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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

GUSTAVO ESCAMILLA, an individual; and GREENWAY NUTRIENTS, a Colorado corporation, Plaintiffs, v. DEPARTMENT OF HOMELAND SECURITY; THE UNITED STATES OF AMERICA; and DOES 1 through 50, inclusive, Defendants.	Case No.: 2:17-cv-07748 **PLAINTIFFS GUSTAVO ESCAMILLA'S AND GREENWAY NUTRIENTS' 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.

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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.

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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