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

Gustavo Escamilla
1315 Highland Avenue
Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re: **GUSTAVO ESCAMILLA, an individual** Petitioner, v. **UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; and OTIS D. WRIGHT, II, in his official capacity as a United States District Judge,** **Respondents.**	**Case No.** CV26-9383-HDV **NOTICE OF FILING OF EXHIBITS A THROUGH AA IN SUPPORT OF EMERGENCY PETITION FOR ENFORCEMENT OF RIGHTS UNDER THE CRIME VICTIMS' RIGHT ACT, 18 U.S.C. § 3771, AND FOR RELIEF UNDER THE MANDATORY VICTIMS' RESTITUTION ACT, 18 U.S.C. § 3664(d)(5)** **[18 U.S.C. § 3771(d)(3) — TO BE DECIDED FORTHWITH]**

TO THE HONORABLE COURT AND THE CLERK OF COURT:

PLEASE TAKE NOTICE that Petitioner Gustavo Escamilla, a federally identified crime victim appearing pro se, hereby files the attached Exhibits A through Z in support of his Victims' Emergency Petition for Enforcement of the Crime Victims' Rights Act, 18 U.S.C. § 3771, and for Relief Under the Mandatory Victims Restitution Act, 18 U.S.C. § 3664(d)(5).

Exhibits A through U were previously filed as legible copies on May 20, 2026 (Dkt. 9) in the above-captioned matter and are incorporated herein by reference. Exhibits W through Z are filed herewith. The exhibits are identified in the index set forth below.

INDEX OF EXHIBITS

Exhibit A. Lead exhibit in support of Petitioner's crime-victim status.

Exhibit B. DHS Special Agent Gibson correspondence regarding the counterfeit-software investigation (No. 2:17-cv-07748).

Exhibit C. DHS Special Agent Gibson email ("we would be happy to take a second look if that decision is reversed") (No. 2:17-cv-07748).

Exhibit D. Order of Chief Judge Marcia S. Krieger, *Greenway Nutrients, Inc. v. Blackburn*, No. 1:13-cv-01088 (D. Colo., DE-129, Mar. 31, 2015).

Exhibit E. Declaration of AUSA Grace Y. Park, Exh. 4 (No. 2:17-cv-07748, Dkt. 9-2, Jan. 29, 2018).

Exhibit F. USAO-CDCA filing republishing the fabricated August 17, 2015, narrative (No. 2:17-cv-07748, Dkt. 9).

Exhibit G. USAO-CDCA filing republishing the fabricated August 17, 2015, narrative (No. 2:17-cv-07748, Dkt. 11).

Exhibit I. Petitioner's Rule 60(d)(3) Motion setting out the five documented acts of misconduct.

Exhibit J. USAO-CDCA Opposition to Rule 60(d)(3) Motion (No. 2:17-cv-07748, Dkt. 23, Oct. 25, 2021).

Exhibit K. Petitioner's Reply in support of Rule 60(d)(3) Motion (No. 2:17-cv-07748, Nov. 1, 2021).

Exhibit L. Rule 60(d)(3) Motion (attorney-appearance reference).

Exhibit M. Order of the Court (No. 2:17-cv-07748, Apr. 4, 2018).

Exhibit N. Order of the Court (Apr. 2, 2021).

Exhibit O. Petitioner's April 24, 2020 notice to DHS Special Agent Gibson invoking protection.

Exhibit P. Notification to First AUSA Essayli and the House Judiciary Committee.

Exhibit Q. Victim-services portal correspondence.

Exhibit R. Contextual exhibit.

Exhibit S. "Review" correspondence.

Exhibit T. Complaint-procedures correspondence.

Exhibit U. Final contextual exhibit.

Exhibit W. USPS Priority Mail service receipts — service on the U.S. Attorney's Office and the Attorney General (June 24, 2026).

Exhibit X. Professional process server proof of service — U.S. Attorney's Office (May 18, 2026).

Exhibit Y. Documentation of Group America Ties (Redacted).

Exhibit Z. Petitioner's memorialization letter to Acting Civil Chief AUSA Daniel A. Beck (August 2026).

Exhibit AA. Government's August 5, 2026, filing (United States v. McCormick, No. 2:20-CR-00346, Doc. 864), with the government's references to Petitioner and his claims highlighted.

Dated: August 19, 2026

Respectfully submitted,

GUSTAVO ESCAMILLA
1315 Highland Avenue
Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se

Exhibit A

Bea's Hive conspiracy

From: Suarez, Carlos (carlos.suarez@ice.dhs.gov)

To: gescamilla@ymail.com

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

Mr. Escamilla,

I was given your information by representatives with Adobe Systems and the Microsoft Corporation. If it all possible, I would like to conduct an interview with you either on 3/2/2015 or 3/3/2015, concerning the information you included in an email sent on October 5, 2014, to Michael A. Sink at his email address, MSink@perkinscoie.com. We have a criminal investigation open out of the Kansas City Office and I will only be in town on the days I noted above.

I attempted to leave you a message on the phone listed on the email (818-355-0062), but when I tried it today, it seems to be disconnected. My contact information is listed below. Please reach out to me at your earliest convenience so we can set a time and date.

Thanks,

Carlos Suarez
Special Agent
Homeland Security Investigations
HSI Kansas City
Office (816) 802-8586
Cell (816) 914-4959
E-mail: Carlos.Suarez@dhs.gov



Exhibit B

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

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

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

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

Mr. Escamilla,

We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, we have been advised that on August 17, 2015 a District Court found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark. While we understand that you may disagree with this judgement, our agency is bound by decision of the court and therefor are restricted on what we can do in regards to your claims that they continue to sell your products illegally. My suggestion is to seek legal alternatives such as an appeal of the decision and if you should receive an affirmative decision we can revisit our involvement against the distribution of the Greenway products. Regardless, we continue to investigate the alleged criminal activities in regards to his alleged distribution of counterfeit software. Please let me know if you have any questions.

Shawn Gibson | Operations Manager
DHS – ICE | Homeland Security Investigations-Domestic Operations
500 12th Street SW, 6th Floor MS-5106 (6161) | Washington D.C. 20536
email-shawn.gibson@dhs.gov

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

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

Dear Mr. Gibson and Suarez,

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

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

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

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

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

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

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

Thank you.

Sincerely,

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

Exhibit C

On Mon, 11/21/16, Gibson, Shawn S
<Shawn.S.Gibson@ice.dhs.gov> wrote:
From: Gibson, Shawn S <Shawn.S.Gibson@ice.dhs.gov>
Subject: RE: Ongoing and illegal Amazon.com sales of Greenway Nutrients® products

To: "Gustavo Escamilla" <gescamilla@ymail.com>,
"shawn.gibson@dhs.gov" <shawn.gibson@dhs.gov>
Cc: "Carlos Suarez" <carlos.suarez@dhs.gov>
Date: Monday, November 21, 2016, 10:24 AM

Why I understand your frustration and concerns, our agency cannot move forward with any investigation involving your trademark until you resolved this issue with the District Court in Colorado that issued the decision. I take offense to the insinuation that I am avoiding your email to deprive your rights. I have never once avoided your emails or questions, in fact because you are emailing from a ymail account they often go into a junk or quarantine box, which I find and then respond to. In this circumstance I have been not only been on official travel in regards to this investigation, but also had more pressing matters to take care of which hasn't afforded me the time to check those folders.

You assert allegations against this department, as well as myself and my staff, that we have ignored you and proactively tried to take advantage of you, which couldn't be further from the truth. We have, and continue too, since the day we met with you to seek charges against Selakovic in Singapore for his alleged sale of illicit software. Additionally, we have made attempts to look into the alleged misuse of the Greenway Nutrients logo, but because of the court decision, in a case you were a party to in Colorado, would not be able to file charges at this time. Attached is a selection of the case history from the court case showing a decision in favor of Selakovic, which as I advised in my prior email you should be able to seek an appeal if you disagree with the decision. Contact the court and get an in depth copy of the decision, which as you can see they tried to send you but was returned undeliverable just over a year ago. We would be happy to take a second look if that decision is
reversed.

If you feel that you have been wronged and feel these are just allegations against the department, my staff or myself, please seek any remedies afforded to you based on your rights.

Shawn Gibson I Operations Manager
DHS – ICE I Homeland Security Investigations-Domestic
Operations
500 12th Street SW, 6th Floor MS-5106 (6161) I Washington D.C.
20536
email-shawn.gibson@dhs.gov

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

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Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Marcia S. Krieger

Civil Action No. 13-cv-01088-MSK-KMT

GREENWAY NUTRIENTS, INC.,

Plaintiff,

v.

STEVE BLACKBURN,
DAVID SELAKOVIC,
FULFILLMENT SOLUTIONS SERVICES, LLC,
SUPREME GROWERS, LLC,

Defendants.

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

THIS MATTER comes before the Court on the Recommendation **(#124)** of the Magistrate Judge that the Defendants' Motion to Dismiss **(#109)** be granted in part and denied in part. Defendants Steve Blackburn, David Selakovic, and Fulfillment Solutions Services, LLC, filed timely Objections **(#126)** to the Recommendation.

I. Background

The underlying facts of this case have been repeated in several orders. In sum, Greenway, a Colorado corporation, is a supplier of plant nutrients and organic pesticides. It owns the trademark "Greenway Nutrients," which it includes on its line of products. As alleged in the Amended Complaint **(#107)**, at some unknown point in time, Greenway discovered overseas suppliers for two new products: "No Powdery Mildew" is a product that eliminates powdery mildew on agricultural products, and "No Spider Mites" is a product that eliminates

spider mites. Greenway began importing the products and selling them under the "Greenway Nutrients" trademark.

Later, Greenway, through its principles, met Defendant Steve Blackburn, and "his company," Defendant Fulfillment Solutions Services (FSS). Greenway and Mr. Blackburn entered into a business relationship whereby FSS was to assist Greenway in expanding its operations and market share. Greenway understood FSS to be a product fulfillment center in Florida that could bottle and ship products throughout the United States. Mr. Blackburn subsequently introduced Greenway to Mr. Selakovic, who was Mr. Blackburn's business partner.

In furtherance of their business relationship, Greenway and FSS through Mr. Blackburn executed a Fulfillment Agreement. The agreement provided that FSS would provide fulfillment services to Greenway for its new products. Mr. Selakovic purchased some of the product with his credit card, presumably to begin fulfillment services. Greenway also executed Nondisclosure Agreements[1] with Mr. Blackburn and Mr. Selakovic so that it could share its confidential information with them during the course of business.

Later, Mr. Blackburn and Mr. Selakovic allegedly fabricated a dispute with Greenway allegedly for the purpose of reneging on the contract and to keep the inventory of product they had acquired. In an attempt to resolve the fictional dispute, Mr. Blackburn represented to Greenway that Mr. Selakovic was interested in investing in Greenway. Mr. Blackburn went to Greenway's office, representing that he needed to conduct due diligence for the invest plan.

[1] The Defendants allege that the Nondisclosure Agreement purportedly entered into by Mr. Selakovic and attached to the Amended Complaint is a forged. The Court does not have occasion to address that issue today, as the Nondisclosure Agreement is not relevant to its ruling. However, the Court warns that the affirmative submission of false evidence is, at a minimum, akin to fraud on the Court, for which for which severe sanctions may be imposed. *See Garcia v. Berkshire Life Ins. Co. of America*, 569 F.3d 1174, 1182 (10th Cir. 2009).

During that time, Mr. Blackburn had access to all of Greenway's proprietary and confidential information.

Greenway alleges that Mr. Blackburn and Mr. Selakovic used the confidential information that they obtained to reverse engineered Greenway's No Spider Mites product and that they began selling the reproduced, counterfeit product with the Greenway trademark. Further, Mr. Blackburn and Mr. Selakovic allegedly began selling Greenway's stock of No Spider Mites and No Powdery Mildew, which bore the Greenway trademark, without authorization. These sales took place through FSS and Defendant Supreme Growers, LCC, a Colorado limited liability company. Greenway alleges that the Defendants used Greenway's internal customer notes to sell the infringing products to Greenway's own customers.

Greenway asserts claims for breach of contract against Mr. Blackburn, FSS, and Mr. Selakovic; unjust enrichment against Mr. Blackburn, FSS, and Mr. Selakovic; and violations of the Lanham Act (trademark infringement under 15 U.S.C. § 1114, and false designation of origin under 15 U.S.C. § 1125) against all Defendants. Greenway asserts federal subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1331, and requests that the Court exercise supplemental jurisdiction over the attendant state law claims.

The Defendants move to dismiss all claims for lack of personal jurisdiction and failure to state a claim for which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(2) and (6). The matter was referred to the Magistrate Judge for a report and recommendation.

The Recommendation issued by the Magistrate Judge recommends that the Motion to Dismiss be granted with respect to the breach of contract claims and all claims against Supreme Growers, LLC. No party objects to that part of the Recommendation. The Court therefore reviews that part of the Recommendation only for clear error. *See* Fed. R. Civ. P. 72, Advisory

Committee Note. Having reviewed the Recommendation and seeing no clear error, the Court adopts the Recommendation that the Motion to Dismiss be granted, in part, with respect to the breach of contract claims and all claims against Supreme Growers, LLC. Accordingly, the breach of contract claims against Mr. Blackburn and Mr. Selakovic, and all claims against Supreme Growers, LLC, are dismissed.

The Magistrate Judge also recommends that the Motion to Dismiss be denied with respect to the claims under the Lanham Act (trademark infringement and false designation of origin) and for unjust enrichment. The Magistrate Judge found that Greenway made a *prima facie* showing of personal jurisdiction over these Defendants and that the First Amended Complaint sufficiently pled the claims. On the issue of personal jurisdiction, the Magistrate Judge determined that Mr. Blackburn, FSS, and Mr. Selakovic waived their right to contest specific personal jurisdiction pursuant to forum selection clauses found in the contracts entered into by the parties.

The Defendants filed timely Objections to the Recommendation. The Defendants object only to the Magistrate Judge's finding that the Court has personal jurisdiction over them with regard to the Lanham Act claims.

II. Standard of Review

When a Magistrate Judge issues a Recommendation on a dispositive motion, the parties may file specific, written objections within fourteen days after being served with a copy of the Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). This Court shall make a *de novo* determination of those portions of the Recommendation to which timely and specific objection is made. *U.S. v. One Parcel of Real Prop. Known as 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Federal Rule of Civil Procedure 12(b)(2) provides that a defendant may move to dismiss a claim for lack of personal jurisdiction over the person. The Plaintiff bears the burden of establishing personal jurisdiction over the Defendants. *See OMI Holdings, Inc. v. Royal Ins. Co.*, 149 F.3d 1086, 1091 (10th Cir. 1998). In the preliminary stages of litigation, the Plaintiff's burden is light. Where, as here, there has been no evidentiary hearing, and the motion to dismiss for lack of personal jurisdiction is decided on the basis of the Complaint and affidavits, the Plaintiff need only make a *prima facie* showing that jurisdiction exists. *See Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995).[2]

For purposes of reviewing a motion to dismiss, the Court accepts all well-pled facts alleged in the Complaint as true — that is, factual allegations that are plausible, non-conclusory, and non-speculative. *See Bell Atl. Corp v. Twombly*, 550 U.S. 544 (2007). If jurisdictional allegations in the Complaint are challenged by an appropriate pleading, the Plaintiff has the duty to support its allegations by competent proof. *See Pytlik v. Prof'l Res., Ltd.*, 887 F.3d 1371, 1376 (10th Cir. 1989). If the parties present conflicting affidavits, all factual disputes must be resolved in the Plaintiff's favor. *See Wenz*, 55 F.3d at 1505.

III. Analysis

As the Court understands it, the Defendants argue that any forum selection clauses contained in the contracts attached to the complaint apply only to the breach of contract claims and do not establish a consent to personal jurisdiction for purposes of the federal Lanham Act claims. The Defendants argue that because this is a federal question case, Greenway must

[2] Of course, even if the Plaintiff meets its burden of establishing personal jurisdiction on the pleadings and by affidavit, it may be reviewed again at subsequent stages in the proceedings as evidence accumulates. *See FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992). Ultimately, at trial, the Plaintiff must establish that personal jurisdiction exists by a preponderance of the evidence. *See Dennis Garberg & Assoc., Inc. v. Pack-Tech Int'l Corp.*, 115 F.3d 767, 773 (10th Cir. 1997).

establish an independent basis for personal jurisdiction over them with regard to the Lanham Act claims. They argue that Greenway has not alleged sufficient facts to show that the Defendants had minimum contacts with Colorado that gave rise to the Lanham Act claims.

1. Consent to Personal Jurisdiction

A party may consent to jurisdiction by assenting to a forum selection clause contained in a contract. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985). By consenting to jurisdiction, a party waives any due process challenges that it could have otherwise brought. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 590 (1991). Forum selection clauses are "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." *See The Breman v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953, 957 (10th Cir. 1992). To overcome the presumption that a forum selection clause provision is valid, a party must make "a showing of inconveniences so serious as to foreclose a remedy, perhaps coupled with a showing of bad faith, overreaching, or lack of notice." *See Riley*, 969 F.2d at 958.

Here, only the Fulfillment Agreement, entered into by Greenway and FSS through Mr. Blackburn, contains a forum selection clause.[3] The clause provides:

> This Agreement shall be deemed to have been negotiated and executed in the State of Colorado, who shall have exclusive jurisdiction over this matter with venue in Denver, CO. The laws of the State of Colorado shall govern this Agreement and all matters arising out of or otherwise relating to this Agreement. The parties hereby submit to the personal jurisdiction of the state and federal courts of the State of Colorado.

[3] The Non-Disclosure Agreements, purportedly entered into by Mr. Blackburn and Mr. Selakovic, contain only a provision that provides that the agreements will be governed by the law of the State of Colorado. This is a choice of law provision, not a forum selection clause. The provision does not provide for the location of dispute resolution, nor does it purport to bind the parties to the jurisdiction of a particular court. Thus, the execution of these contracts alone do not confer personal jurisdiction over Mr. Blackburn or Mr. Selakovic.

The Defendants do not dispute the validity of this clause or argue that enforcement would be unreasonable or unjust. The Defendants argue only that the clause does not operate as consent to personal jurisdiction with regard to the Lanham Act claims asserted here.

Although the Tenth Circuit has not addressed the issue of whether a forum selection clause applies to non-contract claims, the Supreme Court has applied a forum selection clause in a case involving tort claims. *See Carnival Cruise Lines,* 499 U.S. at 588. Other Circuit Courts have held that where tort claims "ultimately depend on the existence of a contractual relationship" between the parties, such claims are covered by a contractually-based forum selection clause, despite the "pleading of alternative non-contractual theories of liability." *See Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 203 (3d Cir. 1983), *overruled on other grounds*, *Lauro Lines v. Chasser*, 490 U.S. 495 (1989)); *Lambert v. Kysar*, 983 F.2d 1110, 1121-22 (1st Cir. 1993) (holding that "contract-related tort claims involving the same operative facts as a parallel claim for breach of contract should be heard in the forum selected by the contracting parties.").

Here, the Court is persuaded that the Lanham Act claims depend on the existence of the contractual relationship between Greenway and the Defendants and involve the same operative facts as a parallel breach of contract claim. Greenway alleges that the Defendants sold the stock of Greenway product without authorization and in violation of Greenway's trademark rights. Prior to that, however, the parties entered into the Fulfillment Agreement, which provided that the Defendants would carry out fulfillment and distribution services for Greenway. This obligation required the Defendants to purchase product and bottling materials and to fulfill customer orders on behalf of Greenway. Thus, in order to determine whether the Defendants acted in violation of Greenway's rights, or rather, in accordance with the contract, will

necessarily rely on an interpretation of the Fulfillment Agreement. Because the Lanham Act claims are related to the Fulfillment Agreement, which expressly provides consent to jurisdiction in Colorado, the Court finds that the FSS and Mr. Blackburn have waived their right to contest personal jurisdiction in Colorado on due process grounds.

2. Due Process Analysis

The Court proceeds with the traditional due process analysis to determine whether it may exercise personal jurisdiction over Mr. Selakovic.

Before a federal court can assert personal jurisdiction over a non-resident defendant in a federal question case, the Court must determine (1) whether any applicable statute potentially confers jurisdiction by authorizing service of process on the defendant, and (2) whether the exercise of jurisdiction comports with due process. *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006). Because the Lanham Act does not, by itself, provide for nationwide service of process, Fed. R. Civ. P. 4(k)(1)(A) refers the Court to the Colorado long-arm statute. Colorado's long-arm statute confers maximum jurisdiction permissible consistent with the Due Process Clause. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1193 (Colo. 2005); *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008). Thus, the statutory inquiry effectively collapses into the second, constitutional inquiry. The Court therefore proceeds directly to the constitutional issue.

The due process analysis is a two-step inquiry. First, the Court examines whether the non-resident defendant has "minimum contacts" with the forum state. *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1065 (10th Cir. 2007). Second, the Court considers whether the exercise of jurisdiction over the defendant offends "traditional notions of fair play and substantial justice," — in other words, whether the exercise of jurisdiction is reasonable under the circumstances. *Id.*

To have sufficient minimum contacts for "specific" personal jurisdiction,[4] the out-of-state defendant must have (1) purposefully directed activities at forum residents, and (2) the litigation must result from alleged injuries that arise out of those forum-related activities. *See Dudnikov*, 514 F.3d at 1071 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472). The touchstone of this analysis is whether the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980). The aim of the "purposeful direction" doctrine has been said to ensure that the defendant is not bound to appear to account for merely "random, fortuitous, or attenuated contacts" with the forum state. *Dudnikov*, 514 F.3d at 1071 (quoting *Burger King*, 471 U.S. at 475). The question of whether a non-resident defendant has sufficient minimum contacts with the forum state to establish personal jurisdiction must be decided on the particular facts of each case. *See Benton v. Cameco Corp.*, 375 F.3d 1070, 1076 (10th Cir. 2004).

In *Calder v. Jones*, 465 U.S 783 (1984), the Supreme Court set forth what is now known as the "*Calder* effects test." The Court held that, where a defendant intentionally engages in tortious actions outside the forum state, and her actions are expressly directed at causing a harmful effect within the forum state, a sufficient nexus exists between the defendant and the state so as to satisfy due process and constitute "purposeful direction" under the "minimum contacts" analysis. *Id.* The Tenth Circuit has refined the *Calder* test to three elements, explaining that a defendant has "purposefully directed" its activities at Colorado or its residents

[4] The minimum contacts standard is also satisfied based on a defendant's "continuous and systematic" general business contacts with the forum state. *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 415 (1984). Such contacts would establish that the Court has general personal jurisdiction over the defendant. Here, however, the Amended Complaint does not allege that any of the Defendants were engaged in systematic and continuous activity in Colorado. Thus, the Court concludes that it does not have general personal jurisdiction over the Defendants.

when the defendant has (1) taken intentional tortious action, (2) that was expressly aimed at Colorado, (3) with the knowledge that the brunt of the injury from the action would be felt in Colorado. *Dudnikov*, 514 F.3d at 1071. Further, the Tenth Circuit takes a "restrictive" approach when analyzing whether a defendant expressly aimed his activities at the forum, explaining that the "express aiming" requirement looks at the "focal point" of the defendant's intentional action, and holding that the forum state itself must be the focal point of the tort. *Id.* at 1075.

Indeed, the mere fact that an out-of-state defendant has committed a tort that causes economic injury to a forum resident does not necessarily establish that the defendant engaged in the constitutionally required minimum contacts with the forum state. *See Far W. Capital, Inc. v. Towne*, 46 F.3d 1071, 1077-80 (10th Cir. 1995). Rather, the plaintiff must show that there was "something more" than the mere foreseeability of economic injury. *Id.*

For purposes of personal jurisdiction analysis, trademark infringement and false designation of origin are considered tortious acts. *See, e.g, Impact Productions, Inc. v. Impact Productions, LLC*, 341 F.Supp.2d 1186, 1190 (D.Colo. 2004). Mr. Selakovic argues that under the *Calder* effects test, Greenway has not alleged that he "expressly aimed" any tortious activity at Colorado.

The Court disagrees. Trademark infringement turns on whether customers are likely to be confused, mistaken, or deceived by the use of a trademarked product. 15 U.S.C. §§ 1114(1). Thus, the effects of an infringement will be felt wherever the infringing products are marketed or sold because that is where the confusion, mistake, or deceit will occur. Here, Greenway alleges that the Defendants sold counterfeit and unauthorized product through a Colorado distributor, Supreme Growers, LLC. It is therefore reasonable to infer that the effects of the Defendants' allegedly infringing acts would be felt in Colorado. Further, Greenway alleges that Mr.

Selakovic used his credit card to purchase raw product for the benefit of Greenway, a forum resident, and in furtherance of their business relationship. Mr. Selakovic therefore took affirmative acts to establish a business connection in Colorado. The Court finds that the Amended Complaint sufficiently alleges that Mr. Selakovic expressly aimed his conduct at Colorado.

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

IV. Conclusion

For the forgoing reasons, the Recommendation **(#124)** of the Magistrate Judge that the Defendant's Motion to Dismiss **(#109)** be granted in part and denied in part is **ADOPTED**. The Motion to Dismiss is **GRANTED** with respect to the breach of contract claims and all claims against Supreme Growers, LLC. The motion is **DENIED** in all other respects.

Dated this 31st day of March, 2015.

BY THE COURT:

Marcia S. Krieger

Marcia S. Krieger
Chief United States District Judge

Exhibit E

NICOLA T. HANNA
United States Attorney
DOROTHY A. SCHOUTEN
Assistant United States Attorney
Chief, Civil Division
ROBYN-MARIE LYON MONTELEONE
Assistant United States Attorney
Chief, General Civil Section
GRACE Y. PARK (Cal. Bar No. 239928)
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Facsimile: (213) 894-7819
E-mail: Grace.Park@usdoj.gov

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

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al.,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants.

No. CV 17-7748 ODW (MRWx)

DECLARATION OF GRACE Y. PARK IN SUPPORT OF MOTION TO DISMISS COMPLAINT

Hearing Date: March 5, 2018
Hearing Time: 1:30 p.m.
Location: First Street Courthouse
350 W. 1st Street
Courtroom 5D, 5th Floor

Hon. Otis D. Wright II

I, Grace Y. Park, do hereby declare and state as follows:

1. I am an Assistant United States Attorney employed by the United States Attorney's Office for the Central District of California and the attorney primarily responsible for defending this action.

2. Attached as Exhibit 1 is a true and correct copy of the January 22, 2018, meet and confer letter I sent to opposing counsel.

3. Attached as Exhibit 2 is a true and correct copy of the Saturday, January 27, 2018, email I received from plaintiffs' counsel, Mainak D'Attaray, in response to my meet and confer letter. In that letter, Mr. D'Attaray seeks to amend the Complaint and give defendants thirty (30) days to respond to the amended complaint. Given: (a) the lack of time to file a stipulation to amend the Complaint; and (b) the futility of plaintiffs' claims, however, defendants have decided to file their motion to dismiss.

4. Attached as Exhibit 3 is a true and correct copy of the docket in Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.).

5. Attached as Exhibit 4 is a true and correct copy of the June 28, 2013 Motion for Sanctions and Protective Order filed in Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of January 29, at Los Angeles, California.

/s/ Grace Y. Park
GRACE Y. PARK

Exhibit 1

United States Department of Justice

United States Attorney's Office
Central District of California

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

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

January 22, 2018

VIA U.S. MAIL and E-MAIL

Mainak D'Attaray
Law Office of Mainak D'Attaray
111 West Ocean Blvd., Suite 400
Long Beach, California 90802

Re: Gustavo Escamilla, et al. v. Department of Homeland Security, et al.
C.D.CA Case No. CV 17-7748 ODW (MRWx)

Dear Mr. D'Attaray:

In advance of the January 29, 2018, deadline to respond to your clients' Complaint, pursuant to Local Rule 7-3, this letter sets forth the reasons why defendants the United States of America ("United States") and Department of Homeland Security ("DHS", and with the United States, "defendants") will prevail on their motion to dismiss. Defendants accordingly request that plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc. ("Greenway," and with Escamilla, "plaintiffs"), dismiss their Complaint in its entirety. For your convenience, a voluntary notice of dismissal is attached.

First, the Complaint does not give defendants fair notice of the claims asserted against them pursuant to Rule 8 of the Federal Rules of Civil Procedure. The Complaint does not identify whether plaintiffs assert each of their claims against the United States, DHS, or both. (See Dkt. 1, Complaint at pp. 17-18, 20-22). Moreover, despite the fact that plaintiffs allege the United States "is sued under the Federal Tort Claims Act [("FTCA")]," (see id. at ¶¶ 6, 7), plaintiffs do not assert any FTCA claims. (See id. at pp. 17-23).

Second, to the extent plaintiffs assert state law claims for violations of the Bane Act, Cal. Civ. Code § 52.1, negligent and intentional infliction of emotional distress, and declaratory and injunctive relief, (see Dkt. 1, Complaint at ¶¶ 97-112), these claims may be maintained, if at all, only pursuant to the FTCA. See F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998) ("The FTCA is the exclusive remedy for tortious conduct by the United States, and it only allows claims against the United States."). A tort claim may be filed in district court, however, only after "receiving a conclusive denial of the claim from the agency or waiting for six months to elapse without a final disposition of the claim being made." Jerves v. United States, 966 F.2d 517, 519 (9th Cir. 1992); see 28 U.S.C. § 2675(a). Here, plaintiffs make no attempt to allege that they satisfied the jurisdictional requirement by filing any administrative claim. (See, generally, Dkt. 1, Complaint).

Nor does United States Immigration and Customs Enforcement ("ICE"), the relevant agency under the jurisdiction of DHS, have any record indicating that any administrative claim was filed by either Greenway or Escamilla. Accordingly, the action must be dismissed with respect to the state law claims for lack of subject matter jurisdiction.

Third, with respect to plaintiffs' claims pursuant to 42 U.S.C. § 1983, "[f]ederal officers acting under federal authority are immune from suit under section 1983." Gibson v. United States, 781 F.2d 1334, 1343 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); see Russell v. U.S. Dep't of the Army, 191 F.3d 1016, 1019 (9th Cir. 1999) (section 1983 "provides no right of action against federal (rather than state) officials"). And to the extent plaintiffs attempt to allege claims pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971) ("Bivens"), "no Bivens-like cause of action is available against federal agencies," such as DHS or the United States. Ibrahim v. Dep't of Homeland Sec., 538 F.3d 1250, 1257 (9th Cir. 2008). Accordingly, these claims must also be dismissed for lack of subject matter jurisdiction.

Finally, plaintiffs' principal contention appears to be that a subset of Greenway investors have not been found civilly or criminally liable for infringing Greenway's products. I want to note, however, that you served as counsel for Greenway in the Colorado action, Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.), which was dismissed without prejudice for failure to prosecute. Nothing alleged in the Complaint suggests that plaintiffs are precluded from asserting continuing infringement claims against the Greenway investors in that Colorado action.

Please let me know if you have any questions, or would like to further discuss any of the matters raised above.

Respectfully,

NICOLA T. HANNA
United States Attorney

Grace Y. Park

GRACE Y. PARK
Assistant United States Attorney

Enclosure

Maintak D'Attaray
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mdattaray@dattaraylaw.com

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 17-7748 ODW (MRWx) **NOTICE OF DISMISSAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 41(a) or (c)**

PLEASE TAKE NOTICE: (*Check one*)

☑ This action is dismissed by the Plaintiff(s) in its entirety.

☐ The Counterclaim brought by Claimant(s) _____ is dismissed by Claimant(s) in its entirety.

☐ The Cross-Claim brought by Claimants(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ The Third-party Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.

☐ **ONLY** Defendant(s) _____

_____

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

The dismissal is made pursuant to F.R.Civ.P. 41(a) or (c).

_____ _____

Date *Signature of Attorney/Party*

NOTE: F.R.Civ.P. 41(a): This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.

Exhibit 2

Park, Grace (USACAC)

From: Mainak D'Attaray <mdattaray@dattaraylaw.com>
Sent: Saturday, January 27, 2018 8:01 AM
To: Park, Grace (USACAC)
Subject: Re: Escamilla v. Dept of Homeland Security, CV 17-7748 ODW

Dear Ms. Park,

We received your correspondence outlining your reasons why a motion to dismiss is likely to be successful against Mr. Escamilla's complaint. We believe the complaint can be cured by amendment to rename individuals as parties and alleging different claims based on the same facts. Because of the press of other matters that are slated for trial and oral arguments next week, I will be unable to amend the complaint until after then. We will gladly postpone the time for you to respond to the complaint until after we amend it. We will likely file our amendment after February 5 and we will grant you an additional 30 days from the date of the filed amended complaint to file your response.

Let me know if you agree; I will draft up a stipulation and proposed order for the Court if necessary.

Very truly yours,
Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray

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

mdattaray@dattaraylaw.com
Office: (424) 703-LAW4 [5294]
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NOTICE: The contents of this message and/or its attachments may be protected by law by the attorney-client privilege, the attorney work product doctrine or other privileges. If you are not the intended recipient of this message, please forward a copy to the sender and delete the message and its attachments from your computer. Thank you.

On Mon, Jan 22, 2018 at 4:18 PM, Rosacia, Zenaida (USACAC) <Zenaida.Rosacia@usdoj.gov> wrote:

Counsel:

Attached please find a letter from AUSA Grace Park pertaining to the above-referenced action. Please contact Ms. Park directly if you have any questions.

Thank you!

Zen Rosacia

Legal Assistant

Exhibit 3

US District Court Civil Docket

U.S. District - Colorado
(Denver)

1:13cv1088

Greenway Nutrients, Inc. v. Blackburn et al

This case was retrieved from the court on Thursday, January 18, 2018

Date Filed: 04/23/2013
Assigned To: Chief Judge Marcia S. Krieger
Referred To: Magistrate Judge Kathleen M. Tafoya
Nature of suit: Other Statutory Actions (890)
Cause: Racketeering (RICO) Act
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: CLOSED
Closed: 08/17/2015
Statute: 18:1962
Jury Demand: Both
Demand Amount: $0
NOS Description: Other Statutory Actions

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

Plaintiff	PRO SE 405 Platte River Drive Denver , CO 80223 USA 888-694-2033 Zachary James Levine LEAD ATTORNEY [Term: 06/02/2015] Wolk & Levine, LLP 550 North Brand Boulevard Suite 625 Glendale , CA 91203 USA 818-241-7499 Fax: 323-892-2324 Email:Zjl@wltlawyers.Com Mainak D'Attaray [Term: 06/02/2015] Mainak D'Attaray, Law Office of 111 West Ocean Boulevard Suite 400 Long Beach , CA 90802 USA 424-703-5294 Fax: 855-706-5294 Email:Mdattaray@dattaraylaw.Com
Steve Blackburn Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
David Selakovic Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Fulfillment Solutions Services, Llc Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Supreme Growers, Llc Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004

	Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Stacy Blackburn [Term: 03/26/2014] Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Ecowin, Llc [Term: 04/09/2014] Defendant	
New Epic Media, Llc [Term: 04/09/2014] Defendant	
Chris Kohlhagen [Term: 04/09/2014] Defendant	
Bea's Hive, Llc [Term: 04/09/2014] Defendant	
Vegalab, Llc [Term: 03/26/2014] Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Gringo Diablo Hydro [Term: 04/09/2014] Defendant	
Grower Trust, Llc [Term: 03/26/2014] Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
Hoops Enterprise, Llc [Term: 03/26/2014] Defendant	Charles Wender ATTORNEY TO BE NOTICED Charles Wender, Attorney At Law,Chartered 190 West Palmetto Park Road Boca Raton , FL 33432-3828 USA 561-368-7004 Fax: 561-368-5798 Email:Wenderlaw@aol.Com
James Halk [Term: 04/09/2014] Defendant	
Dave Thompson	Charles Wender

[Term: 03/26/2014]
Defendant

ATTORNEY TO BE NOTICED
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David Y.S. Park
[Term: 04/09/2014]
Defendant

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

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

Charles Wender
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Email:Wenderlaw@aol.Com

Date	#	Proceeding Text	Source
04/23/2013	1	MOTION to Restrict Access by Plaintiff Greenway Nutrients, Inc.. (sphil,) (Additional attachment(s) added on 4/24/2013: # 1 Civil Cover Sheet) (Filing Fee $350.00; Receipt No. 55043 (sphil,). Modified on 4/24/2013 (sphil,). (Entered: 04/24/2013)	
04/23/2013	2	RESTRICTED DOCUMENT - Level 1: by Plaintiff Greenway Nutrients, Inc... (sphil,) Modified on 4/24/2013 (sphil,). (Entered: 04/24/2013)	
04/23/2013	22	COMPLAINT against Bea's Hive, LLC, Stacy Blackburn, Steve Blackburn, Ecowin, LLC, Fulfillment Solutions Services, LLC, Josh Gill, Gringo Diablo Hydro, Grower Trust, LLC, James Halk, Hoops Enterprise, LLC, Chris Kohlhagen, Koo Kyung-Bon, New Epic Media, LLC, David Y.S. Park, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC, filed by Greenway Nutrients, Inc. (Public Entry for Restricted Document - Level 1 2) (Text only entry) (klyon,) (Entered: 05/20/2013)	
04/24/2013	3	Case assigned to Chief Judge Marcia S. Krieger and drawn to Magistrate Judge Kathleen M. Tafoya. Text Only Entry (sphil,) (Entered: 04/24/2013)	
04/24/2013	4	SUMMONS issued by Clerk. Magistrate Judge Consent Form attached. (Attachments: # 1 Magistrate Judge Consent Form) (sphil,) (Entered: 04/24/2013)	
05/02/2013	5	SUMMONS REQUEST as to Josh Gill, dft by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 05/02/2013)	
05/06/2013	6	SUMMONS issued by Clerk. (klyon,) (Entered: 05/06/2013)	
05/08/2013	7	SUMMONS Returned Executed upon Steve Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013)	
05/08/2013	8	SUMMONS Returned Executed upon Fulfillment Solutions Servs. c/o Steve Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013)	
05/08/2013	9	SUMMONS Returned Executed upon Grower Trust, LLC c/o Dave Thompson (D'Attaray, Mainak) (Entered: 05/08/2013)	
05/08/2013	10	SUMMONS Returned Executed upon David Selakovic (D'Attaray, Mainak) (Entered: 05/08/2013)	
05/08/2013	11	SUMMONS Returned Executed upon Stacy Blackburn (D'Attaray, Mainak) (Entered: 05/08/2013)	

05/08/2013	12	SUMMONS Returned Executed upon Dave Thompson (D'Attaray, Mainak) (Entered: 05/08/2013)
05/08/2013	13	SUMMONS Returned Executed upon Vegalab, LLC c/o David Selakovic (D'Attaray, Mainak) (Entered: 05/08/2013)
05/09/2013	14	SUMMONS Returned Executed upon Josh Gill (D'Attaray, Mainak) (Entered: 05/09/2013)
05/16/2013	15	MOTION for Extension of Time to File Answer or Otherwise Respond by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 05/16/2013)
05/20/2013	16	PARAGRAPH V STRICKEN - Opposition to Defendants' 15 MOTION for 5-Day Extension to File Response to Complaint by Plaintiff Greenway Nutrients, Inc. (D'Attaray, Mainak) Modified on 5/20/2013 to correct title of document pursuant to chambers request and PDF(klyon,). Modified on 5/28/2013 to strike paragraph V pursuant to Minute Order dated 5/28/2013. (klyon,). (Entered: 05/20/2013)
05/20/2013	17	ORDER granting in part and denying in part 1 Motion to Restrict. No later than 5/30/2013, Plaintiff shall file a public version of its Complaint that redacts only the last two pages of Exhibit 2. Plaintiff is advised that, should it fails to file a redacted Complaint by that date, the original Complaint will be unrestricted in its entirety on 5/31/2013. By Magistrate Judge Kathleen M. Tafoya on 5/20/2013. (klyon,) (Entered: 05/20/2013)
05/20/2013	18	ORDER REFERRING CASE to Magistrate Judge Kathleen M. Tafoya: IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b), this matter is referred to the assigned United States Magistrate Judge to: (1)Convene a scheduling conference under Fed. R. Civ. P. 16(b), enter a Scheduling Order meeting the requirements of D.C.COLO.LCivR 16.2, enter such orders as appropriate to enforce the Scheduling Order, and resolve discovery matters;(2)ADR: Court sponsored alternative dispute resolution is governed by D.C.COLO.LCivR 16.6. On the recommendation or informal request of the magistrate judge or on the request of the parties by motion, the Court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding;(3)Hear and determine referred matters in accordance with 28 U.S.C. § 636(b)(1)(A) and (B). by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	19	MEMORANDUM regarding 15 MOTION for Extension of Time to File Answer or Otherwise Respond filed by Stacy Blackburn, Dave Thompson, Steve Blackburn, Vegalab, LLC, Fulfillment Solutions Services, LLC, David Selakovic, Grower Trust, LLC. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	20	MEMORANDUM regarding 16 Counter MOTION for Extension of Time to File Answer or Otherwise Respond re 15 MOTION for Extension of Time to File Answer or Otherwise Respond Opposition filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/20/13. Text Only Entry (msksec,) (Entered: 05/20/2013)
05/20/2013	21	MINUTE ORDER granting 15 Motion for 5-Day Extension to File Response to Complaint. Defendants may answer or otherwise respond to Plaintiff's Complaint no later than 5/30/2013. By Magistrate Judge Kathleen M. Tafoya on 5/20/2013. (klyon,) (Entered: 05/20/2013)
05/21/2013	23	ORDER REGARDING CUSTODY OF EXHIBITS AND DEPOSITIONS USED IN EVIDENTIARY HEARINGS AND TRIALS: Any exhibits and depositions used during evidentiary hearings or trials, counsel for the parties shall retrieve the originals of such exhibits and depositions from the Court following the evidentiary hearing or trial, and shall retain same for 60 days beyond the later of the time to appeal or conclusion of any appellate proceedings. The Court will retain its copy of the exhibits for the same time period after which the documents will be destroyed. by Chief Judge Marcia S. Krieger on 5/21/13. Text Only Entry (mskcd) (Entered: 05/21/2013)
05/21/2013	24	MOTION for Sanctions and to Strike Par. V of Plaintiff's Motion in Opposition by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC,

Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 05/21/2013)

05/21/2013	25	MEMORANDUM regarding 24 MOTION for Sanctions and to Strike Par. V of Plaintiff's Motion in Opposition filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gill, Steve Blackburn, Vegalab, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/21/13. Text Only Entry (msksec,) (Entered: 05/21/2013)
05/21/2013	26	MINUTE ORDER denying 24 Motion for Sanctions and to Strike V of Plaintiff's Motion in Opposition for failure to comply with D.C.COLO.LCivR 7.1A's duty to confer. By Magistrate Judge Kathleen M. Tafoya on 5/21/2013. Text Only Entry (kmtlc2) (Entered: 05/21/2013)
05/21/2013	27	MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss for Failure to State a Claim by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Continuation of Main Document, # 2 Continuation of Main Document)(Wender, Charles) (Entered: 05/21/2013)
05/22/2013	28	ORDER Setting Scheduling Conference for 8/14/2013 09:30 AM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya, by Magistrate Judge Kathleen M. Tafoya on 5/22/13. (sgrim) (Entered: 05/22/2013)
05/23/2013	29	Joint MOTION to Strike Paragraph V of Plaintiff's Opposition to Defendant's Motion for an Extension of Time by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 05/23/2013)
05/24/2013	30	MEMORANDUM regarding 29 Joint MOTION to Strike Paragraph V of Plaintiff's Opposition to Defendant's Motion for an Extension of Time filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/24/13. Text Only Entry (msksec,) (Entered: 05/24/2013)
05/28/2013	31	MINUTE ORDER granting 29 Joint Motion to Strike Paragraph V of Plaintiff's Opposition to Defendants' Motion for an Extension of Time. Paragraph V of Plaintiff's "Opposition to Defendants' Motion for 5-Day Extension to File Response to Complaint" (Doc. No. 16) is STRICKEN. By Magistrate Judge Kathleen M. Tafoya on 5/28/2013. (klyon,) (Entered: 05/28/2013)
05/28/2013	32	Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs. by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit Exhibits in Support of Emergency Motion)(D'Attaray, Mainak) (Entered: 05/28/2013)
05/28/2013	33	Emergency MOTION for Temporary Restraining Order re Steve Blackburn by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion)(D'Attaray, Mainak) (Entered: 05/28/2013)
05/28/2013	34	Emergency MOTION for Temporary Restraining Order re Growers Trust by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion) (D'Attaray, Mainak) (Entered: 05/28/2013)
05/28/2013	35	Emergency MOTION for Temporary Restraining Order re Supreme Growers by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit In Support of Motion, # 2 Exhibit In Support of Motion, # 3 Exhibit In Support of Motion, # 4 Exhibit In Support of Motion)(D'Attaray, Mainak) (Entered: 05/28/2013)
05/28/2013	36	AMENDED COMPLAINT REDACTED Complaint pursuant to Court Order dated May 20, 2013 against All Defendants, filed by Greenway Nutrients, Inc..(D'Attaray, Mainak) (Entered: 05/28/2013)
05/29/2013	37	ORDER denying 32 , 33 , 34 , 35 Motions for Temporary Restraining Order. Fed. R. Civ. P. 65(b) permits the Court to grant a Temporary Restraining Order, on an ex parte basis, upon the movant making two showings: (1) a showing, made in either an affidavit or a verified complaint, of "immediate and irreparable injury, loss, or damage [that will result] before the adverse party can be heard in opposition; and (2) a written showing demonstrating any efforts made to give notice to the adverse party and reasons why it should not be required. Fed. R. Civ. P. 65(b)(1)(A), (B). The Plaintiffs motions fail to make both showings. The Plaintiff has not supplied an affidavit supporting its request for Temporary Restraining Order, and the Amended Complaint is not verified, as required by Rule

		65(b)(1)(A). Further, although the Court understands that Defendants counsel may be aware of this matter by notification through CM/ECF, the Plaintiffs counsel has not given any indication of attempts made to contact the Defendants about the filing of this matter, nor has he shown reasons why notice should not be required. Thus, to the extent the motions request a Temporary Restraining Order, that request is DENIED. The Court deems the remainder of the motions as Motions for Preliminary Injunction under Rule 65(a). The Defendants shall file a response to the appropriate motions within 14 days of the date of this Order. A non-evidentiary law and motion hearing is set for 6/20/2013 at 04:30 PM in Courtroom A 901, for purposes of setting an evidentiary hearing on the Motions for Preliminary Injunction. Parties may appear by telephone if arrangements are made with the Courtroom Deputy at least 48 hours before the hearing. By Chief Judge Marcia S. Krieger on 05/29/13. Text Only Entry(mskic3,) (Entered: 05/29/2013)
06/11/2013	38	RESPONSE to 33 Emergency MOTION for Temporary Restraining Order re Steve Blackburn, 32 Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs., 34 Emergency MOTION for Temporary Restraining Order re Growers Trust, 35 Emergency MOTION for Temporary Restraining Order re Supreme Growers filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC. (Wender, Charles) (Entered: 06/11/2013)
06/11/2013	39	BRIEF in Opposition to 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim Opposition filed by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 06/11/2013)
06/17/2013	40	MOTION for Leave to Appear Telephonically by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 06/17/2013)
06/18/2013	41	ORDER denying 40 Motion for Leave to Appear. The motion is moot in light of 37 , where the Court previously authorized parties to appear by telephone at the hearing set for 6/20/2013, provided that arrangements are made with the Courtroom Deputy. By Chief Judge Marcia S. Krieger on 06/18/2013. Text Only Entry(mskic3,) (Entered: 06/18/2013)
06/18/2013	42	REPLY to Response to 33 Emergency MOTION for Temporary Restraining Order re Steve Blackburn, 32 Emergency MOTION for Temporary Restraining Order re Fulfillment Solution Servs., 34 Emergency MOTION for Temporary Restraining Order re Growers Trust, 35 Emergency MOTION for Temporary Restraining Order re Supreme Growers filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 06/18/2013)
06/20/2013	43	MINUTE ENTRY for Law and Motion Hearing held before Chief Judge Marcia S. Krieger on 6/20/2013. Matters addressed are set forth in the Minutes. Court Reporter: Terri Lindblom. (mskcd) (Entered: 06/21/2013)
06/28/2013	44	NOTICE of Entry of Appearance on behalf of Thomas Ryan and Wendy Ryan by Charles Wender on behalf of Steve Blackburn (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	45	MOTION for Sanctions , MOTION for Protective Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Pages continuation of motion)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	46	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	47	MEMORANDUM regarding 45 MOTION for Sanctions MOTION for Protective Order filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gill, Steve Blackburn, Vegalab, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 6/28/13. Text Only Entry (msksec,) (Entered: 06/28/2013)
06/28/2013	48	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)

06/28/2013	49	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, 48 Exhibits, Exhibit 6 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	50	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 46 Exhibits, 48 Exhibits, 49 Exhibits, Exhibit 9 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	51	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 48 Exhibits, 49 Exhibits, Exhibit 7 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	52	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, Exhibit 8 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	53	Exhibits in Support of 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 9 by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	54	Exhibits in Support of 53 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-A, B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 06/28/2013)
06/28/2013	55	Exhibits in Support of 53 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-C, D by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit Part C) (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	56	Exhibits in Support of 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 10-E by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 06/28/2013)
06/28/2013	57	MINUTE ORDER Setting Hearing on Motion 45 Motion for Sanctions and Protective Order. Forthwith Motion Hearing set for 7/12/2013 at 1:30 PM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya. Plaintiffmay file a response to Defendants' Motion no later than 7/8/2013. By Magistrate Judge Kathleen M. Tafoya on 6/28/2013. (klyon,) (Entered: 06/28/2013)
07/01/2013	58	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 51 Exhibits, 52 Exhibits, Exhibit 11-A, 11-B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Attachments: # 1 Exhibit Part B)(Wender, Charles) (Entered: 07/01/2013)
07/01/2013	59	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit 12-A, B by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC,

		Interested Parties Thomas Ryan, Wendy Ryan. (Attachments: # 1 Exhibit Part B) (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	60	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit C, Criminal Record of Gustavo Escamilla by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	61	Exhibits in Support of 56 Exhibits, 53 Exhibits, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit D, emails to Charles Wender by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	62	Exhibits in Support of 56 Exhibits, 53 Exhibits, 61 Exhibits,, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit E, Sample of email to David Selakovic by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/01/2013	63	Exhibits in Support of 56 Exhibits, 53 Exhibits, 61 Exhibits,, 55 Exhibits, 45 MOTION for Sanctions MOTION for Protective Order , 60 Exhibits,, 59 Exhibits,, 50 Exhibits, 46 Exhibits, 54 Exhibits, 48 Exhibits, 49 Exhibits, 62 Exhibits,, 58 Exhibits,, 51 Exhibits, 52 Exhibits, Exhibit F, Copies of cites by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/01/2013)
07/08/2013	64	MEMORANDUM regarding 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Josh Gill, Steve Blackburn, Vegalab, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/8/13. Text Only Entry (msksec,) (Entered: 07/08/2013)
07/08/2013	65	BRIEF in Opposition to 45 MOTION for Sanctions MOTION for Protective Order filed by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 07/08/2013)
07/12/2013	66	COURTROOM MINUTES for Motion Hearing held on 7/12/2013 before Magistrate Judge Kathleen M. Tafoya. ORDERED: Parties are directed to exchange initial disclosures with respect to a list of potential witnesses on or before July 16, 2013 by 5:00 p.m. (MST). Mr. Escamilla is ORDERED to not have any communication or contact, direct or indirect, with any of defendants' disclosed witnesses, including Thomas Ryan, Wendy Ryan, their daughter Jessica Campbell, and Jessica Campbell's employer. Court advises Mr. Escamilla that further communications, if necessary, must be through his attorneys. Mr. Escamilla further advised that any more direct communications of the kind and nature made previously will result in a recommendation that this case be considered for dismissal for abuse of the court system. Defendants' Motion for Sanctions and Protective Order 45 is GRANTED IN PART, as stated on record. Defendants are awarded reasonable costs with respect to the preparation and presentation of the motion, including attorneys fees. Defendants are directed to file a itemization of costs and fees and file with the court on or before July 22, 2013. Any objections to the amounts claimed shall be filed on or before August 1, 2013. Plaintiff's oral motion to exclude travel costs is DENIED. Defendant's attorney is awarded his own reasonable travel costs for appearance at this hearing, however will not be awarded attorney's fees for his travel time. FTR: S. Grimm. (sgrim) (Entered: 07/15/2013)
07/15/2013	67	SUMMONS Returned Executed by Greenway Nutrients, Inc.. Supreme Growers, LLC served on 6/26/2013, answer due 7/17/2013. (D'Attaray, Mainak) (Entered:

		07/15/2013)
07/17/2013	68	MOTION to Dismiss Adopting Prior Motion by Defendant Supreme Growers, LLC. (Wender, Charles) (Entered: 07/17/2013)
07/18/2013	69	MEMORANDUM regarding 68 MOTION to Dismiss Adopting Prior Motion filed by Supreme Growers, LLC. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/18/13. Text Only Entry (msksec,) (Entered: 07/18/2013)
07/19/2013	70	AFFIDAVIT in Support of Attorney's Fees by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Josh Gill, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC, Interested Parties Thomas Ryan, Wendy Ryan. (Wender, Charles) (Entered: 07/19/2013)
07/19/2013	71	MOTION to Dismiss Party Defendant Josh Gill by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 07/19/2013)
07/19/2013	72	Notice to Court re Attorney Wender's Representation of Defendant Josh Gill by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) Modified on 7/22/2013 to correct text (mnfsl,). (Entered: 07/19/2013)
07/22/2013	73	ORDER granting 71 Motion to Dismiss Party Party Josh Gill terminated. All captions shall omit Mr. Gill. by Chief Judge Marcia S. Krieger on 7/22/13. Text Only Entry(msksec,) (Entered: 07/22/2013)
08/01/2013	74	OBJECTIONS to 70 Affidavit, by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 08/01/2013)
08/07/2013	75	Proposed Scheduling Order Filed Unilaterally by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Affidavit ISO Prop. Sched. Order)(D'Attaray, Mainak) (Entered: 08/07/2013)
08/09/2013	76	WITHDRAWN - MOTION for Leave to File Unilateral Civil Scheduling Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Continuation of Main Document)(Wender, Charles) Modified on 8/15/2013 to withdraw pursuant to chambers instructions as per Notice at 78 (klyon,). (Entered: 08/09/2013)
08/09/2013	77	Proposed Scheduling Order Submitted Jointly (w/ consent of Defendants Blackburn, et al.) by Plaintiff Greenway Nutrients, Inc.. (D'Attaray, Mainak) (Entered: 08/09/2013)
08/13/2013	78	Notice of Withdrawal of 76 Motion to File Unilateral Civil Scheduling Order by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) Modified on 8/13/2013 to terminate Motion and correct title as this is not a Motion but a Notice (klyon,). (Entered: 08/13/2013)
08/13/2013	79	Renewed MOTION to Dismiss by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Attachments: # 1 Exhibit)(Wender, Charles) (Entered: 08/13/2013)
08/13/2013	80	MEMORANDUM regarding 76 MOTION for Leave to File Unilateral Civil Scheduling Order filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Steve Blackburn, Vegalab, LLC, Supreme Growers, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 8/13/13. Text Only Entry (msksec,) (Entered: 08/13/2013)
08/13/2013	81	Exhibits in Support of 79 Renewed MOTION to Dismiss Transcript of 7/12/13 Hearing by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 08/13/2013)
08/14/2013	82	MEMORANDUM regarding 79 Renewed MOTION to Dismiss filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, Grower Trust, LLC, Steve Blackburn, Vegalab, LLC, Supreme Growers, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 8/14/13. Text Only Entry (msksec,) (Entered: 08/14/2013)

08/14/2013	83	COURTROOM MINUTES for Telephonic Scheduling Conference held on 8/14/2013 before Magistrate Judge Kathleen M. Tafoya. Discovery due by 3/14/2014. Dispositive Motions due by 4/14/2014. ORDERED: A Telephonic Final Pretrial Conference is set for June 17, 2014 at 9:30 a.m. The parties shall initiate a conference call and contact chambers at (303) 335-2780 at the time of the Final Pretrial Conference. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference. FTR: S. Grimm. (sgrim) (Entered: 08/14/2013)
08/14/2013	84	SCHEDULING ORDER by Magistrate Judge Kathleen M. Tafoya on 8/14/13. (sgrim) (Entered: 08/14/2013)
08/15/2013	85	TRANSCRIPT of Motion Hearing held on 7-12-13 before Magistrate Judge Tafoya. Pages: 1-54. NOTICE - REDACTION OF TRANSCRIPTS: Within seven calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the party's intent to redact personal identifiers from the electronic transcript of the court proceeding. If a Notice of Intent to Redact is not filed within the allotted time, this transcript will be made electronically available after 90 days. Please see the Notice of Electronic Availability of Transcripts document at www.cod.uscourts.gov. Transcript may only be viewed at the court public terminal or purchased through the Court Reporter/Transcriber prior to the 90 day deadline for electronic posting on PACER. Release of Transcript Restriction set for 11/18/2013. (Avery Woods Reporting,) (Entered: 08/15/2013)
08/16/2013	86	TRIAL PREPARATION ORDER - CIVIL by Chief Judge Marcia S. Krieger on 8/16/13. (msksec,) (Entered: 08/16/2013)
09/03/2013	87	BRIEF in Opposition to 79 Renewed MOTION to Dismiss filed by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit Declaration of Zachary Levine)(Levine, Zachary) (Entered: 09/03/2013)
09/11/2013	88	SUPPLEMENT/AMENDMENT to 72 MOTION to Disqualify Notice to Court re Attorney Wender's Representation of Defendant Josh Gill by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Declaration of Josh Gill, # 2 Exhibit)(Levine, Zachary) (Entered: 09/11/2013)
09/20/2013	89	RESPONSE to 72 MOTION to Disqualify Notice to Court re Attorney Wender's Representation of Defendant Josh Gill, 88 Supplement/Amendment, RESPONSE TO PLAINTIFF'S FILING by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 09/20/2013)
12/04/2013	90	ORDER re: 70 Sworn Declaration of Charles Wender. ORDERED Plaintiff shall pay to the Defendants, though their counsel Charles Wender, the total sum of $8,925.00 in certified funds within thirty days of the entry of this ORDER, by Magistrate Judge Kathleen M. Tafoya on 12/4/13. (sgrim) (Entered: 12/04/2013)
12/05/2013	91	ORDER denying 79 Defendants' Renewed Motion to Dismiss, by Magistrate Judge Kathleen M. Tafoya on 12/5/13.(sgrim) (Entered: 12/05/2013)
01/07/2014	92	ORDER TO SHOW CAUSE. ORDERED that, on or before January 21, 2014, Plaintiff shall show cause in writing why its claims against Defendants Ecowin, LLC; New Epic Media, LLC; Chris Kohlhagen; Beas Hive, LLC; Gringo Diablo Hydro; Hoops Enterprise, LLC; James Halk; David Y.S. Park; and Koo Kyung-Bon should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service, by Magistrate Judge Kathleen M. Tafoya on 1/7/14. (sgrim) (Entered: 01/07/2014)
01/17/2014	93	SUMMONS REQUEST as to Bea's Hive, LLC; New Epic Media, LLC by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 01/17/2014)
01/17/2014	94	SUMMONS REQUEST as to Ecowin, LLC by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 01/17/2014)
01/21/2014	95	SUMMONSES issued by Clerk. (Attachments: # 1 Summons) (klyon,) (Entered: 01/21/2014)
01/21/2014	96	RESPONSE TO ORDER TO SHOW CAUSE re 92 by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit)(Levine, Zachary) (Entered: 01/21/2014)
02/06/2014	97	MOTION to Dismiss by Defendant Hoops Enterprise, LLC. (Wender, Charles) (Entered: 02/06/2014)

02/06/2014	98	NOTICE of Change of Address/Contact Information by Charles Wender (Wender, Charles) (Entered: 02/06/2014)
02/10/2014	99	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE re: Defendants Steve Blackburn, Stacy Blackburn, David Selakovic, Fulfillment Solutions Services, LLC, Vegalab, LLC, Grower Trust, LLC, and Dave Thompson's Motion to Dismiss 27 be GRANTED; Defendant Supreme Growers, LLC's Motion to Dismiss Adopting Prior Motion (D.E. 27) 68 be GRANTED; Motion to Dismiss on Behalf of Defendant Hoops Enterprises, LLC 97 be GRANTED; and that the case be dismissed in its entirety, by Magistrate Judge Kathleen M. Tafoya on 2/10/13. (sgrim) (Entered: 02/10/2014)
02/24/2014	100	OBJECTION to 99 Report and Recommendations filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 02/24/2014)
02/24/2014	101	First MOTION for Leave to file First Amended Complaint by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Proposed Document, # 2 Exhibit, # 3 Proposed Order (PDF Only))(Levine, Zachary) (Entered: 02/24/2014)
02/25/2014	102	MEMORANDUM regarding 101 First MOTION for Leave to file First Amended Complaint filed by Greenway Nutrients, Inc. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 2/25/14. Text Only Entry (msksec,) (Entered: 02/25/2014)
02/26/2014	103	RESPONSE to Objection to 99 RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE re 27 MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Stacy Blackburn, Dave Thompson, Fulfillment Solutions Services, LLC, G filed by Defendants Stacy Blackburn, Steve Blackburn, Fulfillment Solutions Services, LLC, Grower Trust, LLC, David Selakovic, Supreme Growers, LLC, Dave Thompson, Vegalab, LLC. (Wender, Charles) (Entered: 02/26/2014)
02/26/2014	104	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE that Plaintiff's claims against Defendants Chris Kohlhagen; Beas Hive, LLC; Gringo Diablo Hydro; Hoops Enterprise, LLC; James Halk; David Y.S Park; and Koo Kyung-Bon be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) for lack of service. The Order to Show Cause (Doc. No. 92) is DISCHARGED to the extent it concerns Plaintiffs failure to serve Defendants Ecowin, LLC and New Epic Media, LLC. Plaintiff is granted an extension of time through April 17, 2014 to serve Ecowin and New Epic Media. By Magistrate Judge Kathleen M. Tafoya on 2/26/2014. (klyon,) (Entered: 02/26/2014)
03/13/2014	105	RESPONSE to 101 First MOTION for Leave to file First Amended Complaint filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Exhibit A - Affidavits, # 2 Exhibit Exhibit B - Blogs, # 3 Exhibit Exhibit C - Criminal History, # 4 Exhibit Exhibit D - Greenway Website)(Wender, Charles) (Entered: 03/13/2014)
03/26/2014	106	OPINION AND ORDER ADOPTING RECOMMENDATION AND GRANTING IN PART AND DENYING IN PART MOTION FOR LEAVE TO AMEND COMPLAINT: The Court ADOPTS the Recommendation 99 that the Motions to Dismiss (# 27 , 68 , 97) filed by Defendants Steven Blackburn, Stacy Blackburn, David Selakovic, Fulfillment Solutions Services, LLC, Vegalab, LLC, Grower Trust, LLC, David Thompson, Supreme Growers, LLC, and Hoops Enterprises, LLC, be GRANTED. The Plaintiff's First Motion for Leave to file First Amended Complaint 101 is GRANTED IN PART AND DENIED IN PART. The Plaintiff is granted leave to amend. However, the Court does not accept the proposed Amended Complaint filed at Docket #101. Within 14 days, the Plaintiff is directed to re-file its Amended Complaint, clarifying its breach of contract claim as directed by the Court in its analysis. Failure to comply with this Order will result in dismissal of the Complaint in its entirety. by Chief Judge Marcia S. Krieger on 3/26/14.(msksec,) (Entered: 03/26/2014)
04/09/2014	107	AMENDED COMPLAINT against Stacy Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC, filed by Greenway Nutrients, Inc.. (Attachments: # 1 Exhibit)(Levine, Zachary) (Entered: 04/09/2014)
04/21/2014	108	ORDER adopting 104 Report and Recommendation that claims agains unserved Defendants be dismissed. Proper notice having been given and no timely objection having been filed, the Recommendation is adopted and shall become the

		order of the court. The caption shall be amended in accordance therewith. by Chief Judge Marcia S. Krieger on 4/21/2014.(msk,) (Entered: 04/21/2014)
04/23/2014	109	MOTION to Dismiss for Lack of Jurisdiction by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Wender, Charles) (Entered: 04/23/2014)
04/23/2014	110	Exhibits in Support of 109 MOTION to Dismiss for Lack of Jurisdiction by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit A-Defendants' Affidavits, # 2 Exhibit B-Sworn Declaration, # 3 Exhibit C-Notice of Suspension, # 4 Exhibit D-Press reports, # 5 Exhibit E-News Article/Minutes, # 6 Exhibit F-Website clip, # 7 Exhibit G-Summary, # 8 Exhibit H-Escamilla's Declaration, # 9 Exhibit I-Trudeau's Declaration, # 10 Exhibit J-Blogs, # 11 Exhibit K-License Revocation, # 12 Exhibit L-Court Records)(Wender, Charles) (Entered: 04/23/2014)
05/06/2014	111	MEMORANDUM regarding 109 MOTION to Dismiss for Lack of Jurisdiction filed by Steve Blackburn, Supreme Growers, LLC, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/6/14. Text Only Entry (msksec,) (Entered: 05/06/2014)
05/07/2014	112	RESPONSE to 109 MOTION to Dismiss for Lack of Jurisdiction filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/07/2014)
05/15/2014	113	REPLY to Response to 109 MOTION to Dismiss for Lack of Jurisdiction filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit PRESS RELEASES, # 2 Exhibit BLOGS)(Wender, Charles) (Entered: 05/15/2014)
05/30/2014	114	MINUTE ORDER: At the Scheduling Conference in this matter, the parties indicated they would be consenting to the jurisdiction of the magistrate judge. However, the parties never consented. Therefore, the Final Pretrial Conference set for June 17, 2014, is vacated, to be reset by Chief District Judge Marcia S. Krieger. By Magistrate Judge Kathleen M. Tafoya on 5/30/14. Text Only Entry (kmtlc1) (Entered: 05/30/2014)
07/23/2014	115	MOTION for Sanctions and Indirect Criminal Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Exhibit List, # 2 Exhibit A. Sworn Declaration, # 3 Exhibit B. Blogs, # 4 Exhibit C. Counterfeit Emails)(Wender, Charles) (Entered: 07/23/2014)
07/24/2014	116	MEMORANDUM regarding 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Steve Blackburn, Supreme Growers, LLC, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 7/24/14. Text Only Entry (msksec,) (Entered: 07/24/2014)
08/06/2014	117	BRIEF in Opposition to 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 08/06/2014)
08/18/2014	118	REPLY to Response to 115 MOTION for Sanctions and Indirect Criminal Contempt filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Sworn Declaration of Charles Wender, # 2 Exhibit Blog w/ Link to Bar Complaint, # 3 Exhibit Link to Escamilla's Response to Bar)(Wender, Charles) (Entered: 08/18/2014)
10/06/2014	119	AFFIDAVIT by Interested Party Thomas Ryan. (Attachments: # 1 Exhibit)(Ryan, Thomas) (Entered: 10/06/2014)
10/06/2014	120	MOTION for Contempt by Interested Party Thomas Ryan. (Attachments: # 1 Exhibit)(Ryan, Thomas) (Entered: 10/06/2014)
10/07/2014	121	MEMORANDUM regarding 120 MOTION for Contempt filed by Thomas Ryan. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 10/7/14. Text Only Entry (msksec,) (Entered: 10/07/2014)
10/08/2014	122	NOTICE OF ADOPTING AFFIDAVIT OF THOMAS RYAN by Defendants Stacy Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC (Wender, Charles) (Entered: 10/08/2014)

10/21/2014	123	BRIEF in Opposition to 120 MOTION for Contempt filed by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 10/21/2014)
02/23/2015	124	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE that 109 Motion to Dismiss First Amended Complaint be granted in part and denied in part. By Magistrate Judge Kathleen M. Tafoya on 2/20/15. (dkals,) (Entered: 02/23/2015)
02/26/2015	125	ORDER denying 115 Motion for Sanctions and Indirect Criminal Contempt and 120 Motion to Hold Gus Escamilla and Marc Kent in Contempt of Court by Magistrate Judge Kathleen M. Tafoya on 2/26/15.(dkals,) (Entered: 02/26/2015)
03/03/2015	126	OBJECTION to 124 Report and Recommendations filed by Defendants Steve Blackburn, David Selakovic. (Wender, Charles) (Entered: 03/03/2015)
03/11/2015	127	OBJECTION/Appeal of Magistrate Judge Decision to District Court re 125 Order on Motion for Sanctions, Order on Motion for Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Wender, Charles) (Entered: 03/11/2015)
03/23/2015	128	RESPONSE to 127 Objection/Appeal of Magistrate Judge Decision filed by Plaintiff Greenway Nutrients, Inc.. (Attachments: # 1 Affidavit Gustavo Escamilla)(Levine, Zachary) (Entered: 03/23/2015)
03/31/2015	129	ORDER adopting Report and Recommendations re 124 that the Motion to Dismiss for Lack of Jurisdiction 109 be GRANTED in part and DENIED in part. The Motion to Dismiss is GRANTED with respect to the breach of contract claims and all claims against Supreme Growers, LLC. The motion is DENIED in all other respects by Chief Judge Marcia S. Krieger on 3/31/15.(pglov) (Entered: 03/31/2015)
04/01/2015	130	RESPONSE to 127 OBJECTION/Appeal of Magistrate Judge Decision to District Court re 125 Order on Motion for Sanctions, Order on Motion for Contempt by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. filed by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic, Supreme Growers, LLC. (Attachments: # 1 Exhibit Random Samples of "Blogs", # 2 Exhibit Email from Escamilla - Exhibit 16 at Motion Hearing, # 3 Exhibit Excerpts from Letter to Florida Bar)(Wender, Charles) (Entered: 04/01/2015)
04/07/2015	131	Defendants' ANSWER to 107 Amended Complaint by Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic.(Wender, Charles) (Entered: 04/07/2015)
05/13/2015	132	MINUTE ORDER: Status Conference set for 6/2/2015 at 10:30 AM in Courtroom C201 before Magistrate Judge Kathleen M. Tafoya. No later than 5/27/2015, the parties shall file Status Reports advising the court of the need for scheduling in this case. By Magistrate Judge Kathleen M. Tafoya on 5/13/2015. Text Only Entry (kmtlc2) (Entered: 05/13/2015)
05/19/2015	133	Unopposed MOTION for Leave to Appear BY TELEPHONE by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wender, Charles) (Entered: 05/19/2015)
05/19/2015	134	STATUS REPORT by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wender, Charles) (Entered: 05/19/2015)
05/19/2015	135	MEMORANDUM regarding 133 Unopposed MOTION for Leave to Appear BY TELEPHONE filed by Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/19/15. Text Only Entry (msksec,) (Entered: 05/19/2015)
05/19/2015	136	MINUTE ORDER granting 133 Motion to Appear by Telephone. Defendants' counsel may appear at the Status Conference by telephone by calling chambers, 303-335-2780, at the scheduled time. By Magistrate Judge Kathleen M. Tafoya on 5/19/2015. Text Only Entry (kmtlc2) (Entered: 05/19/2015)
05/21/2015	137	First MOTION to Withdraw as Attorney by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/21/2015)
05/21/2015	138	First MOTION for Leave to Appear by telephone by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/21/2015)
05/21/2015	139	First STATUS REPORT by Plaintiff Greenway Nutrients, Inc.. (Levine, Zachary) (Entered: 05/21/2015)

05/22/2015	140	MEMORANDUM regarding 137 First MOTION to Withdraw as Attorney filed by Greenway Nutrients, Inc.Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (msksec,) (Entered: 05/22/2015)
05/22/2015	141	MEMORANDUM regarding 138 First MOTION for Leave to Appear by telephone filed by Greenway Nutrients, Inc. Motions referred to Magistrate Judge Kathleen M. Tafoya by Chief Judge Marcia S. Krieger on 5/22/15. Text Only Entry (msksec,) (Entered: 05/22/2015)
05/22/2015	142	MINUTE ORDER granting 138 Motion to Appear by Telephone. Counsel for Plaintiff and Defendant may attend the Status Conference telephonically by initiating a conference call and contacting chambers, 303-335-2780, at the scheduled time. By Magistrate Judge Kathleen M. Tafoya on 5/22/2015. Text Only Entry (kmtlc2) (Entered: 05/22/2015)
06/02/2015	143	COURTROOM MINUTES for Telephonic Status Conference held on 6/2/2015 before Magistrate Judge Kathleen M. Tafoya. ORDERED: Plaintiff shall secure new counsel and file an entry of appearance on or before June 22, 2015. If an entry of appearance is not filed, an order to show cause will be issued. Plaintiff's Attorney's Motion to Withdraw as Counsel 137 is GRANTED. Attorney Zachary Levine is relieved of any further representation, subject to the discussion held at today's hearing. Based upon the representation of counsel, Attorney Mainak D'Attaray has left the law firm of Wolk & Levine and should be terminated from this case. FTR: KMT C201. (sgrim) (Entered: 06/02/2015)
06/26/2015	144	ORDER TO SHOW CAUSE: On or before 7/10/2015, Plaintiff shall show cause in writing, by and through legal counsel, whose appearance for Plaintiff has been entered properly in this case, why this case should not be dismissed with prejudice as permitted by D.C.COLO.LCivR 41.1 and Ehrenhaus v. Reynolds, 965 F.2d 916 (10th Cir. 1992). Plaintiff is hereby warned that failure toproperly respond to this Order to Show Cause will result in a recommendation that this case be dismissed in its entirety, pursuant to D.C.COLO.LCivR 41.1 and Ehrenhaus, by Magistrate Judge Kathleen M. Tafoya on 6/26/15. (morti,) (Entered: 06/26/2015)
07/08/2015	145	Mail Returned as Undeliverable: 144 Order to Show Cause addressed to Greenway Nutrients, Inc. (dkals,) (Entered: 07/08/2015)
07/21/2015	146	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE. The Court respectfully RECOMMENDS that this case be dismissed in its entirety, with prejudice, by Magistrate Judge Kathleen M. Tafoya on 7/21/15. (morti,) (Entered: 07/21/2015)
08/14/2015	147	ORDER adopting 146 Report and Recommendation of Dismissal for the Plaintiff's failure to prosecute and to obtain counsel within a reasonable period of time. Notice of the Recommendation was given and no timely objection was made, however, previous attempts to give the Plaintiff notice have resulted in mail returned to the Court as undeliverable to the address of record. Because the Plaintiff has neither maintained a valid address in the court records nor obtained counsel as is required for the Plaintiff (a corporation) to proceed, dismissal of the action without prejudice is appropriate. It is so ordered. by Chief Judge Marcia S. Krieger on 8/14/2015. Text Only Entry(msk,) (Entered: 08/14/2015)
08/17/2015	148	JUDGMENT in favor of defendants and against Greenway Nutrients, Inc. re: 147 Order on Report and Recommendations, entered by Clerk on 8/17/15. (pglov) (Entered: 08/17/2015)
09/02/2015	149	MOTION for Attorney Fees , MOTION for Reconsideration re 147 Order on Report and Recommendations,, by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Wender, Charles) (Entered: 09/02/2015)
09/02/2015	150	Mail Returned as Undeliverable: 148 Judgment addressed to Greenway Nutrients, Inc. (dkals,) (Entered: 09/02/2015)
10/27/2015	151	OPINION AND ORDER denying 149 Motion for Reconsideration of Final Judgment and an Award of Attorney Fees by Chief Judge Marcia S. Krieger on 10/27/15. (dkals,) (Entered: 10/27/2015)
11/04/2015	152	Amended MOTION for Attorney Fees by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic. (Attachments: # 1 Affidavit Attorney

Fees)(Wender, Charles) (Entered: 11/04/2015)

11/06/2015	153	Mail Returned as Undeliverable: 151 Order addressed to Greenway Nutrients, Inc. (dkals,) (Entered: 11/06/2015)
06/09/2016	154	NOTICE of Supplemental Authorities re: 152 Amended MOTION for Attorney Fees by Defendants Steve Blackburn, Fulfillment Solutions Services, LLC, David Selakovic (Wender, Charles) (Entered: 06/09/2016)
06/13/2016	155	ORDER denying 152 Motion for Attorney Fees. The Defendants seek an award of attorney fees in this matter pursuant to the Lanham Act, 15 U.S.C. § 1117(a), or alternatively, pursuant to Colo. Rev. Stat. § 13-17-102. Under § 1117(a), the Court may award reasonable attorney fees to the prevailing party in exceptional cases. To determine whether the case is exceptional, the Court must consider whether the suit was unfounded or brought for harassment and the like. King v. PA Consulting Group, 485 F.3d 577, 592 (10th Cir. 2007); see also Octane Fitness, LLC v. ICON Health & Fitness, Inc., 134 S.Ct. 1749, 175 (2014). Factors to consider include the lack of foundation, the plaintiffs bad faith in bringing the suit, the unusually vexatious and oppressive manner in which it is prosecuted, or other reasons. King, 485 F.3d at 592. Similarly, C.R.S. § 13-17-102 provides that in any civil action the Court shall award reasonable attorney fees against any attorney or party who has brought a civil action that lacked substantial justification, meaning substantially frivolous, groundless, or vexatious. Having reviewed the Defendants motion and the record, the Court finds that the Defendants have failed to establish that this is an exceptional case under the Lanham Act or that it lacked substantial justification under § 13-17-102. The Court notes that at the time the case was dismissed for the Plaintiffs failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin, and unjust enrichment were still viable. These claims were not adjudicated on the merits and the Court therefore cannot find that the suit was unfounded or groundless. Further, although the Court agrees that some of the Plaintiffs litigation tactics may have pushed the envelope, it does not find that the Plaintiffs manner of conduct in litigation was unusually oppressive or vexatious. Accordingly, the Court finds that an award of attorney fees is not warranted and the 152 Motion for Attorney Fees is DENIED. by Chief Judge Marcia S. Krieger on 06/13/2016. Text Only Entry(mskic3,) (Entered: 06/13/2016)

Judgments

Date	In Favor Of	Against	Amount	Interest	Court Cost	Status	Status Date
08/17/2015	Steve Blackburn	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	Fulfillment Solutions Services, LLC	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	David Selakovic	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015
08/17/2015	Supreme Growers, LLC	Greenway Nutrients, Inc.	$ 0.00	0.00%	$ 0.00	No Payment	08/17/2015

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Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Honorable Marcia S. Krieger

Civil Action No. 13-cv-01088-MSKJ-KMT

GREENWAY NUTRIENTS, INC.,

Plaintiff,

v.

STEVE BLACKBURN, STACY BLACKBURN, DAVID SELAKOVIC, FULFILLMENT SOLUTIONS SERVICES, LLC, VEGALAB, LLC, GROWER TRUST, LLC, DAVE THOMPSON, et al.,

Defendants.

MOTION FOR SANCTIONS AND PROTECTIVE ORDER

PLEASE TAKE NOTICE that the Defendants, **STEVE BLACKBURN, STACY BLACKBURN, DAVID SELAKOVIC, FULFILLMENT SOLUTIONS SERVICES, LLC, VEGALAB, LLC, GROWER TRUST, LLC, DAVE THOMPSON, JOSH GILL,** *et al.*, and on behalf of two material witnesses, **THOMAS RYAN,** and **WENDY RYAN,** move this Court for Sanctions, including dismissal of this action, and for Orders protecting the two material witnesses from any contact and harm from Plaintiff's President and CEO, GUS ESCAMILLA, a/k/a GUS ESCAMILLA ISQUIERDO, and in support thereof would state:

1. This Motion contains serious allegations of misconduct by the Plaintiff's PRESIDENT and CEO, GUS ESCAMILLA ("Escamilla"). These allegations concern e-mail communications from ESCAMILLA to the Defendants, their counsel and to two material witnesses in this case, THOMAS RYAN ("Tom") and his former wife, WENDY RYAN ("Wendy"). This motion is being made at the urging and request of both TOM and WENDY RYAN. Since ESCAMILLA's actions impact upon the integrity of the judicial system and administration of justice, the Defendants seek a dismissal of this action and other appropriate sanctions in the exercise of this Court's discretion. The main focus of this motion concerns the threats and intimidation of the RYANS -- although, as will be noted, they have not been the only ones being targeted by ESAMILLA.

2. The allegations contained herein, for the most part, do not come from the Defendants, but from two material witnesses, TOM and WENDY RYAN, who have supported this motion with their own separate sworn affidavits, which are annexed hereto. The affidavits and accompanying emails sent from ESCAMILLA "speak for themselves", and raise genuine concerns by the RYANS, that as witnesses they are being tampered with, harassed and put in fear for their physical safety and the safety of their daughter. Most disturbing is an email dated June 19, 2013 from ESCAMILLA to WENDY RYAN and their daughter which, in essence, threatens criminal prosecution if they do not execute an affidavit prepared by ESCAMILLA. This email and the threats contained therein portend blackmail and attempted subordination of perjury.

BACKGROUND

3. GUS ESCAMILLA, is the Chief Executive Officer of the Plaintiff, GREENWAY NUTRIENTS, INC. TOM RYAN is an attorney and was counsel to both GREENWAY NUTRIENTS, and GUS ESCAMILLA. At one point, they were good friends with TOM RYAN, actually living in ESCAMILLA'S house.

4. TOM RYAN is named in Plaintiff's Complaint as the individual who introduced GREENWAY NUTRIENTS (presumably MR. ESCAMILLA) to STEVE BLACKBURN (¶ 39) and, based on MR. RYAN vouching for BLACKBURN, GREENWAY NUTRIENTS and MR. BLACKBURN began a business relationship which gave rise to this lawsuit. MR. RYAN has first-person knowledge concerning many aspects of the case and is a material witness. In addition, MR. RYAN assisted in the business arrangement between the Plaintiff and the Defendant, FULFILLMENT SOLUTIONS SERVICES, and was to be called as a witness by the Defendants.

5. WENDY RYAN is TOM RYAN's former wife. She was an employee of the Plaintiff, GREENWAY NUTRIENTS. She has first-hand knowledge concerning several material aspects of this case.

TOM RYAN'S AFFIDAVIT

6. Mr. RYAN reflects that in October of 2012 he was terminated as counsel for GREENWAY. Approximately two (2) months ago he started to receive a series of emails from MR. ESCAMILLA - which "switched from professional to vulgar and threatening very quickly." The emails contained threats "against myself, my ex-wife and my daughter, along with threats to the Defendants in this action and people who had worked at GREENWAY NUTRIENTS in the past".

7. Thereafter, MR. RYAN contacted Plaintiff's counsel, MR. LEVINE, for help. MR. LEVINE never responded. MR. RYAN then contacted the undersigned for assistance who, in turn, reached out to Plaintiff's counsel without any results and who was essentially "blown off". MR. RYAN then contacted the United States Marshall Service in California, and he was advised that this matter be brought to the Court's attention. MR. RYAN specifically requested that this Court be made aware what was transpiring and seek protection of the Court.

8. Initially, MR. RYAN did not save the e mails received from MR. ESCAMILLA but, more recently, has done so. He has transmitted the emails to the undersigned. The Emails and the copies submitted annexed to TOM RYAN's affidavit are from GUS ESCAMILLA to TOM RYAN and/or WENDY RYAN and were transmitted to the undersigned.

9. The emails sent to TOM RYAN contain vile and vulgar language, implicit and explicit threats, and have caused both TOM RYAN and WENDY RYAN fear for their physical safety. They both feel intimidated, harassed and threatened. One of the more typical emails is reproduced below in order that this Court can appreciate the seriousness of what has occurred, and sense the tone and magnitude of the harangues.

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

DO YOU "SEE" THESE FUCKEN IDIOTS??? YOUR ASSES ARE NEXT!!' ONLY THIS IS NOT A CIVIL MATTER ANY LONGER!!!! IT'S CRIMINAL!!!!BTW YOUR STUPID ASSES SHOULD READ THE THEFT OF TRADE SECRETS ACT OF 2012, THE ECONOMIC ESPIONAGE ACT OF 1996, WIRE FRAUD, MAIL FRAUD AND ON AND ON!!! JESSIE CAMPBELL AKA JESSIE RYAN SHOULD GET TO KNOW THESE LAWS EXCEPTIONALLY WELL!! !! I WONDER HOW LONG OR HOW MUCH PRESSURE SHE CAN TAKE!!!! IM ABOUT TO FIND OUT!!!! SHE TOM AND ALL YOU MOTHER FUCKEN IDIOTS ARE GUILTY AS FUCK!!!!! YOU STUPID STUPID FOOLS!!!! IM GOING TO NAIL YOUR STUPID INGRATE ASSES!!!! YOUR ALL FUCKED!!!! TOM YOUR A FOOL A STUPID STUPID PATHETIC FOOL!!!!!

10. MR. RYAN further notes in his affidavit that, based on his personal knowledge of GUS ESCAMILLA, MR. ESCAMILLA is on "drugs" - "shooting up steroids, taking self-daily doses of Adderol and a sleeping pill I believe was Lunesta or a generic thereof.... He was also smoking approximately 1/8th of medicinal marijuana a day". Based upon the approximate number and nature of the email (as many as 38 in one day) and

ESCAMILLA's state of mind, he is afraid that matters will spin out of control and harm will come to him and his family at the hands of ESCAMILLA. TOM RYAN states in his affidavit:

> "I have requested that Mr. Wender file a motion for protection from the defamation, threats, fear of violence on me and my family and/or some type of restraining order. I have also requested that Mr. Wender inform the court [that] numerous Witness[es] believe that Mr. Escamilla is dangerous and trying to tamper with their testimony as witnesses."

SWORN DECLARATION OF WENDY RYAN

11. WENDY RYAN has independently submitted her own Sworn Declaration (the original of which is annexed hereto). WENDY RYAN related that she was a former employee of GUS ESCAMILLA, having been employed from December 2010 through December 2011 at Greenway University/GREENWAY NUTRIENTS.

12. On April 30, 2013 she received her first email from ESCAMILLA concerning this matter and has annexed the communication as Exhibit 1 to her sworn declaration. WENDY RYAN responded by email, informing ESCAMILLA that she would be contacting the Defendant, STEVE BLACKBURN, and offering to testify in BLACKBURN'S behalf. (Exhibit 2 of her Sworn Declaration.) ESCAMILLA responded with an apologetic email and stated he would not "reach out" to her again. (Exhibit 3 of her Sworn Declaration.)

13. On June 1, 2013 ESCAMILLA copied WENDY RYAN on a rambling, vile and profane email that he had sent to her former husband, TOM RYAN, and DAVID SELAKOVIC (a Defendant herein). (Exhibit 4 of her Sworn Declaration.)

14. On June 7, 2013 ESCAMILLA sent WENDY RYAN, TOM RYAN, and JULIAN ROLAND a series of very threatening and profane emails. He threatened to

put WENDY RYAN'S daughter in prison for imaginary reasons. (Exhibit 5 of her Sworn Declaration.) WENDY RYAN did not respond to MR. ESCAMILLA.

15. Starting on the same day, June 7, 2013, ESCAMILLA unleashed upon WENDY RYAN and TOM RYAN an onslaught of filthy and disgusting emails filled with accusations, threats and foul language. (True copies of the emails are annexed to WENDY RYAN's Sworn Declaration as Exhibit 6.)

16. On June 7, 2013, WENDY RYAN, attempted to contact ESCAMILLA's attorney, MR. LEVINE. She called his office and spoke with the receptionist, leaving a message to be followed up with an email. MR. LEVINE responded, stating that he would speak with his client.

17. On June 8, 2013 WENDY RYAN received another intimidating and menacing email from ESCAMILLA, with more threats of criminal prosecution. (Exhibit 7 of her Sworn Declaration.)

18. On June 11, 2013 WENDY RYAN received more intimidating and profane emails from ESCAMILLA. (Exhibit 8 of her Sworn Declaration.) ESCAMILLA even "dared" WENDY RYAN to provide copies to the Court.

19. On June 12, 2013 there were more threats and profane emails from ESCAMILLA. (Exhibit 9 of her Sworn Declaration.)

20. On June 18, 2013 there were still more filthy and threatening emails sent, some sent five (5) times. (Exhibit 10 of her Sworn Declaration.)

21. On June 19, 2013 more filthy and threatening emails, stating that ESCAMILLA's life's goal was to see the witnesses in prison. (Exhibit 11 of her Sworn Declaration.)

22. On June 19, 2013 GUS ESCAMILLA sent an email stating that he did not "really want" to send WENDY RYAN and her daughter to prison. (Exhibit 12 of her Sworn Declaration.) This email was followed by another email, in which he gave WENDY RYAN and her daughter until 5:00 p.m. PST to sign an affidavit that he had prepared. The statement, according to WENDY RYAN, was untrue, and she felt that she was being

blackmailed. Because of the seriousness of these particular allegations, suggesting subordination of perjury, witness-tampering and blackmail, portions of that email are reproduced below.

Dear Wendy and Jessie Ryan aka Jessie Campbell:

First it is important to note that I am accusing you of **VIOLATING MY RIGHTS AS A CITIZEN OF THE UNITED STATES OF AMERICA.**

THIS IS A CRIMNAL MATTER AND A CRIMINAL MATTER ONLY. It appears that you have unintentionally involved yourself in a conspiracy to defraud Greenway.

I AM ACCUSING BOTH OF YOU OF COMMITTING CRIMINAL ACTIVITY.

I AM ADVISING YOU THAT IT IS MY INTENTION TO PROVIDE INSURMOUNTABLE FACTUAL EVIDENCE TO SUPPORT THAT YOU HAVE IN FACT, COMMITTED WIRE FRAUD, MAIL FRAUD AS WELL AS VIOLATION OF THE THE Racketeer Influenced and Corrupt Organizations ACT, THEFT OF TRADE SECRETS ACT OF 2012, ECONOMIC ESPIONAGE ACT OF 1996.

* * *

Notwithstanding the above, I wish to put this matter behind me.

Therefore, I am looking for acknowledgment of the following statement in order assist Greenway bring closure to this matter today.

Statement of Wendy and Jessie Ryan:

We, Wendy Ryan and Jessie Ryan were duped by Tom Ryan into this entire legal mess which is the subject of the Greenway v. Blackburn, et al litigation. Tom Ryan asked me Jessie Ryan, to accept a $5,000.00 wire to my Paypal account from Steve Blackburn and/or David Dragan Selakovic. At no time, did Tom Ryan ever indicate or mention that this activity was in fact, a ruse to surreptitiously get money from Blackburn to Tom.

* * *

This is not an admission of guilt nor an admission of any wrongdoing. We are simply acknowledging this statement as 100% factual as it relates to the potential criminal activity to which Tom Ryan may have exposed myself and my daughter. Even though Jessie did participate in the above activity, and no time did she or I have any knowledge of the legal consequences of participating in said activity.

Date:

I declare under the penalty of perjury that the foregoing is true and correct.

Wendy Ryan Jessie Ryan aka Jessie Campbell:

Tom and Wendy, I do not wish you harm. I also do not wish to have to go down this ugly road. I do believe that somehow Tom got you caught up in this mess. I can only imagine as parents how you must feel. **I know you Wendy, you are smarter than this.** Let's put the blame squarely on the person who caused you to be involved in this litigation. By signing the above statement it will go a long way to evidence who is to blame.

I have had it with this case. I have had it with people stealing from me. It is important to emphasize that there is no 'quid pro quo' here. We are simply trying to get to the truth. I am giving you until 5pm PST to acknowledge this statement by signing this email an returning it to Greenway.

Gustavo Escamilla
President, Greenway Nutrients, Inc.

OTHER TARGETS OF MR. ESCAMILLA'S RANTS

23. Previous to the email attack on the RYANS, GUS ESCAMILLA targeted the Defendants and their counsel with similar vitriolic diatribes. Using the same method -- emails – ESCAMILLA unleashed his rantings upon the Defendants and Counsel with profanity, threats, challenges, and imaginary and paranoid raving. In light of recent events concerning the RYANS, the Defendants and their counsel have grave concern for their safety. GUS ESCAMILLA is a "loose cannon", and there is a well-founded fear that when he learns of this motion there is no telling what he will do. His attorney's unwillingness to even recognize that ESCAMILLA is acting inappropriately, and his attorney's unwillingness to do anything about it is giving ESCAMILLA a license to continue. Rather than condemn their client's actions, his counsel has apparently given their tacit approval. (Samples of emails to the Defendants and Defendants' counsel are annexed hereto.)

24. Clearly, GUS ESCAMILLA should and does know better, as he was previously convicted of witness tampering in the State of California in 2009. On March 24, 2009 ESCAMILLA plead to and was convicted in the Superior Court of California, County of Los Angeles under Case No. 8WA04249 of two counts of domestic violence (§§ 273.5 and 243(E)(1), California Penal Code) and one count of witness tampering (§ 136.1(B)(1). ESCAMILLA was sentenced to 365 days in County jail, followed by a minimum of three (3) years probation, and an anger management course. ESCAMILLA violated his probation, and the court ordered two post-plea bench warrants. ESCAMILLA was actually a fugitive from February 2, 2010 through February 9, 2012 – a period of over two years – which coincides with the period in which ESCAMILLA has accused the Defendants in this case of misconduct. (A certified copy of the California Clerk's criminal minutes is annexed hereto.)

LEGAL BASIS FOR RELIEF

25. The Defendants seek dismissal of this action due to the gross misconduct of the Plaintiff's representative toward the RYANS, the Defendants and the Defendants' counsel. The RYANS seek an Order of Protection, prohibiting the Plaintiff and

its officers and directors from contacting the RYANS or their daughter.

26. This Court has the unquestionably inherent authority to control its cases and docket to "protect [its] proceeding and judgment in the course of discharging [its] traditional responsibilities". Degen v. United States, 517 U.S. 820 (1996) (a federal court has the inherent authority to sanction a litigant for bad faith conduct). *See*, Shepherd v. American Broadcasting, 62 F.3d 1469, 1472 (D.C. Cir. 1995) ("these powers are 'governed not by rule or statute, but by the control necessarily vested in courts to manage their own affairs so s to achieve the order and expeditious disposition of cases'."); Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991), quoting Link v. Wabash RR Co., 370 U.S. 626, 630-631 (1962). Sanctions, such as shifting attorney fees and default judgment, may be imposed under the court's inherent authority. *See*, Diettrich v. Northwest Airlines, 168 F.3d 961, 964 (7th Cir. 1999) (inherent power "permit[s] a court to impose the ultimate sanction of a grant of judgment; JFB Heating Cont. v. American General LLC, 764 F. Supp. 2d 974 (N.D. Ill. February 8, 2011) (dismissal appropriate for egregious litigating misconduct under inherent authority of the court). As stated in United States v. Moussaoui, 483 F.3d 220, 236 (4th Cir. 2007) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)):

> "It has long been recognized that federal courts possess certain implied or inherent powers that are necessary to the exercise of all other. Inherent powers are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases... In accordance with these principles, the Supreme Court has... held that federal courts possess the inherent authority ... to dismiss a lawsuit *sua sponte* for failure to prosecute[.] ...[A] court has the inherent authority to control various aspects of the cases *before that court* so that they can protect their proceedings and judgments in the course of

> discharging their traditional responsibilities. *See also,* United States v. Carrigan, 804 F.2d. 595 (10th Cir. 1986)]

27. A corollary to controlling its own proceedings is the inherent power to protect witnesses. See, United States v. Cozzetti, 441 F. 2d. 344 (9th Cir. 1971); Carbo v. United States, 288 F. 2d. 282 (9th Cir. 1961); United States v. Kirk, 534 F.2d. 672 (6th Cir. 1975). As noted in Wheeler v. United States, 640 F. 2d. 1116, 1123 (9th Cir. 1981):

> "This inherent power to protect witnesses stems from the "indisputably... broad powers [of the trial judge] to ensure the orderly and expeditious progress of a trial." Bitter v. United States, 389 U.S. 15, 16, 88 S.Ct. 6, 7, 19 L.Ed.2d 15 (1976). More generally stated, the trial judge has the broad discretion to protect the administration of justice from 'abuses, oppression and injustice'. *Id.* at 16, 88 S.Ct. at 7; Wood v. Georgia, 370 U.S. 375, 383, 82 S.Ct. 1364, 1369, 8 L.Ed. 2d 569 (1962); Gumbel v. Pitkin, 124 U.S. 131, 143, 8 S.Ct. 379, 383, 31 L.Ed. 374 (1888)."

DISMISSAL IS AN APPROPRIATE SANCTION FOR WITNESS INTIMIDATION

28. In Lee v. Detective Lieutenant Sass, (E.D. March 29, 2006), the plaintiff was "caught" actively soliciting and suborning perjury from a material witness. In considering appropriate sanctions, the court held that any sanction short of dismissal would be insufficient.

> "A primary aspect of [the federal court's inherent authority] is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.... [O]utright dismissal of a lawsuit.. is a "particularly severe sanction, yet is within the court's discretion. Chambers v. Nasco, 501 U.S. 32, 44-45 (1991).

> "Here, the defendants contend that Lee's attempt to suborn a material witness in this litigation warrants an outright dismissal of the complaint. The court agrees.
>
> "It is difficult to contemplate a clearer or more abhorrent example of a litigant's attempt to abuse and subvert the integrity of the judicial process than an effort to suborn perjury from a material witness. 'Coercing or seeking to obtain or manufacture false testimony strikes at the heart of the judicial system. Lying cannot be condoned in any formal proceeding.... Our legal system is dependent on the willingness of the litigants to allow an honest and true airing of the real facts.' *See*, Young v. Office of the United States Senate Sergeant At Arms, 217 F.R.D. 61, 71 (D.D.C. 2003)."

Similarly, in Fidelity Nat'l. Title Ins. v. Intercounty Title Ins., (N.D. Ill. July 1, 2002), the district court found that a litigant had sent letters attempting to influence witnesses and had lied under oath concerning sending the letters. As to appropriate sanctions concerning the threats to a party's attorney, dismissal was more than appropriate:

> "After careful consideration of alternative sanctions, the court finds dismissal of Cornell's counterclaims against Fidelity is warranted. Cornell's February 8th letter was a direct attempt to influence the outcome of this action to thwart Fidelity's prosecution of its claims by threatening its attorney. *See*, In re Golant, 239 F.3d at 935-38 (default judgment appropriate where a party exhibits bad faith conduct); Quela, 2000 WL 656681, at *2 (sanction of default judgment is warranted where defendant acted in bad faith and provided false testimony). Cornell cannot circumvent the judicial process and employ improper means of defense against Fidelity's claims. Brady v. United States, 877 F. Supp. 444,

> "453 (C.D. Ill. 1994) ('Litigants must know that the courts are not open to persons who would seek justice by fraudulent means'). The record clearly and convincingly supports the magistrate judge's conclusion that Cornell's conduct was willful and in bad faith. Further, the record establishes clearly and convincingly that Cornell lied at his deposition. A monetary fine is insufficient to remedy the disruption and delay caused by litigation of collateral misconduct issues. *See*, Quela, 202 WL 799750 at *2 ('Entering default judgment will send a strong message to other litigants, who scheme to abuse the discovery process and lie to the court, that this behavior will not be tolerated and will be severely punished'). Dismissal with prejudice of Cornell's counterclaims against Fidelity is an appropriate sanction. In addition, Fidelity is awarded reasonable attorneys' fees and expenses incurred in connection wit its motion for sanctions. United States v. Fidelity Deposit, 986 F.2d 1110, 1120 (7th Cir. 1993) (court's inherent authority to sanction includes shifting attorneys' fees and expenses); Quad, Inc. v. ALN Associates, 781 F. Supp. 561 (N.D. Ill. 1992)."

There, as in the case at bar, the letters threatened a witness with a federal indictment and contained "abusive and vulgar language". Here, the attempted intimidation of the RYANS was far more egregious and calculated than anything attempted in the above cited Fidelity case.

29. In Young v. Office of the United States Senate Sergeant-at-Arm, 218 F.R.D. 61 (D.C. 2005), the Plaintiff had committed various discovery violations as well as tampering with a witness. In imposing the sanction of dismissal, the court weighed the adequacy of sanctions against the sanctions available to the court and concluded that dismissal, rather than a monetary fine or issue preclusion, was appropriate, and stated that

in addition to the discovery violation the attempted witness tampering required the strongest of sanctions:

> "...clear and convincing evidence has been presented that plaintiff attempted to influence the testimony of two witnesses in bad faith. She is therefore subject to the ultimate sanction, dismissal, pursuant to the court's inherent power."

30. A District Court ordered the plaintiff's case dismissed with prejudice when the plaintiff was caught "coaching" a witness during a telephone deposition. Johnese v. Jani-King, (N.D. Tex., March 3, 2008). The court opined that a dismissal with prejudice was the only appropriate remedy because "...when dismissing a case for fraudulent litigation conduct, the court does so not only as a remedy for harm incurred by other parties, but also as a deterrent to future litigants who might consider engaging in similar conduct", citing Jiminez v. Madison Area Tech. College, 321 F.3d 652, 657 (7th Cir. 2003) and Aoude v. Mobil Oil Corp., 892 F.2d 1115 (1st Cir. 1989). It is suggested that GUS ESCAMILLA's conduct pales in comparison to the Johnese coaching of a witness during a deposition. In fact, no case thus reported arises to the level of ESAMILLA's incessant campaign of harassment, intimidation and gangsterism.

31. Finally, in United States v. Nayak, (S.D. Ill. 3-3-2009), (copy of Memo and Order annexed hereto), the District Court issued a rule to show cause why the relator's case should not be dismissed and why the relator should not be held in contempt of court for witness tampering, and wrote:

> "Trying improperly to influence a witness is fraud on the court and on the opposing party." Ty, Inc. v. Softbelly's, Inc., 517 F.3d 494, 498 (7th Cir. 2008). Allegations of witness tampering are serious, and the Court does not take them lightly. Therefore, the Court **ORDERS** Tucker to **SHOW CAUSE** on or before March 13, 2009, why the Court should not use its inherent authority to sanction misconduct to dismiss her case, to assess

the defendant's attorney's fees, or to impose some other lesser sanction. *See* Chambers v. NASCO, Inc., 501 U.S. 32, 44-46 (1991). The Court **WARNS** Tucker that it may dismiss this lawsuit pursuant to Federal Rule of Civil Procedure 41(b) or the Court's inherent authority to manage its docket, *see* In re: Bluestein & Co., 68 F.3d 1022, 1025 (7th Cir. 1995), if she fail to timely respond to this order to show cause.

ARGUMENT

32. The misconduct of the Plaintiff through its owner, President and Chief Executive Officer, is palpably vile, odious and improper. In a series of emails, first sent to numerous Defendants, then to their counsel, and then to two witnesses, the RYANS, GUS ESCAMILLA has crossed the line of not only decency, but legality. GUS ESCAMILLA is clearly attempting to silence TOM RYAN and corrupt and suborn the perjury of WENDY RYAN and her daughter by threatening baseless criminal prosecutions if they "would only sign" an affidavit he prepared, which MS. RYAN categorically states was false and was not something she would sign. ESCAMILLA then had the arrogance to "dare" WENDY RYAN to bring the matter before the Court. ESCAMILLA attempted to embarrass Defendants' counsel in the eyes of his clients and interfere with that relationship. He has threatened the parties and witnesses with bizarre allegations.

33. The Defendants and the RYANS would simply ask that this Court review the rantings of GUS ESCAMILLA and decide, as suggested, that his conduct was so outrageous, so gross and so beyond the pale of decency as to warrant the ultimate sanction of dismissal. His actions are an affront to this Court and the due administration of justice. His attempt to "shake down" two witnesses strikes at the very core of the judicial system of justice. The Plaintiff should not be permitted to badger the Defendants or their counsel, nor torment and intimidate witnesses and then solicit false evidence under the threat of becoming criminal defendants. The impertinent attempt to create a wedge between the Defendants and

their counsel is inexcusable. ESCAMILLA has forfeited his right to seek redress before this Court on behalf of his business, GREENWAY NUTRIENTS. Anything short of a dismissal would validate and condone ESCAMILLA's hooligan-like conduct.

RELIEF SOUGHT

WHEREFORE, the Defendants herein and the Witnesses, THOMAS RYAN and WENDY RYAN, seek the following relief:

a. dismissal of this action with prejudice;

b. an award of attorney fees;

c. an Order, backed by a peace bond, prohibiting GUS ESCAMILLA, or anyone on behalf of Plaintiff GREENWAY, contacting, either directly or indirectly, any party, their attorney and/or the RYANS;

d. to impose a fine;

and pray for such other and further relief that would be considered fair, just and proper to protect the integrity of the courts and the physical safety of the Defendants, their counsel and the RYANS.

Respectfully submitted,

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CERTIFICATION OF GOOD FAITH EFFORTS TO RESOLVE THIS DISPUTED MATTER PRIOR TO FILING THIS MOTION

D.C.Colo.L.Civ.R 7.1

Pursuant to D.C.Colo.L.Civ.R 7.1, the undersigned hereby certifies that prior to filing this motion he has conferred on several occasions, both in writing and by telephone, with Plaintiff's counsel, and has made a good faith effort to resolve this disputed matter.

In writing and by telephone, attempts were made to obtain an informal curb on GUS ESCAMILLA and to get him not to contact the Defendants directly. This request had the opposite effect, as the emails escalated and the undersigned was then targeted by ESCAMILLA.

A further attempt was made by letter and telephone for an agreement to obtain a protective Order preventing ESCAMILLA from contacting any party, attorney or witness in this matter. That effort was rejected. Thereafter, further attempts were made to resolve what was perceived as escalating conduct by GUS ESCAMILLA, and those attempts with Plaintiff's counsel came to naught.

Finally, defense counsel requested that in light of the most recent emails, the Plaintiff voluntarily dismiss the case. That request was rejected. In fact, no effort by Plaintiff's counsel to resolve any part of this motion, especially the need for a protective Order, has been met with any success.

By: _____
Charles Wender, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via facsimile and/or U.S. Mail to Zachary Levine, Esquire, zjl@wltlawyers.com, and Mainak D'Attaray, Esquire, md@wltlawyers.com, WOLK & LEVINE, LLP, 550 N. Brand Boulevard, Suite 625, Glendale, CA 91203, on this 28 day of June 2013.

By: _____
Charles Wender, Esquire

Exhibit F

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al.,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants.

No. CV 17-7748 ODW (MRWx)

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

Hearing Date: March 5, 2018
Hearing Time: 1:30 p.m.
Location: First Street Courthouse
350 W. 1st Street
Courtroom 5D, 5th Floor

Hon. Otis D. Wright II

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that, on March 5, 2018, at 1:30 p.m., or as soon thereafter as they may be heard, defendants the United States of America ("United States"), and the Department of Homeland Security ("DHS") (collectively, "defendants") will, and hereby do, move this court for an order dismissing the action in its entirety, without leave to amend. This motion will be made in the United States Courthouse before the Honorable Otis D. Wright II, United States District Judge, located at 350 W. 1st Street, Los Angeles, California, 90012, Courtroom 5D, 5th Floor.

Defendants bring this motion pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the court lacks subject matter jurisdiction, and plaintiff fails to state a claim for relief.

This motion is made upon this notice, the attached memorandum of points and authorities, the declarations of Robert A. Ramey and Grace Y. Park, and all pleadings, records, and other documents on file with the court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3, which was held on January 22, 2018.

Dated: January 29, 2018

Respectfully submitted,

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

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 17, 2015, the District Court of Colorado dismissed without prejudice a trademark infringement suit between plaintiff Greenway Nutrients, Inc. ("Greenway") and a subset of Greenway's investors for Greenway's failure to prosecute that action. As a result of that dismissal, the United States Attorney's Office for the Western District of Missouri ("USAO-MO") declined to continue its ongoing criminal investigation of infringement against the Greenway investors.

Rather than refile the complaint in the District Court of Colorado, Greenway and its principal, plaintiff Gustavo Escamilla ("Escamilla," and with Greenway, "plaintiffs"), filed this action against the Department of Homeland Security ("DHS") and the United States of America ("United States") (collectively "defendants"), asserting the following claims: (1) federal violations of 42 U.S.C. § 1983 under the Fifth and Fourteenth Amendments, (see Dkt. 1, Complaint at ¶¶ 76-96); and (2) state law claims for (a) violation of the Bane Act, Cal. Civ. Code § 52.1; (b) negligent and intentional infliction of emotional distress; and (c) declaratory and injunctive relief. (See id. at ¶¶ 97-112).

The Complaint is not a model of clarity, but it appears that plaintiffs make two principal allegations. First, plaintiffs appear to contend that defendants declined to resume their criminal investigation by refusing to consider purportedly newly discovered evidence of ongoing infringement by the Greenway investor defendants in the Colorado action.[1] (See, e.g., Dkt. 1, Complaint at ¶¶ 84, 98, 103, 107). Second, plaintiffs contend that defendants "acted in a discriminatory manner, with the intent to discriminate, in that plaintiff Escamilla is a Mexican-American small businessman and was not represented by private legal counsel." (Id. at ¶ 92). For the reasons below, the court lacks subject matter jurisdiction over this action, and, even if it did have jurisdiction, the action should be dismissed, without leave to amend, for failure to plausibly allege any entitlement to relief.

[1] The allegations in the Complaint are taken as true solely for the purposes of this motion. See Saleh v. Bush, 848 F.3d 880, 892 (9th Cir. 2017).

A. Colorado Action

On April 23, 2013, Greenway filed a civil action in the District of Colorado, Greenway Nutrients, Inc. v. Blackburn, et al., CV 13-1088 MSK (KMTx) (D. Colo.) ("Colorado action"), alleging trademark infringement and other claims against multiple defendants, including a subset of Greenway's investors. (See Declaration of Grace Y. Park ("Park Decl."), Exh. 3 at Dkts. 22, 36).[2] Shortly after an answer to the operative complaint was filed, (see id. at Dkt. 131), Greenway's counsel filed a motion to withdraw as counsel, (see id. at Dkt. 137), which the court granted. (See id. at Dkt. 143). On July 21, 2015, the magistrate judge issued a report and recommendation dismissing the action, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, in light of Greenway's failure to retain new counsel, noting that "[i]t has been the law for the better part of two centuries [] that a corporation may appear in the federal courts only through counsel." (Id., Dkt. 146 at 1-2) (citing Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02, 113 S.Ct. 716, 721 (1993)). On August 14, 2015, the district court judge adopted the report and recommendation, dismissed the action without prejudice, (see id. at Dkt. 147), and entered judgment on August 17, 2015. (See id. at Dkt. 148). Because Greenway's action was dismissed without prejudice, Greenway remains free to refile its complaint or assert similar claims for infringement occurring after August 17, 2015.[3] See Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Ctr., 492 F.3d 1158, 1162 (10th Cir. 2007) ("Employing Rule 41(b) to dismiss a case without prejudice [] allows the plaintiff another go."); Gonzales v. Bernalillo Cty. Dist. Ct., 640 Fed. App'x 759, 763 (10th Cir. 2016) ("[A] Rule 41(b) dismissal without prejudice is not an extreme sanction because the remedy is simply to cure the defect and refile the

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

[3] Notably, plaintiffs' counsel in this action, Mainak D'Attaray, served as counsel for Greenway in the Colorado action. (See Park Decl., Exh. 3 at p. 2 & Dkt. 143). If Mr. D'Attaray can represent plaintiffs in this action, it is unclear why he cannot represent plaintiffs in a renewed trademark infringement action in the District of Colorado.

complaint.") (internal quotation marks omitted); see also Montes v. United States, 37 F.3d 1347, 1350 (9th Cir. 1994) ("the effect of a dismissal without prejudice may be to end the litigation in the court involved, but not to act as an adjudication on the merits or to bar the filing of a similar action in another court.") (internal quotation marks omitted).

B. U.S. Immigration and Customs Enforcement's Investigation

On March 3, 2015, plaintiffs met in Burbank, California with Shawn Gibson, Operations Manager for the United States Immigration and Customs Enforcement ("ICE"), an agency under the jurisdiction of defendant DHS. (See Dkt. 1, Complaint at ¶¶ 6, 14). At that meeting, Gibson explained that ICE and USAO-MO had been investigating the Greenway investor defendants in the Colorado action for criminal trademark infringement. At that meeting, Gibson explained that ICE and USAO-MO had already recovered $26 million from the Greenway investors for infringing other companies' products, (see id. at ¶ 18), and informed plaintiffs that they may be able to recover as well. (See id. at ¶ 20). Plaintiffs communicated with Gibson again in June 2015, August 2015, and October 2016, (see id. at ¶¶ 22, 24-27), but on October 28, 2016, Gibson told plaintiffs that ICE and USAO-MO would no longer investigate the Greenway investors' infringement of plaintiffs' products because plaintiffs did not prevail in the Colorado action. (See id. at ¶ 27).

On April 11, 2017,[4] plaintiffs notified Gibson of "just discovered new and compelling evidence" regarding Greenway's former attorney, Michael J. Ryan, and his "unlawfully divulging, sharing, as well as disclosing Greenway'[s] confidential business information as well as trade secrets." (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70). When Gibson stated that ICE and USAO-MO would decline to resume their investigation in light of the evidence regarding Ryan, on July 27, 2017, plaintiffs raised their concerns with Russell Simons, Resident Agent in Charge at ICE's Office of Professional Responsibility, at a meeting in Los Angeles, California. (See id. at ¶¶ 7, 38-39). After

[4] The Complaint states "April 11, 2016," (see Dkt. 1, Complaint at ¶ 32), but read in context, it appears that plaintiffs mean April 11, 2017.

multiple exchanges between plaintiffs and Simons on August 3, 2017, and August 4, 2017, Simons explained to plaintiffs that in light of the dismissal in the Colorado action, ICE and USAO-MO would not resume their investigation because the dismissal without prejudice in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt. (See id. at ¶¶ 40-42, 44-46). In other words, ICE and USAO-MO determined that the Greenway investors could assert that they are not criminally liable for infringement because Greenway could not conclusively establish that they were civilly liable for infringement in the Colorado action.

II. LEGAL STANDARD

A. Subject Matter Jurisdiction

A defendant may seek to dismiss a complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. "Rule 12(b)(1) jurisdictional attacks can be either facial or factual." White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004), cert. denied, 544 U.S. 1018 (2005). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Id. "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." Id. "[The court] also need not presume the truthfulness of the plaintiffs' allegations." White, 227 F.3d at 1242. "Once the moving party has converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly brought before the court, the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction." Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty., 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003), cert. denied, 541 U.S. 1009 (2004).

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B. Failure to State a Claim

Evaluating a complaint pursuant to Rule 12(b)(6) involves a two-step process. See Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014) ("While recognizing some tension" among the Supreme Court cases, Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955 (2007), Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009), Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197 (2007), and Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 122 S.Ct. 992 (2002), the Ninth Circuit has "settled on a two-step process for evaluating pleadings.").

First, "[t]o be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." Levitt, 765 F.3d at 1135. A complaint must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]" Twombly, 550 U.S. at 555, 127 S.Ct. at 1964-65; see Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 ("the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.").

Second, "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Levitt, 765 F.3d at 1135. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949. In determining whether the complaint states a plausible claim for relief, the court must "draw on its judicial experience and common sense[,]" Iqbal, 556 U.S. at 679, 129 S.Ct. at 1950, and consider "obvious alternative explanation[s]." Id. at 682, 129 S.Ct. at 1951. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." United States v. Corinthian Colls., 655 F.3d 984, 991 (9th Cir. 2011).

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III. ARGUMENT

A. Plaintiffs Fail to Comply with Rule 8 of the Federal Rules of Civil Procedure

Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," see Iqbal, 556 U.S. at 677-78, 129 S.Ct. at 1949; Twombly, 550 U.S. at 555, 127 S.Ct. at 1964, in order to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Updike v. Multnomah Cty., 870 F.3d 939, 952 (9th Cir. 2017). "If plaintiff fails [] to provide defendants with notice of which defendant is being sued on which theory and what relief is being sought against them, the complaint fails to comply with Rule 8." Wash. v. Cty. of Los Angeles, No. CV 03-5921-DSF (PLA), 2003 WL 27377620, at *4 (C.D. Cal. Dec. 15, 2003).

The Complaint fails to meet the Rule 8 standard in multiple ways. First, with respect to the defendants in this action, plaintiffs do not identify whether each of their claims is against the United States, DHS, or both. (See Dkt. 1, Complaint at pp. 17-18, 20-22).

Second, with respect to the theory of relief, although plaintiffs allege that defendant United States "is sued under the Federal Tort Claims Act on behalf of" Shawn Gibson and Russell Simons, (see Dkt. 1, Complaint at ¶¶ 6, 7), plaintiffs do not assert any claims pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 1671, et seq.[5] (See id. at pp. 17-23). Third, it is unclear whether some or all of plaintiffs' state tort claims are barred by the applicable statute of limitations. See 28 U.S.C. § 2401(b) ("A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing"). Although plaintiffs contend that their

[5] To the extent plaintiffs assert FTCA claims against defendant the United States, plaintiffs' allegations are insufficiently clear to exhaustively ascertain whether certain defenses apply, such as the independent contractor or discretionary function exceptions. See 28 U.S.C. § 2671 (independent contractor exception); 28 U.S.C. § 2680(a) (discretionary function exception).

emotional distress claims arise from conduct from "July 27, 2017, through August 4, 2017," (see Dkt. 1, Complaint at ¶¶ 103, 107), plaintiffs first communicated with DHS employees in March 2015, (see id. at ¶ 13), which is more than two years before the Complaint was filed on October 24, 2017. (See id.).

Third, with respect to the relief sought against any defendant, to the extent plaintiffs seek "exemplary and punitive damages," a "declaration that Defendants' obvious and inadequate respect for following proper law enforcement protocols are unconstitutional,"[6] and "an injunction requiring Defendants to remedy immediately the Constitutional violations," (Dkt. 1, Complaint at Prayer for Relief), these are not available under the FTCA. See Scott v. United States, 884 F.2d 1280, 1285 (9th Cir. 1989) (under the FTCA, "if the local law provides for punitive damages, [] then only the compensatory damages may be awarded"); Westbay Steel, Inc. v. United States, 970 F.2d 648, 651 (9th Cir. 1992) ("the only relief provided for in the FTCA is money damages") (internal alteration and quotation marks omitted); Moon v. Takisaki, 501 F.2d 389, 390 (9th Cir. 1974) (the FTCA "does not submit the United States to injunctive relief"); Thompson v. U.S. Postal Serv., No. C 12-0301 PJH, 2012 WL 3583134, at *3 (N.D. Cal. Aug. 20, 2012) ("the FTCA waives sovereign immunity only as to claims for 'money damages,' and not for declaratory or injunctive relief"); Nhia Kao Vang v. Decker, No. 2:12-CV-01226-MCE, 2012 WL 5020491, at *11 (E.D. Cal. Oct. 17, 2012) (similar).[7] Because defendants do not have sufficient notice of the claims asserted and the relief sought against them to adequately defend against this action, plaintiffs' Complaint should be dismissed.

B. Plaintiffs' State Tort Claims Fail

Plaintiffs attempt to assert state law claims for violation of the Bane Act, Cal. Civ.

[6] Somewhat contradictorily, plaintiffs assert that defendants exhibited an "obvious and inadequate respect for following proper law enforcement reporting protocols," (Dkt. 1, Complaint at ¶ 111), but nevertheless demand that "those policies and practices are enjoined by the Court." (Id. at ¶ 112).

[7] For these reasons, plaintiffs' claims seeking declaratory and injunctive relief regarding defendants' "standards," "mechanisms," "custom[s], polic[ies], and/or practice[s]," (see Dkt. 1, Complaint at ¶¶ 79, 85, 87, 110-12), should be dismissed.

Code § 52.1, negligent and intentional infliction of emotional distress, and declaratory and injunctive relief. (See Dkt. 1, Complaint at ¶¶ 97-112). These state law claims may be maintained, if at all, only pursuant to the FTCA. See F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998) ("The FTCA is the exclusive remedy for tortious conduct by the United States, and it only allows claims against the United States.").[8] The FTCA is a limited waiver of sovereign immunity for tort actions against the United States "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); see Foster v. United States, 522 F.3d 1071, 1074 (9th Cir. 2008) (it is a "well-established principle that waivers of sovereign immunity must be construed strictly in favor of the sovereign").

1. Plaintiffs Failed to Exhaust Their Administrative Remedies

Under 28 U.S.C. § 2675(a),[9] "[s]uit against the Government under the [FTCA] is not permitted unless a claim has first been filed with the agency." Avery v. United States, 680 F.2d 608, 609 (9th Cir. 1982). The content of that claim to the agency does not have to be detailed; rather, "a skeletal claim form, containing only the bare elements of notice of accident and injury and a sum certain representing damages, suffices to overcome an argument that jurisdiction is lacking." Id. at 610; see Shipek v. United States, 752 F.2d 1352, 1354 (9th Cir. 1985) (same). A tort claim may be filed in district court only after "receiving a conclusive denial of the claim from the agency or waiting for six months to elapse without a final disposition of the claim being made." Jerves v. United States, 966 F.2d 517, 519 (9th Cir. 1992); see 28 U.S.C. § 2675(a). "The FTCA's exhaustion

[8] Additionally, the action should be dismissed because the court lacks subject matter jurisdiction over DHS as "the United States is the only proper party defendant in an FTCA action." Kennedy v. U.S. Postal Serv., 145 F.3d 1077, 1078 (9th Cir. 1998). "A claim against [DHS] in its own name is not a claim against the United States." Id. (affirming dismissal of action against USPS and USPS employee because they were not properly named defendants pursuant to 28 U.S.C. § 2679(a)).

[9] Section 2675(a) provides: An FTCA claim "shall not be instituted . . . against the United States . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency [or t]he failure of an agency to make final disposition of a claim within six months after it is filed."

requirement is jurisdictional and may not be waived." D.L. by & through Junio v. Vassilev, 858 F.3d 1242, 1244 (9th Cir. 2017). "[P]laintiff bears the initial burden of proving subject matter jurisdiction under the FTCA." Sabow v. United States, 93 F.3d 1445, 1451 (9th Cir.), as amended, (Sept. 26, 1996).

Here, plaintiffs make no attempt to allege that they satisfied the jurisdictional requirement by filing any administrative claim. (See, generally, Dkt. 1, Complaint). Nor does ICE have any record indicating that any administrative claim was filed by either Greenway or Escamilla. (See Declaration of Robert A. Ramey at ¶¶ 2, 3). Accordingly, the action should be dismissed with respect to the state law claims for lack of subject matter jurisdiction.

2. The Discretionary Function Exception Applies to Plaintiffs' State Tort Claims

Even if plaintiffs fully exhausted their administrative FTCA claims, the court would nevertheless lack subject matter jurisdiction. Under the FTCA, the United States allows a limited waiver of its sovereign immunity only with respect to certain injuries caused by government employees who are acting within the scope of their employment. See 28 U.S.C. § 1346(b). However, there is no waiver of immunity for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function." 28 U.S.C. § 2680(a).[10] "This exception prevents judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." Gonzalez v. United States, 814 F.3d 1022, 1027 (9th Cir. 2016) (internal quotation and alteration marks omitted). As such, "[the court] lack[s] jurisdiction over any claim to which the discretionary-function exception applies." Alfrey v. United States, 276 F.3d 557, 561 (9th Cir. 2002); see Sabow, 93 F.3d at 1451 ("Where the discretionary function exception to the FTCA applies, no federal subject matter

[10] 28 U.S.C. § 2680(a) provides that the FTCA does not apply to: "Any claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused."

jurisdiction exists.").

"The Supreme Court has created a two-step test for courts that governs the applicability of this exception." Bailey v. United States, 623 F.3d 855, 860 (9th Cir. 2010), cert. denied, 565 U.S. 1079 (2011). First, "[a]n agency does not retain discretion whether to act where a statute or policy directs mandatory and specific action and the agency has no lawful option but to adhere to the directive." Id. Second, "[o]nly discretionary decisions that are susceptible to public policy analysis confer immunity on the government under the FTCA; [t]he challenged decision need not be actually grounded in policy considerations." Id. at 861 (internal quotation marks omitted).

With respect to the first prong, "[t]he decision whether or not to prosecute a given individual is a discretionary function for which the United States is immune from liability." Gen. Dynamics Corp. v. United States, 139 F.3d 1280, 1283 (9th Cir. 1998); Gonzalez, 814 F.3d at 1028 ("[t]he investigation and prosecution of crime has long been a core responsibility of the executive branch.") (citation omitted); Dichter-Mad Family Partners, LLP v. United States, 707 F.Supp.2d 1016, 1037 (C.D. Cal. 2010), aff'd, 709 F.3d 749 (9th Cir. 2013) ("[r]efusal to prosecute is a classic illustration of a decision committed to agency discretion"). Indeed, even "[o]utside of the FTCA context, the Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Gonzalez, 814 F.3d at 1028 (citation and internal quotation marks omitted). Moreover, plaintiffs cannot evade the absolute discretion afforded to prosecutors by asserting negligence claims against the investigating agencies. See Gen. Dynamics, 139 F.3d at 1283 (discretionary function exception applies to investigating agency's negligent preparation of report, because "the persons who actually caused the damage [were] the prosecutors[], who were pushing a criminal (and civil) attack upon General Dynamics and its employees.").

Here, plaintiffs do not point to any statute, regulation, rule, or policy that prescribes or mandates any specific course of conduct by defendants. (See, generally, Dkt. 1,

Complaint). Nothing required that defendants consider purportedly newly[11] discovered evidence of ongoing infringement and compel resumption of their criminal investigation. (See, generally, id.). Rather, plaintiffs allege that ICE and USAO-MO decided not to resume their investigation because the dismissal without prejudice in the Colorado action left plaintiffs' valid ownership of Greenway's trademarks in doubt with respect to the Greenway investors' past or continuing infringement. (See id. at ¶¶ 40-42, 44-46). This is precisely the kind of decision that falls within the executive branch's absolute discretion. See Gonzalez, 814 F.3d at 1028 ("an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion") (citation and internal quotation marks omitted). Plaintiffs cannot circumvent USAO-MO's absolute discretion by asserting claims against the investigating agency, ICE, instead. See Gen. Dynamics, 139 F.3d at 1283 (discretionary function exception applies to investigating agency's purported negligence).

With respect to the second prong, defendants' decision to not resume their investigation or review plaintiffs' "new" evidence "clearly require investigative officers to consider relevant political and social circumstances in making decisions about the nature and scope of a criminal investigation." Sabow, 93 F.3d at 1453. Indeed, "[d]oing nothing may be the most constructive use of [DHS's and USAO-MO's] resources," because "Congress gives the[se agencies] a budget, setting a cap on its personnel." Dichter-Mad Family Partners, 707 F.Supp.2d at 1037-38. "Agencies must compare the value of pursuing one case against the value of pursuing another," id. at 1038, and even "may find it worthwhile to give short shrift to a particular claim if the aggrieved party can file its own suit [], for turning the subject over to private litigation frees up time without

[11] Plaintiffs' purportedly "new" evidence that Greenway's former attorney, Michael J. Ryan, "unlawfully divulge[ed], shar[ed], as well as disclos[ed] Greenway'[s] confidential business information as well as trade secrets," (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70), is actually rather old. As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11).

necessarily diminishing the enforcement of [a particular] statute." Id.

Here, ICE and USAO-MO had to consider the relevant political and social implications of using scarce resources to resume a criminal investigation where plaintiffs did not prevail on the same claims in civil proceedings. See Dichter-Mad Family Partners, 707 F.Supp.2d at 1038 (and agency may "find it worthwhile to give short shrift to a particular claim if the aggrieved party can file its own suit"). Defendants had to balance plaintiffs' ability to refile (or abandon) claims against the Greenway investors in Colorado against the risk that other victims lack the resources to file their own civil claims. See id. ("Agencies must compare the value of pursuing one case against the value of pursuing another"). ICE and USAO-MO further had to consider their likelihood of prevailing against the Greenway investors under a higher criminal "beyond reasonable doubt" standard when Greenway determined that it could not prevail against the Greenway investors under a more lenient "preponderance of the evidence" civil standard. In other words, defendants' decisions constituted discretionary judgments that are "at the core of the executive branch." Gonzalez, 814 F.3d at 1033.

Ultimately, plaintiffs' demand that the court direct USAO-MO and ICE to resume their investigation, (see Dkt. 1, Complaint at ¶¶ 84, 98, 103, 107), would involve precisely the type of judicial second-guessing the discretionary function exception is designed to prevent. See Gonzalez, 814 F.3d at 1027 ("This exception prevents judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort."). Courts are not well-suited for that role, because courts and agencies function differently and courts have little visibility into an agency's inner workings. "Judges compare the case at hand against a rule of law or an abstract standard of diligence and do not see the opportunity costs of reallocations within the agency." Dichter-Mad Family Partners, 707 F.Supp.2d at 1038. As such, "[c]ourts cannot intelligently supervise the [agency's] allocation of its staff's time, because although judges see clearly the claim the [agency] has declined to redress, they do not see at all the tasks the staff may accomplish with the time released." Id. "That

fundamental difference in the perspectives of the two bodies is why agencies (and other prosecutors) rather than courts must make the decisions on pursuing or dropping claims." Id. Because the discretionary function exception applies, the court should dismiss the state court claims for lack of subject matter jurisdiction, without leave to amend.

3. Plaintiffs Fail to State any State Tort Claim

a. *Plaintiffs' Claim for Violation of the Bane Act, Cal. Civ. Code § 52.1, Fails*

Even if plaintiffs properly exhausted their administrative FTCA claims, and even if the discretionary function exception did not apply to bar their claims, plaintiffs' claim for violation of the Bane Act ("Bane Act"), Cal. Civ. Code § 52.1, nevertheless fails. The Bane Act imposes liability against individuals who interfere or attempt to interfere by threats, intimidation, or coercion the exercise or enjoyment of rights secured by the Federal or California Constitutions. See Cal. Civ. Code § 52.1(a)-(b). "The statute requires a showing of coercion independent from the coercion inherent in the [constitutional violation]." Shoyoye v. Cnty. of Los Angeles, 203 Cal.App.4th 947, 959 (2012); see Jones v. Kmart Corp., 17 Cal.4th 329, 334 (1998) (section 52.1 "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion"). "The act of interference with a constitutional right must itself be deliberate or spiteful." Shoyoye, 203 Cal.App.4th at 959. "Speech alone is not sufficient to support [a Bane Act violation], except upon a showing that the speech itself threatens violence." Cal. Civ. Code § 52.1(j).

To the extent plaintiffs' Bane Act claim is based on interference with plaintiffs' Fifth and Fourteenth[12] Amendment rights, (see Dkt. 1, Complaint at ¶ 98), the court lacks

[12] Because plaintiffs allege claims against federal entities, the United States and DHS, plaintiffs' Fourteenth Amendment Bane Act claim arises, if at all, under the Due Process Clause of the Fifth, rather that the Fourteenth, Amendment. See Davis v. Passman, 442 U.S. 228, 230, 99 S.Ct. 2264, 2269-70 (1979) (discussing equal protection claims under the Fifth Amendment); Consejo de Desarrollo Economico De Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n.4 (9th Cir. 2007) (holding Fifth Amendment "subjects the federal government to constitutional limitations that are the equivalent of those imposed on the states by the Equal Protection Clause of the Fourteenth

subject matter jurisdiction because the United States has not waived its sovereign immunity with respect to constitutional tort claims. Pursuant to 28 U.S.C. § 1346, the United States waives its sovereign immunity "where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." "By definition, [then, plaintiffs] cannot allege as to [the United States] that state law, the requisite 'law of the place where the act or omission occurred,' was the source of liability for a claim alleging the deprivation of a federal constitutional right." Mendoza v. United States, No. 15CV1528-JAH (BGS), 2017 WL 4286907, at *7 (S.D. Cal. Sept. 27, 2017) (citing F.D.I.C. v. Meyer, 510 U.S. 471, 477-78, 114 S.Ct. 996, 1001 (1994)).

To the extent plaintiffs' Bane Act claim is premised on interference with plaintiffs' rights under the California Constitution, (see Dkt. 1, Complaint at ¶ 98), it also fails for failure to state a claim. Plaintiffs' Complaint is bereft of any allegation, conclusory or otherwise, that defendants intentionally used any threats, intimidation, or coercion, see Cal. Civ. Code § 52.1(a)-(b), separate and apart from any alleged constitutional violation. (See, generally, Dkt. 1, Complaint); see also Shoyoye, 203 Cal.App.4th at 959 ("The act of interference with a constitutional right must itself be deliberate or spiteful."); Jones, 17 Cal.4th at 334 (section 52.1 "require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion"). At most, plaintiffs allege defendants admonished them, (see, e.g., Dkt. 1, Complaint at ¶ 24) ("Gibson scolded Plaintiffs for inquiring about DHS' ongoing criminal investigation"), but absent an actual threat, "[s]peech alone is not sufficient to support [a Bane Act violation]." Cal. Civ. Code § 52.1(j). Accordingly, plaintiffs' Bane Act claim fails.

b. *Plaintiffs' Intentional and Negligent Infliction of Emotional Distress Claims Fail*

Even if plaintiffs properly exhausted their administrative FTCA claims, and even if

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Amendment.") (citing Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954)). This is yet another reason why plaintiffs' Bane Act claims should be dismissed.

the discretionary function exception did not apply, plaintiffs' intentional and negligent infliction of emotion distress claims fail. "A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Hughes v. Pair, 46 Cal.4th 1035, 1050 (2009) (internal quotation marks omitted). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." Id. at 1050-51 (internal quotation marks omitted). "Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Id. at 1051. "Negligent infliction of emotional distress is a form of the tort of negligence, to which the elements of duty, breach of duty, causation and damages apply." Huggins v. Longs Drug Stores Cal., Inc., 6 Cal.4th 124, 129 (1993).

Plaintiffs fail to allege any conduct by defendants that approaches negligence, much less outrageous conduct. Rather, plaintiffs contend that, from July 27, 2017 through August 4, 2017, defendants "were aware Plaintiffs were in possession of new evidence that was critical to a successful resolution to Plaintiffs' criminal allegations," (Dkt. 1, Complaint at ¶¶ 103, 107), but that defendants refused to consider plaintiffs' purportedly new evidence, causing plaintiffs "severe emotional distress and mental suffering." (Id. at ¶¶ 105, 109). As previously explained, ICE and USAO-MO, in their discretion, made the reasoned decision that they would not resume their investigation because the dismissal without prejudice in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt.[13] (See id. at ¶¶ 40-42, 44-46). Moreover, plaintiffs' purportedly "new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new. (See

[13] Moreover, as all of plaintiffs' claims arise, if at all, out of litigation or incidents surrounding litigation, defendants are immune from suit under Cal. Civ. Code § 47(b). See Rubin v. Green, 4 Cal.4th 1187, 1195 (1993) (litigation privilege pursuant to Cal. Civ. Code § 47(b) applies to pre-litigation communications).

Dkt. 1, Complaint at ¶¶ 32, 52, 63-70). As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11). In other words, defendants made reasoned, evidence-based decisions that do not remotely approach negligence or outrageous conduct, and plaintiffs' negligent and intentional infliction of emotional distress claims should be dismissed.

C. Plaintiffs' Claims for Violations of 42 U.S.C. § 1983 Fail

With respect to their § 1983 claims, plaintiffs take issue with defendants' purported "refusal to review, admit, or allow Greenway's new evidence [] that clearly demonstrated that Greenway was in fact, the victim of an ongoing federal crime," (Dkt. 1, Complaint at ¶ 84), and purportedly discriminatory acts "with the intent to discriminate, in that plaintiff Escamilla is a Mexican-American small businessman and was not represented by private legal counsel."[14] (Id. at ¶ 92; see id. at ¶ 30). However, "[f]ederal officers acting under federal authority are immune from suit under section 1983." Gibson v. United States, 781 F.2d 1334, 1343 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); Russell v. U.S. Dep't of the Army, 191 F.3d 1016, 1019 (9th Cir. 1999) (Section 1983 "provides no right of action against federal (rather than state) officials"). Accordingly, these claims should be dismissed for lack of subject matter jurisdiction.

D. Plaintiffs' Claims are Futile

Rule 15 of the Federal Rules of Civil Procedure provides that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). However, "[c]ourts are not required to grant leave to amend if a complaint lacks merit entirely." Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Whether to grant leave to amend is guided by several factors, including: (1) whether the amendment causes the

[14] Other than plaintiffs' conclusory allegations that defendants acted in a racially discriminatory manner, (see Dkt. 1, Complaint at ¶¶ 30, 92), the Complaint does not contain any facts supporting that contention. (See, generally, id.).

opposing party prejudice; (2) whether the amendment is sought in bad faith; (3) whether the amendment causes undue delay; (4) whether the amendment constitutes an exercise in futility; and (5) whether the plaintiff has previously amended his or her complaint. See DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 & n. 3 (9th Cir. 1987).

Liberally construing the allegations in the Complaint, it is clear that giving another opportunity to amend would be futile. Even if plaintiffs administratively exhausted their FTCA claims, the discretionary function exception applies to defendants' investigative and prosecutorial decision not to resume their criminal investigation based on purportedly newly discovered evidence. And as previously explained, see supra at § III.C, plaintiffs § 1983 claims must fail because they cannot be asserted against federal officers or agencies. Accordingly, plaintiffs' Complaint should be dismissed without leave to amend.

IV. CONCLUSION

For the foregoing reasons, defendants respectfully request that the court grant their motion to dismiss and dismiss the action in its entirety without leave to amend.

Dated: January 29, 2018

Respectfully submitted,

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Exhibit G

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, et al.,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants.

No. CV 17-7748 ODW (MRWx)

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Hearing Date: March 5, 2018
Hearing Time: 1:30 p.m.
Location: First Street Courthouse
350 W. 1st Street
Courtroom 5D, 5th Floor

Hon. Otis D. Wright II

In their Opposition to Defendants' Motion to Dismiss (Dkt. 10, "Opp'n"),[1] plaintiffs Greenway Nutrients ("Greenway") and Gustavo Escamilla ("Escamilla") (collectively, "plaintiffs") "concede their missteps in hastily filing their Complaint,"[2] (id. at 2), but nevertheless assert that they should be given leave to amend.[3] While the court "should freely give leave [to amend] when justice so requires," Fed. R. Civ. P. 15(a)(2), in this instance, amendment would be futile, and plaintiffs' Complaint should be dismissed without leave to amend.

Plaintiffs assert that "a Bivens claim, as well as the state tort claims, based on the same facts can survive against the federal officers identified in the Complaint if granted leave to amend." (Dkt. 10, Opp'n at 2). In other words, instead of asserting state law tort and § 1983 claims against the United States and DHS, plaintiffs seek leave to assert the same state law tort claims and Bivens claims against federal officers Russell Simons and

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[1] Plaintiffs filed their Opposition one day after the February 12, 2018, deadline. See L.R. 7-9 (opposition must be filed "not later than twenty-one (21) days before the date designated for the hearing of the motion"). "The Court may decline to consider any memorandum or other document not filed within the deadline set by order or local rule." L.R. 7-12; see Christian v. Mattel, Inc., 286 F.3d 1118, 1129 (9th Cir. 2002) ("The district court has considerable latitude in managing the parties' motion practice and enforcing local rules that place parameters on briefing.").

[2] Somewhat contradictorily, plaintiffs contend that despite their "haste" and "missteps," (Dkt. 10, Opp'n at 1, 2), their Complaint complies with Rule 8(a) of the Federal Rules of Civil Procedure. (See id. at 2, 3). But as explained in defendants' Motion to Dismiss Plaintiffs' Complaint (Dkt. 9, "Motion"), the Complaint does not address even the most basic requirements of Rule 8, (see id. at 6, 7), such as whether each of plaintiffs' state tort claims and § 1983 claims are asserted against defendant the United States of America ("United States"), defendant the Department of Homeland Security ("DHS"), or both (collectively, "defendants"). (See id. at 6).

[3] Nothing precludes plaintiffs from filing an amended complaint by February 20, 2018. See Fed. R. Civ. P. 15(a)(1)(B) ("A party may amend its pleading once as a matter of course within [] 21 days after service of a motion under Rule 12(b)"); (Dkt. 9, Motion) (filed January 29, 2018). So plaintiffs' contention that "[t]his entire exercise in motions practice could have been avoided by Defendants delaying the filing of the motion until Plaintiffs amended their Complaint," (Dkt. 10, Opp'n at 1), lacks merit. Moreover, plaintiffs have not given defendants (or the court) enough time to accommodate their requests. Plaintiffs for the first time offered defendants a 30-day extension to respond to an amended complaint (which has not yet been filed), on the Saturday morning before the Monday deadline for filing defendants' Motion. (See Dkt. 9-2, Declaration of Grace Y. Park ("Park Decl.") at ¶ 3 & Exh. 2).

Shawn Gibson.[4]

Asserting state law tort claims of negligent and intentional infliction of emotional distress and violation of the Bane Act, Cal. Civ. Code § 52.1, (see Dkt. 1, Complaint at ¶¶ 97-109), against Simons and Gibson – rather than the United States and DHS – would be futile. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671, et seq., is the exclusive remedy for common law tort claims arising out of the acts or omissions of a federal employee, see 28 U.S.C. § 2679(b)(1), "and it only allows claims against the United States." F.D.I.C. v. Craft, 157 F.3d 697, 706 (9th Cir. 1998). As such, the court lacks subject matter jurisdiction to consider such state law tort claims asserted against Simons and Gibson. See Kennedy v. U.S. Postal Serv., 145 F.3d 1077, 1078 (9th Cir. 1998) (dismissing FTCA claim against U.S.P.S. employee acting within scope of his employment "[b]ecause the United States is the only proper party defendant in an FTCA action."). Accordingly, plaintiffs' proposed assertion of state law tort claims against federal officers Simons and Gibson would be futile.[5]

In light of the Supreme Court's decision in Ziglar v. Abbasi, 137 S.Ct. 1843 (2017), and the Ninth Circuit's decision in Vega v. United States, No. 13-35311, 2018 WL 740184 (9th Cir. Feb. 7, 2018), asserting claims against Simons and Gibson pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388, 91 S.Ct. 1999 (1971) ("Bivens") would also

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[4] Defendants still do not understand why plaintiffs have not simply refiled their civil infringement claims in the District of Colorado. (See Dkt. 9, Motion at 2); Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe Cty. Justice Ctr., 492 F.3d 1158, 1162 (10th Cir. 2007) ("Employing Rule 41(b) to dismiss a case without prejudice [] allows the plaintiff another go."); Gonzales v. Bernalillo Cty. Dist. Ct., 640 Fed. App'x 759, 763 (10th Cir. 2016) ("[A] Rule 41(b) dismissal without prejudice is not an extreme sanction because the remedy is simply to cure the defect and refile the complaint.") (internal quotation marks omitted). Notably, plaintiffs' counsel in this action, Mainak D'Attaray, served as counsel for Greenway in the Colorado action, (see Dkt. 9-2, Park Decl., Exh. 3 at p. 2 & Dkt. 143), so it is unclear why plaintiffs insist on filing suit against the United States and DHS, and now for the first time – federal officers Simons and Gibson – rather than the "criminal usurpers," (Dkt. 10, Opp'n at 3), themselves.

[5] Moreover, plaintiffs' proposed assertion of state law tort claims against Simons and Gibson (rather than the United States or DHS) does not overcome the fact that plaintiffs failed to administratively exhaust their claims, (see Dkt. 9, Motion at 8-9), nor does it overcome the discretionary function exception, which bars plaintiffs' proffered state law claims. (See id. at 9-13).

be futile.

In Abbasi, the Supreme Court noted that "three cases [] represent the only instances in which the Court has approved of an implied damages remedy under the Constitution itself," 137 S.Ct. at 1855, which are: "(1) police search and seizure in violation of the Fourth Amendment, see Bivens, 403 U.S. 388, 91 S.Ct. 1999; (2) gender discrimination by a congressman in violation of the Fifth Amendment for an employee not covered by Title VII, see Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264 (1978); and (3) deliberate indifference toward a prisoner in violation of the Eighth Amendment, see Carlson v. Green, 446 U.S. 14, 100 S.Ct. 1468 (1980)." Arvizu v. Acosta, No. 1:17-CV-219-LJO-EPG, 2017 WL 3421976, at *7 n. 7 (E.D. Cal. Aug. 9, 2017). "[E]xpanding the Bivens remedy [beyond these three instances] is [] a 'disfavored' judicial activity," Abbasi, 137 S.Ct. at 1857, which the Supreme Court "has consistently refused to extend [] to any new context or new category of defendants . . . for the past 30 years." Id. (internal quotation marks and citation omitted).

In light of this, the Supreme Court has articulated a two-part test as to whether a plaintiff can assert a Bivens claim. "[T]he first question a court must ask [] is whether the claim arises in a new Bivens context, i.e., whether the case is different in a meaningful way from previous Bivens cases decided by this Court." Abbasi, 137 S.Ct. at 1864 (internal quotation marks omitted). "[T]he new-context inquiry is easily satisfied," id. at 1865, even when the meaningfulness of the differences are "small. . . in practical terms." Id. A non-exhaustive list of meaningful differences that a court may consider, include: "the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous Bivens cases did not consider." Id. at 1860.

If the answer to the first question is in the affirmative, the second question is whether

"there are special factors counselling hesitation in the absence of affirmative action by Congress." Id. at 1857. "The answer most often will be [that] Congress" – rather than the courts – "should decide whether to provide for a damages remedy" under the Constitution. Id. (internal quotation marks omitted).

Here, plaintiffs seek leave to assert Bivens claims against Simons and Gibson for "declin[ing] to investigate the criminal usurper of Plaintiffs' trademarks," (Dkt. 10, Opp'n at 3), and declining to consider purportedly newly discovered evidence of infringement, (see id. at 4), thus "depriv[ing] Plaintiffs of their most basic fundamental civil rights of Due Process under the Fifth and Fourteenth[6] Amendments of the United States Constitution." (Id.).

Plaintiffs' proposed Bivens claim involves a "new category of defendants," agents from U.S. Immigration and Customs Enforcement ("ICE"), (see Dkt. 10, Opp'n at 3-4; Dkt. 1, Complaint at ¶¶ 6, 14), as opposed to the police officers, congressman, or prison guards implicated in previously recognized Bivens cases. And to the extent plaintiffs' proposed Bivens claim is grounded on Fifth Amendment Due Process grounds in the prosecutorial investigation context, it is meaningfully different from previous Bivens claims. See, e.g., Vega, 2018 WL 740184, at * 5 (Fifth Amendment procedural due process claims arising out of a prison disciplinary process "plainly present[s] a 'new context' under Abbasi"). Because "the new-context inquiry is easily satisfied," where even differences that are "small . . . in practical terms," are "meaningful," Abbasi, 137 S.Ct. at 1865, the first factor under Abbasi is satisfied.

The second factor of the Abbasi inquiry favors defendants as well. See Abbasi, 137

[6] Because plaintiffs propose claims against federal employees, their due process claims arise, if at all, under the Due Process Clause of the Fifth, rather that the Fourteenth, Amendment. See Davis, 442 U.S. at 230, 99 S.Ct. at 2269-70 (discussing equal protection claims under the Fifth Amendment); Consejo de Desarrollo Economico De Mexicali, A.C. v. United States, 482 F.3d 1157, 1170 n.4 (9th Cir. 2007) (holding Fifth Amendment "subjects the federal government to constitutional limitations that are the equivalent of those imposed on the states by the Equal Protection Clause of the Fourteenth Amendment.") (citing Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693 (1954)). Accordingly, plaintiffs' proposed Bivens claims based on Fourteenth Amendment violations fails as a matter of law.

S.Ct. at 1857 ("a Bivens remedy will not be available if there are special factors counselling [judicial] hesitation in the absence of affirmative action by Congress"). "[I]f there is an alternative remedial structure present in a certain case, that alone may limit the power of the Judiciary to infer a new Bivens cause of action." Id. at 1858.

Here, multiple alternative remedial structures exist, counseling judicial hesitation in recognizing a Bivens remedy in this instance. First, plaintiffs have "state law claims as an alternative remedy." Vega, 2018 WL 740184, at *6 (declining to recognize a Bivens remedy when plaintiff sought state law and FTCA claims). Plaintiffs have asserted state law claims for negligent and intentional infliction of emotional distress and violation of the Bane Act, Cal. Civ. Code § 52.1. (See Dkt. 1, Complaint at ¶¶ 97-109). Even if plaintiffs' state law tort claims under the FTCA fail, that does not mean plaintiffs may seek Bivens claims in the alternative. "[N]o court has held that the plaintiff's lack of success due to inadequate pleading while pursuing alternative remedies provides a basis for Bivens relief." Vega, 2018 WL 740184, at *6. "To do so would require the court to necessarily prove the plaintiff's alternative remedies for him, or be forced to create a new remedy through Bivens." Id. Second, within DHS, the Office for Civil Rights and Civil Liberties ("CRCL"), "investigate[s] complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General." 6 U.S.C. § 345(a)(6). Again, plaintiffs concede that they sought available alternative remedies when they "report[ed] civil rights violations" to the CRCL. (See Dkt. 1, Complaint at ¶ 33 & Exh. 11). In other words, because multiple alternative remedial structures exist to address plaintiffs' grievances, which procedures plaintiffs pursued, the court should hesitate in recognizing a Bivens remedy in this case.

Finally, even if plaintiffs could state a valid Bivens claim, Gibson and Simons are entitled to qualified immunity. Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096 (1986). The qualified immunity inquiry involves two questions:

"Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 2156 (2001). Second, "if a violation could be made out on a favorable view of the parties' submissions, the next [] step is to ask whether the right was clearly established . . . in light of the specific context of the case." Id. Only if the answer to both questions is in the affirmative, then qualified immunity does not apply. See id.; see also Pearson v. Callahan, 555 U.S. 223, 236, 129 S.Ct. 808, 818 (2009) (although following the Saucier protocol sequentially is "often beneficial," it "should not be regarded as mandatory").

Here, as for the first prong, to the extent plaintiffs contend that Simons and Gibson "refused to provide any type of federal law enforcement intervention whatsoever," (Dkt. 10, Opp'n at 4), plaintiffs cite no legal authority that plaintiffs have a constitutional right to federal criminal prosecution to vindicate personal injuries. (See, generally, id.). To the extent plaintiffs contend that Simons and Gibson "refused to investigate plaintiffs' claims," (id. at 3), such contentions are belied by the allegations in the Complaint. Plaintiffs allege that Gibson and Simons made the reasoned, evidence-based decision not to resume their investigation because the dismissal without prejudice of Greenway's trademark infringement suit in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt, (see Dkt. 1, Complaint at ¶¶ 40-42, 44-46), and plaintiffs' purportedly "new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new. (See id. at ¶¶ 32, 52, 63-70). As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Dkt. 9-2, Park Decl., Exh. 4 at 4, 11). As for the second-prong, having failed to identify any violated federal constitutional right, plaintiffs cannot plausibly allege that Gibson or Simons violated a "clearly established" constitutional right. Saucier, 533 U.S. at 201, 121 S.Ct. at 2156.

Although plaintiffs contend that their Complaint, containing "75 paragraphs, across

17 pages," (Dkt. 10, Opp'n at 4), can be amended to adequately assert claims against federal officers Gibson and Simons, for the foregoing reasons, it is clear that additional paragraphs and pages will not help plaintiffs, and defendants' motion to dismiss should be granted without leave to amend.

Dated: February 16, 2018

Respectfully submitted,

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Exhibit H

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, and GREENWAY NUTRIENTS,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY; UNITED STATES OF AMERICA,

Defendants.

No. LACV 17-7748 ODW (MRWx)

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

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

Hon. Otis D. Wright

OPPOSITION[1]

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

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

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

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

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

I. Judge Wright Made Statements in the Related Action that are Consistent with this Action

Plaintiffs contend that Judge Wright improperly dismissed the related action for plaintiffs' failure to identify the existence of criminal proceedings affecting them as victims. (*See* Related Action) (Dkt. 10, Court's Order of April 2, 2021, at 2). Plaintiffs contend this is borne out by the fact that, in this action, Judge Wright previously acknowledged that a criminal investigation involving the same criminal defendants was

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[1] Plaintiffs' motion fails on procedural grounds as well. Plaintiffs' motion does not contain a hearing date and, therefore, has not been noticed at least 28 days before that hearing date. *See* Local Rule 6-1. Nor have plaintiffs made any attempt to meet and confer to resolve any disputes prior to the filing of their motion. *See* Local Rule 7-3. Plaintiffs further bring their motion pursuant to 28 U.S.C. § 144, but plaintiffs' affidavit is not "accompanied by a certificate of counsel of record stating that [plaintiffs' motion] is made in good faith."

underway. (*See* Dkt. 13, Court's Order of April 4, 2018, at 2-4; *see, e.g.* Dkt. 14, Motion at 10-11).

Judge Wright's statements in the April 4, 2018, order and the April 2, 2021, order, however, are entirely consistent. In the April 4, 2018, order, Judge Wright cited plaintiffs' complaint, which alleged that defendants commenced a criminal trademark infringement investigation in March 2015. (*See* Dkt. 13, Court's Order of April 4, 2018, at 2) (citing Dkt. 1, Complaint at 14). When plaintiffs' related civil trademark infringement complaint was dismissed without prejudice in August 2015, (*see id.* at 3), defendants told plaintiffs that they would not move forward with any investigation involving plaintiffs' trademark until the parallel civil trademark infringement lawsuit was resolved on the merits. (*Id.*) (citing Dkt. 1, Complaint at ¶ 30 at Exh. 10).

In the April 2, 2021, order, Judge Wright dismissed the action for plaintiffs' failure to "identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents." (Related Action) (Dkt. 10, Court's Order of April 2, 2021, at 2). In other words, Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, (*id.*), in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits. (*See* Dkt. 13, Court's Order of April 4, 2018, at 3).

As plaintiffs cannot point to any inconsistency between Judge Wright's two orders, plaintiffs cannot tenably assert bias or the appearance of bias.

II. Undersigned Counsel and USAO Provided the Court Accurate Documents

Plaintiffs contend that, in three instances, undersigned counsel and the USAO misled the court by providing "false and materially misleading declarations, pleadings, and filings" to improperly obtain a favorable ruling in this action. (*See, e.g.* Dkt. 14, Motion at 5). Each lack merit.

First, plaintiffs contend that Robert A. Ramey, Associate Legal Advisor for U.S.

Immigrations and Customs Enforcement ("ICE") failed to adequately search for plaintiffs' May 1, 2017, administrative civil rights complaint, which they filed with the Department of Homeland Security's ("DHS") Office of Civil Rights and Civil Liberties ("CRCL"). (Dkt. 14-1, Declaration of Gustavo Escamilla ("Escamilla Decl.") at ¶ 25; *see id.* at ¶¶ 19-24). However, Ramey stated in his declaration that his search was narrow: he "queried the DCLD Litigation Database, which is the Division's electronic database that identifies any administrative tort claim that any person or party has filed with or transmitted to ICE." (Dkt. 9-1, Declaration of Robert A. Ramey ("Ramey Decl.") at ¶ 2). Plaintiffs do not explain how an administrative *civil rights* complaint can be found in an administrative *defensive tort* litigation database. (*See* Dkt. 14-1, Escamilla Decl. at 19).

Second, plaintiffs contend that undersigned counsel and the USAO "conceal[ed] ESI and the existence of [plaintiffs'] formal civil rights complaint [he] filed with DHS's CRCL and DHS's OIG." (*Id.* at ¶ 27). Far from concealing the existence of plaintiffs' administrative civil rights complaint, undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply. (*See* Dkt. 11, Reply at 5) ("plaintiffs concede that they sought available alternative remedies when they 'report[ed] civil rights violations' to the CRCL.").

Third, plaintiffs contend that undersigned counsel "improperly represented" that plaintiffs had sent Michael J. Ryan profanity-laced communications in June 2013 when, in fact, plaintiffs had sent *Tom* Ryan and his wife, Wendy Ryan, profanity-laced communications in June 2013. (*See* Dkt. 14-2, Escamilla Decl. at ¶ 30; *see also id.* at ¶¶ 30-31). But plaintiffs' complaint refers to "Greenway's former attorney named Michael J. Ryan (Ryan)," (Dkt. 1, Complaint at ¶ 32), as well as Greenway's former attorney Tom Ryan. (*Id.*, Exh. 13 at ECF 83) (plaintiffs' complaint to Florida bar against his former attorneys James D. Ryan, Thomas F. Ryan, and Michael J. Ryan).

As plaintiffs cannot demonstrate that undersigned counsel or the USAO submitted "false and materially misleading declarations, pleadings, and filings," they cannot demonstrate that Judge Wright overlooked misconduct that did not occur.

III. Plaintiffs Have Alleged no Facts Supporting the Existence of a Secret Plea Agreement or Deferred Prosecution Agreement

Plaintiffs contend that Judge Wright displayed a "high-degree of personal-bias and deep-seated antagonism" towards plaintiff by, among other things, holding that plaintiffs assertions of a secret plea agreement and/or deferred prosecutions agreements are "merely speculation pulled from the **ether**." (Dkt. 14, Motion at 10) (emphasis in original) (citing April 2, 2021, Order). But "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display," do not establish the appearance of bias or partiality subject to disqualification under 28 U.S.C. § 455(a). *Liteky v. United States*, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1157 (1994). Here, plaintiffs have yet to provide any additional facts supporting their contention of any secret plea or deferred prosecution agreement. (*See generally* Dkt.; Related Action).

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IV. Conclusion[2]

For the reasons above, plaintiffs' motion to disqualify the Hon. Otis D. Wright from this action should be denied.

Dated: July 19, 2021

Respectfully submitted,

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

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

[2] As plaintiffs cannot demonstrate that undersigned counsel or the USAO provided "false and materially misleading declarations, pleadings, and filings" to improperly obtain a favorable ruling in this action, (*see, e.g.* Dkt. 14, Motion at 5), their planned motion under Rule 60(d)(3) of the Federal Rules of Civil Procedure will also fail, particularly as plaintiffs' must meet a very high burden to set aside a judgment under that provision. *See United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1168 (9th Cir. 2017) (fraud on the court "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision.") (internal citations omitted). "In addition, the relevant misrepresentations must go 'to the central issue in the case,' and must 'affect the outcome of the case.' In other words, the newly discovered misrepresentations must 'significantly change the picture already drawn by previously available evidence.'" *Id.*

Exhibit I

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

GUSTAVO ESCAMILLA, an individual; and GREENWAY NUTRIENTS, a Colorado corporation,

Plaintiffs,

v.

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

Defendants.

Case No.: 2:17-cv-07748

PLAINTIFFS GUSTAVO ESCAMILLA'S AND GREENWAY NUTRIENTS' MOTION FOR RECONSIDERATION FOR FRAUD ON THE COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(D)(3); DECLARATION OF MAINAK D'ATTARAY

DATE: November 15, 2021

TIME: 1:30 p.m.

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

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

PLEASE TAKE NOTICE that on November 15, 2021 at 1:30 p.m., in the above-entitled Court, located at 350 West First Street, Los Angeles, California 90012, in Courtroom 5D, pursuant to Federal Rule of Civil Procedure section 60(D)(3), Plaintiffs Gustavo Escamilla ("Escamilla") and Greenway Nutrients, Inc. ("Greenway") (collectively, "Plaintiffs") hereby respectfully move to set aside

the judgment of dismissal in this action based on defendants' actual fraud on the Court.

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

This motion is based on this notice, the attached memorandum of points and authorities, and the declaration of Gustavo Escamilla, and any further oral argument or evidence that the Court may allow.

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

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Rule 60(d)(3) motion stems from Plaintiff Escamilla's recent March 2021 and July 2021 discovery that several high-ranking U.S. Attorneys employed by the United States Attorney's Office for the Central District of California ("USAO-CDOC") violated their sworn duties to uphold the law. Instead, these government attorneys provided the Court with a phony narrative and filed multiple false and materially misleading declarations, pleadings, and filings to obtain a dishonest favorable court ruling during the Plaintiffs previously filed civil rights lawsuit according to 42 U.S. Code § 1983 in *Gustavo Escamilla, et al. v. Department of Homeland Security, et al.* 2:17-cv-07748 DE-1 (the "2017 Civil Rights Lawsuit").

On July 19, 2021, USAO-CDOC U.S. Attorneys' fraud on the Court, was exacerbated by their filing an additional false and materially misleading motion in opposition to the Plaintiffs disqualification motion [DE-15]. On information and belief, USAO-CDOC Attorneys may have potentially engaged in the misconduct above to protect and cover-up for a high-profile, politically and New York mob-boss connected ringleader named David Dragan Selakovic ("Selakovic").[1] Federal

[1] Selakovic is the older brother of a high-ranking Serbian politician named Nikola Selakovic, Who serves as the acting Secretary to the President of Serbia named Alexander Vucic ("Vucic"), with ties to a U.S. sanctioned Serbian weapons dealer named Slobodan Tesic ("Tesic"), and Plaintiff's recent August 2021 discovery of Selakovic's alleged substantial connections to Mileta Miljanic, the alleged New York Mob boss and ringleader of a brutal yet low-profile Serbian-American drug trafficking organization dubbed "**Group America**," a network with historical links to the Serbian secret police that multiple international law enforcement authorities accused of receiving protection from the Central Intelligence Agency ("CIA") or other U.S. intelligence agencies. They were compounded by Plaintiffs repeatedly advising USAO-CDOC U.S. Attorneys and other federal law enforcement officials that Selakovic's massive transnational illicit sales activities have purportedly (continued...)

law enforcement officials employed by the United States Department of Homeland Security ("DHS") were responsible for conducting a massive multimillion-dollar transnational counterfeit goods scheme.

More importantly, USAO-CDOC U.S. Attorneys failed to address that after the Plaintiffs 2017 Civil Rights Lawsuit was dismissed, as requested by the government, Greenway later filed another civil lawsuit against Selakovic, Greenway's former attorneys, the other bad actors in Florida and prevailed. There, Plaintiffs presented material evidence to the Court and DHS officials demonstrating Greenway's former attorney(s) Michael J. Ryan, his brother James Ryan, and Greenway's former product supplier now owned by a corporate entity solely owned by Selakovic, along with other bad actors in question, had participated in unlawfully hijacking Greenway's products and business model. Unlawfully benefitting from the sales of more than one hundred million dollars ($100,000,000.00) worth of retail product value without any compensation to Escamilla or Greenway.

Moreover, the Plaintiffs presented this Court with material evidence of their January of 2020 discovery of Greenway's former attorney, James Ryan, who had previously evaluated Greenway's business model at approximately twenty-five-million dollars ($25,000,000) during James Ryan's representation of Greenway, was then acting as interim CEO of the same publicly traded entity that Greenway's former attorneys, Escamilla, and Greenway had previously held confidential reverse-merger discussions about with the intentions to take its business model public at a later date. James Ryan, Selakovic, and others had unlawfully embezzled from Greenway for their own gain. *See Gustavo Escamilla, et al., v. United States*

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

of America, CV 21-1910 (DE-1, Exh. V).

Subsequently, DHS and the United States Attorneys' Office for the Western District of Missouri ("USAO-MO") officials failed to respond and concealed all case information regarding DHS's and the USAO-MO's sealed criminal indictments and prosecution of Selakovic, and others from being disclosed to Plaintiffs. Selakovic's alleged criminal conduct has negatively impacted thousands of innocent and unsuspecting consumers across the U.S. and within this District, but specifically Plaintiffs. *See Gustavo Escamilla, et al., v. United States of America*, CV 21-1910 (DE-1).

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

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

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

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

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

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

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

II. STATEMENT OF FACTS

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

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

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

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

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

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

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

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

Plaintiffs stated in response that in the CVRA petition, Plaintiffs do not need to show that they filed and prevailed in a civil lawsuit against the people and entities that victimized them. They do not need to have exhausted administrative remedies against the Government. In fact, all of the points the Court made in its decision to dismiss the Plaintiffs' 2017 Civil Rights Lawsuit, were not relevant and did not apply to the Plaintiffs' status as crime victim according to the CVRA. Under the CVRA, the crime victim is defined as "a person directly and proximately harmed as a result of the commission of a Federal offense." 18 U.S.C. § 3771(e).

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

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

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

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

> Most notably, while plaintiffs claim to be victims in an on-going criminal proceeding, they failed to specifically identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents. As support for the existence of a criminal proceeding demonstrating that plaintiffs are victims, Plaintiffs state: the "Government filed a criminal case under seal against SELAKOVIC, BLACKBURN and others with respect to their criminal acts against PLAINTIFFS. The PLAINTIFFS became part and parcel of an existing and ongoing criminal proceedings pursuant to DHS and DOJ's criminal proceedings being conducted in the Western District of Missouri." (Response to OSC at p.4)
>
> The Complaint also fails to state a valid claim for relief under 18 U.S.C. § 3771 **because it fails to (1) identify the existence of any criminal proceeding that would grant Plaintiff rights**; or (2) **allege facts suggesting that the underlying crimes occurred in this District.** See 18 U.S.C. § 3771(d)(3).

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

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

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

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

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

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

B. Events That Triggered Plaintiffs' 2017 Civil Rights Lawsuit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Plaintiffs' purportedly "new" evidence that Greenway's former attorney, Michael J. Ryan, "unlawfully divulge[ed], shar[ed], as well as disclos[ed] Greenway'[s] confidential business information as well as trade secrets," (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70), is actually rather old. . . .
>
> As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11). . . .

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

> Attached as Exhibit 4 is a true and correct copy of the June 28, 2013 Motion for Sanctions and Protective Order filed in *Green-way Nutrients, Inc. v. Blackburn, et al.*, CV 13-1088 MSK (KMTx) (D. Colo.). I declare under penalty of perjury that the foregoing is true and correct. . . .

See Escamilla Decl., Exh. H.

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

///

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

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

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

---

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

> The Magistrate Judge also recommends that the (Defendants) Motion to Dismiss be denied with respect to the claims under the Lanham Act (trademark infringement and false designation of origin) and for unjust enrichment. . . .
>
> The Magistrate Judge found that Greenway made a prima facie showing of personal jurisdiction over these Defendants and that the First Amended Complaint sufficiently pled the claims. On the issue of personal jurisdiction, the Magistrate Judge determined that Mr. Blackburn, FSS, and Mr. Selakovic waived their right to contest specific personal jurisdiction pursuant to forum selection clauses found in the contracts entered into by the parties. . . .
>
> For purposes of personal jurisdiction analysis, trademark infringement and false designation of origin are considered tortious acts. *See, e.g. Impact Productions, Inc. v. Impact Productions, LLC*, 341 F.Supp.2d 1186, 1190 (D.Colo. 2004). . . .

(continued...)

> The Court notes that at the time the case was dismissed for the Plaintiffs failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin, and unjust enrichment were still viable. These claims were not adjudicated on the merits and the Court therefore cannot find that the suit was unfounded or groundless.

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

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

> Plaintiffs allege that Gibson and Simons made the reasoned, evidence-based decision not to resume their investigation because the dismissal without prejudice of Greenway's trademark infringement suit in the Colorado action leaves plaintiffs' valid ownership of Greenway's trademarks in doubt, (see Dkt. 1, Complaint at ¶¶ 40-42, 44-46), and plaintiffs' purportedly **"new" evidence regarding Greenway's former attorney, Michael J. Ryan, is not new**. (See id. at ¶¶ 32, 52, 63-70). **As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges**. (See, e.g., Dkt. 9-2, Park Decl., Exh. 4 at 4, 11).

(...continued)

> Mr. Selakovic argues that under the Calder effects test, Greenway has not alleged that he "expressly aimed" any tortious activity at Colorado.
>
> . . .
>
> The Court disagrees. Trademark infringement turns on whether customers are likely to be confused, mistaken, or deceived by the use of a trademarked product. 15 U.S.C. §§ 1114(1). . . .
>
> Thus, the effects of an infringement will be felt wherever the infringing products are marketed or sold because that is where the confusion, mistake, or deceit will occur. . . .
>
> Accordingly, the Court agrees with the Magistrate Judge that at this early stage of litigation, Greenway has met its burden of making prima facie showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic. . . .

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

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

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

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

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

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

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

> On April 11, 2017, Plaintiffs notified Gibson that they "just discovered new and compelling evidence" regarding Michael J. Ryan, the former attorney for Greenway, and his "unlawful[] divulging, sharing, [and] . . . disclosing [of] Greenway'[s] confidential business information [and] trade secrets." (Id. ¶ 32; Mot. 3.) . . .
>
> Additionally, Defendants correctly note that Plaintiffs had knowledge of their "new information" regarding Greenway's attorney as early as June 2013, if not earlier, and chose not to share it with law enforcement until they sought to produce "new evidence" to demand renewed attention for their case. (Declaration of Grace Y. Park ("Park Decl."), Ex. 4, ECF 9-2.) . . .

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

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

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

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

being prosecuted by the USAO-MO.

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

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

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

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

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

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

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

- USAO-CDOC U.S. Attorneys falsified facts and misled the Court with statements regarding June 2013 communications Escamilla sent to **Tom** Ryan and his ex-wife Wendy Ryan, which the U.S. Attorneys falsely stated that Escamilla's March 2017, discovery date of Greenway's former attorney MJR's embezzlement of confidential attorney-client privileged and insider business information, in violation of numerous criminal statutes was invalidated because of Escamilla's June 2013, communications with Tom and Wendy Ryan, which was untrue.
- Moreover, included in their July 19, 2021, opposition motion, USAO-CDOC U.S. Attorneys again misled the Court with false assertions that "plaintiffs could not identify any criminal proceeding supporting their rights as victims since, (id.), in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a

[3] On August 17, 2015, Judge Kreiger overruled the magistrate's recommendation to dismiss Greenway's 2013 Colorado Civil Suit with prejudice for its failure to prosecute the company's civil claims; dismissing Greenway's case without prejudice, which on June 13, 2016, Judge Krieger "notes that at the time the case was dismissed for the Plaintiffs failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin, and unjust enrichment were still viable. These claims were not adjudicated on the merits and the Court therefore cannot find that the suit was unfounded or groundless." *Greenway v. Blackburn, et al.*, case no. 1:13-cv-01088 [DE-155].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. ARGUMENT

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

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

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

Using the magistrate's "overruled recommendation" as cover, USAO-CDOC U.S. Attorneys concealed Selakovic's and Greenway's former attorneys engaging in potential violations of federal criminal statutes, including but not limited to embezzlement, 18 U.S.C. §645, securities and commodities fraud, 18 U.S.C. §1348, mail and wire fraud, 18 U.S.C. §1343, for their joint participation in the theft of Greenway's confidential, attorney-client privileged, insider business information, and reverse-merger public entity formation strategy for Selakovic's and Greenway's former attorneys' gain.

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

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

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

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

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

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

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

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

Subsequently, Escamilla exchanged multiple email communications with

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

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

> We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, we have been advised that on August 17, 2015 a District Court found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark. . . . Regardless, we continue to investigate the alleged criminal activities in regard to his alleged distribution of counterfeit software.

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

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

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

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

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

> Then, on June 16, 2016, Judge Krieger, further stated in relevant part:
>
> The Court notes that at the time the case was dismissed for the Plaintiffs failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin, and unjust enrichment were still viable. These claims were not adjudicated on the merits and the Court therefore cannot find that the suit was unfounded or groundless . . .

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

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

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

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

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

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

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

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

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

In presenting evidence to the Court as part of their motion to dismiss the 2017 Civil Rights Lawsuit, USAO-CDOC U.S. Attorneys misled the Court regarding Escamilla's discovery that Greenway's former attorney MJR in March 2017, and later discovery, in January 2020, that Greenway's other former attorney JDR and Selakovic engaged in violations of the following criminal statutes, including but not limited to embezzlement, 18 U.S.C. §645, securities and commodities fraud, 18 U.S.C. §1348, mail and wire fraud, 18 U.S.C. §134.

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

Section 3771(a) states in relevant part:

> (1) The right to be reasonably protected from the accused.
>
> (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
>
> (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

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

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

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

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

> When plaintiffs' related civil trademark infringement complaint was dismissed without prejudice **in August 2015**, (see id. at 3), defendants told plaintiffs that they would not move forward with any investigation involving plaintiffs' trademark until the parallel civil trademark infringement lawsuit was resolved on the merits. (Id.) (citing Dkt. 1, Complaint at ¶ 30 at Exh. 10). . . .
>
> . . . **in August 2015**, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits. . . .

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

> We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, **we have been advised that on August 17, 2015 a District Court found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the**

> **Greenway trademark.** While we understand that you may disagree with this judgement, our agency is bound by decision of the court and therefor are restricted on what we can do in regards to your claims that they continue to sell your products illegally.

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

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

> On March 3, 2015, plaintiffs met in Burbank, California with Shawn Gibson, Operations Manager for the United States Immigration and Customs Enforcement ("ICE"), an agency under the jurisdiction of defendant DHS. (See Dkt. 1, Complaint at ¶¶ 6, 14). At that meeting, Gibson explained that ICE and USAO-MO had been investigating the Greenway investor defendants (Selakovic and Blackburn) **in the Colorado action for criminal trademark infringement.** At that meeting, Gibson explained that ICE and USAO-MO had already recovered $26 million from the Greenway investors for infringing other companies' products, (see id. at ¶ 18), and informed plaintiffs that they may be able to recover as well. (See id. at ¶ 20). Plaintiffs

> communicated with Gibson again in June 2015, August 2015, and October 2016, (see id. at ¶¶ 22, 24-27)
>
> . . . but on October 28, 2016, Gibson notified Plaintiffs that—**due to Plaintiffs' failure to prevail against the Greenway investors in the Colorado action (Selakovic and Blackburn)—ICE and USAO-MO would no longer investigate the Greenway investors' product infringement.** (Id. ¶ 27; Mot. 3.) . . .

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

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

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

> plaintiffs contend that undersigned counsel "improperly represented" that plaintiffs had sent Michael J. Ryan profanity-laced communications in June 2013 when, in fact, plaintiffs had sent Tom Ryan and his wife, Wendy Ryan, profanity-laced communications in June 2013. (See Dkt. 14-2, Escamilla Decl. at ¶ 30; see also id. at ¶¶ 30-31). But plaintiffs' complaint refers to "Greenway's former attorney named Michael J. Ryan (Ryan)," (Dkt. 1, Complaint at ¶ 32), as well as Greenway's former attorney Tom Ryan. (Id., Exh. 13 at ECF 83) (plaintiffs' complaint to Florida bar against his former

attorneys James D. Ryan, Thomas F. Ryan, and Michael J. Ryan). . . .

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

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

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

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

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

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

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

> Plaintiffs' purportedly "new" evidence that Greenway's former attorney, **Michael J. Ryan**, "unlawfully divulge[ed], shar[ed], as well as disclos[ed] Greenway [s] confidential business information as well as trade secrets," (Dkt. 1, Complaint at ¶ 32; see id. at ¶¶ 52, 63-70), **is actually rather old.** As far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter accusing Ryan of misappropriation of trade secrets, wire fraud, and mail fraud, among other charges. (See, e.g., Park Decl., Exh. 4 at 4, 11).

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

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

with such gross negligence, stating contrary to the record—

> But plaintiffs' complaint refers to "Greenway's former attorney named Michael J. Ryan (Ryan)," (Dkt. 1, Complaint at ¶ 32), as well as Greenway's former attorney Tom Ryan. (Id., Exh. 13 at ECF 83) (plaintiffs' complaint to Florida bar against his former attorneys James D. Ryan, Thomas E. Ryan, and Michael J. Ryan).

That simply was and is not true.

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

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

> However, Ramey stated in his declaration that his search was narrow: he "queried the DCLD Litigation Database, which is the Division's electronic database that identifies any administrative tort claim that any person or party has filed with or transmitted to ICE." (Dkt. 9-1, Declaration of Robert A. Ramey ("Ramey Decl.") at ¶ 2). Plaintiffs do not explain how an administrative civil rights complaint can be found in an administrative defensive tort litigation database. (See Dkt. 14-1, Escamilla Decl. at 19) . . .
>
> Far from concealing the existence of plaintiffs' administrative civil rights complaint, undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply. (See Dkt. 11, Reply at 5) ("plaintiffs concede that they sought available alternative remedies when they report[ed] civil rights violations' to the CRCL") . . .

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

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

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

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

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

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

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

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

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

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

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

> In the April 2, 2021, order, Judge Wright dismissed the action for plaintiffs' failure to "identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents." (Related Action) (Dkt. 10, Court's Order of April 2, 2021, at 2). In other words, Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, (id.), in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits. (See Dkt. 13, Court's Order of April 4, 2018, at 3). . . .

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

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

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

Moreover, the Plaintiffs are considered crime victims under the CVRA. 18 U.S.C. § 3771(e)(1). Pursuant to Section 3771(e)(1), "Officers and employees of the Department of Judge and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a)."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. CONCLUSION

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

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

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

DECLARATION OF MAINAK D'ATTARAY

I, Mainak D'Attaray, declare:

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

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

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

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

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

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

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

/s/ Mainak D'Attaray

Mainak D'Attaray

EXHIBIT A

d'attaraylaw
law office of mainak d'attaray

Mainak D'Attaray <mdattaray@dattaraylaw.com>

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

1 message

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

Dear Ms. Park,

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

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

Very truly yours,
Mainak D'Attaray, Esq.

d'attaraylaw | law office of mainak d'attaray
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3780 Kilroy Airport Way, Suite 200
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Los Angeles Office (Mailing Address)
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mdattaray@dattaraylaw.com
Direct: (424) 703-LAW4 [5294]
Fax: (855) 706-LAW4 [5294]
Mobile: (310) 497-2216

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EXHIBIT B

d'attaraylaw

Mainak D'Attaray <mdattaray@dattaraylaw.com>

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

1 message

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

Dear Ms. Park,

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

Very truly yours,
Mainak D'Attaray, Esq.

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

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

Cheers,

Grace Y. Park, Assistant United States Attorney

United States Attorney's Office, Central District of California

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

213.894.1561 . Grace.Park@usdoj.gov

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

Dear Ms. Park,

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

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Very truly yours,

Mainak D'Attaray, Esq.

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EXHIBIT C

Mainak D'Attaray <mdattaray@dattaraylaw.com>

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

1 message

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

Mr. D'Attaray,

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

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

Cheers,

Grace Y. Park, Assistant United States Attorney

United States Attorney's Office, Central District of California

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

213.894.3551 Grace.Park@usdoj.gov

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

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Mairak D'Attaray, Esq.

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United States Attorney's Office, Central District of California

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Very truly yours,

Mainak D'Attaray, Esq.

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EXHIBIT D