UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: 2:17-cv-07748-AB-MRW	Date: November 4, 2026

Title: *Gustavo Escamilla et al v. Department of Homeland Security, et al.*

Present: The Honorable	**ANDRÉ BIROTTE JR., United States District Judge**
Evelyn Chun Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **[In Chambers] ORDER DENYING EMERGENCY MOTION TO SET ASIDE JUDGMENT [Dkt. Nos. 28, 33], DENYING EMERGENCY MOTION TO DISQUALIFY UNITED STATES ATTORNEY'S OFFICE [Dkt. No. 37], DENYING EMERGENCY APPLICATION TO FILE SUPPLEMENTAL FACTS [Dkt. No. 40], and STRIKING EXCESSIVE "EMERGENCY" NOTICES [Dkt. Nos. 44, 47, 50, 52, 54, 56]**

Before the Court is Plaintiff Gustavo Escamilla's ("Plaintiff") Emergency Motion to Set Aside the Judgment ("Motion," Dkt. No. 28). Once the case was reassigned, Plaintiff noticed the Motion for hearing on November 6, 2026 (Dkt. No. 33). Plaintiff thereafter also filed an Emergency Motion to Disqualify the United States Attorney's Office (Dkt. No. 37), noticed for November 20, 2026, and an unnoticed Emergency Application to File Supplemental Facts (Dkt. No. 40). Upon review of these filings and the entire docket, neither oppositions nor a hearing are necessary. The Court therefore **VACATES** the hearings set for November 6 and 20, 2026. *See* Fed. R. Civ. P. 78, C.D. Cal. L.R. 7-15. The Motions and Application are **DENIED**.

DISCUSSION

Plaintiff's Complaint, filed by attorney Mainak D'Attaray[1] on behalf of Plaintiff and his company Greenway Nutrients (which is not a party to the Motion), asserts five causes of action: three federal claims under 42 U.S.C. § 1983 for violation of the Fifth and Fourteenth Amendments (Counts 1-3); three state law claims for violation of the Bane Act, Cal. Civ. Code § 52.1, and for negligent and intentional infliction of emotional distress (Counts 4-6); and one claim for declaratory and injunctive relief corresponding to the § 1983 claims (Count 7). The Complaint alleges these claims against the Department of Homeland Security ("DHS") and the United States of America ("United States") (collectively, "Defendants"). Plaintiff's allegations arise out of "Operation Software Slashers," a DHS investigation into a criminal counterfeiting operation that sold counterfeit, fake, and unauthorized versions of products, including millions of dollars of counterfeit versions of Plaintiff's and Greenway's products. *See, e.g.*, Compl. ¶¶ 8-9, 18. In brief, Plaintiff was dissatisfied with how the Defendants' agents handled the case and allegedly failed to assist him despite him and Greenway Nutrients being victims of the criminal counterfeiting.

On April 4, 2018, Judge Wright entered an Order Granting Defendant's Motion to Dismiss with Prejudice ("Order," Dkt. No. 13). Judge Wright's Order dismissed all of Plaintiff's claims with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The Order also determined that Plaintiff failed to state any of these claims and dismissed them on that basis pursuant to Fed R. Civ. P. 12(b)(6).

From July-September 2021, attorney D'Attaray filed a motion to disqualify Judge Wright and a motion to set aside the judgment, both of which were denied.

Five years later, on September 30, 2026, Plaintiff himself filed an Emergency Motion to Disqualify Judge Wright (Dkt. No. 26) and the present Emergency Motion to Set Aside the Judgment. On October 1, 2026, Judge Wright

[1] This case was closed in 2018. The docket reflects that Mainak D'Attaray remains counsel of record for both Plaintiff and Greenway, and that he filed post-judgment motions in 2021, but this case has been inactive since then. Plaintiff himself filed the present documents beginning more than five years later, in September 2026. It is not clear if Plaintiff is still represented by counsel. The Court therefore addresses the present Motions.

recused himself and the case was transferred to Judge Birotte. Plaintiff moves to set aside Judge Wright's Order and judgment for fraud upon the Court, pursuant to Fed. R. Civ. P. 60(d)(3).

The Court has reviewed the entire docket and the Motion to Set Aside the Judgment ("Moton").[2] In September and October 2021, attorney D'Attaray filed two Motions for Reconsideration Pursuant to Fed. R. Civ. P. 60(d)(3) (Dkt. Nos. 18, 21). The Motions appear to be identical; the first Motion was stricken for failure to comply with Local Rule 7-3, and the second Motion was stricken for failure to comply with Local Rules 7-3 and 11-6. Indeed, both memoranda are about 51 pages long – well in excess of the limit set by Local Rule 11-6. After those Motions were stricken, nothing else was filed in this case for five years, until Plaintiff concurrently filed his motion to disqualify Judge Wright and the instant Motion to Set Aside the Judgment. But the 2021 Motions appear to raise the same grounds that the present Motion raises. Therefore, Plaintiff was aware of these grounds long ago. The present Motion is therefore untimely and is **DENIED** on that basis.

The Motion lacks merit in any event. The Order dismissed all of Plaintiffs' claims for lack of subject matter jurisdiction and for failure to state a claim. Even accepting Plaintiff's late-presented allegations of fraud on the court as true, he does not explain how such allegations overcome this Court's lack of subject matter jurisdiction over his claims, or how these allegations shore up any of his claims so as to overcome Rule 12(b)(6). Plaintiff therefore has not shown that any additional information he presents in his Motion supports setting aside the judgment. And on the Court's own consideration of this question, the Court concludes that none of the material presented in the Motion could overcome the grounds on which Judge Wright dismissed the case with prejudice.

Plaintiff's 31-page Emergency Application to File Supplemental Facts (Dkt. No. 40) repeats many of the same allegations. Insofar as it alleges "new" matters that occurred since 2021 and into this year, Plaintiff does not explain how those new matters establish subject matter jurisdiction over his § 1983 claims and state law claims against the Defendants, or how those matters can adequately plead his claims to overcome Rule 12(b)(6). Nor does the Court see how these obstacles can

[2] The memorandum (ignoring the 9-page notice) is about 30 pages long and therefore violates Local Rule 11-6.1. The Court declines to strike the memorandum, but admonishes Plaintiff and advises that similar overlong briefs or other rule violations, whether in this case or in his related cases, may be stricken.

be overcome. Plaintiff's Application to File Supplemental Facts is futile and is **DENIED** on that basis. Plaintiff's similarly repetitive and unduly burdensome "emergency" notices (Dkt. Nos. 44, 47, 50, 52, 54, 56) are **STRICKEN**.

And in light of the foregoing, Plaintiff's Motion to Disqualify the United States Attorney's Office (Dkt. No. 37) is **DENIED AS MOOT**.

CONCLUSION

For the foregoing reasons, Plaintiff's Emergency Motions (Dkt. Nos. 28, 33, 37) and his Emergency Application (Dkt. No. 40) are **DENIED**. Plaintiff's "emergency" notices (Dkt. Nos. 44, 47, 50, 52, 54, 56) are **STRICKEN**. The Clerk's Office is **ORDERED** to indicate on the docket these filings are stricken.

IT IS SO ORDERED.