No. __________

In the Supreme Court of the United States

JASON EDWARD THOMAS CARDIFF,
Petitioner,

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX

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APPENDIX

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Appendix A
[Filed: Sep. 19, 2025]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: JASON EDWARD THOMAS CARDIFF. JASON EDWARD THOMAS CARDIFF, Petitioner, v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE, Respondent, UNITED STATES OF AMERICA, Real Party in Interest	No. 25-5654 D.C. No. 5:23-cr-21-JGB Central District of California, Riverside ORDER

Before: R. NELSON, SUNG, and H.A. THOMAS, Circuit Judges.

Petition has not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus. *See In re Mersho*, 6 F.4th 891, 897 (9th Cir. 2021) ("To determine whether a writ of mandamus should be granted, we weigh the five factors outlined in *Bauman v. United States District Court.*"); *Bauman v. U. S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). The petition is denied.

The motion (Docket entry No. 6) to amend caption is denied as unnecessary.

The motion (Docket Entry Nos. 8 and 9) for a stay is denied as moot.

DENIED.

Appendix B
[Filed: Aug. 19, 2025]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CRIMINAL MINUTES—GENERAL

Case No. **EDCR 23-0021 JGB** Date August 19, 2025

Title ***United States of America v. Jason Edward Thomas Cardiff***

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Government:	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) DENYING Defendant's Motion to Dismiss Count Two of the Indictment (Dkt. No. 106); (2) DENYING Defendant's Motion to Suppress Evidence (Dkt. No. 107); (3) DENYING Defendant's Motion to Dismiss Counts Three and Four of the Indictment (Dkt. Nos. 134, 136); (4) DENYING Defendant's Motion to Dismiss the Indictment Based on Double Jeopardy (Dkt. Nos. 135, 137); and (5) DENYING Defendant's Motion to Dismiss the Indictment Due to Fraud on the Court (Dkt. No. 231) (IN CHAMBERS)

Before the Court are the following motions filed by Defendant Jason Edward Thomas Cardiff ("Defendant" or "Cardiff"): (1) motion to dismiss count two of the indictment ("Second MTD," Dkt. No. 106); (2) motion to suppress evidence ("MTS," Dkt. No. 107); (3) motion to dismiss counts three and four of the indictment ("Third MTD," Dkt. Nos. 134, 1136); (4) motion to dismiss the indictment based on double jeopardy ("Fourth MTD," Dkt. Nos. 135, 137); and (5) motion to dismiss the indictment due to fraud on the Court ("Fifth MTD," Dkt. No. 231) (collectigvely, "Motions"). The Court held a hearing on the Second MTDs on January 30, 2025. After considering the oral argument of the parties, and the papers filed in support of and in opposition to the Motions, the Court now issues this Order setting forth the reasons for **DENYING** the Motions.

I. BACKGROUND

Defendant Cardiff is charged with three crimes: (1) access device fraud under 18 U.S.C. § 1029(a)(5) ("Count One"); (2) aggravated identity theft under 18 U.S.C. § 1208A(a)(1) ("Count Two"); and (3) witness tampering under 18 U.S.C. § 1512(b)(2)(B) ("Counts Three and Four"). ("Indictment," Dkt. No. 1.) Cardiff also faces criminal forfeiture. (Id.)

On April 8, 2024, Defendant moved to dismiss the Indictment, or, in the alternative, to suppress evidence. ("First MTD,) Dkt. Nos. 45, 52.) On June 13, 2024, the Court denied the First MTD. ("First MTD Order," Dkt. No. 79.)

From July 2024 to December 2025, the Court permitted Defendant to travel to Ireland. (Dkt. Nos. 94, 105, 124, 133, 151.) On January 15, 2025, the Court ordered Defendant to return to the United States from Ireland by January 19, 2025. ("First Order to Return," Dkt. No. 165.) On January 17, 2025, the Court confirmed in an order that Defendant was to return to the United States by January 19, 2025, and that he was to attend the January 27, 2025 motion hearing in person. ("Second Order to Return," Dkt. 171.) On January 21, 2025, the Court denied Defendant's ex parte application for modification of reporting time to allow submission of new evidence in support of ex parte application to extend international travel. ("Third Order to Return," Dkt. No. 176.) On January 22, 2025, the Court filed a scheduling notice continuing the motion hearing from January 27, 2025 to January 30, 2025. (Dkt. No. 177.) On January 24, 2025, Defendant filed a status report, informing the Court that he had not returned to the United States and did not intend to return until his physicians clear him for travel. ("Status Report," Dkt. No. 178.) Defendant failed to appear at the motion hearing on January 30, 2025. (Dkt. No. 188.) On February 5, 2025, the Court granted an order that: (1) declared Defendant a fugitive; (2) vacated Defendant's trial date and the tolling of the Speedy Trail Act; and (3) issued an arrest warrant against Defendant. (Dkt. No. 196.) To date, Defendant seemingly remains in Ireland and has not returned to the United States.

A. Second MTD

On September 9, 2024, Defendant moved to dismiss Count Two of the Indictment. (Second MTD.) In support of the Second MTD, Defendant filed two declarations–one by Defendant himself ("Cardiff Decl. for Second MTD," Dkt. No. 106-2), and one by attorney

Stephen Cochell ("Cochell Decl. for Second MTD," Dkt. No. 106-1) alongside three exhibits:

- Excerpts of the Federal Trade Commission's Proposed Statement of Undisputed Facts ("FTC's SUF," "SUF," or "Second mTD, Ex. 1") submitted as Docket Number 423-3 in FTC v. Cardiff, et al., Case No. 5:18-cv-02104-DMG-PLA (C.D. Cal. 2018) (hereinafter cited as "FTC v. Cardiff" and referred to as "FTC Action")
- Memorandum of Interview of Sticky.io employee Joanny Spina ("Second mTD, Ex. 2"); and
- Memorandum of Activity of Sticky.io President and CEO Brian Bagosian ("Second MTD, Ex. 3").

On September 23, 2024, the United States of America (the "Government") opposed the Second MTD. (Second MTD Opp.," Dkt. No. 111.) On October 7, 2024, Defendant replied. ("Second MTD Reply," Dkt. No. 114.)

On March 22, 2025, Defendant filed a notice of supplemental authority in support of the Second MTD. (Dkt. No. 223 (citing and attaching United States v. Parviz, 131 F.4th 966 (9th Cir. 2025)).)

B. Motion to Suppress Evidence

On September 9, 2024, Defendant moved to suppress evidence. (MTS.) In support of the MTS, Defendant filed two declarations—one by Defendant himself ("Cardiff Decl. for MTS," Dkt. No. 1070-2) alongside one exhibit, and one by attorney Stephen

Cochell ("Cochell Decl. for MTS," Dkt. No. 107-1) alongside twenty exhibits.

On September 23, 2024, the Government opposed the MTS. ("MTS Opp.," Dkt. No. 110.) In support of its MTS Opposition, the Government filed a declaration of Jeffrey Hedrick, United States Postal Inspection Service ("USPIS" or "Postal Inspectors") Postal Inspector. ("Hedrick Decl,," Dkt. No. 110-1.)

On October 7, 2024, Defendant replied. ("MTS Reply," Dkt. No. 115.) In support of his MTS Reply, Defendant filed a supplemental declaration ("Cardiff Supp. Decl. for mTS," Dkt. No. 115-1) and the transcript of the First MTD hearing held by this Court on June 3, 2024 ("First MTD Hearing Transcript," Dkt. No. 115-2).

On October 11, 2024, Defendant filed a notice of supplemental authority in support of his MTS. (Dkt. No. 118 (citing and attaching Fed. Trade Comm'n v. VPL Med., Inc., 846 F. App'x 561 (9th Cir. 2021)).) On October 16, 2024, the Government filed a notice of supplemental authority in support of its MTS Opposition. (Dkt. No. 119-1 (citing and attaching Fed. Trade Comm'n v. Cardiff, 2021 WL 2349458 (C.D. Cal. May 24, 2021)).) On October 17, 2024, Defendant filed an additional exhibit, attaching the temporary restraining order ("TRO") filed in FTC v. Cardiff, Dkt. No. 29. ("TRO Exhibit," Dkt. No. 120.)

On November 15, 2024, Defendant filed an additional notice of supplemental authority in support of his MTS. (Dkt. No. 129 (citing and attaching United States v. Holmes, 121 F.4th 727 (9th Cir. 2024)).)

C. Third MTD

On December 2, 2024, Defendant filed the Third MTD. (Third MTD.) In support of the Third MTD, Defendant filed two declarations—one by Defendant himself ("Cardiff Decl. for Third MTD," Dkt. No. 134-2), and one by attorney Stephen Cochell ("Cochell Decl. for Third MTD," Dkt. No. 134-1) alongside fourteen exhibits.

On December 23, 2024, the Government opposed the Third MTD. ("Third MTD Opp.," Dkt. No. 152.) In support of its Third MTD Opposition, the Government filed three exhibits. ("Third MTD Opp., Exs. 1-3," Dkt. No. 152-1-3.) Defendant replied on December 30, 2024. ("Third MTD Reply," Dkt. No. 154.)

D. Fourth MTD

On December 2, 2024, Defendant filed the Fourth MTD. (Fourth MTD.) In support of the Fourth MTD, Defendant filed two declarations—one by Defendant himself ("Cardiff Decl. for Fourth MTD," Dkt. Nos. 135-1, 137-1), and one by attorney Stephen Cochell ("Cochell Decl. for Fourth MTD," Dkt. Nos. 135-2, 137-2) alongside nine exhibits.

On December 23, 2024, the Government opposed the Fourth MTD. ("Fourth MTD Opp.," Dkt. No. 153.) In support of its Fourth MTD Opposition, the Government filed five exhibits. ("Fourth MTD Opp., Exs. A-E," Dkt. No. 153-1.) Defendant replied on December 30, 2024. ("Fourth MTD Reply," Dkt. No. 155.)

E. Fifth MTD

On April 27, 2025, Defendant filed the Fifth MTD. (Fifth MTD.) In support of the Fifth MTD, Defendnat filed fourt exhibits("Fifth MTD, Exs. 1-4," Dkt. No.

231-1-4) and two declarations—one by Defendant himself ("Cardiff Decl. for Fifth MTD," Dkt. No. 231-6), and one by attorney Stephen Cochell ("Cochell Decl. for Fifth MTD," Dkt. No. 231-5) alongside two exhibits.

On May 12, 2025, the Government opposed the Fifth MTD. ("Fifth MTD Opp.," Dkt. No. 241.) In support of its Fifth MTD Opposition, the Government filed an exhibit. ("Fifth MTD Opp., Ex. 1," Dkt. No. 241-1.) Defendant replied on May 19, 2025. ("Fifth MTD Reply," Dkt. No. 246.) In support of his Fifth MTD Reply, Defendant filed two supplemental declarations—one by Defendant himself ("Cardiff Supp. Decl. for Fifth MTD," Dkt. No. 246-1) alongside exhibits, and one by Eunjung Cardiff ("E. Cardiff Second Decl. for Fifth MTD," Dkt. No. 246-2) alongside exhibits.

On May 27, 2025, Defendant filed a notice of newly discovered evidence in support of his Fifth MTD ("Newly Discovered Evidence," Dkt. No. 252) alongside a supplemental declaration of Eunjung Cardiff ("E. Cardiff Third Decl. for Fifth MTD," Dkt. No. 252-1) with exhibits. On August 4, 2025, in support of its Fifth MTD Opposition, the Government submitted a notice of a relevant court order filed in the FTC Action. (Dkt. No. 266 (citing and attaching FTC v. Cardiff, Dkt. No. 738).)

The Court held a hearing on the Second MTD and the MTS on October 21, 2024, and a hearing on the Third and Fourth MTDs on January 30, 2025, at which the parties presented oral argument. (See Dkt. Nos. 142, 198.) On May 30, 2025, because Defendant seemingly remains a fugitive in Ireland, the Court found that a hearing on the Fifth MTD would be unnecessary and took that matter under submission. (See Dkt. No. 253.)

II. FACTUAL ALLEGATIONS

Defendant served as Chairman of the Board of Directors, CEO, and President of Redwood Scientific Technologies, Inc. ("Redwood"), a Delaware corporation with its corporate headquarters in Upland, California, which "sold various products to consumers, including thin film strips marketed as homeopathic remedies causing weight loss, male sexual enhancement, and smoking cessation." (Indictment.)

1. The Civil Investigation and FTC Action

The Government began its investigation of Defendant's company Redwood through a civil investigative demand ("CID") issued by the Federal Trade Commission ("FTC") on August 11, 2017. See FTC v. Redwood, Case No. 2:17-cv-07921 (C.D. Cal. 2017), Dkt. No. 1 (petition for order enforcing the CID after Redwood's failure to comply); (See Second MTD at 3.) On October 10, 2018, the FTC filed a civil action against various defendants, including Cardiff, his wife, and Redwood. See FTC v. Cardiff, Dkt. No. 1; (See Second MTD at 3.) On August 6, 2020, the FTC moved for summary judgment, and in doing so, submitted the SUF. See FTC v. Cardiff, Dkt. No. 423-3; (FTC's SUF.) On October 9, 2020, the court granted summary judgment in favor of the FTC on sixteen claims. See FTC v. Cardiff, Dkt. No. 511; (Second MTD at 3.)

2. Contact Between the FTC and USPIS Prior to the FTC Action

On July 17, 2018, a USPIS Postal Inspector and an FTC attorney first conversed about the FTC's then-ongoing investigation of certain companies centered in Upland, California (i.e. Redwood); in a follow-up letter, the FTC attorney noted that the FTC expected to hear from the USPIS "regarding [its] interest in pursuing this matter further with us." (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 1 at 3.)

On July 24, 2018, USPIS requested from the FTC information related to Cardiff and Redwood via a "Request for Non-public Materials and Certification of Intent to Maintain Confidentiality and to Restrict Use to Law Enforcement Purposes" pursuant to 16 C.F.R. § 4.11(c). (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 2.) The "law enforcement purpose" listed for the request was to "[a]ssist FTC staff in investigation of advertising and marketing practice for thin film strip products." (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 2.) The FTC granted this request on August 3, 2018. (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 3.) A little over a week later, the FTC attorney arranged a phone call with the USPIS Postal Inspector and another FTC attorney for August 20, 2018. (See First MTD Order at 6; Cochell Decl. for MTS, Exs. 4, 5.)

In early September 2018, the FTC attorney and the Postal Inspector planned some sort of reconnaissance of the Redwood business premises in Upland, which would include sending USPIS associates to drive by the Redwood premises and the Cardiffs' home. (See First MTD Order at 6; Cochell Decl. for MTS, Exs. 6, 7.) On October 5, 2018, the Postal Inspector conducted surveillance of the Redwood offices and the Cardiffs' home. (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 8.) She walked into the building in which the offices were located but was unable to enter the Redwood offices. (See First MTD Order at 6; Cochell Decl. for MTS, Ex. 8.) She returned to the premises on October 10, 2018 and observed a car that matched the description of that belonging to Defendant's wife but was again unable to enter the Redwood offices. (See First MTD Order at 6; Cochell Decl. for MTS, Exs. 1, 8.) The FTC filed the FTC Action five days later. (See First MTD Order at 7); FTC v. Cardiff, Dkt. No. 1.

3. The TRO

The FTC applied for and was granted an ex parte TRO[1] which appointed their preferred receiver, Robb

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[1] In the MTS, Defendant requests that the Court take judicial notice of Dkt. Nos. 1 through 15 and 22 through 25 in the FTC Action, which include the TRO application, and the numerous declarations and materials filed in support. (See MTS at 5.) Proceedings of other courts, including orders and filings, are the proper subject of judicial notice when directly related to the case, though not for the truth of the contents of the underlying documents. See United States ex. Rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 917 F.2d 244, 248 (9th Cir. 1992) (courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue"); Neilson v. Union Bank of California, N.A., 290 F. Supp. 2d 1101, 1113 (C.D. Cal. 2003) ("[C]ourt orders and filings are the type of documents that are properly noticed under [Fed. R. Evid. 201(b).]"); Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006). As such, since the TRO appointed the Receiver and granted it access and control over Redwood's Assets, the Court finds the TRO application and supporting documents properly

Evans LLC ("Receiver"). (See First MTD Order at 7); FTC v. Cardiff, Dkt. No. 29. While the TRO was pending, the FTC attorney updated the Postal Inspector that there was "[n]o word from the Court yet, so our earliest date at this point will be Friday, October 12, 2018." (See First MTD Order at 7; Cochell Decl. for MTS, Ex. 9.)

On October 10, 2018, the FTC attorney notified the Postal Inspector that the TRO was approved, attached a copy of the TRO, and informed her that the "immediate access" would occur on October 12, 2018. (See First MTD Order at 7; Cochell Decl. for MTS, Ex. 10.) He also reminded her that they had planned to meet at the Upland Police Department. (See First MTD Order at 7; Cochell Decl. for MTS, Ex. 10.)

The TRO allowed the Receiver to, among other things, (1) assume full control of the Receivership Entities[2] by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, attorney, or agent of any Receivership Entity from control of, management of, or participation in, the affairs of the Receivership Entity; (2) take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody,

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subject to judicial notice. Accordingly, the Court **GRANTS** this request for judicial notice.

[2] The TRO in the FTC Action defines "Receivership Entities" to mean "Corporate Defendants as well as any other entity that has conducted any business related to Defendants' marketing and sale of dissolvable film strips and promotion of the Rengalife multilevel marketing program, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant." (See MTS Opp. at 5); FTC v. Cardiff, Dkt. No. 29 at 6.

or under the control of, any Receivership Entity and all assets of Jason Cardiff and Eunjung Cardiff, except for real property used as their residence; (3) take exclusive custody, control, and possession of 26 valuable articles, including, but not limited to, a $532,000 diamond ring and a $102,076 diamond ring; and (4) take all steps necessary to secure and take exclusive custody of each location from which the Receivership Entities operate their business. (See MTS Opp. at 5); FTC v. Cardiff, Dkt. No. 29 at 19-23.

In securing and taking custody of the business locations, the Receiver was permitted to require any persons present at the location to leave and ensure that such persons were not removing from the premises documents or assets of the Receivership Entities. (See MTS Opp. at 5); FTC v. Cardiff, Dkt. No. 29 at 23. The TRO explicitly allowed law enforcement personnel to (1) "assist the Receiver in implementing these provisions in order to keep the peace and maintain security" and (2) use "any necessary and reasonable force to do so." (See MTS Opp. at 6); FTC v. Cardiff, Dkt. No. 29 at 23. The TRO instructed the Receiver to allow the FTC's representatives, agents, and assistants, as well as Defendant's representatives and Defendant himself, reasonable access to the premises of the Receivership Entities, or any other premises where the Receivership Entities conduct business. See FTC v. Cardiff, Dkt. No. 29 at 24. The purpose of this access was to inspect and copy books, records, documents, accounts, and other property owned by, or in the possession of, the Receivership Entities or their agents. See id. The Receiver had the discretion to determine the time, manner, and reasonable conditions of such access. See id.

4. The Searches

On October 12, 2018, the Receiver, the FTC, USPIS[3] Postal Inspectors, and local law enforcement officers met at the Upland Police Department to discuss the operation plan for the execution of the TRO on the Receivership Entities and office locations. (See MTS Opp. at 6; Hedrick Decl. ¶ 3.) Postal Inspectors were asked to provide support for the Receiver and the FTC and ensure their safety while they executed the TRO. (See MTS Opp. at 6; Hedrick Decl.¶ 4.) Once at the Receivership Entities' office locations, Brick Kane, President of the court-appointed Receiver, made entry first and was followed by the USPIS Postal Inspectors and the FTC employees. (See MTS Opp. at 6; Hedrick Decl. ¶ 5.) Postal Inspectors accompanied employees of the Receiver and the FTC through the various offices to provide security as they reviewed and collected documents and when Kane interviewed Redwood employees. (See MTS Opp. at 6; Hedrick Decl. ¶ 6.) The Government alleges that USPIS neither conducted a search of the Redwood premises that day nor did Postal Inspectors seize any material. (See MTS Opp. at 6; Hedrick Decl. ¶ 7.) Conversely, Defendant alleges that he saw USPIS agents roaming through the office, at computer terminals reviewing documents, and

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[3] In the MTS, Defendant requests that the Court take judicial notice of information contained on USPIS' website regarding the scope of USPIS' enforcement authority. (See MTS at 5.) "[P]ublic records maintained on government websites are generally subject to judicial notice." Johnson v. DBTA, LLC, 424 F. Supp. 3d 657, 662 (N.D. Cal. 2019) (citation modified). The Court finds information on USPIS' website properly subject to judicial notice. Accordingly, the Court **GRANTS** this request for judicial notice.

picking up and reviewing physical Redwood office files. (See MTS at 7-8; Cardiff Decl. for MTS ¶ 9.)

On October 18, 2018, the Postal Inspector requested that the Receiver permit her to return to the Redwood offices and allow USPIS Inspectors and computer analysts to "inspect the locations, photocopy and/or photograph items, and image computers." (See First MTD Order at 7; MTS Opp. at 6.) The Receiver granted the request and on October 22, 2018, two Postal Inspectors conducted a search of the Redwood offices alongside two USPIS forensic computer analysts. (See First MTD Order at 7; MTS Opp. at 6.)

Between May 2020 and August 2020, the Department of Justice ("DOJ") requested and secured from the Receiver (1) a signed waiver of the attorney client and work product privilege related to the Receivership entities; (2) access to third-party stored data, like the Receivership Entities' CRM data held by Sticky.io, via a Stored Communications Act Consent form; and (3) a forensic image of the Receivership Entities' Google Suite Account and a copy of the Receivership Entities' QuickBooks data. (See MTS at 9; MTS Opp. at 7; Cochell Decl. for MTS, Ex. 15.)

In July 2021, the Receiver granted USPIS permission to access a storage unit that contained material collected by the Receiver and review its content. (See MTS at 9; MTS Opp. at 8; Cochell Decl. for MTS, Ex. 11.) The Receiver also consented to USPIS searching a computer that was in the Receivership Entities' Chief Operations Officer's ("COO") possession for evidence of mail and wire fraud via an executed USPIS Consent to Search Electronic Devices form. (See MTS Opp. at 8; Cochell Decl. for MTS, Exs. 11, 13.) The COO had voluntarily turned the laptop over to USPIS and signed a USPIS Consent to Search Electronic Devices form since she kept the computer for personal use for over three years after she left her employment. (See MTS Opp. at 8; Cochell Decl. for MTS, Ex. 11.)

5. The Indictment

Defendant and the Government accept as true, for purposes of adjudicating the Motions, the sections of the FTC's SUF that contain pertinent facts related to the Indictment. (See Second MTD at 3; Second MTD Opp. at 2.)

Count One, the access device fraud offense, alleges that between January 22, 2018 and May 2018, Cardiff effected transactions with debit and credit card account numbers and expiration dates belonging to Redwood customers, and in doing so, obtained at least $1,000 during a one-year period. (See Second MTD at 3; Indictment at 3.) Count Two, the aggravated identity theft offense, alleges that between January 22, 2018 and May 2018, Cardiff transferred, possessed, and used names, credit card account numbers, and debit card account numbers during and in relation to Count One. (See Second MTD at 2-3; Indictment at 4.) Counts Three and Four, the witness tampering offense, alleges that between April 2018 and May 2018, Defendant knowingly and corruptly persuaded two people—namely, G.N. and D.W.—to cause and induce them to alter, destroy, mutilate, and conceal e-mails and electronic records with intent to impair the integrity and availability of these e-mails and electronic records for use in official proceedings. (Indictment at 5-6.)

Specifically, Defendant purportedly directed that brand new continuity or subscription orders should be created for customers who had previously made one-time "straight sale" purchases so that their debit and credit cards could be charged again and going forward on a recurring basis. (See Second MTD at 3-4; FTC's SUF ¶ 839.) Redwood did not contact these consumers or get their approval for additional charges. (See Second MTD at 4; FTC's SUF ¶ 840.) Redwood staff processed hundreds of these unauthorized transactions each day and reported their success and failure rates to Defendant. (See Second MTD at 4; FTC's SUF ¶ 841.) In some cases, customers' credit and debit cards had expired since their original orders had been placed, and Defendant directed his employees to try changing the cards' expiration dates to see if that would allow the new charges to be processed. (See Second MTD at 4; FTC's SUF ¶¶ 842-43.) Over time, the staff attempted to place new continuity orders using customer information associated with older straight sale orders, and ultimately attempted to convert all 2017 straight sale orders into new continuity orders. (See Second MTD Opp. at 3; FTC's SUF ¶ 846.) The Government alleges that Redwood staff continued converting straight sale customers to continuity plans and charging them without authorization until April 2018, and that Redwood processed unauthorized charges for more than 1,500 consumers. (See Second MTD at 4; FTC's SUF ¶¶ 845, 847.) Defendant set a revenue goal for staff of $10,000 a day from the straight-to-continuity initiative. (See Second MTD Opp. at 3; FTC's SUF ¶ 848.)

Further, Redwood used a business called Limelight, later known as Sticky.io, as its Customer Relationship Management provider ("CRM"). (See Second MTD Opp. at 3; Second MTD, Ex. 2 at 13-14.) The CRM integrated third-party providers into Redwood's system including the payment processors that sent information from Redwood's website to banks for processing. (See Second MTD Opp. at 3; Second MTD, Ex. 2 at 14.) Defendant and his employees were able to access information in the CRM system, including billing names and addresses, shipping names and addresses, and partial credit or debit card numbers. (See Second MTD Opp. at 3; Second MTD, Ex. 2 at 17, 21.) The CRM platform gave Defendant, and the employees he directed, the ability to use a customer's credit or debit card "on file" to place a new order with the click of a button. (See Second MTD Opp. at 3; Second MTD, Ex. 2 at 15.)

According to the Government, fraudulent charges were submitted via "new order card on file" transactions. (See Second MTD Opp. at 3; Second MTD, Ex. 2 at 19.) On January 22, 2018, Redwood employee Julie Green emailed Defendant and two other employees step-by-step instructions on how Redwood could process "new order card on file" transactions. (See Second MTD Opp. at 3-4; Second MTD, Ex. 2 at 65, 72.) There were two slightly different sets of instructions sent out a few hours apart; both directed the Redwood employee creating the new charge to work from a spreadsheet containing prior straight sale orders, open the old order of a straight sale customer, and "choose place [a] new order." (See Second MTD Opp. at 3-4; Second MTD, Ex. 2 at 65, 72.) Sticky.io employee Joanny Spina confirmed that both sets of instructions were ways to process new orders for a prior purchaser using the card on file. (See Second MTD Opp. at 4; Second MTD, Ex. 2 at 18-19.) Spina also confirmed that the CRM did not require documenting customer consent for "new order card on file" transactions in 2018, although that changed in 2020 when the NMI PaySafe payment processor began enforcing the requirement to document customer consent for a new charge. (See Second MTD Opp. at 4; Second MTD, Ex. 2 at 19.)

According to Defendant, the CRM services provided were compliant to the Payment Card Industry's ("PCI") standards[4] that ensure businesses "secure and protect credit card data provided by cardholders and transmitted through card processing transactions." (See Second MTD at 4-5; Cardiff Decl. for Second MTD ¶ 4.) When customers purchased a Redwood product either online or through the phone room, their card information was tokenized and securitized, and could not be accessed by Redwood personnel. (See Second MTD at 5; Cardiff Decl. for Second MTD ¶¶ 4-6.) While reports could be generated for each customer, the card information was redacted. (See Second MTD at 5; Cardiff Decl. for Second MTD ¶ 9.)

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[4] In the Second MTD, Defendant requests that the Court take judicial notice of "an overview of PCI compliance" on the Investopedia website. (See Second MTD at 4, n.3.) A court may take judicial notice of an adjudicative fact not subject to "reasonable dispute," either because it is "generally known within the territorial jurisdiction of the trial court," or it is capable of accurate and ready determination by resort to sources whose "accuracy cannot reasonably be questioned." Fed. R. Evid. 201. "[P]ublic records maintained on government websites are generally subject to judicial notice." Johnson v. DBTA, LLC, 424 F. Supp. 3d 657, 662 (N.D. Cal. 2019) (citation modified). "By contrast, the records of private parties have no such imprimatur of reliability, and neither do their websites." Rollins v. Dignity Health, 338 F. Supp. 3d 1025, 1032 (N.D. Cal. 2018). Accordingly, the Court **DENIES** this request for judicial notice.

III. LEGAL STANDARD

Pursuant to Federal Rule of Criminal Procedure 12(b)(1), "[a] party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits."

A. Motions to Dismiss

On a pre-trial motion to dismiss an indictment for failure to state an offense, district courts are "bound by the four corners of the indictment, must accept the truth of the allegations in the indictment, and cannot consider evidence that does not appear on the face of the indictment." United States v. Kelly, 874 F.3d 1037, 1047 (9th Cir. 2017). Counts in an indictment are sufficient so long as it tracks the statutory language and unambiguously sets forth the elements of the offenses charged. United States v. Milovanic, 678 F.3d 713, 727 (9th Cir. 2012); cf. United States v. Crow, 824 F.2d 761, 762 (9th Cir. 1987) ("The use of a 'bare bones' information—that is one employing the statutory language alone—is quite common and entirely permissible so long as the statute sets forth fully, directly and clearly all essential elements of the crime to be punished"). The Government is not required to allege in counts of an indictment the facts necessary to prove the elements of the crimes. United States v. Bellamy, 521 Fed. Appx. 590, 592 (9th Cir. 2013).

It is well-established that a "district court cannot grant a motion to dismiss an indictment if the motion is substantially founded upon and intertwined with evidence concerning the alleged offense." United States v. Lundstedt, 997 F.2d 665, 667 (9th Cir. 1993) (citation modified); see also United States v. Jensen, 93 F.3d 667, 668 (9th Cir. 1996) ("A motion to dismiss the indictment cannot be used as a device for a summary trial of the evidence"). A motion to dismiss an indictment can be determined before trial if it presents legal, rather than factual, issues. United States v. Shortt Accountancy Corp., 785 F.2d 1448, 1452 (9th Cir. 1986).

B. Motion to Suppress Evidence

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The proponent of a motion to exclude evidence has the burden of establishing that "his own Fourth Amendment rights were violated by the challenged search or seizure." Rakas v. Illinois, 439 U.S. 128, 132 (1978). "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." California v. Acevedo, 500 U.S. 565, 580 (1991) (quoting Mincey v. Arizona, 437 U.S. 385, 390 (1978)).

What is reasonable depends on the circumstances surrounding the search and the nature of the search itself. United States v. Montoya de Hernandez, 473 U.S. 531, 537 (1985). The reasonableness of a search is determined by balancing "the degree to which it intrudes upon an individual's privacy and . . . the degree to which it is needed for the promotion of legitimate governmental interests." United States v. Knights, 534 U.S. 112, 119 (2001). The Government bears the burden of providing that a warrantless search or seizure falls within an exception to the warrant requirement. United States v. Job, 871 F.3d 852, 860 (9th Cir. 2017).

The exclusionary rule operates to exclude unlawfully seized evidence in a criminal trial. Utah v. Strieff, 136 S. Ct. 2056, 2061 (2016). It encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure and . . . evidence later discovered and found to be derivative of an illegality." Id. (citation modified). The suppression of evidence retrieved from constitutional violations pursuant to the exclusionary rule functions to "deter future Fourth Amendment violations." Davis v. United States, 564 U.S. 229, at 236-37 (2011). "Where suppression fails to yield 'appreciable deterrence,' exclusion is 'clearly . . .

unwarranted.'" Id. at 237 (quoting United States v. Janis, 428 U.S. 433, 454 (1976)). Thus, for exclusion to be appropriate, "the deterrence benefits of suppression must outweigh its heavy costs." Id. When the police exhibit "deliberate, reckless, or grossly negligent" disregard for Fourth Amendment rights, the deterrent value of exclusion tends to outweigh the resulting costs. Id. at 238. Conversely, when the police act with an "objectively reasonable good faith belief" that their conduct is lawful, or when their conduct involves "only simple, isolated negligence," exclusion is unwarranted. Id. (citation modified).

IV. DISCUSSION

A. Second MTD

Defendant argues that the Supreme Court's decision in Dubin v. United States, 599 U.S. 110 (2023) (hereinafter cited as "Dubin"), significantly narrowed the reach of the aggravated identity theft statute and, therefore, Count Two should be dismissed. (See Second MTD at 1, 9.)

The aggravated identity theft statute provides that "[w]hoever, during and in relation to" certain enumerated felonies, "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person, shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years." 18 U.S.C. § 1028A(a)(1). In Dubin, the Supreme Court vacated a petitioner's conviction for aggravated identity theft. See Dubin at 131. In reaching its decision, the Supreme Court interpreted two provisions of the statute: "use" of another's means of identification and "during and in relation to" a predicate crime. See id. at 118-127.

As to "use" of another's identification and "during and in relation to" a predicate crime, the Supreme Court reversed the petitioner's conviction because their fraud "was in misrepresenting ***how*** and ***when*** services were provided to a patient, not ***who*** received the services." See id. at 132 (emphasis added). "In other words, identity theft is committed when a defendant uses the means of identification itself to defraud or deceive." Id. at 123. Specifically, "[u]se of the means of identification would therefore be at the locus of [the criminal] undertaking, rather than merely passive, passing, or ancillary employment in a crime." Id. (citation modified). Further, the Supreme Court supported "a reading of 'in relation to' where use of the means of identification is at the crux of the underlying criminality." Id. at 122-123. "This central role played by the means of identification, which serves to designate a specific person's identity, explains why we say that the 'identity' itself has been stolen." Id. at 123. To further explain its reasoning, the Supreme Court offered the following analogies: "If a lawyer rounds up her hours from 2.9 to 3 and bills her client using his name, the name itself is not specifically a source of fraud; it only plays an ancillary role in the billing process. The same is true for the waiter who substitutes one cut of meat for another; we might say the filet mignon's identity was stolen, perhaps, but not the diner's." Id.

Defendant argues that his alleged misrepresentations went not to "who" he, Redwood, or their customers were, but to the "what" and the "when"—i.e., whether the customer signed up for a one-time or monthly subscription for products sold by Redwood. (See Second MTD at 11.) In other words, in effectuating the alleged predicate crime of using the customers' access devices to charge for monthly subscriptions when they had placed a one-time order, Defendant argues he did not misrepresent his or Redwood's identity or use a customer's means of identification that fraudulently or deceptively went to "who" was involved in the transaction. (See id.) Defendant also asserts that the CRM's security measures ensured that even if overcharging occurred, it would not involve the unauthorized access or misuse of a customer's card details, as these details were never accessible to anyone within Redwood. (See id. at 6.) Defendant concedes that using customers' names and credit and debit card numbers was necessary to charge them for the subscriptions, but argues that this causal relationship is not sufficient under Dubin. (See id. at 11-12.) According to Defendant, if it were, there would be "an automatic 2-year sentence for generic overbilling that happens to use ubiquitous payment methods." (See id. at 12 (citing Dubin at 124, 129).)

Moreover, Defendant argues that a recent Ninth Circuit reversal of a petitioner's conviction for aggravated identity theft related to healthcare fraud in light of Dubin further underscores his arguments. (See id. at 13 (citing United States v. Ovsepian, 113 F.4th 1193 (9th Cir. 2024)).) For Defendant, in Ovsepian, the Ninth Circuit held that retention of a patient file may have been helpful in the event of an audit, but it was merely an "ancillary" feature of the healthcare fraud scheme that facilitated its commission. (See id. (citing Ovsepian, 113 F.4th at 26).) Defendant likewise argues that the use of customers' card information was purely incidental to the alleged billing errors and did not constitute deception regarding "who" was involved in the transaction. (See id.) Last, Defendant argues that, since Dubin, aggravated identity theft convictions in courts outside of the Ninth Circuit have typically involved cases where the defendants passed themselves off as another person to defraud a third party like a bank or the government. (See id. (citing United States v. Felch, 2024 WL 406554, at *1–5 (D.N.M. Jan. 22, 2024) and United States v. Noble, 2024 WL 253623, at *4–5 (N.D. Ga. Jan. 23, 2024)).)

The Government counters that the facts of this case fall squarely within the Supreme Court's ruling in Dubin, as the fraudulent use of customers' credit and debit card account numbers is an element of the first two counts of the Indictment. (See Second MTD Opp. at 1.) Moreover, for Count Two, the Government asserts that Defendant's use of the credit and debit card account numbers of former customers was not ancillary to the underlying charged criminal act, it was part and parcel of the unlawful use of an access device. (See id. at 7.)

Further, the Government refutes Defendant's assertion that because of security measures there was no unauthorized access or misuse of customers' credit and debit cards simply because the full numbers on the cards were never accessible to anyone within Redwood. (See id. at 9.) The Government argues that Defendant offers no case law or statutory provision in support of the position that direct possession of each digit of a credit or debit card account number is necessary to misuse the full number or transfer it to another entity for payment without authorization. (See id.) Defendant was able to bypass the protections meant to secure the credit and debit card account numbers from fraudulent use by placing "new order card on file" transactions using the full card numbers on file. (See id. at 10.)

The Government also argues that aggravated identity theft is not limited to situations involving impersonation but also includes situations related to who authorized the payment of funds. (See id. at 10-12.) Last, the Government asserts that Defendant's fraudulent new orders on behalf of former customers were not garden-variety overbilling since no legitimate bill existed in the first place. (See id. at 13-14.)

The Court agrees with the Government. Dubin held that "[i]dentity theft covers both when someone steals personal information about and belonging to another . . . and uses the information to deceive others," and "fraudulent appropriation and use." Dubin at 126. "[F]or fraud or deceit crimes like the one in this case, the means of identification specifically must be used in a manner that is fraudulent or deceptive." Id. at 131-132. Here, Defendant allegedly used former customers' means of identification—specifically their names, credit and debit card account numbers and expiration dates—to fraudulently deceive the CRM, processing companies, and banks that these continuity plans were legitimately purchased by or for customers. (See Indictment.) Defendant has also acknowledged the use of the credit and debit card account numbers as part of his alleged straight-to-continuity initiative. (See Second MTD at 11-12 (". . . using those customers' names and credit and debit card numbers was necessary to charge them for the subscriptions . . .").) In other words, without the customers' names and credit and debit card numbers, the predicate crime could not be committed, thus the identify theft is "the locus of [the criminal] undertaking." See Dubin at 132. Further, Defendant's assertion that "Redwood did not use the customer credit card or billing information outside the customer's original intended use" is illogical. (See MTS Reply at 6-7.) As alleged in the Indictment, for customers who purchased a single Redwood product and were put on unauthorized continuity plans, the original intended use of their cards or billing information was for the purchase of that ***single*** product. See Parviz, 131 F.4th at 971 ("even under a narrow construction of 'use,' it would extend to 'tak[ing] some other action on another person's behalf through impersonation or forgery'") (citing Dubin, 599 U.S. at 132 and quoting United States v. Hong, 938 F.3d 1040, 1051 & n.8 (9th Cir. 2019)); see also United States v. Osuna-Alvarez, 788 F.3d 1183, 1185 (9th Cir.

2015) (the language of § 1028A "clearly and unambiguously encompasse[d] situations like the present, where an individual grants the defendant permission to possess his or her means of identification, but the defendant then proceeds to use the identification unlawfully").

Moreover, the Ninth Circuit in Ovsepian "emphasize[d] [] that the facts presented by th[e] appeal [were] unusually narrow" because "the government made a strategic choice not to prosecute [a petitioner] at trial under either the use or transfer prongs of § 1028A(a)(1) and to focus instead on § 1028A possession"—rendering Ovsepian inapplicable here as the Government alleges that Defendant fraudulently transferred, possessed, and used names, credit card account numbers, and debit card account numbers. See Ovsepian, 113 F.4th at 1208; (Indictment.) Even if Ovsepian was applicable, the Ninth Circuit vacated a petitioner's aggravated identity theft conviction because his predicate offense "involved misrepresentations both as to how and when prescriptions were provided, whether such prescriptions were medically necessary, and, in some instances, who was receiving the prescriptions." See id. at 1207-08. In Ovsepian, the fraud centered on misrepresentations related to the possession of prescriptions, making the patients' identity ancillary. (See id.) Whereas here, the fraud is rooted in misrepresenting that customers either consented to or purchased continuity plans, rendering the use of customers' means of identification the crux of the underlying criminality. (See id.; Indictment.)

The Court further finds that Defendant's alleged actions were not "garden-variety" overbilling. The facts of this case are different than the Supreme Court's analogies in Dubin—i.e., a lawyer charging a client for 3 hours when only 2.9 hours of work was performed or a waiter serving flank steak and charging for filet mignon. See Dubin at 123. In these scenarios, a legitimate bill existed to overbill. Here, the customers allegedly did not place, request, or agree to pay for these additional products. (See Indictment.) As the Government notes, these customers "were not charged more than what was due, as nothing was rightly due and no legitimate bill existed." (See Second MTD Opp. at 14.) Accordingly, the Court **DENIES** the Second MTD.

B. Motion to Suppress Evidence

Defendant argues that Redwood's premises and property ("Redwood's Assets") were unreasonably searched and/or seized by USPIS agents in violation of the Fourth Amendment, and thus all evidence obtained because of these searches and/or seizures must be suppressed. (See MTS at 1-3.)

Defendant further asserts that the Supreme Court in AMG Capital Management held that the FTC lacked authority to seek monetary relief under Section 13(b) of the Federal Trade Commission Act ("FTC Act") and, therefore, "[a]uthority for the receivership . . . was void ab initio" because it was pursuant to "a[] [TRO] order to protect assets" under Section 13(b). (See MTS Reply at 2-3); AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n, 593 U.S. 67, 77-78 (2021). Put differently, Defendant asserts that "there was no authority to appoint a receiver in the FTC action." (MTS Reply at 3.)

The Court disagrees. In AMG Capital Management, the Supreme Court addressed whether "Congress, by enacting § 13(b)'s words, 'permanent injunction,' grant[ed] the Commission authority to obtain monetary relief directly from courts, thereby effectively bypassing the process set forth in § 5 and § 19" of the FTC Act. AMG Capital Management, 593 U.S. at 74. The Supreme Court concluded that "§ 13(b) as currently written does not grant the Commission authority to obtain ***equitable monetary relief***." Id. at 82 (emphasis added). In so holding, the Supreme Court reasoned that "[a]n injunction is not the same as an award of equitable monetary relief" because an "injunction typically offers prospective relief against ongoing or future harm" and "restitution typically offers retrospective relief to redress past harm." See id. at 75 (citing United States v. Oregon State Medical Soc., 343 U.S. 326, 333 (1952) and 1 D. Dobbs, Law of Remedies § 4.1(1) (2d ed. 1993)) (citation modified). The Supreme Court further reasoned that words such as "temporary restraining order" within Section 13(b) of the FTC Act "reflect that the provision addresses a specific problem, namely, that of stopping seemingly unfair practices from taking place while the Commission determines their lawfulness." See id. at 76.

Here, the court in the FTC Action granted the TRO under Section 13(b) of the FTC Act because "[t]here [was] good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers—including monetary restitution, rescission, or disgorgement—will occur from the sale, transfer, destruction or other disposition or concealment by Defendants of their assets or records, unless Defendants are immediately restrained and enjoined by order of this Court." (See TRO Exhibit at 3-4.) The FTC did not seek equitable monetary relief in the TRO and only referenced it in the context of preserving Redwood's Assets so harmed consumers may be "grant[ed] effective ***final*** relief." (See id.

(emphasis added).) Accordingly, the Court finds that the terms in the TRO fall squarely within the Supreme Court's definition in AMG Capital Management of "permanent injunction" and "temporary restraining order" pursuant to Section 13(b) of the FTC Act. As such, the court had authority to appoint a receiver in the FTC action.

Defendant next argues that USPIS' agents unreasonably searched and/or seized Redwood's Assets in violation of his Fourth Amendment right. (See MTS at 1.) Consequently, Defendant contends that all evidence obtained as the result of these warrantless searches and/or seizures must be suppressed. (See id. 2-3.)

Defendant bears the initial burden of demonstrating standing to challenge searches and/or seizures of Redwood's Assets.[5] United States v. Thomas, 447 F.3d 1191, 1199 (9th Cir. 2006). In order to do so, he must demonstrate he had a reasonable expectation of privacy and a legitimate privacy interest in Redwood's premises at the time of the challenged searches. See id. This entails both a subjective and an objective inquiry. See id. at 1196. Not only must the defendant have a subjective expectation of privacy, that expectation must be one "society accepts as objectively

[5] Though frequently styled as a question of "standing," the essential inquiry is whether a defendant's motion to suppress asserts their own, recognized privacy and possessory interest. See Rakas, 439 U.S. at 138 (noting that the question of standing for Fourth Amendment suppression is "more properly placed within the purview of substantive Fourth Amendment law than within that of standing"). Thus, the Court treats Defendant's privacy and possessory interests in Redwood's Assets and the question of standing as coextensive and uses these terms interchangeably.

reasonable." Id. For example, while "[a] burglar plying his trade in a summer cabin during the off season" may have a justified subjective expectation of privacy while in that cabin, the law does not recognize this expectation as legitimate. Terrence Byrd v. United States, 138 S. Ct. 1518, 1529 (2018) (citation modified). Moreover, unconstitutional "[s]eizure of property occurs when there is some meaningful interference with an individual's possessory interest in that property." United States v. Jacobsen, 466 U.S. 109, 113 (1984).

Defendant asserts that the sequence of events leading up to and during the search on October 12, 2018 reveals the USPIS' Fourth Amendment violations. (See MTS at 12.) Specifically, Defendant highlights that (1) USPIS agents were present at Redwood's premises solely at the invitation of the FTC and not the Receiver; (2) the TRO granted the FTC access to the premises but did not include inviting additional parties to conduct a criminal investigation; (3) the TRO did not preauthorize searches for the purpose of criminal prosecution; and (4) the Receiver's report on the search makes no mention of the USPIS's presence, involvement, or any consent purportedly granted to them for their search by either the Receiver or Cardiff. (See id.) Defendant further argues that the DOJ's assertion that USPIS agents were present during the initial search at Redwood to help the Receiver "keep the peace" is inaccurate because the TRO did not authorize free access to the premises to criminal investigators. (See id. at 13.) Defendant also asserts that the seizure and forensic imaging of Redwood's computers on the October 22, 2018 search are "fruit[s] of the poisonous tree" because the Postal Inspectors learned of the existence and location of this evidence during the initial search when they perused and rummaged through Redwood's computer system. (See id.) Further, in July 2021, USPIS obtained a written consent-to-search form, explaining rights against non-consensual searches, from the Receiver to search and seize evidence from a storage locker—indicating that USPIS could have followed the same process for the October 12, 2018 and October 22, 2018 searches, but chose not to. (See id. at 14.)

Moreover, Defendant argues that (1) the Receiver's authority is limited to the TRO order; (2) the Receiver's duties are administrative in nature; (3) consent to search a property cannot be granted by a receiver because they are not the property owner; (4) language in the TRO allowing the Receiver to reasonably cooperate with authorities does not mean that the Receiver was allowed to waive Defendant's constitutional rights; and (5) there is no precedent to suggest that a receiver has the power to waive a receivership entity or civil defendant's rights under the Fourth Amendment. (See id. at 15-16, 18-19.) As such, Defendant contends that the evidence and testimony obtained from and because of the October 12, 2018 and October 22, 2018 searches conducted by USPIS should be excluded as fruits of these unreasonable searches and/or seizures. (See id. at 20-22.)

The Government counters that the First MTD Order determined that the "Receiver had the authority to permit [a] search." (See MTS Opp. at 1; First MTD Order at 16 ("Though the Defendant contends that the Receiver complied with unreasonable requests and implores the Court to agree, he offers no legal authority supporting this characterization. This Court finds no reason to agree with Defendant's position given the broad authority granted to the Receiver by the court in the FTC Action and the obvious legitimacy of that proceeding.").) The Government asserts that Defendant's MTS contains no new information and makes the same arguments using the same exhibits as his First MTD. (See MTS Opp. at 1.)

The Government further argues that Defendant had no reasonable expectation of privacy once the court appointed a Receiver in response to Defendant's misconduct. (See id. at 10.) Further, Defendant did not have a present possessory interest in the property; instead, it was the court in the FTC Action, through the Receiver, that retained the present possessory interest in the Receivership Property. (See id. at 11.) The court in the FTC Action via its TRO also explicitly permitted law enforcement to attend the initial search conducted by the Receiver, especially "to keep the peace and maintain security" as there were fifteen to twenty Redwood employees at the premises during that search. (See id. at 11-12.) During the initial search, the Government further asserts that law enforcement officers did not "pick up and review documents, examine items, access computers, move about without any oversight or limitations," or seize property during the search as Defendant contends. (See id. at 12.) The Receiver made clear that law enforcement's role was to support the Receiver during the initial search, and law enforcement acted accordingly. (See id.) Further, the Government argues that the Receiver consented to searches and seizures by law enforcement and was given the authority by the TRO to do so, which is an exception to the warrant requirement under the Fourth Amendment. (See id. at 13-16.) Last, the Government asserts that the independent source, inevitable discovery, attenuation, and good faith doctrines all apply if the Court determines that there was any illegal conduct by law enforcement. (See id. at 16-20.)

The Court finds that Defendant does not have a legitimate privacy interest in Redwood's premises to assert his Fourth Amendment rights. Once custody, control, and possession of Redwood's Assets passed to the Receiver via the TRO, Defendant may have had a subjective expectation of privacy, but not a reasonable one. (See TRO Exhibit.)

In his MTS Reply, Defendant argues that the facts in Anderson parallel the facts in this case and, therefore, he has standing to assert his Fourth Amendment rights. (See MTS Reply at 3); United States v. Anderson, 101 F.4th 586 (9th Cir. 2024). Specifically, Defendant asserts that in Anderson, a defendant's car was placed in the exclusive custody, control, and possession of the police in an impound lot much like Redwood's Assets were placed in the exclusive custody, control, and possession of the Receiver via the TRO. (See MTS Reply at 3.) As such, "[l]ike the police in Anderson, who had policies for conducting an inventory of a car to safeguard the property in the car and protect the public, the Fourth Amendment sets policies and procedures for the USPIS obtaining a consent to search a property." (See id.)

The Court disagrees. The car in Anderson was not subject to a Receivership and the search at issue was conducted before the (1) car was impounded and (2) police officers filled out the forms required to conduct administrative searches. See Anderson, 101 F.4th at 589-90. Moreover, sister courts have persuasively held that a party does not have standing to attack the constitutionality of searches if the property is subject to a Receivership. See United States v. Torres-Ramos, 2008 WL 4667119, at *13 (C.D. Cal. Oct. 17, 2008) (citing United States v. Smallwood, 443 F.2d 535, 539 (8th Cir. 1971) (holding that a corporate officer had no standing to challenge the seizure of corporate records pursuant to a subpoena after a receiver was appointed to take control of the corporate premises because "defendant could not reasonably expect freedom from governmental intrusion once the trustee was appointed")); United States v. Gray, 751 F.2d 733, 737 (5th Cir. 1985) (rejecting a defendant's argument that an FBI agent "should have obtained a warrant before asking [] the receiver[] to turn over the brochure and that the 'seizure' of the brochure without a warrant invaded his Fourth Amendment rights" because defendant "no longer had custody or control over his companies' records [since] that authority [] passed to the receiver").

Accordingly, evidence obtained by USPIS after the appointment of the Receiver does not constitute an unconstitutional seizure. The Court agrees with the Government that "Defendant did not have a present possessory interest in the [Receivership] property; instead, it was the court, through the Receiver, that retained the present possessory interest in the Receivership Property." (See MTS Opp. at 11); Porter v. Sabin, 149 U.S. 473, 479 (1893) ("The possession of the receiver is the possession of the court; and the court itself holds and administers the estate through the receiver, as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it.").

Defendant additionally argues that Cardiff had possessory interest in Redwood's Assets because he had "full access to the premises and [the TRO] did not transfer ownership during or after October 12, 2018." (See MTS Reply at 4.) However, the TRO did not grant Cardiff full access to Redwood's premises but instead (1) gave the Receiver "full control of the Receivership Entities" and (2) allowed the Receiver to grant "Defendants' representatives and Defendants themselves[] ***reasonable access*** to the premises of the Receivership Entities" and "all Documents in the possession, custody, or control of the Receivership Entities." (See TRO Exhibit at 19, 24-25 (emphasis added).) Put differently, the TRO would have allowed the Receiver to grant Cardiff reasonable access to one of Redwood's computers but would have prohibited him from removing said computer from Redwood's premises. (See id. at 14, 19, 23-25.) Further, "[w]hile property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, property rights are neither the beginning nor the end of this Court's inquiry." United States v. Salvucci, 448 U.S. 83, 91–92 (1980) (citation modified). This Court "must instead engage in a conscientious effort to apply the Fourth Amendment by asking not merely whether the defendant had a possessory interest in the items seized, but whether he had a[] [reasonable] expectation of privacy in the area searched." Id. at 93. As discussed above, Cardiff had neither.

Because the Court finds that Cardiff lacks standing to contest USPIS' searches and/or seizures of Redwood's Assets, the Court does not reach the question of whether these searches and/or seizures were constitutional. Accordingly, the MTS is **DENIED**.

C. Third MTD

Defendant argues that the Court should dismiss Counts Three and Four of the Indictment because there is no evidence that Cardiff ordered employees to destroy documents because he "knew or had notice that justice was being administered in that court." (See Third MTD at 3.) Specifically, Cardiff argues that at the time of the alleged destruction, the FTC was in the midst of investigating and gathering information to determine what, if anything, it might do to address its concerns—thus, because Cardiff did not know, and could not reasonably foresee a legal action, he lacked the "intent" to obstruct official proceedings that were not instituted for six months after the alleged destruction. (See id. at 9.) For Defendant, the Government cannot prove that there was an "official proceeding" pending at the time of the alleged destruction of documents on or about April or May 2018 because the FTC was merely investigating Cardiff, and the FTC did not file a complaint against Cardiff until October 2018. (See id. at 8-9.)

Defendant further argues that: (1) the CID is not an official proceeding as it is a pre-litigation investigative tool that lacks tribunal-like qualities; (2) the tampering statute requires destruction of evidence that compromises the availability of evidence "for use in an official proceeding," and neither the CID nor the FTC enforcement action regarding the CID involved evidence that may be "used" in either of those proceedings; (3) the Government cannot prove a nexus between the alleged acts and filing of the FTC Action; and (4) Counts Three and Four must be dismissed because the Indictment failed to identify any specific "official proceeding" at issue—i.e., neither the CID, the enforcement action, nor the FTC Action. (See Third MTD Reply at 2.)

The Government counters that Defendant raises a factual dispute about whether Defendant's obstructive conduct had a nexus to an official proceeding, which is a determination properly decided by the jury at trial; a motion to dismiss is not a proper way to raise a factual defense. (See Third MTD Opp. at 1.) Alternatively, if the Court decides to consider Defendant's claim at the motion to dismiss stage, the Indictment clearly points to proceedings that the jury may decide are official proceedings for purposes of the tampering statute. (See id.) Specifically, the Indictment alleges that Defendant corruptly persuaded two individuals to destroy documents "with the intent to impair the integrity and availability of the objects for use in official proceedings, namely civil and administrative proceedings before the United States District Court for the Central District of California and the United States Federal Trade Commission." (See id.) The Government argues that Defendant focuses solely on the FTC Action initiated in October 2018, ignoring that both the CID and the FTC's enforcement action related to the CID are also official proceedings. (See id. at 2.) Moreover, while the FTC enforcement action was pending, Defendant engaged in the criminal conduct alleged in Counts Three and Four. (See id.) Specifically, Defendant stipulated to an order compelling production of documents related to the CID within the FTC enforcement action, was compelled by Judge Otero to produce such documents, and subsequently instructed his staff to withhold and destroy those same documents that were the subject of the order to compel rather than producing them as the court ordered him to. (See id.) Last, the FTC Action was foreseeable to Defendant when he received the CID. (See id.)

The Court agrees with the Government. The determination of whether a defendant knew or had notice that a judicial proceeding was pending is generally a question of fact rather than law. See United States v. Rodriguez-DeHaro, 192 F. Supp. 2d 1031, 1038 (E.D. Cal. 2002) ("Knowledge is an evidentiary issue Defendant may address at trial with evidence he lacked knowledge that his statement was false. The issue of knowledge cannot be decided as a matter of law from the face of the indictment."). Further, even if the Court determines that the CID and the FTC enforcement action were not "official proceedings" pending at the time of the alleged destruction of documents, the Court holds that the FTC Action was likely foreseeable to Defendant when he received the CID.

"The action taken by the accused must be with an intent to influence judicial or grand jury proceedings; it is not enough that there be an intent to influence some ancillary proceeding, such as an investigation independent of the court's or grand jury's authority." United States v. Aguilar, 515 U.S. 593, 599 (1995) (citing United States v. Brown, 688 F.2d 596, 598 (9th Cir. 1982). "Some courts have phrased this showing as a 'nexus' requirement—that the act must have a relationship in time, causation, or logic with the judicial proceedings." Id. "In other words, the endeavor must have the 'natural and probable effect' of interfering with the due administration of justice." Id. Although 18 U.S.C. § 1512 confirms that "an official proceeding need not be pending or about to be instituted at the time of the offense," to show the requisite nexus, an official proceeding must be at least foreseeable at the time the obstructive actions occurred. See United States v. Cervantes, 2021 WL 2666684, at *6 (9th Cir. June 29, 2021).

The CID notified Defendant that the documents demanded by it were to determine "[w]hether Commission action to obtain monetary relief would be in the public interest." (See Third MTD, Ex. 1-1 at 7.) The CID also provided citations to specific sections of the FTC Act, "Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52." See id. These statutes notified Defendant that documents turned over in response to the CID that were evidence of violations of the FTC Act could result in the FTC filing a temporary restraining order or preliminary injunction, which is exactly what initiated the FTC Action. (See Third MTD Opp. at 19-20); see also Cervantes, 2021 WL 2666684, at *6 (holding that an official proceeding was foreseeable at the time of the obstructive actions because, among other reasons, defendant "knew that he had already drawn the attention of federal authorities") (citing United States v. Binday, 804 F.3d 558, 590–91 (2d Cir. 2015) (nexus element met where defendant was aware that he was the target of a federal investigation)). Accordingly, the Court **DENIES** the Third MTD.

D. Fourth MTD

Defendant moves to dismiss the Indictment, arguing that the criminal prosecution follows civil proceedings by the FTC which were punitive in character and effect, thereby violating the Double Jeopardy provision to the United States Constitution. (See Fourth MTD at 2.) Cardiff asserts that the Receivership lacked statutory authority, and that the Receiver's actions inflicted devastating financial and personal harm on Defendant, including the loss of his home, the destruction of his credit, and the inability to meet basic obligations for his family. (See id. at 3.) For Defendant, absent Congressional authority, the Receiver's actions must be characterized as punitive rather than remedial, and DOJ's decision to pursue criminal charges for the same alleged conduct compounds the punitive harm inflicted by the FTC Action. (See id. at 3-4.) Specifically, Defendant argues that seizure of assets without legitimate authority is proscribed by the Fifth Amendment and, when accomplished without legitimate authority, is inherently punitive. (See id. at 16.)

The Government counters that the district court in the underlying FTC Action did not impose any monetary sanction upon Defendant and his companies—in violation of AMG Capital Management—via the permanent injunction. (See Fourth MTD Opp. at 1.) The Government argues that the district court's order freezing assets and appointing a Receiver was both consistent with facts and law, and ultimately stipulated to by Defendant; thus, under these circumstances, those actions cannot be so punitive as to be transformed into criminal sanctions. (See id.) Further, according to the Government, Defendant cannot establish a violation of the Double Jeopardy Clause because Congress intended the FTC Act and Restore Online Shoppers' Confidence Act ("ROSCA") to be civil regulatory regimes, and there is little proof, much less the necessary "clearest proof," that the asset freeze and appointment of a Receiver was a civil penalty at all or so severe as to transform such actions into a criminal punishment. (See id.)

"The [Double Jeopardy] Clause protects only against the imposition of multiple ***criminal*** punishments for the same offense, . . . and only when such occurs in successive proceedings." Hudson v. United States, 522 U.S. 93, 99 (1997) (emphasis in original). "Whether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction." Id. "A court must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." Id. "Even in those cases where the legislature has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty." Id. (citation modified). The Double Jeopardy Clause does not prevent the criminal prosecution of conduct that also violates a civil regulatory scheme. See Helvering v. Mitchell, 30 U.S. 391, 399 (1938) ("Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense").

To determine whether a statutory scheme was so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty, the following factors are assessed: (1) "[w]hether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of scienter "; (4)

"whether its operation will promote the traditional aims of punishment-retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the alternative purpose assigned." See Kennedy v. Mendoza–Martinez, 372 U.S. 144, 168–169 (1963). "It is important to note, however, that these factors must be considered in relation to the statute on its face and only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." Hudson, 522 U.S. at 99–100 (citation modified).

The Court agrees with the Government. Defendant's arguments rely on the premise that the FTC acted outside of the scope of its authority because its intention with the Receivership was to seek monetary remedies pursuant to Section 13(b) of the FTC Act, which the Supreme Court found impermissible in AMG Capital Management. However, as discussed above, the Court finds that the terms in the TRO fall squarely within the Supreme Court's definition in AMG Capital Management of "permanent injunction" and "temporary restraining order" pursuant to Section 13(b) of the FTC Act. As such, the court had the authority to appoint a Receiver in the FTC Action, and the Receiver acted within the proper scope of its authority pursuant to the TRO, rendering the asset freeze and the Receivership—to stop ongoing consumer harm and/or preserve assets for future monetary relief to customers—permissible civil remedies.

The civil penalties imposed on Cardiff because of the FTC Action were also permissible under ROSCA, which incorporated Section 19(a)(1) of the FTC Act. (See FTC Action, Dkt. No. 627 (finding that the FTC was able to seek equitable monetary relief to redress consumer injury resulting from ROSCA violations)); see also Fed. Trade Comm'n v. Credit Bureau Ctr., LLC, 81 F.4th 710, 714 (7th Cir. 2023) (vacating a restitution order and holding that "section 13(b) does not authorize restitutionary relief," but upholding the restitution judgment after it was reimposed under Section 5 of ROSCA and section 19 of the FTC Act, in lieu of section 13(b)).

The Court also finds that: (1) Congress unambiguously intended the FTC Act and ROSCA to provide for civil remedies, not criminal punishment and (2) the Receivership and asset freeze were not so harsh as to transform what has been viewed as a traditionally civil remedy into a criminal punishment. As such, no criminal punishment was imposed upon Defendant in the FTC Action, and thus the Double Jeopardy provision to the United States Constitution was not violated. Accordingly, the Court **DENIES** the Fourth MTD.

E. Fifth MTD

Finally, Defendant moves to dismiss the Indictment based on fraud on the Court. (Fifth MTD.) Specifically, Defendant asserts that this case rests on evidence produced by a Receiver who committed fraud by forging documents in the FTC Action, which Defendant discovered on or about mid-March 2025 and May 2025. (See id. at 1-2; Newly Discovered Evidence.)

The Court finds that the Fifth MTD implicates evidentiary issues that cannot be addressed in a pre-trial motion to dismiss because it raises inherently factual questions that "invade the province of the ultimate finder of fact." (See, e.g., Fifth MTD at 9 ("Each of the four charges against Mr. Cardiff relies heavily on evidence and records provided by the Receiver, a court-appointed officer whose repeated acts of forgery have irreparably tainted the judicial process. The Receiver's misconduct renders any derivative evidence inadmissible and infects the integrity of the entire prosecution."); see also Shortt Accountancy Corp., 785 F.2d at 1452; Lundstedt, 997 F.2d at 667 (a "district court cannot grant a motion to dismiss an indictment if the motion is substantially founded upon and intertwined with evidence concerning the alleged offense") (citation modified); Jensen, 93 F.3d at 668 ("A motion to dismiss the indictment cannot be used as a device for a summary trial of the evidence.").

Moreover, the court in the FTC Action has repeatedly rejected Defendant's claims of misconduct against the Receiver and determined that the alleged fraud did not require the judgment to be set aside. (See Fifth MTD Opp. at 4); FTC v. Cardiff, Dkt. Nos. 598, 730, 738.

Last, Defendant's reliance on United States v. Sierra Pacific Indus., Inc., 862 F.3d 1157 (9th Cir. 2017) and Levander v. Prober, 180 F.3d 1114 (9th Cir. 1999) is misplaced. (See Fifth MTD Opp. at 3-4.) The courts in these cited cases assessed civil judgments allegedly obtained through fraud under Federal Rule of Civil Procedure 60, and do not stand for the proposition that a court may dismiss an indictment based on allegations of fraud via forged evidence by an officer of the court. Instead, courts have limited authority to review the sufficiency of evidence presented to the grand jury and challenges to the reliability or competence of that evidence are generally not grounds for dismissal. See United States v. Williams, 504 U.S. 36, 54 (1992) (finding that "the mere fact that evidence itself is unreliable is not sufficient to require a dismissal of the indictment," and that "a challenge to the reliability or competence of the evidence presented to the grand jury" will not be heard) (quoting and citing Bank of Nova Scotia v. United States, 487 U.S. 250, 261 (1988)). Accordingly, the Court **DENIES** the Fifth MTD.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the Motions.

IT IS SO ORDERED.

Appendix C
[Filed: Nov. 5, 2025]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CRIMINAL MINUTES—GENERAL

Case No. **EDCR 23-0021 JGB** Date November 5, 2025

Title ***United States of America v. Jason Edward Thomas Cardiff***

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Government:	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING Government's Ex Parte Application to Correct Warrant for Arrest Nunc Pro Tunc (Dkt. No. 268); (2) DENYING Defendant's Motion for Reconsideration (Dkt. No. 272); (3) DENYING Defendant's Request for an Order to Show Cause (Dkt. No. 273); (4) DENYING Defendant's Ex Parte Application to Stay Proceedings; and (5) VACATING the November 10, 2025, Hearing (IN CHAMBERS)

Before the Court is an ex parte application to correct a warrant for arrest nunc pro tunc filed by the United States ("Application," Dkt. No. 268), and three motions filed by Defendant Jason Edward Thomas Cardiff ("Defendant" or "Cardiff"): (1) a motion for reconsideration of the Court's order denying Defendant's first motion to dismiss; (2) Defendant's motion to strike and request for an order to show cause; and (3) Defendant's ex parte application to stay proceedings. ("MFR," Dkt. No. 272; "MTS," Dkt. No. 273; "ASP," Dkt. No. 278.) The Court finds these matters appropriate for resolution without a hearing. See L.R. 7-15. After considering the papers filed in support of and in opposition to the Application, MFR, MTS, and ASP, the Court **GRANTS** the Application and **DENIES** the MFR, MTS, and ASP.

I. BACKGROUND

Defendant Cardiff is charged with three crimes: (1) access device fraud under 18 U.S.C. § 1029(a)(5) ("Count One"); (2) aggravated identity theft under 18 U.S.C. § 1028A(a)(1) ("Count Two"); and (3) witness tampering under 18 U.S.C. § 1512(b)(2)(B) ("Counts Three and Four"). ("Indictment," Dkt. No. 1.) Cardiff also faces criminal forfeiture. (Id.) On April 8, 2024, Defendant moved to dismiss the Indictment, or, in the alternative, to suppress evidence. ("First MTD," Dkt. Nos. 45, 52.) On June 13, 2024, the Court denied the First MTD. ("First MTD Order," Dkt. No. 79.)

Due to Defendant's subsequent failure to appear in Court and his apparent presence in Ireland despite the Court's orders to return to the United States, on

February 5, 2025, the Court granted an order that: (1) declared Defendant a fugitive; (2) vacated Defendant's trial date and the tolling of the Speedy Trial Act; and (3) issued an arrest warrant against Defendant. (Dkt. No. 196.)

Between September 9, 2024, and April 27, 2025, Defendant repeatedly moved the Court for dismissal of the indictment against him and suppression of evidence. On August 19, 2025, the Court issued an order denying Cardiff's five motions. (Dkt. No. 267.)

On September 17, 2025, the Government filed its Application to correct a warrant for Defendant's arrest. (Application.) Defendant opposed that same day. ("Application Opposition," Dkt. No. 270.) On October 13, 2025, Defendant filed his MFR. (MFR.) On October 17, 2025, he filed his MTS. (MTS.) The Government opposed the MFR and MTS on October 20, 2025. ("MFR Opposition," Dkt. No. 274; "MTS Opposition," Dkt. No. 275.) Defendant replied in support of the MFR on October 27, 2025. ("MFR Reply," Dkt. No. 277.) On October 29, 2025, Defendant filed his ASP. (ASP.) The Government opposed on October 30, 2025, and Defendant replied on October 31, 2025. ("ASP Opposition," Dkt. No. 279; "ASP Reply," Dkt. No. 280.)

II. FACTUAL ALLEGATIONS

The Court extensively outlined the factual allegations in this case in its August 19, 2025, order and declines to do so again here, but that order is available for reference. (See Dkt. No. 267.) The Court addresses only the specific facts relevant to the present Application, MFR, and MTS.

A. Application

On February 5, 2025, the Court issued a Warrant for Arrest for Defendant. ("February Warrant," Dkt. No. 195.) The February Warrant mistakenly listed a third party's name who has no relation to the case on the second page of the docket entry. Other pages of the February Warrant and all biographical information on the second page, however, properly referred to Defendant. The Government contends that this was a clerical error.

Defendant objects to the Application being made on an ex parte basis and requesting nunc pro tunc relief.

B. MFR

Defendant's MFR requests reconsideration of the Court's order on his First MTD. Specifically, he alleges "new facts[,] IRS FOIA responses, transcripts, and sworn official statements" that did not exist at the time of his First MTD in 2024. (MFR at ii.) These materials, he argues, show that "the Receiver [in the civil proceedings related to Defendant]—an officer of this Court—submitted a forged 'Amended IRS Proof of Claim.'" (Id. at ii, 1.) Specifically, Defendant argues that the Receiver filed a forged Amended IRS Proof of Claim in the civil FTC receivership action related to his criminal proceedings. Defendant believes that document was forged in part based on a FOIA response received in May 2025 that "confirmed that no such amended claim exists, no correspondence or transmission occurred, and no IRS employee authorized or issued the document." (Id. at 4.)

The Government contends that Plaintiff's MFR is procedurally improper and relies on information that has previously been rejected by the Court as a basis for a different outcome. (MFR Opp'n at 1.)

C. MTS and ASP

Defendant requests that the Court strike the Government's improper ex parte communication, strike the Government's pleadings for DOJ's counsel's lack of authority to file pleadings, and order the Government to show cause why DOJ counsel should not be held in contempt for ex parte communications with the Court. (MTS, ASP.) As to Defendant's request to strike an improper ex parte communication, Defendant alleges that on October 17, 2025, the Government sent an improper ex parte communication to the Court through the Deputy Clerk inquiring about the Government's pending application to correct the warrant for Defendant's arrest. (MTS at 2-3.) Defendant also seeks an order to show cause why Government counsel engaged in such ex parte communications. (Id. at 7.)

With respect to the request to strike or stay for lack of authority to file pleadings, Defendant argues that Manu Sebastian is a trial attorney who is not authorized to file pleadings on behalf of the Enforcement and Litigation Branch ("EALB"), and is improperly filing as a non-Assistant United States Attorney on behalf of the Consumer Protection Branch ("CPB"), which no longer exists. (MTS; ASP.)

III. LEGAL STANDARDS

A. Application

"[A] nunc pro tunc order is typically used to correct clerical or ministerial errors." Singh v. Mukasey, 533 F.3d 1103, 1110 (9th Cir. 2008) (internal citations omitted). Such an order "done now" can "have the same legal force and effect as if done at [the] time when it ought to have been done." Id. (internal citations omitted).

B. MFR

"The Federal Rules of Civil Procedure do not provide for a 'Motion for Reconsideration' but such motions may properly be considered either a Rule 59(e) motion to alter or amend judgment or a Rule 60(b) motion for relief from judgment," provided a judgment has been entered. Hamilton Plaintiffs v. Williams Plaintiffs, 147 F.3d 367, 371 n.10 (5th Cir. 1998).

Rule 60(b) provides for relief from a final judgment, order, or proceeding upon a showing of the following:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

In this district, motions for reconsideration are also governed by Central District Local Rule 7–18. "Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." Tawfilis v. Allergan, Inc., 2015 WL 9982762, at *1 (C.D. Cal. Dec.

14, 2015). Local Rule 7-18 provides that a motion for reconsideration of the decision on any motion may be made only on the grounds of:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L. R. 7-18.

Motions to reconsider are committed to the discretion of the trial court. Arteaga v. Asset Acceptance, LLC, 733 F. Supp. 2d 1218, 1236 (E.D. Cal. 2010). Reconsideration is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enterprises, Inc. v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted).

IV. DISCUSSION

A. Application

The Government characterizes the incorrect name on the warrant as a "typographical error in the supplemental pages of the docket entry." (App. At 2.) The remaining contents of the docket entry is entirely related to Defendant, not to "Graham Hefner," the individual whose name is on the second page. (Dkt. No. 195.) While the name on an arrest warrant is certainly very important, it is plain that the warrant as issued in February was intended to refer to Defendant, and in virtually every respect does so. Defendant characterizes the warrant as authorizing "the arrest of a person not before this Court," a "defect [that] cannot be erased retroactively." (App. Opp'n at 5.)

The Court agrees with the Government. It is plain that the substitution of Defendant's name on the second page was a typographical error, given that Defendant's name elsewhere appears on the document, and the entire remaining contents of the document plainly refer to him. As such, the Court **GRANTS** the Government's Application. The Clerk is directed to correct the name "Graham Hefner" on the second page of the warrant to read "Jason Edward Thomas Cardiff" and to reissue the warrant nunc pro tunc to February 5, 2025.

B. MFR

The Court has been clear about its position on dismissing the indictment against Defendant based on fraud on the court:

> The Court finds that the Fifth MTD implicates evidentiary issues that cannot be addressed in a pre-trial motion to dismiss because it raises inherently factual questions that "invade the province of the ultimate finder of fact." (See, e.g., Fifth MTD at 9 ("Each of the four charges against Mr. Cardiff relies heavily on evidence and records provided by the Receiver, a court-appointed officer whose repeated acts of forgery have irreparably tainted the judicial process. The Receiver's

> misconduct renders any derivative evidence inadmissible and infects the integrity of the entire prosecution."); see also Shortt Accountancy Corp., 785 F.2d at 1452; Lundstedt, 997 F.2d at 667 (a "district court cannot grant a motion to dismiss an indictment if the motion is substantially founded upon and intertwined with evidence concerning the alleged offense") (citation modified); Jensen, 93 F.3d at 668 ("A motion to dismiss the indictment cannot be used as a device for a summary trial of the evidence.").

(Dkt. No. 267 at 23.) While Defendant presents the conclusions he draws from his FOIA request as dispositive of his allegations of fraud on the court, the Government presents ample reason to doubt what such FOIA returns show. For example, the Government points out that, while the IRS did not return a copy of the document Defendant claims is fraudulent, Defendant appears to have used different identifiers than those included on the purportedly fraudulent document when he requested materials from the IRS. (MFR Opp'n at 13.-14.) This interpretation is supported by the fact that the document Defendant insists is the *correct* document also was not returned by the FOIA request given the language Defendant used. (Id. at 14.) The Government also argues that the purportedly forged document is substantially similar to another document whose veracity Defendant does not contest, which undermines the theory that the Receiver would have gone to the trouble of creating a forged document when a meaningfully similar legitimate document already existed. (Id. at 12-13.) Finally, the Government notes that Defendant has failed to file any exhibits supporting his MFR, including purported sworn declarations from IRS officials.[1] (MFR at 4.)

Ultimately, such factual disputes about the propriety of a piece of evidence serve as a perfect example for why such considerations are not appropriately evaluated at this stage.

The Government also contends that Defendant's MFR is untimely and not based on newly discovered evidence. (See Opp'n MFR at 10-11; L.R. 7-18.) Under L.R. 7-18, "[a]bsent good cause shown, any motion for reconsideration must be filed no later than 14 days after entry of the Order" underlying the motion. It has been well over a year since the Court denied Defendant's First MTD on June 13, 2024. (Dkt. No. 79.) Defendant has not made such a good cause showing, nor has he explained why he, "with reasonable diligence, could not have" discovered this evidence earlier. (See Rule 60(b).) The allegedly forged document was submitted to the court in the civil action on September 15, 2021. (Opp'n MFR at 11.) If Defendant doubted the authenticity of that document, he could have investigated it at the time. His efforts to do so now—and apparently without properly requesting the file that may contain this document in the IRS records—do not

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[1] The Government points out that Defendant has repeatedly ignored L.R. 7-5, which requires that a party include with a motion "[t]he evidence upon which the moving party will rely in support of the motion." While the Court considers Defendant's MFR absent such evidence, the Court **ADMONISHES** Defendant for continuing to make deficient filings, and warns Defendant that future failures to abide by the Local Rules, including L.R. 7-5, will result in the Court striking pleadings.

demonstrate the diligence necessary to raise a motion for reconsideration.

Based on the Court's previous ruling; Defendant's failure to provide evidence in support of his MFR; the evidentiary issues with the factual narrative advanced by the MFR; and Defendant's failure to timely file the MFR or demonstrate sufficient diligence, the Court **DENIES** Defendant's MFR.

C. MTS and ASP

Defendant cites no authority supporting his contention that Mr. Sebastian cannot properly litigate this case on behalf of the Government. United States v. Weyhrauch is inapposite—it addresses the qualifications of the person who must *certify an appeal* under 18 U.S.C. § 3731, a statute that expressly provides for certification by "the United States attorney." 544 F.3d 969, 972 (9th Cir. 2008). This case involves no certification of an appeal, and Weyhrauch thus provides no insight into the propriety of Mr. Sebastian appearing for the Government. United States v. Providence Journal Co. similarly offers no on-point authority on this subject.2 485 U.S. 693 (1988). That case involved actions by a Government attorney before the Supreme Court who did not have authorization from the Solicitor General as was required by statute and regulation. Id. at 694–95. Those specific statutes and regulations are not at issue in this case, which is before a District Court and not the Supreme Court. As such, Providence Journal Co. does nothing to support Defendant's contentions.

Given the lack of any support for Defendant's contention that Mr. Sebastian is not authorized to represent the Government, Defendant's MTS and ASP are **DENIED**.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Government's Application and **DENIES** Defendant's MFR, MTS, and ASP. The Clerk is directed to issue a revised warrant nunc pro tunc to February 5, 2025.

IT IS SO ORDERED.

Appendix D
[Filed: Jan. 20, 2026]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: JASON EDWARD THOMAS CARDIFF. JASON EDWARD THOMAS CARDIFF, Petitioner, v. UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE, Respondent, UNITED STATES OF AMERICA, Real Party in Interest	No. 25-5654 D.C. No. 5:23-cr-21-JGB Central District of California, Riverside ORDER

Before: R. NELSON, SUNG, and H.A. THOMAS, Circuit Judges.

The motion (Docket Entry No. 11) for reconsideration and reconsideration en banc is denied. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

Appendix E
[Filed: May 27, 2025]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, vs. JASON EDWARD THOMAS CARDIFF, Defendant	Case No. 5:23-CR-00021-JGB **SUPPLEMENTAL DECLARATION OF EUNJUNG CARDIFF IN SUPPORT OF MOTION TO DISMISS INDICTMENT BASED ON FRAUD ON THE COURT**

SUPPLEMENTAL DECLARATION OF EUNJUNG CARDIFF

I, Eunjung Cardiff, declare as follows:

1. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Defendant's Motion to Dismiss Indictment based on Fraud on the Court.

2. On April 27, 2025, I submitted a Freedom of Information Act (FOIA) request to the Internal Revenue Service (IRS). My request sought any and all records related to an alleged amended IRS Form 4490 (Proof of Claim) for tax year 2014, which had been filed in the U.S. District Court for the Central District of California in the matter of Federal Trade Commission v. Cardiff, Case No. 5:18-cv-02104-DMG (referred to in that docket as Dkt. 657).

3. I filed the FOIA request specifically because I was concerned that the document submitted by the Receiver in that civil case was fraudulent, and I sought to verify whether the IRS had ever authored, filed, transmitted, or received any such amended proof of claim.

4. On May 27, 2025, I personally received, via regular mail delivered by USPS, a physical FOIA response package from the IRS in connection with my request.

5. The FOIA response clearly states that the IRS conducted a search and was unable to locate any responsive records. Specifically, the IRS found no record of any amended IRS Form 4490, no associated correspondence with any third parties (including court-appointed receivers and his counsel), and no transmittal records, faxes, or metadata logs regarding the alleged amended proof of claim filed at Dkt. 657.

6. A true and correct copy of the FOIA response I received is attached to this declaration as **Exhibit 1.**

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27th day of May, 2025, at Dublin, Ireland.

/s/ Eunjung Cardiff 27 May 2025
Eunjung Cardiff

EXHIBIT 1

Eunjung Cardiff
37A Highfield Rd
Dublin, D06 w6D0
Ireland

Eunjung Cardiff
37A Highfield Rd
Dublin, D06 w6D0
Ireland

Department of the Treasury
Internal Revenue Service
Privacy, Governmental Liaison and Disclosure
GLDS Support Services
Stop 93A
PO Box 921506
Atlanta, GA 30362

Date: May 6, 2025
Employee name: M. Russell
Employee ID number: 1000726134
Telephone number: 615-764-6307
Fax number: 855-203-7005
Case Number: 2025-12789

Eunjung Cardiff
37A Highfield Rd
Dublin, D06 w6D0
Ireland

Dear Eunjung Cardiff:

We are writing to provide a final response to your Freedom of Information Act (FOIA) request we received on April 28, 2025.

You requested the following:

1. All versions of IRS Form 4490 (Proof of Claim), and any amended Forms 4490, referencing tax year 2014 submitted under the name of TIN of Eunjung Cardiff (SSN: [redaction added in reproduction]).

2. The complete transaction history or account transcript for tax year 2014, including any transaction codes, dates of claim filings, credits posted, amended claim activity, and any date/lime stamps indicating when these documents were officially processed or logged into IRS systems (AIS, IDRS, or other).

3. Any internal or external correspondence, including emails or memos, between IRS insolvency personnel (e.g., Leonard Brown, Sabina Makarov, Richard Goldstein) and any third parties (including court-appointed receivers or their legal representatives), regarding amended IRS claims filed in the matter of FTC v. Cardiff, Case No. 5:18-cv-02104-DMG-PLA.
4. Copies of any fax cover sheets, electronic transmittal confirmations, and fax transmission logs or routing metadata connected to the submission or receipt of any version of Form 4490 related to this matter.

Regarding items #1, #3, and #4:

A search was conducted, and no records were located in response to your request.

Regarding item #2:

Treasury Regulation 26 CFR 601.702(d) provides that requests for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of the Freedom of Information Act (FOIA).

As a result, Disclosure offices do not process requests for returns and/or transcripts under the FOIA.

You need to submit requests for returns and copies of transcripts, which includes income transcripts such as forms W-2 and/or Forms 1099, by submitting Form 4506, Request for Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return, as applicable. You can also submit a request for copies of transcripts online at https://www.irs.gov/individuals/get-transcript. Form 4506 and Form 4506-T, along with their instructions, are available at IRS.gov by searching at: https://www.irs.gov/forms-instructions.

If you have questions regarding the processing of your FOIA request and you have a FOIA Public Access Portal (FPAP) account, you may contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are unable to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-2929. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

You also have the right to contact the Office of Government Information Services (OGIS). The Office of Government Information Services, the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies. The contact information for OGIS is:

Office of Governmental Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
202-741-5770

877-684-6448
ogis@nara.gov
ogis.archives.gov

You have the right to file an administrative appeal within 90 days from the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. I've enclosed Notice 393, Information on an IRS Determination to Withhold Records Exempt from the Freedom of Information Act – 5 U.S.C. 552, to explain your appeal rights.

Your decision to contact the FOIA Public Liaison or OGIS for assistance in resolving your disputes does not extend the 90-day period in which you can file an appeal.

Sincerely,
/s/ C. Fuqua Vandiver
C. Fuqua Vandiver
Disclosure Manager
Disclosure Office 08

Enclosures:
Notice 393

IRS

Notice 393

Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 90 days after we (1) deny you access to a record in whole or in part, (2) have made an adverse determination as to your category as a requester, (3) deny your request for a fee waiver or reduction, or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain

Your name and address,

- Description of the requested records
- Date of the request (and a copy, if possible),
- Identity of the office and contact on response letter, and
- Date of the letter denying the request (and a copy, if possible)

Mail your appeal to

Independent Office of Appeals
Attn FOIA Appeals
M/Stop 55202
3211 S Northpointe Drive
Fresno, California 93725

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in the United States District Court in the district in which (1) you reside, (2) your principal place of business is located, (3) the records are located, (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeal office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in the Federal Rule of Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A). The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552 does not apply to matter that are:

(b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order;

(b)(2) • related solely to the internal personnel rules and practices of an agency;

(b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title)), provided that the statute

(A) requires that matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

(b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential,

(b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,

(b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

(b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings,

(B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or (b)(9) • geological and geophysical information and data, including maps, concerning wells.

Notice 393 (Rev. 4-2022)
Catalog Number 45803X
Department of the Treasury
Internal Revenue Service
www.irs.gov

Internal Revenue Service
GLDS Support Services
Stop 93A
PO Box 621506
Atlanta, GA 30362-3006

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Penalty for Private Use: $300

Eunjung Cardiff
37A Highfield Rd
Dublin, D06 w6D0
Ireland

Appendix F
[Filed: Sep. 10, 2021]

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Attorneys for Receiver ROBB EVANS AND ASSOCIATES LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. JASON CARDIFF, etc., et al., Defendants.	Case No. 5:18-cv-02104-DMG-PLA **RECEIVER'S SUMMARY ACCOUNTING WITH ALLOCATIONS** Date: TBD Time: TBD Place: Via Zoom Courtroom 8C, 350 West 1st St. Judge: Hon. Dolly M. Gee

TO: THE HONORABLE DOLLY M. GEE, JUDGE OF THE UNITED STATES DISTRICT COURT.

This Court entered its chambers order on August 26, 2021 ("Chambers Order") [Doc. # 650], which provides for a filing by the Receiver as to the Receiver's final accounting for amounts concerning this Receivership estate, and for recommendations by the Receiver to the Court. The Court required the Receiver's filings by September 8, 2021. But, because of a serious illness and emergency hospitalization, the Receiver's filings in that regard have been delayed [Doc. # 652]. The Court accordingly extended the deadline for the Receiver's filings to September 19, 2021 [Doc. # 653].

The Receiver now files a portion of the Receiver's anticipated filings, the summary accounting, attached hereto as Exhibit 1 ("Summary Accounting").[1] The following is a brief orientation to the Summary Accounting.

Poujade/TPI Re-Allocation

The Court asked the Receiver to break out the fees caused to the receivership estate by the contemptuous behavior of Poujade which were the subject of a purge payment to the Receiver by True Pharmastrip ("TPI") [Doc. # 636]. That wrongful behavior by Poujade began the very first day that the Receiver, then a temporary receiver, went to the Redwood offices and interviewed Jason Cardiff. The Receiver and its legal

[1] The remainder of the Receiver's filings, including the backup for the Summary Accounting and the Receiver's recommendations, will be separately filed as soon as those materials can be finalized.

counsel have gone back through all of the billings and invoices to date in this matter, identifying and breaking out the time and incurred by the receivership estate as a result of Poujade's contemptuous behavior.

The Summary Accounting then reallocates those charges during each reporting period, debiting the Poujade funds and showing how the Court could, in its discretion, credit the receivership entity that otherwise paid for those charges. So, for example, all of the Poujade-related charges in the first through third reporting period (October 10, 2018, to September 30, 2019) were allocated from Poujade back to the Redwood entities, from whose funds those charges were otherwise paid.[2] This approach realizes a balance of $235,846.76 in funds received from Redwood being available in the receivership estate under the Summary Accounting.

---

[2] There is an interpretation of the Court's *Chamber's Order re Jacque Poujade, etc.*, dated July 20, 2021, para. 1 on page 8 [Doc. # 636] that identified Poujade-caused expenses ought to be reallocated only if they were paid from VPL funds, and not from funds claimed by Cardiff or other defendants. But, such Order is based on equity, and there is a paltry amount of Poujade-caused expenses that were paid from VPL funds, as shown on the Summary Accounting. On the other hand, a pre-receivership creditor of Redwood, Inter/Media, claims sizeable amounts are owed to it under a final state court judgment and settlement, and that it holds a lien on Redwood personal property assets in the receivership, which could include funds in the sum of $235,846.76 reallocated from Poujade to Redwood, once the Receiver's Remaining Fees are paid. The Summary Accounting shows a possible accounting for those funds, in the Court's discretion, based on the facts and equities in this case to allow Inter/Media to assert its secured claim as to Redwood assets.

Post April 21, 2021 Receiver's Remaining Fees and Costs

The attached Summary Accounting, Exhibit 1, reflects the Receiver's fees, costs, and expenses from and after April 22, 2021, through and including August 31, 2021, the last full accounting period to date, in the aggregate amount of $225,676.60. Further, the Summary Accounting provides for the estimated fees and costs for the Receiver to close out the estate from and after August 31 ("Remaining Fees") in the estimated amount of $68,358.50. The Remaining Fees should be paid first, and this Summary Accounting and the to-be-filed backup supporting it, including declarations, should be considered to be a fee application requesting such payments. The Summary Accounting then shows the remaining, surplus funds in the receivership estate after payment of the Remaining Fees (the "Surplus Funds"), leading to a discussion about and the options for the Court to consider concerning how to resolve claims to such Surplus Funds.

Payment Source for the Remaining Fees

The Court has expressed a view previously that the FTC should be responsible for payment of the Remaining Fees after April 21, 2021, and not the receivership estate assets. Cardiff and VPL endorse that view. The FTC does not, and has asked the Court instead to order that the funds in the receivership estate, rather than the FTC, should pay the Remaining Fees. Previously, the Receiver declined to become involved in that question. For purposes of this Summary Accounting, the Receiver would again decline to express an opinion on that topic and from whom payment of the Remaining Fees should come. That said, there are several observations that the Receiver has at the present time about this issue to share with the Court, concerning the Summary Accounting:

A.The Receiver's Summary Accounting needs to address payment of those Remaining Fees. It does so for illustrative purposes in either of two ways: (i) by paying them pro rata from the balances shown in the Summary Accounting in the columns for "VPL," for "Cardiff," and for "Biztank," as requested by the FTC; or (ii) should the Court decide to have the Remaining Fees paid as requested by Cardiff and VPL, by paying them separately as of August 31, 2021, assuming that none of the Remaining Fees are prorated or paid from the receivership estate assets. That non-prorated and unpaid August 31, 2021, balance is essentially the same as the "Balance before Receiver's Fees and Costs from 4/22/21 to 8/31/21" shown above the line items where receivership Remaining Fees are prorated and allocated to receivership estate assets for payment.

B.The column in the Receiver's Accounting for "VPL" reflects the remaining balance of funds ($70,783.04) to be held by and for the receivership estate after splitting the remaining VPL funds as of June 1, 2021, and transferring to VPL its portion as of that date. These funds essentially are Jason Cardiff's personal share of the previously split remaining VPL funds.

C.As argued by the FTC, most of the receivership estate Remaining Fees (from and after April 22, 2021) were in fact caused directly by the actions of, the complaints by, and filings of the Cardiff and VPL parties.

Claims by Taxing Authorities/New IRS Claim

Up until late Tuesday night (9/7/21) the Receiver knew of claims by taxing authorities in the low six figures, an amount that could have been addressed and paid through the remaining assets in the receivership estate. Then, late on September 7, 2021, the IRS sent to the Receiver an amendment to its prior proof of claim against Eunjung and Jason Cardiff. The prior claim the IRS had delivered to the Receiver on September 1, 2021, claimed that the Cardiffs owed the IRS $64,232.36. The amended IRS proof of claim received on September 7, however, now claims that Eunjung and Jason Cardiff owe the IRS the revised amount of $2,787,989.73, as a result of IRS's "most recent audit" (*See*, Exhibit 2 hereto) ("New IRS Claim").

Issues re the New IRS Claim

It is clear that the New IRS Claim is in excess of the balances in the receivership estate. There are insufficient funds in the receivership estate to pay the New IRS Claim in full. The New IRS Claim therefore raises a host of issues that have to be addressed. For instance, the New IRS Claim (Exhibit 2) asserts that some or all of the IRS claimed amounts are subject to a tax lien in favor of the IRS, and that the New IRS Claim has legal priority for payment from the Surplus Funds over the non-administrative claims of the other creditors of the receivership estate. As previously noted, there is only one receivership estate, one "qualified settlement fund" ("QSF"). The IRS may now be claiming the Surplus Funds in the receivership estate, in the QSF, after payment of the Remaining Fees.

That could set up a conflict with the claims of Inter/Media, secured or unsecured, to some or all of the funds related to Redwood and/or Cardiff. It also could set up a conflict with the claims of Poujade/TPI for return of that money.[3]

It is likely that the Court will have to address the positions of the competing claimants to the Surplus Funds in the receivership estate, and resolve them.

Conclusion

The Receiver will provide a copy of this filing and the Summary Accounting, and any subsequently filed supporting materials, including the declarations and exhibits, to anyone who requests a copy of the Report in writing directed to Robb Evans & Associates LLC, 11450 Sheldon Street, Sun Valley, California 91352-1121. The Receiver also will post a copy of this filing and the Summary Accounting and all supporting materials, once filed, on the Receiver's website for this case at https://www.robbevans.com/find-a-case/redwood-scientific-technologies-inc-et-al/.

Dated: September 10, 2021 Respectfully submitted,

FRANDZEL ROBINS BLOOM & CSATO, L.C.
MICHAEL GERARD FLETCHER
CRAIG A. WELIN
HAL D. GOLDFLAM

[3] Note also that in recent days lawyers for allegedly defaulted TPI debenture holders of claims in excess of USD $3 million have appeared in this matter, whose clients appear to assert claims in this case for all of remaining the Poujade/TPI funds after the reallocation of those funds.

By: <u>/s/ Michael Gerard Fletcher</u>
MICHAEL GERARD FLETCHER
Attorneys for Receiver ROBB EVANS & ASSOCIATES LLC

Exhibit 1

Recalculation per Judge Gee's Order using Poujade's funds

	Total	J. Poujade	VPL	JC	Biztank	Redwood et al.
1st through 3rd Reporting Period: 10/10/18-9/30/19						
Other Funds	593,136.59					593,136.59
Poujade	1,205,984.80	1,205,984.80	0.00	0.00	0.00	
Expenses (Non-Receiver's Fee & Costs)	(11,084.85)					(11,084.85)
Payments of Receiver's Fees & Costs (1st & 2nd Fee Applications)	(427,680.22)					(427,680.22)
Adjustment per Judge Gee's Order - Receiver (1st & 2nd)	0.00	(21,195.90)				21,195.90
Adjustment per Judge Gee's Order - Receiver's Lawyer (1st & 2nd)	0.00	(103,128.50)				103,128.50
Balance as of 9/30/19	1,360,356.32	1,081,660.40	0.00	0.00	0.00	278,695.92
4th Fee app 10/1/19 to 6/30/20						
VPL Expenses	(85,029.79)		(85,029.79)			
Other Expenses	(6,781.61)					(6,781.61)
Payments of Receiver's Fees & Costs (3rd Fee Applications)	(147,919.51)					(147,919.51)
Adjustment per Judge Gee's Order - Receiver (3rd)	0.00	(13,689.90)				13,689.90
Adjustment per Judge Gee's Order - Receiver's Lawyer (3rd)	0.00	(84,376.50)				84,376.50
VPL Funds	2,659,975.51		2,659,975.51			
Redwood et al. Funds (including Int)	54,893.10					54,893.10
Balance as of 6/30/20	3,835,494.02	983,594.00	2,574,945.72	0.00	0.00	276,954.30
5th Fee app 7/1/20-10/30/20						
VPL Expenses	(465,394.27)		(465,394.27)			
Expenses (Non-Receiver's Fee & Costs)	(11,891.13)					(11,891.13)
Payments of Receiver's Fees & Costs (4th Fee Application)	(298,850.47)		(258,969.27)			(39,881.20)
Adjustment per Judge Gee's Order - Receiver (4th)	0.00	(205.20)				205.20
Adjustment per Judge Gee's Order - Receiver's Lawyer (4th)	0.00	(13,994.00)				13,994.00
Biztank	377,648.74				377,648.74	
Redwood et al. Income (Int)	147.32					147.32
JC	37,149.00			37,149.00		
Balance as of 10/30/20	3,474,303.21	969,394.80	1,850,582.18	37,149.00	377,648.74	239,528.49
6th Fee app 11/1/20-4/21/21						
VPL Funds	99,500.00		99,500.00			
Biztank	30,000.00				30,000.00	
JC	91,331.67			91,331.67		
Other Income (Int)	388.27					388.27
VPL Expenses	(1,129,438.13)		(1,129,438.13)			
JC Living Expenses	(80,590.94)			(80,590.94)		
Expenses (Non-Receiver's Fee & Costs)	(3,175.00)					(3,175.00)
Payments of Receiver's Fees & Costs (5th Fee Application)	(408,839.60)		(408,839.60)			

Recalculation per Judge Gee's Order using Poujade's funds	Total	J. Poujade	VPL	JC	Biztank	Redwood et al.
Payments of Receiver's Fees & Costs (6th Fee Application)	(273,238.19)		(273,238.19)			
Adjustment per Judge Gee's Order - Receiver (6th)	0.00	(68.40)	68.40			
Adjustment per Judge Gee's Order - Receiver's Lawyer	0.00	(935.50)	935.50			
Expenses	(601.08)					(601.08)
Payment to VPL	(69,282.12)		(69,282.12)			
Balance before Receiver's Fee and Costs 4/22/21-8/31/21	***1,730,358.09***	***968,390.90***	***70,783.04***	***47,889.73***	***407,648.74***	***235,645.68***
Receiver's Fees and Costs 4/22/21-8/31/21						
Aggregate Receiver's Fees and Costs, Prorated and Applied - $225,676.60						
Receiver's Fees	(36,991.80)	(5,095.80)	(4,289.58)	(2,902.20)	(24,704.22)	
Receiver's Lawyer's Fees	(182,759.00)	(17,783.50)	(22,186.95)	(15,011.04)	(127,777.52)	
Receiver's Costs	(4,469.00)		(601.02)	(406.63)	(3,461.35)	
Receiver's Lawyer's Costs	(1,456.80)		(195.92)	(132.55)	(1,128.33)	
Balance as of 8/31/21	***1,504,681.49***	***945,511.60***	***43,509.58***	***29,437.31***	***250,577.33***	***235,645.68***
Estimate Receiver's Fees & Costs to Close, Prorated and Applied $68,358.50						
Receiver's Fees	(5,251.50)		(706.25)	(477.83)	(4,067.41)	
Receiver's Lawyer's Fees	(46,000.00)		(6,186.37)	(4,185.52)	(35,628.11)	
Receiver's Costs	(14,107.00)		(1,897.20)	(1,283.59)	(10,926.21)	
Receiver's Lawyer's Costs	(3,000.00)		(403.46)	(272.97)	(2,323.57)	
Balance after Payments to Receiver, Prorated and Applied	***1,436,322.99***	***945,511.60***	***34,316.30***	***23,217.40***	***197,632.01***	***235,645.68***
Fees & Costs Not Prorated and Applied - $225,676.60 & Estimate to Close						
Balance as of 8/31/21	***1,730,358.09***	***968,390.90***	***70,783.04***	***47,889.73***	***407,648.74***	***235,645.68***
Taxes Claimed by Various Taxing Authorities	(2,853,234.58)					

Exhibit 2

INTERNAL REVENUE SERVICE IRS

FAX TRANSMISSION
Cover Sheet

Date : September 07, 2021
To: Anita Jen
Address/Organization: Robb Evans & Associates
Fax Number: (616) 768-8802 Office Number: ________
From: Brown Leonard S Jr
Address/Organization: ______________________________
Fax Number: (855) 863-4354 Office Number:_________
Number of 2 pages: *Including cover page*

Subject: RE: Cardiff Proof of Claim

I have attached the amended proof of claim for Jason Cardiff to include the most recent audit. If you have questions let me know.

Leonard Brown
Bankruptcy Specialist
300 N Los Angeles St MS 5022
Los Angeles, CA 90012
Phone: 213-372-4287
Fax: 855-863-4354

Proof of Claim for Internal Revenue Taxes
Department of the Treasury/Internal Revenue Service

Form **4490**
(Rev. 2-2005)

In the District Court
For the Western Division

Docket Number	18-02104
Kind of Proceeding	RECEIVERSHIP

In the Matter of:
CARDIFF EUNJUNG
CARDIFF JASON
870 N. MOUNTAIN AVE, SUITE 115
UPLAND, CA 91768

Date of Petition	11/08/2018
Creditor Number	

Amendment No. 1 to Proof of Claim dated 09/01/2021

The undersigned officer of the Internal Revenue Service, a duly authorized agent of the United States in this behalf, being duly sworn deposes and says that:

1. CARDIFF EUNJUNG CARDIFF JASON is justly and truly indebted to the United States in the amount of $2,787,989.73 with interest and penalty as shown below.
2. This debt is for taxes due under the Internal Revenue laws of the united States as follows:

Taxpayer ID Number	Kind of Tax	Period	Tax Due	Penalty Due	Interest Due	Date Tax Lien Arose
[redacted]	WT-FICA	12/31/2011	$15,616.56	$6,252.85	$5,213.01	02/13/2012
	BENE PLAN	12/31/2012	$18,895.63	$0.00	$4,163.88	02/15/2016
	CORP-INC	12/31/2013	$0.00	$1,170.00	$195.95	10/06/2014
	BENE PLAN	12/31/2013	$9448.86	$0.00	$1,741.30	02/15/2016
	INCOME	12/31/2014	$1,658,549.00	$817,593.10	$247,615.27	
	MISC PEN	12/31/2016	$0.00	$1,459.93	$74.30	08/26/2019
			$1,702,510.05	$826,475.88	$259,003.80	

3. No part of this debt has been paid, and it is now due and payable to the United States Treasury at the Office of Internal Revenue Service;

4. Except for statutory tax liens that arose on the above dates, the United States does not hold, to the

deponent's knowledge or belief, any security of this debt;

5. No note or other negotiable instrument has been received for this debt or any part of it, nor has any judgment been rendered with respect to this debt; and

6. This debt has priority and must be paid in full in advance of distribution to creditors to the extent provided by law. See 31 U.S.C. Section 3713(a). Any executor, administrator, or other person who fails to pay the claims of the United States in accordance with its priority may become personally liable for this debt under 31 U.S.C. Section 3713(b).

(Notarize or witness if court requires) **Subscribed and Sworn to Before Me On** ____________________ Month Day Year	Signature /s/ LEONARD BROWN Title Bankruptcy Specialist ID Number 0845203 Telephone Number (213) 372-4287 Address: Internal Revenue Service Insolvency Group 7, 300 North Los Angeles St. 5022 Los Angeles, CA 90012

Appendix G
[Filed: Sep. 16, 2021]

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Attorneys for Receiver ROBB EVANS AND ASSOCIATES LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. JASON CARDIFF, etc., et al., Defendants.	Case No. 5:18-cv-02104-DMG-PLA **IRS CLAIM UPDATE TO THE RECEIVER'S SUMMARY ACCOUNTING WITH ALLOCATIONS** Date: September 17, 2021 Time: 9:30 a.m. Place: Via Zoom Courtroom 8C, 350 West 1st St.

Judge: Hon. Dolly M. Gee

TO: THE HONORABLE DOLLY M. GEE, JUDGE OF THE UNITED STATES DISTRICT COURT.

The Receiver filed a summary accounting with this Court on September 10, 2021 [Doc. # 654][1] which included an amended claim filing by the IRS in the amount of $2,787,989.73 against Eunjung and Jason Cardiff. The IRS initially filed a claim with the Receiver against them in the amount $64,232.36. The IRS claimed tax liens and priorities for payment.

<u>Further Amended IRS Claim</u>

When the Receiver filed the Summary Accounting on Friday, September 10, 2021, the Receiver served the IRS with it. And, the Receiver initiated a discussion with the IRS over its amended $2,787,989.73 claim.

Late on Wednesday (9/15/21) the IRS provided to the Receiver a further amendment to the IRS claim, Amendment No. 2 (attached hereto as Exhibit 1). To address the issues noted by the Receiver in the Summary Accounting and in the Receiver's 9/10/21 filing [Doc. # 654], and in the discussions that the Receiver had with the IRS, the IRS has now lowered its claim to the previous amount --- $64,232.36 --- and decided

[1] The Court initially required the Receiver to file accountings by September 8, 2021. But, because of a serious illness and emergency hospitalization, the Receiver's filings in that regard have been delayed [Doc. # 652]. The Court accordingly extended the deadline for the Receiver's filings to September 19, 2021 [Doc. # 653]. The Receiver was able, however, to complete the summary accounting and get it on file with the Court.

to forgo claiming the higher, $2,787,989.73 claim amount.

The Receiver believes that the Court should be apprised of this development before the continued status conference on Friday, September 17, 2021. The Receiver also believes that this IRS action will have a significant, and likely simplifying, effect on the receivership estate, which the Receiver is now evaluating.

Dated: September 16, 2021

Respectfully submitted,

FRANDZEL ROBINS BLOOM & CSATO, L.C.
MICHAEL GERARD FLETCHER
CRAIG A. WELIN
HAL D. GOLDFLAM

By: /s/ Michael Gerard Fletcher
MICHAEL GERARD FLETCHER
Attorneys for Receiver ROBB EVANS & ASSOCIATES LLC

Exhibit 1

INTERNAL REVENUE SERVICE IRS

FAX TRANSMISSION
Cover Sheet

Date : September 15, 2021
To: Anita Jen
Address/Organization: Robb Evans & Associates
Fax Number: (616) 768-8802 Office Number: ________
From: Brown Leonard S Jr
Address/Organization: ______________________________
Fax Number: (855) 863-4354 Office Number:_________
Number of 2 pages: *Including cover page*

Subject: Re: Amended Cardiff Proof of Claim

Hi Anita,
I have attached the amended proof of claim to remove the $1.6 million proposed tax assessment I included on the prior claim. Please confirm you have received it.

Thank you,

Leonard Brown
Bankruptcy Specialist
300 N Los Angeles St MS 5022
Los Angeles, CA 90012
Phone: 213-372-4287
Fax: 855-863-4354

distribution or copying of this communication is strictly prohibited by the provisions of the Internal Revenue code. If you have received this communication in error, please contact the sender immediately by telephone. Thank you.

Proof of Claim for Internal Revenue Taxes Department of the Treasury/Internal Revenue Service	Form **4490** (Rev. 2-2005)
In the District Court For the Western Division	Docket Number 18-02104 Kind of Proceeding RECEIVERSHIP
In the Matter of: CARDIFF EUNJUNG CARDIFF JASON 870 N. MOUNTAIN AVE, SUITE 115 UPLAND, CA 91768	Date of Petition 11/08/2018
Amendment No. 2 to Proof of Claim dated 09/01/2021	Creditor Number

The undersigned officer of the Internal Revenue Service, a duly authorized agent of the United States in this behalf, being duly sworn deposes and says that:

1. CARDIFF EUNJUNG CARDIFF JASON is justly and truly indebted to the United States in the amount of $2,787,989.73 with interest and penalty as shown below.
2. This debt is for taxes due under the Internal Revenue laws of the united States as follows:

Taxpayer ID Number	Kind of Tax	Period	Tax Due	Penalty Due	Interest Due	Date Tax Lien Arose
[redacted]	WT-FICA	12/31/2011	$15,616.56	$6,252.85	$5,213.01	02/13/2012
[redacted]	BENE PLAN	12/31/2012	$18,895.63	$0.00	$4,163.88	02/15/2016
[redacted]	CORP-INC	12/31/2013	$0.00	$1,170.00	$195.95	10/06/2014
[redacted]	BENE PLAN	12/31/2013	$9448.86	$0.00	$1,741.30	02/15/2016
[redacted]	MISC PEN	12/31/2016	$0.00	$1,459.93	$74.30	08/26/2019
			$43,961.05	$8,88278	$211,388.53	

3. No part of this debt has been paid, and it is now due and payable to the United States Treasury at the Office of Internal Revenue Service;

4. Except for statutory tax liens that arose on the above dates, the United States does not hold, to the deponent's knowledge or belief, any security of this debt;

5. No note or other negotiable instrument has been received for this debt or any part of it, nor has any judgment been rendered with respect to this debt; and

6. This debt has priority and must be paid in full in advance of distribution to creditors to the extent provided by law. See 31 U.S.C. Section 3713(a). Any executor, administrator, or other person who fails to pay the claims of the United States in accordance with its priority may become personally liable for this debt under 31 U.S.C. Section 3713(b).

(Notarize or witness if court requires) **Subscribed and Sworn to Before Me On** ____________________ Month Day Year	Signature /s/ LEONARD BROWN Title: Bankruptcy Specialist ID Number: 0845203 Telephone Number: (213) 372-4287 Address: Internal Revenue Service Insolvency Group 7, 300 North Los Angeles St. 5022 Los Angeles, CA 90012