d'attaray law

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 <melmon@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 <melmon@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.

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.

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)

10252 Foothill Boulevard

Lake View Terrace, California 91342

Office: (818) 273-4729

mdallaray@dallaraylaw.com

Direct: (424) 703-LAW4 [5294]

Fax: (855) 706-LAW4 [5294]

Mobile: (310) 497-2216

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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: Melanie D'Attaray <mdallaray@dallaraylaw.com>
Sent: Tuesday, September 21, 2021 5:15 AM
To: Park, Grace (USACAC) <GPark@usa.doj.gov>
Cc: Melanie Simon <msimon@dallaraylaw.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

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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

[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., PLAINTIFF(S) v. Department of Homeland Security, et al., DEFENDANT(S).	CASE NUMBER: CV 17-07748-ODW(MRWx) **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,[3] 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

[3] 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. *Subow 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.

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 relief. *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: [redacted]

To: shawn.gibson@dhs.gov

Cc: scott.titus@dhs.gov; jonathan.poland@dhs.gov; rosalinda.estrada@dhs.gov; brian.pecnik@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; sean.larson@usdoj.gov; carlos.suarez@ice.dhs.gov; timothy.garrison@usdoj.gov; stacey.perkins-reck@usdoj.gov; info@sec.gov; dhs-oig.officepublicaffairs@oig.dhs.gov; iyecontactmedia@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
155.5 KB

Request For Correspondence PB.docx
173.5 KB

Request For Prevati Memo.docx
167.4 KB

Prevati 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; usaoi.VictimOmbudsman@usdoj.gov; Judiciary_Whistleblower@mail.house.gov; OPR.Complaints@usdoj.gov; pamela.bondi@usdoj.gov; Harmeet.Dhillon@usdoj.gov; Clayton.Schuster@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).

1. 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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Oct 18 Rule 60(d)(3)
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Nov 1 Rule 60(d)(3) Response .pdf
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(11) DHS Office of Inspector General (E).pdf
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Oct 18 Rule 60(b)(3)
1.9 MB

Oct
1,801.5 KB

Nov 1 Rule 60(d)(3) Response .pdf
344.6 KB

(11) DHS Office of Inspector General (E).pdf
322.7 KB

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; CRCL.Compliance@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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Nov 1 Rule 60(d)(3) Response .pdf
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Nov 1 Rule 60(d)(3) Response .pdf
344.6 KB



(11) DHS Office of Inspector General (1).pdf
322.7 KB

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.

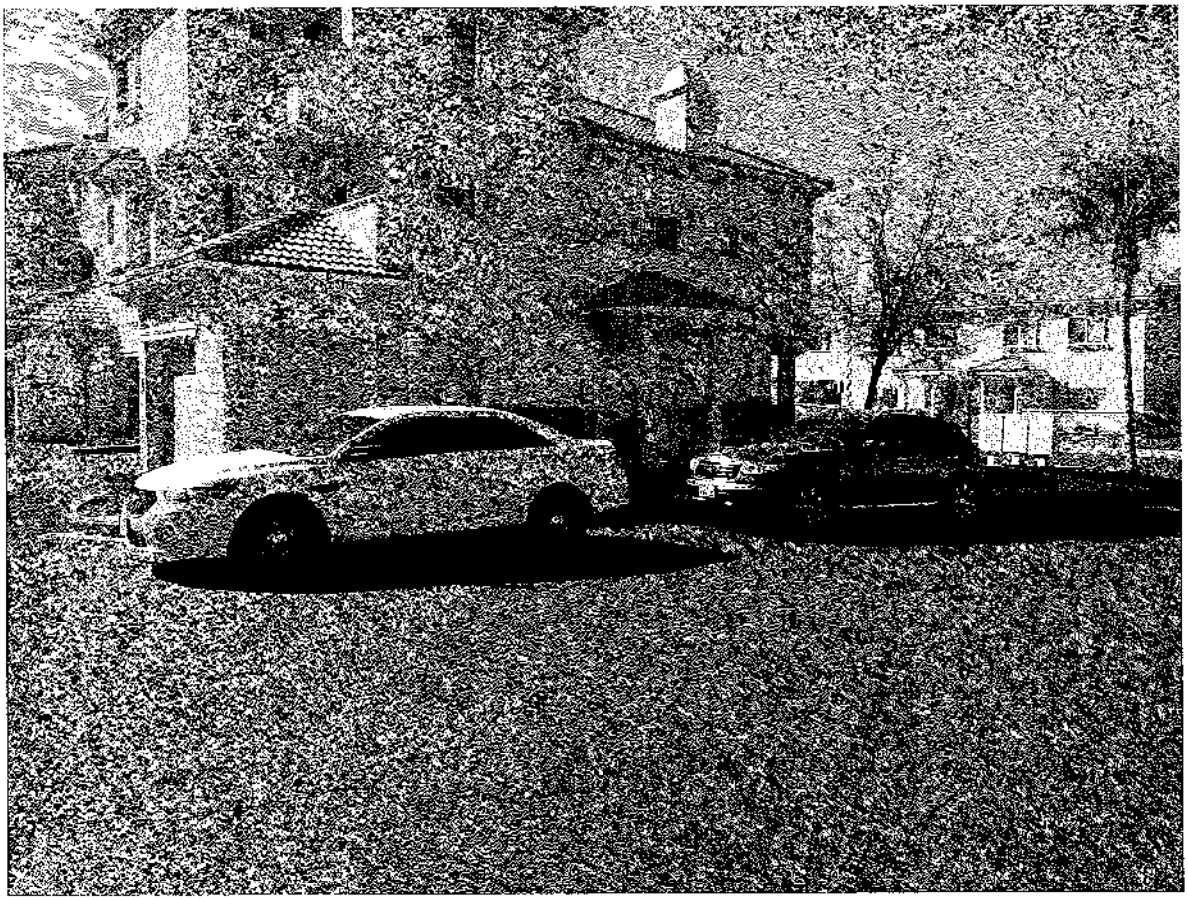
Respectfully submitted,

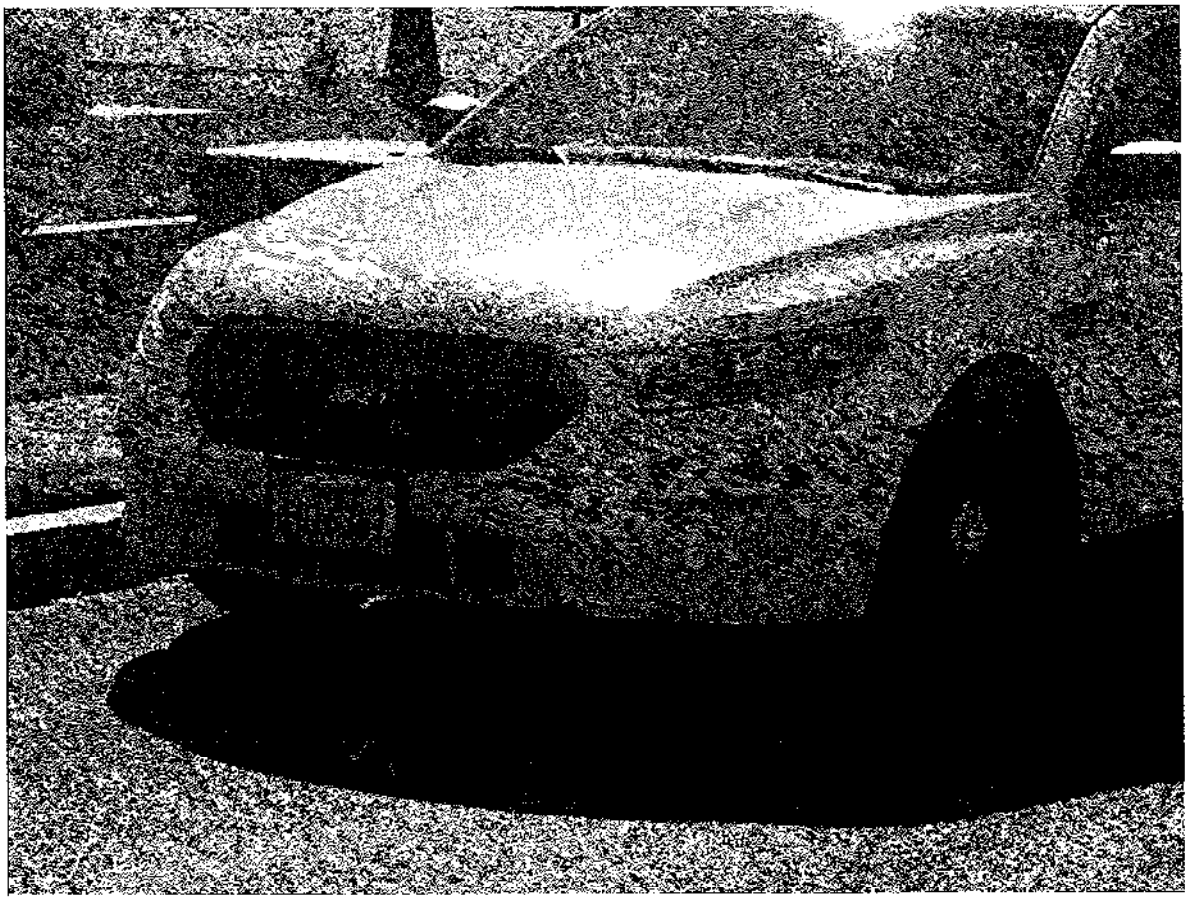
/s/ Gustavo Escamilla

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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(1) Virage Capital Infograph (2).pdf
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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 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: 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

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

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 | 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: 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