida Court, evidence that after the Ryan brothers assisted Escamilla to complete Greenway's PPM, JDR, MJR and, Tom Ryan, a third brother and also Florida attorney, had determined Greenway's estimated market value at approximately $25,000,000 at the time. This was supported by a private stock solicitation letter offering a 17.5% equity interest stake in exchange for a $4,500,000 investment in Greenway's PPM prepared by JDR, which he sent to his brother Tom Ryan, as well ~~as~~ his clients during the Ryan brothers' representation of Greenway.

Prior to filing Greenway's Florida Suit, Escamilla provided his attorneys with a witness statement signed by a former Selakovic employee who witnessed Selakovic direct employees to sell large quantities of the Greenway trademarked products to Greenway's customer base using deceptive marketing and websites.

The former employee stated that Selakovic personally advised him that they had agreed to purchase Greenway's former supplier named Ecowin for a purported $30,000,000, and that Selakovic and Blackburn wanted to move away from the sales of software and into the organic pesticide and fungicide industry. *See Greenway Nutrients, Inc. vs. Selakovic et al.*, case no. 9:18-cv-81104; *see also Escamilla Decl.* Exh. F.

**6. The U.S. District Court in Florida ruled in Greenway's favor finding Greenway's former attorneys MJR and JDR could be held accountable for their malfeasance.**

On February 14, 2018, the Florida court ruled in Greenway's favor on the defendants' motion to dismiss, finding that Greenway's former attorneys JDR, MJR, and their law firm could be held accountable to Greenway for breach of fiduciary duty and tortious interference claims, further noting that JDR "had flagrantly misquoted the law." *See Greenway Nutrients, Inc. vs. Selakovic et al.*, case no. 9:18-cv-9 81104 [DE-81]. The court also ruled that Greenway's civil trademark infringement and unjust enrichment claims were viable.

Greenway also prevailed against its former supplier Ecowin, now majority owned by an entity solely owned by Selakovic, which defaulted after being properly served. During the period Ecowin was contractually obligated to supply its products to Greenway, Ecowin had unlawfully shipped thousands of gallons of Ecowin's highly concentrated products to an entity operated by Blackburn and controlled by Selakovic in violation of Greenway's NDA.

During the Plaintiffs' Florida Suit and the 2021 CVRA case, Plaintiffs provided the courts with material evidence demonstrating a corporate entity owned solely by Selakovic had unlawfully purchased Greenway's former supplier Ecowin for $30,000,000, in violation of Greenway's NDA. Additionally, during the Plaintiffs' Florida Suit, Escamilla discovered that Ecowin had unlawfully shipped thousands of gallons of Ecowin's highly concentrated products to an entity operated by Blackburn and controlled by Selakovic that resold the product as counterfeit, knock-off, or unauthorized versions of Greenway products in violation of Greenway's trademarks, and that the Selakovic Defendants and Ecowin unlawfully benefitted without providing any compensation to Escamilla or Greenway.

Ecowin's unlawful shipments to the bad actors was worth an estimated retail value of over $100,000,000. *See Gustavo Escamilla, et al., v. United States of America*, case no. 21-cv-01910 [DE-1].

Shortly thereafter, Greenway's former attorneys demanded that Escamilla agree to release JDR, MJR, and their law firm from Greenway's Florida Suit. When Escamilla refused to release JDR and MJR, Pierce Bainbridge and WDPB abruptly withdrew as counsel and abandoned Greenway.

Pierce Bainbridge and WDPB also failed to prepare a Motion for Default Judgment against Ecowin, did not propound any discovery, took no depositions, and failed to serve the primary ringleader Selakovic before withdrawing. This resulted in zero damages being awarded to Greenway.

On April 18, 2019, Escamilla filed an uncontested Motion to Strike

Defendants' Pleadings for Fraud on the Florida court. The Florida court ruled that Escamilla could not represent Greenway as a pro se litigant and later dismissed Greenway's Florida Suit without prejudice on May 1, 2019.

**7. Escamilla discovers Greenway's former attorney JDR unlawfully served as interim CEO of VEGL.**

In late January 2020, Escamilla discovered that Greenway's other former attorney JDR, was now acting as the interim CEO of VEGL. The same JDR who previously evaluated Greenway's PPM and business model, who later attempted to deny ever representing Greenway, engaged in fraud on the Florida court, in violation of Greenway's NDA and multiple criminal statutes, including but not limited to embezzlement, 18 U.S.C. §645, securities and commodities fraud, 18 U.S.C. §1348, and mail and wire fraud, 18 U.S.C. §1343. *See Gustavo Escamilla, et al., v. United States of America*, 21-cv-01910 [DE-1, Ex. V].

**8. Escamilla once again contacted DHS agent Gibson and the USAO-MO, to update them all on recent events.**

Escamilla advised DHS agent Gibson and USAO-MO U.S. Attorneys about Greenway's former attorneys engaging in egregious misconduct during Greenway's Florida Suit and provided them with a copy of his April 18, 2019, uncontested Motion to Strike. Escamilla also provided material evidence to DHS agent Gibson and USAO-MO U.S. Attorneys that his former attorneys JDR, MJR, and their firm, Ecowin, and Selakovic, engaged in stock and securities fraud. There has been no response since.

Escamilla requested that DHS agent Gibson, the USAO-MO, and or other DHS or DOJ officials advise him of his federal crime victims' rights, or to put him in contact with any other DHS or DOJ official who can, as mandated by the CVRA. DHS and USAO-MO law enforcement officials did not respond and ignored Escamilla's repeated and desperate pleas for help or protection from Selakovic, Blackburn, entities operated and controlled by Selakovic, and Greenway's former

attorneys.

The Government has not offered Escamilla any victims assistance, provided no information regarding the disposition of charges, and no information regarding any potential deferred prosecution agreements or plea bargains that the Government may have reached with Selakovic, Blackburn, and others, all in violation of the CVRA.

Escamilla also advised DHS agent Gibson, and other DOJ officials that he believes that Selakovic, with the assistance of MJR and JDR coerced or unduly influenced Pierce Bainbridge and WDPB to abandon Greenway's Florida Suit. Escamilla, again, received no response.

**9. Plaintiffs filed an emergency petition under CVRA in the Central District of California**

After Plaintiffs' CVRA petition was assigned to the Honorable Judge Otis D. Wright, Escamilla purchased copies of the U.S. Attorneys' filings during the 2017 Civil Rights Lawsuit. Escamilla researched and discovered that Senior U.S Attorneys with the USAO-CDOC falsified material facts, failed to present and concealed evidence, and filed multiple false and materially misleading declarations, pleadings, and filings to the Court, all to obtain a favorable court ruling to dismiss Plaintiffs' suit.

Plaintiffs planned to notify the Court of their intentions to amend Plaintiffs' 2021 CVRA petition on March 22, 2021. However, that same day, the Court issued an OSC requesting the Plaintiffs explain why their emergency CVRA petition should not similarly be dismissed for failure to state a claim under 18 U.S.C. § 3771, and why Plaintiffs' CVRA petition is not barred by issue and claim preclusion as a result of the previous dismissal of the 2017 action.

In response to the OSC, Plaintiffs advised the Court that their CVRA petition is distinguishable from the previously dismissed case because it is filed under 18 U.S.C. § 3771 which has completely different and unique set of requirements than

the civil rights action. Under 18 U.S.C. § 3771(e)(2)(a), Plaintiffs' need only prove that they are "victims "in a criminal proceeding," in other words, "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia."

**10. Plaintiffs provided evidence to the Court that USAO-CDOC attorneys failed to store ESI in violation of FRCP 37(e) and submitted a false and materially misleading to dismiss along with two falsely sworn declarations in the 2017 Civil Rights Lawsuit**

Included in Plaintiffs' March 2021 response was Escamilla's discovery of USAO-CDOC U.S. Attorneys engaging in bad faith misconduct during the 2017 Civil Rights Lawsuit. That on or about January 29, 2018, former United States Attorney Nicola T. Hanna ("Hanna"), and AUSA Dorothy A. Schouten ("Schouten"), AUSA Robyn-Marie Lyon Monteleone ("Monteleone"), and AUSA Grace Y. Park ("Park") falsified material facts and filed a false and materially misleading motion to dismiss the 2017 Civil Rights Lawsuit with prejudice and without leave to amend. The motion to dismiss included a sworn declaration signed under penalty of perjury by another AUSA Robert A. Ramey ("Ramey"), which stated that Ramey could find no records or hardcopies of Escamilla or Greenway ever filing a formal civil rights complaint with DHS's CRCL and DHS's OIG, by stating in relevant part:

> [O]n January 9, 2018, I queried the DCLD Litigation Database, which is the Division's electronic database that identifies any ad-ministrative tort claim that any person or party has filed with or transmitted to ICE. . . .
>
> Additionally, on January 9, 2018, I queried DCLD's attorneys and paralegal specialists whether any of them have administered or handled any purported electronic or hardcopy administrative tort claim that Mr. Escamilla or Greenway Nutrients might have filed with or transmitted to ICE. . . .
>
> These queries identified no electronic or hardcopy record of any administrative tort claim from either Mr. Escamilla or Greenway

> Nutrients transmitted to ICE. . . .
>
> I declare under penalty of perjury that the foregoing is true and correct.
> . . .

Ramey conveniently failed to adequately inquire with the DHS's CRCL, DHS's OIG or the 20 other DHS and DOJ officials at both the USAO-MO, as well as the USAO-CDOC who, on May 1, 2017 received Escamilla's civil rights complaint. *See* Escamilla Decl., Exh. E.

Alternatively, U.S. attorneys Hanna, Schouten, Monteleone, Park, and Ramey violated Federal Rule of Civil Procedure 37(e) by concealing ESI and the existence of Escamilla's formal civil rights complaint filed with DHS's CRCL and DHS's OIG, despite DHS's CRCL's May 2, 2017 acknowledgement of Escamilla's civil rights complaint stating that the department did not have jurisdiction over his civil rights complaint. This concealment and failure to disclose ESI to the Court became one of the primary determining factors of this Court dismissing the 2017 Civil Rights Lawsuit with prejudice and without leave to amend, which stated in relevant part:

> Plaintiffs allege that they filed a formal complaint with the DHS Office for Civil Rights and Civil Liberties on May 1, 2017. (See Compl. ¶ 33.) However, in reviewing a Rule 12(b)(1) motion, the Court looks to all available evidence. *Safe Air*, 373 F.3d at 1039. ICE asserts by affidavit that there is no record of a formal complaint. (Ramey Decl. ¶¶ 2–3.) The only evidence that Plaintiffs provide in support of their assertion is an email response from DHS. (Compl., Ex. 11.)

USAO-CDOC U.S. Attorneys failure to disclose the existence of Escamilla's civil rights complaint, filed with DHS's CRCL and DHS's OIG on May 1, 2017, misled the Court to believe that Escamilla had not exhausted all of his and Greenway's available administrative remedies, according to the FTCA.

Also included in their motion to dismiss the 2017 Civil Rights Lawsuit, the aforementioned USAO-CDOC Attorneys willfully falsified material facts regarding communications Escamilla had in June of 2013 with his former attorney named

Thomas F. Ryan ("Tom Ryan") and his ex-wife Wendy Ryan. They misled the Court to believe that Escamilla's June 2013 communications took place with an entirely different person named Michael J. Ryan, and not with Tom Ryan, by stating in relevant part:

> Plaintiffs' purportedly "new" evidence that Greenway's former attorney, Michael J. Ryan, "unlawfully divulge[ed], shar[ed], 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). . . .

USAO-CDOC attorney Park also provided a sworn declaration under penalty of perjury improperly representing Escamilla had sent "Michael J. Ryan" profanity-laced communications in June 2013. U.S. attorney Park's false evidence and declaration misled the Court to believe that Escamilla had not supplied DHS with any new evidence in March 2017, which was untrue. Park's declaration stated in relevant part:

> Attached as Exhibit 4 is a true and correct copy of the June 28, 2013 Motion for Sanctions and Protective Order filed in *Green-way 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. . . .

*See* Escamilla Decl., Exh. H.

In furtherance of their deception, the USAO-CDOC attorneys presented the Court with a June 28, 2013 Motion for Sanctions and Protective Order (hereinafter "MSPO") filed in the early stages of litigation during Greenway's 2013 Colorado civil lawsuit on behalf of Tom Ryan and his ex-wife Wendy Ryan. This document never mentioned Michael J. Ryan anywhere. *See Gustavo Escamilla, et al.. v. United States of America*, case no. 21-cv-01910 [DE-10, Ex.C].

/ / /

**11. USAO-CDOC attorneys submitted a second false and materially misleading filing with the Court in support of the Motion to Dismiss the 2017 Civil Rights Lawsuit.**

On February 16, 2018, USAO-CDOC U.S. Attorneys Hanna, Schouten, Monteleone and Park filed an additional false and materially misleading filing in support of their motion to dismiss the 2017 Civil Rights Lawsuit.

Falling to disclose Colorado Chief Judge Marcia Kreiger's June 13, 2016 ruling noting that Greenway's civil trademark infringement, false designation, or unjust enrichment claims were still viable at that time. And that Greenway's 2013 Colorado Civil Suit was not adjudicated on its merits, was not unfounded or groundless,[2] stating in relevant part:

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[2] Specifically, on March 31, 2015, the Court ruled against Selakovic, Blackburn, and an alter-ego corporate entity controlled by Selakovic named Fulfillment Solutions Services, LLC, in Greenway's favor regarding Greenway's meritorious unjust enrichment, false designation of origin claims, and civil trademark infringement claims—

> The Magistrate Judge also recommends that the (Defendants) 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. Selakovic waived their right to contest specific personal jurisdiction pursuant to forum selection clauses found in the contracts entered into by the parties. . . .
>
> 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*, 341 F.Supp.2d 1186, 1190 (D.Colo. 2004). . . .

(continued...)

> 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.

*Greenway v. Blackburn, et al.*, case no. 1:13-cv-01088 [DE-155].

Whereas, USAO-CDOC Attorneys misrepresented to the Court that:

> 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).

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(...continued)

> 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. . . .

*See Greenway v. Blackburn, et al.*, case no. 1:13-cv-01088 (DE-129).

The Court did ***not*** rule in favor of Selakovic regarding Greenway's civil trademark infringement, false designation of origin or unjust enrichment claims during Greenway's 2013 Colorado Civil Suit.

*Escamilla, et al. v. Department of Homeland Security, et al.*, case no. 2:17-cv-07748 [DE-11] [Emphasis added.].

Once again, U.S. attorneys Hanna, Schouten, Monteleone and Park altered material facts, misled the Court to believe that the ownership of Greenway's trademark was somehow in doubt. Which is false, materially misleading and untrue because Greenway has maintained valid ownership of Greenway's U.S. trademark, which was never in doubt. And again, CDOC-USAO attorneys falsely claimed Escamilla's March 2017 discovery of Michael J. Ryan's embezzlement of Greenway's confidential attorney-client privileged information for his self-dealing gain was "rather old" based on Escamilla's June 2013 communications with entirely different persons—Tom and Wendy Ryan.

Notwithstanding, it was not until March 2016 that Michael J. Ryan and Selakovic, Ecowin, and entities controlled by Selakovic, converted Greenway's confidential attorney-client privileged and business information for their self-dealing gain, and completed a reverse merger with Vegalab, Inc. (then HPC, Acquisitions, Inc.).

**12. The Court then dismissed the 2017 Civil Rights Lawsuit with prejudice and without leave to amend.**

On April 4, 2018, the Court granted the Government's motion to dismiss the 2017 Civil Rights Lawsuit with prejudice and without leave to amend stating in relevant part:

> On April 11, 2017, Plaintiffs notified Gibson that they "just discovered new and compelling evidence" regarding Michael J. Ryan, the former attorney for Greenway, and his "unlawful[] divulging, sharing, [and] . . . disclosing [of] Greenway'[s] confidential business information [and] trade secrets." (Id. ¶ 32; Mot. 3.) . . .
>
> Additionally, 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.) . . .

USAO-CDOC attorney Park misrepresented material facts regarding Escamilla's March 2017 discovery date that Greenway's former attorney MJR had unlawfully switched sides and took VEGL public with Selakovic. Park misled the Court to believe that MJR was the same individual as Tom Ryan, who was previously married to Wendy Ryan, which was a gross alteration of material facts—false, materially misleading, and untrue.

Park compounded the concealment and misrepresentations to the Court by failing to disclose Escamilla's January 2020 discovery of Greenway's other former attorney, JDR, unlawfully serving as interim CEO of VEGL in violation of numerous federal criminal statutes and securities regulations in her July 19, 2021 opposition.

USAO-CDOC attorneys were aware that Escamilla repeatedly advised DHS agent Gibson, CRCL, OIG, the USAO-MO, the USAO-CDOC, and other DHS and DOJ officials that it was not until March 2017 that they became aware of Michael J. Ryan's involvement in the scheme to defraud Greenway after Escamilla discovered VEGL'S public filings and disclosures that Michael J. Ryan, filed with the S.E.C. at that time. Moreover, VEGL's (then HPC Acquisitions, Inc.) initial date of formation and filing date was in March 2016, which means it was impossible for the Plaintiffs to have discovered this information before then. However, the USAO-CDOC attorneys repeatedly asserted to the Court that Escamilla's communications to Tom Ryan in June 2013 negated Escamilla's March 2017 discovery of Michael J. Ryan embezzling Greenway's confidential attorney-client privileged information for his personal gain.

Since then, Plaintiffs have been ignored and kept in the dark while the Government has sat idly by and deprived Plaintiffs of their property and constitutional rights of due process in connection with DHS's refusal to investigate the theft of Greenway's business model and millions of dollars' worth of its trademarked products by Selakovic, Blackburn, and others included in the OSS and

being prosecuted by the USAO-MO.

**13. On July 19, 2021, USAO-CDOC attorneys again filed a false and materially misleading opposition to Plaintiffs' Motion For Disqualification.**

On July 12, 2021, the Plaintiffs' filed a preemptive motion seeking the disqualification of the Honorable Otis D. Wright from presiding over Plaintiffs' Rule 60(d)(3) motion for fraud on the Court.

On July 19, 2021, USAO-CDOC attorneys Park, Traci Wilkison ("Wilkison"), David M. Harris ("Harris") and Joanne S. Osinoff ("Osinoff"), filed an opposition. *See Gustavo Escamilla, et al. v. Department of Homeland Security, et al.* 2:17-cv-07748 [DE-15].

Current acting U.S. Attorney Traci Wilkison, as well as former acting U.S. Attorney Sandra Brown, also received Escamilla's May 1, 2017 civil rights complaint, Escamilla filed with DHS-CRCL and DHS-OIG, which the aforementioned U.S. Attorneys failed to disclose to the Court during the Plaintiffs' 2017 Civil Rights Lawsuit.

USAO-CDOC attorneys Wilkison, Harris, Osinoff, and Park, presented the Court with multiple false and materially misleading statements included in their July 19, 2021 opposition that sheds further light on Plaintiffs' assertions of USAO-CDOC U.S. Attorneys concealing material evidence and falsifying material facts to gain an unfair litigation advantage and obtain favorable April 4, 2018, and July 22, 2021, court rulings:

- The USAO-CDOC Attorneys falsified facts regarding a criminal trademark investigation that DHS conducted on behalf of Greenway. Specifically, the USAO-CDOC Attorneys made false entries of record regarding publicly available documents filed in Greenway's aforementioned 2013 Colorado Civil Suit to improperly influence and mislead the Court regarding a magistrate's August 2015 recommendation

to dismiss the 2013 Colorado suit, which was overruled[3] on August 17, 2015 by Chief Judge Marcia Krieger in favor of Greenway. On July 19, 2021, USAO-CDOC Attorneys again failed to disclose to the Court, then falsely asserted that this was the reason why DHS officials were unwilling to proceed forward with Greenway's criminal trademark infringement complaint at that time.

- USAO-CDOC U.S. Attorneys falsified facts and misled the Court with statements regarding June 2013 communications Escamilla sent to **Tom** Ryan and his ex-wife Wendy Ryan, which the U.S. Attorneys falsely stated that Escamilla's March 2017, discovery date of Greenway's former attorney MJR's embezzlement of confidential attorney-client privileged and insider business information, in violation of numerous criminal statutes was invalidated because of Escamilla's June 2013, communications with Tom and Wendy Ryan, which was untrue.
- Moreover, included in their July 19, 2021, opposition motion, USAO-CDOC U.S. Attorneys again misled the Court with false assertions 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

[3] On August 17, 2015, Judge Kreiger overruled the magistrate's recommendation to dismiss Greenway's 2013 Colorado Civil Suit with prejudice for its failure to prosecute the company's civil claims; dismissing Greenway's case without prejudice, which on June 13, 2016, Judge Krieger "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." *Greenway v. Blackburn, et al.*, case no. 1:13-cv-01088 [DE-155].

judgment on the merits." This was false as a judgment on the merits in a civil suit was not necessary to access rights under the CVRA.

## III. LEGAL STANDARD FOR TO SEEK RELIEF UNDER RULE 60(D)(3) AND THE TEST FOR FRAUD ON THE COURT WITHIN THE MEANING OF RULE 60(D)(3)

Rule 60 of the Federal Rules of Civil Procedure, entitled "Relief from a Judgment or Order," provides that judgments, while ordinarily accorded a degree of finality, are subject to being set aside when appropriate, whether for ministerial reasons at one end of the spectrum or for fraud at the other according to Federal Rule of Civil Procedure 60.

Rule 60(b), which is focused on fraud between parties, is governed by a one-year statute of limitation. Rule 60(d), on the other hand—the basis on this motion—is focused on fraud on the court and has no time bar whatsoever.

Moreover, Rule 60(d) "does not limit a court's power to . . . set aside a judgment for fraud on the court," Fed. R. Civ. P. 60(d), as it simply codifies a fundamental principle: federal courts have always had the "inherent equity power to vacate judgments obtained by fraud." *United States v. Estate of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011) (*citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); *In re Levander*, 180 F.3d 1114, 1118-19 (9th Cir. 1999)).

As found by the Supreme Court, a federal court's power to vacate a judgment procured by fraud originates from a rule of equity that "fulfill[s] a universally recognized need for correcting injustices which, in certain circumstances, are deemed sufficiently gross to demand a departure from rigid adherence" to the rule that a final judgment is typically binding and final. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944) (overruled on other grounds by *Standard Oil of Cal. v. United States*, 429 U.S. 17 (1976)).

While courts have "struggled to define the conduct that constitutes fraud on the court," the Ninth Circuit confirms this particular species of fraud exists when

the moving party demonstrates, by "clear and convincing evidence," that the opposing party's misconduct has harmed "the integrity of the judicial process." *Stonehill*, 660 F.3d at 443-44 (*quoting England v. Doyle*, 281 F.2d 304, 310 (9th Cir. 1960) (evidentiary standard); *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989) (standard for harm)); *Dixon v. C.I.R.*, 316 F.3d 1041, 1046 (9th Cir. 2003). "[F]raud on the court . . . embrace[s] only that species of fraud which does[,] or attempts to defile the court itself, or is perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are present for adjudication." *In re Intermagnetics Am., Inc.*, 926 F.2d 912, 916 (9th Cir. 1991) (*quoting* 7 James Wm. Moore & J. Lucas, Moore's Federal Practice ¶ 60.33 (2d ed. 1978)).

When conduct harms "the integrity of the judicial process . . . and the fraud rises to the level of 'an unconscionable plan or scheme which is designed to improperly influence the court in its decisions,'" there has been a fraud on the court, and the court "not only can act, [but] should." *Dixon*, 316 F.3d at 1046 (*quoting England*, 281 F.2d at 309). "[T]he inquiry as to whether a judgment should be set aside for fraud upon the court . . . focuses not so much in terms of whether the alleged fraud prejudiced the opposing party" *Intermagnetics*, 926 F.2d at 917.

Moreover, fraud on the court "is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1133 (9th Cir. 1995) (*quoting Hazel-Atlas*, 322 U.S. at 264).

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function –

thus where the impartial functions of the court have been directly corrupted."

Prejudice is not an element of fraud on the court. *Hazel-Atlas*, 322 U.S. at 238; *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1132-33 (9th Cir. 1995). Fraud on the court occurs when the misconduct harms the integrity of the judicial process, regardless of whether the opposing party is prejudiced. *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989).

Furthermore, the perpetrator of the fraud should not be allowed to dispute the effectiveness of the fraud after the fact. *Hazel-Atlas*, 322 U.S. at 247; *Pumphrey*, 62 F.3d at 1133; *see also Paulson v. City of San Diego*, 294 F.3d 1124, 1128 (9th Cir. 2002) (en banc).

Thus, the question of whether one party "would have prevailed" but for the opposing party's fraud on the court is decidedly not the relevant inquiry. *Id.* at 1132. Instead, the question is "whether the alleged fraud harms the integrity of the judicial process." *Intermagnetics*, 926 F.2d at 917.

## IV. A MOTION FOR FRAUD ON THE COURT IS NOT PRECLUDED BY THE PASSAGE OF TIME

There is no time bar to a motion or action to set aside a final judgment for fraud on the court. Fed. R. Civ. P. 60(c). Indeed, the rule makes clear that the one-year time limit applicable to circumstances set forth in subdivision (b) does not apply to subdivision (d)(3). Fed. R. Civ. P. 60(c)(1). In keeping with the plain language of the rule, the Ninth Circuit has clearly held that Rule 60 "provides no time limit on courts' power to set aside judgments based on a finding of fraud on the court." *Stonehill*, 660 F.3d at 443 (citation omitted). "[T]he power to vacate for fraud on the court is . . . great," and is largely "free from procedural limitations." *Id.* at 444 (*citing* 11 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2870 (2d ed. 1987)). Thus, any delay in bringing a motion or action for fraud on the court does not bar the court from granting relief under Rule 60(d)(3). *See Hazel-Atlas*, 322 U.S. at 247

The Supreme Court has recognized, "even if [the moving party] did not exercise the highest degree of diligence [the] fraud cannot be condoned for that reason alone. . . . Surely it cannot be that the preservation of the integrity of the judicial process must always wait upon the diligence of the litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Id.* The Ninth Circuit echoed this reasoning in *Pumphrey*, stating, "even assuming that [the plaintiff] was not diligent in uncovering the fraud, the district court was still empowered to set aside the verdict, as the court itself was a victim of the fraud." *Pumphrey*, 62 F.3d at 1133.

## V. THE INTEGRITY OF THE JUDICIAL PROCESS IS MOST SEVERELY DAMAGED WHEN GOVERNMENT ACTORS DEFRAUD THE COURT

### A. Because They Represent the Sovereign, Government Attorneys Are Held to a Higher Standard

The standards discussed above are applied even more stringently when the misconduct at issue is alleged to have been committed by a government attorney. These lawyers for the public play a unique role in our judicial system, as they are "the representative not of an ordinary party to a controversy, but of a sovereignty . . . [whose] interest . . . is ***not that it shall win a case, but that justice shall be done***." *Berger*, 295 U.S. at 88 (emphasis added); *see also* A.B.A. Op. 150 ("The prosecuting attorney is the attorney of the state, and it is his primary duty not to convict but to see that justice is done.").

As a result of this unique position, there are special rules and standards in place, applicable only to government attorneys, defining a government attorney's role, duties, and interests so as to safeguard the public and ensure the integrity of both the judicial process and our government. In particular, an attorney representing the United States is "held to a higher standard of behavior." *United*

*States v. Young*, 470 U.S. 1, 25-26 (1985) (Brennan, J., concurring).

This standard applies equally to government attorneys in criminal and civil cases. *See Freeport-McMoRan Oil & Gas Co. v. F.E.R.C.*, 962 F.2d 45, 47 (D.C. Cir. 1992); *see also* A.B.A. Code of Prof. Resp. EC 7-14 (discussing application to civil actions). Under this heightened standard, the government attorney "cannot take as a guide for the conduct of his office the standards of an attorney appearing on behalf of an individual client. The freedom elsewhere wisely granted to a partisan advocate must be severely curtailed if the [government attorney's] duties are to be properly discharged." Prof. Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1218 (1958).

These standards require that "[a] government lawyer in a civil action . . . should not use his position . . . to harass parties or to bring about unjust settlements or results." A.B.A. Code of Prof. Resp. EC 7-14 (1980). A government lawyer also has an obligation to "refrain from instituting or continuing litigation that is obviously unfair." *Id.* More specifically, responsibility to seek justice requires lawyers representing the United States "to see that all evidence relevant to the case is presented, even if unfavorable to its position." *United States v. Chu*, 5 F.3d 1244, 1249 (9th Cir. 1993).

A government attorney thus occupies a "dual role, being obligated, on the one hand, to furnish the adversary element essential to the informed decision of any controversy, but being possessed, on the other, of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice." *See* Prof. Responsibility: Report of the Joint Conference, 44 A.B.A.J. 1159, 1218 (1958).

Government attorneys cannot falsify, alter, tamper with or conceal relevant evidence because a government attorney "has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that

guilt is decided upon the basis of sufficient evidence." *See id.* A prosecutor who withholds such evidence violates not only his disclosure obligations but also the due process clause. *Id.* Due process is violated "irrespective of the good faith or bad faith of the prosecution." *Id.*

Although the Supreme Court has not yet explicitly stated that *Brady* applies in civil cases, numerous federal courts have opined that the policy justifications underlying *Brady* apply in civil settings as well—the government's obligation to do justice extends to civil cases in which the government is a party.

Here, although a civil case, the misleading statements were made by USAO-CDOC prosecutors to this Court. Whether in a criminal matter or civil, a federal prosecutor and as a member of the bar in this Federal District, their responsibilities also require them to take certain actions when he suspects that a witness he has proffered has given perjured testimony: "When a prosecutor suspects perjury, the prosecutor must at least investigate. The duty to act 'is not discharged by attempting to finesse the problem by pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining willfully ignorant of the facts.'" *Morris v. Ylst*, 447 F.3d 735, 744 (9th Cir. 2006) (*quoting N. Mariana Islands v. Bowie*, 243 F.3d 1109, 1118 (9th Cir. 2001)).

The Supreme Court has emphasized that "the presentation of false evidence involves 'a corruption of the truth-seeking function of the trial process.'" *Id.* (*quoting United States v. Agurs*, 427 U.S. 97, 103 (1976)). Appreciating the wrong committed by the USAO-CDOC attorneys repeated fabricated narrative, and materially misleading declarations, pleadings, and filings, presented to this court to obtain a favorable federal Court ruling requires not only an understanding of their unique role within the justice system, but an understanding of the trust placed in them – by the public and by this Court – as a direct result of their position as USAO-CDOC Attorneys. Even in civil cases, government attorneys are given an

amount of credibility and trust that outweighs a private litigant or attorney.

Therefore, the USAO-CDOC attorneys have important obligations, and the trust that the courts and the public necessarily place in government attorneys and investigators to meet these obligations. Unfortunately, this also makes it easier for government attorneys and government investigators to compromise "the integrity of the judicial process" and to "improperly influence the court in its decisions." *Dixon*, 316 F.3d at 1046; *see Berger*, 295 U.S. at 88 ("It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the [government] attorney, will be faithfully observed. Consequently, improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.").

While much of the case law holds that a jury places greater confidence in a prosecutor, a judge, knowing the duties and responsibilities of a government attorney, must also assume that a government attorney is, at all times, seeking to do justice and acting in a manner befitting "a public official charged with law enforcement" and a representative of the United States. *See Hennon*, 109 F.3d at 333.

"The Government's duty of honesty to the Court can ***never*** be excused, no matter what the circumstance. The Court is charged with the humbling task of defending the Constitution and ensuring that the Government does not falsely accuse people, needlessly invade their privacy or wrongfully deprive them of their liberty. The Court simply cannot perform this important task if the Government lies to it. Deception perverts justice. Truth always promotes it." *Islamic Shura Council of Southern California v. F.B.I.* 779 F.Supp.2d 1114, 1125 (C.D. Cal. 2011).

In engaging in the aforementioned misconduct during the Plaintiffs 2017 Civil Rights Lawsuit, and again in their July 19, 2021, opposition motion, USAO-CDOC'S Attorneys did not only violated their "higher standard of behavior," they

perverted justice, thereby preventing the judicial process from functioning in the usual manner precisely because the judicial process assumes and requires government attorneys to behave in a certain way. Indeed, "[o]ur adversary system for the resolution of disputes rests on the unshakable foundation that truth is the object of the system's process which is designed for the purpose of dispensing justice . . . Even the slightest accommodation of deceit or a lack of candor in any material respect quickly erodes the validity of the process." *See U.S. v. Shaffer Equip. Co.*, 11 F.3d 450, 457 (4th Cir. 1993).

**B. Recklessness By a Government Attorney Is Sufficient to Constitute a Fraud on the Court**

As the Supreme Court held in *Mapp v. Ohio*, "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. . . . Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." 367 U.S. at 659.

The Ninth Circuit held that "failure to disclose information that "could conceivably have affected the outcome of the litigation . . . violates the general duty of candor that attorneys owe as officers of the court." *First Amendment Coalition v. United States Department of Judge*, 878 F.3d 1119, 1142 (9th Cir. 2017) (*citing Shaffer*, 11 F.3d at 459). Given that Rule 60(d)(3) serves as a means through which the court can safeguard the integrity of the judicial process itself, relief under 60(d)(3) is particularly necessary and appropriate where the threat to the judicial process is occasioned by government attorneys, operating under a higher standard of care. Indeed, a fraud on the court perpetrated by government attorneys and government investigators has far more serious consequences for both the court and the public because of public trust placed in those individuals as government officers.

## VI. ARGUMENT

### A. USAO-CDOC Attorneys Falsely Claimed A Magistrate's "Overruled" August 2015 Recommendation To Dismiss Greenway's 2013 Colorado Civil Lawsuit Served As The Reason Why DHS and USAO-MO Officials Were Unwilling To Investigate Greenway's Criminal Trademark Infringement Complaint

Before filing the Plaintiffs' 2017 Civil Rights Lawsuit, Escamilla was contacted by DHS officials who initially informed Escamilla and his business partner that Greenway was identified as the Lead Victim in and part of the government's most substantial federal criminal investigations and prosecutions of its kind entitled Operation Software Slashers ("OSS"), in conjunction with the Microsoft Corporation ("Microsoft") and Adobe Systems Incorporated ("Adobe").

USAO-CDOC U.S. Attorneys then falsely claimed repeatedly that a magistrate's August 2015 "recommendation" to dismiss a civil lawsuit Greenway filed in Colorado in 2013, which was later overruled on October 27, 2015, served as the reason why DHS officials were unwilling to press forward with Greenway's criminal trademark infringement complaint filed with DHS against Selakovic, and others in March 2015. *See* Escamilla Decl., Exh. I.

Using the magistrate's "overruled recommendation" as cover, USAO-CDOC U.S. Attorneys concealed Selakovic's and Greenway's former attorneys engaging in potential violations of 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, for their joint participation in the theft of Greenway's confidential, attorney-client privileged, insider business information, and reverse-merger public entity formation strategy for Selakovic's and Greenway's former attorneys' gain.

During the Plaintiffs 2017 Civil Rights Lawsuit, the Court noted that in March 2015, Escamilla and his business partner met face to face with DHS officials

in Burbank, California, regarding his criminal trademark infringement complaint against Selakovic, Steven Blackburn ("Blackburn"), and entities operated and controlled by Selakovic (collectively, "Selakovic Defendants").

DHS agents Shawn Gibson, ("Gibson"), Carlos Suarez ("Suarez"), and another DHS officer attended and recorded DHS's interview. During Escamilla's interview, DHS agents informed him of the following:

1. That Greenway would be identified as the Lead Victim of the alleged criminal acts that were to be included in one of the largest software piracy schemes ever prosecuted by federal law enforcement officials called Operation Software Slashers ("OSS") in conjunction with Microsoft, and Adobe being conducted in the Western District of Missouri.

2. Federal criminal charges and sealed indictments had already been filed against Selakovic, Blackburn, other individuals, and corporate entities operated and controlled by Selakovic.

3. Selakovic and Blackburn, are the alleged ringleaders responsible for OSS.

4. The Federal prosecutor in the Western District of Missouri agreed to prosecute Escamilla's federal criminal trademark infringement complaint that he filed against Selakovic, Blackburn, and other unmanned suspects and corporate entities operated or controlled by Selakovic that were to be included in OSS.

5. Escamilla's company Greenway would be eligible for compensatory damages from the more than $20,000,000 that DHS and the USAO-MO successfully seized from six other related individual suspects and entities that had already pled guilty to criminal charges in connection with OSS.

Subsequently, Escamilla exchanged multiple email communications with

DHS agent Gibson and provided material evidence demonstrating the Selakovic Defendants' unlawful manufacturing, distribution, and sales of substantial amounts of knock-off, counterfeit, or unauthorized versions of Greenway's products also bearing Greenway's trademark, to Greenway's customer base.

Curiously, over a year later, on October 28, 2016, DHS agent Gibson and another DHS agent attempted to deceive and coerce Escamilla to believe that DHS and the USAO-MO in charge of the OSS operation could not proceed forward with the Plaintiffs' criminal trademark infringement complaint based on a federal magistrate's August 2015 "recommendation" to dismiss Plaintiffs' 2013 Colorado Civil Lawsuit, which on October 27, 2015 was overruled. *Greenway Nutrients, Inc. v. Blackburn et al.*, case no. 1:13-cv-01088. DHS agents stated:

> 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. . . . Regardless, we continue to investigate the alleged criminal activities in regard to his alleged distribution of counterfeit software.

That same day, Escamilla advised DHS agent Gibson that the Court during Greenway's 2013 Colorado Civil Lawsuit had issued no such final Court ruling in favor of Selakovic regarding Greenway's trademark infringement claims. Escamilla also advised DHS agent Gibson that he was either mistaken or was taking advantage of Escamilla because he is a Mexican American small businessman who was not represented by private legal counsel.

Escamilla advised DHS agent Gibson he was incorrect because on October 27, 2015, Judge Marcia Kreiger, who presided over Greenway's 2013 Colorado Civil Lawsuit, overruled the magistrate's August 2015, "recommendation" to dismiss Greenway's suit with prejudice, stating in relevant part:

> Of greatest concern, the Recommendation contains no explanation as to why the Plaintiffs conduct in not obtaining new counsel required an additional sanction in making the dismissal with prejudice, what

> purpose a sanction was designed to serve, and what alternative sanctions the Magistrate Judge considered. In the absence of this information, the Recommendation's finding that "any sanction other than dismissal with prejudice would not be effective to remedy Plaintiffs transgressions" is unsupported.

*Greenway Nutrients, Inc. v. Blackburn*, case no. 1:13-cv-01088 [DE-151].

> Then, on June 16, 2016, Judge Krieger, further stated in relevant part:
>
> 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 . . .

*Greenway Nutrients, Inc. v. Blackburn*, case no. 1:13-cv-01088 [DE-155].

In other words, DHS agent Gibson and another DHS agent misrepresented material facts regarding Judge Krieger's March 31, 2015 ruling and August 17, 2015 order overruling the magistrate's August 2015 "recommendation" to dismiss Greenway's 2013 Civil Lawsuit with prejudice. Compounding that misrepresentation, USAO-CDOC U.S. Attorneys falsely claimed repeatedly to this Court that because of a purported negative court ruling in favor of Selakovic regarding Greenway Nutrients' valid Colorado trademark infringement claims somehow mysteriously left Greenway's ownership of its valid trademark in doubt. That USAO-CDOC U.S. Attorneys falsely claimed served as the fabricated reason why DHS or the USAO-MO were unwilling to further investigate Greenway's criminal trademark infringement complaint against the Selakovic Defendants.

> This Court found, contrary to the actual record:
>
> Escamilla contacted Gibson again in October 2016 to complain about the Greenway defendant investors' (Selakovic and Blackburn) continued infringement. (See Compl., Exs. 7–8.) . . .
>
> On October 28, 2016, Gibson notified Plaintiffs that—due to Plaintiffs' failure to prevail against the Greenway investors in the Colorado action—ICE and USAO-MO would no longer investigate the Greenway investors' (Selakovic's and Blackburn's) product infringement. (Id. ¶ 27; Mot. 3.) Plaintiffs immediately protested this decision. (Compl. ¶ 28.) . . .

> They contacted Gibson again on November 21, 2016, to inquire about the investigation against the Greenway investors (Selakovic's and Blackburn's) and advise Gibson that Escamilla felt discriminated against for his status as "a Mexican-American small businessman . . . [not] represented by private legal counsel." (Id. ¶¶ 29–30.) . . .
>
> Escamilla complained that he was being taken advantage of by DHS. (Id. ¶ 30.) Gibson responded that same day, clarifying that DHS could not "move forward with any investigation involving [Plaintiffs'] trademark until [Plaintiffs] resolve[d] this issue with the District Court in Colorado," because that decision in favor of the alleged infringers precluded them from filing charges. (Id., Ex. 10.) . . .
>
> Plaintiffs' state law claims center around the allegation that Defendants violated Plaintiffs' rights by refusing to reopen the investigation into Greenways' claims after Plaintiffs came forward with new evidence. (See Compl. ¶ 54.) . . .
>
> As Defendants explained to Plaintiffs, they chose not to further investigate Plaintiffs' claims due to the negative judgment in the Colorado action. (See id. ¶ 27.) . . .

Moreover, during the Plaintiffs 2017 Civil Rights Lawsuit the Plaintiffs presented the Court with material evidence that after Escamilla contacted the resident agent in charge of DHS's Office of Professional Responsibility ("DHS-OPR"), Russell Simons ("Simons"), DHS agent Simons contradicted DHS agent Gibson's repeated misleading assertions regarding Greenway's civil trademark infringement claims during its 2013 Colorado Civil Lawsuit, stating in relevant part:

> You can file anything you want because I am not going to do anything with it anyway . . . while there may not have ever been any actual adverse legal decision ruling against Greenway's trademark, there was no actual ruling or legal decision that ruled in favor of Greenway's trademark that clearly stated that Greenway owned the rights to its valid US trademark . . .

This remains to be untrue, contradictory and is entirely at odds with DHS agent Gibson's multiple misrepresentations regarding DHS's and the USAO-MO's unwillingness to investigate Greenway's criminal trademark infringement complaint further at that time based on a purported negative Court ruling, which was nothing more than a magistrate's "recommendation" to dismiss Greenway's

2013 Colorado Civil Lawsuit with prejudice. And which, on August 17, 2015, the Court overruled. This was misrepresented to the Court by the USAO-CDOC U.S. Attorneys in Greenway's 2017 Civil Rights Lawsuit. *See Gustavo Escamilla, et al. v. Department of Homeland Security, et al.*, case no. 2:17-cv-07748 [DE-1, Exh. 8].

On April 4, 2018, this Court dismissed the Plaintiffs' 2017 Civil Rights Lawsuit with prejudice and without leave to amend based on USAO-CDOC U.S. Attorneys presenting the Court with the aforementioned false and misleading narrative regarding a magistrate's October 27, 2015 recommendation, which was overruled by the judge in the case.

In presenting evidence to the Court as part of their motion to dismiss the 2017 Civil Rights Lawsuit, USAO-CDOC U.S. Attorneys misled the Court regarding Escamilla's discovery that Greenway's former attorney MJR in March 2017, and later discovery, in January 2020, that Greenway's other former attorney JDR and Selakovic engaged in violations of the following 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. §134.

More importantly, according to the CVRA, 18 U.S.C § 3771(a)(1)(2)(3) and 18 U.S.C § 3771(b)(1), it is federal law enforcement officials' responsibility to adequately advise the victims of the status of their criminal proceedings as well as their rights as victims therein, and not the other way around.

Section 3771(a) states in relevant part:

> (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.

Furthermore, Section 3771(b)(1) states in relevant part:

> (b) Rights Afforded.—(1) In general.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

### B. USAO-CDOC Attorneys Supplied the Court with the First of Multiple Material Representations in Their July 19, 2021 Opposition

Included in their July 19, 2021, opposition motion, USAO-CDOC U.S. Attorneys Wilkison, Harris, Osinoff, and Park presented the Court with multiple false and materially misleading statements including but not limited to the following:

> 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 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. . . .

Exhibit 9 to the Plaintiffs' 2017 Civil Rights Lawsuit is an October 28, 2016 email from DHS officials attempting to deceive and coerce Escamilla regarding DHS's and USAO-MO's reasons why DHS and the USAO-MO were unwilling to proceed forward with DHS's investigation and prosecution of Selakovic, and others regarding Greenway's criminal trademark infringement complaint, stating in relevant part:

> 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.

Not only did DHS Agent Gibson and the USAO-MO alter material facts regarding publicly available Court records to coerce and deceive Escamilla that the Colorado Court ruled in favor of Selakovic in Greenway's 2013 Colorado Civil Suit. That did not occur in August 2015, as the USAO-CDOC U.S. Attorneys falsely claimed was due to a purported negative Court ruling against Greenway in favor of Selakovic. That was nothing more than a magistrate's August 2015, *recommendation* to dismiss Greenway's 2013 Colorado Civil Lawsuit with prejudice. On October 27, 2015, Chief Judge Marcia Krieger overruled the magistrate's recommendation. See *Greenway Nutrients, Inc. v. Blackburn, et al.*, case no. 1:13-cv-01088 [DE-151].

The USAO-CDOC U.S. Attorneys altered DHS' October 28, 2016 email date with the intent to make it appear as if DHS advised the Plaintiffs 14 months earlier, with the intentions to impede, obstruct, or influence the proper administration of a civil and related criminal matter within this jurisdiction. Without correcting the record, this continues to be a gross alteration of material facts which served as one of the bases in dismissing the 2017 Civil Rights Lawsuit. *See Gustavo Escamilla, et al. v. Department of Homeland Security*, et al. 2:17-cv-07748, case no. [DE-1, Exh. 8]. The USAO-CDOC U.S. Attorneys falsely stated in relevant part:

> 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 (Selakovic and Blackburn) **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 notified Plaintiffs that—**due to Plaintiffs' failure to prevail against the Greenway investors in the Colorado action (Selakovic and Blackburn)—ICE and USAO-MO would no longer investigate the Greenway investors' product infringement.** (Id. ¶ 27; Mot. 3.) . . .

Moreover, as previously noted, DHS-OPR agent Simons contradicted DHS agent Gibson's multiple and repeated misleading representations regarding Greenway's 2013 Colorado Civil Suit. That refutes USAO-CDOC's misleading statements regarding why DHS and USAO-MO officials were unwilling to investigate Greenway's civil trademark infringement claims at that time. USAO-CDOC U.S. Attorneys improperly altered, falsified, and misrepresented material facts to the Court regarding DHS advising Escamilla on October 28, 2016 about Greenway's status as crime victims. That did not occur in August 2015, as USAO-CDOC U.S. Attorneys improperly presented to the Court in their July 19, 2021 filing.

### C. USAO-CDOC Attorneys Supplied the Court with a Second Material Misrepresentation in Their July 19, 2021 Opposition

Additionally, included in their July 19, 2021 opposition, USAO-CDOC U.S. Attorneys incorrectly referred to Plaintiffs' March 2017 discovery of Michael J. Ryan embezzling Greenway's confidential attorney-client privileged information for his personal gain, by making the representation that Michael J. Ryan's unlawful actions were somehow negated as a result of Escamilla's June 2013 communications with ***Tom*** and his ex-wife ***Wendy*** Ryan—

> 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). . . .

However, not only is the above statement misleading, but it also contradicts USAO-CDOC U.S. Attorneys' January 29, 2018 assertions included in their motion to dismiss the 2017 Civil Rights Lawsuit. Specifically, USAO-CDOC U.S. Attorneys misrepresented Plaintiffs' 2017 complaint at paragraph 32, DHS's and the USAO-MO's unwillingness to recognize or investigate Escamilla's March 2017 evidence demonstrating that Greenway's former attorney Michael J. Ryan violated Greenway's non-disclosure agreement and unlawfully embezzled Greenway's confidential attorney-client privileged information for his own gain, and demonstrating that Michael J. Ryan had switched sides and taken an unlawful stock position in, and representing Selakovic's newly formed over-the-counter publicly traded entity named VEGL, which the 2017 Complaint at ¶ 32, states in relevant part:

> Later, on or about April 11, 2016, Escamilla and Greenway advised DHS and Gibson that Plaintiffs had just discovered new and compelling evidence that should have negated any and all erroneous assertions that defendants DHS or Gibson may have initially reached in Plaintiffs criminal investigation that should have also immediately triggered Greenway' criminal case to be immediately reopened due to the fact that Greenway' former attorney named **Michael J. Ryan** (Ryan) who was still supposed to be lawfully bound by the terms of Plaintiffs nondisclosure non circumvent agreement was now also unlawfully divulging, sharing, as well as disclosing Greenway' confidential business information as well as trade secrets with the accused suspects and that Greenway' former attorney Ryan was now also unlawfully representing the accused suspects in Greenway' criminal case.

Once again, nowhere in the Plaintiffs 2017 civil rights complaint at ¶ 32, do the Plaintiffs' ever reference or mention ***Tom*** or ***Wendy*** Ryan. Further, USAO-CDOC U.S. Attorneys pointed to Exhibit 13 of Docket Entry 83 to mislead the Court that Escamilla's references to Greenway's former attorneys James Ryan, Tom Ryan, as well as Michael J. Ryan, somehow invalidated Escamilla's later discovery of Michael J. Ryan's (May 2017), and James Ryan's (January 2020)

embezzlement Greenway's confidential information for their self-dealing gain.

Escamilla's Florida Bar complaint [ECF 83, Exh. 13], clearly evidences Escamilla advising the Florida Bar of Escamilla's March 2017 discovery of MJR's embezzlement, stating in relevant part:

> Furthermore, on or about **March 8, 2017** and due to the fact that Greenway Nutrients President Gustavo Escamilla had to update Greenway' overall case evidence, information, as well as business records for Greenway' upcoming federal trademark infringement litigation that is currently underway in Florida Southern District Court, to our utter shock and am amazement, Greenway was also able to uncover the fact that **Michael J. Ryan** with the Ryan Law Group were also now improperly and unlawfully representing Mr. Selakovic and his newly form ed publicly traded company named HPC Acquisitions, Inc. DBA Vegalab US, (now named "VEGL") who have, in fact, hijacked and stolen Greenway' entire business model. as well as have unlawfully sold millions of dollars worth of my companies products bearing my companies valuable US trademark. . . .

Which is once again, entirely at odds with USAO-CDOC U.S. Attorneys' representations to the Court that the Michael J. Ryan discovery "was rather old" based on Escamilla's June 2013 communications with ***Tom*** and his ex-wife ***Wendy*** Ryan—

> Plaintiffs' purportedly "new" evidence that Greenway's former attorney, **Michael J. Ryan**, "unlawfully divulge[ed], shar[ed], 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).

Other than being brothers, Escamilla's 2013 communications with Tom and Wendy Ryan had nothing to do with his March of 2017 discovery of MJR's and JDR's January 2020 subsequent embezzlement of Greenway's confidential business and attorney-client privileged information for their self-dealing gain, which had not occurred back in 2013.

The USAO-CDOC U.S. Attorneys misrepresented the record intentionally or

with such gross negligence, stating contrary to the record—

> 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).

That simply was and is not true.

**D. USAO-CDOC Attorneys Supplied the Court with a Third Material Misrepresentation in Their July 19, 2021 Opposition**

Additionally, and included in the USAO-CDOC U.S. Attorneys' July 19, 2021 opposition, U.S. Attorneys Wilkison, Harris, Osinoff, and Park, stated in relevant part:

> 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) . . .
>
> 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") . . .

USAO-CDOC U.S. Attorneys again misrepresented material facts concerning the substantial negative impact of USAO-CDOC U.S. Attorney Robert A. Ramey's sworn declaration, which they improperly presented to the Court during the Plaintiffs' 2017 Civil Rights Lawsuit and concealed Escamilla's 2017 complaint to DHS-CRCL and DHS-OIG.

Acting U.S. Attorney Traci Wilkison, as wells former Acting U.S. Attorney Sandra Brown, both received a copy of Escamilla's May 1, 2017 complaint, which was also sent to over a dozen other USAO-MO, DHS-CRCL-

DHS-OIG, USAO-CDOC, and DOJ officials.

USAO-CDOC U.S. Attorneys failed to disclose and misrepresented that Escamilla did not file a civil rights complaint to gain an unfair litigation advantage and obtain a dishonest Court ruling in their favor. The Court relied on the USAO-CDOC U.S. Attorneys' representations as a determining factor to dismiss the 2017 Civil Rights Lawsuit—

> Plaintiffs allege that they filed a formal complaint with the DHS Office for Civil Rights and Civil Liberties on May 1, 2017. (See Compl. ¶ 33.) However, in reviewing a Rule 12(b)(1) motion, the Court looks to all available evidence. Safe Air, 373 F.3d at 1039. ICE asserts by affidavit that there is no record of a formal complaint. (Ramey Decl. ¶¶ 2–3.) The only evidence that Plaintiffs provide in support of their assertion is an email response from DHS. (Compl., Ex. 11.) . . .

The FTCA only provides jurisdiction for tort suits against the government when a plaintiff has fully exhausted their administrative remedies. *D.L. v. Vassilev*, 858 F.3d 1242, 1244 (9th Cir. 2017); *Avery v. United States*, 680 F.2d 608, 609 (9th Cir. 1982). This means that they must first file a claim with the agency allegedly at fault. *Id.* A satisfactory claim (1) "give[s] an agency sufficient notice to commence investigation" and (2) "places a value on the claim." *Shipek v. United States*, 752 F.2d 1352, 1353 (9th Cir. 1985); *see also Avery*, 680 F.2d at 610 ("[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.").

On May 1, 2017, Escamilla's civil rights complaint filed with DHS-CRCL and DHS-OIG provided a short plain statement of a satisfactory claim which, (1) gave the "agency sufficient notice to commence investigation" and (2) "place[d] a value on the claim."

USASO-CDOC U.S. Attorneys failed or concealed from the Court (or failed to preserve ESI) Plaintiffs' complaint, which was also copied to former acting U.S. Attorneys Traci Wilkison, Sandra Brown, as well as over a dozen other

USAO-CDOC, USAO-MO, DHS, and DHS-CRCL officials also received the same email on May 1, 2017. By this deceit, USAO-CDOC U.S. Attorneys misled the Court to rule in their favor that Plaintiffs had not exhausted all of their available administrative remedies prior to filing the 2017 Civil Rights Lawsuit, which the Court improperly relied upon to dismiss Plaintiffs' March 2021 emergency CVRA petition *sua-sponte*, further depriving Plaintiffs' due process rights.

E. **USAO-CDOC Attorneys Raised the Issue of the Plaintiffs' March 1, 2021 CVRA Petition in Their July 19, 2021 Opposition**

Moreover, USAO-CDOC U.S. Attorneys Wilkison, Harris, Osinoff, and Park raised the issue of the Plaintiffs' March 1, 2021 filing of the CVRA in, stating in relevant part:

> 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). . . .

USAO-CDOC U.S. Attorneys Wilkison, Harris, Osinoff, and Park's misrepresentations regarding the Plaintiffs being part of one of the most substantial federal criminal prosecutions, OSS, or status as crime victims under the CVRA is dubious. First, USAO-CDOC U.S. Attorneys falsely claimed and repeatedly utilized the Colorado magistrate's August 2015 recommendation to dismiss Greenway's 2013 Colorado Civil Lawsuit, which was overruled on August 17, 2015 by Chief Judge Marcia Krieger. This conveniently served as the reason why DHS and the USAO-MO were unwilling to investigate Greenway's criminal trademark infringement complaint at that time—even though the Court ruled Greenway's

claims were ***not*** unfounded, groundless, properly adjudicated or dismissed on their merits.

Plaintiff Escamilla and Greenway were proximately harmed by, and were victims of Federal crimes committed by Selakovic, Blackburn, and corporate entities operated or ultimately controlled by the Defendants.

Moreover, the Plaintiffs are considered crime victims under the CVRA. 18 U.S.C. § 377l(c)(l). Pursuant to Section 377l(c)(l), "Officers and employees of the Department of Judge and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)."

Section 3771(a) lists all of the rights accorded to the victims. These rights cover the entire criminal process from the investigative stage all the way to sentencing. Nowhere does the CVRA limit a victim's rights to when a criminal case is filed under seal. Nowhere does the CVRA state that victim's only have rights until after a criminal case is filed. If crime victim's protections do not attach until formal charges are filed, then crime victims are excluded from any role regarding whether charges are filed or not and what those charges should be. This flies in the face of the spirit and language of the CVRA.

**F. Plaintiffs' 2017 Civil Rights Case Represents a Matter of Public Interest Due to Bad Actors Conduct Negatively Impacting Untold Thousands of Innocent and Unsuspecting American Consumers**

According to the DOJ's own press release regarding OSS, Selakovic's and Blackburn's massive transnational counterfeit goods scheme has negatively impacted untold thousands of innocent and unsuspecting American consumers stating in part;

> U.S. Attorney Tammy Dickinson of the Western District of Missouri announced today that a Seattle man became the sixth defendant convicted

> in federal court for his role in one of the largest software piracy schemes ever prosecuted by the U.S. Department of Justice.
>
> "An investigation that began in Kansas City, Mo., uncovered one of the largest software piracy schemes ever prosecuted by the U.S. Department of Justice, with tentacles reaching into cities across the United States and overseas," said U.S. Attorney Dickinson. "Investigators seized more than $20 million in assets from conspirators who are estimated to have sold in excess of $100 million worth of illicit, unauthorized and counterfeit software products to thousands of online customers. Software piracy is a significant economic crime that victimizes not only software developers and manufacturers, but unwitting consumers."
>
> "Pirating software, particularly on this massive scale, damages the American economy, hurts private businesses and harms the unsuspecting buyer," said acting Special Agent in Charge James Gibbons of U.S. Immigration and Customs Enforcement's Homeland Security Investigations (ICE-HSI) Chicago. "These plea agreements mark a historic day for our HSI special agents, and our law enforcement partners, in the fight to stop the theft of intellectual property."
>
> Many of these defendants and their related entities had been sued civilly for willful trademark and copyright infringement by Microsoft and other software developers. …
>
> The multimillion-dollar scheme, which involved co-conspirators operating overseas in the People's Republic of China, Singapore and Germany and across the United States, illegally sold millions of dollars of Microsoft Corporation and Adobe Systems Inc. …
>
> The conspirators distributed more than 170,000 product activation key codes and many of these key codes were each used and activated numerous times. …

The DOJ's press release can be viewed on the following website link:

https://www.justice.gov/opa/pr/operation-software-slashers-six-defendants-plead-guilty-100-million-software-piracy-scheme

DOJ's press release indicated OSS conspirators distributed 170,000 units of illicit Microsoft and Adobe product activation key-codes in furtherance of their unlawful software manufacturing, distribution, and sales scheme.

However, that number pales in comparison to the Plaintiff's presenting Court with transcripts from civil court proceedings demonstrating Blackburn had purchased over three hundred and seventy thousand (370,000) units of illicit versions of Adobe Systems software products unlawfully wiring over forty-eight

million dollars ($48,000,000.00) in illegally obtained profits to entities operated and controlled by Selakovic. *Gustavo Escamilla, et al. v. United States of America,* CV 21-1910 [DE-1 Exh. "Y"].

Notwithstanding the Plaintiff's presenting material evidence to this Court demonstrating the bad actors illegally benefitted from the unlawful sales of over $100 MM in Greenway's retail product value without any compensation to Greenway.

**G. USAO-CDOC Attorneys' Multiple Instances of Misconduct Constitute Fraud on the Court**

USAO-CDOC U.S. Attorneys' misrepresentations and bad faith misconduct independently constitute fraud on the court under Rule 60(d)(3). But even if the Court were to conclude that no discrete sequence of events was sufficient to constitute on its own a fraud on the Court, the analysis most certainly would not end there. Fraud on the court may also be found by assessing various acts of misconduct that, when taken together over the entire course of litigation, rise to the level of a fraud on the court. *See United States v. Stonehill,* 660 F.3d 415, 446-52 (analyzing seven separate instances of litigation malfeasance in isolation to determine whether each of those instances constituted a fraud upon the court, and after answering that inquiry in the negative, analyzing whether the "allegations as a whole" amounted to fraud on the court); *see also Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1133 (listing a series of steps undertaken by a company's general counsel, which, taken together, constituted fraud on the court).

As the Ninth Circuit recognized in *Stonehill*, a fraud on the court occurs when the alleged conduct, considered in its totality, "changes the story . . . presented to the district court," or alternatively, when that conduct "substantially undermine[s] the judicial process by preventing the [court] from analyzing the case." 660 F.3d at 452, 454.

Considered as a whole, USAO-CDOC U.S. Attorneys' conduct not only meets the applicable standards, but far exceeds any evidentiary threshold associated with showing grave damage to the integrity of the judicial system. Indeed, beyond committing a single act of fraud on the court, the USAO-CDOC U.S. Attorneys here conceived of and engaged in a series of interconnected acts – all driven by a perverted desire to win at any cost – that dramatically "changed the story" heard by this Court and substantially undermined the judicial process.

Moreover, although finding fraud upon the court most certainly does not require a showing of "knowing and intentional participation by counsel," and can be satisfied by a reckless disregard for the truth, there can be no doubt that USAO-CDOC U.S. Attorneys' engaged in this misconduct intentionally.

While the government could perhaps try to chalk up a single, isolated incident to an unintentional mistake, the broad and repetitive tapestry of misconduct in this case, defies such description. The transgressions and instances of misconduct here are simply too numerous, relate to numerous critical issues, and are so pervasive throughout the litigation to have been the product of incompetence. There is only one inescapable conclusion: USAO-CDOC U.S. Attorneys' knowingly and willfully engaged in each of the acts described herein as part of a scheme to improperly influence the Court and affect the outcome of the litigation repeatedly.

USAO-CDOC U.S. Attorneys did not stay "well within the rules" in the Plaintiffs' 2017 Civil Rights Lawsuit. *See United States v. Maloney*, 755 F.3d 1044, 1046 (9th Cir. 2014) ("The [government attorney's] job isn't just to win, but to win fairly, staying well within the rules."). Instead, they did whatever necessary, from filing two false sworn declarations under penalty of perjury, concealed material critical facts, and submitted two false and materially misleading filings in support of the motion to dismiss the 2017 Civil Rights Lawsuit, in an all-out effort

to win. By engaging in this conduct, USAO-CDOC U.S. Attorneys forgot not only their obligations as attorneys, but also their obligation as representatives of a sovereignty whose "interest in a . . . [case] is not that it shall win a case, but that justice shall be done." *See Berger v. United States*, 295 U.S. 78, 88 (1935). USAO-CDOC U.S. Attorneys—shielded by the high level of trust our system of justice naturally places in them as representatives of the United States—pursued their goal at the expense of justice.

Thus, the pervasive and coordinated misconduct of USAO-CDOC U.S. Attorneys, whether viewed in isolated parts or as a whole, reflects "an effort by the government to prevent the judicial process from functioning 'in the usual manner,'" and that "involved perjury or nondisclosure [ ] so fundamental that it undermined the workings of the adversary process itself." *Stonehill*, 660 F.3d at 445.

## VII. CONCLUSION

For all of the reasons stated above, Plaintiffs respectfully request the judgment of dismissal with prejudice entered in this action on April 4, 2018 be set aside pursuant to Rule 60(d)(3).

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

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

**DECLARATION OF MAINAK D'ATTARAY**

I, Mainak D'Attaray, declare:

1. I am an attorney duly licensed to practice before the United State District Court for the Central District of California, the principal of the Law Office of Mainak D'Attaray, and the counsel of record for plaintiffs Gustavo Escamilla and Greenway Nutrients in the above entitled action. The following is based on my personal knowledge. If called to testify to the following, I could and would do so competently.

2. Pursuant to Local Rule 7-3, I attempted several times to meet and confer with opposing counsel form the United States Attorney's Office for the Central District of California with no success. On September 21, 2021, I sent an email to U.S. Attorney Grace Park at grace.park@usdok.gov to meet and confer as required under the local rules. A true copy of which is attached here as **Exhibit A.** She did not respond. So I sent another email on October 4, 2021 reminding her that her office had not responded to my email. A true copy of the October 4, 2021 email is attached here as **Exhibit B.**

3. Ms. Park responded that same day that someone from her office would reach out to me. A true copy of that email is attached here as **Exhibit C.** On October 5, 2021, Ms. Park followed up whether I had heard from anyone in her office; I had not. A true copy of her October 5, 2021 email is attached here as **Exhibit D.**

4. To date, no one from the U.S. Attorney's office has phoned my office to discuss this case or our motion. We have attempted all reasonable means to meet and confer with the U.S. Attorney's office and no one has picked up the phone to meet and confer with my office.

5. Thus, we are filing our motion without having heard back from the U.S. Attorney's office on their substantive positions on this motion.

I declare the above is true under the penalty of perjury under the laws of the

United States of America; executed this 18th day of October 2021 at Long Beach, California.

/s/ Mainak D'Attaray

Mainak D'Attaray

# EXHIBIT A

d'attaraylaw
law office of mainak d'attaray

Mainak D'Attaray <mdattaray@dattaraylaw.com>

# MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

1 message

**Mainak D'Attaray** <mdattaray@dattaraylaw.com> Tue, Sep 21, 2021 at 5:14 AM
To: "Park, Grace (USACAC)" <Grace.Park@usdoj.gov>
Cc: Melanie Simon <msimon@dattaraylaw.com>

Dear Ms. Park,

This is our attempt to meet and confer, pursuant to Local Rule 7-3, prior to refiling our motion to set aside judgment based on FRCP 60(d)(3). Our basis for bringing the motion is obviously stated in our motion,which we filed but was stricken by Judge Wright for failing to comply with Local Rule 7-3.

Please let me know if you have time to meet and confer this afternoon or tomorrow; or if you deem this sufficient given the position we have taken in our motion about the conduct of your office.

Very truly yours,
Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray
***Long Beach Office (Main Address)***
3780 Kilroy Airport Way, Suite 200
Long Beach, California 90806
Office: (562) 256-7038

***Los Angeles Office (Mailing Address)***
10262 Foothill Boulevard
Lake View Terrace, California 91342
Office: (818) 273-4729

mdattaray@dattaraylaw.com
Direct: (424) 703-LAW4 [5294]
Fax: (855) 706-LAW4 [5294]
Mobile: (310) 497-2216

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# EXHIBIT B

d'attaraylaw
law office of mainak d'attaray

Mainak D'Attaray <mdattaray@dattaraylaw.com>

# Re: [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

1 message

**Mainak D'Attaray** <mdattaray@dattaraylaw.com> Mon, Oct 4, 2021 at 9:00 AM
To: "Park, Grace (USACAC)" <Grace.Park@usdoj.gov>
Cc: Melanie Simon <msimon@dattaraylaw.com>

Dear Ms. Park,

It has been two weeks and your office has not responded to my email or called my office to meet and confer. Please note, if I do not hear from you by close of business today, we will file our motion and give a declaration of our attempts to comply with the meet and confer requirement.

Very truly yours,
Mainak D'Attaray, Esq.

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On Tue, Sep 21, 2021 at 7:12 AM Park, Grace (USACAC) <Grace.Park@usdoj.gov> wrote:

> Good morning Mr. D'Attaray,
>
> Thank you for your email. I will not be able to meet and confer today or tomorrow as I am preparing for taking medical leave. I would greatly appreciate it if you could give our office a few days to ascertain next steps while I am away.
>
> In the meantime, I greatly appreciate your extending this courtesy. We will get back to you shortly.

Cheers,

Grace Y. Park, Assistant United States Attorney

United States Attorney's Office, Central District of California

300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012

213.894.3551 Grace.Park@usdoj.gov

**From:** Mainak D'Attaray <mdattaray@dattaraylaw.com>
**Sent:** Tuesday, September 21, 2021 5:15 AM
**To:** Park, Grace (USACAC) <GPark@usa.doj.gov>
**Cc:** Melanie Simon <msimon@dattaraylaw.com>
**Subject:** [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

Dear Ms. Park,

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Very truly yours,

Mainak D'Attaray, Esq.

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# EXHIBIT C

d'attaray law
law office of mainak d'attaray

Mainak D'Attaray <mdattaray@dattaraylaw.com>

# RE: [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

1 message

**Park, Grace (USACAC)** <Grace.Park@usdoj.gov> Mon, Oct 4, 2021 at 9:16 AM
To: Mainak D'Attaray <mdattaray@dattaraylaw.com>
Cc: Melanie Simon <msimon@dattaraylaw.com>, "Osinoff, Joanne (USACAC)" <Joanne.Osinoff@usdoj.gov>, "Cuff, Ross (USACAC)" <Ross.Cuff@usdoj.gov>

Mr. D'Attaray,

My apologies. I forwarded your email internally for reassignment in light of the fact that I am currently on medical leave and will be on medical leave until October 25, 2021. Reviewing my files, it appears that the email got stuff in my outbox.

Please contact my supervisors, Ross Cuff, ross.cuff@usdoj.gov, or Joanne Osinoff, joanne.osinoff@usdoj.gov, for assistance. You should also receive an auto-reply email with Ross Cuff's information.

Cheers,

Grace Y. Park, Assistant United States Attorney

United States Attorney's Office, Central District of California

300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012

213.894.3551 Grace.Park@usdoj.gov

**From:** Mainak D'Attaray <mdattaray@dattaraylaw.com>
**Sent:** Monday, October 4, 2021 9:01 AM
**To:** Park, Grace (USACAC) <GPark@usa.doj.gov>
**Cc:** Melanie Simon <msimon@dattaraylaw.com>
**Subject:** Re: [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

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Very truly yours,

Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray

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>
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Cheers,

Grace Y. Park, Assistant United States Attorney

United States Attorney's Office, Central District of California

300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012

213.894.3551 GracePark@usdoj.gov

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**Sent:** Tuesday, September 21, 2021 5:15 AM
**To:** Park, Grace (USACAC) <GPark@usa.doj.gov>
**Cc:** Melanie Simon <msimon@dattaraylaw.com>
**Subject:** [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

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Very truly yours,

Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray

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# EXHIBIT D

d'attaraylaw
law office of mainak d'attaray

Mainak D'Attaray <mdattaray@dattaraylaw.com>

# RE: [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

1 message

**Park, Grace (USACAC)** <Grace.Park@usdoj.gov> Tue, Oct 5, 2021 at 8:22 AM
To: Mainak D'Attaray <mdattaray@dattaraylaw.com>
Cc: Melanie Simon <msimon@dattaraylaw.com>

Mr. D'Attaray,

Have you heard from Joanne or Ross yet? If not, I'll ping them again.

**From:** Mainak D'Attaray <mdattaray@dattaraylaw.com>
**Sent:** Monday, October 4, 2021 9:01 AM
**To:** Park, Grace (USACAC) <GPark@usa.doj.gov>
**Cc:** Melanie Simon <msimon@dattaraylaw.com>
**Subject:** Re: [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

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> Cheers,
>
> Grace Y. Park, Assistant United States Attorney
>
> United States Attorney's Office, Central District of California
>
> 300 N. Los Angeles Street, Suite 7516, Los Angeles, CA 90012
>
> 213.894.3551 Grace.Park@usdoj.gov
>
> **From:** Mainak D'Attaray <mdattaray@dattaraylaw.com>
> **Sent:** Tuesday, September 21, 2021 5:15 AM
> **To:** Park, Grace (USACAC) <GPark@usa.doj.gov>
> **Cc:** Melanie Simon <msimon@dattaraylaw.com>
> **Subject:** [EXTERNAL] MEET AND CONFER: Motion to Set Aside Judgment based on FRCP 60(d)(3) | Escamilla v. Dept. Homeland Sec., et al.

Dear Ms. Park,

This is our attempt to meet and confer, pursuant to Local Rule 7-3, prior to refiling our motion to set aside judgment based on FRCP 60(d)(3). Our basis for bringing the motion is obviously stated in our motion,which we filed but was stricken by Judge Wright for failing to comply with Local Rule 7-3.

Please let me know if you have time to meet and confer this afternoon or tomorrow, or if you deem this sufficient given the position we have taken in our motion about the conduct of your office.

Very truly yours,

Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray

***Long Beach Office (Main Address)***

3780 Kilroy Airport Way, Suite 200

Long Beach, California 90806

Office: (562) 256-7038

***Los Angeles Office (Mailing Address)***

10262 Foothill Boulevard

Lake View Terrace, California 91342

Office: (818) 273-4729

mdattaray@dattaraylaw.com

Direct: (424) 703-LAW4 [5294]

Fax: (855) 706-LAW4 [5294]

Mobile: (310) 497-2216

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.

**CERTIFICATE OF SERVICE**

I am employed in Defendant of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3780 Kilroy Airport Way, Suite 200, Long Beach, California 90806.

On October 18, 2021, I served the foregoing document described as **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); DECLARATION OF MAINAK D'ATTARAY** on all interested parties:

Grace Y. Park, Assistant United States Attorney
United States Attorney's Office, Central District of California
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
Grace.Park@usdoj.gov

☐ **BY PERSONAL SERVICE:** Service on the individuals listed on the attached Service List.

☐ **BY UNITED STATES MAIL:** I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by FedEx and addressed as listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY COURIER SERVICE:** I caused the document to be delivered by courier service to the addressee listed above.

☐ **BY FACSIMILE TRANSMISSION:** I faxed the document to the fax number listed above. No error was reported by the fax machine that I used.

☒ **BY ELECTRONIC TRANSMISSION:** I caused the above-referenced document to be transmitted electronically to the intended recipient(s) at the email address listed above.

Executed October 18, 2021 at Long Beach, California. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true.

Melanie Simon

# Exhibit J

TRACY L. WILKISON
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, General Civil Section
KEVIN B. FINN (Cal. Bar No. 128072)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2444
Facsimile: (213) 894-7819
E-mail: kevin.finn@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, and GREENWAY NUTRIENTS,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY; *et al.*,

Defendants.

No. CV 17-7748 ODW (MRWx)

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION FOR FRAUD ON THE COURT PURSUANT TO FRCP 60(D)(3); DECLARATION OF KEVIN B. FINN

Hearing Date: November 15, 2021
Hearing Time: 1:30 p.m.
Location: 5D

Honorable Otis D. Wright

Defendants oppose Plaintiffs' Motion for Reconsideration as follows:

A. GENERAL OBJECTIONS UNDER LOCAL RULES 7-3 AND 11-6

Plaintiffs have failed to comply with Local Rules 7-3 and 11-6. Local Rule 7-3 requires that counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference shall take place at least seven days prior to the filing of the motion.

Plaintiff declares that he sent Assistant United States Attorney Grace Park an email to provide notice on September 21, 2021 and that "[s]he did not respond." Dkt. 21, p. 61, ¶ 2. However, Plaintiffs' counsel's own Exhibit B reflects that Ms. Park responded to him on September 21, informing that she was going on medical leave and she would forward the message within her office. On October 4 and October 5, 2021, Assistant United States Attorney Kevin Finn responded to Plaintiffs' counsel by email to comply with Rule 7-3, inviting him to provide dates and times to meet and confer. Mr. Finn is not aware of receiving a response, and Plaintiffs' counsel does not declare that he did respond over the two weeks from the first email until he filed the motion. In fact, rather than acknowledge the two emails, Plaintiffs' counsel's declaration states that no one "has phoned my office" to discuss the motion, and that he has not "heard back on the substantive positions on this motion."

Additionally, Local Rule 11-6 states that no memorandum of points and authorities shall exceed 25 pages in length, unless permitted by order of the judge. Plaintiffs' memorandum of points and authorities is approximately 70 pages and an order authorizing a 70-page brief does not appear on PACER.

As such, Plaintiffs have failed to comply with the spirit of Rule 7-3 and have violated Rule 11-6. Therefore, the Court should deny the motion.

B. PLAINTIFFS FAIL TO SATISFY RULE 60(d)(3)

1. Relevant Procedural History

On October 24, 2017, Plaintiffs Gustavo Escamilla and Greenway Nutrients ("Plaintiffs") filed their complaint motion alleging claims for violation of 42 U.S.C. §

1983, California Civil Code § 52.1, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress and Declaratory and Injunctive Relief. Dkt. 1. On January 29, 2018, Defendants Department of Homeland Security and United States of America filed their Motion to Dismiss. Dkt. 9. On April 4, 2018, the Court issued an order granting Defendants' Motion and dismissed the action with prejudice. Dkt. 13. The Court held that claims for civil rights violations, due process and equal protection cannot be brought under section 1983 against DHS or the United States. *Id.* at 8-9. The Court also dismissed Plaintiffs' tort claims against DHS for lack of subject matter jurisdiction because a federal agency cannot be sued for a tort, and Plaintiffs' FTCA claim against the United States because Plaintiffs failed to exhaust their administrative remedies. *Id.* at 10-11. Furthermore, the Court held that the discretionary function exception would bar Plaintiffs' claims even if they had exhausted their administrative remedies. *Id.* at 11-13. Finally, the Court dismissed Plaintiffs' complaint for failure to state a claim. *See Id.* at 14-17.

Over three years later, on July 19, 2021, Plaintiffs filed a Motion to Disqualify the Hon. Otis D. Wright. Dkt. 15. The Court referred the matter to the Hon. Stephen V. Wilson, and the Court denied the motion on July 22, 2021. Dkts. 16 and 17.

On September 18, 2021, Plaintiffs filed a Motion to Set Aside Judgment, and on September 19, 2021, the Court struck the motion for failure to comply with Local Rule 7-3. Dkts. 18 and 19. On October 18, 2021, Plaintiffs refiled their Motion to Set Aside Judgment. Dkt. 21.

2. Relief Under Rule 60(D)(3)

Federal Rule of Civil Procedure 60(d)(3) allows a court to set aside a judgment for fraud on the court. However, relief from judgment for fraud on the court is "available only to prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38,

47 (1998).[1]

"[N]ot all fraud is fraud on the court… the relevant inquiry is not whether fraudulent conduct 'prejudiced the opposing party,' but whether it 'harmed the integrity of the judicial process'…. Fraud on the court must be an 'intentional, material misrepresentation'… [and] 'must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *See U.S. v. Sierra Pacific Industries, Inc.*, 862 F.3d 1157, 1167-1168 (2017), and the Ninth Circuit cases cited therein.

"In addition, the relevant misrepresentations must go 'to the central issue in the case,' (citation omitted), and must 'affect the outcome of the case'". *Id.* at 1168. "In other words, the newly discovered misrepresentations must 'significantly change the picture already drawn by previously available evidence.'" *Id.* Mere nondisclosure of evidence is typically not enough to constitute fraud on the court. *Id.* The Supreme Court and the Ninth Circuit have consistently applied this standard for fraud on the court even in cases involving government attorneys, rather than creating some different standard for these cases. *See Beggerly*, 524 U.S. at 47; *Sierra Pacific*, 862 F.3d at 1168.

Finally, relief for fraud on the court is available only where the fraud was not known at the time of settlement or entry of judgment. *See, e.g., Hazel-Atlas*, 322 U.S. at 244 (allowing relief for "after-discovered fraud"); *Haeger v. Goodyear Tire & Rubber Co.*, 813 F.3d 1233, 1243–45 (9th Cir. 2016) (analogizing to fraud on the court, where crucial information was concealed until after settlement and entry of judgment), overruled on other grounds, —— U.S. ——, 137 S.Ct. 1178 (2017); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995) (finding fraud on the court where crucial information was concealed and came to light after entry of judgment); *In re Levander*, 180 F.3d 1114, 1120 (9th Cir. 1999) (same). This limitation arises because

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[1] The Supreme Court has noted that "[o]ut of deference to the deep-rooted policy in favor of the repose of judgments ..., courts of equity have been cautious in exercising [this] power." *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944).

issues that are before the court or could potentially be brought before the court during the original proceedings "could and should be exposed at trial." *Levander*, 180 F.3d at 1120 (explaining that there is no fraud on the court where "the plaintiff had the opportunity to challenge the alleged perjured testimony or non-disclosure because the issue was already before the court").

Allowing parties to raise issues that should have been resolved at trial amounts to a collateral attack and undermines "the deep rooted policy in favor of the repose of judgments." *Hazel-Atlas*, 322 U.S. at 244. Where the moving party "through due diligence could have discovered" the alleged perjury or non-disclosure, such fraud does "not disrupt the judicial process" and thus does not constitute fraud on the court. *Appling v. State Farm*, 340 F.3d 769, 780 (2003). Thus, a finding of fraud on the court is reserved for material, intentional misrepresentations that could not have been discovered earlier, even through due diligence. *Sierra Pacific*, 862 F.3d at 1169.

3. Plaintiffs Fail to Meet Their High Burden

Plaintiffs contend that Plaintiff Gustavo Escamilla discovered in March and July of 2021 that AUSAs "provided the Court with a phony narrative and filed multiple false and materially misleading declarations, pleadings and filings" in this 2017 civil rights suit. Dkt. 21, p. 9. However, as the Court's dismissal order reflects, none of Plaintiff's claims could be brought against Defendants as a matter of law. Section 1983 claims and FTCA claims cannot be brought against DHS, and the discretionary function exception and failure to exhaust preclude Plaintiffs' tort claims against the United States. Plaintiffs' motion fails to overcome these fatal deficiencies in their civil rights complaint. While Plaintiffs have also failed to establish a fraud on the court, assuming *arguendo* that once existed, it would not "affect the outcome of the case" and would not support the relief Plaintiffs seek.

Plaintiffs' motion largely repeats their allegations which they claim support their section 1983 civil rights claims and details subsequent lawsuits unrelated to the dismissal of this civil rights case. *See* Motion (Dkt. 21), pp. 9-16, 19-27. Then Plaintiffs allege that

Escamilla filed a "formal civil rights complaint with DHS's Office of Civil Rights and Civil Liberties ("CRCL"), pursuant to the Federal Tort Claims Act ("FTCA"). *Id.*, p. 16. Plaintiffs allege that Escamilla sent the May 1, 2017 civil rights complaint to over 20 DHS and DOJ officials. *Id.*, p. 17. Finally, Plaintiffs allege that on May 2, 2017, the CRCL advised Escamilla that the department did not have jurisdiction over the civil rights complaint. *Id.*, p. 18.

With respect to the alleged "fraud" on the court warranting a reversal of the dismissal order based on lack of jurisdiction and failure to state a claim, Plaintiffs rely solely on minutiae regarding the underlying procedural history and Plaintiffs' interactions with prosecutors. However, Plaintiffs fail to understand that the alleged merits of their claims are not relevant to the fundamental issues of waiver of sovereign immunity and jurisdiction.

Plaintiffs first rely on allegedly false statements regarding a Magistrate's recommendation in a Colorado lawsuit as the evidence supporting their motion. *Id.*, p. 42-47. Plaintiffs then assert that this Court dismissed the subject suit "based on USAO-CDOC U.S. Attorneys presenting the Court with the aforementioned false and misleading narrative regarding a magistrate's October 27, 2015 recommendation, which was overruled by the judge in the case." *Id.*, p. 47. Plaintiffs also allege that U.S. Attorneys "misled the Court regarding Escamilla's discovery that Greenway's former attorney[s]… engaged in criminal" activities. *Id.*

As the Court is aware, the recitation of Plaintiffs' narrative of the underlying facts pursuant to Rule 12 standards, both in the Court's ruling and in Defendants' opposition, formed no basis of the Court's dismissal for lack of jurisdiction and failure to state a claim, other than affirming that Plaintiffs alleged section 1983 and tort claims in their complaint. The alleged fraud would not establish jurisdiction where it does not exist and would not change the outcome of the case.

Plaintiffs' motion then alleges misrepresentations in the 2021 pleadings filed three years after the dismissal of this suit. *Id.*, pp. 48-56. Plaintiff has not provided any

evidence supporting their claims of fraud, but those claims are irrelevant because the alleged fraud occurred years after the dismissal of this case and would not support a motion to set aside the judgment based on underlying fraud on the court. Again, the alleged fraud could not create jurisdiction or change the dismissal in 2018.

To the extent Plaintiffs attempt to claim that the alleged fraud in 2021 impacted the Court's decision to deny their disqualification motion, Plaintiffs have failed to clearly articulate this argument, have failed to meet their high burden of establishing a knowing, conscious fraud on the court, have failed to establish that the allegedly fraudulent statements are relevant to the issues related to disqualification, or that their disqualification motion had merit, the court's ruling was not proper and it would have changed in the absence of the alleged fraud.

4. Plaintiffs Have Failed to Establish Recent Discovery of the Alleged Fraud

While Plaintiffs contend that Escamilla just discovered the fraud in March and July of 2021, Plaintiffs have failed to cite any allegedly fraudulent statements made to the Court in 2017 or 2018 that Plaintiffs could not have addressed at the time of opposing the dismissal motion or the Court's dismissal order. Plaintiffs were aware of the Magistrate's recommendation, the former attorneys' alleged criminal activities and of their alleged civil rights claim. As such, Plaintiffs have failed to establish that they did not know of the alleged fraud at the time of the judgment, and could not have presented those arguments in opposition to the motion to dismiss. Plaintiffs have failed to establish that they learned of facts subsequent to the hearing of the dismissal motion that would have changed the outcome. Plaintiffs could have raised the facts alleged in the Rule 60 motion in their opposition filed in 2018.

Additionally, Plaintiffs have failed to establish that they were not aware at the time of their disqualification motion of the alleged facts that would dispute the alleged misrepresentations made to the Court in the government's opposition, and that they could not have raised those arguments at the time of the disqualification motion. As such, Plaintiffs have failed to meet their burden of establishing newly discovered

evidence to support their Rule 60 motion.

C. CONCLUSION

Plaintiffs have failed to meet their burden of establishing a fraud on the court, that a fraud impacted the dismissal of this action for lack of jurisdiction and failure to state a claim, that a fraud impacted the denial of their recusal motion, and that their motion for relief from the 2017 judgment is timely because they did not know of the alleged fraud at the time of the dismissal. As such, the Court should deny Plaintiffs' motion for relief under Rule 60(d)(3).

Dated: August 20, 2021

Respectfully submitted,

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

/s/
KEVIN B. FINN
Assistant United States Attorney

Attorneys for Defendants

# Exhibit K

d'attaraylaw | law office of mainak d'attaray
Mainak D'Attaray (Bar No. 283999)
3780 Kilroy Airport Way, Suite 200
Long Beach, California 90806
Telephone: (424) 703-5294
Facsimile: (855) 706-5294
Email: mdattaray@dattaraylaw.com
*Attorneys for Plaintiffs Gustavo Escamilla and Greenway Nutrients*

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' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION FOR FRAUD ON THE COURT PURSUANT TO FRCP 60(D)(3); DECLARATION OF MAINAK D'ATTARAY**

**DATE:** **November 15, 2021**

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

**CTRM:** **5D—350 W. First St., Los Angeles, Calif. 90012**

Plaintiffs Gustavo Escamilla and Greenway Nutrients, Inc. through their undersigned counsel, replies to Defendants' opposition to Plaintiffs' motion pursuant to FRCP 60(D)(3).

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The opposition (the "Opposition") to Plaintiff's FRCP 60(D)(3) motion (the "Motion") is flimsy, relying on a technical grounds to deny the Motion for (i) failing to meet and confer, despite a declaration that Plaintiff's counsel initiated the attempts, emails that certain individuals would contact Plaintiff's counsel who never did, and a declaration by a different AUSA who claims to have sent emails, which were not responded to; (ii) exceeding the page length pursuant to Local Rule 11-6 when the Motion is an extraordinary pleading to demonstrate fraud on the Court; and (iii) for not raising the issue timely when the FRCP and case law specifically state there is no time bar to bring a FRCP 60(D)(3) motion.

## II. PLAINTIFFS ATTEMPTED TO MEET AND CONFER IN GOOD FAITH PURSUANT TO LOCAL RULE 7-3

AUSA Kevin Finn's ("Finn") declaration and email communications are dubious and another misguided attempt to keep this Court from deciding Plaintiffs' well-documented March 2021, recently discovered material evidence and issues on their merits that senior attorneys in the United States Attorney's Office for the Central District of California ("USAO-CDOC").

AUSA Finn asserts, though this motion and by affidavit – notwithstanding Counsel allowing the USAO-CDOC almost a full month to meet and confer, sending numerous attempts to the USAO-CDOC and AUSA Grace Park ("Park") pursuant to Local Rule 7-3 in good faith. At no time did AUSA Park or the USAO-CDOC advise Plaintiffs' counsel's office or counsel to expect an email from AUSA Finn. Nor does counsel possess any such records of AUSA Finn emailing or contacting Plaintiffs' counsel's office from Finn's email address of kevin.finn@usdoj.gov.

On the contrary, on October 4, 2021, and according to multiple email communications Plaintiffs' counsel provided in his declaration, AUSA Park

represented that Plaintiffs' counsel ("Counsel") should be expect a response to the meet and confer request from Ross Cuff ("Cuff"), email address—ross.cuff@usdoj.gov, or Joanne Osinoff ("Osinoff"), email address—joanne.osinoff@usdoj.gov, for assistance.

And again, after Counsel initially contacted the USAO-CDOC and AUSA Park in good faith to meet and confer pursuant to Local Rule 7-3 on September 21, 2021, counsel waited an additional almost two-full weeks to once again contact AUSA Park. In a further good faith attempt to reasonably meet and confer with AUSA Park or anyone else from USAO-CDOC in compliance with Local Rule 7-3.

AUSA Park apologized and advised Plaintiffs' Counsel that she (AUSA Park) failed to forward his office's initial September 21, 2021 email, explaining Counsel's initial email was delayed in AUSA Park's email outbox. AUSA Park finally forward Counsel's September 21, 2021 email to her superiors on October 4, 2021. Again, on October 5, 2021, AUSA Park emailed Counsel curiously asking if his office had heard from her bosses, Cuff or Osinoff.

Notwithstanding, AUSA Finn claims to have sent an email on October 4, 2021, and again on October 5, 2021, which Counsel's office has no record of such emails. But, at no time did AUSA Park, her superiors Ossinoff or Cuff, or even Finn pick up the phone to follow up or meet and confer with Counsel. Nonetheless, in Counsel's September 21, 2021 email, Counsel reminded Park that the USAO-CDOC had been served with the motion so that any issues with the motion could be analyzed and raised via email. Again, the USAO-CDOC did not do that.

It strains credulity that Plaintiffs who sought to meet and confer pursuant to Local Rule 7-3 and followed up with AUSA Park would then avoid meeting and conferring. Moreover, AUSA Finn's misguided assertions of Plaintiffs violating Local Rule 11-6 is gamesmanship with no authority to support an outright denial of Plaintiffs' Rule 60(d)(3) motion based on a technical error.

Plaintiffs' Counsel's multiple attempts and repeated emails to AUSA Park in

good faith attempts to meet and confer in accordance with Local Rule 7-3 with the USAO-CDOC does not in any way reflect any type of "willful, grossly negligent, or reckless", conduct on behalf of Plaintiffs' Counsel and does in NO way "rise to the level of bad faith and/or a willful disobedience of a court order." Due to Plaintiffs' Counsel possessing no records of AUSA Flinn ever once contacted Plaintiffs' Counsel's office via email, the Court should disregard this argument.

Compounded by Plaintiffs' Counsel never receiving any notifications from AUSA Park's superiors, U.S. Attorney's Ossinoff, or Cuff. Who never once picked up the phone or emailed Plaintiffs' Counsel's office to properly introduce or follow with AUSA Finn's purported October 4, 2021, and October 5, 2021, emails. AUSA Park appeared to have not known about occurring either.

Otherwise, AUSA Park would have never needed to contact Counsel's office again on October 5, 2021, curiously asking if his office had heard back from her superiors Ossinoff or Cuff, which if AUSA Finn had purportedly already made contact would have been unnecessary. Also, in the September 21, 2021 email, Counsel makes clear that the motion was already prematurely filed once so that the USAO-CDOC had a copy of it so that AUSA Park could address those issues in a response to the September 21, 2021 email.

Therefore, AUSA Finn's argument that Plaintiffs' motion should be denied pursuant to Local Rule 11-6 could have been emailed in response to Counsel's September 21, 2021 email on October 4 or October 5, when Finn purportedly emailed. However, that does not change Plaintiffs' need to supply the Court with a well-pled fact-based motion regarding USAO-CDOC's alleged fraud on the Court. *See* Fed. R. Civ. Proc. 60(D)(3).

Moreover, the opposition fails to cite any authority or law as to why Plaintiffs' motion should be denied, since it was the USAO-COC that failed to meet and confer in violation of Local Rule 7-3.

**III. THE OPPOSITION FAILS TO ADDRESS HOW THE U.S.**

**ATTORNEY'S OFFICE FALSIFIED MATERIAL FACTS OF THE COURT RULING IN GREENWAY'S 2013 COLORADO CIVIL LAWSUIT**

Plaintiffs' well-pled and fact-based FRCP 60(D)(3) motion centers on a brazenly false and materially misleading October 28, 2016, email listed as Exhibit 9 to the Plaintiffs' 2017 Civil Rights Lawsuit. *Gustavo Escamilla, et al. v. Department of Homeland Security, et al.* 2:17-cv-07748 [DE-1].

The Court and USAO-CDOC Attorney's previously acknowledged that this is an October 28, 2016, email from the Department of Homeland Security ("DHS") official in charge of investigating a criminal trademark infringement complaint named DHS Agent Shawn Gibson ("Gibson"). On October 28, 2016, and again on November 21, 2016, via email records supplied to this Court, Gibson repeatedly misrepresented this as the **sole and phony** underlying legal basis why DHS and the USAO-MO were unwilling to press forward with Greenway's criminal trademark infringement complaint at that time.

On behalf of Greenway, Escamilla filed a complaint with Gibson and several other DHS agents in attendance in March 2015, against the politically and criminally connected Selakovic, Selakovic's longtime business partner Steven Blackburn ("Blackburn"), and entities operated and ultimately controlled by Selakovic. Gibson and the USAO-MO falsified and altered material facts, deceived and coerced Escamilla regarding Court records included in a 2013 civil lawsuit Greenway filed in Colorado ("Greenway's 2013 Colorado Civil Lawsuit"). *See Greenway v. Blackburn, et al.*, case no. 1:13-cv-01088 (DE-129)

Gibson falsely misrepresented material facts stating in relevant part:

> 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.

This never ever occurred. This statement directly contradicts Colorado Chief Judge Marcia Kreiger's ("Kreiger") March 31, 2015 ruling ***against*** **Selakovic and in favor of Greenway regarding Greenway's meritorious civil trademark infringement claims** during Greenway's 2013 Colorado Civil Lawsuit, which 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,* 341 F.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**." …

[Emphasis added.]

Worse yet, on November 21, 2016, when Escamilla contacted DHS Agent Gibson via email again, Gibson falsely stated in relevant part:

> **"While 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." …
>
> "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**."

[Emphasis added.]

Therefore, DHS Gibson's and USAO-MO false misrepresentations regarding Colorado Chief Judge Marcia Krieger ruling in Greenway's 2013 Colorado Civil Lawsuit has been repeatedly used by the U.S. Attorney's office to mislead this Court.

## IV. THE OPPOSITION FAILS TO ADDRESS THE USAO-CDOC'S MULTIPLE INSTANCES OF ALTERING MATERIAL FACTS, CONCEALING MATERIAL EVIDENCE, AND FILING MULTIPLE FALSE AND MATERIALLY MISLEADING DECLARATIONS, PLEADINGS, AND OTHER FILINGS IN PLAINTIFFS' 2017 CIVIL RIGHTS LAWSUIT

The Opposition fails to address multiple instances of the USAO-CDOC U.S. Attorneys engaging in egregious attorney misconduct during the Plaintiffs' 2017 civil rights lawsuit, which is exhaustively identified with detailed specificity in Plaintiffs' Rule 60(d)(3) motion. The USAO-CDOC falsified material facts and filed a false and materially misleading motion to dismiss the 2017 Civil Rights Lawsuit with prejudice and without leave to amend, which the Court granted. Plaintiffs also alleged that they exhausted all their available administrative remedies by properly advising DHS Agent Simons that Selakovic, Blackburn, and related entities had caused Greenway and Escamilla millions of dollars in financial losses during multiple telephone conversations between Escamilla and Simons.

DHS-OPR Agent Simons and DHS Agent Gibson contradicted each other regarding DHS' refusal to press forward on Greenway's criminal trademark infringement complaint at that time, based solely on a purported August 17, 2015 negative Court ruling in favor of Selakovic and against Greenway regarding its trademark infringement claims, which never occurred. And on March 31, 2015, Judge Kreiger ruled in favor of Greenway and ***against*** Selakovic regarding Greenway's trademark infringement claims, stating in relevant part;

> **"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.** . . .

[Emphasis added.]

However, the Opposition fails to address how the USAO-CDOC misled this Court to believe that the Greenway's ownership of its trademark was somehow in doubt. This was done despite the record clearly demonstrating that the opposite was true.

## V. ON APRIL 21, 2021, ESCAMILLA FILED A FORMAL COMPLAINT WITH THE UNITED STATES OFFICE OF THE INSPECTOR GENERAL ("US-OIG") REGARDING ESCAMILLA'S MARCH 2021 DISCOVERY OF AUSA PARK'S AND USAO-CDOC U.S. ATTORNEY'S FABRICATING A FALSE NARRATIVE, CONCEALING EVIDENCE, WHO FILED MULTIPLE FALSE AND MATERIALLY MISLEADING DECLARATIONS, PLEADINGS, AND FILINGS DURING PLAINTIFFS' 2017 CIVIL RIGHTS LAWSUIT

Had the USAO-CDOC met and conferred with Plaintiffs' Counsel according to Local Rule 7-3, the USAO-CDOC's misguided concerns regarding Escamilla's recent March 2021 discovery of multiple USAO-CDOC U.S. Attorney's violating Plaintiffs' clearly established civil rights to their property and due process of law would have been properly addressed. On April 21, 2021, Escamilla filed a formal federal civil rights complaint against U.S. Attorney Park and several other U.S. Attorney's with US-OIG.

/ / /

## VI. PLAINTIFFS' RULE 60(D)(3) MOTION FAR EXCEEDS ANY EVIDENTIARY THRESHOLDS DEMONSTRATING USAO-CDOC HARMED THE INTEGRITY OF THE JUDICIAL PROCESS

Rule 60(d)(3) motions for fraud on the Court are subject to a "high standard." *United States v. Sierra Pacific Indus., Inc.*, 862 F.3d 1157, 1171 (9th Cir. 2017). To prevail, the movant must establish fraud by clear and convincing evidence. *United States v. Estate of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011). "In determining whether fraud constitutes fraud on the court, the relevant inquiry is not whether fraudulent conduct prejudiced the opposing party, but whether it 'harmed the integrity of the judicial process." *Sierra*, 862 F.3d at 1167-68 (internal quotations omitted).

The fraud must be an "intentional, material misrepresentation" that "involve[s] an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *Id.* (quoting *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1097 (9th Cir. 2007); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995)).

The relevant misrepresentations must go "to the central issue in the case," *Sierra*, 862 F.3d at 1168 (quoting *Estate of Stonehill*, 660 F.3d at 452), and must "affect the outcome of the case," *Id.* In other words, the newly discovered misrepresentations must "significantly change the picture already drawn by previously available evidence." *Id.* Perjury may constitute fraud on the court if it "involves, or is suborned by, an officer of the court." Finally, relief for fraud on the court is available only where the fraud was not known at the time of settlement or entry of judgment. *Id. Myers v. Freed* (D. Ariz., Oct. 13, 2020, No. CV-19-05683-PHX-SMB) [pp. 2]

Plaintiffs' Rule 60(d)(3) motion for fraud on the Court demonstrates numerous USAO-CDOC U.S. Attorney's "harmed the integrity of the judicial process." *Sierra*, 862 F.3d at 1167-68 (internal quotations omitted). USAO-CDOC

attorneys supplied the Court with multiple "intentional, material misrepresentation(s)" while engaging in an "unconscionable plan or scheme which [was] designed to improperly influence the court in its decision." *Id.* (*quoting In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1097 (9th Cir. 2007); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995)).

Furthermore, Plaintiffs' Rule 60(d)(3) motion for fraud on the Court goes straight "to the central issue in the case," *Sierra*, 862 F.3d at 1168 (quoting *Estate of Stonehill*, 660 F.3d at 452), which was the purported August 17, 2015, negative Court ruling regarding Greenway's meritorious civil trademark infringement claims where the Colorado Court previously ruled the exact opposite of what DHS Agent Gibson and USAO-MO falsely misrepresented to Escamilla and Greenway repeatedly, and which the USAO-CDOC attorneys republished in their filings with this Court.

Escamilla's recent March 2021 discovery of USAO-CDOC U.S. Attorneys engaging in egregious misconduct "significantly changed the picture already drawn by previously available evidence," regarding Escamilla's June 2013 communications with Tom and his ex-wife Wendy Ryan, multiple USAO-CDOC U.S. Attorney's, including AUSA Park, improperly presented this to the Court—falsely claiming that this involved an entirely different person named Michael J. Ryan, which also negatively affected the outcome of the Plaintiffs' 2017 Civil Rights Lawsuit.

Furthermore, the AUSA Park's and Opposition fails to address AUSA Robert A. Ramey's ("Ramey") false and materially misleading declarations submitted to the Court under penalty of perjury, which constitute fraud on the court as it "involves, or is suborned by, an officer of the court."

But the USAO-CDOC compounded its fraud on the Court on July 19, 2021, in its opposition, which supplied the Court with "intentional, material misrepresentation[s]" that "involved an unconscionable plan or scheme which is

designed to improperly influence the court in its decision." *Id.* (quoting *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1097 (9th Cir. 2007); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995)).

## VII. A MOTION OR ACTION FOR FRAUD ON THE COURT IS NOT PRECLUDED BY THE PASSAGE OF TIME

There is no time bar to a motion or action to set aside a final judgment for fraud on the court. Fed. R. Civ. P. 60(c). Indeed, the rule makes clear that the one-year time limit applicable to circumstances set forth in subdivision (b) does not apply to subdivision (d)(3). Fed. R. Civ. P. 60(c)(1).

"[T]he power to vacate for fraud on the court is . . . great," and is largely "free from procedural limitations." *Id.* at 444 (*citing* 11 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2870 (2d ed. 1987)). Thus, any delay in bringing a motion or action for fraud on the court does not bar the court from granting relief under Rule 60(d)(3). *See Hazel-Atlas*, 322 U.S. at 247

The Supreme Court has recognized, "even if [the moving party] did not exercise the highest degree of diligence [the] fraud cannot be condoned for that reason alone. . . . Surely it cannot be that the preservation of the integrity of the judicial process must always wait upon the diligence of the litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Id.* The Ninth Circuit echoed this reasoning in *Pumphrey*, stating, "even assuming that [the plaintiff] was not diligent in uncovering the fraud, the district court was still empowered to set aside the verdict, as the court itself was a victim of the fraud." *Pumphrey,* 62 F.3d at 1133.

Moreover, USAO-CDOC U.S. Attorney's play a unique role in our judicial system, as they are "the representative not of an ordinary party to a controversy, but of a sovereignty . . . [whose] interest . . . is ***not that it shall win a case, but that justice shall be done.***" *Berger*, 295 U.S. at 88 (emphasis added); *see also* A.B.A.

Op. 150 ("The prosecuting attorney is the attorney of the state, and it is his primary duty not to convict but to see that justice is done.").

"The Government's duty of honesty to the Court can ***never*** be excused, no matter what the circumstance. The Court is charged with the humbling task of defending the Constitution and ensuring that the Government does not falsely accuse people, needlessly invade their privacy or wrongfully deprive them of their liberty. The Court simply cannot perform this important task if the Government lies to it. Deception perverts' justice. Truth always promotes it." *Islamic Shura Council of Southern California v. F.B.I.,* 779 F.Supp.2d 1114, 1125 (C.D. Cal. 2011)

USAO-CDOC U.S. Attorneys' misrepresentations and bad faith misconduct independently constitute fraud on the court under Rule 60(d)(3). But even if the Court were to conclude that no discrete sequence of events was sufficient to constitute on its own a fraud on the Court, the analysis most certainly would not end there. Fraud on the court may also be found by assessing various acts of misconduct that, when taken together over the entire course of litigation, rise to the level of a fraud on the court. *See United States v. Stonehill,* 660 F.3d 415, 446-52 (analyzing seven separate instances of litigation malfeasance in isolation to determine whether each of those instances constituted a fraud upon the court, and after answering that inquiry in the negative, analyzing whether the "allegations as a whole" amounted to fraud on the court); *see also Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1133 (listing a series of steps undertaken by a company's general counsel, which, taken together, constituted fraud on the court).

Thus, the pervasive and coordinated misconduct of USAO-CDOC U.S. Attorneys, whether viewed in isolated parts or as a whole, reflects "an effort by the government to prevent the judicial process from functioning 'in the usual manner,'" and that "involved perjury or nondisclosure [ ] so fundamental that it undermined the workings of the adversary process itself." *Stonehill*, 660 F.3d at 445.

/ / /

## VIII. CONCLUSION

For all of the reasons stated above, Plaintiffs respectfully request the Court grant Plaintiffs' Rule 60(d)(3) motion for fraud on the Court.

DATED: November 1, 2021 LAW OFFICE OF MAINAK D'ATTARAY

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

**DECLARATION OF MAINAK D'ATTARAY**

I, Mainak D'Attaray, declare:

1. I am an attorney duly licensed to practice before this United District Court, and the principal of the Law Office of Mainak D'Attaray, counsel of record for plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc. ("Greenway") (collectively, "Plaintiffs"). The following is based on my personal knowledge. If called to testify to the statements below, I could and would do so competently.

2. I read AUSA Finn's declaration and I find it curious that although my office was looking to meet and confer and initiated the process and followed up after two weeks of no response, that we would avoid meeting and conferring prior to bringing this motion. At no time did AUSA Park or the USAO-CDOC advise me to expect an email from AUSA Finn. Nor do I possess any such records of AUSA Finn emailing or contacting me or my office from the email address of kevin.finn@usdoj.gov.

3. On the contrary, on October 4, 2021, and according to multiple email communications I provided in my previous declaration, AUSA Park represented to me that I should be expect a response to my meet and confer request from Ross Cuff ("Cuff"), email address—ross.cuff@usdoj.gov, or Joanne Osinoff ("Osinoff"), email address—joanne.osinoff@usdoj.gov.

4. And again, when AUSA Park finally forwarded my September 21, 2021 email to her superiors on October 4, 2021, she emailed me asking if I had heard from her bosses, Cuff or Osinoff. At the same time, AUSA Finn claims to have sent an email on October 4, 2021, and again on October 5, 2021, which my office has no record of such emails. But, at no time did AUSA Park, her superiors Ossinoff or Cuff, or even Finn pick up the phone to follow up or meet and confer with me. Nonetheless, in my September 21, 2021 email, I reminded Park that the USAO-CDOC had been served with the motion we intended to "refile" so that any

issues with the motion could be analyzed and raised via email. Again, the USAO-CDOC did not do that.

5. It strains credulity that I, who sought to meet and confer pursuant to Local Rule 7-3 and followed up with AUSA Park would then avoid meeting and conferring.

I declare the above is true under the penalty of perjury under the laws of the United States of America; executed this 1st day of November 2021 at Long Beach, California.

___/s/ Mainak D'Attaray_____
Mainak D'Attaray

**CERTIFICATE OF SERVICE**

I am employed in Defendant of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3780 Kilroy Airport Way, Suite 200, Long Beach, California 90806.

On November 1, 2021, I served the foregoing document described as **PLAINTIFFS GUSTAVO ESCAMILLA'S AND GREENWAY NUTRIENTS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION FOR FRAUD ON THE COURT PURSUANT TO FRCP 60(D)(3); DECLARATION OF MAINAK D'ATTARAY** on all interested parties:

Grace Y. Park, Assistant United States Attorney
United States Attorney's Office, Central District of California
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
Grace.Park@usdoj.gov

☐ **BY PERSONAL SERVICE:** Service on the individuals listed on the attached Service List.

☐ **BY UNITED STATES MAIL:** I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, mail is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by FedEx and addressed as listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY COURIER SERVICE:** I caused the document to be delivered by courier service to the addressee listed above.

☐ **BY FACSIMILE TRANSMISSION:** I faxed the document to the fax number listed above. No error was reported by the fax machine that I used.

☒ **BY ELECTRONIC TRANSMISSION:** I caused the above-referenced document to be transmitted electronically to the intended recipient(s) at the email address listed above.

Executed November 1, 2021 at Long Beach, California. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true.

Melanie Simon

# Exhibit L

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

| | |
|---|---|
| Gustavo Escamilla et al.,<br>PLAINTIFF(S)<br>v.<br>Department of Homeland Security, et al.,<br>DEFENDANT(S). | CASE NUMBER:<br>CV 17-07748-ODW(MRWx)<br>**ORDER TO STRIKE ELECTRONICALLY FILED DOCUMENT(S)** |

The Court hereby **ORDERS** the documents listed below be **STRICKEN** for failure to comply with the Court's Local Rules, General Orders, and/or Case Management Order, as indicated:

| 10/18/21 | / 21 | / MOTION to Set Aside Judgment |
|---|---|---|
| *Date Filed* | *Doc. No.* | *Title of Document* |
| | / | / |
| *Date Filed* | *Doc. No.* | *Title of Document* |

- ☐ Document submitted in the wrong case
- ☐ Incorrect document is attached to the docket entry
- ☐ Document linked incorrectly to the wrong document/docket entry, all the documents are attached incorrectly.
- ☐ Incorrect event selected. Correct event is _____
- ☐ Case number is incorrect or missing
- ☐ Hearing information is missing, incorrect, or not timely
- ☐ Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- ☐ Case is closed
- ☐ Proposed Document was not submitted as separate attachment
- ☐ Title page is missing
- ☐ Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- ☐ Local Rule 56-2 Statement of genuine disputes of material fact lacking
- ☐ Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- ☐ Local Rule 11-6 Memorandum/brief exceeds 25 pages
- ☐ Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- ☑ Other: Failure to comply with Local Rules 7-3 and 11-6.

Dated: November 9, 2021

By: _____
U.S. District Judge ~~/ U.S. Magistrate Judge~~

*cc: Assigned District and/or Magistrate Judge*

**Please refer to the Court's website at www.cacd.uscourts.gov for Local Rules, General Orders, and applicable forms.**

# Exhibit M

O
JS-6

# United States District Court
# Central District of California

GUSTAVO ESCAMILLA; and GREENWAY NUTRIENTS, INC.

Plaintiff,

v.

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

Defendants.

Case No. 2:17-cv-07748-ODW(MRWx)

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE [9]**

## I. INTRODUCTION

Plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc., ("Greenway") filed this action against the Department of Homeland Security ("DHS") and the United States of America (collectively, "Defendants"). Based upon Defendants' actions in conjunction with a trademark infringement investigation, Plaintiffs assert various federal and state law claims for violations of civil rights, due process, and equal protection, in addition to claims for intentional and negligent infliction of emotional distress. (*See* Compl. ¶¶ 76–109, ECF No. 1.) Plaintiffs also

request declaratory and injunctive relief. (*Id.* ¶¶ 110–112.) Defendants moved to dismiss the complaint for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and failure to state a claim, pursuant to Rule 12(b)(6). (Mot., ECF No. 9.) For the reasons discussed below, the Court **GRANTS** Defendants' Motion to Dismiss with prejudice.

## II. FACTUAL BACKGROUND

On April 13, 2013, Greenway filed a civil action (the "Colorado action"), alleging trademark infringement and other claims against multiple defendants, including a subset of Greenway's own investors. (*See Greenway Nutrients, Inc. v. Blackburn*, Case No. 1:13-cv-13-1088-MSK-KMT (D. Colo.), Compl., ECF No. 1.) DHS officials subsequently contacted Plaintiffs in or about March 2015. (Compl. ¶ 13.) On March 3, 2015, Plaintiffs met with Shawn Gibson ("Gibson"), Operations Manager for the United States Immigration and Customs Enforcement ("ICE"), a DHS agency, and several other special agents. (Compl. ¶ 14; Mot. 3.) Gibson explained to Plaintiffs that the Greenway investor defendants in Plaintiffs' civil suit had already been subject to extensive investigation for criminal trademark infringement. (Compl. ¶¶ 17–18; Mot. 3.) He told them that, as of the meeting date, ICE and the United States Attorney's Office had recovered over $26 million in the investigation. (Compl. ¶ 18; Mot. 3.) He also informed Plaintiffs that they may be able to recover from an established victims' fund. (*Id.*) Plaintiffs allege that Gibson also promised them that the Kansas City U.S. Attorney's Office for the Western District of Missouri ("USAO-MO") agreed that Greenway would be added as a victim in the government's case and that they "would no longer ever need to worry about having to hire another private attorney . . . to pursue the accused suspects[']' ongoing theft" of Greenway's products. (Compl. ¶¶ 19, 21.) In May 2015, Greenway's counsel in the Colorado action withdrew, and Greenway never retained new counsel. (*See Greenway Nutrients*, Case No. 1:13-cv-13-1088-MSK-KMT, ECF Nos. 137, 143.)

Escamilla again communicated with Gibson in June 2015, and Gibson responded that his team was continuing their investigation in relation to Plaintiffs' claims. (Compl., Ex. 5.) Escamilla reached out to DHS again on August 3, 2015, expressing anger and frustration about the length of the investigation. (*See id.*, Ex. 6.) Gibson responded, explaining his team was continuing their work and informing Escamilla that these accusatory emails were not helpful. (*Id.*) On August 17, 2015, the District Court of Colorado dismissed Greenway's suit without prejudice due to Greenway's failure to prosecute. (*Greenway Nutrients*, Case No. 1:13-cv-13-1088-MSK-KMT, Judg., ECF No. 148.)

Escamilla contacted Gibson again in October 2016 to complain about the Greenway defendant investors' continued infringement.[1] (*See* Compl., Exs. 7–8.) On October 28, 2016, Gibson notified Plaintiffs that—due to Plaintiffs' failure to prevail against the Greenway investors in the Colorado action—ICE and USAO-MO would no longer investigate the Greenway investors' product infringement. (*Id.* ¶ 27; Mot. 3.) Plaintiffs immediately protested this decision. (Compl. ¶ 28.) They contacted Gibson again on November 21, 2016, to inquire about the investigation against the Greenway investors and advise Gibson that Escamilla felt discriminated against for his status as "a Mexican-American small businessman . . . [not] represented by private legal counsel." (*Id.* ¶¶ 29–30.) Escamilla complained that he was being taken advantage of by DHS. (*Id.* ¶ 30.) Gibson responded that same day, clarifying that DHS could not "move forward with any investigation involving [Plaintiffs'] trademark until [Plaintiffs] resolve[d] this issue with the District Court in Colorado," because that decision in favor of the alleged infringers precluded them from filing charges. (*Id.*, Ex. 10.)

[1] It is unclear from the allegations and attached exhibits whether Gibson and the DHS ever responded to the messages sent by Plaintiff in early October. (*See* Compl. ¶ 26, Ex. 8.)

On April 11, 2017,[2] Plaintiffs notified Gibson that they "just discovered new and compelling evidence" regarding Michael J. Ryan, the former attorney for Greenway, and his "unlawful[] divulging, sharing, [and] . . . disclosing [of] Greenway'[s] confidential business information [and] trade secrets." (*Id.* ¶ 32; Mot. 3.) After receiving no response, Plaintiffs contacted DHS. (*See* Compl. ¶ 33.) Plaintiffs allege they filed a formal complaint with the DHS Office for Civil Rights and Civil Liberties on May 1, 2017. (*See id.*) ICE has no record, however, indicating Plaintiffs formally filed a complaint. (Declaration of Robert A. Ramey ("Ramey Decl.") ¶¶ 2–3, ECF No. 9-1.) On May 2, 2017, DHS emailed Escamilla explaining that they lacked jurisdiction over his allegations. (*See* Compl., Ex. 11.)

Plaintiffs then contacted the DHS Office of Professional Responsibility ("OPR") on July 27, 2017. (*Id.* ¶ 36.) They expressed their concerns to Russell Simons ("Simons"), OPR Resident Agent in Charge. (*Id.* ¶¶ 37–38; Mot. 3.) Simons initiated an investigation. (Compl. ¶ 39.) Between August 3 and August 4, 2017, there were multiple follow-up exchanges between Simons and Plaintiffs. (*Id.* ¶¶ 39–46; Mot. 4.) Simons explained Gibson's inability to proceed with their claims in light of the adverse civil judgment. (Compl. ¶¶ 41–42.) Plaintiffs explained the circumstances of the civil case's dismissal, and Simons agreed to speak to Gibson about this issue again. (*Id.* ¶ 45.) After further discussion with Gibson, on August 4, 2017, Simons called and reiterated to Plaintiffs that they would be required to return to federal civil court to receive a favorable decision in the Colorado action before DHS could continue pursuing their claims, as the standing decision left the validity of Plaintiffs' trademark ownership at issue. (*Id.* ¶ 46; Mot. 4.)

On October 24, 2017, Plaintiffs filed a complaint against Defendants for federal and state civil rights violations, federal due process violations, federal equal protection violations, intentional infliction of emotional distress, and negligent infliction of

[2] The Court recognizes and agrees that the date listed in the Complaint with regard to this additional information, April 11, 2016, is properly read in context as April 11, 2017. (*Id.* ¶ 32; Mot. 3.)

emotional distress, seeking damages as well as injunctive and declaratory relief. (*See generally* Compl.) On January 29, 2018, Defendants moved to dismiss the case pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (*See generally* Mot.) Defendants' Motion is now before the Court.[3]

## III. LEGAL STANDARD

### A. Subject Matter Jurisdiction

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may move to dismiss a complaint for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "Jurisdictional dismissals in cases premised on federal-question jurisdiction are exceptional . . . ." *Sun Valley Gasoline, Inc. v. Ernst Enters.*, 711 F.2d 138, 140 (9th Cir. 1983). "Rule 12(b)(1) jurisdictional challenge may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A facial attack is based on the challenger's assertion that allegations in the complaint are "insufficient on their face to invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. A factual attack disputes the validity of allegations that, if true, would invoke federal jurisdiction. *Id.* In resolving a factual attack, the Court "need not presume the truthfulness of the plaintiffs' allegations." *White*, 227 F.3d at 1242. "[T]he district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Safe Air*, 373 F.3d at 1039. This evidence includes "affidavits furnished by both parties." *Savage v. Glendale Union High Sch. Dist. No. 205, Maricopa Cnty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). "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." *Id.*

[3] After considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

**B. Failure to State a Claim**

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering a motion to dismiss for failure to state a claim, "the court must accept as true all factual allegations in the complaint, as well as all reasonable inferences that may be drawn from such allegations." *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 n.2 (9th Cir. 2000). To be entitled to this presumption of truth, "allegations in a complaint . . . 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 v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014). All such allegations are to be construed in the light most favorable to the nonmoving party. *Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). The "factual allegations that are taken as true must [also] plausibly suggest an entitlement to relief." *Levitt*, 765 F.3d at 1135. To determine this, the Court relies upon its judicial experience and common sense. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "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 985, 991 (9th Cir. 2011).

**C. Leave to Amend**

Under Rule 15 of the Federal Rules of Civil Procedure, a party may amend its pleading once as a matter of course within twenty-one days of serving or, if the pleading requires a responsive pleading, within twenty-one days of service of a responsive pleading or service of a Rule 12 motion. *See* Fed. R. Civ. P. 15(a). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2). The Court should freely grant leave to amend when justice requires. *Id.* "This policy is to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). In assessing the appropriateness of leave to amend, the Court considers "undue

delay, bad faith dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party of allowance of the amendment, and futility of the amendment . . . ." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The opposing party bears the burden of showing why leave to amend should not be granted. *DCD Programs, Ltd. v. Leighton*, 833 F.3d 183, 187 (9th Cir. 1987).

## IV. DISCUSSION

Under Rule 12, a party may bring a motion to dismiss based on seven different grounds. *See* Fed. R. Civ. P. 12(b). Accordingly, Defendants request that Plaintiffs' complaint be dismissed for lack of subject matter jurisdiction and failure to state a claim. (*See generally* Mot.)

### A. Subject Matter Jurisdiction

"[D]istrict courts . . . have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Generally, "[w]hether the complaint states a cause of action on which relief could be granted is a question of law[,] and just as issues of fact[,] it must be decided after and not before the court has assumed jurisdiction over the controversy." *Bell v. Hood*, 327 U.S. 678, 682 (1946). The only exceptions to this are "where the alleged claim under the [C]onstitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such claim is wholly insubstantial and frivolous." *Safe Air*, 373 F.3d at 1039 (quoting *Bell*, 327 U.S. at 682.); *cf. Sun Valley Gasoline*, 711 F.2d at 140 ("[A] jurisdictional finding of genuinely disputed facts is inappropriate when the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits' of an action.").

In this case, Plaintiffs' assertion of federal question jurisdiction appears to be predicated upon claims brought under 42 U.S.C. § 1983 for violations of civil rights, due process, and equal protection, and the Federal Tort Claims Act ("FTCA"), 28

U.S.C. § 1346, for civil right violations and tortious conduct. (Compl. ¶¶ 76–112.) Defendants assert Plaintiffs fail to satisfy these requirements on several grounds.

**1. Preliminary Considerations**

When filing a complaint, Rule 8 of the Federal Rules of Civil Procedure requires that the pleader make clear which claims are brought against which defendants. *See Hearns v. San Bernardino Pol. Dep't*, 530 F.3d 1124, 1129 (9th Cir. 2008). Defendants assert that Plaintiffs failed to comply with Rule 8 by failing to identify whether each claim is brought against the United States, DHS, or both. (Mot. 6.) Courts frequently find that this requirement is unsatisfied in litigation involving a large number of defendants. *See, e.g.*, *Hearns*, 530 F.3d at 1132 (looking to whether clarity existed as to which claims were brought against which defendants); *McHenry v. Renne*, 84 F.3d 1172, 1174 (9th Cir. 1996) (affirming dismissal of a case where complaint failed to specify which of twenty named defendants were liable for which claims). Here, there are only two named defendants. (*See* Compl.) In each claim for relief, Plaintiffs reference "Defendants". (*Id.* ¶¶ 77, 83, 91, 99, 103, 107, 111.) In light of this, the Court presumes that Plaintiffs intended to allege all claims against both the United States and DHS and proceeds with its analysis accordingly.

**2. 42 U.S.C. § 1983**

Plaintiffs' first three claims—alleging violations of civil rights, due process, and equal protection, respectively—are brought pursuant to 42 U.S.C. § 1983. (*See* Compl. ¶¶ 75–96.) In order to establish jurisdiction and bring a cause of action under section 1983, a plaintiff must show (1) some person deprived him of a federal right; and (2) that the person depriving him of that right acted under color of *state* law. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Claims brought under this provision are to be brought against a *person*, not an entity. 42 U.S.C. § 1983. A federal agency does not constitute a "'person' within the meaning of this provision." *Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011). Here, all three section 1983 claims are brought against two entities, the United States and DHS; thus, Defendants, by their

very nature, cannot be subjected to liability under this provision. (*See* Compl. ¶¶ 5–7.) Plaintiffs' section 1983 claims are precisely the sort of "wholly insubstantial and frivolous" claims which properly warrant dismissal under Rule 12(b)(1). *Safe Air*, 373 F.3d at 1039; *see also* Fed. R. Civ. P. 12(b)(1).

Furthermore, it is a well-established that the "United States, as sovereign, is immune from suit save as it consents to be sued." *United States v. Mitchell*, 445 U.S. 535, 538 (1980). The same principles apply when a federal agency is sued. *Villegas v. United States*, 926 F. Supp. 2d 1185, 1195 (citing *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 687–88 (E.D. Wash. 2013)). Waivers of sovereign immunity must be clear and unequivocal. *Id.* No such waiver existed here. *Gibson*, 781 F.2d at 1343. Section 1983 "provides no right of action against federal [actors]." *Russell v. U.S. Dep't of the Army*, 191 F.3d 1016, 1019 (9th Cir. 1999). Plaintiffs themselves acknowledge that there has been no waiver of sovereign immunity in this instance and do not allege that the actions upon which their complaint is predicated occurred under color of state law. (*See* Opp. 2, ECF No. 10.) Accordingly, Plaintiffs' Claims 1–3 are also precluded by sovereign immunity.

Plaintiffs also bring these claims against the United States "on behalf of" Simons and Gibson in their official capacities. (Compl. ¶¶ 6–7.) As a preliminary matter, this is improperly pleaded. Official-capacity suits brought under section 1983—while treated in practice as suits against the individual official's employing agency—must be pled against individuals. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Thus, this action should have been brought against Simons and Gibson in their official capacity as government employees.

However, even if properly pleaded, "[f]ederal officers acting under *federal* authority are immune from suit under section 1983." *Gibson*, 781 F.2d at 1343. Plaintiffs specifically sought to bring suit against Simons and Gibson "in [their] official capacity" as federal employees. (Compl. ¶¶ 6–7.) Thus, even if pled against

Simons and Gibson, these claims could not proceed. The Court **DISMISSES** Claims 1–3 for lack of subject matter jurisdiction.

**3. Federal Tort Claims Act**

"The FTCA authorizes private 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.'" *Jachetta*, 653 F.3d at 904 (citing 28 U.S.C. § 1346(b)(1)). However, "waivers of sovereign immunity must be construed in favor of the sovereign." *Foster v. United States*, 522 F.3d 1071, 1074 (9th Cir. 2008). The FTCA is the *only* remedy for tortious conduct by the United States and *only* the United States may be sued under it. *F.D.I.C. v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998). Such suits may be brought on account of the actions of federal agencies. *Id.* However, the FTCA does not waive sovereign immunity as to these agencies, and accordingly, agencies themselves cannot be sued pursuant to the FTCA. *Id.* Thus, Plaintiffs lack subject matter jurisdiction to sue DHS with regard to Claims 4–7 for civil rights violations, intentional infliction of emotional distress, negligent infliction of emotional distress, and injunctive and declaratory relief under California law. The claims brought pursuant to the FTCA may only be brought against Defendant United States, if they may be brought at all.

**a. Exhaustion of Administrative Remedies**

The FTCA only provides jurisdiction for tort suits against the government when a plaintiff has fully exhausted their administrative remedies. *D.L. v. Vassilev*, 858 F.3d 1242, 1244 (9th Cir. 2017); *Avery v. United States*, 680 F.2d 608, 609 (9th Cir. 1982). This means that they must first file a claim with the agency allegedly at fault. *Id.* A satisfactory claim (1) "give[s] an agency sufficient notice to commence investigation" and (2) "places a value on the claim." *Shipek v. United States*, 752 F.2d 1352, 1353 (9th Cir. 1985); *see also Avery*, 680 F.2d at 610 ("[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.").

The FTCA authorizes Plaintiffs to bring a tort action only after an agency claim has been conclusively denied or six months elapse without a final disposition of the agency claim. *Jerves v. United States*, 966 F.2d 517, 519 (9th Cir. 1992). It is the Plaintiffs' burden to establish initial subject matter jurisdiction under the FTCA. *Sabow v. United States*, 93 F.3d 1445, 1451 (9th Cir. 1996), *as amended*, Sept. 26, 1996.

Plaintiffs allege that they filed a formal complaint with the DHS Office for Civil Rights and Civil Liberties on May 1, 2017. (*See* Compl. ¶ 33.) However, in reviewing a Rule 12(b)(1) motion, the Court looks to all available evidence. *Safe Air*, 373 F.3d at 1039. ICE asserts by affidavit that there is no record of a formal complaint. (Ramey Decl. ¶¶ 2–3.) The only evidence that Plaintiffs provide in support of their assertion is an email response from DHS. (Compl., Ex. 11.) While this indicates that some contact did occur between Plaintiffs and Defendants on the dates in question, it does not establish that a formal complaint was filed or that, if such a complaint did exist, it met the requirements for a claim sufficient to satisfy the FTCA. (*See id.*) Escamilla did also contact Simons on August 11, 2017 via US Express Mail, sending a letter with the subject "Re: Greenway Nutrients ® federal law enforcement misconduct complaint." (*Id.*, Ex. 12.) However, the letter fails to allege any amount of damages. (*See id.*) Thus, it still does not constitute a satisfactory formal complaint. Plaintiffs fail to establish that they exhausted their administrative remedies, and the Court is therefore precluded from exercising jurisdiction over these claims pursuant to the FTCA. Accordingly, dismissal pursuant to Rule 12(b)(1) is appropriate as to all state law claims in regard to the United States, in addition to DHS.

**b. Discretionary Function Exception**

As a secondary matter, even if the Court were to grant Plaintiffs' leave to amend—and Plaintiffs provided additional support sufficient to establish the existence of a formal complaint—Plaintiffs' claims could still be barred by the discretionary

function exception if they are based upon the "exercise or performance or the failure to exercise or perform a discretionary function." *See* 28 U.S.C. § 2680(a). "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." *Gonzales v. United States*, 814 F.3d 1022, 1027 (9th Cir. 2016). Where it applies, no federal subject matter jurisdiction exists. *Sabow v. United States*, 93 F.3d 1445, 1451 (9th Cir. 1996). "The United States bears the ultimate burden of proving the applicability of the discretionary function exception." *Sabow*, 93 F.3d at 1451.

The Supreme Court has established a two-step analysis for determining the exception's applicability. *Bailey v. United States*, 623 F.3d 855, 860 (9th Cir. 2010). First, the Court considers "whether the challenged actions involve 'an element of judgment or choice.'" *Sabow*, 93 F.3d at 1451. It is well-established that "[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); *see also 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."). Likewise, "[t]he investigation of crime involves policy judgments at the core of the executive branch." *Gonzales v. United States*, 814 F.3d 1022, 1032 (9th Cir. 2016). This remains true, even where a plaintiff asserts allegations of negligence against the involved agency. *See Gen. Dynamics*, 139 F.3d at 1283. Where the challenged actions do involve an element of choice or judgment, the Court then looks to "whether it is of the kind that the discretionary exception was designed to shield." *United States v. Gaubert*, 499 U.S. 315, 322–23 (1991). If it involves consideration of social, economic, or political policy, then the exception applies. *Sabow*, 93 F.3d at 1451.

Looking to the first prong of the test, Plaintiffs' state law claims center around the allegation that Defendants violated Plaintiffs' rights by refusing to reopen the investigation into Greenways' claims after Plaintiffs came forward with new evidence. (*See* Compl. ¶ 54.) As Defendants explained to Plaintiffs, they chose not to further investigate Plaintiffs' claims due to the negative judgment in the Colorado action. (*See id.* ¶ 27.) DHS has limited resources available and must use its judgment to determine where these resources are best used. *See Dichter-Mad*, 707 F. Supp. 2d at 1038 ("Courts 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."). DHS weighed the impact of allotting these scarce resources to a criminal investigation in which a civil court had already ruled against the victims and found, quite reasonably, that this would not be in the best interest of the public. (*See* Mot. 12.) The Court finds that DHS's decision not to pursue further investigation of Plaintiffs' claims clearly involved an element of discretion and judgment. *See Gonzales*, 814 F.3d at 1032.

The question then becomes whether DHS's exercise of judgment implicates social, economic, and political policy. Decisions involving investigation and prosecution inherently require consideration of stewardship of judicial resources as well as concerns regarding safety and crime prevention. Defendants made a judgment call based upon what they believe will be in the public interest in light of the relevant social, economic, and political concerns. Thus, the second prong is also satisfied. Accordingly, the Court **DISMISSES** Plaintiffs' state law claims, Claims 4–7, for lack of subject matter jurisdiction.[4]

[4] These claims may also be precluded by the statute of limitations. (Mot. 6–7.) All tort claims brought against the United States must be brought within two years of their accrual, or they are forever barred. 28 U.S.C. § 2401(b). "Although ordinarily the defendant bears the burden of proving an affirmative statute of limitations defense, here the statute of limitations is jurisdictional, and, [w]hen subject matter jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Kingman Reef Atoll*

**B. Failure to State a Claim**

Defendants also bring their Motion to Dismiss pursuant to Rule 12(b)(6) for failure to state a claim. To properly bring a claim, Rule 8(a) of the Federal Rules of Civil Procedure requires the plaintiff to file a complaint containing "a short and plain statement of the claim showing that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 667–68. This is intended to "give the defendant fair notice" of the plaintiff's claims and the grounds for them. *Updike v. Multnomah Cnty.*, 870 F.3d 939, 952 (9th Cir. 2017).

**1. Federal Claims**

Plaintiffs themselves acknowledge that they cannot properly bring an action under 42 U.S.C. § 1983 for Claims 1–3, since section 1983 actions can only be brought against individuals. (Opp'n. 2, ECF No. 10); *see* 42 U.S.C. § 1983. Additionally, even if amended to be pled against Simons and Gibson "in their official capacities," section 1983 actions require that the Plaintiffs establish that the Defendants' violation occurred under color of state law. Plaintiffs make no such allegations here and do not assert that they would or could, if given leave to amend. (*See* Compl.; Opp'n.) Accordingly, Claims 1–3 are also properly **DISMISSED** under Rule 12(b)(6) for failure to state a claim.

**2. State Law Claims**

As to Claims 4–7, brought pursuant to the FTCA for alleged violations of California state law, claims brought under the FTCA may only be brought against the United States. *Craft*, 157 F.3d at 706. Thus, as already established, all claims brought under the FTCA against DHS automatically fail and need not be further considered.

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*Invs., L.L.C. v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) (internal citation omitted). Here, Plaintiffs assert the conduct leading to their emotional distress claims arose between July 27, 2017 and August 4, 2017. (Compl. ¶¶ 103, 107.) However, much of the conduct upon which Plaintiffs rely occurred outside of that period, going back as far as March 2015, which is unquestionably outside of the statute of limitations. (*See id.* ¶ 13.) Accordingly, as Plaintiff failed to clearly establish that the claims arose solely out of conduct occurring *within* the statute of limitations period, the Court could also dismiss the state law claims on that ground.

The Court has further recognized that the discretionary function exception entirely precludes suit under the FTCA against the United States in this case. However, even if Plaintiffs could amend their complaint to in some way avoid the exception, Plaintiffs' claims should still be dismissed if the central allegations upon which they are founded do not establish the underlying claims asserted. *See* Fed. R. Civ. P. 12(b)(6).

Plaintiffs first assert a claim for violation of the Bane Act, Cal. Civ. Code § 52.1, which imposes liability on all individuals who interfere or attempt to interfere by threat, intimidation, or coercion, with "the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United State or laws of the Constitution or laws of [California]." Cal. Civ. Code § 52.1(a). Such coercion or intimidation must be "deliberate or spiteful." *Shoyoye v. Cnty. of Los Angeles*, 203 Cal. App. 4th 947, 959 (2012). Plaintiffs predicated the Bane Act claim on the Fourth and Fifteenth Amendments of the U.S. Constitution, as well as sections of the California Constitution. (Compl. ¶ 98.) However, the Complaint never alleges that Plaintiffs were threatened, intimidated, or coerced in any way by the United States or its agents. (*See generally id.*) The strongest allegation Plaintiffs make is that Gibson "scolded" Escamilla for becoming frustrated with the case's slow progress. (*Id.* ¶ 24.) Plaintiffs' own tone was far more coercive and threatening than that of Gibson and Simon throughout the entirety of their interactions. (*See, .e.g., id.*, Ex. 9–12.) Accordingly, Plaintiffs' Bane Act claim fails.[5]

Plaintiffs also assert claims for Intentional Infliction of Emotional Distress (IIED) and Negligent Infliction of Emotion Distress (NIED). (*Id.* ¶¶ 102–09.) An IIED claim requires (1) extreme and outrageous conduct by the defendant with the

[5] Additionally, the FTCA authorizes only a cause of action for violations of *state* law, not federal law. *Mendoza v. United States*, Case No. 15cv1528-JAH (BGS), 2017 WL 4286907 at *7 (S.D. Cal. Sept. 27, 2017). Thus, there is no subject matter jurisdiction under the FTCA for Bane Act violations predicated on violations of the Fifth and Fourteenth Amendments. *Mendoza*, 2017 WL 4286907 at *7 ("By definition, [plaintiffs] cannot allege . . . that state law [is] the source of liability for a claim [against the United States] alleging the deprivation of a federal constitutional right.").

intent of causing, or reckless disregard for the probability of causing, emotional distress; (2) actual suffering of severe emotional distress by the plaintiff; and (3) actual and proximate causation of that distress by the defendant's outrageous conduct. *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (2009). To meet the extreme and outrageous standard, the behavior must be "so extreme as to exceed the bounds of that usually tolerated in a civilized community." *Id.* at 1050–51. NIED does not require intentionally outrageous conduct but instead "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' pleadings fail to demonstrate the negligence necessary to establish NIED and do not begin to approach the high bar of IIED's outrageous conduct. Plaintiffs summarily assert that the Greenway defendants' infringement caused Escamilla severe emotional distress. (Compl. ¶ 22.) However, this in no way established that *Defendants* caused emotional distress to Plaintiffs. Plaintiffs also allege Defendants denied Plaintiffs' due process and refused to consider new evidence. (*Id.* ¶¶ 103–05.) However, Plaintiffs fail to allege specific facts that establish a violation of due process. (*See id.*) Moreover, as the Court already noted, Defendants *did* consider Plaintiffs' allegedly new evidence and found, as a matter of policy, it was not sufficient to authorize a renewal of the investigation.[6] (*Id.* ¶¶ 40–44.) Accordingly, Plaintiffs allege no specific facts demonstrating negligence on the part of Defendants, let alone the intentional or reckless behavior necessary to establish IIED. Even if Plaintiffs could somehow overcome the discretionary function exception, their NIED and IIED claims would still fail.

Plaintiffs' seventh alleged claim is merely a request for declaratory and injunctive relief. (*See Id.* ¶ 110–12.) It is well established that the FTCA does not

[6] Additionally, 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.)

submit the United States to injunctive or declaratory belief. *Thompson v. U.S. Postal Serv.*, No. C 12-0301 PJH, 2012 WL 3583134, at *3 (N.D. Cal. Aug. 20, 2012); *see Moon v. Takisaki*, 502 F.2d 389, 390 (9th Cir. 1974). Moreover, because all underlying claims also fail, Plaintiffs do not allege any claim for which such relief could be granted, even if such a request *could* be properly brought. Thus, the seventh claim for relief is also dismissed.

In sum, even if Plaintiffs could successfully establish subject matter jurisdiction over their claims, all claims raised would still be properly **dismissed** for failure to state a claim under Rule 12(b)(6).

**C. Appropriateness of Leave to Amend**

Recognizing the inadequacies of Plaintiffs' complaint, the Court next turns to consider whether leave to amend is appropriate here. Under Rule 15 of the Federal Rules of Civil Procedure, the Court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). However, courts need not give leave to amend when a complaint lacks merit entirely. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). To determine whether amendment should be granted, the Court considers (1) prejudice to the opposing party; (2) bad faith; (3) undue delay; (4) futility, and (5) previous amendment. *DCD Programs*, 833 F.2d at 189 & n.3 (9th Cir. 1987). "[F]utility of amendment can, by itself, justify denial of motion for leave to amend." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Here, there is no indication that amendment would prejudice the opposing party, is motivated in bad faith, or would cause undue delay—and Defendants do not attempt to assert the contrary. (*See generally* Mot.; Reply, ECF No. 11.) Rather, Defendants argue that amendment is entirely futile, as no alteration to the complaint could suffice to render Plaintiffs' claims valid. (Mot. 17.)

**1. Current Claims**

It has already been established that the Plaintiffs' claims under section 1983, as currently pleaded, must be dismissed for both lack of subject matter jurisdiction under

Rule 12(b)(1) and failure to state a claim under Rule 12(b)(6). Plaintiffs admit that no amendment could cure the fundamental problems that prohibit the claims brought pursuant to 42 U.S.C. § 1983. (Opp'n. 1–2.) Accordingly, the Court **denies leave to amend as to** Claims 1–3.

Plaintiffs also do not dispute that the FTCA does not provide subject matter jurisdiction over DHS, nor that the discretionary function exception bars asserting the alleged FTCA claims against the United States. (*See generally id.*) Plaintiffs argue, however, an amended complaint would enable them to properly bring the asserted state law claims against federal officers Simons and Gibson. (*Id.* at 2.) However, the FTCA is the only remedy for tortious conduct by the United States and only the United States may be sued under it. *Craft*, 157 F.3d at 706. Individual employees may not be sued pursuant to the FTCA, *id.*, and no "other civil action or proceeding for damages arising out of or relating to the same subject matter" may be brought against them. 28 U.S.C. § 2679(a). Thus, no claim may be brought against Gibson and Simons under the FTCA, and Plaintiffs provide no alternative grounds on which the claims may be asserted against them. Accordingly, all amendment to the state law claims is likewise futile. In light of this, the Court also **denies leave to amend** Claims 4–7.

**2. *Bivens* Claim**

Plaintiffs also request leave to amend in order to bring a new claim against Simons and Gibson, whom Plaintiffs intend to add as parties, under the implied right of action theory first established in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). (Opp'n 2.) "In *Bivens*, the Supreme Court recognized for the first time an implied right of action for damages against federal officers alleged to have violated a citizen's constitutional rights." *Vega v. United States*, 881 F.3d 1146, 1152 (9th Cir. 2018). The court has recognized the appropriateness of *Bivens* claims in only three contexts: (1) police search and seizure in violation of the Fourth Amendment, *see Bivens*, 403 U.S. at 388; (2) gender discrimination by a congressman

in violation of the Fifth Amendment, *see Davis v. Passman*, 442 U.S. 228 (1978); and (3) deliberate indifference toward a prisoner's medical needs in violation of the Eighth Amendment, *see Carlson v. Green*, 446 U.S. 14 (1980). "The Court has made clear that [further] expanding the *Bivens* remedy is now a 'disfavored' judicial activity." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017). Plaintiffs' attempt to assert a *Bivens* claim for civil rights and due process violations pursuant to the Fifth and Fourteenth Amendments would require just such expansion. (Opp'n. 3.)

When considering whether Plaintiffs may bring a *Bivens* claim, the Court considers (1) whether the claim arises in a new *Bivens* context and if so, (2) whether special factors counsel hesitation in the absence of affirmative action by Congress. *Abbasi*, 137 S. Ct. at 1857, 1864. A claim arises in a new context whenever it is "different in a meaningful way from previous *Bivens* cases decided by the Court." *Id.* at 1864. Meaningful differences may include "the rank of officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how the officer should [have responded] . . . ; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion . . . into the function[]of other branches;" or the presence of factors not previously considered. *Id.* at 1860. The Fourteenth Amendment has never been subject to a *Bivens* claim before. *See id.* at 1857. Moreover, the Fifth Amendment has never been the subject of a *Bivens* claim related to racial discrimination. (*See* Compl. ¶ 30.); *c.f. Davis*, 442 U.S. at 228 (regarding a Fifth Amendment *Bivens* claim predicated on gender discrimination). In addition, employees of DHS and ICE—the proposed Defendants offered by Plaintiffs—are a new class of defendants who have never been subjected to a *Bivens* suit. (Opp'n 3); *Abbasi*, 137 S. Ct at 1857. Thus, Plaintiffs' claims clearly arise in a new *Bivens* context.

The Court next looks to whether special factors counsel judicial hesitation. *Id.* Judicial hesitation is appropriate where there are valid, alternative remedies available.

*See Vega*, 2018 WL 740184, at *6. This factor favors the defendants where Plaintiffs assert alternative claims for relief. *See id.* Even if the alternative claims fail due to inadequate pleading, this does not justify creation of a new *Bivens* remedy. *Id.* It is not the Court's burden to "prove the [P]laintiff's case for him or to be forced to create a new remedy through *Bivens*." *Id.* Here, Plaintiffs attempt to bring claims under the FTCA and state law, in addition to this potential *Bivens* claim. (Compl.) They also sought alternative remedies by reporting "civil rights violations" to the DHS's Office for Civil Rights and Civil Liberties. (Compl. ¶ 33, Ex. 11.) Thus, the availability of alternative remedies to Plaintiffs' counsels against the creation of a *Bivens* remedy in this case.

Moreover, the purpose of a *Bivens* remedy is not to "alter an entity's policy." *See Correctional Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001). Plaintiffs' primary allegations center on their frustration with the investigative policies of DHS and ICE, and Gibson and Simons' discretionary choices not to further pursue Plaintiffs' claims in light of those policies. (*See* Compl. ¶ 94.) To create a *Bivens* claim specifically tailored to this instance would call into question "the formulation and implementation of a[n] . . . executive [agency] policy . . . . The litigation process might also implicate the discussions and deliberations that led to the formation of the particular policy, requiring [the Court] to interfere with sensitive Executive Branch functions." *Abbasi*, 137 S. Ct. at 150. Since permitting a *Bivens* claim in this instance would interfere with the discretionary functions of ICE and DHS and force an alteration of agency policy, this consideration also clearly counsels against the creation of a *Bivens* remedy in this instance. In light of the significant concerns counseling against extending *Bivens* to the current context, the Court declines to permit Plaintiffs to amend to add a *Bivens* claim.

In addition, even if facts supporting a *Bivens* claim could be alleged, the claim would still be precluded by qualified immunity. Qualified immunity protects all government officials who are not "plainly incompetent or . . . knowingly violat[ing]

the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). To determine whether it applies, the Court first considers whether the facts, taken in the light most favorable to the party asserting the injury, show the officer's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the answer is yes, the Court then considers whether "the right was clearly established . . . in light of the specific context of the case." *Id.* Only when both these criteria are met may qualified immunity be waived. *Id.*

Plaintiffs contend that Defendants violated their constitutional rights by "refus[ing] to provide any type of federal law enforcement intervention whatsoever" and "refus[ing] to investigate Plaintiffs' claims." (Opp'n 3–4.) However, Defendants did initially intervene. (*See* Compl. ¶¶ 14, 23.) Moreover, they consistently communicated with Plaintiffs, informed them of their options, and explained why they could not further pursue Plaintiffs' claims until Plaintiffs themselves rectified the issues raised by the negative judgment in the Colorado action. (*See id.* ¶ 27.) Plaintiffs provide no compelling evidence of a constitutional violation here. Plaintiffs further attempt to predicate their claims on the Defendants' refusal to prosecute. (*See, e.g.*, Compl. ¶ 21.) However, there is no constitutional right to federal criminal prosecution for vindication of personal injuries—nor do Plaintiffs provide any case law or argument asserting that there is. *See Wyatt v. Cole*, 504 U.S. 158, 162 (1992) (noting that the civil cause of action under § 1983 was created, in part, because victims did not have a means of obtaining relief outside of it, including under criminal law); (*see generally* Compl.; Opp'n.) Plaintiffs fail to establish that Defendants violated their constitutional rights in any way, and they certainly do not meet the secondary "clearly established" requirement. Accordingly, even if Plaintiffs could amend their Complaint to successfully allege a *Bivens* claim, it would necessarily fail because both officers are protected by qualified immunity. Thus, any amendment to allege a *Bivens* claim would also be futile.

For this reason, the Court finds that allowing Plaintiffs leave to amend their complaint would be futile. The Court **denies leave to amend** as to all claims.

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## V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim. (ECF No. 9.) The Court **DENIES leave to amend.** Plaintiffs' complaint is **DISMISSED with prejudice** as to all Defendants.

**IT IS SO ORDERED.**

April 4, 2018

**OTIS D. WRIGHT, II**
**UNITED STATES DISTRICT JUDGE**

# Exhibit N

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

**CIVIL MINUTES – GENERAL**

Case No. **CV 21-1910 ODW (JEMx)** Date: April 2, 2021

Title **Gustavo Escamilla et al. v. United States of America**

Present: The Honorable: OTIS D. WRIGHT, II, United States District Judge

| Sheila English | Not Reported |
|---|---|
| Deputy Clerk | Court Reporter / Recorder |

| Attorneys Present for Plaintiffs: | Attorneys Present for Defendants: |
|---|---|
| Not Present | Not Present |

**Proceedings: (IN CHAMBERS) ORDERS TO SHOW CAUSE**

Plaintiff Gustavo Escamilla filed a Complaint on March 1, 2021, styled as a "Victims Emergency Petition." (Docket No. 1). The Complaint violates Federal Rule of Civil Procedure 8 by failing to provide a short and plain statement of the claims showing that Plaintiff is entitled to relief. 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; or (2) allege facts suggesting that the underlying crimes occurred in this District. *See* 18 U.S.C. § 3771(d)(3).

On April 4,2018 the Court issued a Dismissal of this matter with prejudice for Lack of Subject Matter Jurisdiction and Failure to State a Claim for Relief. (See Gustavo Escamilla, et al. v. United States of America and DHS, et al., case No. 17-cv-07747, DE-13.

On March 22, 2021 the Court issued an Order to Show Cause why this matter should not similarly be dismissed for failure to state a claim under 18 U.S.C. § 3771. Specifically Plaintiffs were ordered to show cause why the relief sought in the Complaint is not barred by issue and claim preclusion as a result of the Court's dismissal of Plaintiff's claims with prejudice in *Gustavo Escamilla et al v. Department of Homeland Security, et al.*, 17-CV-07748-ODW (MRWx) (C.D. Cal April 4, 2018).

Plaintiff's filed a timely response, but fail to explain how and why they

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. **CV 21-1910 ODW (JEMx)** Date: April 2, 2021

Title **Gustavo Escamilla et al. v. United States of America**

are entitled to relief. Most notably, while plaintiffs claim to be victims in an on-going criminal proceeding, 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. As support for the existence of a criminal proceeding demonstrating that plaintiffs are victims, Plaintiffs state: the "Government filed a criminal case under seal against SELAKOVIC, BLACKBURN and others with respect to their criminal acts against PLAINTIFFS. The PLAINTIFFS became part and parcel of an existing and ongoing criminal proceedings pursuant to DHS and DOJ's criminal proceedings being conducted in the Western District of Missouri." (Response to OSC at p.4)

Plaintiffs admit to being unable to identify anything concerning the claims being asserted against Selakovic or Blackburn because the file is sealed and they have not been able to review the criminal complaint. Further, plaintiff speculates that the government is no longer pursuing this criminal action because of concerns of how such a prosecution would negatively impact international relations. Specifically, plaintiffs allege "[a]ny prosecution of SELAKOVIC would have a substantial negative impact on the US/Serbian relations." (Id. at 13.)

There is further speculation of a secret plea agreement and/or deferred prosecution agreements, with no facts provided to justify these beliefs. They are merely speculation pulled from the ether and do nothing to cause the Court to reconsider its earlier determination that Plaintiffs have supplied no basis to establish any rights under the Crime Victims' Rights Act.

The Court reaffirms its April 4, 2018 Order dismissing this matter with prejudice. For the same reasons, the Court discharges the OSC and sua sponte dismisses the Victim's Emergency Petition. [DE-1]

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. **CV 21-1910 ODW (JEMx)** Date: March 22, 2021

Title **Gustavo Escamilla et al. v. United States of America**

Procedure 12(b)(6). *See Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir. 1981) ("A trial court may dismiss a claim sua sponte under Fed. R. Civ. P. 12(b)(6)") (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357 at 593 (1969)).

IT IS SO ORDERED

sc

# Exhibit O

# 3rd Request - Fw: OPERATIONS SOFTWARE SLASHERS MASTERMIND - SECURITIES FRAUD, GRAND LARCENY, AND EMBEZZLEMENT

From: Gustavo (gescamilla@ymail.com)

To: shawn.gibson@dhs.gov

Cc: scott.titus@dhs.gov; jonathan.pohner@dhs.gov; rosalinda.estrada@dhs.gov; brian.psenak@dhs.gov; robert.patterson@dhs.gov; christopher.armstrong@dhs.gov; megan.pollock@dhs.gov; ryder.wells@dhs.gov; kristin.norton@dhs.gov; melissa.shanahan@dhs.gov; susan.welsh@dhs.gov; patrick.daly@dhs.gov; tom.larson@usdoj.gov; carlos.suarez@ice.dhs.gov; timothy.garrison@usdoj.gov; stacey.perkins-rock@usdoj.gov; info@osc.gov; dhs-oig.officepublicaffairs@oig.dhs.gov; ipreenternedia@ice.dhs.gov; carlos.suarez@dhs.gov

Date: Friday, April 24, 2020 at 06:22 PM PDT

DHS – ICE | Homeland Security Investigations-Domestic Operations
Attn: Shawn Gibson
500 12th Street SW, 6th Floor MS-5106 (6161)
Washington D.C. 20536

Re; OPERATIONS SOFTWARE SLASHERS MASTERMIND - SECURITIES FRAUD, GRAND LARCENY, AND EMBEZZLEMENT

Dear Shawn,

In or about late October, 2016, you advised Greenway Nutrients, Inc. ("GREENWAY") and me, that Greenway would need to return to civil court to obtain a favorable court ruling over the mastermind behind "***Operation Software Slashers***" named David Dragan Selakovic ("SELAKOVIC") as it relates to Greenway's criminal trademark infringement complaint that Greenway filed with D.H.S. on or around March 5, 2015.

*(As evidenced in Greenway Nutrients, Inc. v. Selakovic et al. civil case #9:18-cv-81104 Docket Entry 102, Exhibit #2.)*

Since then, Greenway has repeatedly attempted to provide with you material evidence of as well as to advise you of the theft of Greenway's business model, products, and publicly-traded entity formation strategy that amounts to nothing more than Unfair and Deceptive Business Practices, Fraud, Grand Larceny, and Embezzlement.

**Evidence Of Greenway's Former Attorneys And The Accused Defendants Past History of Operating An Ongoing An Illicit Counterfeit Goods and Racketeering Enterprise Scheme.**

Greenway alleges that Selakovic and his longtime West Palm Beach Florida area front-man named Steve Blackburn ("BLACKBURN"), and Greenway's former attorney named James Ryan, appear to be operating nothing more than an ongoing counterfeit goods and racketeering enterprise scheme.

***As described in more detail below, and Greenway Nutrients, Inc. vs. David Selakovic et al. civil case #9:18-cv-81104 Docket entry 102 - Exhibit #2***

James Ryan is Selakovic's legal muscle who has repeatedly defended Selakovic and Blackburn during multiple civil-theft related counterfeit software manufacturing and distribution lawsuits filed by The Microsoft Corporation and Adobe Systems, who were able to successfully obtain numerous permanent injunctions against Blackburn and eventually Selakovic in those various cases.

***David Selakovic, Steve Blackburn's, and Greenway's former attorney named James Ryan, ongoing illicit business scheme is quite simple.***

Selakovic and Blackburn will get caught stealing or manufacturing copious amounts of counterfeit, fake, or unauthorized versions of your company's products.

Selakovic, utilizing various corporate-fronts will then hire and pay James Ryan to defend against those lawsuits with illegally obtained profits that Selakovic and Blackburn can make while your companies lawsuit is still ongoing until Selakovic and Blackburn are compelled to stop. *That is it.*

At that point, Selakovic and or Blackburn will then form a different corporate front, and start the illegal sales cycle of other companies' products all over again.

***David Selakovic, Steve Blackburn, and James Ryan's now proven illicit business model have operated for well over a decade.***

As evidenced in the following massive civil-theft related federal lawsuits below.

**Microsoft Corporation v. MBC Enterprises, Steven Blackburn Case No. 2:00-CV-00217** - ***James Ryan*** defended Steve Blackburn during this lawsuit. At the same time, David Selakovic's corporate front, named Bantech supplied millions of dollars worth of counterfeit, fake, or unauthorized versions of Microsoft Software products to Blackburn and MBC Enterprises during

this period. Microsoft successfully obtained a permanent federal injunction against all defendants in this case.

**Microsoft Corp. v. Big Boy Distribution LLC Case No. 07-80296-CIV.** ***James Ryan*** acted as Steve Blackburn's attorney during this lawsuit, and David Selakovic's corporate front called Selacorp supplied Big Boy Distribution millions of dollars worth of counterfeit, fake, or unauthorized versions of Microsoft Software products during this period as well. Microsoft successfully obtained a permanent federal injunction against all defendants in this case.

**Adobe Systems Incorporated v. Bea's Hive LLC, Selacorp, David Selakovic, Steve Blackburn Case #9:14-cv-81102.** ***James Ryan*** is still currently defending Selakovic, in this lawsuit wherein David Selakovic's corporate front named Selacorp was caught illegally supplying over 370,000 units of counterfeit, fake, or unauthorized versions of Adobe Systems software products during this period as well. Adobe Systems has successfully obtained a $1.8 MM judgment against David Selakovic personally, as well as a decisive permanent federal injunction against all defendants in this case that is still ongoing.

**Greenway Nutrients, Inc. vs. David Selakovic et al. civil case #9:18-cv-81104:** ***James Ryan*** represented himself, as well as all of the other accused defendants, intentionally concealed evidence, filed multiple sham pleadings, while committing a deliberate Fraud Upon The Court.

Worse yet, in on or about mid-late 2017, Greenway' repeatedly attempted to advise you and D.H.S. that the company's former attorney named Michael J. Ryan, the brother of James Ryan, had misappropriated Greenway's confidential attorney-client privileged information at that time.

Instead of offering to assist Greenway your colleague with the Office of Inspector General, advised Greenway and me that he knew of you and had worked with you before, was entirely rude, overly condescending, and intentionally deprived Greenway of and me any lawful due process, and proceeded to advise me of the following including but not limited to:

***"You can file anything you want to because I am not going to do anything with any of it anyway!"...***

Notwithstanding these glaring facts, Greenway's senior management will continue to wish you nothing but the very best, pray that the Good Lord heals your heart, to help change the way you treat the innocent victims of an ongoing federal crime that it appears that you have regretfully chosen to continue to ignore.

Therefore, at your earliest convenience, Greenway once again, respectfully and desperately begs of you to communicate with, offer assistance to, or please forward Greenway's senior management contact information to federal law enforcement officials within DHS or the USDOJ who can.

Thank you, Shawn, and patiently await your assistance.

Respectfully submitted,

Gus Escamilla
Greenway Nutrients, Inc.
(818) 355-0062 Direct

----- Forwarded Message -----
**From:** Gustavo <gescamilla@ymail.com>
**To:** shawn.gibson@dhs.gov <shawn.gibson@dhs.gov>
**Cc:** "scott.titus@dhs.gov" <scott.titus@dhs.gov>; "jonathan.polner@dhs.gov" <jonathan.polner@dhs.gov>; "rosalinda.estrada@dhs.gov" <rosalinda.estrada@dhs.gov>; "brian.psenak@dhs.gov" <brian.psenak@dhs.gov>; "robert.patterson@dhs.gov" <robert.patterson@dhs.gov>; "christopher.armstrong@dhs.gov" <christopher.armstrong@dhs.gov>; "megan.pollock@dhs.gov" <megan.pollock@dhs.gov>; "ryder.wells@dhs.gov" <ryder.wells@dhs.gov>; "kristin.norton@dhs.gov" <kristin.norton@dhs.gov>; "melissa.shanahan@dhs.gov" <melissa.shanahan@dhs.gov>; "susan.welsh@dhs.gov" <susan.welsh@dhs.gov>; "patrick.daly@dhs.gov" <patrick.daly@dhs.gov>; "tom.larson@usdoj.gov" <tom.larson@usdoj.gov>; Carlos Suarez <carlos.suarez@ice.dhs.gov>; timothy.garrison@usdoj.gov <timothy.garrison@usdoj.gov>; stacey.perkins-rock@usdoj.gov <stacey.perkins-rock@usdoj.gov>; info@osc.gov <info@osc.gov>; dhs-oig.officepublicaffairs@oig.dhs.gov <dhs-oig.officepublicaffairs@oig.dhs.gov>; iprcentermedia@ice.dhs.gov <iprcentermedia@ice.dhs.gov>; Carlos Suarez <carlos.suarez@dhs.gov>
**Sent:** Thursday, April 23, 2020, 8:58:26 PM PDT
**Subject:** OPERATIONS SOFTWARE SLASHERS MASTERMIND - SECURITIES FRAUD, GRAND LARCENY, AND EMBEZZLEMENT

April 23, 2020

DHS – ICE | Homeland Security Investigations-Domestic Operations
Attn: Shawn Gibson
500 12th Street SW, 6th Floor MS-5106 (6161)
Washington D.C. 20536

Re; OPERATIONS SOFTWARE SLASHERS MASTERMIND - SECURITIES FRAUD, GRAND LARCENY, AND EMBEZZLEMENT

Dear Shawn,

On or about October 18, 2016, you advised Greenway Nutrients, Inc. ("GREENWAY") and me, that Greenway would need to return to civil court to obtain a favorable court ruling over the mastermind behind "***Operation Software Slashers***" named David Dragan Selakovic ("SELAKOVIC") as it relates to Greenway's criminal trademark infringement complaint that Greenway filed with D.H.S. on or around March 5, 2015.

*(As evidenced in Greenway Nutrients, Inc. v. Selakovic et al. civil case #9:18-cv-81104 Docket Entry 102, Exhibit #2.)*

Greenway has since discovered that Greenway's former attorneys named James D. Ryan and his brother and law partner named Michael J. Ryan, intentionally violated numerous non-disclosure agreements embezzling Greenway's confidential attorney-client privileged information for their self-dealing gain.

To compound matters, Greenwaqy's former attorney named James Ryan is now acting as the interim CEO of Selakovic' publicly-traded company named Vegalab, Inc. that Selakovic and James Ryan stole from Greenway and that Greenway has repeatedly attempted to advise you of.

*(As evidenced in Greenway Nutrients, Inc. v. Selakovic et al. civil case #9:18-cv-81104 Docket Entry 102, Pages 4-24, Exhibits 1-16)*

Thankfully, we have also been recently contacted by various reporters that include, Mr. Ryan Boysen with Law360, Mr. Jack Newsham with Law.com, as well as Mr. Naveed Jamali with Newsweek, concerning Greenway's allegations of foul play and bribery occurring during Greenway's recently dismissed civil suit.

Greenway has a solid reason to believe that Selakovic and Greenway's former attorney named James Ryan, paid off or bribed Greenway now-former attorney named John Pierce to minimize the company's damages and dump Greenway's civil case in its entirety.

Greenway has also recently filed a State of California Bar complaint against John Pierce and his law firm Pierce Bainbridge attached for your records.

More importantly, John Pierce has recently found himself facing a slew of negative media and was placed on leave from his firm Pierce Bainbridge based on allegations of financial misconduct. Apparently, Pierce Bainbridge is also being sued for defaulting on a $65 MM litigation funding agreement.

Mr. Ryan Boysen's Law360.com article reflecting this news is also attached for your review.

On or about January 9, 2020, Greenway, once again, respectfully requested that you communicate with as well as protect the victims of an ongoing federal crime, according to the Federal Crime Victims Rights Act (CVRA): 18 U.S.C. § 3771, as well as Marsey's Law, under the California Constitution article I, § 28.

Worse yet, David Selakovic appears to be now engaging in securities fraud by concealing multiple civil lawsuits/judgments against Selakovic and Selakovic' publicly-traded company named Vegalab, Inc, while also causing financial harm to numerous other innocent, and the unsuspecting US Small Business owners.

According to 18 U.S.C. § 3771, as well as Marsey's Law, under the California Constitution article I, § 28 it appears as if federal law enforcement officials are *required* to provide federal crime victims with certain unalienable rights that include but are not limited to:

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

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

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

***(6) The right to proceedings free from unreasonable delay.***

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

***(8) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.***

***(9) 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.***

Therefore, at your earliest convenience, Greenway once again, respectfully and desperately begs of you to communicate with, offer assistance to, or please put Greenway's senior management in contact with federal law enforcement officials within DHS or the USDOJ who can.

Thank you, Shawn, we continue to wish you nothing but the very best, and patiently await your reply.

Respectfully submitted,

Gus Escamilla
Greenway Nutrients, Inc.
(818) 355-0062 Direct

Attorney Misconduct Online Complaint.pdf
193.8 KB

Greenway Pierce Bainbridge Timeline.docx
155.3 KB

Request For Correspondence PB.docx
173.3 KB

Request For Pravati Memo.docx
167.4 KB

Pravati Capital Response.docx
167.9 KB

Pierce Bainbridge Funder Targets Ex-Partners In Debt Chase - Law360.pdf
93.5 KB

# Exhibit P

# Formal Notification of Alleged Misconduct by Former Acting U.S. Attorney Nicola Hanna and Multiple Senior Assistant U.S. Attorneys in the United States Attorney's Office for the Central District of California, and DHS Officials

From: Gustavo (gescamilla@ymail.com)

To: Bilal.Essayli@usdoj.gov

Cc: oig.hotline@usdoj.gov; usaeo.VictimOmbudsman@usdoj.gov; Judiciary_Whistleblower@mail.house.gov; OPR.Complaints@usdoj.gov; pamela.bondi@usdoj.gov; Harmeet.Dhillon@usdoj.gov; Clayton.Schroers@mail.house.gov; Carissa.Bunge@mail.house.gov; Kristi.Noem@DHS.gov; dhs-oig.officepublicaffairs@oig.dhs.gov; CRCLCompliance@hq.dhs.gov; crcl@hq.dhs.gov

Date: Thursday, December 18, 2025 at 06:33 AM PST

Gustavo Escamilla
1315 Highland Avenue
Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

December 18, 2025

First Assistant U.S. Attorney, Bill Essayli
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Phone Number: (213) 894-2400
Email Address: Bilal.Essayli@usdoj.gov

**Re: Formal Notification of Alleged Misconduct by Former Acting U.S. Attorney Nicola Hanna and Multiple Senior Assistant U.S. Attorneys in the United States Attorney's Office for the Central District of California; Acting In Concert With Multiple Corrupt United States Department of Homeland Security (DHS) Officials. Request for Thorough Investigation and Reporting to the State Bar of California, Federal Crime Victims Rights Ombudsman, and the United States Attorneys Office of the Inspector**

**General Pursuant to the Crime Victims' Rights Act (18 U.S.C. § 3771) and the Attorney General Guidelines for Victim and Witness Assistance**

Dear First Assistant U.S. Attorney Essayli:

I write to you in my capacity as a federal crime victim, pursuant to the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, and the United States Attorney General Guidelines for Victim and Witness Assistance (USAGVWA), to formally notify you of serious and ongoing violations of my statutory rights as a crime victim by former Acting U.S. Attorney Nicola Hanna and multiple senior Assistant U.S. Attorneys (AUSAs) employed by the United States Attorney's Office for the Central District of California (USAO-CDOC).

It is essential to note on **October 18, 2021**, I filed a Rule 60(d)(3) independent action for fraud on the court in ***Escamilla v. United States***, Case No. 2:21-cv-01910-ODW (C.D. Cal.), (Attached) demonstrating that USAO-CDOC attorneys had obtained the 2018 dismissal of my civil rights case (2:17-cv-07748-ODW) through a perjured declaration and fabricated evidence.

On **October 25, 2021**, the following senior DOJ attorneys filed an opposition (Dkt. 17) on behalf of the United States:

- **Tracy L. Wilkison** – then Acting United States Attorney, Central District of California
- **David M. Harris** – Assistant United States Attorney, Chief, Civil Division
- **Joanna S. Osinoff** – Assistant United States Attorney, Chief, General Civil Section
- **Kevin B. Finn** – Assistant United States Attorney

**Their opposition did NOT deny** any of the specific acts of fraud I alleged. Instead, they appear to have glossed over addressing their alleged wrongdoing, who instead argued that the victims "should have notified the Court sooner."

This position was knowingly false and in direct violation of their statutory duties because:

1. There is **no statute of limitations** on an independent action for fraud on the court (Fed. R. Civ. P. 60(d)(3); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)).
2. As DOJ attorneys, they were mandated under 18 U.S.C. § 3771(c)(1) and the Attorney General Guidelines to use their "*best efforts*" to see that I was accorded my CVRA rights — including protection from the accused bad actors and those acting in concert, the right to proceedings free from unreasonable delay, and the right to be treated with fairness (§ 3771(a)(7) & (8)).
3. Rather than cure the prior denial of my victim's rights (as permitted by § 3771(d)(4)), they appear to have **doubled down** on the fraud by defending a judgment obtained through the repeated republishing of DHS officials fabricated evidence, included in multiple false and materially misleading pleadings and filings containing brazen mischaracterizations of material evidence and facts via declaration under penalty of perjury.

This October 25, 2021 filing constitutes a separate, willful, and wanton violation of the Crime Victims' Rights Act by the four highest-ranking civil litigators in the Central District of California at that time. These violations include the refusal to provide mandated victim assistance, the falsification of material evidence and facts in federal court proceedings, and the deprivation of my inalienable victims rights under federal law. Such conduct not only undermines the integrity of the judicial process but also constitutes potential violations of federal statutes, including 18 U.S.C. § 1512 (tampering with a witness, victim, or informant), 18 U.S.C. § 1519 (alteration or falsification of records in federal investigations), and 18 U.S.C. § 242 (deprivation of rights under color of law).

As detailed below, these actions have persisted since at least 2013, involving my status as a victim of federal crimes committed by the high-profile, politically, and organized crime connected primary bad actor, David Dragan Selakovic (Selakovic), and his longtime business partner, Steven Blackburn, and associated entities (collectively, the "Selakovic Defendants"), in conjunction with my company's former attorney's, including embezzlement (18 U.S.C. § 645), securities and commodities fraud (18 U.S.C. § 1348), and mail and wire fraud (18 U.S.C. § 1343).

It is also essential to note, the United States Federal Bureau of Investigation (FBI) has also known about Selakovic defendants since at least 2000, when FBI officials raided one of the Selakovic defendants warehouses in Pflugerville, Texas, and have since, allowed the Selakovic defendants to illegally manufacture, distribute, and resell an untold millions of dollars worth of fake, counterfeit, or unauthorized versions of Microsoft software products, as evidenced in this news article indicating the same.

These crimes proximately harmed me, my family, and my company, Greenway Nutrients, Inc., resulting in financial losses exceeding tens of millions of dollars. Despite repeated notifications to DHS, and USAO-CDOC officials, including Nicola T. Hanna, Tracy Wilkison, Sandra Brown, Eileen Decker, and others, no assistance has been provided, and instead, material evidence has been falsified to obstruct justice and the repeated denial of any due process or victims' rights.

I respectfully request that you and your office initiate a thorough investigation into this misconduct and report the findings to the State Bar of California and the Department of Justice Office of the Inspector General (OIG) for appropriate disciplinary action, including potential suspension or termination, as mandated by 18 U.S.C. § 3771(f)(2)(C).

**I. Background of the Case and My Status as a Crime Victim**

I am Gustavo Escamilla, the primary owner and developer of Greenway Nutrients, Inc., a company based in the Central District of California. In April 2013, I discovered that the Selakovic Defendants were unlawfully stealing and selling substantial quantities of Greenway's trademarked products bearing Greenway's trademark, leading to the filing of a federal civil lawsuit in the District of Colorado (*Greenway Nutrients, Inc. v. Blackburn et al.*, Case No. 1:13-cv-01088) and a criminal complaint with the FBI's Los Angeles Field Office.

Subsequent investigations revealed the Selakovic Defendants' involvement in a multibillion-dollar counterfeit software scheme affecting major corporations like Adobe Systems and Microsoft, prompting referrals to the Department of Homeland Security (DHS) and the United States Attorney's Office for the Western District of Missouri (USAO-MO).

DHS officials confirmed in March 2015 that I and Greenway were victims of federal crimes and that sealed indictments had been secured against the Selakovic Defendants in the Western District of Missouri as part of "Operation Software Slashers," one of the government's largest prosecutions of its kind. Under 18 U.S.C. § 3771(e)(2)(A), a "crime victim" is defined as "*a person directly and proximately harmed as a result of the commission of a Federal offense.*" I meet this definition, as the Selakovic Defendants' actions caused direct financial and emotional harm, including losses exceeding $100 million in retail value from unauthorized sales, without any compensation to me or my company.

Despite this, USAO-CDOC officials, including Hanna and his predecessors, have systematically denied me assistance since 2013, falsified evidence in related civil rights proceedings, and deprived me of my CVRA rights. This misconduct was exacerbated in my 2017 civil rights lawsuit against DHS (*Escamilla et al. v. Department of Homeland Security et al.*, Case No. 2:17-cv-07748) and my 2021 CVRA enforcement petition (*Escamilla et al. v. United States of America*, Case No. 2:21-cv-01910), both in the Central District of California.

It is essential to note, coinciding with my CVRA preparations and communications with potential counsel (including at Gibson Dunn & Crutcher, where former Acting U.S. Attorney Nicola T. Hanna was a partner), Former Acting U.S. Attorney, Nicola Hanna, and USAO-CDOC indicted my nephew, Jordan McCormick, in September 2020, on information and belief, suggests vindictive prosecution of my nephew to deter my pursuit of rights (cf. *Blackledge v. Perry*, 417 U.S. 21 (1974)).

## II. Relevant Federal Mandates Under the CVRA and USAGVWA

The CVRA and USAGVWA impose clear, non-discretionary obligations on Department of Justice (DOJ) personnel, including U.S. Attorneys, to protect and assist crime victims. These mandates prioritize a victim-centered, trauma-informed, and culturally sensitive approach, as outlined in the USAGVWA (2022 Edition, issued by Attorney General Merrick B. Garland). Key provisions include:

- **CVRA Rights (18 U.S.C. § 3771(a))**: Crime victims have the following inalienable 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 determines otherwise based on clear and convincing evidence.
  (4) The right to be reasonably heard at any public proceeding involving release, plea, sentencing, or parole.
  (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 CVRA rights and services under the Victims' Rights and Restitution Act (34 U.S.C. § 20141(c)).

- **Enforcement and Judicial Obligations (18 U.S.C. § 3771(b)-(d))**: In any court proceeding involving an offense against a crime victim, the court must ensure these rights are afforded (§ 3771(b)(1)). Victims may assert rights in the district where the crime occurred or where prosecution is underway (§ 3771(d)(3)), and the court must decide such motions forthwith. DOJ employees must make their "best efforts" to accord victims these rights (§ 3771(c)(1)), and errors may be cured (§ 3771(d)(4)), which they have, thus far, failed to do.

- **USAGVWA Guidelines**: These guidelines, applicable to all DOJ components including USAO-CDOC, require personnel to:

  - Identify victims early and provide services without regard to administrative remedies or civil outcomes (USAGVWA, Art. III).
  - Offer protection from accused offenders, and those acting in concert with the accused offenders, including notifications of releases and plea agreements (Art. IV).

- Ensure timely notice, consultation with government attorneys, and restitution (Art. V-VII).
- Adopt a victim-centered approach, avoiding actions that expose victims to further harm or impede justice (Foreword by Attorney General Garland).
- Impose disciplinary sanctions, including suspension or termination, for willful or wanton failures to comply with victim treatment laws (18 U.S.C. § 3771(f)(2)(C); USAGVWA, Art. IX).

## III. Alleged Violations and Misconduct by Senior AUSAs within the USAO-CDOC

Since 2013, USAO-CDOC officials have been aware of my case through direct communications, complaints to the Los Angeles Field Office of FBI, oversight committees, and court filings.

**Key instances of misconduct include:**

- **Refusal to Assist and Denial of Rights (2016-2021)**: Despite previous notifications to Decker, Brown, Wilkison, and others, no victim services were provided. In June 2016, Decker dismissed my civil rights complaint against DHS without contacting me, falsely claiming lack of jurisdiction. From July 2016 onward, repeated emails and complaints went ignored, violating my rights to confer with government attorneys (§ 3771(a)(5)), notice of proceedings (§ 3771(a)(2)), and fair treatment (§ 3771(a)(8)).
- **Falsification of Evidence (2018-2021)**: In my 2017 civil rights lawsuit, Hanna and AUSAs (including Grace Park) submitted falsified declarations and motions, republished a fabricated and non-existent August 17, 2015, Colorado court ruling against Greenway (contrary to actual rulings in Greenway's favor; see Case No. 1:13-cv-01088, Dkt. 129). They also submitted March 2017 discovery of attorney embezzlement as "*rather old*," omitting key facts and concealing my exhaustion of administrative remedies. These acts constituted fraud on the court, leading to dismissal with prejudice and violating due process and § 3771(a)(7)-(8). Similar falsifications occurred in my 2021 CVRA petition.
- **Retaliatory Actions (2020)**: Coinciding with my CVRA preparations and communications with potential counsel (including at Gibson Dunn & Crutcher,

where Hanna was a partner), Former Acting U.S. Attorney, Nicola Hanna, and USAO-CDOC indicted my nephew, Jordan McCormick, in September 2020, suggesting vindictive prosecution to deter my pursuit of rights (cf. Blackledge v. Perry, 417 U.S. 21 (1974)).

This pattern reflects willful disregard of USAGVWA mandates for victim-centered assistance and exposes systemic failures, potentially rooted in racial discrimination against Hispanic/Latino victims.

**As evidence, attached you will find the following exhibits:**

1. The victim's October 18, 2021, Rule 60(d)(3) motion for Fraud on The Court
2. USAO-CDOC U.S. Attorneys October 25, 2021, opposition (Dkt. 17)
3. The victim's November 1, 2021, response to USAO-CDOC U.S. Attorneys October 25, 2021, opposition.
4. Criminal Complaint Against DHS Officials Submitted to United States Department of Homeland Security Office of The Inspector General in or around July 2025

## IV. Request for Investigation and Reporting

Pursuant to 18 U.S.C. § 3771(f)(2)(C) and USAGVWA Article IX, I respectfully request that you and your team:

1. Initiate a thorough internal investigation into the misconduct of Nicola Hanna and the involved senior AUSAs.
2. Report the findings to the State Bar of California for potential disciplinary proceedings under California Rules of Professional Conduct (e.g., Rule 3.3, Candor Toward the Tribunal; Rule 8.4, Misconduct).
3. Report the findings to the DOJ Office of the Inspector General for review of potential criminal violations and administrative sanctions.

Notwithstanding my immense fear of further potential retaliatory misconduct, my personal well-being, and safety, I respectfully request immediate assistance am available to provide additional evidence, including emails, court records, and affidavits,

to facilitate this process. Thank you for your prompt attention to this matter, which is essential to restoring public trust in the administration of justice.

Respectfully submitted,

/s/ Gustavo Escamilla
Gustavo Escamilla
Federal Crime Victim

CC:

U.S. Department of Justice Office of the Inspector General Investigations
The United States Department of Justice Crime Victims' Rights Ombudsman, Ellen M. FitzGerald, Victims' Rights Ombudsman
House Judiciary Committee
The United States Department of Justice Office of Professional Responsibility (OPR)
Office of The Honorable Congressman Jim Jordan, Chairman of the House Judiciary Committee
United States Attorney General Pam Bondi
Office of the Assistant Attorney General, Civil Rights Division, Harmeet Dhillon
Office of The Honorable Congresswoman Laura Friedman, Clayton Schroers, Chief of Staff, and Carissa Bunge; Legislative Director
Secretary of Homeland Security, Kristi Noem
United States Department of Homeland Security Office of The Inspector General
United States Department of Homeland Security Office of Civil Rights and Civil Liberties

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# Exhibit Q

# URGENT LEGAL NOTIFICATION & DEMAND FOR MANDATORY REPORTING Regarding: Ongoing Violations of the Crime Victims' Rights Act (18 U.S.C. § 3771) and Department of Justice Professional Misconduct ...

From: Gustavo (gescamilla@ymail.com)

To: Allison.Stafford@usdoj.gov

Cc: oig.hotline@usdoj.gov; usaeo.victimombudsman@usdoj.gov; Judiciary_Whistleblower@mail.house.gov; OPR.Complaints@usdoj.gov; pam.bondi@usdoj.gov; Harmeet.Dhillon@usdoj.gov; Clayton.Schroers@mail.house.gov; Carissa.Bunge@mail.house.gov; Kristi.Noem@DHS.gov; dhs-oig.officepublicaffairs@oig.dhs.gov; CRCLCompliance@hq.dhs.gov; crcl@hq.dhs.gov; bilal.essayli@usdoj.gov

Date: Tuesday, December 30, 2025 at 04:55 PM PST

Gustavo Escamilla
1315 Highland Avenue
Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

December 30, 2025

Supervisory Victim Witness Specialist, Allison Stafford
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Phone Number: (213) 894-2400
Email Address: Allison.Stafford@usdoj.gov

**Re: URGENT LEGAL NOTIFICATION & DEMAND FOR MANDATORY REPORTING Regarding:** Ongoing Violations of the Crime Victims' Rights Act (18 U.S.C. § 3771) and Department of Justice Professional Misconduct **Victim:** Gustavo Escamilla / Greenway Nutrients, Inc. **Related Cases:** *Escamilla v. United States* (2:21-cv-01910); *Escamilla v. DHS* (2:17-cv-07748) **Subject: Demand for Filing of Urgent Report** (JM 1-13.130) and Referral to Civil Rights Division (JM 8-3.000)

Dear Ms. Stafford:

I write to you in my capacity as a federal crime victim, and in your official capacity as a Supervisory Victim Witness Specialist for the United States Attorney's Office for the Central District of California (USAO-CDOC), pursuant to the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, and the United States Attorney General Guidelines for Victim and Witness Assistance (USAGVWA).

This correspondence serves as a follow up to our previous December 18, 2025, correspondence to the Honorable First Assistant United States Attorney, Mr. Bill Essayli, regarding the victim's formal legal notification of alleged USAO-CDOC U.S. Attorney misconduct identified below and attached. Demonstrating serious, ongoing violations of federal law and Department of Justice (DOJ) policy by personnel within your office and the Department of Homeland Security (DHS).

As a recognized federal crime victim under the **CVRA and USAGVWA**, I am humbly and formally requesting your immediate assistance to ensure the USAO-CDOC complies with its non-discretionary reporting obligations. Specifically, I respectfully request that your office and the USAO-CDOC immediately file an **Urgent Report** to Department leadership and refer these matters to the **Criminal Section of the Civil Rights Division**, as mandated by the Justice Manual.

## I. FACTUAL PREDICATE FOR MANDATORY REPORTING

Since 2013, I have been the victim of a massive transnational criminal enterprise orchestrated by a political and organized crime connected criminal defendant David Dragan Selakovic, Steven Blackburn, and associated entities ("Selakovic Defendants"), involving intellectual property theft, embezzlement, and securities fraud resulting in tens of millions of dollars in losses. Rather than receiving the protection and services mandated by federal law, I have been subjected to a pattern of obstruction, deceit, and deprivation of rights by federal officials.

Credible evidence, fully documented in the attached filings (including the victim's October 18, 2021, Rule 60(d)(3) motion for Fraud on The Court filing, *(Escamilla et al. v. Department of Homeland Security et al., Case No. 2:17-cv-07748)*), and (*Escamilla et al. v. United States of America,* Case No. 2:21-cv-01910) demonstrates that former Acting U.S. Attorney Nicola Hanna, along with multiple Senior Assistant U.S. Attorneys identified in our aforementioned December 18, 2025, as attached and referenced below.

## II. MANDATORY REPORTING OBLIGATIONS UNDER THE JUSTICE MANUAL

The gravity of these allegations—involving high-ranking DOJ officials falsifying evidence to defraud a federal court—triggers specific, mandatory reporting requirements that the United States Attorney's Office for the Central District of California has thus far failed to execute.

### A. Requirement to File an Urgent Report (JM 1-13.130)

Under **Justice Manual § 1-13.130**, United States Attorneys are **required** to inform Department leadership, including the Attorney General and Deputy Attorney General, of "major developments" in significant matters. These apply to high profile cases like public corruption involving elected officials, **large-scale corporate fraud with massive financial stakes**, national security-related prosecutions, **major cybercrime matters causing widespread impact, or civil rights investigations sparking public unrest**—**any** of which could meet the "significant" criteria and involve reportable developments

- **The Violation:** The credible allegation that USAO-CDOC leadership harmed the integrity of the judicial process and engaged in "Fraud on the Court" constitutes a "major development" and a "sensitive law enforcement matter" of the highest order.

- **Requested Assistance:** Based on the above, you must immediately facilitate the filing of an Urgent Report detailing these allegations of misconduct and the resulting compromise of integrity in (*Escamilla et al. v. Department of Homeland Security et al.*, Case No. 2:17-cv-07748)), and (*Escamilla et al. v. United States of America,* Case No. 2:21-cv-01910)

**B. Requirement to Report to Civil Rights Division (JM 8-3.000)**

Under **Justice Manual § 8-3.000**, federal prosecutors must coordinate with the **Criminal Section of the Civil Rights Division** regarding potential violations of criminal civil rights statutes, specifically **18 U.S.C. §§ 241 (Conspiracy Against Rights)** and **242 (Deprivation of Rights Under Color of Law)**.

- **The Violation:** The concerted effort by DHS agents and USAO-CDOC attorneys to deprive the victim's of their CVRA rights, falsified records (18 U.S.C. § 1519), and obstructed proceedings constitutes a clear violation of the victim's civil rights under color of law.

- **Requested Assistance:** Your office must immediately contact the **Criminal Section of the Civil Rights Division** to report these potential criminal violations for independent review and guidance.

**C. Mandatory Disclosure of Ombudsman Contact (CVRA Right Ten / AGGVWA)**

Pursuant to **18 U.S.C. § 3771(a)(10)** and the **Attorney General Guidelines for Victim and Witness Assistance (AGGVWA, Art. V.L)**, your office is strictly required to provide victims with contact information for the Department of Justice's **Office of the Victims' Rights Ombudsman**.

- **The Violation:** The systemic failure to address these grievances internally or provide this critical contact information has exacerbated the harm the victims have suffered unnecessarily.

- **Requested Assistance:** You must immediately facilitate the reporting of these violations to the Ombudsman and ensure that USAO-CDOC's non-compliance with these disclosure requirements ceases immediately.

**D. Disclosure to the State Bar of California, Pursuant to California Supreme Court's recent approval of California's new Rule 8.3 "Snitch Rule" (Reporting Professional**

**Misconduct)**

- **The Violation:** As identified in the victims October 18, 2021, Rule 60(d)(3) motion for Fraud on The Court filing, (*Escamilla et al. v. Department of Homeland Security et al.*, Case No. 2:17-cv-07748) Nicola Hanna, in conjunction with multiple senior USAO-CDOC U.S. Attorneys submitted falsified declarations under penalty of perjury, and motions, republished DHS officials fabricated and non-existent August 17, 2015, Colorado court ruling against Greenway (contrary to actual rulings in Greenway's favor; see Case No. 1:13-cv-01088, Dkt. 129). They also submitted false narrative regarding the victims March 2017 discovery of the victim's former attorney Michael Ryan conspiring with Selakovic and others to embezzle the victim's confidential insider business information, in violation of the victim's non-disclosure agreement, and multiple federal criminal statues. Notwithstanding the victim's irrefutable material demonstrating otherwise, Nicola Hanna, in conjunction with multiple senior USAO-CDOC U.S. Attorneys, falsely claimed the victim's discovery of its former attorney and others embezzling its confidential business information as "*rather old*," omitting key facts and concealing the victim's exhaustion of administrative remedies. These acts constituted fraud on the court, leading to dismissal with prejudice and violating due process and § 3771(a)(7)-(8). Similar falsifications occurred in the victim's subsequent attempts to have USAO-CDOC attorneys cure their errors during the victim's 2021 CVRA petition filing.

- **Requested Assistance:** You must immediately facilitate the reporting of these violations to the State Bar of California pursuant to its new 'Snitch Rule" which obligates all California-licensed attorneys to inform the State Bar of California (or alternatively a tribunal with jurisdiction to investigate or act upon such misconduct, under 28 C.F.R. Part 45 or DOJ-specific policies) when they know of credible evidence that another lawyer has engaged in any of the following misconduct "that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects": (a) committed a criminal act; (b) engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation; or (c) misappropriated funds or property.

## III. DEMAND FOR ACTION

Ms. Stafford, as a Supervisory Victim Witness Specialist, it is our understanding, based on publicly available information, that you are a designated guardian of victim rights within the USAO-CDOC. If so, you are professionally obligated to ensure that the victim's inalienable rights are not trampled by DOJ officials sworn to protect them.

**I hereby respectfully request that you take the following actions within ten (10) business days:**

- **Confirm** in writing that an **Urgent Report** pursuant to **JM 1-13.130** has been filed regarding the allegations of fraud and misconduct by USAO-CDOC and DHS officials.
- **Confirm** in writing that a referral has been made to the **Criminal Section of the Civil Rights Division** pursuant to **JM 8-3.000** regarding the potential violations of 18 U.S.C. §§ 241 and 242.
- **Provide** the contact information for the specific Duty Attorney or Section Chief in the Civil Rights Division with whom this matter has been coordinated.
- **Provide** the formal contact information for the Office of the Victims' Rights Ombudsman as required by CVRA Right Ten, aside from Ellen Fitzgerald.

Failure to act on this notification could potentially be viewed as a continuing violation of the Crime Victims' Rights Act and duties under the Attorney General Guidelines, the **CVRA** and the **USAGVWA.**

Notwithstanding my immense fear of further potential retaliatory misconduct, my personal well-being, and safety, I respectfully request immediate assistance am available to provide additional evidence, including emails, court records, and affidavits, to facilitate this process. Thank you for your prompt attention to this matter, which is essential to restoring public trust in the administration of justice.

I respectfully and humbly await your urgent response.

Respectfully,

/s/ Gustavo Escamilla
Gustavo Escamilla
Federal Crime Victim

U.S. Department of Justice Office of the Inspector General Investigations The United States Department of Justice Crime Victims' Rights Ombudsman, Ellen M. FitzGerald, Victims' Rights Ombudsman House Judiciary Committee
The United States Department of Justice Office of Professional Responsibility (OPR) Office of the Assistant Attorney General, Civil Rights Division, Harmeet Dhillon
Office of The Honorable Congresswoman Laura Friedman, Clayton Schroers, Chief of Staff, and Carissa Bunge; Legislative Director Secretary of Homeland Security, Kristi Noem
United States Department of Homeland Security Office of The Inspector General United States Department of Homeland Security Office of Civil Rights and Civil Liberties

==========

**From:** Gustavo <gescamilla@ymail.com>
**To:** Bilal.Essayli@usdoj.gov <bilal.essayli@usdoj.gov>
**Cc:** oig.hotline@usdoj.gov <oig.hotline@usdoj.gov>; usaeo.VictimOmbudsman@usdoj.gov <usaeo.victimombudsman@usdoj.gov>; Judiciary_Whistleblower@mail.house.gov <judiciary_whistleblower@mail.house.gov>; OPR.Complaints@usdoj.gov <opr.complaints@usdoj.gov>; pamela.bondi@usdoj.gov <pamela.bondi@usdoj.gov>; Harmeet.Dhillon@usdoj.gov <harmeet.dhillon@usdoj.gov>; Clayton.Schroers@mail.house.gov <clayton.schroers@mail.house.gov>; Carissa.Bunge@mail.house.gov <carissa.bunge@mail.house.gov>; Kristi.Noem@DHS.gov <kristi.noem@dhs.gov>; dhs-oig.officepublicaffairs@oig.dhs.gov <dhs-oig.officepublicaffairs@oig.dhs.gov>; CRCLCompliance@hq.dhs.gov <crclcompliance@hq.dhs.gov>; crcl@hq.dhs.gov <crcl@hq.dhs.gov>
**Sent:** Thursday, December 18, 2025 at 06:33:19 AM PST
**Subject:** Formal Notification of Alleged Misconduct by Former Acting U.S. Attorney Nicola Hanna and Multiple Senior Assistant U.S. Attorneys in the United States Attorney's Office for the Central District of California, and DHS Officials

Gustavo Escamilla
1315 Highland Avenue

Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

December 18, 2025

First Assistant U.S. Attorney, Bill Essayli
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Phone Number: (213) 894-2400
Email Address: Bilal.Essayli@usdoj.gov

**Re: Formal Notification of Alleged Misconduct by Former Acting U.S. Attorney Nicola Hanna and Multiple Senior Assistant U.S. Attorneys in the United States Attorney's Office for the Central District of California; Acting In Concert With Multiple Corrupt United States Department of Homeland Security (DHS) Officials. Request for Thorough Investigation and Reporting to the State Bar of California, Federal Crime Victims Rights Ombudsman, and the United States Attorneys Office of the Inspector General Pursuant to the Crime Victims' Rights Act (18 U.S.C. § 3771) and the Attorney General Guidelines for Victim and Witness Assistance**

Dear First Assistant U.S. Attorney Essayli:

I write to you in my capacity as a federal crime victim, pursuant to the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, and the United States Attorney General Guidelines for Victim and Witness Assistance (USAGVWA), to formally notify you of serious and ongoing violations of my statutory rights as a crime victim by former Acting U.S. Attorney Nicola Hanna and multiple senior Assistant U.S. Attorneys (AUSAs) employed by the United States Attorney's Office for the Central District of California (USAO-CDOC).

It is essential to note on **October 18, 2021**, I filed a Rule 60(d)(3) independent action for fraud on the court in ***Escamilla v. United States***, Case No. 2:21-cv-01910-ODW (C.D. Cal.), (Attached) demonstrating that USAO-CDOC attorneys had obtained the 2018 dismissal of my civil rights case (2:17-cv-07748-ODW) through a perjured declaration and fabricated evidence.

On **October 25, 2021**, the following senior DOJ attorneys filed an opposition (Dkt. 17) on behalf of the United States:

- **Tracy L. Wilkison** – then Acting United States Attorney, Central District of California
- **David M. Harris** – Assistant United States Attorney, Chief, Civil Division
- **Joanna S. Osinoff** – Assistant United States Attorney, Chief, General Civil Section
- **Kevin B. Finn** – Assistant United States Attorney

**Their opposition did NOT deny** any of the specific acts of fraud I alleged. Instead, they appear to have glossed over addressing their alleged wrongdoing, who instead argued that the victims "should have notified the Court sooner."

This position was knowingly false and in direct violation of their statutory duties because:

1. There is **no statute of limitations** on an independent action for fraud on the court (Fed. R. Civ. P. 60(d)(3); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)).
2. As DOJ attorneys, they were mandated under 18 U.S.C. § 3771(c)(1) and the Attorney General Guidelines to use their "*best efforts*" to see that I was accorded my CVRA rights — including protection from the accused bad actors and those acting in concert, the right to proceedings free from unreasonable delay, and the right to be treated with fairness (§ 3771(a)(7) & (8)).
3. Rather than cure the prior denial of my victim's rights (as permitted by § 3771(d)(4)), they appear to have **doubled down** on the fraud by defending a judgment obtained through the repeated republishing of DHS officials

fabricated evidence, included in multiple false and materially misleading pleadings and filings containing brazen mischaracterizations of material evidence and facts via declaration under penalty of perjury.

This October 25, 2021 filing constitutes a separate, willful, and wanton violation of the Crime Victims' Rights Act by the four highest-ranking civil litigators in the Central District of California at that time. These violations include the refusal to provide mandated victim assistance, the falsification of material evidence and facts in federal court proceedings, and the deprivation of my inalienable victims rights under federal law. Such conduct not only undermines the integrity of the judicial process but also constitutes potential violations of federal statutes, including 18 U.S.C. § 1512 (tampering with a witness, victim, or informant), 18 U.S.C. § 1519 (alteration or falsification of records in federal investigations), and 18 U.S.C. § 242 (deprivation of rights under color of law).

As detailed below, these actions have persisted since at least 2013, involving my status as a victim of federal crimes committed by the high-profile, politically, and organized crime connected primary bad actor, David Dragan Selakovic (Selakovic), and his longtime business partner, Steven Blackburn, and associated entities (collectively, the "Selakovic Defendants"), in conjunction with my company's former attorney's, including embezzlement (18 U.S.C. § 645), securities and commodities fraud (18 U.S.C. § 1348), and mail and wire fraud (18 U.S.C. § 1343).

It is also essential to note, the United States Federal Bureau of Investigation (FBI) has also known about Selakovic defendants since at least 2000, when FBI officials raided one of the Selakovic defendants warehouses in Pflugerville, Texas, and have since, allowed the Selakovic defendants to illegally manufacture, distribute, and resell an untold millions of dollars worth of fake, counterfeit, or unauthorized versions of Microsoft software products, as evidenced in this news article indicating the same.

These crimes proximately harmed me, my family, and my company, Greenway Nutrients, Inc., resulting in financial losses exceeding tens of millions of dollars. Despite repeated notifications to DHS, and USAO-CDOC officials, including Nicola T. Hanna, Tracy Wilkison, Sandra Brown, Eileen Decker, and others, no assistance

has been provided, and instead, material evidence has been falsified to obstruct justice and the repeated denial of any due process or victims' rights.

I respectfully request that you and your office initiate a thorough investigation into this misconduct and report the findings to the State Bar of California and the Department of Justice Office of the Inspector General (OIG) for appropriate disciplinary action, including potential suspension or termination, as mandated by 18 U.S.C. § 3771(f)(2)(C).

## I. Background of the Case and My Status as a Crime Victim

I am Gustavo Escamilla, the primary owner and developer of Greenway Nutrients, Inc., a company based in the Central District of California. In April 2013, I discovered that the Selakovic Defendants were unlawfully stealing and selling substantial quantities of Greenway's trademarked products bearing Greenway's trademark, leading to the filing of a federal civil lawsuit in the District of Colorado (*Greenway Nutrients, Inc. v. Blackburn et al.*, Case No. 1:13-cv-01088) and a criminal complaint with the FBI's Los Angeles Field Office.

Subsequent investigations revealed the Selakovic Defendants' involvement in a multibillion-dollar counterfeit software scheme affecting major corporations like Adobe Systems and Microsoft, prompting referrals to the Department of Homeland Security (DHS) and the United States Attorney's Office for the Western District of Missouri (USAO-MO).

DHS officials confirmed in March 2015 that I and Greenway were victims of federal crimes and that sealed indictments had been secured against the Selakovic Defendants in the Western District of Missouri as part of "Operation Software Slashers," one of the government's largest prosecutions of its kind. Under 18 U.S.C. § 3771(e)(2)(A), a "crime victim" is defined as "*a person directly and proximately harmed as a result of the commission of a Federal offense.*" I meet this definition, as the Selakovic Defendants' actions caused direct financial and emotional harm, including losses exceeding $100 million in retail value from unauthorized sales, without any compensation to me or my company.

Despite this, USAO-CDOC officials, including Hanna and his predecessors, have systematically denied me assistance since 2013, falsified evidence in related civil rights proceedings, and deprived me of my CVRA rights. This misconduct was exacerbated in my 2017 civil rights lawsuit against DHS (*Escamilla et al. v. Department of Homeland Security et al.*, Case No. 2:17-cv-07748) and my 2021 CVRA enforcement petition (*Escamilla et al. v. United States of America*, Case No. 2:21-cv-01910), both in the Central District of California.

It is essential to note, coinciding with my CVRA preparations and communications with potential counsel (including at Gibson Dunn & Crutcher, where former Acting U.S. Attorney Nicola T. Hanna was a partner), Former Acting U.S. Attorney, Nicola Hanna, and USAO-CDOC indicted my nephew, Jordan McCormick, in September 2020, on information and belief, suggests vindictive prosecution of my nephew to deter my pursuit of rights (cf. *Blackledge v. Perry*, 417 U.S. 21 (1974)).

## II. Relevant Federal Mandates Under the CVRA and USAGVWA

The CVRA and USAGVWA impose clear, non-discretionary obligations on Department of Justice (DOJ) personnel, including U.S. Attorneys, to protect and assist crime victims. These mandates prioritize a victim-centered, trauma-informed, and culturally sensitive approach, as outlined in the USAGVWA (2022 Edition, issued by Attorney General Merrick B. Garland). Key provisions include:

- **CVRA Rights (18 U.S.C. § 3771(a))**: Crime victims have the following inalienable 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 determines otherwise based on clear and convincing evidence.
  (4) The right to be reasonably heard at any public proceeding involving release, plea, sentencing, or parole.
  (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 CVRA rights and services under the Victims' Rights and Restitution Act (34 U.S.C. § 20141(c)).

- **Enforcement and Judicial Obligations (18 U.S.C. § 3771(b)-(d))**: In any court proceeding involving an offense against a crime victim, the court must ensure these rights are afforded (§ 3771(b)(1)). Victims may assert rights in the district where the crime occurred or where prosecution is underway (§ 3771(d)(3)), and the court must decide such motions forthwith. DOJ employees must make their "best efforts" to accord victims these rights (§ 3771(c)(1)), and errors may be cured (§ 3771(d)(4)), which they have, thus far, failed to do.
- **USAGVWA Guidelines**: These guidelines, applicable to all DOJ components including USAO-CDOC, require personnel to:
  - Identify victims early and provide services without regard to administrative remedies or civil outcomes (USAGVWA, Art. III).
  - Offer protection from accused offenders, and those acting in concert with the accused offenders, including notifications of releases and plea agreements (Art. IV).
  - Ensure timely notice, consultation with government attorneys, and restitution (Art. V-VII).
  - Adopt a victim-centered approach, avoiding actions that expose victims to further harm or impede justice (Foreword by Attorney General Garland).
  - Impose disciplinary sanctions, including suspension or termination, for willful or wanton failures to comply with victim treatment laws (18 U.S.C. § 3771(f)(2)(C); USAGVWA, Art. IX).

## III. Alleged Violations and Misconduct by Senior AUSAs within the USAO-CDOC

Since 2013, USAO-CDOC officials have been aware of my case through direct communications, complaints to the Los Angeles Field Office of FBI, oversight committees, and court filings.

**Key instances of misconduct include:**

- **Refusal to Assist and Denial of Rights (2016-2021)**: Despite previous notifications to Decker, Brown, Wilkison, and others, no victim services were provided. In June 2016, Decker dismissed my civil rights complaint against DHS without contacting me, falsely claiming lack of jurisdiction. From July 2016 onward, repeated emails and complaints went ignored, violating my rights to confer with government attorneys (§ 3771(a)(5)), notice of proceedings (§ 3771(a)(2)), and fair treatment (§ 3771(a)(8)).
- **Falsification of Evidence (2018-2021)**: In my 2017 civil rights lawsuit, Hanna and AUSAs (including Grace Park) submitted falsified declarations and motions, republished a fabricated and non-existent August 17, 2015, Colorado court ruling against Greenway (contrary to actual rulings in Greenway's favor; see Case No. 1:13-cv-01088, Dkt. 129). They also submitted March 2017 discovery of attorney embezzlement as "*rather old*," omitting key facts and concealing my exhaustion of administrative remedies. These acts constituted fraud on the court, leading to dismissal with prejudice and violating due process and § 3771(a)(7)-(8). Similar falsifications occurred in my 2021 CVRA petition.
- **Retaliatory Actions (2020)**: Coinciding with my CVRA preparations and communications with potential counsel (including at Gibson Dunn & Crutcher, where Hanna was a partner), Former Acting U.S. Attorney, Nicola Hanna, and USAO-CDOC indicted my nephew, Jordan McCormick, in September 2020, suggesting vindictive prosecution to deter my pursuit of rights (cf. Blackledge v. Perry, 417 U.S. 21 (1974)).

This pattern reflects willful disregard of USAGVWA mandates for victim-centered assistance and exposes systemic failures, potentially rooted in racial discrimination against Hispanic/Latino victims.

**As evidence, attached you will find the following exhibits:**

1. The victim's October 18, 2021, Rule 60(d)(3) motion for Fraud on The Court
2. USAO-CDOC U.S. Attorneys October 25, 2021, opposition (Dkt. 17)
3. The victim's November 1, 2021, response to USAO-CDOC U.S. Attorneys October 25, 2021, opposition.
4. Criminal Complaint Against DHS Officials Submitted to United States Department of Homeland Security Office of The Inspector General in or around July 2025

## IV. Request for Investigation and Reporting

Pursuant to 18 U.S.C. § 3771(f)(2)(C) and USAGVWA Article IX, I respectfully request that you and your team:

1. Initiate a thorough internal investigation into the misconduct of Nicola Hanna and the involved senior AUSAs.
2. Report the findings to the State Bar of California for potential disciplinary proceedings under California Rules of Professional Conduct (e.g., Rule 3.3, Candor Toward the Tribunal; Rule 8.4, Misconduct).
3. Report the findings to the DOJ Office of the Inspector General for review of potential criminal violations and administrative sanctions.

Notwithstanding my immense fear of further potential retaliatory misconduct, my personal well-being, and safety, I respectfully request immediate assistance am available to provide additional evidence, including emails, court records, and affidavits, to facilitate this process. Thank you for your prompt attention to this matter, which is essential to restoring public trust in the administration of justice.

Respectfully submitted,

/s/ Gustavo Escamilla
Gustavo Escamilla
Federal Crime Victim

CC:

U.S. Department of Justice Office of the Inspector General Investigations
The United States Department of Justice Crime Victims' Rights Ombudsman, Ellen M. FitzGerald, Victims' Rights Ombudsman
House Judiciary Committee
The United States Department of Justice Office of Professional Responsibility (OPR)
Office of The Honorable Congressman Jim Jordan, Chairman of the House Judiciary Committee
United States Attorney General Pam Bondi
Office of the Assistant Attorney General, Civil Rights Division, Harmeet Dhillon
Office of The Honorable Congresswoman Laura Friedman, Clayton Schroers, Chief of Staff, and Carissa Bunge; Legislative Director
Secretary of Homeland Security, Kristi Noem
United States Department of Homeland Security Office of The Inspector General
United States Department of Homeland Security Office of Civil Rights and Civil Liberties

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# Exhibit R

# RE: REQUEST FOR REASONABLE PROTECTION PURSUANT TO THE CRIME VICTIMS' RIGHTS ACT ("CVRA"), 18 U.S.C. § 3771, and THE 2022 ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE ("AG Guidelines")

From: Gustavo (gescamilla@ymail.com)

To: allison.stafford@usdoj.gov

Cc: bilal.essayli@usdoj.gov; harmeet.dhillon@usdoj.gov; clayton.schroers@mail.house.gov; carissa.bunge@mail.house.gov; kristi.noem@dhs.gov; oig.hotline@usdoj.gov; crcl@hq.dhs.gov

Date: Monday, January 12, 2026 at 08:09 AM PST

Gustavo Escamilla
1315 Highland Avenue
Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

January 12, 2026

Supervisory Victim Witness Specialist, Allison Stafford
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Phone Number: (213) 894-2400
Email Address: Allison.Stafford@usdoj.gov

**Re: REQUEST FOR REASONABLE PROTECTION PURSUANT TO THE CRIME VICTIMS' RIGHTS ACT ("CVRA"), 18 U.S.C. § 3771, and THE 2022 ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE ("AG Guidelines")**

Dear Ms. Stafford:

I am writing to follow up on my previous correspondence regarding the victim's invoking their statutory rights to receive reasonable protection from the accused bad actors and those potentially acting in concert, under the Crime Victims'

Rights Act ("CVRA"), 18 U.S.C. § 3771, and the **2022 Attorney General Guidelines for Victim and Witness Assistance ("AG Guidelines")**.

For years, I have provided federal law enforcement and former counsel with actionable intelligence regarding a massive transnational criminal enterprise involving **David Dragan Selakovic** and his associates. Despite the victims' cooperation leading to the seizure of millions of dollars in counterfeit goods in "Operation Software Slashers", federal law enforcement authorities have failed to reciprocate or assist with the victims' mandatory protection required by law.

## I. The Imminent Threat: Transnational Organized Crime and Documented Intimidation

The Department is on notice that the primary suspect, David Dragan Selakovic (Selakovic), is alleged to be a top earner for **"Group America,"** a brutal yet low-profile Serbian-American drug trafficking organization accused of smuggling tons of cocaine into the United States for decades. The danger here is not hypothetical; it is historical, documented, and lethal.

1. **History of Violence and Witness Tampering:** Group America's leadership, specifically **Mileta Miljanic**, is accused of having deep ties to state intelligence apparatuses—potentially including the CIA—and a history of extreme violence . Furthermore, the syndicate's former ringleader was previously indicted for **witness tampering** in **the federal racketeering trial of John Gotti.** This is a criminal enterprise that historically neutralizes witnesses to obstruct justice. As evidenced in the attached info-graph and the news article(s) referenced below.

According to a multi-year investigation conducted by the Organized Crime and Corruption Network, titled **"Powerful Serbian-American Drug Traffickers May Have Ties to Intelligence Agencies," that also accuses Group America's members of** allegedly receiving protection from the CIA.

As evidenced in the Courthouse News Service's article referenced below.

https://www.courthousenews.com/powerful-serbian-american-drug-traffickers-may-have-ties-to-intelligence-agencies/

**"Fugitive Faces Charges In Gotti Jury Tampering Case"**

*https://www.theledger.com/story/news/2000/01/15/fugitive-faces-charges-in-gotti-jurytampering-case/26539371007/*

2. **Direct Intimidation of the Victim:** I have previously reported specific, terrifying instances of intimidation to DHS officials, including Special Agent Carlos Suarez. This includes an incident where three bald men with gang-affiliated tattoos attempted to breach my warehouse at night using flashlights to locate me.

3. **Surveillance:** I have documented and reported instances of unmarked law enforcement-style vehicles (attached) allegedly stalking my residence and my family, a tactic clearly designed to harass and silence a minority Mexican-American federal crime victim.

## II. The Non-Discretionary Duty to Act

Under the AG Guidelines, there is a **"strong presumption in favor of providing, rather than withholding, assistance and services"** to victims. By ignoring the threats posed by Mr. Selakovic and his Group America associates—who allegedly enjoy protection from intelligence agencies—the federal law enforcement officials have repeatedly failed its statutory mandate.

### A. The Right to Reasonable Protection (18 U.S.C. § 3771(a)(1))

The CVRA guarantees me the "right to be reasonably protected from the accused." This is not a suggestion; it is a federal right. According to **Article IV.F of the AG Guidelines**, the responsible official of the investigative agency **"shall arrange for a victim to receive reasonable protection"** when legitimate security concerns exist. Given Mr. Selakovic's documented ties to Serbian President **Alexander Vucic and "Group America's" violent transnational drug trafficking criminal**

**enterprise**, contacting local law enforcement is an utter and complete waste of time; they have proven to continue to be woefully ill-equipped to manage a state-sponsored transnational threat. The obligation falls squarely on federal law enforcement.

### B. The Duty to Assess and Act

The AG Guidelines explicitly state that Department personnel must **"promptly assess victim security concerns and take reasonable measures"**. To date, despite the victim's previous reports of suspected gang members at the victim's door and **unmarked law enforcement vehicles outside the victim's home,** that was perceived as a legitimate threat, meant to intimidate minority and marginalized federal crime victims, wherein no federal protection plan was previously implemented. This constitutes an abandonment of the "best efforts" standard required by 18 U.S.C. § 3771(c)(1).

## III. Request for Immediate Compliance and Coordination

Mr. Selakovic and his associates, including James Ryan, continue to operate their ongoing criminal Racketeering enterprise with impunity, allegedly utilizing litigation funding mechanisms like Virage Capital and offshore Cayman Island accounts to finance their defense and harass victims. Notwithstanding, federal law enforcement's non-discretionary obligations; according to AG Guidelines, require protection services to begin "at the earliest opportunity after the detection of a crime".

**Therefore, respectfully request that your office immediately:**

1. **Implement a federal protection plan** that addresses the specific transnational nature of this threat, which local police cannot handle.

2. **Provide written confirmation** that these measures have been initiated.

The victims are respectfully requesting assistance to ensure the Department fulfills its solemn obligation to protect crime victims and those who expose federal crimes.

**I have a legitimate, ongoing and pervasive fear for me and my family's well-being and personal safety**, and that the bad actors, or those acting in concert with the politically connected and organized crime connected bad actors, with a documented history of being accused of engaging in intimidation and some of the most heinous acts of violence, will retaliate and want to cause the victims or their family members physical harm.

I trust that, upon reviewing this dispositive evidence, you will agree that the Department's obligations to the victims under the Crime Victims' Rights Act, pursuant to 18 U.S.C. § 3771, and the *AG Guidelines* have not yet been met, and you will take the necessary professional steps to cure this ongoing violation.

Respectfully submitted,

/s/ Gustavo Escamilla

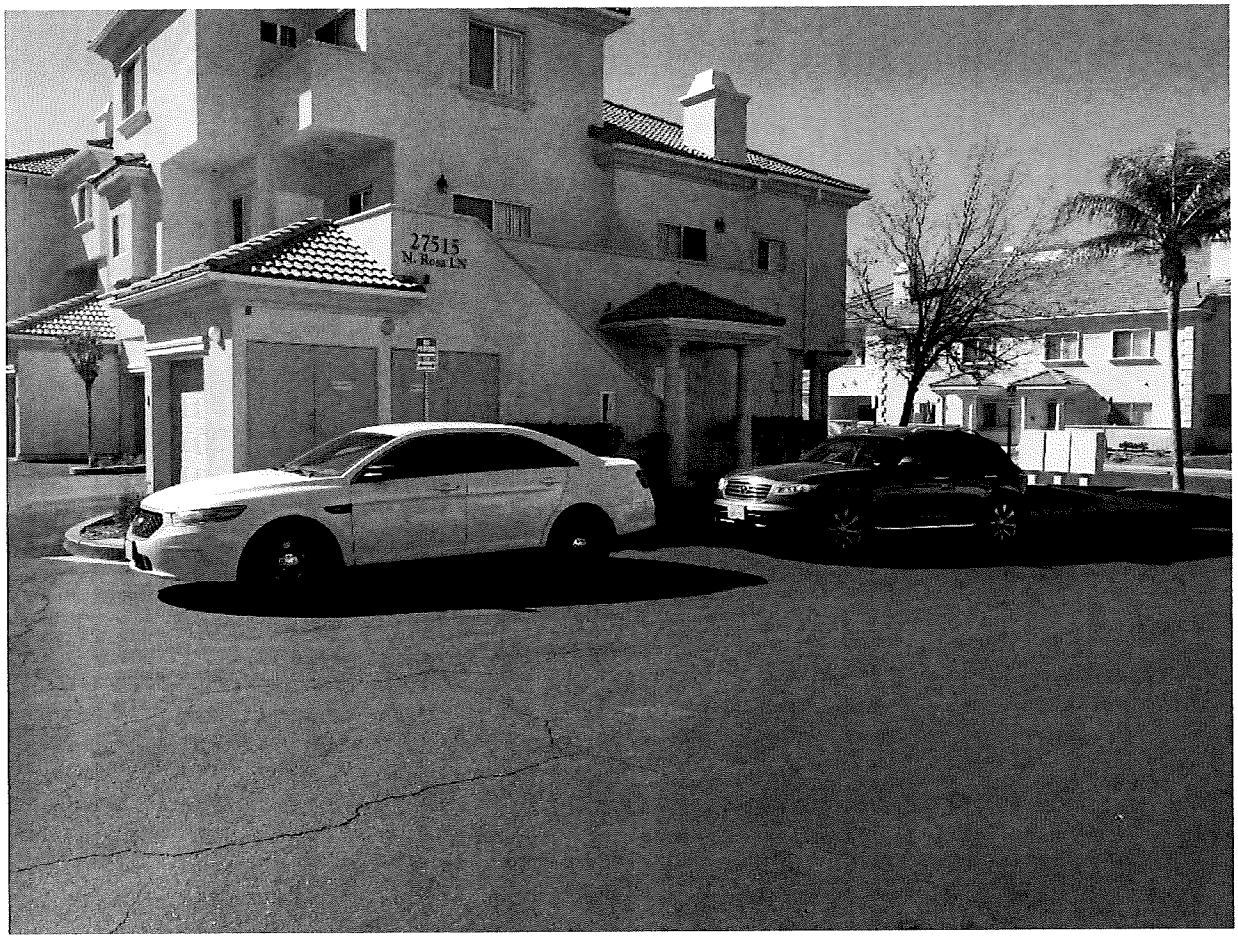
Gustavo Escamilla
Federal Crime Victim

CC.
First Assistant U.S. Attorney, Bill Essayli, United States Attorney's Office for the Central District of California
Office of the Assistant Attorney General, Civil Rights Division, Harmeet Dhillon
Office of The Honorable Congresswoman Laura Friedman, Clayton Schroers, Chief of Staff, and Carissa Bunge; Legislative Director
Secretary of Homeland Security, Kristi Noem
United States Department of Homeland Security Office of Civil Rights and Civil Liberties
U.S. Department of Justice Office of The Inspector General

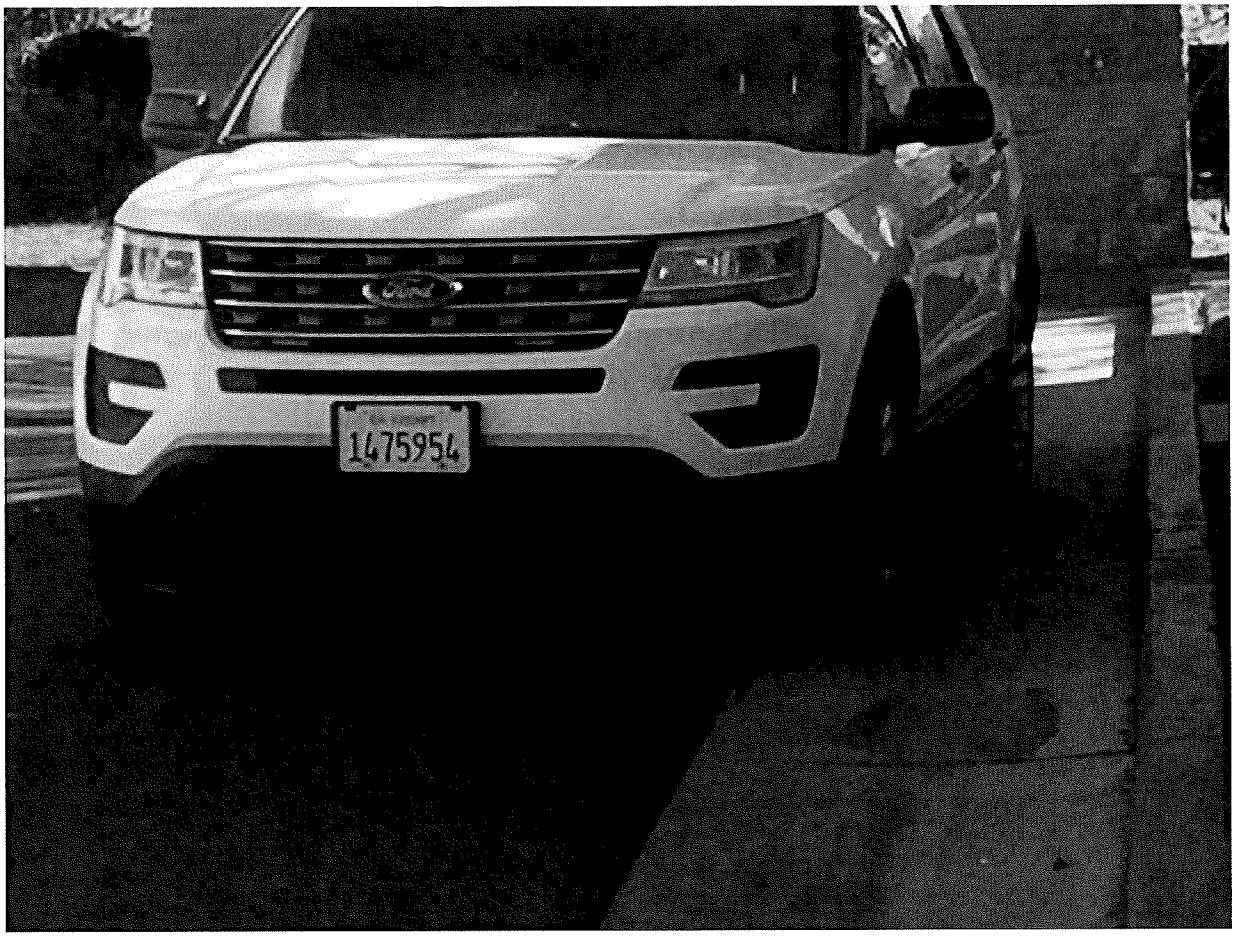
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25.9 KB

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# Exhibit S

# RE: [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

From: Stafford, Allison (USACAC) (allison.stafford@usdoj.gov)

To: gescamilla@ymail.com

Date: Wednesday, January 28, 2026 at 02:12 PM PST

The CVRA rights become available to federal crime victims only when federal criminal proceedings are initiated by complaint, information or indictment. You must be "a person directly and proximately harmed as a result of the commission of a Federal offense, or an offense in the District of Columbia," and be a "crime victim" of an offense charged in Federal District Court or the Superior Court of the District of Columbia to file a complaint with this office. 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.

If you believe you have evidence of federal criminal activity, you may contact the Federal Bureau of Investigation at 1-800-CALLFBI or email at www.fbi.gov/contact-us. The FBI can investigate your complaint, and, if appropriate, refer the matter for criminal prosecution.

If you are seeking victim services, you can contact the Office for Victims of Crime for assistance at https://ovc.ojp.gov/. You can reach the Office for Victims of Crime at 202-307-5983.

Best regards,

**Allison Stafford | Victim Witness Coordinator**
Victim Witness Unit | United States Attorney's Office
312 North Spring Street, Suite 1700 | Los Angeles, California 90012
T: 213.894.5670 | F: 213.534.7375 | allison.stafford@usdoj.gov

**From:** Gustavo <gescamilla@ymail.com>
**Sent:** Friday, January 23, 2026 6:34 AM
**To:** Stafford, Allison (USACAC) <Allison.Stafford@usdoj.gov>
**Cc:** Essayli, Bilal (USACAC) <Bilal.Essayli@usdoj.gov>; Dhillon, Harmeet K. (CRT) <Harmeet.Dhillon@usdoj.gov>
**Subject:** [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

Gustavo Escamilla

# Exhibit T

# [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

From: Gustavo (gescamilla@ymail.com)

To: allison.stafford@usdoj.gov

Date: Thursday, February 5, 2026 at 03:33 PM PST

Gustavo Escamilla
1315 Highland Avenue
Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

February 5, 2026

Supervisory Victim Witness Specialist, Allison Stafford

United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Phone Number: (213) 894-2400
Email Address: Allison.Stafford@usdoj.gov

**RE: [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review**

Dear Ms. Stafford,

Thank you for your email dated January 28, 2026. While I appreciate the response, it is respectfully submitted that the position articulated—that the victim's are somehow not an identified crime victim in a federal criminal proceeding and therefore ineligible for CVRA protections or assistance—is wholly, factually inaccurate, and legally incomplete.

The Victims' Rights Ombudsman FAQs and related DOJ guidance you reference (including 28 C.F.R. § 45.10(a)) confirm that CVRA rights attach upon initiation of federal criminal proceedings by investigation, complaint, information, or indictment. Here, such proceedings were in fact, initiated in or around 2015 when

DHS/HSI officials explicitly conferred victim status on me and my company, Greenway Nutrients, Inc., in connection with "Operation Software Slashers."

During an in-person meeting in Burbank, California, Supervisory Special Agent Shawn Gibson and other DHS representatives in attendance advised that:

- **Sealed federal indictments against David Dragan Selakovic and Steven Blackburn had been filed in the Western District of Missouri;**
- **We were identified as victims in the government's largest criminal trademark-infringement and counterfeit-goods prosecution of its kind; and**
- **We would be eligible for restitution from the federal victim restitution fund.**

These statements and subsequent email communications which your office (USAO-CDOC), in their pleadings, and the Court have already acknowledged existed, reflecting formal recognition of an ongoing federal criminal proceeding (initiated by sealed indictment) and direct/proximate harm from the charged offenses.

As you are undoubtedly aware, the sealing of indictments in no way negates the existence of the government's criminal proceedings or extinguishes victim status; it merely limits public disclosure.

In fact, existing 9th circuit case law and findings already referenced and identified in our previous correspondence, clearly demonstrate the Court disfavors federal law enforcements non-disclosure of sealed criminal indictments. Aggravated by federal law enforcement officials' mandatory obligations to disclose sealed case information to the victim's, and NOT the other way around.

## Ongoing Predicate Criminal Conduct in the Central District of California

The predicate acts of the racketeering enterprise—including embezzlement, (18 U.S. Code § 641), wire fraud (18 U.S.C. § 1343), mail fraud (18 U.S.C. § 1341), securities fraud (18 U.S.C. § 1348), and related criminal racketeering conduct—have continued

unabated in Glendale, California (within the Central District of California) for more than a decade, which is problematic.

Another recent example is the December 2025 civil trademark infringement lawsuit filed against Selakovic personally in the District of Delaware (*MR Innovation Co., Ltd. v. Vegalab S.A. David Selakovic et al.*, C.A. No. 1:25-cv-01554-UNA, which is attached and alleges Selakovic's misuse of alter ego corporate entities (Vegalab S.A. and Vegalab LLC) to perpetrate ongoing infringement—representing yet ANOTHER predicate act in Selakovic's alleged criminal racketeering enterprise.

Unfortunately, DHS and DOJ's ongoing failure to act or protect the general public has indirectly enabled such misconduct to persist, causing direct and proximate harm to me and my company, Greenway Nutrients, that satisfies the "*directly and proximately harmed*" definition under 18 U.S.C. § 3771(e)(2)(A).

Thankfully, the victims' have been in contact with the above plaintiff's counsel from Rivkin Radler and Saul Ewing, one of which is a former federal prosecutor, who have been made aware that federal law enforcement officials have indirectly allowed Mr. Selakovic's criminal racketeering enterprise to continue to operate unabated through their inexplicable and ongoing inaction, which has caused significant financial harm and negatively impacted another innocent company's business operations, substantially.

Moreover, as you are aware, your office's prior filings in Case No. 2:17-cv-07748-ODW (including declarations by USAO-CDOC AUSA Grace Park and a Robert A. Ramey) defended the very DHS/USAO-MO investigation referenced above, yet your correspondence regretfully omitted these glaring facts—contributing to erroneous dismissals.

The continued refusal to acknowledge this record or escalate the documented allegations of misconduct (by former Acting U.S. Attorney Nicola T. Hanna and multiple senior AUSAs) violates DOJ's employees mandatory obligations under:

- 18 U.S.C. § 3771(c) (best efforts to accord rights);

- The 2022 AG Guidelines (victim-centered approach, protection from harm, escalation of complaints); and
- Justice Manual §§ 1-4.100–1-4.400 and 3-2.170 (mandatory reporting of credible allegations of misconduct, prioritization of victim rights).

Additionally, as you are aware, I have conducted myself—and will continue to conduct myself—with the utmost professionalism, courtesy, and respect throughout this process. I have no intention of allowing any response to be misconstrued as frustration or hostility; the facts and law speak for themselves.

To resolve this matter constructively, I respectfully request that your office:

1. Confirm in writing my status as a CVRA-protected victim based on the DHS conferral and ongoing harm in this district;
2. Immediately provide reasonable protection, including a threat assessment related to Selakovic/"Group America" and coordination with appropriate authorities;
3. Escalate the allegations of misconduct/fraud on the court to DOJ-OPR, DOJ-OIG, and the Victims' Rights Ombudsman, with confirmation of referral;
4. Provide a detailed explanation if your office continues to maintain that no CVRA rights apply, specifically addressing the sealed indictments, DHS conferral, and ongoing predicate acts in CDCA.

In an ongoing effort to assist, the victims' remain available at your earliest convenience and stand ready to introduce you to counsel currently suing Mr. Selakovic, mentioned above, and provide any additional documentation or participate in discussions to ensure full compliance with federal law.

Thank you for your service and ongoing commitment to protecting victims' rights under federal law.

Respectfully submitted,

/s/ Gustavo Escamilla

Gustavo Escamilla
Federal Crime Victim

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**From:** Stafford, Allison (USACAC) <allison.stafford@usdoj.gov>
**To:** Gustavo <gescamilla@ymail.com>
**Sent:** Wednesday, January 28, 2026 at 02:12:13 PM PST
**Subject:** RE: [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

The CVRA rights become available to federal crime victims only when federal criminal proceedings are initiated by complaint, information or indictment. You must be "a person directly and proximately harmed as a result of the commission of a Federal offense, or an offense in the District of Columbia," and be a "crime victim" of an offense charged in Federal District Court or the Superior Court of the District of Columbia to file a complaint with this office. 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.

If you believe you have evidence of federal criminal activity, you may contact the Federal Bureau of Investigation at 1-800-CALLFBI or email at www.fbi.gov/contact-us. The FBI can investigate your complaint, and, if appropriate, refer the matter for criminal prosecution.

If you are seeking victim services, you can contact the Office for Victims of Crime for assistance at https://ovc.ojp.gov/. You can reach the Office for Victims of Crime at 202-307-5983.

Best regards,

**Allison Stafford I Victim Witness Coordinator**

Victim Witness Unit I United States Attorney's Office

312 North Spring Street, Suite 1700 I Los Angeles, California 90012

T: 213.894.5670 I F: 213.534.7375 I allison.stafford@usdoj.gov

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# Exhibit U

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# RE: [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

From: Stafford, Allison (USACAC) (allison.stafford@usdoj.gov)

To: gescamilla@ymail.com

Date: Thursday, February 12, 2026 at 12:19 PM PST

Thank you for the email. 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. You may find contact and procedural information at this website: https://www.justice.gov/usao/office-victims-rights-ombudsman

Best regards,

**Allison Stafford I Victim Witness Coordinator**
Victim Witness Unit I United States Attorney's Office
312 North Spring Street, Suite 1700 I Los Angeles, California 90012
T: 213.894.5670 I F: 213.534.7375 I allison.stafford@usdoj.gov

**From:** Gustavo <gescamilla@ymail.com>
**Sent:** Thursday, February 5, 2026 3:33 PM
**To:** Stafford, Allison (USACAC) <Allison.Stafford@usdoj.gov>
**Subject:** [EXTERNAL] Supplement - Credible Allegations of Judicial Misconduct, and CVRA Denials – For DOJ OPR/OIG And Oversight Review

Gustavo Escamilla

1315 Highland Avenue
Glendale, CA. 91202
Telephone: (818) 355-0062
Email: gescamilla@ymail.com

February 5, 2026

Supervisory Victim Witness Specialist, Allison Stafford

United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012