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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, and GREENWAY NUTRIENTS,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY; UNITED STATES OF AMERICA,

Defendants.

No. LACV 17-7748 ODW (MRWx)

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO DISQUALIFY THE HONORABLE OTIS D. WRIGHT

Hearing Date: None noticed by plaintiffs
Hearing Time: None noticed by plaintiffs
Location: None noticed by plaintiffs

Hon. Otis D. Wright

OPPOSITION[1]

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

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

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

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

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

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

[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,

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/s/ *Grace Y. Park*
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[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.*