

No. 25-934

IN THE
Supreme Court of the United States

GORE AND ASSOCIATES
MANAGEMENT COMPANY, INC.,
Petitioner,

v.

SLSCO LTD. AND HARTFORD
FIRE INSURANCE COMPANY,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

**RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

Whether the United States Court of Appeals for the First Circuit correctly applied settled law and dismissed this case, where the assignors of this action retained financial interest in the outcome of the litigation and plaintiff-assignee failed to prove with admissible evidence—and after participating in discovery—that the assignors were completely diverse from the defendants.

PARTIES TO THE PROCEEDING

The *petitioner* is Gore and Associates Management Company, Inc (“Gore” or “Petitioner”).

The *respondents* are SLSCO Ltd. and Hartford Fire Insurance Company (“SLSCO” and “Hartford”, jointly “Respondents”).

CORPORATE DISCLOSURE

Respondent SLSCO, Ltd. is a limited partnership organized under the laws of Texas. Its general partner is Sullivan Environmental Services, Inc. No publicly held company owns 10% or more of SLSCO, Ltd.

Respondent Hartford Fire Insurance Company is a corporation organized under the laws of Connecticut. Hartford Fire Insurance Company is wholly-owned by The Hartford Financial Services Group, Inc., a corporation organized under the laws of Delaware. Hartford Financial Services Group, Inc., is a publicly traded corporation that has no parent corporation.

RELATED PROCEEDINGS

United States District Court for the District of Puerto Rico:

Gore & Assoc. Mgmt. Co., Inc. v. SLSCO Ltd., No. 3:19-cv-1650-CVR, (judgment dismissing Gore’s complaint, Pet. App. 14a-15a, Nov. 10, 2025; order in compliance with remand, Pet. App. 16a-29a, Sept. 11, 2025)

United States Court of Appeals for the First Circuit:

Gore & Assoc. Mgmt. Co., Inc. v. SLSCO Ltd., No. 23-1429, (opinion regarding jurisdiction, and remanding to District Court with instructions to dismiss complaint, Pet. App. 1a-7a, Oct. 16, 2025)

In re: Gore & Assoc. Mgmt. Co., No. 21-1762 (judgment dismissing Gore’s appeal, Pet. App. 13a, Nov. 25, 2025)

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit directing the district court to dismiss Gore's complaint for lack of subject matter jurisdiction is reported at 157 F.4th 83. Pet. App. 1a-7a.

The opinion of the District Court for Puerto Rico regarding jurisdiction is not reported. Pet. App. 16a-29a.

JURISDICTION

The First Circuit entered judgment on October 16, 2025, remanding this matter with instructions to dismiss. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition for certiorari, however, should be denied, as discussed below.

STATUTES OR PROVISIONS INVOLVED

28 U.S.C. § 1359 provides:

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

STATEMENT OF THE CASE

Several limited liability companies assigned their rights to this action to petitioner and assignee, Gore, which then sued respondents, SLSCO and Hartford. In doing so, the assignors retained a financial interest in the litigation. If Gore recovered, the assignors recovered.

Specifically, Earthwrx, LLC (“Earthwrx”), Uniify of Puerto Rico, LLC (“Uniify PR”), and Uniify Strategic Business Solutions, LLC (“Uniify”) assigned their claims against Respondents by way of written assignment agreements. App. 60a-71a.

Before Gore filed this action, the assignors themselves had pursued litigation in federal court. App. 1a-15a. On January 25, 2019, Uniify PR and Uniify filed a complaint in the United States District Court for the Virgin Islands against Earthwrx, LLC (“Earthwrx”), SLSCO, Hartford, and others, asserting breach of contract claims. *See Uniify of Puerto Rico, LLC, et al. v. Earthwrx, LLC, et al.*, No. 1:19-cv-00005 (D.V.I.). *Id.*

On April 19, 2019, Respondents moved to dismiss that complaint, arguing, among other things, that the plaintiffs had failed to allege the citizenship of the parties—a threshold requirement for diversity jurisdiction. App. 16a-46a. It was only after that motion was filed that the assignors voluntarily dismissed their Virgin Islands complaint on June 5, 2019, and purportedly assigned their claims to Gore. App. 47a-49a; 60a-71a. The assignment agreements expressly provide that the assignors retained a financial interest in the outcome of the litigation. App. 60a-71a.

Moreover, the assignment agreements are facially deficient: they lack execution dates, omit the exhibitions referenced in their recitals, and one of them lacks Gore's own signature. *Id.*

These circumstances—a federal complaint abandoned after a motion to dismiss challenged the adequacy of citizenship allegations, followed by assignments to a diverse party that retained the assignors' financial interest—presented precisely the type of “suspicious circumstances” that compel judicial inquiry under 28 U.S.C. § 1359.

On appeal from an unrelated order, the First Circuit *sua sponte* pointed out that the assignors' citizenship was “neither alleged in the complaint nor apparent from the record” and that “the assignments [...] indicate that [the assignors] may retain some financial interest in the outcome of this litigation”—raising concerns under 28 U.S.C. § 1359, which prohibits collusive assignments made to create federal jurisdiction. Pet. App. 9a.

As such, on February 13, 2025, the Court ordered Gore to provide information about assignor citizenship. App. 73a-76a. Gore responded. App. 50a-52a. The First Circuit, however, found Gore's response was “insufficient to prove the citizenship” of the assignors. Pet. App. 10a.

As a result, on April 22, 2025, the First Circuit remanded the case to the District Court “for factfinding and a determination as to whether the assignments [...] were improper or collusive attempts to invoke federal jurisdiction.” *Id.* The First Circuit directed Gore to prove the citizenship of each limited liability company member by a preponderance of evidence. Pet. App. 11a (citing

Aponte-Dávila v. Mun. of Caguas, 828 F. 3d 40, 46-47 (1st Cir. 2016)). The Circuit further established a two-step framework: if Gore proved the assignors were completely diverse from defendants, the assignments would not be collusive; and if not completely diverse, the circumstances and motive would be examined for collusion. Pet. App. 11a-12a.

On remand, the District Court conducted extensive factfinding proceedings over nearly five months (April 22, 2025, to September 11, 2025). The District Court ordered Gore to submit information regarding the citizenship of its assignors and authorized limited jurisdictional discovery. Pet. App. 44a.

Gore filed a document titled “Proof of Jurisdiction,” to which it attached evidence that purportedly established its assignors’ citizenship. App. 72a-114a. Respondents then served written discovery requests specifically targeting citizenship verification. App. 115-132a; 136a-143a. For all requests seeking documents or communications about citizenship verification efforts, Gore’s initial responses, served on July 7, 2025, certified that it had “none in possession.” *Id.*

On July 9, 2025, Respondents notified Gore of deficiencies in its responses. Despite this notification, and a subsequent meet-and-confer on July 15, 2025, Gore did not cure those deficiencies. App. 115-132a; 136a-143a. On July 18, 2025, Gore served supplemental responses and a privilege log but again provided no substantive evidence of having conducted any pre-filing citizenship verification. App. 115-132a; 136a-143a; 144a-146a. The parties filed simultaneous memoranda on August 18, 2025. Pet. App. 43a-65a.

Gore’s certified discovery responses established it had conducted no pre-filing citizenship verification whatsoever. App. 115-132a; 136a-143a. For every request seeking verification efforts or documents, Gore certified “none in possession.” App. 115-132a; 136a-143a. Gore’s privilege log revealed that all citizenship research was conducted in 2025, six years after filing the complaint. App. 115-132a; 144a-146a.

Moreover, Gore submitted contradictory information undermining its credibility. Gore initially informed the First Circuit that assignor, Earthwrx, LLC (“Earthwrx”) was “wholly owned by 541, LLC,” an Oregon entity. App. 53a-59a. Later, Gore claimed Earthwrx’s sole members were James Young and Bobby Owens, with no mention of 541, LLC. App. 89a-114a. These inconsistencies demonstrated Gore lacked actual knowledge of the assignors’ ownership and citizenship.

After reviewing the parties’ written submissions, on September 11, 2025, the District Court found Gore had failed to prove the assignors’ citizenship by a preponderance of the evidence. Pet. App. 16a-29a. The court concluded Gore’s evidence was “unreliable, speculative, inconsistent, not admissible under the Federal Rules of Evidence and plainly insufficient [...] .” Pet. App. 27a. Because Gore failed to establish the threshold requirement –assignor citizenship– the court did not proceed to the collusion analysis. Pet. App. 28a n.4

Ten days after the adverse ruling –and for the first time– Gore sought additional time for discovery and an evidentiary hearing. Pet. App. 30a-38a. On October 16, 2025, the First Circuit denied Gore’s belated request and

ordered dismissal. Pet. App. 1a-7a. The Court held that Gore “did not meet its burden” and noted: “Gore had from April 2025 through September 2025 to establish jurisdiction. The parties sought a single extension of the remand period, which was granted, and Gore did not ask for additional time before the district court ruled.” Pet. App. 6a. The Court emphasized that “Gore also did not seek an evidentiary hearing; in fact, it agreed that the district court could resolve the jurisdictional inquiry on the papers.” *Id.* The Court concluded: “Gore cannot now complain about its own approach to litigating the jurisdictional remand merely because that approach proved unsuccessful.” Pet. App. 6a.

On November 10, 2025, the District Court entered judgment dismissing the case for lack of subject matter jurisdiction. Pet. App. 14a-15a.

The petition disputes evidentiary sufficiency, procedural adequacy, and strategic choices –all fact-bound determinations. Was Gore’s evidence sufficient? No –the district court found it “unreliable, speculative, inconsistent, [and] inadmissible.” Pet. App. 27a. Was the opportunity adequate? Yes –five months, multiple extensions, and reserved rights Gore chose not to exercise. These are applications of settled law to specific facts, not questions requiring this Court’s resolution.

REPLY TO PETITIONER’S MISSTATEMENTS

Supreme Court Rule 15.2 requires a brief in opposition to “address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted.” Sup. Ct. R.

15.2. The petition contains material misstatements that obscure what actually occurred below.

The petition claims the First Circuit “did not provide Gore a sufficient opportunity to cure any suspected jurisdictional defects.” Pet. 7. This is factually incorrect. The district court proceedings spanned from the April 22, 2025 remand to the September 11, 2025 findings. The initial deadline was extended from July 21 to September 11, 2025, at the parties’ joint request. Petitioner reserved the right to take depositions and request an evidentiary hearing but chose to exercise neither. Petitioner did not request additional time until ten days *after* receiving an adverse ruling.

The petition also emphasizes that the district court “made no finding of collusion” as if this were exculpatory. Pet. 5. This mischaracterizes the First Circuit’s two-step framework. The remand order established diversity of citizenship as the threshold inquiry: if the assignors were diverse, no collusion analysis was necessary; if not diverse, then the circumstances must be examined for collusion. Pet. App. 11a. Petitioner failed at the threshold, rendering the collusion analysis unnecessary under the framework the First Circuit established.

Moreover, the petition omits critical facts that reveal the nature of Petitioner’s failure. It does not mention that Petitioner certified “none in possession” for all citizenship verification documents. App. 115a-132a; 136a-143a. It does not disclose that Petitioner’s privilege log shows all research on citizenship was conducted six years after filing. App. 115a-132a; 144a-146a. It does not acknowledge that Petitioner submitted contradictory ownership claims about Earthwrx– first informing the First Circuit it was “wholly owned by 541, LLC,” then

claiming individual members owned it. App. 56a. And it does not mention that Petitioner relied on asset reports containing express disclaimers that the data should not be relied upon as definitively accurate. App. 104a.

These omissions and misstatements obscure the central fact: Petitioner's failure was substantive, not procedural. The problem was not insufficient discovery opportunities but the complete absence of pre-filing citizenship verification and the failure to present admissible evidence establishing diversity jurisdiction.

The petition further asserts that "there are no suspicious circumstances justifying the court's investigation" into the assignment agreements. Pet. 6. This claim ignores the undisputed record. The assignors filed a federal lawsuit in the Virgin Islands asserting the same claims. When Respondents moved to dismiss that lawsuit—citing, among other grounds, failure to allege the citizenship of the parties—the assignors voluntarily dismissed and assigned their claims to Gore, a diverse party, while retaining a financial interest in the litigation's outcome. App. 16a-46a. A contemporaneous email then confirmed the arrangement was designed so that Gore's "attorney [could] collect for [them] all." App. 135a.

These are precisely the type of "suspicious circumstances" that warrant inquiry under 28 U.S.C. § 1359. *See McCulloch v. Vélez*, 364 F.3d 1, 5 (1st Cir. 2004); *see also Harrell & Sumner Contracting Co. v. Peabody Petersen Co.*, 546 F.2d 1227, 1229 (5th Cir. 1977) (finding assignment improper where assignor retained financial interest and "the reasons for the assignment were legal and tactical.").

REASONS FOR DENYING THE PETITION

A. THE PETITION PRESENTS A MISAPPLICATION CLAIM EXPRESSLY DISFAVORED BY RULE 10

Supreme Court Rule 10 guides this Court’s discretionary grant of petitions for a writ of certiorari. Sup. Ct. R. 10. This Rule is unequivocal: “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” *Id.*

The Petition’s own framing concedes this case involves alleged misapplication of law. Each of its headings argues that the First Circuit applied established law: (1) “The First Circuit Misapplied 28 U.S.C. § 1359” (Pet. 5); (2) “The First Circuit [...] departed from its standard approach” Pet. 6-7); and (3) “The First Circuit Incorrectly Required Proof” (Pet. 7).

The petition does not contend that the First Circuit adopted a novel interpretation of 28 U.S.C. § 1359, altered the governing burden of proof for diversity jurisdiction, or created unprecedented discovery procedures. Instead, the petition’s disagreement is inherently fact-bound: whether Gore’s evidence was sufficient; whether the jurisdictional record was adequately developed; and whether Gore’s own litigation choices were reasonable.

This Court is not a court of error correction. Yet that is precisely what the petition seeks –a second chance for Petitioner to correct its own procedural and strategic errors after the approach it chose proved unsuccessful. Because the petition presents only a fact-bound challenge to the application of settled law, it falls squarely within

the category of cases Rule 10 identifies as rarely warranting certiorari. Sup. Ct. R. 10. As such, the petition should be denied.

B. THE PETITION DOES NOT IDENTIFY A CIRCUIT SPLIT, AND NONE EXISTS

Rule 10 establishes that certiorari is warranted only in limited circumstances, including when there is “a conflict of authority among the United States courts of appeals or between a United States court of appeals and a state court of last resort,” or when a lower court has decided an important federal question in a manner that conflicts with that of another court. Sup. Ct. R. 10. No such conflict exists here.

The legal framework governing assignments under 28 U.S.C. § 1359 has been settled since *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823, 828–29 (1969), which requires courts to ensure that assignments are not used to manufacture federal jurisdiction. The very cases the petition relies upon apply the same settled framework established by this Court in *Kramer*. See, e.g., *Steele v. Hartford Fire Ins. Co.*, 788 F.2d 441, 445 (7th Cir. 1986); *Lester v. McFaddon*, 415 F.2d 1101, 1106 (4th Cir. 1969); *McSparran v. Weist*, 402 F.2d 867, 876 (3d Cir. 1968) (en banc). The petition identifies no confusion among lower courts, no uncertainty requiring clarification, and no disagreement about the governing legal standards.

The Seventh Circuit articulated the governing rule in *Steele*, 788 F.2d at 445 –a case the petition itself cites–holding that an assignment is not collusive where the assignor could have invoked federal jurisdiction

independently. The First Circuit applied that same rule here. Pet. App. 11a.

The petition does not dispute the governing rule that the party invoking diversity jurisdiction bears the burden of establishing it by a preponderance of the evidence. *Aponte-Dávila*, 828 F.3d at 46-47. Nor does it identify any court applying a different standard. That is unsurprising, as this Court has long made clear that the party invoking federal jurisdiction must prove it. *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936).

Similarly, the petition cites cases recognizing that parties must have an opportunity to establish jurisdiction before dismissal. Pet. 6-7 (citing *Padilla-Mangual v. Pavia Hosp.*, 516 F.3d 29, 34 (1st Cir. 2008); *Joyce v. Joyce*, 975 F.2d 379, 386 (7th Cir. 1992)). But the petition does not argue these circuits disagree on that principle.

Petitioner ultimately identifies no disagreement over any legal standard governing § 1359, the burden of establishing jurisdiction, or the procedures for developing jurisdictional facts. Instead, it argues only that the First Circuit misapplied those settled principles to the facts of this case.

Because the petition identifies no conflict of authority—only a fact-bound disagreement with the application of settled law—this Court’s review is unwarranted. *See Sup. Ct. R.* 10.

C. NO IMPORTANT FEDERAL QUESTIONS

Even absent a circuit conflict, this Court may grant certiorari when “a court of appeals has decided an important question of federal law that should be settled by this Court.” Sup. Ct. R. 10. The petition presents no such question.

The petition challenges discretionary case management and discovery rulings, which are determinations committed to the sound discretion of district courts. *See Sprint/United Management Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008) (“In deference to a district court’s familiarity with the details of the case and its greater experience in evidentiary matters, courts of appeals afford broad discretion to a district court’s evidentiary rulings.”)

Whether Gore received adequate opportunity to establish jurisdiction, whether the district court should have held an evidentiary hearing, and whether additional time should have been granted are not “important questions of federal law” requiring this Court’s intervention. They are case-specific determinations grounded in the district court’s management of the record and proceedings.

Moreover, the questions actually presented are not of national importance. The petition disputes whether *this* plaintiff’s *particular* evidence satisfied *its* burden, whether *this* procedural timeline afforded adequate opportunity, and whether the court abused its discretion in denying additional process. This Court does not sit to review fact-bound determinations that have no

significance beyond the parties to a particular case. *See* Sup. Ct. R. 10.

The petition argues that “[a]ssignments of claims are common in modern commercial litigation” and thus present an “important and recurring question.” Pet. 9. But frequency alone does not establish importance under Rule 10. Sup. Ct. R. 10. The Rule requires a question of federal law of broad significance or a conflict among lower courts, not merely an issue that arises in recurring factual settings.

In light of the above, the petition fails to present any important federal question warranting this Court’s review.

D. EVEN ON THE MERITS, PETITION FAILS

Even if this Court were to reach the merits –which it should not– the courts below correctly applied settled law, and Petitioner’s own failures doom its claims.

i. The Courts below did not depart from accepted practice

Under Rule 10, certiorari may be proper when “a United States court of appeals has departed so far from the accepted and usual course of judicial proceedings [...] as to call for an exercise of this Court’s supervisory power.” Sup. Ct. R. 10. But no such departure occurred here.

The First Circuit and the district court applied the settled framework this Court established in *Kramer*, which governs assignments under 28 U.S.C. § 1359, and pursuant to which courts must ensure that assignments

are not used to manufacture federal jurisdiction, while recognizing that an assignment is not collusive where the assignor could have invoked federal jurisdiction independently. *See, e.g., Steele*, 788 F.2d at 445.

Consistent with the framework established by this Court in *Kramer*, the First Circuit instructed the district court to determine whether the assignors were diverse. If the assignors were indeed diverse, the assignment would not be collusive. If, however, the assignors were not diverse from one or more of the defendants, then the circumstances surrounding the assignment would need to be probed for possible collusion to manufacture diversity. Pet. App. 11a. This reflects the routine application of settled legal principles, rather than a departure from the accepted and usual course of judicial proceedings.

The First Circuit's decision to scrutinize the assignments was supported by the record. The assignors had previously filed their own federal lawsuit in the Virgin Islands asserting the same claims at issue here. App. 1a-15a. When faced with a motion to dismiss challenging the adequacy of citizenship allegations, the assignors chose not to oppose it, but instead to voluntarily dismiss their action and *then* assign their claims to Gore—a diverse party—while retaining a financial interest in the outcome. App. 47a-49a; 78a-89a.

This sequence of events presented precisely the type of circumstances that 28 U.S.C. § 1359 was enacted to address: “the manufacture of federal jurisdiction by the device of assignment.” *Kramer*, 394 U.S. at 826. The First Circuit was not only authorized but obligated to investigate. *See McCulloch*, 364 F.3d at 5 (§ 1359 “impels a federal court, when confronted with suspicious circumstances, to make every effort to determine whether

a party has been insinuated into an action in order to allow the litigants artificially to invoke the court's jurisdiction.”)

The courts below also applied settled law in holding that Petitioner bore the burden of establishing jurisdiction by a preponderance of the evidence. *Aponte-Dávila*, 828 F.3d at 46-47. This included proving the citizenship of the assignors, whose diversity status was determinative of whether the assignments created federal jurisdiction. The court of appeals’ application of that principle was neither novel nor unusual; in fact, it was compelled by longstanding jurisdictional doctrine.

The petition’s argument that the courts below improperly required proof regarding “non-party assignors” does not present a distinct legal question. Where, as here, the existence of diversity jurisdiction depends on the citizenship of assignors whose claims were transferred to the plaintiff, those facts are necessarily part of the jurisdictional inquiry. This Court’s decision in *Kramer* confirms that courts must look beyond the nominal parties to ensure that assignments are not used to manufacture jurisdiction. 394 U.S. at 828–29. That inquiry necessarily encompasses the citizenship and status of assignors, even if they are not formal parties to the litigation.

Petitioner’s reliance on *BRT Mgmt. LLC v. Malden Storage, LLC*, 68 F.4th 691, 695 (1st Cir. 2023), is misplaced. That decision addressed the general rule for diversity jurisdiction among named parties. It did not address the distinct question arising under § 1359, where the citizenship of assignors is determinative of whether the assignment itself created federal jurisdiction. When an assignment has “the effect of creating federal

jurisdiction,” the assignors’ citizenship becomes part of the jurisdictional inquiry. *McCulloch*, 364 F.3d at 6. Petitioner identifies no court adopting a contrary rule. The First Circuit’s approach reflects the ordinary application of settled law, not the creation of any new requirement.

Here, the district court afforded petitioner ample opportunity to establish jurisdiction, including written discovery, multiple status conferences, extensions, and the option to pursue depositions or an evidentiary hearing; options petitioner chose not to exercise. That process not only met but exceeded the “adequate opportunity” required by *Padilla-Mangual*, 516 F.3d at 34, and reflects routine case management.

Moreover, Petitioner is estopped from challenging the adequacy of proceedings it expressly agreed to follow. The record establishes that neither party requested an evidentiary hearing and that both parties opted to resolve the jurisdictional inquiry solely on paper submissions. Pet. App. 5a, 19a. Petitioner reserved the right to take depositions but never exercised that right. Pet. App. 5a; 19a; 43a-45a. Petitioner did not request additional time or an evidentiary hearing until ten days after the district court issued its adverse findings, a belated request the First Circuit properly rejected. Pet. App. 6a–7a.

As the First Circuit recognized, a party who receives discovery, agrees to resolution on the papers, and forgoes available procedural options cannot later complain that those foregone procedures were constitutionally required. *Cf. Valentín v. Hosp. Bella Vista*, 254 F.3d 358, 364-65 (1st Cir. 2001) (holding that a party was estopped from challenging the district court’s failure to hold an evidentiary hearing on jurisdictional facts where the

party received discovery and urged the court not to hold such a hearing). Petitioner's litigation choices were strategic, and having chosen a course that proved unsuccessful, it cannot now recast those choices as procedural deprivations warranting this Court's review.

The petition challenges only how these settled principles were applied to the facts, such as whether Gore's evidence was sufficient, whether the procedural schedule was adequate, and whether the court abused its discretion in denying a belated request for more time. These are fact-bound disputes about the application of settled law to a particular record, which are precisely the type of determinations this Court does not review.

ii. Petitioner's Substantive Failure Dooms its Claims

Petitioner's failure was substantive, not merely procedural. Federal courts are courts of limited jurisdiction, and the party invoking jurisdiction must establish it by proving the facts necessary to support it at the time of filing. *See Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 570-71 (2004).

Petitioner certified that it possessed no communications with its assignors regarding citizenship, no documents reflecting any citizenship verification, and no evidence that such verification had been undertaken prior to filing. Those admissions establish that petitioner invoked federal jurisdiction without conducting the inquiry necessary to confirm its existence. The record further shows that petitioner's citizenship research occurred only after the First Circuit raised jurisdictional concerns, years after the complaint was filed. App. 115a-132a; 136a-143a.

As a matter of settled law, jurisdiction must exist at the time of filing and cannot be cured by subsequent events or later-developed evidence. *See Grupo Dataflux*, 541 U.S. at 570-71. The First Circuit’s remand afforded Gore the opportunity to prove, with admissible evidence, what the assignors’ citizenship was when the complaint was filed in July 2019. Gore failed. Its own certified discovery responses confirm that it possessed no documents verifying the assignors’ citizenship –not because such evidence was lost or destroyed, but because Gore did not undertake that inquiry. App. 115a-132a; 136a-143a. For every request seeking citizenship verification efforts or documents, Petitioner certified “none in possession.” App. 115a-132a; 136a-143a. These admissions establish that Petitioner invoked federal jurisdiction without conducting the inquiry necessary to confirm its existence –the very inquiry Fed. R. Civ. P. 11(b) demands before filing.

Petitioner’s shifting representations further underscore that failure. Petitioner initially represented that Earthwrx was “wholly owned by 541, LLC,” an Oregon limited liability company. App. 56a. On remand, however, Petitioner asserted that James A. Young and Bobby Owens were Earthwrx’s sole members, with no mention of 541, LLC. App. 72a-114a. These inconsistencies, which the district court noted “cannot go unnoticed and militate [...] against Plaintiff’s position,” (Pet. App. 26a n.3), confirm that Petitioner lacked actual knowledge of the assignors’ citizenship and failed to establish jurisdiction with competent evidence.

The district court thus correctly concluded that Petitioner’s evidence was “unreliable, speculative, inconsistent, not admissible under the Federal Rules of Evidence and plainly insufficient.” Pet. App. 27a-28a.

That determination rests on Petitioner's own admissions and the undisputed record.

The courts below therefore reached the only conclusion consistent with settled jurisdictional principles: Petitioner failed to carry its burden to establish diversity jurisdiction. That determination is fact-bound, record-dependent, and does not warrant this Court's review.

iii. This Case Does Not Present a Suitable Basis for Review

Even if this Court were to resolve every legal question in Petitioner's favor, the outcome would not change. Petitioner's evidentiary failures provide an independent and adequate basis for the judgment below.

The district court rejected Petitioner's evidence as inadmissible under the Federal Rules of Evidence, including for failure to authenticate documents under Rule 901 and as hearsay under Rules 801 and 802. Pet. App. 24a; 27a. Those evidentiary rulings are independent of the legal questions the petition raises regarding § 1359, the applicable burden of proof, or the scope of jurisdictional proceedings. Because Petitioner failed to present admissible evidence establishing jurisdictional facts, it could not carry its burden regardless of how those legal questions are resolved.

This Court has repeatedly declined to grant review where independent grounds support the judgment below, rendering the question presented outcome-determinative only in theory. *See, e.g., Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 34 (1993) (per curiam) (dismissing certiorari where independent grounds supported the judgment).

As discussed, the district court found Petitioner's evidence inadmissible, unreliable, and insufficient. Pet. App. 27a-28a. That determination forecloses relief irrespective of how the petition's legal questions might be resolved. Certiorari should accordingly be denied.

CONCLUSION

The petition presents no question warranting this Court's review. It identifies no circuit split, no unresolved question of federal law, and no departure from accepted judicial practice. The courts below applied settled framework established by this Court in *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823 (1969), and longstanding principles governing the burden of establishing diversity jurisdiction. Petitioner's challenge reduces to a fact-bound disagreement with evidentiary rulings and case-management decisions, precisely the type of determination this Court has repeatedly declined to review. Moreover, the judgment below rests on independent evidentiary grounds that would foreclose relief regardless of how the petition's legal questions are resolved. The petition for a writ of certiorari should be denied.

Respectfully submitted,
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APPENDIX

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APPENDIX A

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case No.: __:19-CV____

UNIIFY OF PUERTO RICO, LLC AND
UNIIFY STRATEGIC BUSINESS SOLUTIONS, LLC

Plaintiffs,

v.

EARTHWRX, LLC; 541, LLC; SLSCO LTD.;
HARTFORD FIRE AND INSURANCE COMPANY;
AND JAMES YOUNG.

Defendants.

ACTION FOR BREACH OF
CONTRACT, BREACH OF PERSONAL
GUARANTEE, AND PAYMENT BOND CLAIM

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Uniify of Puerto Rico, LLC (“Uniify PR”) and Uniify Strategic Business Solutions, LLC (“Uniify”) (collectively the “Plaintiffs”), by and through undersigned counsel, files this complaint (the “Complaint”) against Defendants Earthwrx, LLC (“EarthWrx”), 541, LLC (“541”), SLSCO, Ltd. (“SLSCO”), Hartford Fire and Insurance Company

(“Hartford Insurance”) and James Young (“Young”) (collectively, the “Defendants”), and states the following:

PRELIMINARY STATEMENT

1. This is an action for breach of contract in which Uniify, by and through its Puerto Rico subsidiary, Uniffy PR, provided manpower staffing solutions to SLSCO via its subcontractor, 541, LLC which operated under a wholly owned Puerto Rico subsidiary, EarthWrx, for fulfillment of a certain FEMA disaster recovery program being carried out on Puerto Rico and the U.S. Virgin Islands after Hurricane Maria. Plaintiffs seek damages from Defendants for non-payment of Uniify PR payroll invoices in the approximate amount of \$1,402,313.28. Plaintiffs are also seeking recovery against Young, the owner of EarthWrx and 541, LLC, who was a personal guarantor of the contract between EarthWrx/541, LLC and Uniify PR. Plaintiffs also seek recovery against the payment bond between SLSCO and Hartford Insurance under the Miller Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C § 1332, and due to the complete diversity of citizenship of the parties and the fact that the amount in controversy exceeds the sum of \$75,000.00.
3. Venue is proper in this district because a significant amount of services provided by Uniify PR to EarthWrx occurred in the U.S. Virgin Islands on the island of St. Croix.

PARTIES

4. Uniify of Puerto Rico, LLC (“Uniify PR”) is a Puerto Rico limited liability company with a mailing address of 530 Ave. Ponce De Leon, Ste. 1, San Juan, PR 00901. Uniify PR is a wholly owned subsidiary of Uniify. At all relevant times hereto, Uniify PR legally authorized to conduct business in Puerto Rico and the U.S. Virgin Islands, and was under a contractual relationship with EarthWrx to provide manpower staffing for disaster recovery operations pursuant to a certain FEMA disaster recovery program.
5. Uniify Strategic Business Solutions, LLC (“Uniify”) is a Louisiana limited liability organization located at 1869 Easy Street, Lake Charles, LA, 70506. At all relevant times hereto, Uniify provided staffing solutions for a variety of industries, including disaster recovery support, and was authorized to do business in the Virgin Islands and Puerto Rico through its wholly owned subsidiary, Uniify PR.
6. Earthwrx, LLC (“EarthWrx”), a Puerto Rico limited liability company with a mailing address of 5900 Ave. Isla Verde, Ste. 2 Carolina, PR 00979. At all relevant times hereto, EarthWrx, a wholly owned subsidiary of 541, LLC, provided manpower staffing to SLSCO, Ltd. for disaster recovery and relief services in Puerto Rico and the U.S. Virgin Islands pursuant to a FEMA disaster recovery program.
7. 541, LLC (“541”) is an Oregon limited liability company located at 505 Rock Creek Road, Gold Hill, OR 97525. Upon information and

belief, 541 was a subcontractor to SLSCO, Ltd., providing manpower staffing for a certain FEMA disaster recovery program through its wholly owned subsidiary, EarthWrx. 541 was also contractually liable to Uniify and Uniify PR under a certain payroll funding agreement.

8. James Young (“Young”) is an individual residing in the state of Oregon with a home address of 505 Rock Creek Road, Gold Hill, OR 97525. At all relevant times hereto, Young was the owner of EarthWrx and a Member of 541. Young was also a personal guarantor of staffing contract between Uniify PR and EarthWrx.
9. SLSCO, Ltd. (“SLSCO”), is a Texas limited partnership located at 13 Evia Main, Galveston, TX, 77554. At all relevant times hereto, SLSCO operated as a post disaster recovery business providing disaster recovery services to Puerto Rico and the U.S. Virgin Islands pursuant to a certain FEMA disaster recovery program. Upon information and belief, SLSCO contract with 541 and EarthWrx to provide manpower staffing in support of the FEMA disaster recovery program.
10. Hartford Fire Insurance Company (“Hartford Insurance”), a Connecticut corporation located at One Hartford Plaza, Hartford, CT 06155. At all relevant times hereto, Hartford Insurance with the surety to SLSCO under a certain payment bond for insuring against claims by subcontractors for labor and materials provided in support of a certain FEMA disaster recovery program in Puerto Rico and the U.S. Virgin Islands.

FACTUAL BACKGROUND

11. On or about January 2018, SLSCO entered to a certain FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03 (the “FEMA Disaster Recovery Contract”), with the Puerto Rico Department of Housing. Pursuant to the FEMA Disaster Recovery Contract, SLSCO was required to post a labor and material payment bond. A true and accurate copy of the Hartford Fire Insurance Company Labor and Material Payment Bond, Bond No. 46BCSHU0780 (the “Hartford Payment Bond”) is attached hereto as **Exhibit A**.
12. Upon information and belief, SLSCO contracted with 541 and EarthWrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands.
13. Upon information and belief, 541 contacted Uniify to procure manpower staffing to support the FEMA Disaster Recovery Contract in Puerto Rico and the U.S. Virgin Islands. The parties entered into a certain staffing contract through their respective Puerto Rico subsidiaries, EarthWrx and Uniify PR. A true and accurate copy of the Uniify of Puerto Rico, LLC, Staffing Contract (the “Staffing Contract”) is attached hereto as **Exhibit B**.
14. To finance payroll of the Staffing Contract, Uniify and Uniify PR obtained payroll funding from Gore and Associates Management Company located at 2268 James B. White Hwy. N.,

Whiteville, NC 28472 (“Gore & Assoc.”) pursuant to a certain funding agreement. EarthWrx and 541 were also parties to the funding agreement. A true and correct copy of the Gore & Assoc. Funding Agreement (the “Funding Agreement”) is attached hereto as **Exhibit C**.

15. Pursuant to the terms of the Staffing Contract, Uniify PR would provide on-site workers to EarthWrx who would then provide on-site management for directing and supervising the disaster relief work under the FEMA Disaster Recovery Contract.
16. EarthWrx supervisors were also responsible for providing weekly time tracking reports for each Uniify PR worker (the “Weekly Reports”). The Weekly Reports included the dates and number of hours worked by each Uniify PR worker and were signed by the EarthWrx supervisors for authentication.
17. Upon receipt of the Weekly Reports, Uniify PR would process payroll for the workers through Uniify, including accounting for overtime pay, time and half pay, and reimbursables, and collected the appropriate payroll taxes, both state and federal.
18. Contemporaneously with payroll, Uniify, on behalf of Uniify PR, would invoice EarthWrx for the total amount of disbursement and provide EarthWrx with a payroll report identifying the dates and hours of work by each worker, rate of pay, amount of reimbursables, and all withholdings (the “Invoices”).

19. Upon receipt of the Invoices, EarthWrx would verify the information and disburse funds to Gore and Associates Management Company (“Gore & Assoc.”), the payroll funding company for Uniify/Uniify PR. Gore & Assoc. would then disburse funds to Uniify/Uniify PR.
20. Between the dates of April 4, 2018 through July 06, 2018, Uniify invoiced EarthWrx in the approximate amount of \$1,557,158.05. However, EarthWrx only paid \$289,500.00 towards the invoices leaving a balance of \$1,267,658.05. Pursuant to the Staffing Contract ¶ 8, all Outstanding Invoices that remain unpaid after thirty days of the agreed terms of Net 15 shall have a finance charge imposed at the rate of 1.5% per month on unpaid balances or the maximum legal interest rate, whichever is lower. In applying the contractual rate of interest, the total due for the unpaid invoices, as of January 23, 2019, is \$1,402,313.28. A summary of the unpaid invoices is attached hereto as **Exhibit D**.
21. EarthWrx has failed and refused to pay the outstanding Invoices and it has been over 90-days since the last furnishing of labor under the Staffing Contract.
22. Uniify and Uniify PR have suffered damages in the amount of the unpaid Invoices, \$1,402,313.28, in addition accrued interest and consequential damages, including but not limited to, liability under the Funding Agreement and costs of collection, including reasonable attorney’s fees and costs.

CLAIM FOR RELIEF I

BREACH OF CONTRACT – STAFFING CONTRACT

23. Plaintiffs re-alleges and incorporates herein by reference the allegations in the preceding paragraphs.
24. Uniify PR and EarthWrx have a valid contract for staffing manpower operations in support of disaster relief efforts in the Virgin Islands and Puerto Rico. *See* Ex. B.
25. Pursuant to the terms of the contract, EarthWrx was to pay all Uniify PR Invoices within 15 days of receipt. *Id.*
26. Uniify PR, through its parent, Uniify, properly invoiced EarthWrx for services provided, including submitting all required reports and information to EarthWrx for verification of the Invoices.
27. EarthWrx has failed to pay the outstanding Invoices in breach of its contract with Uniify PR.
28. As a direct and proximate result of the breach, Uniify PR has suffered actual damages in the amount of the unpaid Invoice, approximately \$1,402,313.28. Uniify PR has suffered additional damages, including costs of collection, in an amount to be more fully determined at a trial and/or hearing on damages.

CLAIM FOR RELIEF II

BREACH OF CONTRACT –
FUNDING AGREEMENT

29. Plaintiffs re-alleges and incorporates herein by reference the allegations in the preceding paragraphs.
30. Uniify, Uniify PR, 541 and EarthWrx have a valid contract for payroll funding in support of the Staffing Contract, the Funding Agreement. *See Ex. C.*
31. Pursuant to the terms of the Funding Agreement, 541/ EarthWrx was to promptly pay all Uniify/Uniify PR invoices to Gore & Assoc. by ACH transfer. *Id.*
32. Uniify PR, through its parent, Uniify, properly invoiced EarthWrx for services provided, including submitting all required reports and information to EarthWrx for verification of the Invoices.
33. 541/EarthWrx have failed to pay the outstanding Invoices in breach of the Funding Agreement.
34. As a direct and proximate result of the breach, Uniify and Uniify PR have suffered actual damages in the amount of the unpaid Invoice, approximately \$1,402,313.28. Uniify and Uniify PR have suffered additional damages, including costs of collection, in an amount to be more fully determined at a trial and/or hearing on damages.

CLAIM FOR RELIEF III

BREACH OF THE PERSONAL GUARANTEE

35. Plaintiffs re-alleges and incorporates herein by reference the allegations in the preceding paragraphs.
36. Young is the owner of EarthWrx and 541.
37. Young executed a personal guarantee in connection with the Staffing Contract guaranteeing payment under the contract. *See* Ex. B.
38. Pursuant to the terms of the guarantee, Young is financially responsible for all payments under the Staffing Contract.
39. EarthWrx is in default of its contract with Uniify PR for non-payment of certain Invoices as specified above. As such, Uniify PR may proceed against Young for payment of the outstanding Invoices as the personal guarantor.
40. Young has failed and/or refused to make payments for outstanding invoice. As a result, Young is in breach of his personal guarantee.
41. As a direct and proximate result of the breach, Uniify PR has suffered actual damages in the amount of the unpaid Invoice, approximately \$1,402,313.28. Uniify PR has suffered additional damages, including costs of collection, in an amount to be more fully determined at a trial and/or hearing on damages.

CLAIM OF RELIEF – IV

PAYMENT BOND CLAIM PURSUANT TO
THE MILLER ACT, 40 U.S.C. § 3133

42. Plaintiffs re-alleges and incorporates herein by reference the allegations in the preceding paragraphs.
43. Upon information and belief, SLSCO is a primary contractor under the FEMA Disaster Recovery Contract which is a United States government contract.
44. Under the FEMA Disaster Recovery Contract, SLSCO was responsible for providing a payment bond pursuant to 40 U.S.C. §3131.
45. SLSCO obtained a payment bond from Hartford Insurance, the Hartford Payment Bond. *See* Ex. A.
46. Under the Harford Payment Bond, Hartford Insurance was to act as the surety for any claims against SLSCO by subcontractors, including second tier subcontractors, under the FEMA Disaster Recovery Contract. *Id.*
47. Under the Harford Payment Bond, both SLSCO and Harford Insurance were to be jointly and severally liable for any subcontractor claims.
48. As stated above, SLSCO contracted with 541/EarthWrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract. As a result, 541/EarthWrx are subcontractors of SLSCO.
49. 541/EarthWrx contracted with Uniify/Uniify PR under the Staffing Contract and Funding Agreement to provide manpower staffing in

support of the FEMA Disaster Recovery Contract. As a result, Uniify/Uniify PR are second tier subcontractors of SLSCO.

50. As stated above, 541/EarthWrx are in breach of the Staffing Contract and Funding Agreement with Uniify/Uniify PR.
51. Invoices for employee payroll provided by Uniify/Uniify PR to 541/EarthWrx in support of the FEMA Disaster Recovery Contract have gone unpaid for over 90 days since the last furnishing of labor, on or about July 2018.
52. Pursuant to 40 U.S.C. § 3133(b), Uniify/Uniify PR may bring a civil action on the Hartford Payment Bond.
53. The Uniify/Uniify PR civil action is timely since it is being brought within one year from the last furnishing of labor under the FEMA Disaster Recovery Contract.
54. Uniify/Uniify PR are entitled to payment under the Hartford Payment Bond for the unpaid Invoices in the approximate amount of \$1,402,313.28.

CLAIM OF RELIEF – V

PAYMENT BOND CLAIM –
THIRD PARTY BENEFICIARY

55. Plaintiffs re-alleges and incorporates herein by reference the allegations in the preceding paragraphs.
56. Upon information and belief, SLSCO is a primary contractor under the FEMA Disaster Recovery Contract which is a United States government contract.

57. SLSCO obtained a payment bond from Hartford Insurance, the Hartford Payment Bond, for payment of claims arising from the FEMA Disaster Recovery Contract. *See* Ex. A.
58. The Hartford Payment Bond states that a “Claimant” is defined as “one having a direct contract with the Principle or with a subcontractor of the Principle for labor, material, or both, used or reasonably required for use in the performance of the contract.” *Id.* Thus, the Bond expressly intends to confer a benefit on third parties to the Bond, namely subcontractors and second-tier subcontractors.
59. The Bond further states that such claimants may sue on the bond for payment of labor or materials which remain unpaid after the expiration of the 90-day period from the last furnishing of such labor or materials, for which the Principle and Surety will be jointly and severally liable. *Id.*
60. As stated above, 541 and EarthWrx were subcontractors of SLSCO. When 541 and EarthWrx contracted with Uniify and Uniify PR, Uniify and Uniify PR became subcontractors to “a subcontractor of the Principle” for purposes of the Hartford Payment Bond. As such, Uniify and Uniify PR are third-party beneficiaries who have standing to bring a claim under the Bond.
61. As stated above, 541/EarthWrx are in breach of the Staffing Contract and Funding Agreement with Uniify/Uniify PR.
62. Invoices for employee payroll provided by Uniify/Uniify PR to 541/EarthWrx in support of

the FEMA Disaster Recovery Contract have gone unpaid for over 90 days since the last furnishing of labor, on or about July 2018.

63. Under the Harford Payment Bond, both SLSCO and Harford Insurance are jointly and severally liable for any subcontractor claims, including this claim.
64. Uniify/Uniify PR are entitled to payment under the Hartford Payment Bond for the unpaid Invoices in the approximate amount of \$1,402,313.28.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court grant the following relief:

1. Enter judgment against EarthWrX in favor of Uniify PR for the damages suffered by EarthWrX's breach of the Staffing Contract;
2. Enter judgment against Young in favor of Uniify PR for breach of the personal guarantee under the Staffing Contract;
3. Enter judgment against 541 and EarthWrX in favor of Uniify and Uniify PR for breach of the Funding Agreement;
4. Enter judgment against SLSCO and Harford Insurance, jointly and severally, for payment of Plaintiffs' claim under the Hartford Payment Bond;
5. That costs and attorney's fees be taxed against the Defendants;
6. The case be tried by jury on those issues so triable;
7. For such further relief as the Court deems just and proper.

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RESPECTFULLY SUBMITTED,
This 25th Day of January, 2019

McCHAIN MILLER NISSMAN
Attorneys for Plaintiff

/s/ Scot F. McChain
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APPENDIX B

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case No. 1:19-CV-00005

UNIIFY OF PUERTO RICO, LLC; and
UNIIFY STRATEGIC BUSINESS SOLUTIONS, LLC,

Plaintiffs,

v.

EARTHWRX, LLC; 541, LLC; SLSCO, Ltd.;
HARTFORD FIRE INSURANCE COMPANY;
and JAMES YOUNG,

Defendants.

MOTION OF SLSCO, LTD. AND
HARTFORD FIRE INSURANCE
COMPANY TO DISMISS

The Defendants SLSCO, LTD. (“SLSCO”) and HARTFORD FIRE INSURANCE COMPANY (“Hartford”), by and through their undersigned counsel, move the Court to dismiss all claims asserted against them by the Plaintiffs Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC pursuant to F.R.Civ.P. 12(b)(1), 12(b)(3) and 12(b)(6) for lack of subject matter jurisdiction, improper venue, and failure to state a claim upon which relief may be granted. In support of this motion, SLSCO and

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Hartford rely upon their simultaneously-filed Memorandum in support of this motion.

Respectfully submitted,

DATED: April 19, 2019

By: /s/ J. Daryl Dodson, Esq.
J. Daryl Dodson, Esq. (V.I. Bar No. 241)
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*Attorneys for Defendants
SLSCO, Ltd. And
Hartford Fire Insurance Company*

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CERTIFICATE OF SERVICE

I certify that on April 19, 2019, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send a notification of such filing to:

Scot F. McChain, Esq.
McChain Miller Nissman
2120 Company St., Ste. 1
Christiansted, VI 00820-4945
Email: smcchain@ilpplus.com

Attorneys for Plaintiffs

/s/ J. Daryl Dodson

19a

IN THE DISTRICT COURT OF
THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case No. 1:19-CV-00005

UNIFY OF PUERTO RICO, LLC; and UNIFY
STRATEGIC BUSINESS SOLUTIONS, LLC,

Plaintiffs,

v.

EARTHWRX, LLC; 541, LLC; SLSCO, LTD.;
HARTFORD FIRE INSURANCE COMPANY;
and JAMES YOUNG,

Defendants.

ORDER DISMISSING ALL CLAIMS
ASSERTED AGAINST SLSCO, LTD. AND
HARTFORD FIRE INSURANCE COMPANY

The Defendants SLSCO, LTD. (“SLSCO”) and HARTFORD FIRE INSURANCE COMPANY (“Hartford”), having moved to dismiss all claims asserted against them by the Plaintiffs Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC pursuant to F.R.Civ.P. 12(b)(1), 12(b)(3) and 12(b)(6) for lack of subject matter jurisdiction, improper venue, and failure to state a claim upon which relief may be granted, and the Court being fully advised, IT IS NOW ORDERED that the motion is GRANTED and all claims asserted herein against SLSCO and Hartford are herewith DISMISSED.

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IT IS SO ORDERED ON THIS THE __ OF __, 2019

JUDGE OF THE DISTRICT COURT
OF THE VIRGIN ISLANDS

ATTEST:

Glenda L. Lake, Esq.
Clerk of the Court

By:

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APPENDIX C

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case No. 1:19-CV-00005

UNIIFY OF PUERTO RICO, LLC; AND
UNIIFY STRATEGIC BUSINESS SOLUTIONS, LLC,

Plaintiffs,

v.

EARTHWRX, LLC; 541, LLC; SLSCO, LTD.;
HARTFORD FIRE INSURANCE COMPANY;
AND JAMES YOUNG,

Defendants.

MEMORANDUM OF SLSCO, LTD. AND
HARTFORD FIRE INSURANCE COMPANY
IN SUPPORT OF MOTION TO DISMISS

The Defendants SLSCO, LTD. (“SLSCO”) and HARTFORD FIRE INSURANCE COMPANY (“Hartford”), by and through their undersigned counsel, submit this Memorandum in support of its Motion to Dismiss, pursuant to F.R.Civ.P. 12(b)(1), 12(b)(3) and 12(b)(6) for lack of subject matter jurisdiction, improper venue, and failure to state a claim upon which relief may be granted. In support of this motion, SLSCO and Hartford rely upon the following showings.

I. ALLEGATIONS OF THE COMPLAINT.

In their Complaint,¹ the plaintiffs Uniify of Puerto Rico, LLC (“Uniify PR”) and Uniify Strategic Business Solutions, LLC (“Uniify,” and collectively “Plaintiffs”) allege that they provided manpower staffing for disaster recovery operations in both the U.S. Virgin Islands and in Puerto Rico pursuant to a “certain FEMA [Federal Emergency Management Agency] disaster recovery program.” However, the documents that the plaintiffs submitted are at odds with the allegations of the Complaint. Those documents relate only to work to be done in Puerto Rico, and do not provide a basis for venue to litigate these claims in the District Court of the Virgin Islands.

In the Complaint, Plaintiffs allege that SLSCO entered into a certain “FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03,” which the Complaint refers to as the “FEMA Disaster Recovery Contract.” Although the Plaintiffs do not attach the so-called “FEMA Disaster Recovery Contract” to the Complaint, the Complaint (and its attachments)² make it quite clear that this contract is between SLSCO and the Puerto Rico Department of Housing (“PRDOH”), and not with FEMA. Plaintiffs do not allege that any party entered into a contract with the United States of America or with FEMA or any other federal agency.

The Complaint does not directly make the implausible allegation that, in this contract, the PRDOH

¹ Hereinafter, the “Complaint,” Docket Entry or “D.E.” 1.

² The sole reference to this contract is in the Labor and Material Payment Bond No. 46BCSHU0780 issued by Hartford and attached as Exhibit A to the Complaint.

used public funds to deliver disaster relief services *outside* of Puerto Rico, to residents of the U.S. Virgin Islands. However, the Plaintiffs appear to make this allegation indirectly, by implication, by alleging that SLSCO then subcontracted with two other defendants, namely Earthwrx, LLC (“Earthwrx”) and 541, LLC (“541”) to “provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands.”³ The Complaint does not provide any details about the alleged subcontract between SLSCO on the one hand and 541 and Earthwrx on the other, or attach a copy of it. There is no allegation that FEMA provided a grant to any agency of the Government of the U.S. Virgin Islands (“GOVI”) to provide any services in the U.S. Virgin Islands, or that any party to this litigation contracted or subcontracted to provide any such services in support of such a contract with the GOVI. None of the attachments to the Complaint refer to the U.S. Virgin Islands in any way.⁴

As for the next level of subcontracting, Plaintiffs allege “on information and belief” that 541 “contacted,” (not “contracted with”) Uniify to provide staffing and that “the parties” entered into a certain “Staffing Contract,” to provide staffing services “through their subsidiaries Earthwrx and Uniify PR.”⁵ Plaintiffs state that “a true and accurate copy” of the Staffing Contract, dated April 3, 2018, is appended as Exhibit B. However, neither 541 nor Uniify is a party to the Staffing Contract. It requires

³ Complaint, paragraph 6.

⁴ The lone possible exception is Exhibit D, an unauthenticated spreadsheet prepared by Plaintiffs, which contains some cryptic references to “Earthwrx VI.”

⁵ Complaint, paragraph 13.

Uniify PR to fill two positions – “Carpenter” and “Supervisor” – at stated hourly rates. In the Staffing Contract, Earthwrx, and its owner, Defendant James Young (“Young”) agree to pay compensation to Uniify PR for the wages, fringe benefits, and other costs of the carpenters and supervisors provided. The Staffing Contract is quite clear that these staffing services are to be provided solely by Uniify PR, and there is no mention of the putative parent company Uniify, the U.S. Virgin Islands or any Virgin Islands entity or work site.

The only other contract for services appended to the Complaint is what is described as the “Funding Agreement” dated May 30, 2018.⁶ This and, the paragraphs of the Complaint relating to it,⁷ lay out a complicated arrangement in which non-party Gore and Associates Management Company (“Gore”), identified as the “Funding Company” agrees to advance funds for the benefit of EarthWrx to meet the payroll of Uniify PR. Under the Funding Agreement, Earthwrx (defined as the “Client”) is not to make payments directly to its subcontractors Uniify or Uniify PR (identified as the “Staffing Company”). Instead, Uniify is to “provide weekly invoices and payroll registry for all employees assigned to [EarthWrx] . . .” to Gore.⁸ Then, Gore is to “issue a wire transfer to [Uniify] on a weekly basis after the requested records [namely, the weekly invoices and payroll records] have been provided.” In order to reimburse itself for these advances, Gore is then to “collect via ACH . . . from [Earthwrx] based

⁶ Complaint, Exhibit C.

⁷ Complaint, paragraphs 14-21.

⁸ Complaint, Exhibit B at 1.

on the terms of the [Staffing Agreement].” Gore is to provide a “courtesy communication” to EarthWrx prior to sending the ACH order to the bank designated by EarthWrx. However, those ACH orders will be sent to withdraw funds from the EarthWrx bank account “every week for invoices with a 30-day maturity,” with Gore having an “expectation of funds availability” regardless of the response of EarthWrx to the “courtesy communication.” Only after Gore meets the payroll of Uniify PR, and receives funds from EarthWrx is Gore then to remit to Uniify and/or Uniify PR their “net profit” based on a stated formula: total invoices generated by Uniify, minus payroll funded by Gore, minus a 3.5% fee and any late fees.⁹ Under these provisions, EarthWrx was not to make any payments directly to Uniify or Uniify PR.¹⁰ Instead, these were to be funneled through Gore.

The Complaint alleges that between April 4, 2018 and July 6, 2018, it *invoiced* EarthWrx “in the approximate amount of \$1,557,158.05,” that Earth Wrx “only paid \$289,500.00 towards these invoices leaving a balance of \$1,267,658.05.”¹¹ However, Plaintiffs do not specify whether any or all of the payrolls corresponding to these invoices were advanced, not by Plaintiffs, but by Gore and thus are

⁹ *Id.* at 2.

¹⁰ See Complaint at paragraph 19 (Only after EarthWrx verified the payroll records and disbursed funds to Gore, Gore “would then disburse funds to Uniify/Uniify PR.”)

¹¹ Complaint at paragraph 20.

debts owing to an entity that is not a party to this litigation.¹²

Although Plaintiffs place great reliance on the Staffing Agreement and the Funding Agreement, they do not allege that either SLSCO or Hartford were ever aware of the existence of those agreements or, indeed, of the role of Uniify and Uniify PR before they filed this civil action. More important, Plaintiffs do not allege that they ever provided notice *at any time* to SLSCO or Hartford that funds remained due and owing to them, or that Plaintiffs were looking to SLSCO or Hartford to settle their unpaid invoices. In their Complaint, Plaintiffs do not state when labor was last furnished to EarthWrx under the Staffing Agreement,¹³ although this must have occurred before the July 6, 2018 date of last invoicing.¹⁴ Plaintiffs certainly do not allege that they gave notice to SLSCO or Hartford within ninety days of the date they last furnished labor to EarthWrx.

The bulk of the Complaint is directed towards Plaintiffs' claims against EarthWrx for breach of the Staffing Contract (Count I) and the Funding Contract (Count II), and against Young for breach of his personal guarantee of the Staffing Contract

¹² SLSCO and Hartford reserve the right to raise, in future motion practice, whether Plaintiffs' claims are asserted by the real party in interest, and whether Gore is an essential party to this litigation under F. R. Civ. P. 19.

¹³ The Complaint, paragraph 21, states only that, as of the January 25, 2019 date of the Complaint, "it has been over 90 days since the last furnishing of labor under the Staffing Contract."

¹⁴ Complaint, paragraph 20 states that Uniify invoiced EarthWrx "[b]etween the dates of April 4, 2018 and July 6, 2018."

(Count III). Both of Plaintiffs' claims against SLSCO and Hartford are based on the "Labor and Materials Payment Bond, No. 46BCSHU0780," issued by Hartford and attached as Exhibit A to the Complaint (the "PR Payment Bond"). In Count IV, Plaintiffs assert a claim against SLSCO and Hartford under the Miller Act, 40 U.S.C. Section 3133 *et seq.* Under Count V, they assert a claim arising under the common law of contracts, namely, that they are the intended third party beneficiaries of the PR Payment Bond. Although one section of PR Payment Bond refers to a Puerto Rico statute, "Act No. 111 of June 22, 1961," the Complaint does not advance a claim based on this provision of the law of Puerto Rico. Neither count states a claim upon which relief may be granted.

III. BECAUSE THE COMPLAINT FAILS TO PROPERLY ALLEGE THE CITIZENSHIP OF THE PARTIES, PLAINTIFFS HAVE FAILED TO CARRY THEIR BURDEN TO DEMONSTRATE A BASIS FOR DISTRICT COURT JURISDICTION OVER THIS ACTION.

Plaintiffs do not allege that this Court has federal question jurisdiction under 28 U.S.C. Section 1331 on grounds that this action arises under the Miller Act, or any other provision of the Constitution, laws or treaties of the United States. Instead, they rely solely on 28 U.S.C. Section 1332,¹⁵ and claim that there is "complete diversity of citizenship of the parties." However, their allegations of citizenship are defective and are insufficient to carry their burden to establish diversity of citizenship.

The burden is on the Plaintiffs to make factual allegations sufficiently specific to establish this

¹⁵ Complaint, paragraph 2.

Court’s jurisdiction over the controversy.¹⁶ The Complaint alleges that both Plaintiffs and two of the defendants are limited liability companies.¹⁷ It also alleges, at paragraph 9, that SLSCO is a “Texas limited partnership.” The complaint does not identify the members of the limited liability companies or the partners of the limited partnership, much less make any averments as to their citizenship. It is well established that alleging merely that a limited liability company (“LLC”) is, *e.g.* an “Oregon limited liability company,” is insufficient to establish diversity jurisdiction. An LLC has the citizenship of every one of its members, not just of its state of organization.

As we have held before, the citizenship of partnerships and other unincorporated associations is determined by the citizenship of its partners or members. *Swiger [v. Allegheny Energy, Inc.]*, 540 F.3d 179 (3d Cir. 2008) at 182. Accordingly, the citizenship of an LLC is determined by the citizenship of its members. And as with partnerships, where an LLC has, as one of its members, another LLC, “the citizenship of unincorporated associations must be traced through however many layers of partners or members there may be” to determine the citizenship of the LLC. *Hart v. Terminex Int’l*, 336

¹⁶ *Andreozzi Bluestein LLP v. Hamed*, CV 2017-0014, 2018 WL 1151117, at *2 (D.V.I. Mar. 2, 2018).

¹⁷ Complaint, paragraphs 4 (Unify PR), 5 (Uniify), 6 (Earth Wrx), and 7 (541).

F.3d 541, 543 (7th Cir.2003) (quotation omitted).¹⁸

Since the Plaintiffs have failed to identify the members of the LLCs, or to allege sufficient facts to identify the citizenship of each, their complaint is facially defective and must be dismissed without prejudice.

Plaintiff—as the proponent of diversity jurisdiction—is required to identify the individual members of the LLC and their respective citizenships to meet its burden of demonstrating diversity jurisdiction. *See Lipitor Antitrust*, [855 F.3d 126, 150 (3d Cir. 2017)], as amended (Apr. 19, 2017) (noting that “an unincorporated association is in the best position to ascertain its own membership” and therefore should not be excused “of its obligation to plead the citizenship of each of its members”) (internal quotations omitted); *see also Pike Co.*, 2013 WL 432928, at *1 (holding that a complaint failed to properly demonstrate the Plaintiff/LLP’s citizenship for purposes of diversity jurisdiction where it failed to alleged the identities and citizenship of all of the Plaintiff’s partners); *MCF Ltd. Partners v. Seneca Specialty Ins. Co.*, 2012 WL 6681813, at *1 (M.D. Pa. Dec. 21, 2012) (same). Thus, Defendant correctly identified a facial defect in the Complaint.¹⁹

¹⁸ *Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412, 419–20 (3d Cir. 2010).

¹⁹ *Andreozzi Bluestein LLP v. Hamed*, CV 2017-0014, 2018 WL 1151117, at *2 (D.V.I. Mar. 2, 2018).

The same is true of partnerships, including limited partnerships such as, at least according to the allegations of the Complaint, SLSCO.

Partnerships and other unincorporated associations, however, unlike corporations, are not considered “citizens” as that term is used in the diversity statute. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 187–92, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990) (holding that a limited partnership is not a citizen under the jurisdictional statute); *see also Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 n. 1, 126 S.Ct. 606, 163 L.Ed.2d 415 (2005) (“[F]or diversity purposes, a partnership entity, unlike a corporation, does not rank as a citizen[.]”); *United Steelworkers of Am. v. Bouligny*, 382 U.S. 145, 149–50, 86 S.Ct. 272, 15 L.Ed.2d 217 (1965) (holding that a labor union is not a citizen for purposes of the jurisdictional statute); *Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 454–55, 20 S.Ct. 690, 44 L.Ed. 842 (1900) (holding that a limited partnership association, even though it was called a quasi-corporation and declared to be a citizen of the state under the applicable state law, is not a citizen of that state within the meaning of the jurisdictional statute); *Chapman v. Barney*, 129 U.S. 677, 682, 9 S.Ct. 426, 32 L.Ed. 800 (1889) (holding that although the plaintiff-stock company was endowed by New York law with the capacity to sue, it could not be considered a “citizen” for diversity purposes); 15 James Wm. Moore, *Moore’s Federal Practice* § 102.57[1] (3d ed.2006) [hereinafter *Moore’s Federal Pract-*

ice] (“[A] partnership is not a ‘citizen’ of any state within the meaning of the statutes regulating jurisdiction[.]”).

Given that partnerships are not citizens for diversity purposes, the Supreme Court has long applied the rule of *Chapman v. Barney*: that courts are to look to the citizenship of all the partners (or members of other unincorporated associations) to determine whether the federal district court has diversity jurisdiction.²⁰

The allegations regarding Young are similarly deficient. These state that he is “residing in the state of Oregon,”²¹ but do not state that he is domiciled there with an intent to remain, as required to properly allege citizenship.²² The same is true for Hartford, which is alleged to be a “Connecticut corporation located at” an address in Hartford, Connecticut.²³ A corporation is deemed to be a resident of the state in which it maintains its “principal place of business,” not every state where it has an address or office, and Plaintiffs have failed to allege the principal place of business.²⁴ The

²⁰ *Swiger, supra*, at 182.

²¹ Complaint, paragraph 8.

²² See, e.g. *Smith v. All Persons Claiming a Present or Future Interest in Est. 13*, CIVIL 2011-41, 2012 WL 685524, at *2 (D.V.I. Feb. 29, 2012) (“A naked averment that one is a ‘domiciliary’ or a ‘resident’ of a state is insufficient.”)

²³ Complaint, paragraph 10.

²⁴ See, e.g. *DiGregorio v. Starwood Hotel & Resorts Worldwide, Inc.*, CV 2017-23, 2018 WL 1249273, at *2 (D.V.I. Mar. 9, 2018) (Plaintiff “has not alleged the location of either defendant’s *principal place of business*. Therefore, his allegations

Complaint must be dismissed for failure to make out a prima facie case that diversity jurisdiction is present.

IV. BECAUSE THE COMPLAINT IS NOT BROUGHT IN THE NAME OF THE UNITED STATES, FAILS TO ALLEGE SUFFICIENT FACTS TO ESTABLISH A CONTRACT FOR “PUBLIC WORKS,” AND IS BROUGHT ON BEHALF OF A THIRD TIER SUBCONTRACTOR, IT FAILS TO STATE A CLAIM UNDER THE MILLER ACT UPON WHICH RELIEF MAY BE GRANTED.

The Miller Act requires a general contractor to furnish a payment bond with a surety “for the protection of all persons supplying labor and material” before a contract of more than \$100,000 may be awarded for the “construction, alteration, or repair of any public building or public work of the Federal Government.” 40 U.S.C. § 3131. The purpose of the Miller Act is to protect persons supplying labor and material for the construction of federal projects in lieu of the protection they might receive under state statutes with respect to the construction of nonfederal buildings. *United States ex rel Sherman v. Carter*, 353 U.S. 210, 216 (1957); *United States ex rel. Walton Tech., Inc. v. Weststar Eng’g, Inc.*, 290 F.3d 1199, 1205 (9th Cir. 2002). The Miller Act provides that any person who has furnished labor or material in carrying out work provided for in a contract subject to the Act, and who has not been paid in full within 90 days of last supplying labor or material,

regarding the citizenship of Vistana and the Hotel Company are insufficient.”).

may bring a civil action on the payment bond for the amount unpaid. 40 U.S.C. § 3133(b).

First, although the Complaint purports to bring a claim under the Miller Act, it fails to meet the most elemental requirement of that statute: it fails to bring this claim in the name of the United States. This is a fundamental pleading deficiency that requires dismissal of the Complaint without prejudice.²⁵ The Plaintiffs are well aware of this requirement since their counsel has been involved in extensive litigation, albeit on behalf of a defendant, under the Miller Act in this very Court and judicial division.²⁶

Second, the Plaintiffs have failed to plead sufficient facts to establish that the contract upon which they rely is one subject to the provisions of the Miller Act. The Complaint alleges that “upon information and belief, SLSCO is a primary contractor under the FEMA Disaster Recovery Contract which is a United States government contract.” It further alleges that “Unify/Uniify PR are second tier subcontractors of SLSCO.”²⁷ Despite the label applied by Plaintiffs, this contract is in fact not a contract with FEMA or any other agency of the United States. Instead, it is a contract with an agency of the Commonwealth of Puerto Rico, the PRDOH. It is not a “contract of more than \$ 100,000 . . . for the construction, alteration, or repair of any public building or public work of the

²⁵ 40 U.S.C.A. § 3133(b)(3): “A civil action brought under this subsection must be brought— (A) in the name of the United States for the use of the person bringing the action . . .”

²⁶ *United States of America for the Use of Heavy Materials, LLC v. Tip Top Construction Corp.*, 2016 WL 2992116 (D.V.I. 2016).

²⁷ Complaint, paragraphs 43, 49.

Federal Government” as required to invoke Miller Act jurisdiction under 40 U.S.C. Section 3131(b), and is thus not a contract subject to the provisions of the Miller Act.

Although many factors are considered in determining whether a project is a public work, courts have generally found whether the United States is a contracting party to be particularly important. *See, e.g., United States v. TK Elec. Serv., LLC*, No. 1:09–CV–00041, 2011 WL 379192, at *1 (S.D. Ohio Feb. 3, 2011) (finding the Miller Act inapplicable because the United States was not a party to the contract); *United States ex rel. Roc Carter Co., LLC v. Freedom Demolition, Inc.*, No. 5:09–CV–101, 2009 WL 3418196, at *3 (M.D. Ga. Oct. 14, 2009) (finding that in order for a project to be a public work: “(1) there must be a construction contract; (2) the United States must be a party to the construction contract; and (3) the contract must require that bonds be secured that run in favor of the United States”); *United States ex rel. Miller v. Mattingly Bridge Co.*, 344 F. Supp. 459, 462 (W.D. Ky. 1972) (“The wording of [the Miller Act], indicates strongly that Congress in using the word ‘contracts’ had in mind only contracts between the United States and prime contractors, and not contracts to which the United States was not a party.”).²⁸

²⁸ *United States ex rel. J.A. Manning v. Bronze Oak, LLC*, 2017 WL 190099 (N.D. Okla. 2017).

In *Bronze Oak*, *supra*, the Court found that it lacked jurisdiction despite heavy federal involvement in the contract in question:

Here, on the one hand, the United States is not a contracting party³ or an initiator or ultimate operator of the project, and the work was not done on federal land. On the other hand, the United States is obligee of the payment bond, and the bond was issued under the Miller Act. Additionally, the Nation funded the project with money it received from the federal government pursuant to § 202, and the DOT retained some control over the project by requiring semi-annual reports on, and occasional access to for inspections of, all § 202 projects.²⁹

Even if the work allegedly performed by the Plaintiffs in Puerto Rico was funded through a FEMA grant, this is not sufficient, standing alone, to state a claim under the Miller Act. As one court noted,

As in *U.S. for and on Behalf of Mississippi Road Supply Co.*, [*U.S. Etc. Miss. Road Supply Co. v. H.R. Morgan, Inc.*, 542 F.2d 262 (5th Cir.1976)] plaintiff here “asserts that because the funds here come from the government in the form of grants . . . government funding is present.” 542 F.2d at 265. The rule in that case was that “the existence of government funding alone” is not enough to warrant Miller Act jurisdiction. Indeed, in a decision on facts strikingly similar to the case at bar, it was held that a contract executed between a

²⁹ *Id.* at *2.

state and a contractor for construction of a portion of an interstate highway system, was not a public work of the United States for purposes of Miller Act jurisdiction even though the construction was funded in part by the United States. *See Miller v. Mattingly Bridge Co.*, 344 F.Supp. 459 (W.D.Ky. 1972).³⁰

Plaintiffs have not alleged any details about the work they allegedly performed, or the provisions of the so-called FEMA Disaster Recovery Contract or of the hypothesized contract between FEMA and the PRDOH. They certainly have failed to allege that the contract is one falling under 40 U.S.C. Section 3131(b) with the specificity required to meet the pleading standards of *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007) and its progeny. As this Court recently stated:

The Supreme Court in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), set forth the “plausibility” standard for overcoming a motion to dismiss and refined this approach in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The plausibility standard requires the complaint to allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. A complaint satisfies the plausibility standard when the factual pleadings “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

³⁰ *TIJ Materials Corp. v. Green Island Const. Co., Inc.*, 131 F.R.D. 31, 33 (D.R.I. 1990)

This standard requires showing “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* A complaint which pleads facts “merely consistent with’ a defendant’s liability, . . . ‘stops short of the line between possibility and plausibility of “entitlement of relief.”” *Id.* (citing *Twombly*, 550 U.S. at 557).³¹

Plaintiff describes the work it provided as “manpower staffing solutions . . . for fulfillment of a certain FEMA disaster recovery program” and “manpower staffing . . . for disaster recovery and relief services.”³² These vague allegations are patently insufficient for the Court to conclude that Plaintiffs have alleged the existence of a “public work of the Federal Government,” as required to state a claim under the Miller Act. The Complaint must be dismissed for this reason alone.

Third, even if the Complaint is somehow construed to start the counting of the tiers of subcontractors at the correct level, it fails to state a claim. The operative contract here is not the so-called “FEMA Disaster Recovery Contract” between the PRDOH and SLSCO. It is the contract that is presumably one level up, namely the award of a disaster recovery *grant* by FEMA to the PRDOH. This contract, if it exists, is the federal contract that presumably provided funding for the work in question. The counting of subcontractor tiers should start at that level.

³¹ *Sullivan v. Sabharwal*, CV 2016-21, 2018 WL 5316171, at *2 (D.V.I. Oct. 26, 2018)

³² Complaint at paragraph 1, 6.

Therefore, even if the Complaint is construed to allege that FEMA entered into a contract with the PRDOH to provide disaster relief services, and even if this putative contract is indeed one to which the Miller Act applies, Plaintiffs are not, as they allege,³³ second tier subcontractors with standing to assert a claim under the Miller Act. Under a proper ordering of subcontractor tiers, the prime contract would be the putative one between FEMA and the PRDOH to provide disaster relief services. The prime contractor in this scenario would be the PRDOH. The so-called FEMA Disaster Relief Services Contract between the PRDOH and SLSCO to provide those services would be a first tier subcontract under that prime contract. The hypothesized further subcontract between SLSCO and EarthWrx would be a second-tier subcontract. The Supply Agreement between Earth Wrx and Uniify PR would be a third-tier subcontract and Plaintiff Uniify PR would be a third-tier subcontractor. Third-tier subcontractors lack standing to assert a claim under the Miller Act.

In *J.W. Bateson Company, Inc. v. United States Ex Rel. Board of Trustees of the National Automatic Sprinkler Industry Pension Fund*, 434 U.S. 586 (1978), the U.S. Supreme Court made it clear that third tier subcontractors such as Plaintiffs may not invoke the Miller Act. The Court succinctly summarized the facts of that case:

Petitioner J. W. Bateson Co. entered into a contract with the United States for construction of an addition to a hospital and provided a payment bond signed by Bateson's president and by representatives of

³³ Complaint, paragraph 49.

petitioner sureties. Bateson, the prime contractor, subcontracted with Pierce Associates for a portion of the original work, and Pierce in turn subcontracted with Colquitt Sprinkler Co. for the installation of a sprinkler system, one of the items specified in the contract between Bateson and the United States. Under a collective-bargaining agreement with respondent Road Sprinkler Fitters Local Union No. 669, Colquitt was obligated to pay over amounts withheld from employees' wages for union dues and vacation savings, and to contribute to the union's welfare, pension, and educational trust funds. When Colquitt failed to make any of these payments by the end of the union members' employment with the firm, the union and respondent trustees notified Bateson of the amount that they claimed was due them under the payment bond and then filed suit against Bateson in the name of the United States.³⁴

The Court held that Colquitt's employees, as third tier subcontractors, were not protected by the Miller Act payment bond, since they did not have a contractual relationship either with Bateson, the prime contractor holding a contract directly with the federal government, or with Pierce, the first tier subcontractor, or any other "subcontractor" within the meaning of the Miller Act. The Court held that, under the Miller Act, "persons who lack a 'contractual relationship express or implied with the [prime] contractor' [must] show a 'direct contractual relationship with a subcontractor' in order to recover on the

³⁴ *Id.* at 588.

bond.”³⁵ In that case, the Court held that Colquitt was not a “subcontractor” of Bateson, the prime, and thus the employees of Colquitt, lacking a direct contractual relationship with Pierce of any other “subcontractor” of the prime, could not recover against the bond under the Miller Act.

The same result should apply here. It is the PRDOH that is the prime contractor, under the most expansive reading of the Complaint, with an agency of the United States. Uniify and Uniify PR, who are at best subcontractors of EarthWrx, stand in the position of the employees of Colquitt in *Bateson*, and may not recover.

V. AS TO SLSCO AND HARTFORD. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED BECAUSE IT FAILS TO ALLEGE THAT PLAINTIFFS PROVIDED SUFFICIENTLY SPECIFIC NOTICE OF THEIR CLAIM AGAINST THE BOND WITHIN NINETY DAYS OF LAST PROVIDING SERVICES.

Even if the contract at issue were one to which the Miller Act applies, and if the Plaintiffs had proper standing as a subcontractor of the prime contractor, their claim must fail because they have failed to allege that they provided notice to SLSCO within ninety days of the date labor was last supplied, as required by both the Payment Bond and the Miller Act. This is an absolute requirement for second tier subcontractors, such as Plaintiffs purport to be, who must provide prompt notice of unpaid invoices so that the prime can protect itself by withholding payment to the offending first tier subcontractor. It is also a

³⁵ *Id.* at 589.

specific, stated requirement for claims under the Payment Bond. The Miller Act provides

. . . any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.³⁶

Similarly, the Payment Bond provides:

3. No suit or action shall be commenced hereunder by any Claimant (a) Unless claimant, other than one having a direct contract with the Principal [SLSCO], shall have given written notice to any two of the following: the Principal, the Owner [the PRDOH], or the Surety above named [Hartford], within 90 (ninety) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials of which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was

³⁶ 40 U.S.C. § 270b

done or performed. Such notice shall be served by mailing same by registered mail or certified mail, postage prepaid, in an envelope addressed to Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction or business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.³⁷

The notice is to be sent, not only within ninety days of the last furnishing of labor, but also sent via registered mail to the general contractor's place of business or residence or served in any manner in which the United States Marshal is authorized to serve summons. The giving of the notice pursuant to the statute is a condition precedent to the bringing of suit under the Miller Act. *See. e.g., Liles Construction Co., Inc. v. United States ex rel. Stabler Paint Manufacturing Co., Inc.*, 415 F.2d 889, 890 (5th Cir.1969); *National Union Indemnity Co. v. R.O. Davis, Inc.*, 393 F.2d 897, 900 (5th Cir.1968).

Although the notice provisions of the statute are to be construed liberally, certain minimum requirements must be met. The second tier subcontractor must not only advise the prime that it is unpaid. The second-tier subcontractor must specifically state that it is looking for payment, not just from the first tier subcontractor with whom it contracted, but also from the prime and its bond. In *U.S. ex rel. Kyle v. H.J. Group Ventures, Inc.*, 1999 WL 33537111 at *3 (N.D. Miss. 1999), for example, the Court found the notice

³⁷ Payment Bond at 1.

insufficient because the second tier subcontractor gave notice, but did not specifically state that it demanded payment from the prime and its bond. In that case, the second tier subcontractor handed a copy of its invoice to a person believed to be an agent of the prime, stating only “This is my bill.” The agent then stated that he would pass it on to the first tier subcontractor. Even this notice was deemed insufficient to preserve a Miller Act claim. That court noted,

The facts in this case more closely approximate those in *United States ex rel. Kinlau Sheet Metal Works, Inc. v. Great American Insurance Co.*, 537 F.2d 222 (5th Cir, 1976), where, as here, the supplier delivered to the general contractor’s agent during the 90–day period copies of monthly statements and summary sheets of amounts owed by the subcontractor, but made no demand, oral or written, on the general contractor nor did he otherwise give any indication that he was looking to the general contractor for payment. These actions were held by the court not to have conveyed sufficient notice under the statute. *Id.* at 224. “[T]he written notice and accompanying oral statements must inform the general contractor, expressly or impliedly, that the supplier is looking to the general contractor for payment so that it plainly appears that the nature and state of the indebtedness was brought home to the general contractor.” *Id.* at 223.³⁸

³⁸ *U.S. ex rel. Kyle v. H.J. Group Ventures, Inc.*, 1999 WL 33537111 at *3 (N.D. Miss. 1999).

Since Plaintiffs have failed to allege that they provided notice in any form, and certainly not the specific form of notice, provided within ninety days of their last furnishing of labor, required under the Miller Act, and under the terms of the Payment Bond itself, Counts IV and V should be dismissed.

VI. BECAUSE THE COMPLAINT FAILS TO ALLEGE WITH SUFFICIENT SPECIFICITY THAT ANY PAYMENTS ARE DUE AND OWING FOR WORK DONE IN THE U.S. VIRGIN ISLANDS, THE CLAIMS AGAINST SLSCO AND HARTFORD SHOULD BE DISMISSED FOR IMPROPER VENUE.

The allegations of the Complaint, and the attachments, make it clear that this is an action that should be brought, if at all, in Puerto Rico, in the U.S. District Court for the District of Puerto Rico, or in the local Court of First Instance. Although the Complaint alleges that some of the work was performed in the U.S. Virgin Islands, these allegations lack plausibility. It is not conceivable that the Commonwealth of Puerto Rico would enter into a contract to expend public funds to deliver (unspecified) services to residents of the U.S. Virgin Islands in the U.S. Virgin Islands. Both the PR Payment Bond and the Miller Act, even if applicable, require that action brought to recover from the PR Payment Bond be brought in the courts of that unincorporated territory of the United States.

The Miller Act, 40 U.S.C. s 270b(b), states as follows:

Every suit instituted under this section shall be brought in . . . the United States District Court for any district in which the contract

was to be performed and executed and not elsewhere

Similarly, the Payment Bond, provided as follows:

3. No suit or action shall be commenced hereunder by any Claimant (c)Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

At a minimum, even if Counts IV and V somehow are deemed to state a claim upon which relief should be granted, they should be dismissed from this court, in contemplation of refileing in Puerto Rico.

VII. CONCLUSION.

For the reasons stated herein, SLSCO and Hartford respectfully move the Court to dismiss all claims asserted against them in the Complaint, for lack of subject matter jurisdiction, failure to state a claim upon which relief may be granted and for improper venue.

Respectfully submitted,

DATED: April 19, 2019

By: /s/ J. Daryl Dodson, Esq.
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*Attorneys for Defendants SLSCO, Ltd.
and Hartford Fire Insurance Company*

CERTIFICATE OF SERVICE

I certify that on April 19, 2019, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send a notification of such filing to:

Scot F. McChain, Esq.
McChain Miller Nissman
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Attorneys for Plaintiffs

/s/ J. Daryl Dodson

APPENDIX D

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

Case No. 1:19-CV-00005

UNIIFY OF PUERTO RICO, LLC; and UNIIFY
STRATEGIC BUSINESS SOLUTIONS, LLC,

Plaintiffs,

v.

EARTHWRX, LLC; 541, LLC; SLSCO, LTD.;
HARTFORD FIRE INSURANCE COMPANY;
and JAMES YOUNG,

Defendants.

ACTION FOR BREACH OF CONTRACT,
BREACH OF PERSONAL GUARANTEE,
AND PAYMENT BOND CLAIM

JURY TRIAL DEMANDED

PLAINTIFFS' NOTICE OF VOLUNTARY
DISMISSAL

COMES NOW Uniify of Puerto Rico, LLC (“Uniify PR”) and Uniify Strategic Business Solutions, LLC (“Uniify”) (collectively the “Plaintiffs”), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. Rule 41(a)(1)(A)(i), give notice of their dismissal of all claims against all Defendants, without prejudice. Counsel for Defendants SLSCO, Ltd.,

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and Hartford Fire and Insurance Company has been consulted regarding this notice and does not object to dismissal without prejudice.

RESPECTFULLY SUBMITTED,
This 5th Day of June, 2019

McCHAIN MILLER NISSMAN
Attorneys for Plaintiffs

/s/ Scot F. McChain

Scot F. McChain

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CERTIFICATE OF SERVICE

I certify that on June 5, 2019, I electronically filed the foregoing with the Clerk of Court, using the CM/ECF system, which will send a notification of such filing to:

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Hartford Fire Insurance Co.*

/s/ Scot F. McChain

Scot F. McChain

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APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 23-1429

GORE AND ASSOCIATES MANAGEMENT COMPANY, INC.,
Plaintiff, Appellant,

v.

SLSCO LTD.; HARTFORD FIRE INSURANCE COMPANY,
Defendants, Appellees.

ORDER OF COURT

Entered: February 13, 2025
Pursuant to 1st Cir. R. 27.0(d)

Subject-matter jurisdiction for this litigation is asserted on the basis of diversity of citizenship. 28 U.S.C. § 1332(a). The operative pleading alleges that plaintiff Gore and Associates Management Company, Inc. (“Gore”) is a citizen of North Carolina; that defendant SLSCO Ltd. (“SLSCO”) is a citizen of Texas; and that defendant Hartford Fire Insurance Company (“Hartford”) is a citizen of Connecticut. The complaint also alleges, however, that the claims asserted by Gore were assigned to it by Earthwrx, LLC, Uniify Strategic Business Solutions, LLC, and Uniify of Puerto Rico, LLC. And title 28, § 1359 “strips the district court of jurisdiction over any ‘civil

action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.” *McCulloch v. Velez*, 364 F.3d 1, 5 (1st Cir. 2004) (quoting 28 U.S.C. § 1359).

The record, as presently constituted, does not provide sufficient information to determine whether subject-matter jurisdiction exists. *See McCulloch*, 364 F.3d at 5. SLSCO and Hartford have not challenged the assignment but indicate that they may dispute it on unspecified grounds. And the assignments contained in the appellate record indicate that Earth wrx, LLC and Uniify of Puerto Rico, LLC may retain some financial interest in the outcome of this litigation. *See* 13F Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3639 (3d ed. 2024).

“When a colorable question exists, an appellate court has an unflagging obligation to inquire sua sponte into its own jurisdiction.” *Charlesbank Equity Fund II v. Blinds to Go, Inc.*, 370 F.3d 151, 155-56 (1st Cir. 2004). The Court therefore orders Gore to provide: (1) information about the citizenships of Earthwrx, LLC, Uniify Strategic Business Solutions, LLC, and Uniify of Puerto Rico, LLC, bearing in mind that citizenship for a limited liability company is based on the citizenship of all of the members when the suit was commenced, *see Berkley Nat’l Ins. Co. v. Atl. Newport Realty LLC*, 93 F.4th 543, 549 (1st Cir. 2024); *Universal Truck & Equip. Co. v. Southworth-Milton, Inc.*, 765 F.3d 103, 109 (1st Cir. 2014), and (2) any additional information pertinent to our jurisdiction. The parties shall also address the citizenship of SLSCO’s partners, both general and limited, at the time of the commencement of the suit.

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See Americold Realty Tr. v. ConAgra Foods, Inc., 577 U.S. 378, 381 (2016).

Gore shall file its response by no later than **February 24, 2025**. SLSCO and Hartford shall file a response to Gore's filing by no later than **March 6, 2025**. Each submission shall not exceed ten pages.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

John L. Marchione

Sophia Bernard

Salvador J. Antonetti-Stutts

Alfredo F. Ramírez MacDonald

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APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Case No. 23-1429

GORE AND ASSOCIATES
MANAGEMENT COMPANY, INC.

Plaintiff-Appellant

v.

SLSCO LTD. AND HARTFORD
FIRE INSURANCE COMPANY

Defendants-Appellees

On Appeal from an Order of the United States
District Court for the District of Puerto Rico
Case No. 3:19-cv-01650, Judge Gustavo A. Gelpi, Jr.

APPELLANT'S RESPONSE TO ORDER OF COURT
ENTERED ON FEBRUARY 13, 2025

Sophia L. Bernard
First Circuit Bar No. 1208047
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54a

*Counsel for Appellant Gore and
Associates Management
Company, Inc.*

Dated: February 24, 2025

APPELLANT'S RESPONSE TO ORDER OF COURT
ENTERED ON FEBRUARY 13, 2025

Pursuant to the Order of this Court entered on February 13, 2025, Appellant GORE AND ASSOCIATES MANAGEMENT COMPANY, INC. ("Gore"), responds as follows:

INTRODUCTION

This action stems from the Appellees' non-payment of monies owed to Gore, Earthwrx, LLC ("Earthwrx") Uniify of Puerto Rico, LLC, and Uniify Strategic Business Solutions, LLC (collectively referred to as "Uniify") for payroll and temporary workforce management services provided by them to assist in FEMA hurricane recovery projects executed by Appellee-contractor SLSCO Ltd. Appellee Hartford Fire Insurance Company ("Hartford") acted as the surety for the payment bonds required under the FEMA contracts.

On July 6, 2019, Gore filed its Complaint in the United States District Court for the District of Puerto Rico, styled *Gore and Associates Management Company, Inc. v. SLSCO Ltd. and Hartford Fire Insurance Company* (Case No. 3:19-cv-01650). Gore alleges that pursuant to 28 U.S.C. § 1332(a), the District Court has subject matter jurisdiction because there is complete diversity of citizenship, and the amount in controversy exceeds \$75,000.

In the Complaint, Gore further alleges that Earthwrx and Uniify assigned their claims against

Appellees to Gore. *See* Complaint, Doc. No. 1, ¶ 26-27; Earthwrx Assignment Agreement, attached as **Exhibit A**; Uniify Assignment Agreement, attached as **Exhibit B** (collectively referred to as the (“Assignment Agreements”)).

MEMORANDUM OF LAW

28 U.S.C. § 1359 provides that “[a] district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.” *See* 28 U.S.C. § 1359. However, in this case, the claims and collection rights assigned to Gore by Earthwrx, and Uniify were not improperly or collusively made.

Before, Gore’s action was filed, on January 25, 2019, Uniify filed a separate complaint alleging breach of contract claims against Earthwrx, SLCSO Ltd., and Hartford in the United States District Court for the Virgin Islands, styled *Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC v. Earthwrx, LLC, 541, LLC, SLSCO Ltd., Hartford Fire and Insurance Company, and James Young* (Case No. 1:19-cv-0005). Uniify’s case was voluntarily dismissed on June 5, 2019. Consideration for the Assignment Agreements included Uniify’s agreement to voluntarily dismiss its action against Earthwrx and James Young, and Gore’s agreement not to bring an action against Earthwrx related to its breach of contract claims. *See Exhibits A and B*. Therefore, the reason for the assignments was not to artificially invoke federal jurisdiction (*see McCulloch v. Velez*, 364 F. 3d 1, 5 (1st Cir. 2004)), but to consolidate Gore, Uniify, and Earthwrx’s claims against the Appellees into one action, to prevent unnecessary litigation costs, and to avoid inconsistent judgments.

Moreover, the assignments do not have the effect of creating federal jurisdiction. *See McCulloch*, 364 F. 3d at 6 (“[t]ransfers or assignments that have the effect of creating federal jurisdiction raise a red flag and, thus, need to be examined with care.”). Complete diversity of citizenship exists even without the assignments, as Gore is a citizen of North Carolina, SLSCO Ltd. is a citizen of Texas, and Hartford is a citizen of Connecticut. *See* Complaint, Doc. No. 1, ¶ 3-5.

A. Citizenship of Earthwrx

Earthwrx LLC, who lawfully assigned its claims against the Appellees to Gore, is wholly owned by 541, LLC, an Oregon limited liability company with its principal place of business located at 505 Rock Creek Road, Gold Hill, Oregon, 97525. 541, LLC is currently an inactive Oregon limited liability company. However, an amended annual report filed with the Oregon Secretary of State on September 12, 2018 lists James A. Young and Bobby S. Owens as members. A later amended annual report filed with the Oregon Secretary of State on December 27, 2019 identified James Young as the only member of 541, LLC.

Based on information and belief, 541, LLC had the following members at the time the lawsuit was commenced, who are domiciled as follows:

James A. Young – Gold Hill, Oregon

Bobby S. Owens – Gold Hill, Oregon

Therefore 541, LLC and Earthwrx LLC are deemed to be citizens of the State of Oregon for the purposes of determining diversity jurisdiction.

B. Citizenship of Uniify

Uniify of Puerto Rico, LLC, who lawfully assigned its claims against the Appellees to Gore, is wholly owned by Uniify Strategic Business Solutions, LLC (“Uniify Strategic”). Uniify Strategic, who also lawfully assigned its claims against the Appellees to Gore, is a Louisiana limited liability company, with its principal place of business located at 1869 Easy Street, Lake Charles, Louisiana, 70606. Uniify Strategic is currently an inactive Louisiana limited liability company. A search of the Louisiana Secretary of State’s online business directory reveals that the last report filed with the Secretary of State was filed on September 5, 2019. The members of Uniify Strategic are listed as Terry L. Bee and Joseph P. Meyer.

Based on information and belief, Uniify Strategic had the following members at the time the lawsuit was commenced, who are domiciled as follows:

Terry L. Bee – Lake Charles, Louisiana

Joseph P. Meyer – Lake Charles, Louisiana

Therefore Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC are deemed to be citizens of the State of Louisiana for the purposes of determining diversity jurisdiction.

C. Citizenship of SLSCO, Ltd.

SLSCO, Ltd. is a Texas limited partnership with its principal place of business located at 13 Evia Main, Galveston, Texas, 77554. In a Public Information Report filed by SLSCO Ltd. on December 18, 2018 with the Texas Secretary of State, Todd P. Sullivan, William W. Sullivan, and John R. Sullivan are listed as partners. SLSCO Ltd. appears to have

not filed a Public Information Report for 2019 and 2020. In its 2021 Public Information Report filed on December 31, 2021, SLSCO Ltd. listed Todd P. Sullivan, William W. Sullivan, and John R. Sullivan as partners.

Based on information and belief, SLSCO Ltd. had the following partners at the time the lawsuit was commenced, who are domiciled as follows:

Todd P. Sullivan – Galveston, Texas

William W. Sullivan – Galveston, Texas

John R. Sullivan – Galveston, Texas

Therefore SLSCO Ltd. is deemed to be a citizen of the State of Texas for the purposes of determining diversity jurisdiction.

CONCLUSION

There is complete diversity of citizenship between the Appellant, Appellant's assignors, and Appellees. The Assignment Agreements were properly made, and did not create complete diversity of citizenship or artificially invoke federal jurisdiction. Therefore, this Court has subject matter jurisdiction of this cause of action based upon diversity of citizenship and the amount in dispute of Appellant's claim, which exceeds \$75,000.00 pursuant to 28 U.S.C. § 1332(a).

Date: February 24, 2025

Respectfully submitted,

/s/Sophia L. Bernard, Esq.

Sophia L. Bernard, Esq.

First Circuit Bar No. 1208047

TAYLOR NELSON PL

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59a

(863) 875-6950 (tel)

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Counsel for the Appellant

Gore and Associates

Management Company, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been e-filed via the Court's CM/ECF system, which shall send notification of the filing to all counsel of record. This 24th day of February, 2025.

/s/Sophia L. Bernard, Esq.

ASSIGNMENT OF RIGHTS AGREEMENT

This Assignment Agreement (collectively referred to as the “Agreement”) is made and entered into by and between Gore & Associates Management Company (“Gore”) and Earthwrx, LLC (“Earthwrx”) (collectively the “Parties” and each a “Party”), all intending to be legally bound hereby, and in consideration of the following promises and covenants, do understand and agree as follows:

RECITALS

WHEREAS, the Parties understand and agree that this is an assignment of rights by Earthwrx, including but not limited to claims and benefits, under the FEMA Disaster Recovery Contracts in Puerto Rico and the U.S. Virgin Islands attached as Exhibit A (the “FEMA Contracts”).

WHEREAS, the Parties acknowledge that on or about January 23, 2018, SLSCO, Ltd. (“SLSCO”) entered to a certain FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03 (the “FEMA Disaster Recovery Contract”), with the Puerto Rico Department of Housing. Pursuant to the FEMA Disaster Recovery Contract, SLSCO was required to post a labor and material payment bond,

WHEREAS, SLSCO contracted with Earthwrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Earthwrx and Uniify entered into the Uniify of Puerto Rico LLC Staffing Account Terms (“Staffing Contract”) attached hereto as **Exhibit B**

on April 4, 2018 to procure manpower staffing to support the FEMA Disaster Recovery Contract in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Uniify and Earthwrx obtained payroll funding for the Staffing Contract from Gore pursuant to the Gore & Assoc. Funding Agreement (the “Funding Agreement”), attached hereto as Exhibit C,

WHEREAS, the Parties acknowledge that the above-described FEMA Contracts resulted in unpaid services by SLS and in extensive damages to Gore, Uniify, and Earthwrx,

WHEREAS Earthwrx has not paid Gore pursuant to the Staffing Agreement and currently owes Gore five-hundred twenty-one thousand, nine-hundred seventy-four and 35/100 US Dollars (\$521,974.35) plus interest accrued since August 9, 2018, and

WHEREAS, Earthwrx agrees to assign to Gore full collection rights to any and all of Earthwrx’s rights under the FEMA Contracts as against SLSCO or any other entity that might owe money on those contracts, such as surety bonds.

ASSIGNMENT

For good and valuable consideration, including but not limited to a temporary forbearance of filing a lawsuit against Earthwrx, Earthwrx hereby assigns, transfers, and conveys all rights, claims, causes of action, and benefits (the “Assigned Claims”) it has or may come to have under applicable law pursuant to the FEMA Contracts against SLSCO and any of SLSCO’s sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations, arising out of or in any way related to collection of monies due to Earthwrx under

the FEMA Contracts. Further, Earthwrx agrees to fully cooperate with Gore in its collection efforts against SLSCO and any of SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations and in the prosecution of any suits or proceedings against the same or any other entity which is or may be obligated to pay the monies owed and will voluntarily testify on behalf of Gore, if so requested. Earthwrx agrees that its cooperation includes the reasonable provision of documents, electronic files, accounting records, and any other material necessary for Gore's collection efforts. Earthwrx agrees that Gore will have complete discretion and final authority in approval of any settlement agreements related to the Assigned Claims, even if it means that Earthwrx will not be paid in full or at all for its outstanding invoices to SLSCO.

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct.
2. Earthwrx waives any conflicts of interest, whether true or perceived, with Gore or with the law firm of Taylor & Associates, Attorneys at Law, PL, in assigning its rights to Gore, to allow Taylor & Associates to pursue collection on the Assigned Claims to the fullest.
3. Gore is to receive all monies collected until it is paid in full for all total receivables under its Funding Agreement, with interest, and attorneys' fees from

August 2018 through the conclusion of the collections process. Following Gore's receipt of the total sum described, Earthwrx agrees that any monies collected will be paid to Uniify pursuant to the Staffing Contract until Uniify's net total receivables are collected, accounting for any payments made to Gore and interest accrued on Uniify's receivables. Once and if Gore and Uniify receive all funds due to them under their respective agreements as described above, Earthwrx will receive the remainder of the collections.

4. Earthwrx agrees to pay the costs of its accountant required to determine total accounts receivable owed by SLSCO to Earthwrx, or to Gore or to Uniify.

5. Earthwrx and Gore respectively warrant and represent that no promise or inducement has been offered or made except as herein set forth, that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital. Earthwrx and Gore respectively certify that this Agreement has been made after consultation with, and on the advice of, its respectively chosen attorneys, who have explained to it/them the nature and extent of the Parties' respective legal rights and the effect of the Agreement, and that this Agreement is executed without reliance upon any statement or representation of any other Party or its agents. Alternatively, Earthwrx and Gore certify that, if it chose not to engage an attorney to assist with the negotiation and execution of this Agreement, that it had the full opportunity to so engage an attorney and the decision to not engage counsel was a conscious and knowing decision.

6. Earthwrx agrees it will remain responsible for any and all independent attorneys' fees incurred with its own counsel.

7. This Agreement has been negotiated at arms-length between persons knowledgeable in the matters dealt with herein. Accordingly, the Parties agree that any rule of law, legal decisions, or common law principles of similar effect that would require interpretation of any ambiguities in this Agreement against the party that drafted the Agreement is of no effect and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intentions of the Parties hereto.

8. This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida for the purpose of any suit, action, proceeding, or judgment relating to or arising out of this Agreement.

9. The undersigned warrant and represent that they have carefully read and are fully informed, have full knowledge of and are fully satisfied with the terms, conditions and effects of this Agreement.

10. This Agreement constitutes the full and final agreement among the Parties with respect to the subject matter hereof and replaces all prior negotiations, proposed agreements and agreements, whether written or oral. The Parties further agree that this Agreement may not be altered, amended, modified, cancelled or terminated except by express

written agreement duly executed by all of the Parties hereto.

11. The Parties agree that the prevailing party in any action to enforce this Agreement shall be entitled (both at trial and on appeal) to attorneys' fees, interest, costs and expenses of litigation.

12. The Parties agree that this Agreement is and shall remain confidential between the Parties hereto and their respective officers, accountants, auditors, attorneys, liability insurers, and reinsurers. Confidentiality is a material consideration to the Parties.

13. The Parties further agree that this Agreement may be executed in any number of copies and may be signed in as many counterparts as may be convenient and the signature pages may be exchanged electronically or by facsimile. The text of this Agreement, together with accurate copies of the relevant Parties' signatures, shall have the force and effect of an original as between the Parties.

The undersigned have read this agreement and fully understand the contents of this document and swear under oath to the representations made above.

Gore & Associates Management Company

/s/ Illegible _____

Signature

Title: _____

EarthWrx, LLC

Signature /s/ James Young

Title: ___ CEO _____

ASSIGNMENT OF RIGHTS AGREEMENT

This Assignment Agreement (collectively referred to as the “Agreement”) is made and entered into by and between Gore & Associates Management Company (“Gore”) and Uniify of Puerto Rico (“Uniify”) (collectively the “Parties” and each a “Party”), all intending to be legally bound hereby, and in consideration of the following promises and covenants, do understand and agree as follows:

RECITALS

WHEREAS, the Parties understand and agree that this is an assignment of rights, including but not limited to claims and benefits, under the FEMA Disaster Recovery Contracts in Puerto Rico and the U.S. Virgin Islands attached as Exhibit A and the Uniify of Puerto Rico LLC Staffing Account Terms (“Staffing Contract”) between Uniify and Earthwrx entered into on April 4, 2018 and attached hereto as Exhibit B.

WHEREAS, the Parties acknowledge that on or about January 23, 2018, SLSCO entered to a certain FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03 (the “FEMA Disaster Recovery Contract”), with the Puerto Rico Department of Housing. Pursuant to the FEMA Disaster Recovery Contract, SLSCO was required to post a labor and material payment bond,

WHEREAS, SLSCO contracted with Earthwrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Earthwrx and Uniify entered into the Staffing Contract to procure manpower staffing to support the FEMA Disaster Recovery Contract in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Uniify and Earthwrx obtained payroll funding for the Staffing Contract from Gore pursuant to the Gore & Assoc. Funding Agreement (the "Funding Agreement") attached hereto as Exhibit C,

WHEREAS, the Parties acknowledge that the above-described FEMA Contracts resulted in unpaid services by SLS and in extensive damages to Gore, Uniify, and Earthwrx,

WHEREAS Uniify has not paid Gore pursuant to the Funding Agreement or Staffing Agreement and currently owes Gore five-hundred twenty-one thousand, nine-hundred seventy-four and 35/100 US Dollars (\$521,974.35) plus interest accrued since August 9, 2018, and

WHEREAS, Uniify agrees to assign to Gore full collection rights to any and all of Uniify's rights under the Staffing Contract and Funding Agreement.

ASSIGNMENT

For good and valuable consideration, including but not limited to a temporary forbearance of filing a lawsuit against Uniify, Uniify hereby assigns, transfers, and conveys all rights, claims, causes of action, and benefits (the "Assigned Claims") it has or may come to have under applicable law pursuant to the Staffing Contract, Funding Agreement, or FEMA Contracts against Earthwrx, SLSCO and any of Earthwrx or SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations, arising out

of or in any way related to collection of monies due to Uniify and Gore under the Staffing Contract and Funding Agreement. Further, Uniify agrees to fully cooperate with Gore in its collection efforts against SLSCO and any of SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations and in the prosecution of any suits or proceedings against the same or any other entity which is or may be obligated to pay the monies owed and will voluntarily testify on behalf of Gore, if so requested. Uniify agrees that its cooperation includes the reasonable provision of documents, electronic files, accounting records, and any other material necessary for Gore's collection efforts. Uniify agrees that Gore will have complete discretion and final authority in approval of any settlement agreements related to the Assigned Claims, even if it means that Uniify will not be paid in full or at all for its outstanding invoices to Earthwrx..

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct.
2. Uniify waives any conflicts of interest, whether true or perceived, with Gore or with the law firm of Taylor & Associates, Attorneys at Law, PL, in assigning its rights to Gore, to allow Taylor & Associates to pursue collection on the Assigned Claims to the fullest.
3. Gore is to receive all monies collected until it is paid in full for all total receivables under its Funding

Agreement, with interest, and attorneys' fees from August 2018 through the conclusion of the collections process. Following Gore's receipt of the total sum described, Uniify agrees that any monies collected will be paid to Uniify pursuant to the Staffing Contract until Uniify's net total receivables are collected, accounting for any payments made to Gore and interest accrued on Uniify's receivables, totaling \$1,267,658.05.

4. Uniify agrees to withdraw without prejudice its action against Earthwrx and James Young in the U.S. District Court for the Virgin Islands.

5. Uniify and Gore respectively warrant and represent that no promise or inducement has been offered or made except as herein set forth, that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital. Uniify and Gore respectively certify that this Agreement has been made after consultation with, and on the advice of, its respectively chosen attorneys, who have explained to it/them the nature and extent of the Parties' respective legal rights and the effect of the Agreement, and that this Agreement is executed without reliance upon any statement or representation of any other Party or its agents. Alternatively, Uniify and Gore certify that, if it chose not to engage an attorney to assist with the negotiation and execution of this Agreement, that it had the full opportunity to so engage an attorney and the decision to not engage counsel was a conscious and knowing decision.

6. Uniify agrees it will remain responsible for any and all independent attorneys' fees incurred with its own counsel.

7. This Agreement has been negotiated at arms-length between persons knowledgeable in the matters dealt with herein. Accordingly, the Parties agree that any rule of law, legal decisions, or common law principles of similar effect that would require interpretation of any ambiguities in this Agreement against the party that drafted the Agreement is of no effect and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intentions of the Parties hereto.

8. This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida for the purpose of any suit, action, proceeding, or judgment relating to or arising out of this Agreement

9. The undersigned warrant and represent that they have carefully read and are fully informed, have full knowledge of and are fully satisfied with the terms, conditions and effects of this Agreement.

10. This Agreement constitutes the full and final agreement among the Parties with respect to the subject matter hereof and replaces all prior negotiations, proposed agreements and agreements, whether written or oral. The Parties further agree that this Agreement may not be altered, amended, modified, cancelled or terminated except by express written agreement duly executed by all of the Parties hereto.

11. The Parties agree that the prevailing party in any action to enforce this Agreement shall be entitled

(both at trial and on appeal) to attorneys' fees, interest, costs and expenses of litigation.

12. The Parties agree that this Agreement is and shall remain confidential between the Parties hereto and their respective officers, accountants, auditors, attorneys, liability insurers, and reinsurers. Confidentiality is a material consideration to the Parties.

13. The Parties further agree that this Agreement may be executed in any number of copies and may be signed in as many counterparts as may be convenient and the signature pages may be exchanged electronically or by facsimile. The text of this Agreement, together with accurate copies of the relevant Parties' signatures, shall have the force and effect of an original as between the Parties.

The undersigned have read this agreement and fully understand the contents of this document and swear under oath to the representations made above.

Gore & Associates Management Company

Signature

Title: _____

Uniify of Puerto Rico

Terry L. Bee _____

Signature /s/ Terry L. Bee _____

Title: Pres/CEO, UNIIFY of Puerto Rico

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APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Case No: 3:19-cv-01650

GORE AND ASSOCIATES MANAGEMENT COMPANY, INC.,
Plaintiff,

v.

SLSCO LTD. and HARTFORD FIRE AND
INSURANCE COMPANY,

Defendants.

PLAINTIFF'S PROOF OF JURISDICTION

Pursuant to this Court's directive to file proof of jurisdiction during a case status conference held on May 20, 2025, Plaintiff GORE AND ASSOCIATES MANAGEMENT COMPANY, INC. ("Gore"), provides as follows:

INTRODUCTION

This action stems from the Defendants' non-payment of monies owed to Gore, Earthwrx, LLC ("Earthwrx") Uniify of Puerto Rico, LLC, and Uniify Strategic Business Solutions, LLC (collectively referred to as "Uniify") for payroll and temporary workforce management services provided by them to assist in FEMA hurricane recovery projects executed by Defendant-contractor SLSCO Ltd. Defendant Hartford Fire Insurance Company ("Hartford") acted as the surety for the payment bonds required under the FEMA contracts.

On July 6, 2019, Gore filed its Complaint in this action, and alleges that pursuant to 28 U.S.C. § 1332(a), this Court has subject matter jurisdiction because there is complete diversity of citizenship, and the amount in controversy exceeds \$75,000. Gore filed its First Amended Complaint on December 17, 2019. *See* First Amended Complaint, Doc. No. 31.

In the Complaint, Gore further alleges that Earthwrx and Uniify assigned their claims against Defendants to Gore. *See* First Amended Complaint, Doc. No. 31, ¶¶ 31-32; Earthwrx Assignment Agreement, attached as Exhibit A; Uniify Assignment Agreement, attached as Exhibit B (collectively referred to as the (“Assignment Agreements”)).

MEMORANDUM OF LAW

28 U.S.C. § 1359 provides that “[a] district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.” *See* 28 U.S.C. § 1359. However, in this case, the claims and collection rights assigned to Gore by Earthwrx, and Uniify were not improperly or collusively made.

Before, Gore’s action was filed, on January 25, 2019, Uniify filed a separate complaint alleging breach of contract claims against Earthwrx, SLCSO Ltd., and Hartford in the United States District Court for the Virgin Islands, styled *Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC v. Earthwrx, LLC, 541, LLC, SLSCO Ltd., Hartford Fire and Insurance Company, and James Young* (Case No. 1:19-cv-0005). Uniify’s case was voluntarily dismissed on June 5, 2019. Consideration for the Assignment Agreements included Uniify’s agreement to voluntar-

ily dismiss its action against Earthwrx and James Young, and Gore's agreement not to bring an action against Earthwrx related to its breach of contract claims. *See* Exhibits A and B. Therefore, the reason for the assignments was not to artificially invoke federal jurisdiction (*see McCulloch v. Velez*, 364 F. 3d 1, 5 (1st Cir. 2004)), but to consolidate Gore, Uniify, and Earthwrx's claims against the Defendants into one action, to prevent unnecessary litigation costs, and to avoid inconsistent judgments.

Moreover, the assignments do not have the effect of creating federal jurisdiction. *See McCulloch*, 364 F. 3d at 6 (“[t]ransfers or assignments that have the effect of creating federal jurisdiction raise a red flag and, thus, need to be examined with care.”). Complete diversity of citizenship exists even without the assignments, as Gore is a citizen of North Carolina, SLSCO Ltd. is a citizen of Texas, and Hartford is a citizen of Connecticut. *See* First Amended Complaint, Doc. No. 31, ¶ 3-5.

A. Citizenship of Gore

Plaintiff is a corporation organized under the laws of North Carolina, which is not disputed by any of the parties. *See* First Amended Complaint, Doc. No. 31, ¶ 3; Gore Articles of Incorporation, attached as Exhibit C. Therefore Gore is deemed to be a citizen of the State of North Carolina for the purposes of determining diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).

B. Citizenship of Earthwrx

Earthwrx LLC, who lawfully assigned its claims against the Defendants to Gore, is a Puerto Rico limited liability company. *See* Earthwrx Certificate of Formation, attached as Exhibit D. James A. Young and

Bobby Owens are listed as the sole members of Earthwrx LLC. *Id.* Based upon the information and documentation gathered by Plaintiff, James A. Young's domicile at the time the lawsuit was filed was 505 Rock Creek Road, Gold Hill, Oregon, 97525. *See* Young's Assets Report, attached as Exhibit E. Based upon the information and documentation gathered by Plaintiff, Bobby Owens' domicile at the time the lawsuit was filed was 624 Rock Creek Road, Gold Hill, Oregon. *See* Owens Assets Report, attached as Exhibit F. Therefore Earthwrx LLC is deemed to be a citizen of the State of Oregon for the purposes of determining diversity jurisdiction.

B. Citizenship of Uniify

Uniify of Puerto Rico, LLC, who lawfully assigned its claims against the Defendants to Gore, is a Puerto Rico limited liability company wholly owned by Uniify Strategic Business Solutions, LLC ("Uniify Strategic"). *See* Certificate of Formation, attached as Exhibit G. Uniify Strategic, who also lawfully assigned its claims against the Defendants to Gore, is a Louisiana limited liability company, with its principal place of business located at 1869 Easy Street, Lake Charles, Louisiana, 70606. Uniify Strategic is currently an inactive Louisiana limited liability company. *See* Uniify Strategic's LA Business Filing Report, attached as Exhibit H. A search of the Louisiana Secretary of State's online business directory reveals that the last report filed with the Secretary of State was filed on September 5, 2019, where the members of Uniify Strategic are listed as Terry L. Bee and Joseph P. Meyer. *Id.*

Based upon the information and documentation gathered by Plaintiff, Terry L. Bee, now deceased, was domiciled at 1869 Easy Street, Lake Charles, Louisiana, 70605 at the time the lawsuit was filed.

Based upon the information and documentation gathered by Plaintiff, Joseph P. Meyer, shared the same domicile address as Terry L. Bee. *See* Bee-Meyer Assets Reports, attached as Exhibit I. Therefore Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC are deemed to be citizens of the State of Louisiana for the purposes of determining diversity jurisdiction.

C. Citizenship of SLSCO, Ltd.

SLSCO, Ltd. is a Texas limited partnership with its principal place of business located at 13 Evia Main, Galveston, Texas, 77554. Defendant SLSCO does not dispute this fact. The general partner of SLSCO is Sullivan Environmental Services, Inc., with its principal place of business located at 13 Evia Main, Galveston, Texas, 77554. *See* Defendants' Answer, Doc. 63 ¶ 4. Therefore SLSCO Ltd. is deemed to be a citizen of the State of Texas for the purposes of determining diversity jurisdiction.

D. Citizenship of Hartford Fire and Insurance Company

Hartford is a for profit corporation incorporated in the state of Connecticut, which is not disputed by Hartford. *See* Defendants' Answer, Doc. 63 ¶ 5; Hartford Corporate Disclosure, Doc. 12. Therefore Hartford is deemed to be a citizen of the State of Connecticut for the purposes of determining diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).

CONCLUSION

There is complete diversity of citizenship between the Plaintiff, Plaintiff's assignors, and Defendants. The Assignment Agreements were properly made, and did not create complete diversity of citizenship or

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artificially invoke federal jurisdiction. Therefore, this Court has subject matter jurisdiction of this cause of action based upon diversity of citizenship and the amount in dispute of Plaintiff's claim, which exceeds \$75,000.00 pursuant to 28 U.S.C. § 1332(a).

Date: June 9, 2025

Respectfully submitted,

/s/ Sophia L. Bernard, Esq.
Sophia L. Bernard, Esq. (*pro hac vice*)
TAYLOR NELSON PL
20 3rd Street SW, Suite 209
Winter Haven, FL 33880
(863) 875-6950 (tel)
(863) 875-6955 (fax)
sbernard@taylorlawpl.com
efiling@taylorlawpl.com

*Counsel for the Plaintiff Gore and
Associates Management Company, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been e-filed via the Court's CM/ECF system, which shall send notification of the filing to all counsel of record. This 24th day of February, 2025.

/s/Sophia L. Bernard, Esq.

EXHIBIT A

ASSIGNMENT OF RIGHTS AGREEMENT

This Assignment Agreement (collectively referred to as the “Agreement”) is made and entered into by and between Gore & Associates Management Company (“Gore”) and Earthwrx, LLC (“Earthwrx”) (collectively the “Parties” and each a “Party”), all intending to be legally bound hereby, and in consideration of the following promises and covenants, do understand and agree as follows:

RECITALS

WHEREAS, the Parties understand and agree that this is an assignment of rights by Earthwrx, including but not limited to claims and benefits, under the FEMA Disaster Recovery Contracts in Puerto Rico and the U.S. Virgin Islands attached as Exhibit A (the “FEMA Contracts”).

WHEREAS, the Parties acknowledge that on or about January 23, 2018, SLSCO, Ltd. (“SLSCO”) entered to a certain FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03 (the “FEMA Disaster Recovery Contract”), with the Puerto Rico Department of Housing. Pursuant to the FEMA Disaster Recovery Contract, SLSCO was required to post a labor and material payment bond,

WHEREAS, SLSCO contracted with Earthwrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Earthwrx and Uniify entered into the Uniify of Puerto Rico LLC Staffing Account Terms (“Staffing Contract”) attached hereto as Exhibit B on

April 4, 2018 to procure manpower staffing to support the FEMA Disaster Recovery Contract in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Uniify and Earthwrx obtained payroll funding for the Staffing Contract from Gore pursuant to the Gore & Assoc. Funding Agreement (the "Funding Agreement"), attached hereto as Exhibit C,

WHEREAS, the Parties acknowledge that the above-described FEMA Contracts resulted in unpaid services by SLS and in extensive damages to Gore, Uniify, and Earthwrx,

WHEREAS Earthwrx has not paid Gore pursuant to the Staffing Agreement and currently owes Gore five-hundred twenty-one thousand, nine-hundred seventy-four and 35/100 US Dollars (\$521,974.35) plus interest accrued since August 9, 2018, and

WHEREAS, Earthwrx agrees to assign to Gore full collection rights to any and all of Earthwrx's rights under the FEMA Contracts as against SLSCO or any other entity that might owe money on those contracts, such as surety bonds.

ASSIGNMENT

For good and valuable consideration, including but not limited to a temporary forbearance of filing a lawsuit against Earthwrx, Earthwrx hereby assigns, transfers, and conveys all rights, claims, causes of action, and benefits (the "Assigned Claims") it has or may come to have under applicable law pursuant to the FEMA Contracts against SLSCO and any of SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations, arising out of or in any way related to collection of monies due to Earthwrx under

the FEMA Contracts. Further, Earthwrx agrees to fully cooperate with Gore in its collection efforts against SLSCO and any of SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations and in the prosecution of any suits or proceedings against the same or any other entity which is or may be obligated to pay the monies owed and will voluntarily testify on behalf of Gore, if so requested. Earthwrx agrees that its cooperation includes the reasonable provision of documents, electronic files, accounting records, and any other material necessary for Gore's collection efforts. Earthwrx agrees that Gore will have complete discretion and final authority in approval of any settlement agreements related to the Assigned Claims, even if it means that Earthwrx will not be paid in full or at all for its outstanding invoices to SLSCO.

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct.
2. Earthwrx waives any conflicts of interest, whether true or perceived, with Gore or with the law firm of Taylor & Associates, Attorneys at Law, PL, in assigning its rights to Gore, to allow Taylor & Associates to pursue collection on the Assigned Claims to the fullest.
3. Gore is to receive all monies collected until it is paid in full for all total receivables under its Funding Agreement, with interest, and attorneys' fees from August 2018 through the conclusion of the collections process. Following Gore's receipt of the total sum described, Earthwrx agrees that any monies collected

will be paid to Uniify pursuant to the Staffing Contract until Uniify's net total receivables are collected, accounting for any payments made to Gore and interest accrued on Uniify's receivables. Once and if Gore and Uniify receive all funds due to them under their respective agreements as described above, Earthwrx will receive the remainder of the collections.

4. Earthwrx agrees to pay the costs of its accountant required to determine total accounts receivable owed by SLSCO to Earthwrx, or to Gore or to Uniify.

5. Earthwrx and Gore respectively warrant and represent that no promise or inducement has been offered or made except as herein set forth, that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital. Earthwrx and Gore respectively certify that this Agreement has been made after consultation with, and on the advice of, its respectively chosen attorneys, who have explained to it/them the nature and extent of the Parties' respective legal rights and the effect of the Agreement, and that this Agreement is executed without reliance upon any statement or representation of any other Party or its agents. Alternatively, Earthwrx and Gore certify that, if it chose not to engage an attorney to assist with the negotiation and execution of this Agreement, that it had the full opportunity to so engage an attorney and the decision to not engage counsel was a conscious and knowing decision.

6. Earthwrx agrees it will remain responsible for any and all independent attorneys' fees incurred with its own counsel.

7. This Agreement has been negotiated at arm's-length between persons knowledgeable in the matters

dealt with herein. Accordingly, the Parties agree that any rule of law, legal decisions, or common law principles of similar effect that would require interpretation of any ambiguities in this Agreement against the party that drafted the Agreement is of no effect and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intentions of the Parties hereto.

8. This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida for the purpose of any suit, action, proceeding, or judgment relating to or arising out of this Agreement.

9. The undersigned warrant and represent that they have carefully read and are fully informed, have full knowledge of and are fully satisfied with the terms, conditions and effects of this Agreement.

10. This Agreement constitutes the full and final agreement among the Parties with respect to the subject matter hereof and replaces all prior negotiations, proposed agreements and agreements, whether written or oral. The Parties further agree that this Agreement may not be altered, amended, modified, cancelled or terminated except by express written agreement duly executed by all of the Parties hereto.

11. The Parties agree that the prevailing party in any action to enforce this Agreement shall be entitled (both at trial and on appeal) to attorneys' fees, interest, costs and expenses of litigation.

12. The Parties agree that this Agreement is and shall remain confidential between the Parties hereto

and their respective officers, accountants, auditors, attorneys, liability insurers, and reinsurers. Confidentiality is a material consideration to the Parties.

13. The Parties further agree that this Agreement may be executed in any number of copies and may be signed in as many counterparts as may be convenient and the signature pages may be exchanged electronically or by facsimile. The text of this Agreement, together with accurate copies of the relevant Parties' signatures, shall have the force and effect of an original as between the Parties.

[Signature Page to Follow]

The undersigned have read this agreement and fully understand the contents of this document and swear under oath to the representations made above.

Gore & Associates Management
Company

/s/ [Illegible]

Signature

Title: Pres

EarthWrx, LLC

/s/ James Young

James Young

Signature

Title: CEO

EXHIBIT B

ASSIGNMENT OF RIGHTS AGREEMENT

This Assignment Agreement (collectively referred to as the “Agreement”) is made and entered into by and between Gore & Associates Management Company (“Gore”) and Uniify of Puerto Rico (“Uniify”) (collectively the “Parties” and each a “Party”), all intending to be legally bound hereby, and in consideration of the following promises and covenants, do understand and agree as follows:

RECITALS

WHEREAS, the Parties understand and agree that this is an assignment of rights, including but not limited to claims and benefits, under the FEMA Disaster Recovery Contracts in Puerto Rico and the U.S. Virgin Islands attached as Exhibit A and the Uniify of Puerto Rico LLC Staffing Account Terms (“Staffing Contract”) between Uniify and Earthwrx entered into on April 4, 2018 and attached hereto as Exhibit B.

WHEREAS, the Parties acknowledge that on or about January 23, 2018, SLSCO entered to a certain FEMA Disaster Recovery Program, Sheltering and Temporary Essential Power Program, Contract for Construction Repair Work, DOH-RFP-17-18-03 (the “FEMA Disaster Recovery Contract”), with the Puerto Rico Department of Housing. Pursuant to the FEMA Disaster Recovery Contract, SLSCO was required to post a labor and material payment bond,

WHEREAS, SLSCO contracted with Earthwrx to provide manpower staffing in support of the FEMA Disaster Recovery Contract for services in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Earthwrx and Uniify entered into the Staffing Contract to procure manpower staffing to support the FEMA Disaster Recovery Contract in Puerto Rico and the U.S. Virgin Islands,

WHEREAS, Uniify and Earthwrx obtained payroll funding for the Staffing Contract from Gore pursuant to the Gore & Assoc. Funding Agreement (the "Funding Agreement") attached hereto as Exhibit C,

WHEREAS, the Parties acknowledge that the above-described FEMA Contracts resulted in unpaid services by SLS and in extensive damages to Gore, Uniify, and Earthwrx,

WHEREAS Uniify has not paid Gore pursuant to the Funding Agreement or Staffing Agreement and currently owes Gore five-hundred twenty-one thousand, nine-hundred seventy-four and 35/100 US Dollars (\$521,974.35) plus interest accrued since August 9, 2018, and

WHEREAS, Uniify agrees to assign to Gore full collection rights to any and all of Uniify's rights under the Staffing Contract and Funding Agreement.

ASSIGNMENT

For good and valuable consideration, including but not limited to a temporary forbearance of filing a lawsuit against Uniify, Uniify hereby assigns, transfers, and conveys all rights, claims, causes of action, and benefits (the "Assigned Claims") it has or may come to have under applicable law pursuant to the Staffing Contract, Funding Agreement, or FEMA Contracts against Earthwrx, SLSCO and any of Earthwrx or SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations, arising out of or in any way

related to collection of monies due to Uniify and Gore under the Staffing Contract and Funding Agreement. Further, Uniify agrees to fully cooperate with Gore in its collection efforts against SLSCO and any of SLSCO's sureties, subsidiaries, agents, successors in interest, administrators, or other corporate entities or parent corporations and in the prosecution of any suits or proceedings against the same or any other entity which is or may be obligated to pay the monies owed and will voluntarily testify on behalf of Gore, if so requested. Uniify agrees that its cooperation includes the reasonable provision of documents, electronic files, accounting records, and any other material necessary for Gore's collection efforts. Uniify agrees that Gore will have complete discretion and final authority in approval of any settlement agreements related to the Assigned Claims, even if it means that Uniify will not be paid in full or at all for its outstanding invoices to Earthwrx..

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct.
2. Uniify waives any conflicts of interest, whether true or perceived, with Gore or with the law firm of Taylor & Associates, Attorneys at Law, PL, in assigning its rights to Gore, to allow Taylor & Associates to pursue collection on the Assigned Claims to the fullest.
3. Gore is to receive all monies collected until it is paid in full for all total receivables under its Funding Agreement, with interest, and attorneys' fees from August 2018 through the conclusion of the collections

process. Following Gore's receipt of the total sum described, Uniify agrees that any monies collected will be paid to Uniify pursuant to the Staffing Contract until Uniify's net total receivables are collected, accounting for any payments made to Gore and interest accrued on Uniify's receivables, totaling \$1,267,658.05.

4. Uniify agrees to withdraw without prejudice its action against Earthwrx and James Young in the U.S. District Court for the Virgin Islands.

5. Uniify and Gore respectively warrant and represent that no promise or inducement has been offered or made except as herein set forth, that this Agreement contains the entire agreement between the Parties hereto, and that the terms of this Agreement are contractual and not a mere recital. Uniify and Gore respectively certify that this Agreement has been made after consultation with, and on the advice of, its respectively chosen attorneys, who have explained to it/them the nature and extent of the Parties' respective legal rights and the effect of the Agreement, and that this Agreement is executed without reliance upon any statement or representation of any other Party or its agents. Alternatively, Uniify and Gore certify that, if it chose not to engage an attorney to assist with the negotiation and execution of this Agreement, that it had the full opportunity to so engage an attorney and the decision to not engage counsel was a conscious and knowing decision.

6. Uniify agrees it will remain responsible for any and all independent attorneys' fees incurred with its own counsel.

7. This Agreement has been negotiated at arms-length between persons knowledgeable in the matters dealt with herein. Accordingly, the Parties agree that

any rule of law, legal decisions, or common law principles of similar effect that would require interpretation of any ambiguities in this Agreement against the party that drafted the Agreement is of no effect and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the intentions of the Parties hereto.

8. This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Florida for the purpose of any suit, action, proceeding, or judgment relating to or arising out of this Agreement.

9. The undersigned warrant and represent that they have carefully read and are fully informed, have full knowledge of and are fully satisfied with the terms, conditions and effects of this Agreement.

10. This Agreement constitutes the full and final agreement among the Parties with respect to the subject matter hereof and replaces all prior negotiations, proposed agreements and agreements, whether written or oral. The Parties further agree that this Agreement may not be altered, amended, modified, cancelled or terminated except by express written agreement duly executed by all of the Parties hereto.

11. The Parties agree that the prevailing party in any action to enforce this Agreement shall be entitled (both at trial and on appeal) to attorneys' fees, interest, costs and expenses of litigation.

12. The Parties agree that this Agreement is and shall remain confidential between the Parties hereto

and their respective officers, accountants, auditors, attorneys, liability insurers, and reinsurers. Confidentiality is a material consideration to the Parties.

13. The Parties further agree that this Agreement may be executed in any number of copies and may be signed in as many counterparts as may be convenient and the signature pages may be exchanged electronically or by facsimile. The text of this Agreement, together with accurate copies of the relevant Parties' signatures, shall have the force and effect of an original as between the Parties.

[Signature Page to Follow]

The undersigned have read this agreement and fully understand the contents of this document and swear under oath to the representations made above.

Gore & Associates Management
Company

Signature
Title: _____

Uniify of Puerto Rico

Terry L. Bee
Signature /s/ Terry L. Bee
Title: Pres/CEO,
UNIIFY of Puerto Rico

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EXHIBIT C

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION

Pursuant to §55-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purpose of forming a business corporation.

1. The name of the corporation is: Gore & Associates Management Company

2. The number of shares the corporation is authorized to issue is: 10,000 shares

These shares shall be: *(check either a or b)*

- a. all of one class, designated as common stock;
or
- b. divided into classes or series within a class as provided in the attached schedule, with the information required by N.C.G.S. Section 55-6-01.

3. The street address and county of the initial registered office of the corporation is:

Number and Street 2268 James B. Highway North
City, State, Zip Code Whiteville, NC 28472
County Columbus

4. The mailing address *if different from the street address* of the initial registered office is:

P.O. Box 1860, Whiteville, NC 28472

5. The name of the initial registered agent is: Randal Eugene Gore

6. Principal office information: *(must select either a or b.)*

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- a. X The corporation has a principal office.

The street address and county of the principal office of the corporation is:

Number and Street 2268 James B. Highway North
City, State, Zip Code Whiteville, NC 28472
County Columbus

The mailing address, *if different from the street address*, of the principal office of the corporation is:

P.O. Box 2860, Whiteville, NC 28472

- b. The corporation does not have a principal office.

7. Any other provisions, which the corporation elects to include, are attached.

8. The name and address of each incorporator is as follows:

Eugenia Gore
2770 Bella Coola Road
Lake Waccamaw, NC 28450

9. These articles will be effective upon filing, unless a date and/or time is specified: _____

This the 17th day of November, 2005

Gore & Associates Management Company

/s/ Eugenia Gore

Signature

Eugenia Gore, Incorporator

Type or Print Name and Title

NOTES:

1. Filing fee is \$125. This document must be filed with the Secretary of State.

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EXHIBIT D

Government of Puerto Rico
Department of State
Transaction Date: 20-Mar-2018
Register No: 406809
Order No: 1370488

Government of Puerto Rico
Certificate of Formation of a
Limited Liability Company

Article I – Limited Liability Company Name

The name of the Domestic Limited Liability Company is: EARTHWRX L.L.C. Desired term for the entity name is: L.L.C.

Article II – Principal Office and Resident Agent

Its principal office in the Government of Puerto Rico will be located at:

Street Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Mailing Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Phone (541) 659-6169

The name, street and mailing address of the Resident Agent in charge of said office is:

Name Northwest Registered Agent, LLC.

Street Address 165 Ponce de Leon Ave. STE 201, SAN
JUAN, PR, 00917

Mailing Address 165 Ponce de Leon Ave. STE 201, SAN
JUAN, PR, 00917

Email info@northwestregisteredagent.com

Phone (509) 768-2249

Article III – Nature of Business

This is a For Profit entity whose nature of business or purpose is as follows:

CONSTRUCTION SERVICES

Article IV – Authorized Persons

The name, street and mailing address of each Authorized Person is as follows:

Name YOUNG, JAMES A

Street Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Mailing Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Email alyssa@apiprocessing.com

Name OWENS, BOBBY S

Street Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Mailing Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Email ALYSSA@APIPROCESSING.COM

Article V – Administrators

If the faculties of the Authorized Persons will end upon the filing of the Certificate of Formation of a Limited Liability Company, the names, physical and mailing address of the persons who will act as Administrators until the first annual meeting of the members or until their successors replace them are as follows:

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Name YOUNG, JAMES A

Title MEMBER

Street Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Mailing Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Email alyssa@apiprocessing.com

Expiration Date Indefinite

Name OWENS, BOBBY S

Title MEMBER

Street Address 5900 AVE. ISLA VERDE STE 2,
GUAYNABO, PR, 00970

Mailing Address 5900 AVE. ISLA VERDE STE 2,
CAROLINA, PR, 00979

Email ALYSSA@APIPROCESSING.COM

Expiration Date Indefinite

Article VI – Terms of Existence

The term of existence of this entity will be: Perpetual

The date from which the entity will be effective is:
20-Mar-2018

Supporting Documents

Document

Date Issued

STATEMENT UNDER PENALTY OF PERJURY

IN WITNESS WHEREOF, I/We YOUNG, JAMES A,
the undersigned, for the purpose of forming a limited
liability company pursuant to the laws of Puerto Rico,
hereby swear that the facts herein stated are true.
This 20th day of March, 2018.

95a

EXHIBIT E

Frequency of Update: WEEKLY

Current Date: 06/09/2025

Source: COUNTY CLERK

Owner Information

Owner(s): JAMES YOUNG

Absentee Owner: SITUS FROM SALE (ABSENTEE)

Property Address: 512 HOLLY ST MEDFORD, OR
97501-2419

Mailing Address: 505 ROCK CREEK RD
GOLD HILL, OR 97525-9675

Property Information

County: JACKSON

Assessor's Parcel Number: 10393635

Property Type: SINGLE FAMILY RESIDENCE -
TOWNHOUSE

Land Use: SINGLE FAMILY
RESIDENCE

Building Square Feet: 1745

Sale Price: \$77,900.00

Deed Type: GRANT DEED

Document Type: SPECIAL WARRANTY DEED

Type of Transaction: CONSTRUCTION LOAN

Mortgage Amount: \$62,320.00

Mortgage Term: 1 YEARS

Mortgage Deed Type: DEED OF TRUST

Mortgage Date: 10/18/2016

Mortgage Due Date: 10/16/2017

Lender Name: SACKS STEPHEN

Address: ASHLAND, OR 97520-9736

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Recording Date: 10/20/2016

Document Number: 34607

FIDELITY NATIONAL TITLE CO/OR

Private Party Lender: YES

Construction Loan: CONSTRUCTION LOAN

Construction Type: SALE IS A RE-SALE

Purchase Payment: MORTGAGE

Foreclosure Sale: REO SALE - SALE FROM
GOVERNMENT TO PRIVATE PARTY

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

End of Document © 2025 Thomson Reuters.

No claim to original U.S. Government Works.

To Summary

Real Property Transaction Record

Source Information

Filings Current Through: 05/29/2025

Transaction Information

Transaction Date: 06/06/2005

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EXHIBIT F

Land Use: SINGLE FAMILY
RESIDENCE

Building Square Feet: 1146

TAX ASSESSOR RECORD may be available for this property. The record contains information from the office of the local real property tax assessor office. In addition to identifying the current owner, the record may include tax assessment information, the legal description, and property characteristics. Additional charges may apply.

TRANSACTION HISTORY REPORT may be available for this property. The report contains details about all available transactions associated with this property. The report may include information about sales, ownership transfers, refinances, construction loans, 2nd mortgages, or equity loans based on recorded deeds. Additional charges may apply.

Real Property Transaction Record

Source Information

Filings Current Through: 05/23/2025
County Last Updated: 06/05/2025
Frequency of Update: WEEKLY
Current Date: 06/09/2025
Source: COUNTY CLERK

Owner Information

Owner(s): BOBBY OWENS
Ownership Rights: RIGHT OF SURVIVORSHIP
Absentee Owner: SITUS FROM SALE (OCCUPIED)

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Property Address: 624 ROCK CREEK RD
GOLD HILL, OR
97525-9628

Mailing Address: 624 ROCK CREEK RD
CENTRAL POINT, OR 97502

Property Information

County: JACKSON
Assessor's Parcel Number: 10157893

Transaction Information

Transaction Date: 04/14/2011
Seller Name: DEUTSCHE BK N TRUST 2005-W4
Sale Price: \$82,000.00
Deed Type: GRANT DEED
Document Type: SPECIAL WARRANTY DEED
Type of Transaction: RESALE
Recording Date: 05/12/2011
Document Number: 14550 SERVICELINK
Construction Type: SALE IS A RE-SALE
Purchase Payment: CASH
Foreclosure Sale: REO SALE –
SALE FROM GOVERNMENT TO PRIVATE PARTY

99a

EXHIBIT G

Government of Puerto Rico
Department of State

Transaction Date: 18-Nov-2017

Register No: 401592

Order No: 1338574

Government of Puerto Rico
Certificate of Formation of a
Limited Liability Company

Article I – Limited Liability Company Name

The name of the Domestic Limited Liability Company
is: UNIIFY OF PUERTO RICO LLC

Desired term for the entity name is: LLC

Article II – Principal Office and Resident Agent

Its principal office in the Government of Puerto Rico
will be located at:

Street Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Mailing Address 8734 Ortega Park Dr., NAVARRE,
FL, 32566

Phone(850) 499-0787

The name, street and mailing address of the Resident
Agent in charge of said office is:

Name Bee, Terry

Street Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Mailing Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Email Terry.Bee@uniify.com

Phone(850) 499-0787 Article

100a

Article III – Nature of Business

This is a For Profit entity whose nature of business or purpose is as follows:

Temporary labor provider

Article IV – Authorized Persons

The name, street and mailing address of each Authorized Person is as follows:

Name Bee, Terry

Street Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Mailing Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Email Terry.Bee@uniify.com

Article V – Administrators

If the faculties of the Authorized Persons will end upon the filing of the Certificate of Formation of a Limited Liability Company, the names, physical and mailing address of the persons who will act as Administrators until the first annual meeting of the members or until their successors replace them are as follows:

Name Bee, Terry

Title President

Street Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Mailing Address 530 Ave Ponce De Leon, Suite 1,
SAN JUAN, PR, 00901

Email Terry.Bee@uniify.com

Expiration Date Indefinite

101a

Article VI – Terms of Existence

The term of existence of this entity will be: Perpetual

The date from which the entity will be effective is:
18-Nov-2017

Supporting Documents

Document Date Issued

STATEMENT UNDER PENALTY OF PERJURY

IN WITNESS WHEREOF, I/We Bee, Terry, the undersigned, for the purpose of forming a limited liability company pursuant to the laws of Puerto Rico, hereby swear that the facts herein stated are true. This 18th day of November, 2017.

102a

EXHIBIT H

Louisiana

Secretary of State

Nancy Landry

(<https://www.sos.la.gov/Pages/default.aspx>)

Search for Louisiana Business Filings

Buy Certificates and Certified Copies

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Print Detailed Record

Name UNIFY STRATEGIC BUSINESS
SOLUTIONS, LLC

Type Limited Liability Company

City LAKE CHARLES

Status Inactive

Previous Names

Business: UNIFY STRATEGIC BUSINESS
SOLUTIONS, LLC

Charter Number: 42153064K

Registration Date: 1/28/2016

Domicile Address

1869 EASY STREET
LAKE CHARLES, LA 70606

Mailing Address

1869 EASY STREET
LAKE CHARLES, LA 70606

103a

Status

Status: Inactive

Inactive Reason: Action By Secretary of State

File Date: 1/28/2016

Last Report Filed: 9/5/2019

Type: Limited Liability Company

Registered Agent(s)

Agent: CORPORATION SERVICE COMPANY
Address 1: 450 LAUREL STREET, 8TH FLOOR
City, State, Zip: BATON ROUGE, LA 70801

Appointment

Date: 1/28/2016

Officer(s)

Additional Officers: No

Officer: TERRY L. BEE

Title: Member

Address 1: 1869 EASY STREET

City, State, Zip: LAKE CHARLES, LA 70606

Officer: JOSEPH P. MEYER

Title: Member

Address 1: 1869 EASY STREET

City, State, Zip: LAKE CHARLES, LA 70606

Amendments on File (1)

Description Revoked

Date 5/16/2022

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EXHIBIT I

[Logo: LexisNexis Risk Solutions]

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Your DPPA Permissible Use: Civil, Criminal, Administrative, or Arbitral Proceedings

Your GLBA Permissible Use: Use by persons Holding a Legal or Beneficial Interest Relating to the Consumer

Your DMF Permissible Use: No Permissible Purpose

105a

Comprehensive Report

Date: 02/21/25

Reference Code: 2924.0003

Report processed by:

TAYLOR NELSON PL

20 3RD ST SW STE 209

WINTER HAVEN, FL 33880

863-875-6950 Main Phone

Subject Information

(Best Information for Subject)

Name: JOSEPH MEYER

Age: 0

SSN:

AKAs

(Names Associated with Subject)

JOSEPH MEYER

SSN:

Indicators

Bankruptcy: No

Property: No

Corporate Affiliations: Yes

Comprehensive Report Summary:

Bankruptcies: None Found

Liens and Judgments: None Found

UCC Filings: None Found

Phones Plus: None Found

Email Address: None Found

People at Work: 1 Found

Driver's License: None Found

Address(es) Found:

106a

1 Verified and 0 Non-Verified Found

Possible Properties Owned: None Found

Motor Vehicles Registered: None Found

Watercraft: None Found

FAA Certifications: None Found

FAA Aircrafts: None Found

Possible Criminal Records: None Found

Sexual Offenses: None Found

Professional Licenses: None Found

Voter Registration: None Found

Hunting/Fishing Permit: None Found

Concealed Weapons Permit: None Found

Possible Associates: None Found

Possible Relatives:

1st Degree - None Found

2nd Degree - None Found

3rd Degree - None Found

Neighbors:

1st Neighborhood - 1 Found

Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of fraud or deception)

[None Found]

Address Summary:

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

Active Address(es):

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

107a

Name Associated with Address:

JOSEPH MEYER

Current Residents at Address:

ROBERT LEE LWHETLEY

Property Ownership Information for this Address

Property:

Parcel Number - 01333693

Owner Name: SAM ISTRE CONSTRUCTION

Property Address: - 1869 EASY ST, LAKE CHARLES,
LA 70605-0418, CALCASIEU COUNTY

Owner Address: PO BOX 4281, LAKE CHARLES, LA
70606-4281, CALCASIEU COUNTY

Subdivision Name - EASY ST SUB

Total Market Value - \$18,600

Assessed Value - \$2,790

Improvement Value - \$18,600

Legal Description - 1869 EASY ST SUBDIV
WILLIAMSBERG LIGHT INDUSTRIAL, BLOCK,
LOT 0002, UNIT 01, STRT 35-10-09-01

Data Source - B

Neighborhood Profile (2010 Census)

Average Age: 32

Median Household Income: \$87,109

Median Owner Occupied Home Value: \$159,167

Average Years of Education: 14

Previous And Non-Verified Address(es): [None Found]

Bankruptcies: [None Found]

Liens and Judgments: [None Found]

UCC Filings: [None Found]

108a

Phones Plus: Phone Finder Ultimate [None Found]

Email Address: [None Found]

People at Work:

Maximum 50 People at Work records returned

Name: JOSEPH P MEYER

Title: MEMBER

SSN:

Company: UNIIFY STRATEGIC BUSINESS
SOLUTIONS, LLC

Phone: 210-669-7819

FEIN:

Dates: Jan 11, 2018 - Oct 15, 2024

Driver's License Information: [None Found]

Possible Properties Owned by Subject: [None Found]

Motor Vehicles Registered To Subject: [None Found]

Watercraft: [None Found]

FAA Certifications: [None Found]

FAA Aircrafts: [None Found]

Possible Criminal Records: [None Found]

Sexual Offenses: [None Found]

Professional License(s): [None Found]

Voter Registration: [None Found]

Hunting/Fishing Permit: [None Found]

Concealed Weapons Permit: [None Found]

Firearms and Explosives: [None Found]

Possible Associates: [None Found]

Possible Relatives: [None Found]

Neighbors: Neighborhood:

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

109a

ROBERT LEE LWHETLEY DOB: 4/xx/1967

466-31-xxxx issued in Texas between 1/1/1975 and
12/31/1975

Address(es):

1857 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (2013 - Sep 2024)

Residents:

SHARON FAYE ISTRE DOB: 8/xx/1957

439-11-xxxx issued in Louisiana between 1/1/1973
and 12/31/1973

SAMUEL JUDE ISTRE DOB: 9/1955

433-02-xxxx issued in Louisiana between 1/1/1971
and 12/31/1972

Source Information:

All Sources 1 Source Document(s)

Historical Person Locator 1 Source Document(s)

Comprehensive Report

Date: 02/21/25

Reference Code: 2924.0003

Report processed by:

TAYLOR NELSON PL

20 3RD ST SW STE 209

WINTER HAVEN, FL 33880

863-875-6950 Main Phone

Subject Information

(Best Information for Subject)

Name: TERRY BEE

Age: 0

SSN:

AKAs

110a

(Names Associated with Subject)

TERRY BEE

SSN:

Indicators

[Logo: LexisNexis Risk Solutions]

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Important: The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

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Your DPPA Permissible Use: Civil, Criminal, Administrative, or Arbitral Proceedings

Your GLBA Permissible Use: Use by persons Holding a Legal or Beneficial Interest Relating to the Consumer

111a

Your DMF Permissible Use:

No Permissible Purpose

Bankruptcy: No

Property: No

Corporate Affiliations: Yes

Comprehensive Report Summary:

Bankruptcies: None Found

Liens and Judgments: None Found

UCC Filings: None Found

Phones Plus: None Found

Email Address: None Found

People at Work: 2 Found

Driver's License: None Found

Address(es) Found: 1 Verified and
0 Non-Verified Found

Possible Properties Owned: None Found

Motor Vehicles Registered: None Found

Watercraft: None Found

FAA Certifications: None Found

FAA Aircrafts: None Found

Possible Criminal Records: None Found

Sexual Offenses: None Found

Professional Licenses: None Found

Voter Registration: None Found

Hunting/Fishing Permit: None Found

Concealed Weapons Permit: None Found

Possible Associates: None Found

Possible Relatives: 1st Degree - None Found

2nd Degree - None Found

3rd Degree - None Found

112a

Neighbors:

1st Neighborhood - 1 Found

Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of fraud
or deception)

[None Found]

Address Summary:

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

Active Address(es):

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

Name Associated with Address:

TERRY BEE

Current Residents at Address:

ROBERT LEE LWHETLEY

Property Ownership Information for this Address

Property:

Parcel Number - 01333693

Owner Name: SAM ISTRE CONSTRUCTION

Property Address: - 1869 EASY ST, LAKE CHARLES,
LA 70605-0418, CALCASIEU COUNTY

Owner Address: PO BOX 4281, LAKE CHARLES, LA
70606-4281, CALCASIEU COUNTY

Subdivision Name - EASY ST SUB

Total Market Value - \$18,600

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Legal Description - 1869 EASY ST SUBDIV
WILLIAMSBERG LIGHT INDUSTRIAL, BLOCK ,
LOT 0002, UNIT 01, STRT 35-10-09-01

113a

Data Source - B

Neighborhood Profile (2010 Census)

Average Age: 32

Median Household Income: \$87,109

Median Owner Occupied Home Value: \$159,167

Average Years of Education: 14

Previous And Non-Verified Address(es): [None Found]

Bankruptcies: [None Found]

Liens and Judgments: [None Found]

UCC Filings: [None Found]

Phones Plus: Phone Finder Ultimate [None Found]

Email Address: [None Found]

People at Work:

Maximum 50 People at Work records returned

Name: TERRY L BEE

Title: MEMBER

SSN:

Company: UNIIFY STRATEGIC BUSINESS
SOLUTIONS, LLC

Phone: 210-669-7819

FEIN:

Dates: Jan 11, 2018 - Oct 15, 2024

Name: TERRY BEE

Title: MEMBER

SSN:

Company: UNIIFY STRATEGIC BUSINESS
SOLUTIONS, LLC

Phone: 210-669-7819

FEIN:

Dates: Jan 28, 2016 - Dec 15, 2017

Driver's License Information: [None Found]

Possible Properties Owned by Subject: [None Found]

114a

Motor Vehicles Registered To Subject: [None Found]

Watercraft: [None Found]

FAA Certifications: [None Found]

FAA Aircrafts: [None Found]

Possible Criminal Records: [None Found]

Sexual Offenses: [None Found]

Professional License(s): [None Found]

Voter Registration: [None Found]

Hunting/Fishing Permit: [None Found]

Concealed Weapons Permit: [None Found]

Firearms and Explosives: [None Found]

Possible Associates: [None Found]

Possible Relatives: [None Found]

Neighbors:

Neighborhood:

1869 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (Aug 2020 - Feb 2021)

ROBERT LEE LWHETLEY DOB: 4/xx/1967

466-31-xxxx issued in Texas between 1/1/1975 and
12/31/1975

Address(es):

1857 EASY ST, LAKE CHARLES, LA 70605-0418,
CALCASIEU COUNTY (2013 - Sep 2024)

Residents:

SHARON FAYE ISTRE DOB: 8/xx/1957

439-11-xxxx issued in Louisiana between 1/1/1973
and 12/31/1973

SAMUEL JUDE ISTRE DOB: 9/1955

433-02-xxxx issued in Louisiana between 1/1/1971
and 12/31/1972

Source Information:

All Sources 1 Source Document(s)

Historical Person Locator 1 Source Document(s)

115a

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Case No. 3:19-cv-01650

GORE AND ASSOCIATES MANAGEMENT COMPANY, INC.,

Plaintiff,

v.

SLSCO LTD. and HARTFORD
FIRE INSURANCE COMPANY,

Defendants.

MEMORANDUM IN COMPLIANCE WITH
COURT ORDER OF JULY 16, 2025

TO THE HONORABLE COURT:

COME NOW defendants SLSCO Ltd. and Hartford Fire Insurance Company (jointly, “Defendants”), through their undersigned counsel, and respectfully submit this memorandum in compliance with the Court’s Order of July 16, 2025 (ECF No. 107), requesting the Court to recommend dismissal of this action on the grounds that plaintiff Gore and Associates Management Company, Inc. (“Gore”) has failed to provide sufficient evidence to establish the existence of subject-matter jurisdiction, for the following reasons:

I. INTRODUCTION

On February 13, 2025, the U.S. Court of Appeals for the First Circuit, acting *sua sponte*, concluded that the

existing record lacked sufficient information to determine whether subject-matter jurisdiction existed.¹ Accordingly, the First Circuit directed Gore to submit details regarding the citizenship of Earthwrx, LLC, Uniify Strategic Business Solutions, LLC, and Uniify of Puerto Rico, LLC, along with any other information relevant to jurisdiction.² This inquiry was prompted by the fact that “the assignments contained in the appellate record indicate that Earthwrx, LLC and Uniify of Puerto Rico, LLC may retain some financial interest in the outcome of this litigation.”³

Accordingly, on February 24, 2025, Gore filed its response to the First Circuit’s order, and on March 6, 2025, Defendants submitted their response to Gore’s filing. However, the First Circuit remained unsatisfied with the information provided regarding its subject-matter jurisdiction. On April 22, 2025, the First Circuit issued a second Order, concluding that Gore had failed to present sufficient evidence to establish the citizenship of the assigning entities—an essential element for determining whether diversity jurisdiction exists.⁴ As a result, the First Circuit remanded the case to the district court for factfinding and a determination as to whether the assignments allegedly made to Gore by Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, and Earthwrx, LLC were improper or collusive attempts to invoke federal jurisdiction.⁵

¹ Case No. 23-01429, Order of Court entered on February 13, 2025, at 1.

² *Id.* at 2

³ *Id.* at 1.

⁴ Case No. 23-01429, Order of Court entered on April 22, 2025.

⁵ *Id.* at 2-4.

Following remand, the District Court held a status conference on May 20, 2025, during which Gore was ordered to submit information regarding the citizenship of Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, and Earthwrx, LLC.⁶ The District Court also authorized Defendants to conduct limited jurisdictional discovery. On June 9, 2025, Gore filed a document titled “Proof of Jurisdiction,” accompanied by several attachments purporting to establish the assignors’ citizenship.⁷ Defendants then served limited written jurisdictional discovery on Gore.⁸ A subsequent status conference was held on July 16, 2025, at which the District Court directed both parties to file memoranda addressing the issue of subject-matter jurisdiction.⁹

Having reviewed Gore’s so-called “Proof of Jurisdiction” and its responses to written discovery, Defendants respectfully submit that Gore has failed to provide any factual basis to support this Court’s subject-matter jurisdiction. Because Gore has not established the citizenship of the assignors by a preponderance of the evidence, there is no need to examine the motives behind the assignments. Furthermore, and in any case, the evidence turned up during discovery also tends to support the conclusion that the assignment was motivated by improper or collusive intent. Accordingly, the District Court should recommend to the First Circuit that this case be dismissed for lack of subject-matter jurisdiction.

⁶ Case No. 19-cv-01650, ECF No. 101.

⁷ Case No. 19-cv-01650, ECF No. 103.

⁸ Case No. 19-cv-01650, ECF No. 105.

⁹ Case No. 19-cv-01650, ECF No. 107.

II. APPLICABLE LAW

“A court without jurisdiction is like a king without a kingdom: both are powerless to act.” *Lawless v. Steward Health Care Sys., LLC*, 894 F.3d 9, 16 (1st Cir. 2018). When a legitimate question about federal subject-matter jurisdiction exists, “an appellate court has an unflagging obligation to inquire *sua sponte* into its own jurisdiction.” *Watchtower Bible & Tract Soc. of New York, Inc. v. Colombani*, 712 F.3d 6, 10 (1st Cir. 2013). In remanding the matter to the District Court, the First Circuit thus articulated the guiding principles for the jurisdictional inquiry, grounded in the concern that the assignment of claims to Gore may have been a collusive attempt to improperly invoke federal jurisdiction—conduct expressly prohibited under 28 U.S.C. § 1359.¹⁰

First, the U.S. Court of Appeals emphasized that the citizenship of a limited liability company (LLC) is determined by the citizenship of all its members at the time the suit was commenced. *Berkley Nat’l Ins. Co. v. Atl.-Newport Realty LLC*, 93 F.4th 543, 549 (1st Cir. 2024); *Universal Truck & Equip. Co. v. Southworth-Milton, Inc.*, 765 F.3d 103, 109 (1st Cir. 2014).¹¹ Accordingly, “[i]f the members are themselves unincorporated associations, then those members’ citizenships are relevant too.” *BRT Mgmt. LLC v. Malden Storage LLC*, 68 F.4th 691, 696 (1st Cir. 2023). This “process is ‘iterative,’ and a party must ‘trace the citizenship of any member that is an unincorporated association through however many layers of members or partners there may be.” *Id.* (citing *D.B. Zwirn*

¹⁰ Case No. 23-01429, Order of Court entered on April 22, 2025, at 1-2.

¹¹ *Id.* at 2.

Special Opportunities Fund, L.P. v. Mehrotra, 661 F.3d 124, 126-127 (1st Cir. 2011)).

Second, the U.S. Court of Appeals noted that Gore bears the burden of proving the citizenship of the relevant LLC members by a preponderance of the evidence. *Aponte-Dávila v. Mun. of Caguas*, 828 F.3d 40, 46-47 (1st Cir. 2016).¹² In this context, citizenship is determined by domicile at the time the suit was filed, “which can be established by demonstrating that the individual is physically present in the state and has an intent to remain indefinitely.” *García Pérez v. Santaella*, 364 F.3d 348, 350 (1st Cir. 2004). Courts typically consider several factors indicating the extent of a party’s ties to the purported domicile, including:

current residence; voting registration and voting practices; location of personal and real property; location of brokerage and bank accounts; membership in unions, fraternal organizations, churches, clubs and other associations; place of employment or business; driver's license and other automobile registration; [and] payment of taxes. . . .

Id. at 351. *See also Toste Farm Corp. v. Hadbury, Inc.*, 70 F.3d 640, 642 (1st Cir. 1995) (explaining that the party invoking diversity jurisdiction bears the burden of demonstrating complete diversity).

Third and finally, 28 U.S.C. § 1359 dictates the court “shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.” 28 U.S.C. § 1359.¹³

¹² *Id.*

¹³ *Id.* at 2-3.

“Transfers or assignments that have the effect of creating federal jurisdiction raise a red flag and, thus, need to be examined with care.” *McCulloch v. Vélez*, 364 F.3d 1, 6 (1st Cir. 2004). An assignment may be colorable and lacking any reality “when a substantial interest is retained, and little more than the control over the litigation is transferred, . . . particularly when the motivation for the assignment seems to be the desire to create diversity of citizenship jurisdiction.” 13F Charles A. Wright & Arthur R. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 3639 (3d ed. 2024).

III. ARGUMENT

A. Gore’s submission was insufficient to prove the citizenship of Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, and Earthwrx, LLC

In its April 22nd Order, the U.S. Court of Appeals explained that if Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, or Earthwrx, LLC, was of completely diverse citizenship from Defendants, there would be “a sufficient basis to conclude, as to that entity, that the assignment of its claims to Gore was not a collusive or improper attempt to invoke federal jurisdiction, since in that situation federal jurisdiction could have been invoked under title 28, section 1332(a) even without the assignment.”¹⁴ However, “if the citizenship of Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, or Earthwrx, LLC, is not diverse from one or more of the defendants, the circumstances surrounding that entity’s assignment of claims to Gore and the motive for the assignment must necessarily be probed for possible collusion to create

¹⁴ *Id.* at 2 (citing *Steele v. Hartford Fire Ins. Co.*, 788 F.2d 441, 445 (7th Cir. 1986)).

diversity jurisdiction where it would not otherwise have existed.”¹⁵

Defendants maintain that establishing the assignors’ citizenship is a threshold requirement of the April 22nd First Circuit Order; in the absence of proof of complete diversity, there is no need to proceed to the second step of evaluating potential collusion. And as discussed below, Gore’s submission fails to establish the citizenship of the assignors by a preponderance of the evidence, thereby eliminating the need to proceed to the second step of the analysis.

Consequently, Gore’s submission is insufficient to support subject-matter jurisdiction.

1. Citizenship of Earthwrx, LLC

Gore asserts that Earthwrx, LLC –an entity that allegedly assigned its claims to Gore– is a Puerto Rico limited liability company.¹⁶ While Defendants dispute the legality of the assignment, they do not contest Earthwrx, LLC’s place of formation, as confirmed by the Puerto Rico Department of State’s Certificate of Formation.¹⁷ However, as the First Circuit has made clear, the place of formation alone is insufficient for determining citizenship. Gore must establish, by a preponderance of the evidence, the citizenship of all members of Earthwrx, LLC at the time the suit was filed, including tracing through any layers of ownership. *BRT Mgmt. LLC*, 68 F.4th at 696.

¹⁵ *Id.* at 2-3.

¹⁶ Gore’s “Proof of Jurisdiction,” Case No. 19-cv-01650, ECF No. 103, at 4.

¹⁷ Exhibit D of Gore’s “Proof of Jurisdiction,” Case No. 19-cv-01650, ECF 103-4.

Gore has failed to meet this burden. It inconsistently claims that James A. Young and Bobby Owens are the sole members of Earthwrx, LLC,¹⁸ while previously asserting that “Earthwrx LLC . . . is wholly owned by 541, LLC, an Oregon limited liability company with its principal place of business located at 505 Rock Creek Road, Gold Hill, Oregon, 97525.”¹⁹ This contradiction undermines the credibility of Gore’s assertions and raises serious questions about the actual ownership structure of Earthwrx, LLC at the time the complaint was filed on July 6, 2019.

Moreover, the Certificate of Formation of Earthwrx, LLC submitted by Gore is dated March 20, 2018 –over a year before the filing date– and does not confirm the membership status as of July 2019.²⁰ Gore has not provided any contemporaneous documentation or admissible evidence demonstrating that Mr. Young and Mr. Owens were the only members of Earthwrx, LLC at the relevant time. Nor has Gore shown that 541, LLC was not a member or owner of Earthwrx, LLC during that period. Thus, Gore has not provided reliable evidence identifying Earthwrx, LLC’s members as of the filing date.

Gore also attempts to establish the domiciles of Mr. Young and Mr. Owens in Oregon through third-party asset reports.²¹ Defendants object to these reports as inadmissible hearsay and unauthenticated under Fed.

¹⁸ Gore’s “Proof of Jurisdiction,” Case No. 19-cv-01650, ECF No. 103, at 4.

¹⁹ Appellant’s Response to Order of Court Entered on February 13, 2025, filed on February 24, 2025, Case No. 23-01429, at 4.

²⁰ See Complaint, Case No. 19-cv-01650, ECF No. 1.

²¹ Exhibits E & F of Gore’s “Proof of Jurisdiction,” Case No. 19-cv-01650, ECF Nos. 103-5 & 103-6.

R. Evid. 801, 802, and 901. Even if considered, the reports fail to satisfy the legal standard for establishing domicile, which requires evidence of both physical presence and intent to remain indefinitely. *Garcia Pérez*, 364 F.3d at 350. Courts typically consider factors such as: residence; voting registration and voting practices; location of personal and real property; location of brokerage and bank accounts; membership in unions, fraternal organizations, churches, clubs and other associations; place of employment or business; driver's license and other automobile registration; and payment of taxes. *Id.* at 350-351. Gore's submission lacks any such corroborating evidence.

In sum, Gore has failed to establish the citizenship of Earthwrx, LLC as of the date the complaint was filed. It has not demonstrated that Mr. Young and Mr. Owens were members of Earthwrx, LLC, that they were domiciled in Oregon, or that Earthwrx had no other members. It remains unclear whether 541, LLC owned Earthwrx, or whether any purported members were domiciled in Puerto Rico, as suggested by the addresses listed in the Certificate of Formation.²² Gore's assertions are speculative and unsupported by admissible evidence, and therefore fail to establish Earthwrx, LLC's citizenship by a preponderance of the evidence.

2. Citizenship of Uniify of Puerto Rico, LLC,
and Uniify Strategic Business Solutions,
LLC

Gore asserts that Uniify of Puerto Rico, LLC –an entity that allegedly assigned its claims to Gore– is a Puerto Rico limited liability company wholly owned by

²² Exhibit D of Gore's "Proof of Jurisdiction," Case No. 19-cv-01650, ECF No. 103-4, at 2-3.

Uniify Strategic Business Solutions, LLC, which Gore claims is a Louisiana limited liability company.²³ As with Earthwrx, LLC, Defendants contest the legality of the assignments but do not dispute the place of formation of either entity. However, the place of formation is not determinative of citizenship. The relevant inquiry requires Gore to establish, by a preponderance of the evidence, the citizenship of all members of each LLC at the time the complaint was filed, including tracing through any layers of ownership. *BRT Mgmt. LLC*, 68 F.4th at 696.

Gore alleges that Uniify of Puerto Rico, LLC is wholly owned by Uniify Strategic Business Solutions, LLC and supports this claim with a Certificate of Formation issued by the Puerto Rico Department of State.²⁴ However, that document does not identify the members of Uniify of Puerto Rico, LLC, nor does it confirm the ownership structure at the time of filing. As such, Gore has failed to provide any admissible evidence establishing that Uniify Strategic Business Solutions, LLC was the sole member of Uniify of Puerto Rico, LLC.

Assuming, arguendo, that Uniify Strategic Business Solutions, LLC is the sole member of Uniify of Puerto Rico, LLC, Gore then relies on a search of the Louisiana Secretary of State's online business directory, which allegedly lists Terry L. Bee and Joseph P. Meyer as members in a report dated September 5,

²³ Gore's "Proof of Jurisdiction," Case No. 19-cv-01650, ECF No. 103, at 5.

²⁴ Exhibit G of Gore's "Proof of Jurisdiction", Case No. 19-cv-01650, ECF 103-7.

2019.²⁵ However, Gore has not submitted any certified documentation confirming that Mr. Bee and Mr. Meyer were actual members of Uniify Strategic Business Solutions, LLC at the time the complaint was filed, nor has it shown that the LLC had no other members. The absence of such evidence renders Gore's claim speculative and insufficient under the applicable legal standard.

Finally, to establish Mr. Bee's and Mr. Meyer's domicile, Gore relies on third-party asset reports,²⁶ and alleges that "Terry L. Bee, now deceased, was domiciled at 1869 Easy Street, Lake Charles, Louisiana, 70605 at the time the lawsuit was filed,"²⁷ and "Joseph P. Meyer, shared the same domicile address as Terry L. Bee."²⁸ Defendants object to these reports as inadmissible hearsay and unauthenticated under FED. R. EVID. 801, 802, and 901. Even if considered, the reports fail to establish the individuals' physical presence and intent to remain in Louisiana indefinitely, as required under *García Pérez v. Santaella*, 364 F.3d at 350-351. Moreover, the reports contain disclaimers explicitly stating that the data may be inaccurate, incomplete, or outdated, and should not be relied upon without independent verification.²⁹

²⁵ Exhibit H of Gore's "Proof of Jurisdiction", Case No. 19-cv-01650, ECF 103-8.

²⁶ Exhibit I of Gore's "*Proof of Jurisdiction*," Case No. 19-cv-01650, ECF No. 103-9.

²⁷ Gore's "*Proof of Jurisdiction*," Case No. 19-cv-01650, ECF No. 103, at 5.

²⁸ Gore's "*Proof of Jurisdiction*," Case No. 19-cv-01650, ECF No. 103, at 5.

²⁹ The asset reports clearly state:

Notably, Gore has not provided any evidence regarding the date of Mr. Bee's death or the succession of his membership interest, nor has it clarified whether Mr. Bee or Mr. Meyer were domiciled in Louisiana or another jurisdiction, such as Puerto Rico, as suggested by the address listed for Mr. Bee in Uniify of Puerto Rico, LLC's Certificate of Formation.³⁰

Therefore, Gore failed to establish the citizenship of Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC as of the date the complaint was filed. It has not demonstrated that Uniify of Puerto Rico, LLC was wholly owned by Uniify Strategic Business Solutions, LLC, that Mr. Bee and Mr. Meyer were members of the latter at the relevant time, that they were domiciled in Louisiana, or that no other members existed. The evidence submitted is speculative, internally inconsistent, and inadmissible under the Federal Rules of Evidence.

The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

Exhibit I of Gore's "*Proof of Jurisdiction*," Case No. 19-cv-01650, ECF No. 103-9, at 2 & 6 (emphasis supplied).

³⁰ Exhibit G of Gore's "*Proof of Jurisdiction*," Case No. 19-cv-01650, ECF No. 103-7, at 2-3.

Accordingly, Gore has not met its burden to establish subject-matter jurisdiction based on diversity.

B. Gore's Responses to Written Discovery Confirms Lack of Citizenship Verification Efforts and Raise Questions on the Assignments

Under the First Circuit Order of April 22, 2025, the jurisdictional inquiry under 28 U.S.C. § 1359 involves a two-step process: (i) determine whether the assignor is completely diverse from the defendants, and, if not, (ii) evaluate whether the assignment was nevertheless collusive. Because Gore has failed to establish the assignors' citizenship, the inquiry ends at step one. Without proof of diversity, there is no legal basis to examine the motive behind the assignments. *See, e.g., Tanzymore v. Bethlehem Steel Corp.*, 457 F.2d 1320, 1324 n.5 (3rd Cir. 1972) (noting that “[a] naked averment that one is a ‘domiciliary’ or a ‘resident’ of a state is insufficient.”).

While the District Court should recommend dismissal of this case for lack of subject-matter jurisdiction without proceeding to evaluate the motive behind the assignments, even if the Court were to reach the second step of the jurisdictional inquiry, the record raises substantial concerns about the validity and propriety of the purported assignments for purposes of federal jurisdiction.

The assignment agreements submitted by Gore in its so-called “Proof of Jurisdiction” and throughout the case are facially deficient. These documents are incomplete, lack execution dates, and omit the exhibits

referenced in their recitals.³¹ Under Puerto Rico law, such agreements are unenforceable against third parties unless they bear a “date certain.” *See, e.g., Bldg. Maint. Serv. H.R. Exec. Bldg.*, 109 D.P.R. 656, 9 P.R. Offic. Trans. 876, 889 (1980) (when considering whether an assignment of credit is enforceable against third parties, the critical issue is whether it has a “date certain.”).

Moreover, the timing and circumstances of the assignments further support the inference of a tactical maneuver. The assignments were not executed until after Defendants moved to dismiss a related complaint filed by Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC in the U.S. District Court for the Virgin Islands – *Uniify of Puerto Rico, LLC, et al. v. Earthwrx, LLC et al.*, Case No. 1:19-cv-00005– for, among other things, failure to allege the citizenship of the parties.³² It was only after Defendants’ motion had been filed that Plaintiffs voluntarily dismissed that complaint and purportedly assigned their claims to Gore.³³ Notably, the assignment agreements expressly state that the assignors retained a financial interest in the litigation.³⁴

³¹ Exhibit B of Gore’s “*Proof of Jurisdiction*” lacks Gore’s signature. Case No. 19-cv-01650, ECF No. 103-2, at 5.

³² This Court can take judicial notice of the Memorandum of SLSCO, Ltd. and Hartford Fire Insurance Company in Support of Motion to Dismiss, and corresponding request for dismissal, filed on April 19, 2019, at ECF Nos. 13 and 14, in Case No. 19-cv-00005.

³³ This Court can take judicial notice of the Plaintiff’s Notice of Voluntary Dismissal, filed on June 5, 2019, at ECF No. 18, in Case No. 19-cv-00005.

³⁴ Section 3 of Exhibits A and B of Gore’s “*Proof of Jurisdiction*,” Case No. 19-cv-01650, ECF No. 103-1, at 3; ECF No. 103-2, at 3.

These facts raise serious concerns about the legitimacy of the assignments. *See, e.g., Harrell & Sumner Contracting Co. v. Peabody Petersen Co.*, 546 F.2d 1227, 1229 (5th Cir. 1977) (affirming a finding that an assignment was improper or collusive because the assignor retained a one-half interest in the proceeds of the litigation and “the reasons for the assignment were legal and tactical”).

And limited jurisdictional discovery confirms these concerns. An email dated April 22, 2019, shows Gore coordinating with Earthwrx, LLC “so my attorney can collect for us all,” clearly indicating a shared financial interest.³⁵ Additionally, Gore’s responses to Defendants’ requests for production confirm that it lacks any documents verifying the assignors’ citizenship or any efforts to do so.³⁶

Further, Gore has withheld a potentially relevant email dated May 21, 2019, involving Wendy Fisher, Esq., Scot McChain, Randy Gore, and Kristen Johnson, Esq., claiming it is privileged.³⁷ However, Mr. McChain was counsel of record for Uniify of Puerto Rico, LLC and Uniify Strategic Business Solutions, LLC in the Virgin Islands litigation and is a third party for purposes of privilege.³⁸ Communications with him should not be protected, and any assertion of privilege is improper. *See e.g., Llubes v. Uncommon Prods., LLC*, 663 F.3d 6, 24 (1st Cir. 2011) (the attorney-client privilege “protection ceases, or is often said to be ‘waived,’ when otherwise privileged communications

³⁵ Exhibit I of this Memorandum.

³⁶ Exhibits II of this Memorandum.

³⁷ Exhibit III of this Memorandum.

³⁸ This Court can take judicial notice of the Complaint, filed on January 25, 2019, at ECF No. 1, in Case No. 19-cv-00005.

are disclosed to a third party.”); *Mullins v. Dep’t of Lab. of Puerto Rico*, 269 F.R.D. 172, 174 (D.P.R. 2010) (a document that is determined to be protected by the work product doctrine may be discoverable if the opposing party shows a “substantial need’ for the document to prepare for its case and that the party cannot, without ‘undue hardship,’ secure a substantial equivalent) (citing Fed. R. Civ. P. 26(b)(3)(A)(ii)). Despite meeting and conferring under Local Rule 26 on July 31, 2025,³⁹ Gore has refused to produce the document and, on August 14, 2025, confirmed its intention not to do so.⁴⁰ Should the Court determine that the motive behind the assignments warrants further inquiry, or if the case proceeds without dismissal, Defendants reserve the right to compel production of this email.

In any event, the defects and deficiencies in the assignment documents underscore the importance of determining the assignors’ citizenship. As the First Circuit noted, “the claims asserted by Gore are alleged to have been assigned to it by nonparties Uniify of Puerto Rico, LLC, Uniify Strategic Business Solutions, LLC, and Earthwrx, LLC, whose citizenship is neither alleged in the complaint nor apparent from the record.”⁴¹ Indeed, the terms “citizen,” “citizenship,” and “domicile” appear nowhere in Gore’s First Amended Complaint, nor is there any reference to the citizenship or domicile of Gore’s assignors.⁴²

³⁹ Case No. 19-cv-01650, ECF No. 110.

⁴⁰ Exhibit IV of this Memorandum.

⁴¹ Case No. 23-01429, *Order of Court* entered on April 22, 2025, at 1.

⁴² Case No. 19-cv-01650, ECF No. 31.

The First Circuit gave Gore, as the party seeking to remain in federal court, ““a fair chance to put his best foot forward.” *McCulloch*, 364 F.3d at 7. In attempting to do so, however, Gore has offered only bare allegations and inadmissible, insufficient evidence. Simply put, Gore has failed to provide facts that would confirm the Court’s subject-matter jurisdiction.

IV. CONCLUSION

WHEREFORE, SLSCO Ltd. and Hartford Fire Insurance Company respectfully request that this Court: (i) find that the Court’s Order of July 16, 2025 (ECF No. 107), has been satisfied; and (ii) recommend dismissal of this action on the grounds that Gore and Associates Management Company, Inc., has failed to provide sufficient evidence to establish the existence of subject-matter jurisdiction. In the alternative, should the Court determine that the motive behind the assignments warrants further inquiry, Defendants respectfully request that the Court: (i) compel the disclosure of the May 21, 2019 email involving Wendy Fisher, Esq., Scot McChain, Randy Gore, and Kristen Johnson, Esq.; or (ii) conduct an in camera review of the email to determine whether it is protected by privilege.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on August 18, 2025

WE HEREBY CERTIFY that on this date, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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O'NEILL & BORGES LLC
*Counsel for SLSCO Ltd. and
Hartford Fire Insurance Company*
250 Muñoz Rivera Ave., Suite 800
San Juan, Puerto Rico 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

s/Salvador J. Antonetti-Stutts
Salvador J. Antonetti-Stutts
USDC No. 215002
salvador.antonetti@oneillborges.com

s/Jorge A. Candelaria-Serrano
Jorge A. Candelaria-Serrano
USDC No. 306004
jorge.candelaria@oneillborges.com

s/Annie Lorena Ramírez Hernández
Annie Lorena Ramírez Hernández
USDC No. 308706
annie.ramirez@oneillborges.com

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EXHIBIT I

Redacted-ACP

From: Randy Gore <randy@coastalgroup.us>

Sent: Monday, April 22, 2019 2:15 PM

To: DC Bee <DC@uniify.com>;

Kristen Johnson

<KJohnson@taylorattorneys.net>

Subject: Re: Assignment Agreements for Uniify and Earthwrx (2924-003)

I am checking. I have copied my attorney on this email.

Kristen

Please see DC question below.

Randy Gore

randy@coastalgroup.us

thecoastalgroupinc.com

Office: 910-642-4443

Cell: 910-770-1001

cid:image001.png@01D2FFDE.030C3540

From: DC Bee <DC@uniify.com>

Date: Monday, April 22, 2019 at 2:10 PM

To: Randy Gore <randy@coastalgroup.us>

Subject: Re: Assignment Agreements for Uniify and Earthwrx (2924-003)

Randy

Should t the agreement include all monies due Uniify and not just money owed to Gore? That is what we agreed to.

Sent from my iPhone

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On Apr 22, 2019, at 1:05 PM, Randy Gore <randy@coastalgroup.us> wrote:

Please sign and return.

Thanks

Randy Gore
randy@coastalgroup.us
thecoastalgroupinc.com
Office: 910-642-4443
Cell: 910-770-1001

<image001.png>

<Draft Assignment Agreement Gore and Earthwrx.DOCX>

<Draft Assignment Agreement Gore and Uniify.DOCX>

Redacted-ACP

From: James Young <james@earthwrx.com>

Date: Monday, April 22, 2019 at 3:16 PM

To: Randy Gore <randy@coastalgroup.us>

Subject: Re: Assignment Agreements for Uniify and Earthwrx (2924-003)

Hello Randy,

This was only between Earthwrx LLC not 541LLC I've never reached out to SLS as 541LLC and SLS never reach out to us as 541LLC, Only as EarthWrx LLC. 541LLC has never signed a contract with anyone ever for staffing. We have only done this as EarthWrx LLC.

This might have to be changed on this contract.

Thank you

James Young

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From: Randy Gore <randy@coastalgroup.us>
Date: Monday, April 22, 2019 at 2:06 PM
To: James Young <james@earthwrx.com>,
Pedro Baez <pedro@coastalgroup.us>
Subject: FW: Assignment Agreements for Uniify and Earthwrx (2924-003)

James

Please sign and return. This is what we have been talking about so my attorney can collect for us all.

Randy Gore
randy@coastalgroup.us
thecoastalgroupinc.com
Office: 910-642-4443
Cell: 910-770-1001

cid:image001.png@01D2FFDE.030C3540

From: Randy Gore <randy@coastalgroup.us>
Date: Monday, April 22, 2019 at 2:05 PM
To: DC Bee <DC@uniify.com>
Subject: FW: Assignment Agreements for Uniify and Earthwrx (2924-003)

Please sign and return.

Thanks

Randy Gore
randy@coastalgroup.us
thecoastalgroupinc.com
Office: 910-642-4443
Cell: 910-770-1001
cid:image001.png@01D2FFDE.030C3540

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EXHIBIT II

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Case No: 3:19-cv-01650

GORE AND ASSOCIATES MANAGEMENT COMPANY,
INC.,

Plaintiff,

v.

SLSCO LTD. AND HARTFORD FIRE
AND INSURANCE COMPANY,

Defendants.

PLAINTIFF'S FIRST SUPPLEMENTAL
RESPONSE TO DEFENDANTS' FIRST SET OF
REQUESTS FOR THE PRODUCTION OF
DOCUMENTS

Plaintiff, GORE AND ASSOCIATES MANAGEMENT COMPANY, INC. ("Gore" or "Plaintiff"), by and through its undersigned counsel, pursuant to Rules 26 and 34 of the Federal Rules Civil Procedure, hereby responds as follows to Defendants SLSCO Ltd. and HARTFORD FIRE AND INSURANCE COMPANY's First Set of Requests for the Production of Documents served on June 24, 2025.

RESPONSES

DOCUMENT REQUEST NO. 1: All documents concerning the negotiation, execution, and performance of each Assignment Agreement, including but not limited to: (a) all drafts of the Assignment Agreements; (b) all communications between any party (including the Assignor LLCs) concerning the Assignment Agreements; (c) all notes, memoranda, or other documents concerning assignment discussions; (d) all documents concerning the consideration provided for the assignments; (e) all documents concerning any discussions about diversity jurisdiction in connection with the assignments; and (f) all documents concerning the authority to execute the Assignment Agreements.

RESPONSE: Plaintiff objects to this request to the extent it seeks privileged attorney-client communications, and attorney work product. Plaintiff is withholding privileged documents responsive to this request and have provided the attached privilege log. Subject to, and without waiving said objections, see non-privileged responsive documents in Plaintiff's possession, custody, and or control, produced contemporaneously with Plaintiff's Response, Bates numbered PLAINTIFF000076-000079.

DOCUMENT REQUEST NO. 2: All documents concerning the dismissal of the Original Complaint and the refiling of the matter under the Complaint, including but not limited to: (a) all documents concerning any discussions or communications or explanations about the reasons why the Original Complaint was dismissed; and (b) all documents concerning any discussions or communications or explanations about the reasons why the Complaint

was then filed under the Assignment Agreement structure.

RESPONSE: Plaintiff objects to this request to the extent it seeks privileged attorney-client communications, and attorney work product. Subject to, and without waiving said objections, see Plaintiff's response to Request No. 1.

DOCUMENT REQUEST NO. 3: All communications between Gore and Earthwrx concerning the Citizenship of the Assignor LLCs including but not limited to: (a) all emails, letters, text messages, or other written communications; and (b) all notes or memoranda memorializing oral communications.

RESPONSE: None in Plaintiff's possession, custody, or control.

DOCUMENT REQUEST NO. 4: All communications between Gore and Uniify Puerto Rico concerning the Citizenship of the Assignor LLCs including but not limited to: (a) all emails, letters, text messages, or other written communications; and (b) all notes or memoranda memorializing oral communications.

RESPONSE: None in Plaintiff's possession, custody, or control.

DOCUMENT REQUEST NO. 5: All communications between Gore and Uniify Strategic concerning the Citizenship of the Assignor LLCs including but not limited to: (a) all emails, letters, text messages, or other written communications; and (b) all notes or memoranda memorializing oral communications.

RESPONSE: None in Plaintiff's possession, custody, or control.

DOCUMENT REQUEST NO. 6: All documents concerning the verification of the Citizenship of Earthwrx before filing the Original Complaint and the Complaint on July 6, 2019, including but not limited to: (a) all communications with any person concerning Citizenship verification; (b) all documents reviewed in conducting Citizenship verification; (c) all database searches or public records searches conducted; (d) all investigation reports or memoranda; (e) all notes concerning Citizenship verification; and (f) all documents establishing the dates of each verification step.

RESPONSE: Plaintiff objects to this request as its request for “documents concerning the verification of Citizenship” is vague and ambiguous. Plaintiff further objects to the extent this request seeks privileged attorney-client communications, and attorney work product. Plaintiff is withholding privileged documents responsive to this request and have provided the attached privilege log. Subject to and without waiving said objections, see responsive documents produced contemporaneously with Plaintiff’s Response. Otherwise, none in Plaintiff’s possession, custody or control.

DOCUMENT REQUEST NO. 7: All documents concerning verification of the Citizenship of Uniify Puerto Rico before filing the Original Complaint and the Complaint on July 6, 2019, including but not limited to: (a) all communications with any person concerning Citizenship verification; (b) all documents reviewed in conducting Citizenship verification; (c) all database searches or public records searches conducted; (d) all investigation reports or memoranda; (e) all notes concerning Citizenship verification; and

(f) all documents establishing the dates of each verification step.

RESPONSE: Plaintiff objects to this request as its request for “documents concerning the verification of Citizenship” is vague and ambiguous. Plaintiff further objects to the extent this request seeks privileged attorney-client communications, and attorney work product. Plaintiff is withholding privileged documents responsive to this request and have provided the attached privilege log. Subject to and without waiving said objections, see responsive documents produced contemporaneously with Plaintiff’s Response. Otherwise, none in Plaintiff’s possession, custody or control.

DOCUMENT REQUEST NO. 8: All documents concerning Gore’s assertion that “the reason for the assignments was. . . to consolidate Gore, Uniify, and Earthwrx’s claims against the Defendants into one action, to prevent unnecessary litigation costs, and to avoid inconsistent judgments”, including but not limited to: (a) all emails, letters, text messages, or other written communications; (b) all notes or memoranda memorializing oral communications; and (d) all communications with any other party concerning this assertion.

RESPONSE: See Plaintiff’s response to Request No. 1, and responsive documents in Plaintiff’s possession, custody, and or control, produced contemporaneously with Plaintiff’s Response, Bates numbered PLAINTIFF000108-000115.

DOCUMENT REQUEST NO. 9: All documents concerning the death of Terry L. Bee, including but not limited to: (a) death certificate and address of place of death; (b) all documents concerning the succession of his membership interest in Uniify Strategic; (c) all documents concerning the succession of his membership interest in Uniify of Puerto Rico; and (d) all documents concerning the Citizenship of such successors-in-interest as of July 6, 2019.

RESPONSE: None in Plaintiff's possession, custody, or control.

DOCUMENT REQUEST NO. 10: All documents concerning the person or persons who assisted in connection with the identification, collection, and production of documents concerning diversity jurisdiction issues in this litigation, including but not limited to all custodians of documents responsive to these document requests.

RESPONSE: Plaintiff objects to this request to the extent it seeks privileged attorney-client communications and attorney work product. Plaintiff is withholding privileged documents responsive to this request and have provided the attached privilege log. Subject to and without waiving said objections, Plaintiff has no responsive, non-privileged documents in its possession, custody or control.

DOCUMENT REQUEST NO. 11: All documents not otherwise requested herein that concern, support, or refute Gore's subject matter jurisdiction in this case, the Citizenship of any party or assignor for diversity purposes, or the validity of the Assignment Agreements under 28 U.S.C. § 1359.

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RESPONSE: See Plaintiff's non-privileged responsive documents produced contemporaneously with this Response, Bates numbered PLAINTIFF000080-000107. Plaintiff is withholding privileged documents responsive to this request and have provided the attached privilege log.

Date: July 18, 2025

Respectfully submitted,

/s/ Sophia L. Bernard, Esq.

Sophia L. Bernard, Esq. (*pro hac vice*)

TAYLOR NELSON PL

20 3rd Street SW, Suite 209

Winter Haven, FL 33880

(863) 875-6950 (tel)

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sbernard@taylorlawpl.com

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Carla Ferrari Luga

FERRARI LAW, PASC

USDC-PR No 221804

27 Calle Munoz Rivera Aguadilla,

PR 00603

ferraric@ferrarilawpr.com

Counsel for the Plaintiff Gore and Associates Management Company, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2025, I caused the foregoing document to be served upon the attorney(s) shown below via electronic mail and first-class mail.

Served upon:

Salvaor J. Antonetti-Stutts, Esq.
Jorge A. Candelaria Serrano, Esq.
Annie Lorena Ramirez Hernandez, Esq.
O'NEILL & BORGES LLC
250 Mnoz Rivera Ave. Suite 800
San Juan, PR 00918-1813
Telephone: (787) 764-8181
Facsimile: (787) 753-8944
salvador.antonetti@oneillborges.com
Jorge.candelaria@oneillborges.com
annie.ramirez@oneillborges.com

*Attorneys for SLSCO Ltd. AndHartford Fire
Insurance Company*

/s/ Sophia Bernard

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EXHIBIT III

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Case No: 3:19-cv-01650

GORE AND ASSOCIATES MANAGEMENT COMPANY, INC.,
Plaintiff,

v.

SLSCO LTD. and HARTFORD FIRE AND INSURANCE
COMPANY,
Defendants.

PLAINTIFF'S PRIVILEGE LOG

Bates No.	Date	Author	Recipient	Description	Privilege Asserted
PLAINTIFF00076	04/22/2019	Randy Gore	Kristen Johnson, Esq.	Email with subject Re: Assignments for Uniify and Earthwrx	Attorney-client communication
PLAINTIFF000078	04/22/2019	Randy Gore	Kristen Johnson, Esq.	Email with subject Re: Assignments for Uniify and Earthwrx	Attorney-client communication
N/A	06/06/2025 to 07/02/2025	Elana Faniel, Esq.	Randy Gore	Email with subject Gore & Associates Manage Co. v. SLSCO Ltd. et al.	Attorney-client communications
N/A	03/07/2019	Kristin Johnson, Esq.	Randy Gore	Email with subject Representation Proposal	Attorney-client communications
N/A	05/21/2019	Wendy Fisher,	Randy Gore	Email with subject	Attorney-client communication

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		Esq.		Uniify/Earthwrx Issue	
	06/09/2025	Westlaw		Background and Asset Reports for Uniify Strategic Business Solutions LLC	Work product
	06/09/2025	Westlaw		Background and Asset Reports for Earthwrx LLC	Work product
	06/09/2025	Westlaw		Background Report for Bobby Owens	Work product
	06/09/2025	Westlaw		Background Report for James Young	Work product
	02/21/2025	LexisNexis		Background Report for Terry Bee	Work product
	02/21/2025	LexisNexis		Background Report for James Young	Work product
	02/21/2025	LexisNexis		Background Report for Bobby Owens	Work product
	05/21/2019	Wendy Fisher, Esq/	Scot McChain, Randy Gore, Kristen Johnson, Esq.	Email with subject Gore, Uniify, Earthwrx v. SLS	Work product

Date: July 18, 2025

s/ Sophia L. Bernard, Esq.
 Sophia L. Bernard, Esq. (*pro hac vice*)
 TAYLOR NELSON PL
 20 3rd Street SW, Suite 209
 Winter Haven, FL 33880
 (863) 875-6950 (tel)
 (863) 875-6955 (fax)
 sbernard@taylorlawpl.com
 efileing@taylorlawpl.com

146a

Carla Ferrari Luga
FERRARI LAW, PASC
USDC-PR No 221804
27 Calle Munoz Rivera Aguadilla,
PR 00603
ferraric@ferrarilawpr.com

*Counsel for the Plaintiff Gore and
Associates Management Company, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2025, I caused the foregoing document to be served upon the attorney(s) shown below via electronic mail and first-class mail.

Served upon:

Salvaor J. Antonetti-Stutts, Esq.
Jorge A. Candelaria Serrano, Esq.
Annie Lorena Ramirez Hernandez, Esq.
O'NEILL & BORGES LLC
250 Mnoz Rivera Ave. Suite 800
San Juan, PR 00918-1813
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salvador.antonetti@oneillborges.com
Jorge.candelaria@oneillborges.com
annie.ramirez@oneillborges.com

*Attorneys for SLSCO Ltd. and
Hartford Fire Insurance Company*

/s/ Sophia Bernard

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EXHIBIT IV

Abigail Torres Cruz

From: Elana G. Faniel
<efaniel@taylorlawpl.com>
Sent: Thursday, August 14, 2025 11:20 AM
To: Jorge A. Candelaria Serrano;
Sophia Bernard
Cc: Salvador J. Antonetti;
Annie Lorena Ramirez Hernandez;
Lane Roberts; Carla Ferrari Lugo
Subject: RE: SERVICE OF COURT
DOCUMENT; UDSPR GORE AND
ASSOCIATES MANAGEMENT
COMPANY, INC. V SLSCO LTD ET AL;
(TNSB File No 2924.0003)

Jorge, I apologize for my delayed response. We do not intend to produce the document, as it contains privileged communications.

Thank you,

Elana G. Faniel
Senior Associate
Taylor Nelson Slattery Bernard PL
efaniel@taylorlawpl.com
Main: 863-875-6950 Direct: 813-212-1004

Steering Solutions. Driving Success.
www.taylorlawpl.com

Winter Haven | St. Pete | Miami | Jacksonville
146 2nd St. N., Suite 208, St. Petersburg, FL 33701

148a

From: Jorge A. Candelaria Serrano
<jorge.candelaria@oneillborges.com>
Sent: Tuesday, August 12, 2025 9:26 AM
To: Elana G. Faniel
<efaniel@taylorlawpl.com>;
Sophia Bernard
<SBernard@taylorlawpl.com>
Cc: Salvador J. Antonetti
<Salvador.Antonetti@oneillborges.com>;
Annie Lorena Ramirez Hernandez
<annie.ramirez@oneillborges.com>;
Lane Roberts
<lroberts@taylorlawpl.com>;
Carla Ferrari Lugo
<ferraric@ferrarilawpr.com>
Subject: RE: SERVICE OF COURT
DOCUMENT; UDSPR GORE AND
ASSOCIATES MANAGEMENT
COMPANY, INC. V SLSCO LTD ET AL;
(TNSB File No 2924.0003)

Good morning, Counsel,

During our last meet and confer, you indicated that you would confirm by Friday, August 8, whether you intend to produce the remaining document pending in discovery. We have not received a response. Please advise whether you intend to produce the document.

Thank you,

Jorge A. Candelaria Serrano
O'Neill & Borges LLC
250 Ave. Muñoz Rivera, Ste. 800
San Juan, P.R. 00918-1813
T. 787-764-8181 | F. 787-753-8944
www.oneillborges.com

149a

From: Elana G. Faniel
<efaniel@taylorlawpl.com>
Sent: Monday, August 4, 2025 3:35 PM
To: Jorge A. Candelaria Serrano
<jorge.candelaria@oneillborges.com>;
Sophia Bernard
<SBernard@taylorlawpl.com>
Cc: Salvador J. Antonetti
<Salvador.Antonetti@oneillborges.com>;
Annie Lorena Ramirez Hernandez
<annie.ramirez@oneillborges.com>;
Lane Roberts
<lroberts@taylorlawpl.com>;
Carla Ferrari Lugo
<ferraric@ferrarilawpr.com>
Subject: RE: SERVICE OF COURT
DOCUMENT; UDSPR GORE AND
ASSOCIATES MANAGEMENT
COMPANY, INC. V SLSCO LTD ET AL;
(TNSB File No 2924.0003)

Jorge,

We have no suggested changes. Please see the attached with Sophia Bernard's signature added. Thank you,

Elana G. Faniel Senior Associate
Taylor Nelson Slattery Bernard PL
efaniel@taylorlawpl.com Main: 863-875-6950
Direct: 813-212-1004
Steering Solutions. Driving Success.
www.taylorlawpl.com

Winter Haven | St. Pete | Miami | Jacksonville
146 2nd St. N., Suite 208, St. Petersburg, FL 33701

150a

From: Jorge A. Candelaria Serrano
<jorge.candelaria@oneillborges.com>
Sent: Friday, August 1, 2025 5:51 PM
To: Sophia Bernard
<SBernard@taylorlawpl.com>;
Carla Ferrari Lugo
<ferraric@ferrarilawpr.com>
Cc: Elana G. Faniel
<efaniel@taylorlawpl.com>;
Salvador J. Antonetti
<Salvador.Antonetti@oneillborges.com>;
Annie Lorena Ramirez Hernandez
<annie.ramirez@oneillborges.com>;
Lane Roberts
<lroberts@taylorlawpl.com>
Subject: Re: SERVICE OF COURT
DOCUMENT; UDSPR GORE AND
ASSOCIATES MANAGEMENT
COMPANY, INC. V SLSCO LTD ET AL;
(TNSB File No 2924.0003)

Counsel,

We acknowledge receipt of your document production. Please find enclosed a draft of the informative motion discussed during yesterday's meet and confer. If the draft is acceptable, kindly add your signatures so that we may proceed with filing the motion. Should you have any revisions, please share them for our review.

Cordially,

Jorge

Jorge A. Candelaria Serrano
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250 Ave. Muñoz Rivera, Ste. 800
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From: Lane Roberts
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Sent: Friday, August 1, 2025 10:55:37 AM
To: Annie Lorena Ramirez Hernandez
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Subject: SERVICE OF COURT DOCUMENT;
UDSPR GORE AND ASSOCIATES
MANAGEMENT COMPANY, INC.
V SLSCO LTD ET AL;
(TNSB File No 2924.0003)

Counsel,

Please see attached supplemental document production on behalf of Plaintiff. Best regards,

Court United States District of Puerto Rico
Case No. 3:19-CV-01650
Style Gore and Associates Management
Company, Inc. v. SLSCO Ltd and
Hartford Fie and Insurance Company

Document(s) PLAINTIFF000116-000616

Sender Lane Roberts, Paralegal

Sender

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