

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

ERNESTO DI GREGORIO, and
ECOLIFT CORPORATION

CIVIL NO.

Plaintiffs

v.

ROSA EMILIA RODRIGUEZ-VELEZ,
EDWARD VERONDA, and IVAN SERPA

Bivens claim for Malicious,
& Vindictive Prosecution, and
Unlawful Search & Seizure

JURY TRIAL DEMANDED

Defendants

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW Plaintiffs, ERNESTO DI GREGORIO and ECOLIFT CORPORATION, through undersigned counsel and respectfully state, allege and pray as follows:

I. Nature of Action

1. On September 11, 2015, before 9:00am, a large team of federal agents, identified as such and lead by defendant Ivan Serpa, descended upon the premises of Ecolift Corporation at the Isla Grande airport in San Juan, Puerto Rico. They left after 4:00pm that day with more than 80 boxes of documents and approximately 10 hard drives from Ecolift's computers.

2. Over the next five years Ernesto Di Gregorio lived under the cloud of prosecution, his liberty was restricted, his personal reputation and business were destroyed, and he had to pay substantial legal fees to defend himself.

3. The charges against Di Gregorio were malicious and vindictive, based upon lies, material omissions, misstatements of law and facts and illegally obtained evidence.

4. The false allegations resulted directly from the actions and omissions of the lead case agent, defendant ICE-HIS Agent Ivan Serpa, federal prosecutor AUSA Edward Veronda and former USA Rosa Emilia Rodriguez-Velez who intentionally, knowingly, and recklessly made false statements, representations and material omissions of facts in their reports, affidavits and other communications amongst themselves and with the Grand Jury, thereby initiating and maintaining a malicious and vindictive prosecution of Di Gregorio that spanned five years and three indictments.

5. The basis of the prosecution of Di Gregorio was false and collapsed by its own wrongful weight, with a jury verdict for acquittal on March 18, 2020 and the dismissal of the remaining indictment on the government's motion on September 25, 2020.

6. This is an action brought under the United States Constitution pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for the defendants' malicious and vindictive prosecution of Di Gregorio in violation of the Fourth Amendment and the unlawful search and seizure of plaintiffs' business premises, records and attorney-client privileged communications in violation of plaintiffs' Fourth and Fifth Amendment rights.

II. Jurisdiction and Venue

7. This court has jurisdiction over this action pursuant to the Fourth and Fifth Amendments to the United States Constitution and 28 U.S.C. 1331 and 2201.

8. Venue is properly with this District under 28 U.S.C. 1402(b) as the prosecution of Di Gregorio occurred in the District of Puerto Rico and the defendants' acts that are subject of this Complaint occurred in this District.

III. Parties and Actors

9. Plaintiff ERNESTO DI GREGORIO is an American citizen and businessman, resident of Puerto Rico. Di Gregorio is the president and sole stockholder of Ecolift Corporation.

10. Plaintiff ECOLIFT CORPORATION is a for-profit corporation incorporated under the laws of Puerto Rico more than twenty years ago with its principal place of business in the Isla Grande Airport, San Juan, Puerto Rico. Ecolift's business is the sale, service, and repairs of new and used helicopters and aircraft. At the times relevant to this complaint Ecolift was the exclusive representative of Bell Helicopters in Puerto Rico and the Caribbean, had representative contracts with Garmin, L3-Wescam, Leonardo Helicopter, Airbus Defense & Space and L3Avionics, and had service and repair contracts with Latin American countries, including Argentina, Chile, the Dominican Republic and Jamaica, for military and civil aircraft.

11. Defendant IVAN SERPA is a Special Agent with the U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) and has served in this capacity since March 9, 2013. Prior to his current duties Serpa was a Special Agent with the Naval Criminal Investigative Services (NCIS), and with the U.S. Agency for International Development, Office of Inspector General. He also served as a Diversion Investigator with the U.S. Drug Enforcement Administration (DEA). Agent Serpa has completed all training programs required for him and is a well-trained, knowledgeable and

experienced law enforcement officer who has participated in investigations involving the illegal export of goods and technology including the enforcement of the Export Administration Regulations (EAR). At the times relevant to this complaint, Agent Serpa was assigned to the Illicit Trade Enforcement Group in San Juan, Puerto Rico.

12. Agent Serpa is sued in his personal capacity for actions and omissions taken under color of law. And plaintiffs believe a private insurance company has issued a policy to cover the consequences of Serpa's actions.

13. Defendant EDWARD VERONDA is an Assistant U.S. Attorney who, at the times relevant to this complaint, was assigned to the Financial Fraud and Corruption Unit of the U.S. Attorney's Office for the District of Puerto Rico. He is sued in his personal capacity for actions and omissions taken under color of law.

14. Defendant ROSA EMILIA RODRIGUEZ-VELEZ was the Acting United States Attorney for Puerto Rico from 2007 until October 4, 2019. Former USA Rodriguez-Velez was replaced by W. Stephen Muldrow. Rodriguez-Velez is sued in her personal capacity for actions and omissions taken under color of law.

IV. Facts

A. The search warrants – scope and execution

15. On September 11, 2015, before 9:00am, a large team of federal agents, identified as such and lead by defendant Agent Serpa, descended upon the premises of Ecolift at the Isla Grande airport in San Juan, Puerto Rico.

16. They had a copy of a search warrant issued by Magistrate Judge Marcos E. López on 9-04-2015 at 5:41pm authorizing the search and seizure of the items listed in Attachment B to the application from the places indicated in Attachment A.

17. Agent Serpa had provided the federal agents executing the search warrant a copy of the warrant and the Attachment B, but not of his affidavit in support of probable cause or the Attachment A which listed the places to be searched in Ecolift's premises.

18. Agent Serpa's conscious, intentional or reckless decision to exclude the affidavit of probable cause and the list of places to be searched from the documents provided to the team of searching federal agents set the course to an overbroad and constitutionally offensive search and seizure.

19. Agent Serpa and the federal agents occupied Ecolift's premises for the entire day, did not allow any of Ecolift's employees to leave, including plaintiff Di Gregorio, separating, isolating, and then interviewing them, whilst searching every corner of the building, including the space between the ceiling and the ceiling tiles.

20. Agent Serpa oversaw the operation. He directed the executing federal agents what to search and seize.

21. Agent Serpa and his team of federal agents left Ecolift's premises after 4:00pm that day with more than 80 boxes of documents and approximately 10 hard drives from Ecolift's computers.

22. The operation was simultaneously covered and published by the Puerto Rico press. A spokesperson for Homeland Security, Ivan Ortiz, informed the public that a search warrant had been executed in an ongoing and sealed investigation.

23. That same day the Puerto Rico press published that their sources had confirmed that the subject of the sealed investigation was Ecolift's contract with the Government of Puerto Rico for the sale and maintenance of four helicopters for the *Fuerzas Unidas de Rápida Acción* (FURA) of the Puerto Rico Police.

24. During the interviews of Di Gregorio and Ecolift's employees conducted by Agent Serpa and his team of Federal agents during the search, most of the questions posed focused on the contracts with the Government of Puerto Rico and the FURA helicopters. It appeared that this was the real focus of the search.

25. However, the statement of probable cause for the search warrant executed by Agent Serpa did not mention any contracts with the Government of Puerto Rico nor any FURA helicopters.

26. The mention of the FURA helicopters by the Puerto Rico press, and the line of questioning conducted during the search, later proved to be premonitory, making Serpa's statement of probable cause for the search warrant at least suspect, but most likely a subterfuge to access Ecolift's business records.

27. When seeking business records from a person under investigation, it has been long established that the usual procedural method to be used is a subpoena, and the only alternative would be a search warrant in strict compliance with the Fourth Amendment's requirement of particularity.

28. The application for the search warrant was submitted on September 4, 2015 by Agent Serpa and was supported by his single affidavit.

29. In his affidavit Agent Serpa indicated he believed there was probable cause that evidence related to exports, shipping and smuggling violations to Venezuela were at the premises to be searched.

30. The purported violations cited were: 50 USC 1705 (International Emergency Economic Powers Act, IEEPA), and the Export Administration Regulations (EAR) which includes the following: 18 USC 554 (smuggling goods from the United States), 13 USC

305 (Penalties for Unlawful Export Information Activities), 15 CFR 758.1 (The Shipper Export Declaration, SED, or Automated Export System, AES), 15 CFR 30.6 (Electronic Export), 18 USC 1956 (money laundering), 18 USC 1343 (wire fraud), and 18 USC 1341 (mail fraud) for activities related to the underlying export administration regulations violations.

31. The targeted country for Ecolift's exportation activity subject to the application for the search warrant was Venezuela, specifically Pequiven, SA, a petrochemical company managed/owned by the Venezuelan government, and which Agent Serpa stated he believed to be affiliated with the Venezuelan Armed Forces and *El Servicio Bolivariano de Inteligencia Nacional* (SEBIN), Venezuela's "premiere Intelligence Agency".

32. The items purportedly exported to Venezuela were civilian aircraft parts.

33. There is no legal prohibition for the sale or exportation of civilian items to Venezuela.

34. According to Agent Serpa's statement for probable cause of the affidavit in support of the application, the items were exported or mailed from November 8, 2012 through March 7, 2015, according to information obtained from other search warrants on the email accounts belonging to Ecolift and Pequiven.

35. The previous search warrants referenced by Agent Serpa had been issued at his request on April 14 and November 24, 2014, and authorized the seizure of the entire contents of the email accounts sales@ecolift.com and esdigre@ecolift.com.

36. Based on Agent Serpa's representations, Magistrate Judge Marcos E. López authorized, on 9-04-2015 at 5:41pm, the search and seizure of the items listed in Attachment B to the application, and the places to be searched in Attachment A.

37. Attachment B of the September 2015 search warrant authorized the seizure of all records found in the premises of the business in Attachment A relating to the specified violations of the IEEPA and EAR. It also authorized the seizure of certain categories of items "related to merchandise illegally exported from the United States and shipped via false statements in order to conceal the exports of aviation commodities".

38. As to manner of execution, the September 2015 search warrant ordered the agents to identify personnel willing to assist in the copying of "things described in the warrant", if there was an unwillingness to assist or were untrustworthy, it ordered the agents to "attempt to locate the things described in the warrant, and... attempt to make electronic copies of those things".

39. The September 2015 search warrant also provided that the analysis of the evidence would "focus on things that may contain the evidence and information of the violations under investigation", that is, the IEEPA and EAR offenses described in Attachment B.

40. And the September 2015 search warrant also ordered the agents to "conduct an offsite search for the things described in the warrant".

41. The September 2015 search warrant fails to satisfy the Fourth Amendment particularity requirement.

42. The warrant lacked any mention that the object of the investigation was exports to Venezuelan government entities for a specific time-period, which were the only offenses alluded to in Agent Serpa's affidavit.

43. And Agent Serpa's affidavit, which particularized the investigated offenses, was not incorporated to the warrant.

44. The Fourth Amendment requires particularity in the search warrant, not in the supporting documents.

45. Additionally, the list of items to be seized (Attachment B) suffers from another particularity defect since it does not impose temporal limitations whatsoever to cabin the discretion of the searching officers, including the search of electronic data seized during the execution of the warrant.

46. Therefore, the failure to include the specific references to the limited investigated offenses, and to impose temporal limitations, had the effect of justifying the amplification of the scope of the search warrant beyond the finding of probable cause, in violation of the Fourth Amendment.

47. Additionally, the warrant authorized "to copy only those things that are evidence of the offenses described herein and provide only those things to the case agent" and required the agents to "seize those components of the Company's computer system that the agents believe must be seized to permit the agents to locate the things described in the warrant". No authority was given for the search of all Ecolift's business records.

48. In the execution of the 2015 warrant there was no effort to craft a reasonable search protocol to segregate or seal materials outside the scope of the warrant. The items

seized, especially those pertaining to computer's hardware and email documents, covered every business aspect of Ecolift; they were not limited to the facts in the statement of probable cause, or the Magistrate's directives in Attachment B.

49. Moreover, in reviewing the electronic data indiscriminately seized from Ecolift, Agent Serpa accessed and reviewed attorney-client privileged communications between Ecolift, Di Gregorio and their attorneys.

50. Even after making AUSA Veronda aware of the situation, Agent Serpa continued accessing the electronic data in search of evidence to support an indictment, and without procuring a new search warrant.

51. Any reasonable well-trained agent would have known that such intrusion was contrary to the Government's manual and violated the Fourth and Sixth Amendment rights of Ecolift and Di Gregorio.

52. Agent Serpa was aware of the constitutional inadequacies of the 2015 search warrant and its execution, but intentionally, or recklessly made the decision to proceed as previously indicated.

53. Former USA Rosa Emilia Rodriguez-Velez organized a "taint filter review" of the privileged information, not by an outside law firm, but by the civil division of the U.S. Attorney's Office in Puerto Rico, delegating such task to AUSA David Martorani.

54. A search warrant to review this privileged information was never sought by AUSA Veronda, nor required by former USA Rodriguez-Velez.

55. Despite the taint filter review, attorney-client privileged information of Ecolift and Di Gregorio was notified by AUSA Veronda as evidence in the prosecution against Di Gregorio.

56. There has never been an explanation of what the filter consisted of, the method used for reviewing the information, who had access to the communications before the filter, whether privileged communications were segregated from the attorneys and agents handling this case and when. Also, there is no information that the members of the taint team, or former USA Rodriguez-Velez, AUSA Veronda or Agent Serpa informed the Magistrate Judge that they had copied and reviewed privileged communications, nor what information was discussed amongst them.

57. Courts have cautioned that “the process of segregating electronic data that is seizeable from that which is not must not become a vehicle for the government to gain access to data which it has no probable cause to collect”¹.

58. Former USA Rodriguez-Velez, AUSA Veronda and Agent Serpa failed to implement a search protocol for the 2015 warrant that structured the search by requiring an analysis of the file structure, next looking for suspicious file folders, then looking for files and types of files most likely to contain the objects of the search by doing keyword searches.

59. Moreover, the 2014 search warrants that supported the application for the September 2015 search warrant where themselves constitutionally insufficient.

60. The affidavits in support of the 2014 search warrants claimed that Ecolift was in violation of federal regulations because it undervalued the aircraft parts exported to Pequiven.

61. The 2014 search warrants authorized the seizure of all mail ever sent by or delivered to certain specific electronic addresses, so that the government could open and

¹ *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1177 (9th Cir. 2010).

read all the mail, in order to determine if there was evidence of any crime, including access to “all opened and unopened electronic mail messages sent and received”, “all information related to the subscriber”, “the contents of any wire or electronic communication”, and “all business records in possession of” the third party provider, without temporal or subject matter limitations.

62. Evidently, the 2014 search warrants lacked particularity as to the items to be seized.

63. More importantly, since there is no way to ascertain the contents of an electronic file without first opening it, and because e-files containing evidence of a crime may be intermingled with millions of innocuous files, the government had to examine many files to exclude the possibility that the sought-after files were concealed there, which underscores the importance of the particularity’s guardrails.

64. Additionally, with such a broad search warrant the government may claim that the contents of every e-file it chose to open were “in plain view” and therefore admissible even to implicate a criminal defendant in a crime not contemplated by the warrant.

65. Thus, Fourth Amendment’s concerns with the particularity requirements are more sensitive in the context of digital searches, because there is a serious and plausible risk that every warrant for electronic information will become, in effect, a constitutionally prohibited general warrant.

66. The 2014 search warrants procured by Agent Serpa are best analogized “to a warrant asking the post office to provide copies of all mail ever sent by or delivered to

a certain address so that the government can open and read all the mail to find out whether it constitutes fruits, evidence or instrumentality of a crime”².

67. The lack of particularity of the 2014 search warrants violates the Fourth Amendment provisions.

68. No reasonably well-trained agent should have relied on the 2014 warrants and would have known that they violated the Fourth Amendment rights of plaintiffs.

69. Agent Serpa was aware of the constitutional inadequacies of the 2014 search warrants and intentionally, or recklessly, procured them twice, first in April and then in November 2014.

70. During the execution of the 2014 search warrants Agent Serpa failed to sort or filter the documents to only search the ones related to the statement of probable cause and seized and reviewed thousands of emails covering many topics unrelated to the Venezuelan government entities referenced in the application supporting affidavits because the search warrants did not provide a sorting or filtering procedure for information that did not fall within the scope of the probable cause.

71. Thus, Agent Serpa used the 2014 and 2015 search warrants to review electronic evidence beyond the scope of the probable cause finding and without obtaining a subsequent warrant.

72. The Warrant Clause of the Fourth Amendment prohibits the issuance of a warrant, except one “particularly describing the place to be searched, and the persons or things to be seized”. The purpose of the particularity requirement is to “make general searches under them impossible and prevent the seizure of one thing under a warrant

² *In re Applications for Search Warrants for Information Associated with Target Email Accounts/Skype Accounts*, 2013 WL 4647554 (D.Kan. 2013), a clear violation of the Fourth Amendment.

describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant”³.

73. Consequent to the general rummaging through the entire data seized under the purported authority of the 2014 and 2015 search warrants, Agent Serpa obtained documents regarding the sale of helicopters to FURA, without first obtaining the required warrant.

74. Agent Serpa and AUSA Veronda used the illegally obtained evidence from the 2014 and 2015 search warrants to seek criminal charges against Plaintiff Di Gregorio for conduct unrelated to the investigation of exports to Venezuela.

B. The 2017 criminal indictment against Di Gregorio

75. On February 23, 2017 AUSA Veronda and Agent Serpa obtained from a Grand Jury an indictment against Plaintiff Di Gregorio on twelve counts, case no. 17-cr-0490 ADC.

76. Former USA Rodríguez authorized the Grand Jury presentation with prior knowledge that the evidence in support had been illegally obtained from constitutionally defective and illegally executed search warrants.

77. The indictment included various offenses relating to business transactions by Ecolift.

78. Di Gregorio was alleged to have delivered a 2013 helicopter instead of a 2014 to FURA, failed to deliver police equipment required by the purchase agreement and made modifications not certified by the FAA. These were the factual allegations of the Wire Fraud charges in Counts 1 through 5, 18 USC 1343.

³ *Montilla Records of Puerto Rico, Inc. v. Morales*, 575 F.2d 324, 326 (1st Cir. 1978).

79. Di Gregorio was also alleged to have sold and exported equipment not authorized for a Dominican Republic military aircraft. These were the factual allegations of the Aircraft Part Fraud charges in Counts 6 through 7, 18 USC 38.

80. Di Gregorio was also alleged to have made certain false representations in export documents for shipments to Venezuela. These were the factual allegations of the Smuggling charges in Counts 8 through 12, 18 USC 554.

81. The charged conduct began in 2012 and continued into October 2016.

82. The return of an indictment by the Grand Jury was unknown to Di Gregorio because it remained sealed whilst Agent Serpa and AUSA Veronda procured the cooperation of Di Gregorio unencumbered by the knowledge of formal criminal charges.

83. On August 23, 2017 Di Gregorio was summoned by his attorney to a meeting with AUSA Veronda. Instead of a meeting to cooperate with information, as had been ongoing, in this occasion Di Gregorio was arrested.

84. Upon his arrest Di Gregorio was released on his own recognizance with the government's agreement.

85. On December 13, 2017 Di Gregorio's attorney sent AUSA Veronda a letter expounding on the details of a December 11, 2017 meeting when certain factual and legal questions about the charges of the indictment, including caselaw and analysis, were discussed.

86. Regarding the wire fraud charges, Di Gregorio brought to AUSA Veronda's attention that the allegations, if true, were, at best, a breach of contract claim to be disputed amongst the parties to the agreement, because there was no evidence of an intent to not perform the terms of the contract at the time of its execution.

87. Additionally, the factual allegations that supported the indictment were knowingly incorrect.

88. The indictment stated that the August 16, 2013 purchase agreement provided for the sale of four 2014 model 429 Bell helicopters, and one of the delivered helicopters was a 2013 Bell helicopter model 429. However, Appendix 1 to the purchase agreement specifically indicates that the helicopters to be provided included a “429 Data Plate Year 2013” Bell helicopter.

89. Additionally, the indictment provided that the “August 16, 2013 purchase agreement stated that all modifications would be US FAA Certified and Approved”, whilst there is no language to such effect in the purchase agreement between Ecolift and the Government of Puerto Rico.

90. And most importantly, compliance with FAA regulations is not required because the FURA helicopters were public aircrafts and “the FAA has no regulatory authority over [public aircrafts] other than those [traffic] requirements that apply to all aircraft operating in the”⁴ national airspace system.

91. In January 2018, after the meeting with Di Gregorio’s attorney and the letter, the criminal indictment against Di Gregorio was unsealed at AUSA Veronda’s request.

92. The Puerto Rico press furiously fixed on the factual allegations of the indictment and provided extraordinary news coverage generating negative publicity against Di Gregorio and Ecolift, ravaging their reputations.

93. Then, upon Agent Serpa’s request, on March 27, 2018 the Department of Homeland Security indefinitely suspended Ecolift from the government’s procurement

⁴ Quoting, FAA, Advisory Circular AC 00-1.1A, Public Aircraft Operations, Section 7.f (February 12, 2014).

and non-procurement programs. Consequently, Ecolift was removed from the System for Award Management (SAM), which allows the government agencies and contractors to search a company based on different criteria.

94. Ecolift suffered great and irreversible damage to its business reputation and operations from suspension and removal from SAM.

95. On April 10, 2018 Di Gregorio filed a motion to suppress the evidence seized pursuant to the search warrant executed on September 11, 2015 at Ecolift.

96. Di Gregorio explained in his motion, while the affidavit in support of the application related solely to Venezuelan export violations, the agents executing the search proceeded to indiscriminately seize emails, documents, and computer hardware that were not within the scope of the violations being investigated. As a fortuitous consequence of this broad seizure, the government “stumbled upon” documents related to the purchase of the FURA helicopters which then became the basis for Counts 1-5 of the indictment. These emails were entirely unrelated to the Venezuela smuggling and export alleged violations that had previously been the focus of the investigation.

97. In his motion, Di Gregorio characterized Agent Serpa’s conduct as “general rummaging” through the entirety of Ecolift’s business records.

98. Therefore, Di Gregorio asked the court to suppress all materials obtained via the search, not related to the Venezuelan government entities referred to in the indictment.

99. In the same motion Di Gregorio noted that the government produced in discovery certain communications with his attorneys that were protected by the attorney-

client privilege. He argued that the government's review of those privileged materials constituted a gross violation of his Sixth Amendment right to counsel.

100. Two weeks later, on April 24, 2018, Di Gregorio filed a second motion to suppress relating to the electronic evidence seized pursuant to the April and November 2014 search warrants to the third-party provider of two Ecolift email accounts. Di Gregorio explained that these warrants had not been addressed in his prior motion because the government had only recently informed him of their existence.

101. Di Gregorio argued that the 2014 warrants, which purported to authorize seizure of the complete contents of the relevant email accounts, failed to limit the universe of electronic communications and information to be turned over to the specific crimes being investigated, and therefore violated the Fourth Amendment's particularity requirement.

102. Di Gregorio continued to strongly question the government's conduct in his reply in support of the motions. He described the government's explanation as to how agents "stumbled upon" the FURA helicopters as "self-serving and disingenuous". He again characterized defendants' conduct of the searches as an unrestricted general rummaging of irrelevant information. And, regarding the privilege issue, noted that Agent Serpa's access to privileged communications violated the procedures set out in the government's own manual.

103. A two-day evidentiary hearing regarding the motions was held on July 5 and 6, 2018.

104. The first day of the hearing involved a detailed proffer from AUSA Veronda about the handling of potentially privileged documents seized in connection with the

warrants. It also included the testimony of AUSA David Martorani, from the civil division of the USAO-PR, who had been assigned by former USA Rodriguez-Velez to conduct the taint review of the attorney-client privileged emails.

105. Former USA Rodriguez-Velez knew that the review of attorney-client privileged emails that she ordered AUSA Martorani to conduct violated the Sixth Amendment rights of Di Gregorio and required a separate search warrant.

106. Still, former USA Rodriguez-Velez deliberately chose AUSA Martorani, her collaborator in the civil division, to ensure that the violation of plaintiff's Sixth Amendment right to counsel not be denounced.

107. On the second hearing day, Agent Serpa testified over two hours. The hearing revealed, among other things, that the government was continuing to review potentially privileged documents in an admitted attempt to prepare for a possible trial defense based on advice of counsel – a defense that had not yet been decided upon by Di Gregorio.

108. Agent Serpa's lies or reckless omissions during his testimony at the hearing hid the real facts that would have revealed the problems of acquiring such evidence.

109. Defendants knew that new warrants were needed to review the evidence obtained through the illegal extension of the scope of the September 2015 search warrant.

110. After conclusion of evidence, counsel for Di Gregorio made clear that there is no basis in law for the U.S. Attorney's office to continue to invade Di Gregorio's confidential e-mails with his attorneys and referred to the denounced conduct as outrageous.

111. Three days later, on July 11, 2018 a Grand Jury issued, at AUSA Veronda's request with former USA Rodriguez-Velez's authorization, an indictment with additional charges against "Di Gregorio dba Ecolift Corporation".

C. *The July 11, 2018 indictment against Di Gregorio, "dba Ecolift Corporation"*

112. The July 11, 2018 indictment, signed by AUSA Veronda, includes four counts of Aircraft Parts Fraud, all related to the sale of a helicopter to the Puerto Rico Department of Health in late 2016, and the modifications for use as an air ambulance, case no. 18-cr-0431 GAG.

113. The indictment alleged that the helicopter included aircraft modifications that were not in compliance with FAA regulations.

114. The indictment also included a forfeiture allegation of property indiscriminately belonging to Di Gregorio and Ecolift.

115. The transaction at issue had been the subject of a public legislative investigation and by December 2016 the Government of Puerto Rico had declared the helicopter subject of the indictment a public aircraft.

116. AUSA Veronda procured this indictment with full previous knowledge that it was to be used by the Government of Puerto Rico as an air ambulance.

117. Furthermore, it appears that these charges largely stem from Agent Serpa's conversation with the FAA on April 24, 2018, on the same day Di Gregorio filed his second motion to suppress.

118. Crucially, AUSA Veronda obtained and executed an arrest warrant for Di Gregorio even though he was at the time released on his own recognizance and had voluntarily appeared at the suppression hearing in the case with the original indictment.

119. During the initial appearance hearing on July 13, 2018 AUSA Veronda sought a change in Di Gregorio's release conditions to include a secure bond. After a hearing, the court set a \$250,000 bail secured with real property that could not be subject to forfeiture. Di Gregorio had until July 23, 2018 to post the bail.

120. The next day AUSA Veronda and Agent Serpa took action to seize Di Gregorio's and Ecolift's bank accounts and sought forfeiture of Di Gregorio and Ecolift's personal assets, including real property that was purchased before the transaction in question and thus could not constitute proceeds of the alleged activity.

121. Ecolift filed an emergency motion requesting the return of the forfeited property, including bank deposits, and explained that the seizure of funds constituted overreaching, that the *ex parte* seizure failed to show that the seized funds were tainted or that the seizure could otherwise be justified under 18 USC 984 because of the expiration of the statute of limitations contained in that provision of the civil forfeiture law.

122. AUSA Veronda opposed, but eventually was forced to recognize that he was not able to prove the link between Ecolift's forfeited assets and the criminal activity alleged against Di Gregorio (*prd docket 223, 3/02/2020, case 18-cr-00431 GAG*).

123. Nevertheless, after seizing plaintiffs' property, on July 19, 2018 AUSA Veronda moved the court for an increase of the bail amount to 1 million dollars.

D. The requests to revoke Di Gregorio's appearance bond

124. The seizure of plaintiffs' bank accounts and property had the effect of cutting off Di Gregorio's access to property to secure the bond imposed. Therefore, Di Gregorio sought the assistance of Mr. Luis Rodriguez-Santana who has been plaintiffs' insurance broker for many years.

125. On July 23, 2018 Di Gregorio posted bond with the deposit of a \$250,000 personal check from Mr. Luis Rodriguez-Santana.

126. Two days later AUSA Veronda's request to increase the bail to 1 million dollars was denied.

127. Still, on August 10, 2018 AUSA Veronda tried again, but this time sought the revocation of Di Gregorio's personal recognizance status in the case for the original indictment, *17-cr-0490 ADC*, and the imposition of a millionaire bail with onerous conditions.

128. After a hearing on September 13, 2018 Magistrate Judge Marcos E. Lopez did not order Di Gregorio detained but imposed stricter conditions including a bail in the amount of \$500,000 secured, electronic monitoring with home detention plus standard conditions. The \$250,000 posted in the second indictment, *18-cr-0431 GAG*, was included in the amount to be posted, and 14 days were granted to post the other \$250,000 secured bond and a bonding company was allowed.

129. Furthermore, Di Gregorio was ordered to not participate in any capacity at Ecolift's activities pertaining to customs, importations, or exportations, that is, Di Gregorio could not work or earn a living.

130. On October 12, 2018 Di Gregorio entered the appearance bond and remained released on bond with the restrictive conditions that included electronic monitoring and a nightly curfew.

131. Eighteen days later, after AUSA Veronda's failure to engineer Di Gregorio's detention, on October 30, 2018 Javier Ortiz Torres, Vice President of Bell Helicopter Textron, Inc. in charge of sales for the Americas, received an alarming email from a

Puerto Rican-based DHS investigator, Raul Gonzalez. Gonzalez alerted Ortiz-Torres that the government had identified him as a potential aggravated identity theft victim and had learned he could be residing in Texas, possibly close to Houston. Ortiz-Torres, very alarmed, immediately responded that he lived in Dallas and Gonzalez set up a meeting the following week at the Dallas field office.

E. The Ruse

132. Bell Helicopter had been served with a subpoena issued by a Grand Jury at AUSA Veronda's behest on 5-17-2018. The subpoena requested certain documents related to Ecolift's sale of Bell helicopters to the Puerto Rico government.

133. In the process of gathering and producing the subpoenaed documents, Bell Helicopter's counsel, John Sams, spoke via telephone with AUSA Veronda on or around May 24, 2018, who posed the following to Atty. Sams: "I don't suppose you're going to let me interview Ortiz". Atty. Sams responded that he would not allow AUSA Veronda to interview Ortiz-Torres unless counsel for Di Gregorio was present and a court reporter transcribed the interview. AUSA Veronda declined this offer.

134. AUSA Veronda made no apparent further attempt with Atty. Sams to discuss a possible interrogation of Ortiz -Torres. He never reached out to Atty. Sams to discuss an interview or raise any issues/conflicts as to the propriety of Sams' representation.

135. On November 6, 2018 Ortiz-Torres went to the DHS Dallas Field Office to discuss the theft of his identity. But Investigator Gonzalez was not there. Rather, Agent Serpa and DHS Task Force Officer Hector Malave were lying in wait.

136. Agent Serpa and Officer Malave escorted Ortiz-Torres to an interview room and informed him that the theft of his identity was a ruse concocted to arrange a meeting to interview him without the participation of his counsel, Atty. Sams.

137. Neither Serpa nor Malave informed Ortiz-Torres of his Constitutional rights.

138. The two agents then interrogated Ortiz-Torres on the merits of the case in which, soon thereafter, Ortiz-Torres was indicted.

139. The ruse concocted by Agent Serpa was authorized by AUSA Veronda. It was an elaborate lie devised to unwittingly lure Ortiz-Torres into an interview without the benefit of counsel in violation of his Fifth and Sixth Amendment Rights to Counsel.

140. AUSA Veronda is also responsible for Agent Serpa's conduct for having ordered the ruse, or after becoming aware of the ruse approving it or not rectifying it.

141. Tellingly, the first contact in this ruse followed on the heels of AUSA Veronda's failed attempts to gain leverage over Di Gregorio by the imposition of restrictive bonds, the seizure of all property and the intended revocation of bond.

142. Thus, AUSA Veronda and Agent Serpa sought to bait Ortiz-Torres into a room alone without counsel to extract a confession and gain leverage over him and pressure him to testify against Di Gregorio.

143. Apparently, the ruse was an effort to somehow breathe life back into the cases pending against Di Gregorio and to substantiate additional charges against Di Gregorio with illegally obtained evidence, given that a superseding indictment was being sought with a Grand Jury.

F. The November 2018 Grand Jury

144. On November 2018 former USA Rodriguez-Velez authorized AUSA Veronda to seek a superseding indictment against Di Gregorio and an indictment against Ortiz-Torres with a Grand Jury.

145. Several witnesses were called by AUSA Veronda to testify at the Grand Jury: Luis Rodriguez-Santana, the government's FAA expert Antonio Gonzalez and Agent Serpa himself.

146. AUSA Veronda questioned Luis Rodriguez-Santana as to why he provided the money for Di Gregorio's bond.

147. Luis Rodriguez-Santana responded that it was because Di Gregorio was an honest person, and the government knew the charges against him were based on misstatements of law and were abusive.

148. AUSA Veronda misled the Grand Jury as to crucial FAA regulations and proceedings by eliciting false testimony and incorrect opinions from Inspector Antonio Gonzalez.

149. Specifically, Inspector Gonzalez misled the Grand Jury on two essential issues: the acceptable FAA methods of performing FAA certified modifications to an aircraft, and the operations the Puerto Rico Police could carry out with the helicopters.

150. Inspector Gonzalez told the Grand Jury, at AUSA Veronda's behest, that the aircraft modifications at issue did not meet FAA standards because he did not find the supplemental type certificate (STC) for the modifications. Inspector Gonzalez explained what an STC is and stated that none of the equipment at issue had the STC that said it was professionally installed, properly engineered, properly tested.

151. AUSA Veronda intentionally or recklessly forsook to elicit testimony from Inspector Gonzalez to explain to the Grand Jury that there are at least 14 other ways the equipment installed could have met the FAA requirements for modifications or alterations.

152. The only impression the Grand Jury was mistakenly left with was that Di Gregorio made modifications to an aircraft that did not meet FAA regulations.

153. The impact of AUSA Veronda's concealment through Inspector Gonzalez's tailored testimony was significant considering that the Grand Jury deliberated on whether the mission critical modifications and upgrades installed to the helicopter were not in compliance with FAA regulations. Without instructions about the various methods of performing FAA-certified modifications, it was impossible for the Grand Jury to determine whether the modifications Di Gregorio made followed FAA regulations or not.

154. The lack of instruction is particularly egregious because AUSA Veronda and Agent Serpa were aware that Ecolift did, in fact, execute the modifications using other sources of approved data.

155. Another crucial issue for the Grand Jury was whether the Government of Puerto Rico purchased the helicopter to be used as a public aircraft, a civil aircraft, or for a dual purpose. The distinction is significant because the FAA has no authority to regulate airworthiness or modifications made to a public aircraft.

156. During his Grand Jury testimony, Inspector Gonzalez admitted that the helicopter at issue could be used as a public aircraft, even if it were not deemed airworthy for civilian purposes. However, he was untruthful as to what operations a public aircraft could perform.

157. At AUSA Veronda's behest Inspector Gonzalez told the Grand Jury that, as a public aircraft, the government of Puerto Rico could not use the helicopter to perform governmental functions such as search and rescue missions or interject individuals committing felonies. This false testimony was knowingly and intentionally or recklessly elicited by AUSA Veronda.

158. The Grand Jury seemed awed by Inspector Gonzalez's testimony. Insightfully, the Grand Jury questioned Inspector Gonzalez as to what the helicopter could be used for:

GRAND JURY MEMBER: Just turn it on, go for a ride, come back and that's it?

AUSA VERONDA: Is that right?

[GONZALEZ]: Yes, sir.

159. Inspector Gonzalez's testimony is demonstrably false as the law explicitly contradicts him. A public aircraft's "governmental function" specifically includes activities such as "search and rescue" and "law enforcement" missions. 49 U.S. Code § 40125(a)(2). A "law enforcement" mission includes "transport of prisoners, detainees, and illegal aliens." *Id.* Indeed, a public aircraft can perform rescue missions and law enforcement operations such as interjecting drug traffickers.

160. Inspector Gonzalez's misleading and outright false testimony was shockingly prejudicial and undoubtedly influenced the Grand Jury's decision to indict. Any reasonable person would be stunned upon learning that the government spent millions of dollars on a helicopter that could only be used to "go for a ride" and could not be used by the Puerto Rico Police for its intended purpose.

161. AUSA Veronda knew of the falsity of Inspector Gonzalez's testimony and intentionally or recklessly elicited it to push "a wavering grand jury over the edge".

162. In addition, AUSA Veronda failed to properly instruct the Grand Jury on this crucial legal issue. As they are not legal experts, the Grand Jury members must rely on proper legal instructions from the prosecutor.

163. Agent Serpa also misled the Grand Jury on key FAA and contractual related matters.

164. Agent Serpa's testimony was false in two fronts. First, he testified that the modification to the aircraft belonging to the Dominican Republic Armed Forces -- installation of a camera -- had to be certified by the FAA, which is incorrect as a matter of law. Second, Serpa testified that, contractually, Di Gregorio promised FAA-approved modifications to the DRAF, a fact that is nowhere to be found in the contract.

165. Serpa testified before the Grand Jury that Di Gregorio violated FAA regulations by installing an infrared camera on the DRAF aircraft. But a camera installed on a military aircraft does not require FAA approval. The FAA has no jurisdiction to impose operation and maintenance requirements over foreign-registered aircraft operated by a foreign country, and, even if it were not foreign, military aircrafts are considered public aircrafts. So, the modifications to the DRAF aircraft cannot constitute a violation of FAA regulations.

166. Serpa's false testimony left the Grand Jury with the mistaken impression that Di Gregorio violated FAA regulations regarding the military airplanes of the Dominican Republic Air Force.

167. Significantly, after hearing that the installation purportedly violated FAA regulations, the Grand Jury asked the key question: do “federal laws and regulations” apply to foreign countries: “When this equipment is being installed and so in the Dominican Republic, does the federal laws and regulations on the aviation side applies [sic] also to foreign country?”.

168. It was AUSA Veronda’s duty -- then and there-- to clarify Agent Serpa’s incorrect legal assertion. As stated, as a matter of law, the FAA regulations do not apply to foreign military aircraft or even to any military aircraft. AUSA Veronda did not answer the pointed question. Instead, he spoke about air part fraud.

169. AUSA Veronda purposely or recklessly mislead the Grand Jury into believing that the modifications performed on the DRAF aircraft were done in violation of FAA regulations, unfairly swaying the Grand Jury into believing Di Gregorio violated the law.

170. Serpa also misled the Grand Jury when he stated that Di Gregorio was contractually obligated to make FAA approved modifications to the DRAF aircraft. But the referenced sections of the contract make absolutely no reference to the modifications being FAA approved. This is not merely a contractual interpretation issue. Serpa’s testimony was simply false.

171. The significance of Serpa’s false testimony is apparent considering that it involves an essential element of the offense: the intent to defraud.

172. Serpa’s false and misleading testimony that Di Gregorio promised an FAA-certified installation of the Garmin 600 is premised on an alleged contractual clause that

does not exist. Yet, the Grand Jury was falsely led to believe that an FAA-certified modification was promised and contractually obligated.

173. The Grand Jury made its decision to indict Di Gregorio based on a false statement of facts.

174. AUSA Veronda knowingly, intentionally, or recklessly presented and procured false factual testimony to the Grand Jury.

175. The original Indictment stated as the basis for Counts one through five that Di Gregorio “did not install or provide the following items”: (1) compressor wash kit; (2) Wheelen strobe lights; (3) patient litter kit; (4) crew peripherals; and (5) a tactical case receiver microwave.

176. Those allegations were incorrect. The equipment was in fact provided. And by letter dated December 13, 2017, Di Gregorio, in good faith, had provided evidence to AUSA Veronda that showed the equipment had been provided to the Puerto Rico Police, exculpating him of the charges contained in Counts 1-5. On May 23, 2018, through reciprocal discovery, Di Gregorio provided additional evidence to further substantiate his position.

177. Surprisingly, when AUSA Veronda went back to the Grand Jury on December 10, 2018, to seek a superseding indictment, it once again raised the missing equipment allegations and failed to advise the Grand Jury of the exculpatory evidence.

178. Before being accused by a Grand Jury, a criminal defendant has no right to present evidence or explain the law. Because these tasks fall squarely on the prosecutor, the law imposes a duty on him/her to do so honestly and fairly.

179. AUSA Veronda here failed to discharge his legally imposed duties. He knowingly, intentionally, or recklessly allowed Agent Serpa and FAA Inspector Gonzalez to provide false testimony before the Grand Jury regarding matters that go to the heart of the prosecution against Di Gregorio. To compound the egregiousness of his conduct, AUSA Veronda utterly failed to clarify the false testimony to the members of the Grand Jury, even after the Grand Jury asked.

180. The Fifth Amendment of the U.S. Constitution provides that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” *U.S. Constitution, Amendment V.* “Implicit in that language is the guarantee that a defendant will be indicted only upon [a Grand Jury’s] informed an independent determination.”⁵

181. By knowingly, intentionally, or recklessly providing false or misleading information to the Grand Jury, AUSA Veronda and Agent Serpa infringed on Di Gregorio’s constitutional right to be indicted by an informed and independent Grand Jury.

G. The December 10, 2018 Superseding Indictment

182. On December 10, 2018, a superseding indictment was issued charging both Di Gregorio and Javier Ortiz-Torres of Bell Helicopters in Counts 1-2 with conspiracy to commit wire fraud (18 U.S.C. §§ 1343 and 1349) and Count 3 with wire fraud (18 U.S.C. § 1343).

183. The superseding indictment also charges Ortiz-Torres with making a false statement on a loan application with a federally insured bank (18 U.S.C. § 1014).

⁵*U.S. v. Sears, Roebuck & Co., Inc.*, 719 F.2d 1386, 1391 (9th Cir. 1983).

184. Di Gregorio was separately charged in Counts 4-7 with wire fraud, Counts 8-9 with Aircraft Part Fraud (18 U.S.C. § 38), and Counts 10-14 with Smuggling (18 U.S.C. § 554).

185. The violations of the wire fraud statute of the superseding indictment state that Di Gregorio defrauded the Government of Puerto Rico in relation to the sale of a Bell 429 Helicopter, by: (a) delivering a 2013 model helicopter instead of a 2014; (b) failing to deliver equipment required; and (c) by installing “mission critical modifications and upgrades” that “were not in compliance with FAA regulations”.

186. The aircraft part fraud charges at Counts eight and nine allege that Di Gregorio exported, sold, traded, or installed on two airplanes exported to the Dominican Republic an infrared camera designed for automobiles and a Garmin G600 system not certified for CASA 212-400 aircraft.

187. And the superseding indictment contained a forfeiture provision that was not voted by the Grand Jury.

188. The evidence to support this superseding indictment included the attorney-client privileged emails seized under the September 2015 search warrant and subjected to former USA Rodriguez-Velez’s taint review, the evidence obtained from the ruse with Ortiz-Torres and the falsities, omissions and misstatements of law and facts made by Agent Serpa and AUSA Veronda to the November 2018 Grand Jury.

189. The superseding indictment was the basis for the arrest warrant issued as to Javier Ortiz-Torres.

190. On January 11, 2019, in the early morning, DHS agents arrested Ortiz-Torres at his Dallas-Fort Worth area residence.

191. The agents questioned Ortiz-Torres, and again pressured him to cooperate by testifying against Di Gregorio.

H. The Misuse and Manipulation of the Judicial and Other Procedures

192. The evidence used to obtain the superseding indictment from the Grand Jury included evidence obtained from the ruse and from the taint review of attorney-client privileged communications between Di Gregorio and his attorneys.

193. Not surprisingly then, on December 4, 2018 AUSA Veronda questioned the source of the attorney's fees for Di Gregorio's trial attorney Mr. Francisco Rebollo Casalduc by filing a motion with the court in the case of the air ambulance indictment.

194. And, on December 22, 2018 AUSA Veronda filed a motion arguing that attorneys for now co-defendant Javier Ortiz-Torres, McConnell Valdes, had a conflict of interest with Di Gregorio.

195. Evidently, the documents supporting such requests were obtained through the illegal seizure of September 11th, 2015 and the unconstitutional taint review of the electronic evidence conducted by AUSA Martorani at former USA Rodriguez-Velez's behest.

196. The criminal cases against Di Gregorio continued their course throughout the year 2019 with the filing of various motions to dismiss and to suppress evidence.

197. AUSA Veronda continued to review the illegally obtained evidence, including the electronic attorney-client privileged communications.

198. On December 26, 2019 Judge Aida Delgado issued an Opinion and Order, case 17-cr-0170ADC docket 298, denying Di Gregorio's motions to suppress but ordering the government "to permanently cease (as it had been preliminarily enjoined of

conducting it) its second taint review...[and] from engaging in further searches of the electronic information in this case without prior approval of the Court".

199. On January 27-28, 2020, the court held an evidentiary hearing on Ortiz-Torres' motion to suppress all the evidence obtained consequent to the ruse.

200. Eventually, the case of the air ambulance was tried before a jury and a unanimous verdict of acquittal was issued on March 18, 2020.

201. A month later the FAA issued an Emergency Order of Revocation, dated April 22, 2020, at the behest of Agent Serpa or AUSA Veronda. By said emergency order the FAA revoked the repair station certificate of Ecolift.

202. The revocation of Ecolift's certificate by the FAA meant that the company had to immediately cease its operations.

203. Ecolift's dire financial crisis was compounded by the suspension on March 27, 2018 from the government procurement and nonprocurement programs, a suspension issued by the DHS at Agent Serpa's request.

204. The FAA revocation order was lifted only after the FAA and Ecolift reached an agreement on June 26, 2020.

205. The jury trial on the criminal case with the superseding indictment, case 17-cr-0170ADC, was scheduled for several dates and lastly on August 3, 2020, but was continued for several reasons the last of which was the Coronavirus Pandemia.

206. Ultimately, on September 25, 2020, five years after the search warrant was executed on Ecolift's premises, AUSA Veronda requested leave to dismiss the charges against Di Gregorio and Ortiz-Torres.

207. The dismissal request as to Ortiz-Torres was for all charges.

208. The dismissal request as to Di Gregorio included counts 1 through 9 and count 15; counts 10 to 14 (smuggling airplane parts) remained.

209. In evaluating the dismissal request the court indicated that at the hearing on Ortiz-Torres' motion to suppress the evidence from the ruse Agent Serpa testified that AUSA Veronda knew of their plan to interview Ortiz-Torres.

210. The request was granted on September 29, 2020 and a pretrial hearing for the remaining counts against Di Gregorio scheduled and held.

211. Then on November 13, 2020 the Court vacated the trial date as per the government's motion.

212. By then the USA for the District of Puerto Rico, was the Hon. W. Stephen Muldrow; former USA Rodriguez-Velez had "retired".

213. And, on February 19, 2021, AUSA Veronda resigned from the USAO-PR.

214. All charges against Di Gregorio in both criminal proceedings resulted in a favorable termination of the prosecution.

215. Since all charges were dismissed after the hearings on the motions to suppress, after the acquittal of the air ambulance indictment, and after a change in the prosecuting attorney and the US Attorney for the District of Puerto Rico, it can be inferred that the charges were dismissed because of Di Gregorio's innocence, or the government's lack of reasonable grounds for the prosecution.

V. Damages to Ecolift

216. Although Ecolift was not a criminal defendant in any of the criminal proceedings, the actions and omissions of defendants had a direct and intended negative effect on Ecolift, with the purpose of pressuring Di Gregorio.

217. Defendants' actions and omissions intentionally or recklessly caused Ecolift's business significant and catastrophic losses.

218. Ecolift still owes a substantial amount of the \$1.5 million in attorney's fees spent to defend Di Gregorio from this malicious and vindictive prosecution.

219. During the year 2017 Ecolift was valued at \$30 million.

220. The balance sheet of Ecolift reflected a stockholder's equity (the amount of assets remaining in a business after all liabilities have been settled) of \$12.8 million on 2014 and \$12.7 - \$12.6 million in 2015.

221. As of December 15, 2017 the annual projection of income for Ecolift was \$31 million for 2018, \$30.6 million for 2019, \$38 million for 2020, \$43 million for 2021 and \$48 million for 2022.

222. The projection of earnings before interest, taxes, depreciation, and amortization (EBITDA) for the years 2018 to 2022 were the following: \$4.7 million, \$4.9 million, \$5.9 million, \$7.2 million and \$8.3 million, respectively.

223. The malicious and vindictive prosecution of Di Gregorio caused Ecolift to lose its commercial affiliations with Bell Helicopters, Garmin, L3Western, Leonardo Helicopter and L3Avionics, amongst others.

224. The degradation of Ecolift's business is easily ascertainable from annual audited financial statements.

225. Today, Ecolift owes more than \$5 million in debts and will certainly file for bankruptcy.

VI. First Cause of Action - Vindictive and/or Malicious Prosecution

226. The allegations of all preceding paragraphs and subsequent paragraphs are restated and incorporated by reference as if they had been set forth fully herein.

227. The Fourth Amendment to the U.S. Constitution provides that “no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”.

228. The relevant constitutional provision to assess the deprivations that go hand in hand with criminal prosecutions is the Fourth Amendment.

229. Fourth Amendment protections are not extinguished with the start of legal process.

230. “The bulwark of *Fourth Amendment* protection...is the *Warrants Clause*, requiring that, absent certain exceptions, police obtain a warrant from a neutral and disinterested magistrate before embarking upon a search”. *Franks v. Delaware*, 438 U.S. 154, 164 (1978).

231. In interpreting the *Warrants Clause* SCOTUS has emphasized that it requires an independent and neutral magistrate or Grand Jury to determine probable cause. This constitutional function is hindered by misrepresentations, lies, false statements, omissions and misstatements of the law and facts necessary for a probable cause showing, or to establish that the evidence forming the basis for probable cause was acquired constitutionally.

232. Therefore, a seizure does not necessarily comply with the Fourth Amendment simply because it was carried out pursuant to a search warrant.

233. The September 2015 search warrant fails the particularity test of the Fourth Amendment.

234. In obtaining the September 2015 search warrant Agent Serpa intentionally or recklessly misled the Magistrate Judge into believing that the evidence that formed the basis for probable cause – the emails obtained from the 2014 search warrants – had been constitutionally acquired.

235. The 2014 search warrants offend the most basic principles of the particularity requirement of the Fourth Amendment, as it allowed the government to open and read all the emails ever sent and received by Ecolift to determine if there was evidence of any crime.

236. The execution of the September 2015 also violates the Fourth Amendment. Agent Serpa made a conscious decision to extend the scope of the search and seizure beyond the parameters of the search warrant and seized the totality of Ecolift's business records.

237. Moreover, in the overextended search AUSA Veronda and Agent Serpa accessed, reviewed, and analyzed attorney-client privileged emails between Di Gregorio and Ecolift and their attorneys, in violation of plaintiffs' Sixth Amendment rights.

238. This action was aided and endorsed by former USA Rodriguez-Velez.

239. By failing to procure a search warrant to seize evidence not included in the original, including attorney-client privileged emails, defendants precluded the neutral gatekeeping role required by the *Warrants Clause*.

240. Also, when law enforcement intentionally or recklessly makes false statements about the constitutional or good faith means by which the evidence to sustain an indictment was obtained such lies, or reckless omissions, violate the *Warrants Clause*.

241. Defendants deliberate or reckless lies and omissions hid facts that would have revealed problematic means of acquiring evidence in violation of the *Warrants Clause*.

242. As regards the August 2017 original indictment against Di Gregorio the problem was that the evidence was obtained in violation of the Fourth Amendment.

243. As regards the July 2018 indictment on the air ambulance the problem was the same, the evidence was obtained in violation of the Fourth Amendment.

244. And as regards the superseding indictment of December 2018, the evidence used to procure the indictment from the Grand Jury was illegally obtained from a constitutionally offensive ruse, and by known falsities, deliberate omissions and misstatements of law and facts.

245. And the inclusion of Ecolift as a “dba” of Di Gregorio was deceptive and intentionally designed to not provide Ecolift Corporation with the opportunity to challenge the implication in criminal charges, except through this *Bivens* action.

246. The ruse concocted by AUSA Veronda and Agent Serpa was an elaborate lie devised to unwittingly lure Ortiz-Torres into an interview without the benefit of counsel in violation of his Fifth and Sixth Amendment Rights to Counsel.

247. The Grand Jury that issued the superseding indictment of December 10, 2018 against Di Gregorio was misled by information provided by Agent Serpa and sought

by AUSA Veronda that they knew was false or would have known was false except for their reckless disregard of the truth.

248. Agent Serpa and AUSA Veronda knew, or simply did not care, that the evidence used to support the indictments had been illegally obtained.

249. Former USA Rodriguez-Velez knowingly participated in the process of obtaining illegal evidence to be used against Di Gregorio, in reckless disregard of his constitutional rights.

250. Defendants' actions were induced by a vindictive disposition.

251. The actions described herein were intentional and deliberate acts by the defendants, or in reckless disregard of the truth.

252. The actions described herein constitute malicious or vindictive prosecution in violation of the Fourth Amendment.

253. Malicious and/or vindictive prosecution undermined plaintiffs' right under the *Warrants Clause*.

254. The denounced actions caused plaintiffs damages.

255. The damages to Ecolift were the foreseeable and intended consequence of the intentional or reckless actions by defendants to prosecute Di Gregorio maliciously or vindictively.

256. Plaintiffs have suffered to date considerable and quantifiable damages.

257. Defendants are liable to plaintiffs.

VII. Second Cause of Action – Warrantless Search and Seizure

258. The allegations of all preceding paragraphs and subsequent paragraphs are restated and incorporated by reference as if they had been set forth fully herein.

259. The actions of defendants in causing the warrantless access and review of all email communications of plaintiffs, including attorney-client privileged communications with their attorneys, violated Di Gregorio and Ecolift's clearly established constitutional rights to be free from unlawful search and seizure under the Fourth Amendment.

260. The denounced actions caused plaintiffs damages.

261. The damages to Ecolift were the foreseeable and intended consequence of the intentional or reckless actions by defendants to maliciously or vindictively prosecute Di Gregorio.

262. Plaintiffs have suffered to date considerable and quantifiable damages.

263. Defendants are liable to plaintiffs.

VIII. *Third Cause of Action – Unlawful Search and Seizure*

264. The allegations of all preceding paragraphs and subsequent paragraphs are restated and incorporated by reference as if they had been set forth fully herein.

265. Defendant Serpa caused a search of Ecolift's premises and the totality of business records without probable cause and with a constitutionally defective search warrant, thereby violating plaintiffs clearly established constitutional rights under the Fourth Amendment.

266. Defendant Serpa made or caused to be made knowingly and recklessly false statements and representations or material omissions of facts in the affidavit to establish probable cause for the search warrant, which led to the seizure of plaintiffs' property.

267. Defendant Serpa knowingly and recklessly executed the search warrant beyond its constitutional limitations, thereby accessing and reviewing evidence unrelated

to the search warrant but later used to justify three separate indictments against Di Gregorio, violating his clearly established constitutional rights under the Fourth Amendment.

268. The denounced actions caused plaintiffs damages.

269. The damages to Ecolift were the foreseeable and intended consequence of the intentional or reckless actions by defendants to maliciously or vindictively prosecute Di Gregorio.

270. Plaintiffs have suffered to date considerable and quantifiable damages.

271. Defendant Serpa is liable to plaintiffs.

IX. Conspiracy to Violate Constitutional Rights

272. The allegations of all preceding paragraphs and subsequent paragraphs are restated and incorporated by reference as if they had been set forth fully herein.

273. Defendants conspired with each other to “cover up” their systemic - intentional or reckless - violation of plaintiffs’ constitutional rights.

274. Defendants formed this conspiracy after the motions to suppress the evidence retrieved from Ecolift were filed denouncing the outrageous constitutional violations in the scope and execution of the search warrants, including the taint review of the attorney-client privileged communications.

275. All acts and omissions after the filing of the motions to suppress were in furtherance of defendants’ conspiratorial agreement.

276. The denounced actions caused plaintiffs damages.

277. The damages to Ecolift were the foreseeable and intended consequence of the intentional or reckless actions by defendants to maliciously or vindictively prosecute Di Gregorio.

278. Plaintiffs have suffered to date considerable and quantifiable damages.

279. Defendants are liable to plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this court,

- a. Determine that the actions of defendants were taken knowingly, intentionally, or recklessly.
- b. Determine that defendants' actions violated Plaintiffs' constitutional rights.
- c. Issue an injunction requiring defendants to return to plaintiffs all information in their custody or control obtained from Di Gregorio and Ecolift's electronic devices and communications, and, to the extent that information cannot be returned, to order the expungement or destruction of that information.
- d. Provide for compensatory damages as to all defendants.
- e. Provide for punitive damages as to all defendants.
- f. Order defendants to pay reasonable attorney's fees, costs, litigation expenses and prejudgment and post-judgment interest.
- g. Order all other relief the court deems adequate and just.
- h. Order this case be heard by a Jury.

- i. Enter judgment on behalf of Plaintiffs and against the Defendants.

RESPECTFULLY SUBMITTED.

Dated: April 16, 2021.

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