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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRENDAN WHITE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:24-cv-02159-MAR

DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT

[Memorandum of Points and Authorities; and Proposed Order filed concurrently]

Hearing Date: October 16, 2024
Hearing Time: 11:00 a.m.
Ctrm: Roybal Federal Building and U.S. Courthouse, 255 E. Temple St., Los Angeles, CA 90012 Courtroom 790, 7th Floor
Hon. Margo A. Rocconi

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NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that, on October 9, 2024 at 11:00 a.m., as soon thereafter as they may be heard, Defendant United States of America will, and hereby does, move this Court for an order dismissing the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. This motion will be made before the Honorable Margo A. Rocconi, United States Magistrate Judge, Roybal Federal Building and United States Courthouse, 255 E. Temple Street, Courtroom 790, Los Angeles, CA 90012.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which was held on August 9, 2024.

Dated: September 6, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff is suing regarding two temporary seizures of cash by the U.S. Drug Enforcement Administration ("DEA") during domestic air travel in 2023. In the **April incident**, Plaintiff alleges he was traveling with $332,000 in cash from Dallas to Orange County when Transportation Security Administration ("TSA") officers saw it during airport security screening and reported it to the DEA, who in turn seized the cash for civil asset forfeiture. *See* First Amended Complaint ("FAC") ¶¶ 9-10, 14-15, 22, 37-38. The cash was returned to him upon submission of a claim for its return. *Id.* ¶ 39. In the **October incident**, Plaintiff alleges he was traveling with approximately $65,000 in cash from Boston to Los Angeles via Dallas when similar events transpired, leading to the seizure of his cash by DEA agents in Dallas. *See* FAC at ¶¶ 43-46, 48, 56-59. Plaintiff later received return of these funds as well. *Id.* at ¶ 61.

Plaintiff brings claims of false arrest, trespass to chattels, and invasion of privacy under the Federal Tort Claims Act ("FTCA") for both incidents. The Court lacks jurisdiction over Plaintiff's trespass to chattels and invasion of privacy claims which are barred by the detention of goods exception to the FTCA. The Court also lacks jurisdiction over Plaintiff's invasion of privacy claim which is barred by the discretionary function exception. Moreover, all of Plaintiff's claims fail as there are insufficient facts to state a cognizable claim as to either incident.

Further, Plaintiff's claims regarding the October incident should be dismissed because they were not administratively exhausted at the time this action was filed, and venue is improper.

II. PLAINTIFF'S ALLEGATIONS

Per the FAC, the first incident occurred on April 3, 2023 when Plaintiff traveled from Dallas to Orange County carrying approximately $332,000, which he obtained as part of his business trading cryptocurrency for cash. FAC ¶¶ 9-12. Plaintiff alleges that TSA officers "took notice of Plaintiff's cash" when Plaintiff "presented himself" at a

security checkpoint for screening at the Dallas airport. *Id.* ¶¶ 14-15. He further alleges that TSA "directly or indirectly" reported Plaintiff's carrying of the cash to DEA along with his personal information. *Id.* ¶ 22. Plaintiff alleges that once he landed in California, DEA officers were waiting for him and he was told that he may not leave with his bags and that he must allow a search of his bags. *Id.* ¶¶ 23-26. Plaintiff alleges the DEA officer searched his bags even though he did not consent. *Id.* ¶¶ 27, 30. Plaintiff's money was seized by a DEA officer. *Id.* ¶¶ 37-38. Plaintiff's funds were returned to him in December 2023, after he filed an administrative claim. *Id.* ¶ 39.

The second incident alleged occurred on October 10, 2023, when Plaintiff traveled from Boston to Los Angeles via Dallas carrying approximately $65,000. *Id.* ¶¶ 43-45. Plaintiff alleges that Boston TSA officers took notice of his cash and tipped off the DEA. *Id.* at 46. In Dallas, Plaintiff alleges that he was told that he may not leave with his bags and that a dog would be searching his bags. *Id.* ¶¶ 48-50. The dog "alerted" on Plaintiff's bag, at which point he was told the bag would be seized and a search warrant obtained. *Id.* ¶¶ 56-58. Plaintiff filed an administrative claim and received return of these funds as well. *See Id.* ¶ 61 (alleging agreement to return funds).

Plaintiff submitted an FTCA administrative claim regarding the October incident on November 30, 2023. He filed his *original* complaint in this action on March 16, 2024. *See* ECF 1. He filed the FAC on July 12, 2024. *See* ECF 19.

III. LEGAL STANDARDS

A. Rule 12(b)(1)

A plaintiff bringing a complaint must allege sufficient facts to establish federal subject matter jurisdiction. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Courts presume lack of subject matter jurisdiction unless a plaintiff shows otherwise. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377-378 (1994); *see In re Wilshire Courtyard*, 729 F.3d 1279, 1284 (9th Cir. 2013). Rule 12(b)(1) motions may challenge jurisdiction facially or factually. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "In a facial attack, the challenger asserts that the allegations

contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Id.* In considering a factual attack on jurisdiction, a court "may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id.* (citation omitted). Rule 12(b)(1) requires dismissal of a complaint if a court concludes that it lacks subject matter jurisdiction following consideration of both the complaint's allegations and extrinsic evidence concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

B. Rule 12(b)(6)

Dismissal under Federal Rule of Civil Procedure Rule 12(b)(6) is appropriate when a complaint, like Plaintiff's, fails "to state a claim upon which relief can be granted." To survive a motion under Rule 12(b)(6), a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-55, 570 (2007). A complaint meets this standard only if it "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although allegations of material fact are taken as true and construed in the light most favorable to the plaintiff, *see Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989), "the liberal pleading standard . . . applies only to a plaintiff's factual allegations." *Neitze v. Williams*, 490 U.S. 319, 330 n. 9 (1989). A complaint that offers mere labels and conclusions or a formulaic recitation of the elements of a cause will not do, nor will a complaint suffice if it tenders "naked assertion[s] devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678.

IV. ARGUMENT

A. The Detention of Goods Exception Bars Plaintiff's Trespass to Chattels and Invasion of Privacy Claims

1. The United States Has Not Waived Sovereign Immunity for Claims Related to the Detention of Goods

28 U.S.C. § 2680 provides for certain categories of claims expressly exempt from the FTCA's waiver of sovereign immunity, "severely limit[ing]" the scope of that waiver. *Morris v. United States*, 521 F.2d 872, 874 (9th Cir. 1975). "If a plaintiff's tort claim falls within one of the exceptions, the district court lacks subject matter jurisdiction." *Id.* In determining whether § 2680 bars a proposed claim, "[the court] 'look[s] beyond the labels' and evaluate[s] the alleged 'conduct on which the claim is based.'" *DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117, 1123 (9th Cir. 2019) (quoting *Thomas-Lazear v. FBI*, 851 F.2d 1202, 1207 (9th Cir. 1988) and *Mt. Homes, Inc. v. U.S.*, 912 F.2d 352, 356 (9th Cir. 1990)). "Thus, if the governmental conduct underlying a claim falls within an exception outlined in section 2680, the claim is barred, no matter how the tort is characterized." *Id*. (citing *Mt. Homes*, 912 F.2d at 356).

One such exception to the FTCA's sovereign immunity waiver is for claims "arising in respect of ... the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." 28 U.S.C. § 2680(c). Thus, absent some other applicable waiver of immunity, the United States enjoys sovereign immunity for all claims arising from the detention of property—even claims for negligent handling of the property—and courts lack subject matter jurisdiction to hear such claims. *Kosak v. U.S.*, 465 U.S. 848, 854 (1984). The detention exception is a broad retention of sovereign immunity, which "sweep[s] within the exception all injuries associated in any way with the 'detention' of goods." *Id.*

Here, Plaintiff's trespass to chattels and invasion of privacy claims fall squarely within the detention of goods exception to the FTCA. Plaintiff's trespass to chattels claim clearly "aris[es] in respect of" the detention of his currency by DEA. 28 U.S.C. §

2680(c); FAC ¶¶ 38-40, 77 (alleging that a DEA officer "dispossessed Plaintiff of his belongings," by seizing Plaintiff's money). Plaintiff's invasion of privacy claim complains that TSA's alleged reporting of Plaintiff's currency to DEA led to the seizure of Plaintiff's currency. FAC ¶¶ 81-88 (alleging that TSA officer did not have a warrant, probable cause, or reasonable suspicion of a crime, yet reported the cash to the DEA). At its core, this claim, like the trespass to chattels claim, is about the seizure of Plaintiff's currency. Accordingly, absent a further waiver of sovereign immunity, the United States enjoys sovereign immunity for these claims.

2. The CAFRA Re-Waiver of Sovereign Immunity Applies Only to Claims Based on Injury or Loss of the Seized Property by the Government

In 2000, Congress passed the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), a comprehensive reform of forfeiture laws and procedures in the nation. *See* Pub. L. No. 106–185, 114 Stat. 202. Section 3 of CAFRA, codified at 28 U.S.C. § 2680(c), titled "Compensation for Damage to Seized Property," amended the FTCA's detention exception to allow for certain claims "based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer." *See* Pub. L. No. 106–185, § 3, 114 Stat. 202. Congress through "CAFRA canceled the detention of goods exception and restored the waiver of sovereign immunity - or 're-waived' sovereign immunity - with respect to certain forfeiture-related seizures." *Foster v. U.S.*, 522 F.3d 1071, 1075 (9th Cir. 2008). In CAFRA, "Congress was predominately concerned with making property owners whole where the government unsuccessfully brings a forfeiture action and damages or loses the seized property while the action is pending." *Smoke Shop LLC v. U.S.*, 761 F.3d 779, 784 (7th Cir. 2014).

Waivers of the United States' sovereign immunity must be "unequivocally expressed in the statutory text" and "[a]ny such waiver must be strictly construed in favor of the United States, and not enlarged beyond what the language of the statute

requires." *U.S. v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 6-7 (1993) (internal quotations and citations omitted).

CAFRA's re-waiver requires an injury or loss to the goods or property while the property is in the law enforcement officers' possession. *See, e.g. Bah v. U.S.*, 91 F.4th 116, 121 (3d Cir. 2024) (affirming dismissal of plaintiff's claims where cash was returned to plaintiff after seizure and plaintiff did not allege any injury to or loss of his cash); *Robinson v. U.S. Dep't of Justice*, 2020 WL 635658, at *4 (S.D.N.Y. Feb. 11, 2020) (holding that CAFRA sovereign immunity "waiver applies only insofar as Plaintiff sues for harm to or loss of her property in government custody."); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 239 (2008) (Kennedy, J., dissenting) (Section 2680(c)(1) "establishes that [certain government officials] shall be liable in tort for damage to the property when the owner's interest in the goods in the end is not forfeited (and when other conditions apply)"); *Hakizimana v. U.S.*, 2017 WL 1536491, *2 (N.D. Ga. Mar. 31, 2017), *adopted by*, 2017 WL 1519887 (N.D. Ga. Apr. 27, 2017) ("The amended complaint alleges that the government has detained Plaintiff's property, not that it has injured or lost the property, and does not allege any facts supporting a finding that any of § 2680(c)'s other requirements are met. Section 2680(c) thus bars relief.").

Here, Plaintiff does not allege any injury or loss to his currency while in the DEA's possession. Rather, Plaintiff affirmatively alleges the return of/agreement to return his currency. FAC ¶¶ 40, 61. Therefore, Plaintiff's claim does not fall within the scope of Section 2680(c)'s re-waiver of sovereign immunity and is barred by sovereign immunity.[1]

[1] While the Court need not reach this determination as Plaintiff fails to allege any injury or loss to his currency, but he also does not allege sufficient facts to determine whether the seizure satisfied the four additional elements of 28 U.S.C. § 2680(c)(1)-(4).

B. The Discretionary Function Exception Bars Plaintiff's Invasion of Privacy Claim

1. The Discretionary Function Exception

The discretionary function exception to the FTCA (hereafter, the "DFE",) bars claims against the United States which are "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). This exception "marks the boundary between Congress' willingness to impose tort liability upon the United States and its desire to protect certain governmental activities from exposure to suit by private individuals." *Chadd v. U.S.*, 794 F.3d 1104, 1108 (9th Cir. 2015) (*quoting U.S. v. S.A. Empresa de Viacao Aerea Rio Grandense* (*Varig Airlines*), 467 U.S. 797, 808 (1984)). It is designed to "prevent judicial 'second guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort." *Id.* (*quoting Varig Airlines*, 467 U.S. at 814); *see Begay v. U.S.*, 768 F.2d 1059, 1064 (9th Cir. 1985) ("[I]f judicial review would encroach upon th[e] type of balancing done by an agency, then the [DFE] would apply.").

"In order to determine whether the [DFE] applies, the court must engage in a two-step inquiry." *Nurse v. U.S.*, 226 F.3d 996, 1001 (9th Cir. 2000). "First, the court must determine whether the challenged conduct involves an element of judgment or choice. Second, if the conduct involves some element of choice, the court must determine whether the conduct implements social, economic or political policy considerations." *Id.* (citations omitted).

In conducting this inquiry, the Supreme Court has emphasized that the DFE "is not confined to the policy or planning level" and extends "to the actions of Government agents" taken "in the course of day-to-day activities." *United States v. Gaubert*, 499 U.S. 315, 323, 325, 334 (1991); *Gonzalez v. U.S.*, 814 F.3d 1022, 1029 (9th Cir. 2016) ("Courts have consistently held that where . . . a government agent's performance of an

obligation requires that agent to make judgment calls, the [DFE] applies."). "It is also important to bear in mind that the decision giving rise to tort liability 'need not be actually grounded in policy considerations, but must be, by its nature, susceptible to a policy analysis.'" *Chadd*, 794 F.3d at 1109 (*quoting Miller v. U.S.*, 163 F.3d 591, 593 (9th Cir. 1998)) (emphasis added). The focus "is not on the agent's subjective intent" in exercising discretion, but rather on "the nature of the actions taken and whether they are susceptible to policy analysis." *Id*. (*quoting Gaubert*, 499 U.S. at 325). Likewise, it is irrelevant whether the actual conduct challenged in a particular case amounted to negligence. *Parsons v. U.S.*, 811 F. Supp. 1411, 1416 (E.D. Cal. 1992) ("'[N]egligence is simply irrelevant to the [DFE] inquiry' because § 2680(a) offers immunity 'whether or not the discretion involved be abused.'" (citation omitted)).

Although the United States bears the burden of proving that the DFE applies, a plaintiff must nonetheless allege a claim "that is facially outside the [DFE] in order to survive a motion to dismiss." *Doe v. Holy See*, 557 F.3d 1066, 1084 (9th Cir. 2009) (per curiam) (*quoting Prescott v. U.S.*, 973 F.2d 696, 702 & n.4 (9th Cir. 1992)); *see Ard v. F.D.I.C.*, 770 F. Supp. 2d 1029, 1034 (C.D. Cal. 2011) (requiring the plaintiffs to identify whether any federal statute, regulation, or policy applied to the conduct challenged in their lawsuit). Accordingly, if the plaintiff cannot plead specific facts sufficient to show that the challenged conduct did not involve a discretionary function, the plaintiff cannot lay claim to the FTCA's waiver of sovereign immunity. *See, e.g., Gates v. U.S.*, 2018 WL 3303019, at *2–3 (S.D. Cal. July 5, 2018) (*quoting Gordo-Gonzalez v. U.S.*, 873 F.3d 32, 37 (1st Cir. 2017)).

2. The Challenged Conduct of TSA is Discretionary in Nature

Here, TSA MD 100.4(6)(C)(2) reflects TSA's policy regarding large amounts of currency. It states that "traveling with large amounts of currency is not illegal[,]" but that "[w]hen currency appears to be indicative of criminal activity, TSA will report the matter to the appropriate authorities." TSA, *TSA Management Directive No. 100.4* [hereinafter TSA MD 100.4], https://www.tsa.gov/sites/default/files/foia-

readingroom/transportation_security_searches_100.4.pdf (last visited August 14, 2024)[2]. It lists examples of factors that may indicate that cash is related to criminal activity such as "the quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment." *Id.*

There are no statutes or regulations that expressly direct how TSA must respond to discoveries of bulk currency, meaning the formulation of a policy on this point is discretionary. Moreover, the terms and structure of the TSA's policy regarding currency referrals, (e.g. "appears to be indicative of" and listing factors to consider,) evinces that the decision whether to refer a discovery of currency is discretionary. *Id.*

Plaintiff complains that "other than the mere existence of cash" there was no reason for TSA to suspect Plaintiff was "engaged in criminal behavior or that the currency was otherwise forfeitable." FAC ¶ 21. But the determination of whether large amounts of currency "appears to be indicative of criminal activity" is clearly left to the TSA agent's judgment, satisfying the first step of the DFE analysis. If in the agent's judgment the currency appears to be indicative of criminal activity, based on the particular considerations attendant to its discovery during screening, it should then be reported to the appropriate authorities. TSA MD 100.4(6)(C)(2) ("TSA will report the matter to the appropriate authorities.")[3]

Evaluated as a whole, the policy is discretionary in nature because it requires the TSA employee to make an initial judgment call as to what "appears to be indicative of criminal activity." TSA MD 100.4(6)(C)(2); *see also Gonzalez*, 814 F.3d at 1029 (holding that while FBI guidelines used mandatory-sounding language "the field office *shall* promptly transmit the information [concerning criminal activity] to a law

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[2] A court can take judicial notice of a government's website. *See EVO Brands, LLC v. Al Khalifa Group, LLC*, 657 F.Supp.3d 1312, 1321 (C.D. Cal. 2023) (citations omitted).

[3] The prior section of the policy also more broadly states that when "evidence of crimes unrelated to transportation security" is discovered, "TSA personnel **shall** refer it to a supervisor or law enforcement official for appropriate action" which satisfies a TSA employee's "obligation to report known or suspected violations of Federal law." TSA MD 100.4(6)(C)(1) (citing TSA MD 1100.73-5).

enforcement agency," as a whole the guidelines were discretionary as it required agent to make judgment calls as to credibility, seriousness, etc.); *Conrad v. U.S.*, 447 F.3d 760, 765-66 (9th Cir. 2006) (holding that where a criminal procedural rule provided that government "must take the defendant without unnecessary delay" before a judge, "exercise of judgment" was required in determining "how much delay is necessary").

3. The Nature of the Action is One Susceptible to Policy Analysis

Once the Government shows that a policy allows for the exercise of discretion, "it must be presumed that the agent's acts are grounded in policy when exercising that discretion" and "the burden shifts to Plaintiffs to identify particular acts and decisions that were either (1) mandatorily prescribed by statute, regulation, or policy, or (2) were not 'susceptible to policy analysis.'" *Dichter-Mad Fam. Partners, LLP v. U.S.*, 707 F. Supp. 2d 1016, 1035, 1039-40 (C.D. Cal. 2010), *aff'd & adopted as the opinion of the court*, 709 F.3d 749, 750 (9th Cir. 2013) (quoting *Gaubert*, 499 U.S. at 323-34).

Here, the determination of whether discovery of large amounts of currency could be indicative of criminal activity not only involves judgment by the TSA employee(s) on the scene, but the very nature of such a decision is susceptible to policy analysis as it requires, *inter alia*, a balancing of privacy interests, public safety, and national security. Because the TSA's decisions were susceptible to policy analysis and thus are the type of actions the DFE was designed to protect, the claim should be dismissed. *See, e.g., Miller*, 163 F.3d at 593, 596 (DFE applied where Forest Service's suppression of wildfire required balancing of safety, costs, resource damage, and protection of private property considerations); *Gonzalez*, 814 F.3d at 1036 (FBI's decision of whether to disclose information to local law enforcement "requires considerations of public safety, allocation of scarce resources, and the likelihood of success"); *Tobar v. U.S.*, 731 F.3d 938, 948 (9th Cir. 2013) (Coast Guard's searching and towing of ship fell under policy considerations including enforcement of laws and minimization of intrusion on privacy).

Accordingly, because Plaintiff cannot allege that TSA officers were under some unstated, mandatory, and specific obligation to refrain from informing law enforcement

of the large sums of cash Plaintiff carried, this claim must be dismissed for lack of subject matter jurisdiction.

C. Plaintiff Alleges No Facts to Establish the Elements of False Arrest

Under California law, the tort of false arrest is a species of false imprisonment. *See Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998). The elements of false imprisonment are "1) the nonconsensual, intentional confinement of a person, 2) without lawful privilege, and 3) for an appreciable period of time, however brief." *Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1204 (9th Cir. 2003) (quotations and citations omitted). "A person is falsely imprisoned if he or she is wrongfully deprived of his or her freedom to leave a particular place by the conduct of another." *Martensen v. Koch*, 942 F. Supp. 2d 983, 1001 (N.D. Cal. 2013). "Restraint may be effectuated by means of physical force ..., threat of force or of arrest ..., confinement by physical barriers ..., or by means of any other form of unreasonable duress." *See Fermino v. Fedco, Inc.*, 7 Cal. 4th 701, 715 (1994).

"Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n. 16 (1968). The Supreme Court has "held repeatedly that mere police questioning does not constitute a seizure." *Muehler v. Mena*, 544 U.S. 93, 94 (2005) (quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991) ("[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions.")). "[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen…" *Florida v. Royer*, 460 U.S. 491, 497 (1983). Where an officer in the public area of an airport asks whether an individual would step aside and speak with them, this is "clearly the sort of consensual encounter that implicates no Fourth Amendment interest." *Florida v. Rodriguez*, 469 U.S. 1, 5-6 (1984)

(*citing U.S. v. Mendenhall*, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.) and *Royer*, 460 U.S. at 497).

Here, Plaintiff alleges that a DEA officer told Plaintiff he may not leave with his bags, and that he did not believe he was free to go based on the officer's uniform, demeanor, and tone. FAC ¶¶ 28-29, 53-54. These allegations are insufficient to state a claim. They fail to demonstrate how Plaintiff was deprived of his freedom by DEA officers or how he was restrained – by threats, physical force, etc. Plaintiff does nothing more than provide "labels and conclusions" and a "formulaic recitation" of the elements of his cause of action. *Twombly*, 550 U.S. at 555. These conclusions are not entitled to the assumption of truth" and does not give rise to the "plausible inference" that Plaintiff was falsely arrested. *Iqbal*, 556 U.S. at 679, 682.

Even assuming that Plaintiff did properly allege a false arrest, Plaintiff's claim still fails as he cannot allege any facts to show that the DEA's conduct was without legal authority. To the contrary, his allegations show that the DEA's conduct in stopping him for the purpose of seizing the cash *was* authorized.

Law enforcement officers may conduct a brief investigatory stop or seizure when an officer has reasonable suspicion "supported by articulable facts that criminal activity may be afoot." *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989). An investigatory seizure based on reasonable suspicion must be brief and must last no longer than necessary for the officer to investigate the situation with the aim of either confirming or dispelling his or her suspicion. *Royer*, 460 U.S. at 500. Here, the information allegedly shared by TSA gave DEA officers reasonable suspicion and any brief detention of Plaintiff and his luggage to confirm or dispel this suspicion was reasonable under the Fourth Amendment. *Id.*; *See also United States v. $557,933*, 287 F.3d 66 (2d Cir. 2002) (holding that brief detention of a passenger's luggage based on airport screeners' report to law enforcement officers of large amount of money orders in luggage so they had an opportunity to confirm or dispel any suspicions of criminal activity reasonable under the Fourth Amendment). Plaintiffs allegations fit within this authority. Thus, he has not stated a false arrest claim.

D. Plaintiff Alleges Insufficient Facts to State a Trespass to Chattels Claim

To state a claim for trespass to chattels under California law a plaintiff must plead that "an intentional interference with the possession of personal property has proximately caused injury." *Intel. Corp. v. Hamidi*, 30 Cal. 4th 1342, 1350-51 (2003). "A trespasser is liable when the trespass diminishes the condition, quality, or value of personal property." *Welenco, Inc. v. Corbell*, 126 F. Supp. 3d 1154, 1172 (E.D. Cal. 2015) (citing *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1071 (N.D. Cal. 2000)).

Here, the FAC allegations are insufficient to state a trespass to chattels claim. Plaintiff only alleges that his currency was seized and his funds were or will be returned. FAC ¶¶ 39-40, 61. The FAC contains no non-conclusory allegations of harm to his property from the seizure. Accordingly, Plaintiff fails to state a claim.

E. Plaintiff Fails to State an Invasion of Privacy Claim Under Texas Law

To state an invasion of privacy based on intrusion under Texas law, one must show that there was "an intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that is highly offensive to a reasonable person." *Cornhill Ins. PLC v. Valsamis, Inc.*, 106 F.3d 80, 85 (5th Cir. 1997). An action for intrusion upon one's seclusion is usually found "only when there has been a physical invasion of a person's property or ... eavesdropping on another's conversation with the aid of wiretaps, microphones, or spying." *Ross v. Midwest Commc'ns, Inc.*, 870 F.2d 271, 273 (5th Cir. 1989) (internal citation and quotation omitted). "There cannot be an intrusion where there is no legitimate expectation of privacy." *Graham v. JPMorgan Case Bank, Nat. Ass'n*, 2015 WL 4431199, at *12 (S.D. Tex. July 17, 2015) (citation omitted).

Here, Plaintiff fails to allege facts sufficient to support an invasion of privacy claim. Setting aside legal conclusions, all the FAC alleges is that a TSA officer disclosed the contents of his belongings to the DEA. FAC ¶¶ 22, 46, 82. This falls far short of pleading an "intentional intrusion" on Plaintiff's "solitude, seclusion, or private affairs" "that would be highly offensive to a reasonable person," and "resulted in an injury to the Plaintiff." *Aldridge v. Sec., Dep't of the Air Force*, 2005 WL 2738327, at *3 (N.D. Tex.

Oct. 24, 2005).

Moreover, Plaintiff cannot establish that there was a legitimate expectation of privacy in luggage he presented to a TSA security checkpoint. "Airport screenings which require passengers to walk through a magnetometer and submit carry-on luggage for x-ray screening" are reasonable and do not offend the Fourth Amendment. *United States v. Marquez*, 410 F.3d 612, 616 (9th Cir. 2005), *amended*, No. 04-30243, 2005 WL 1661572 (9th Cir. July 18, 2005) (citing cases). The constitutionality of an airport screening search "does not depend on consent" and "where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport. Under TSA regulations and procedures, that election occurs when a prospective passenger walks through the magnetometer or places items on the conveyor belt of the x-ray machine." *United States v. Aukai*, 497 F.3d 955, 961 (9th Cir. 2007) (citing *United States v. Biswell*, 406 U.S. 311, 315 (1972)).

Moreover, multiple Texas courts have held that travelers who attempt to board a commercial aircraft or check their baggage cannot challenge a search of their luggage and person because they lack a reasonable expectation of privacy. *E.g.*, *Kjolhede v. State*, 333 S.W.3d 631, 633-34 (Tex. App. 2009); *Turner v. State*, 132 S.W.3d 504, 507-08 (Tex. App. 2004); *see also Florida v. J.L.*, 529 U.S. 266, 274 (2000) (reasonable expectation of privacy is diminished at airports).

Here, Plaintiff twice elected to attempt entry into airport secured area with cash in a carry-on bag. He was twice subjected to a routine airport screening where TSA agents allegedly took note of his cash. As the submission of carry-on luggage for x-ray screening has been held to be reasonable and within the bounds of the Fourth Amendment and under Texas privacy law, Plaintiff lacked a reasonable expectation of privacy in the contents of his luggage.

Plaintiff charges that the TSA should not have shared information about the cash with the DEA. But the TSA is not charged, as Plaintiff presumes, with ignoring

information that falls outside of its "statutory mission" "of securing the aviation system from terrorism and other security threats to the public." FAC ¶¶ 18-20. And the mere fact that a screening procedure ultimately reveals contraband other than weapons or explosives does not render it unreasonable, post facto. *Marquez*, 410 F.3d at 617 (quoting *United States v. Davis*, 482 F.2d 893, 908 (9th Cir. 1973)). Instead, "routine airport screening searches will lead to discovery of contraband and apprehension of law violators. This practical consequence does not alter the essentially administrative nature of the screening process…or render the searches unconstitutional." *Id.*

The Ninth Circuit has expressly held that nothing precludes TSA officers "from reporting information pertaining to criminal activity, as would any citizen." *United States v. McCarty*, 648 F.3d 820, 834 n.16 (9th Cir. 2011) (quoting *United States v. $124,570 U.S. Currency*, 873 F.2d 1240, 1247 (9th Cir. 1989)). And courts have repeatedly held that indicia of criminality discovered as a by-product of airport security searches that are confined in good faith to their purpose may be referred to law enforcement without offending the Fourth Amendment. *Aukai*, 497 F.3d at 959-61 (affirming denial of motion to suppress methamphetamine located after law enforcement officer was summoned by a TSA screener); *Marquez*, 410 F.3d at 617 ("The screening at issue here is not unreasonable simply because it revealed that Marquez was carrying cocaine rather than C 4 explosives."); *$557,933*, 287 F.3d at 84-87 (rejecting argument that incriminating nature of money orders needed to have been immediately noticed by airport screeners and holding that brief detention of luggage so law enforcement officers could confirm or dispel suspicions of criminal activity reasonable under the Fourth Amendment); *United States v. Hartwell*, 436 F.3d 174, 181 n.13 (3d Cir. 2006) (affirming denial of motion to suppress drugs located during search at airport security checkpoint).

Accordingly, even if this Court finds that it has jurisdiction to consider Plaintiff's invasion of privacy claim, it should nonetheless dismiss for failure to state a claim.

F. The Court Lacks Subject Matter Jurisdiction over Plaintiff's Claims based on the October Incident because Plaintiff Failed to Exhaust Administrative Remedies Before Filing Suit

The FTCA requires the exhaustion of administrative remedies before the commencement of a tort action. 28 U.S.C. § 2675(a); 42 U.S.C. § 233(a). A party may not maintain an action under the FTCA unless they have first presented an administrative claim for money damages to the appropriate Federal agency and thereafter waited until the claim was denied in writing or is deemed denied by the passage of six months. *Id.*

If a claimant files suit before either of these conditions is satisfied, the action is premature and must be dismissed for lack of subject matter jurisdiction. 28 U.S.C. § 2675(a); *McNeil v. U.S.*, 508 U.S. 106, 111-12 (1993) (FTCA requirement that administrative remedies be exhausted before bringing suit was not satisfied by receipt of agency rejection of claim occurring after commencement of suit), *citing with approval Jerves v. U.S.*, 966 F.2d 517 (9th Cir. 1992); *Brady v. U.S.*, 211 F.3d 499, 502-03 (9th Cir. 2000).

As a general rule then, "a premature 'complaint cannot be cured through amendment, but instead, plaintiff must file a new suit.'" *Duplan v. Harper*, 188 F.3d 1195, 1199 (10th Cir.1999) (*quoting Sparrow v. USPS*, 825 F.Supp. 252, 254–55 (E.D. Cal. 1993)); *see also Johnson v. Sullivan*, 748 F.Supp.2d 1, 14 (D.D.C.2010) ("A failure to exhaust administrative remedies under the FTCA cannot be cured by the passage of time or by amendment of the complaint after the six-month time period has expired."); *Hurt v. Smith*, 2011 WL 43474, at *2-3 (E.D. Cal. Jan. 6, 2011) ("Amended complaints are a continuation of the original action" for purposes of assessing subject matter jurisdiction over a prematurely filed FTCA claim). This is because "[a]llowing claimants generally to bring suit under the FTCA before exhausting their administrative remedies and to cure the jurisdictional defect by filing an amended complaint would render the exhaustion requirement meaningless and impose an unnecessary burden on the judicial system." *Duplan*, 188 F.3d at 1199.

The plaintiff bears the burden of establishing the prerequisites of subject matter jurisdiction. *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006).

Here, the FAC states that Plaintiff's administrative claim for the October incident was submitted on November 30, 2023. FAC ¶ 62. He filed his *original* complaint in this action less than six months later, on March 16, 2024. *See* ECF 1. This lack of exhaustion at the time of his original filing cannot be cured through filing an amended complaint. *See Johnson*, 748 F. Supp. 2d at 14; *Duplan,* 188 F.3d at 1199.

Accordingly, because Plaintiff's claims based on the October incident were unexhausted as of the date of his original filing, they must be dismissed.

G. Plaintiff Fails to Show that Venue is Proper for his October Incident Claims

Claims under the FTCA may be brought in "the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." 28 U.S.C. § 1402(b). When venue is challenged, the plaintiff has the burden of proving that venue is proper in the district in which the complaint was filed. *See Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). In deciding whether venue is proper, the Court may consider facts outside the pleadings and does not have to accept the pleadings as true. *Kukje Hwajae Ins. Co. v. M/V Hyundai Liberty*, 408 F.3d 1250, 1254 (9th Cir. 2005). If venue is improper, the district court "shall dismiss, or if it be in the interest of justice, transfer such case" to an appropriate venue. 28 U.S.C. § 1406(a).

Here, venue is inappropriate in this district for Plaintiff's claims arising out of the October incident because the alleged acts or omissions did not occur here and Plaintiff has not established that he resides here. 28 U.S.C. § 1402(b).

First, Plaintiff does not allege any events or omissions regarding the October incident that occurred in this District. § 1402(b). Indeed, the FAC makes clear that the seizure took place in Texas. FAC ¶ 48.

Second, it is unclear whether Plaintiff resides in this District. 28 U.S.C. § 1391(c)(1) (explaining for venue purposes, a person is "deemed to reside in the judicial

district in which that person is domiciled."); *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) ("[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there.").

Here, although the FAC alleges that Plaintiff resides in Los Angeles County, Plaintiff provided a Daytona Beach, Florida address in his claim form to the DEA seeking return of his cash.[4] In light of this seemingly contradictory evidence, Plaintiff has not shown that he resides in this District with the intent to remain. *Gaudin v. Remis*, 379 F.3d 631, 636–37 (9th Cir. 2004) (a person must have the intent to remain indefinitely at a residence in order to be domiciled there). Accordingly, venue is improper in the Central District of California.

V. CONCLUSION

For the foregoing reasons, Defendant United States respectfully requests that the Court dismiss Plaintiff's action.

Dated: September 24, 2024

E. MARTIN ESTRADA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Jill S. Casselman
JILL S. CASSELMAN
SOO-YOUNG SHIN
Assistant United States Attorney

Attorneys for Defendant
United States of America

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Defendants, certifies that the memorandum of points and authorities contains 6,205 words, which complies with the

[4] *See* Exhibit A to this Motion.

word limit of L.R. 11-6.1.

Respectfully submitted,

Dated: September 24, 2024

E. MARTIN ESTRADA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Jill S. Casselman
JILL S. CASSELMAN
SOO-YOUNG SHIN
Assistant United States Attorneys

Attorneys for Defendant United States of America

CIVIL RIGHTS LAW
CORBETT RIGHTS
P.C.

5551 Hollywood Blvd., Suite 1248
Los Angeles, CA 90028
jon@corbettrights.com

May 5th, 2023

2023 MAY -8 PM 2:35

To: U.S. Drug Enforcement Administration
Forfeiture Counsel
Asset Forfeiture Section
8701 Morrissette Dr.
Springfield, VA 22152
via USPS Priority Mail, certified

Re: Claim for Asset ID #23-DEA-_____, US$332,200.00 and Demand for Immediate Release Under 18 U.S.C. §983(f)

Dear Forfeiture Counsel:

My name is Jonathan Corbett and my firm has been retained as counsel by Brendan White, who had US$332,200 stolen from his possession on April 3rd, 2023, by a DEA agent or federal taskforce member at SNA airport (Orange County, Calif.). We have not yet received a formal notice or Asset ID number; please see the attached seizure receipt.

My client was charged with no crime, was in possession of no drugs, and the funds seized were lawfully earned funds: to wit, my client operates a currency exchange business. The funds were seized despite the fact that my client filed – and presented to the seizing officer (!!) – a Currency Transaction Report the *morning* before the seizure. There was not even arguable probable cause for this seizure, which also constituted a false arrest. No reason was given to my client at the time of the seizure, and no reason has since been given to him.

My client makes a claim pursuant to 18 U.S.C. § 983(a)(2) for the $332,200 for which he has a possessory interest and was the legitimate assets of his legitimate business. Furthermore, my client demands immediate release of these funds under 18 U.S.C. §

983(f). The continued holding of this large amount of cash will cause my client's business to be seriously injured, a substantial hardship as defined by that statute. None of the circumstances enumerated in §983(f)(8) apply.

We request that you immediately mail a check for the entire amount to my firm at the address above. I may be contacted via e-mail to jon@corbettrights.com or via phone at (310) 684-3870.

Respectfully,

Jonathan Corbett, Esq.
CORBETT RIGHTS, P.C.

OATH OF CLAIMANT

I, Brendan White, declare under penalty of perjury under the laws of the United States of America that I have read the foregoing letter and the facts asserted by it are true and correct.

Brendan White
Claimant
Date: May 5, 2023

2023 MAY -8 PM 2:35

RECEIPT FOR CASH OR OTHER ITEMS

TO: (Name, Title, Address (including ZIP CODE), if applicable)	FILE NO.	G-DEP IDENTIFIER
WHITE, BRENDAN 144 SNOWGOOSE CT DAYTONA BEACH, FL 32119 x [signature]	FILE TITLE	
DIVISION/DISTRICT OFFICE	DATE 4-3-2023	

LAFD / LAX GROUP 3

I hereby acknowledge receipt of the following described cash or other item(s), which was given into my custody by the above named individual.

AMOUNT or QUANTITY	DESCRIPTION OF ITEM(S)	PURPOSE (If Applicable)
N - 1	SSEE #: LØØØØ98297	SEIZED PURSUANT TO
	WHICH CONTAINS AN UNKNOWN AMOUNT OF	21 USC 881 (A)(6)
	U.S. CURRENCY TO BE DETERMINED BY A	
	FINANCIAL INSTITUTION	

2023 MAY -8 PM 2:35

NOTHING FURTHER

RECEIVED BY (Signature)	NAME AND TITLE (Print or Type)
[signature]	CORONADO, TFO
WITNESSED BY (Signature)	NAME AND TITLE (Print or Type)
[signature]	GONZALEZ, TFO

FORM DEA-12 (9-00) *Previous editions obsolete*

EXHIBIT A

AND WILL NOT BE PROCESSED BY FINCEN.
This form has been signed and cannot be altered.

Currency Transaction Report

Version Number: 1.3

OMB No. 1506-0004, OMB No. 1506-0005, OMB No. 1506-0064

How to File:

1. Complete the report in its entirety with all required and known requested data provided.
2. Select **VALIDATE** to ensure the report has no errors.
3. Select **SIGN WITH PIN** to electronically sign the report.
4. Select **SAVE** to save a local copy of the report.
5. Select **READY TO FILE** to access the **FILE FINCEN REPORTS** page.
6. **ATTACH** the report, **RE-ENTER** your PIN, and **SUBMIT**.

Filing Name Christian-Radu-CTR-8

***1 Type of filing** ☒ Initial report ☐ Correct/amend prior report ☐ FinCEN directed Backfiling

Prior report BSA Identifier

Save | Validate | Print

By providing my PIN, I acknowledge that I am electronically signing the BSA report submitted.

Remove Signature

Release Date: June 2021

2023 MAY -8 PM 2:36

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EXHIBIT A

Part IV Filing Institution Contact Information

*52 Type of financial institution	MSB
Other (specify)	
*43 Primary federal regulator	Internal Revenue Service (IRS)

53 If 52a - Casino/Card Club is checked, indicate type (check only one)

☐ State licensed casino ☐ Tribal authorized casino ☐ Card club ☐ Other

*44 Legal name of filing institution	522 Ventures, Ltd
45 Alternate name, e.g. trade name, DBA	
*46 EIN	474923738
*47 Address	7208 Red Top Rd
*48 City	Hummelstown
*49 State	PA
*50 ZIP Code	17036
*51 Country	US
54 Filing institution ID type	
ID number	
*55 Contact office	Main office
*56 Phone number	4157475567 Ext.
*57 Date filed	04/03/2023 (Date filed will be auto-populated when the form is signed.)

2023 MAY -8 PM 2:36

AND WILL NOT BE PROCESSED BY FINCEN.

Part III Transaction Location 1 of 1

*38 Type of financial institution	MSB
Other (specify)	
*29 Primary federal regulator	Internal Revenue Service (IRS)

39 If 38a - Casino/Card Club is checked, indicate type (check only one)

☐ State licensed casino ☐ Tribal authorized casino ☐ Card club ☐ Other

*30 Legal name of financial institution	522 Ventures, Ltd
31 Alternate name, e.g. trade name, DBA	
*32 EIN ☐ Unknown	474923738
*33 Address	2201 Airport Fwy
*34 City	Bedford
*35 State	TX
*36 ZIP Code	76021
*37 Country	US
40 Financial institution ID type	
ID number	
*41 Cash in amount for transaction location	335,020
*42 Cash out amount for transaction location	

2023 MAY -8 PM 2:36

This form has been signed and cannot be altered.

EXHIBIT A

This AND WILL NOT BE PROCESSED BY FINCEN unless completed and signed and cannot be altered.

Part I Person Involved in Transaction(s) 1 of 1

*2 a ☒ Person conducting transaction on own behalf b ☐ Person conducting transaction for another c ☐ Person on whose behalf transaction was conducted d ☐ Common carrier

3 ☐ Multiple transactions

Check ☐ If entity

*4 Individual's last name or entity's legal name	☐ Unknown	Radu
*5 First name	☐ Unknown	Cristian
6 Middle name		
Suffix		
7 Gender		Male
8 Alternate name		
9 Occupation or type of business		
9a NAICS Code		
*10 Address	☐ Unknown	3114 Wheaton Way Apt B
*11 City	☐ Unknown	Ellicot City
*12 State	☐ Unknown	MD
*13 ZIP/Postal Code	☐ Unknown	21043
*14 Country	☐ Unknown	US
*15 TIN	☒ Unknown	
16 TIN type		
*17 Date of birth	☐ Unknown	[redacted]1980
18 Contact phone number		
Ext.		
19 E-mail address		

2023 MAY -8 PM 2:36

*20 Form of identification used to verify identity ☐ Unknown

☒ Driver's license/State ID ☐ Passport ☐ Alien Registration ☐ Other

Number R300125009704 Country US Issuing State MD

21 Cash in amount for individual or entity listed in Item 4 $

Account number

22 Cash out amount for individual or entity listed in Item 4 $

Account number

This form has been signed and cannot be altered.

EXHIBIT A

AND WILL NOT BE PROCESSED BY FINCEN.

Part II Amount and Type of Transaction(s). Check all boxes that apply.

*23 Date of transaction 04/02/2023

24 ☐ Armored car (FI Contract) ☐ ATM ☐ Mail deposit or shipment ☐ Night deposit ☐ Aggregated transactions ☐ Shared branching

*25 CASH IN: (in U.S. dollar equivalent)		*27 CASH OUT: (in U.S. dollar equivalent)	
a Deposit(s)	$ .00	a Withdrawal(s)	$ .00
b Payment(s)	.00	b Advance(s) on credit (including markers)	.00
c Currency received for funds transfer(s) out	.00	c Currency paid from funds transfer(s) in	.00
d Purchase of negotiable instrument (s)	.00	d Negotiable instrument(s) cashed	.00
e Currency exchange(s)	335,020.00	e Currency exchange(s)	.00
f Currency to prepaid access	.00	f Currency from prepaid access	.00
g Purchases of casinos chips, tokens and other gaming instruments	.00	g Redemption(s) of casino chips, tokens, TITO tickets and other gaming instruments	.00
h Currency wager(s) including money plays	.00	h Payment(s) on wager(s) (including race and OTB or sports pool)	.00
i Bills inserted into gaming devices	.00	i Travel and complimentary expenses and book gaming incentives	.00
z Other (specify):	.00	j Payment for tournament, contest or other promotions	.00
		z Other (specify):	.00
Total cash in	$ 335,020.00	Total cash out	$ .00

26 Foreign cash in — Foreign Country

28 Foreign cash out — Foreign Country

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EXHIBIT A

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EP14F July 2022
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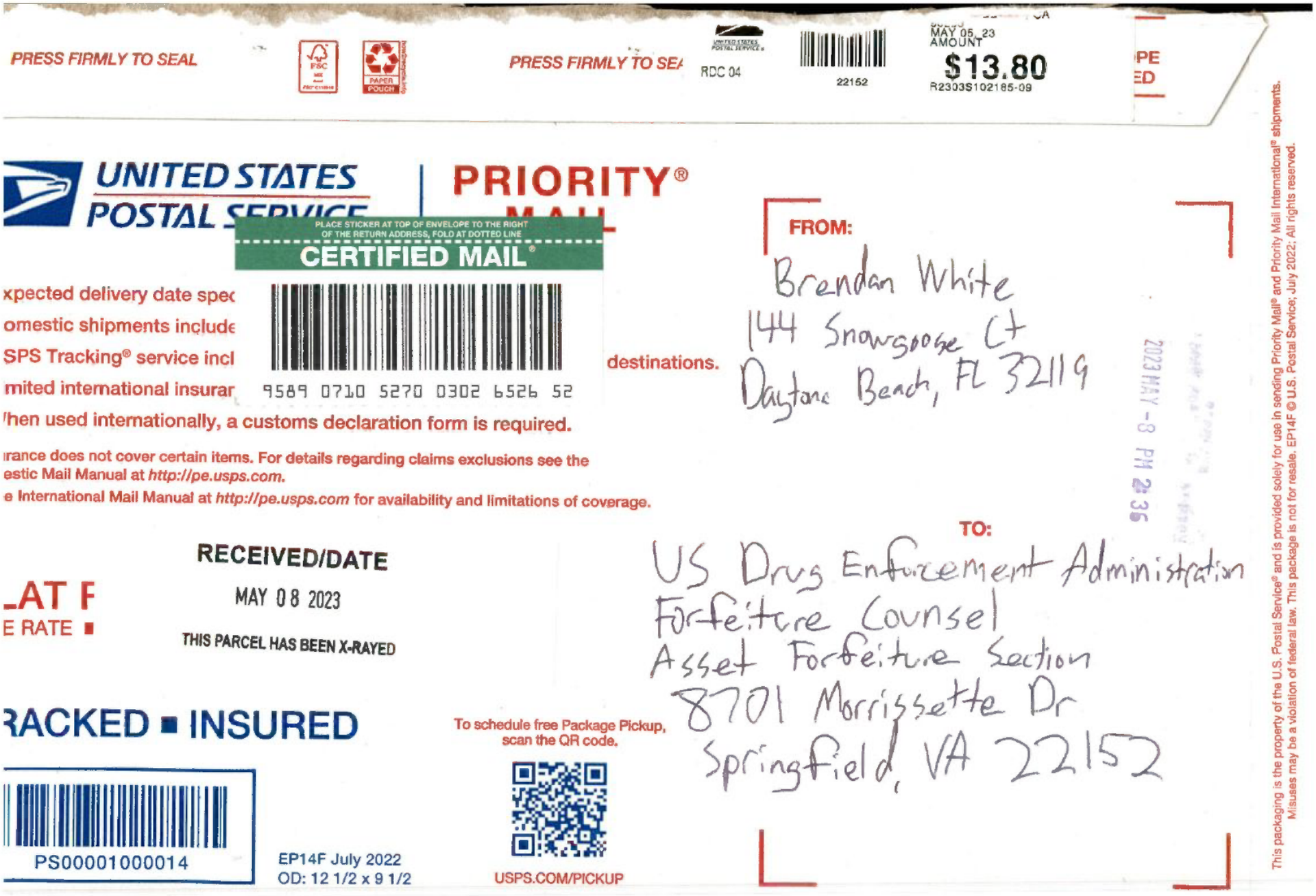
EXHIBIT A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Brendan White
144 Snowgoose Ct
Daytona Beach, FL 32119
2023 MAY -8 PM 2:35
TO:
US Drug Enforcement Administration
Forfeiture Counsel
Asset Forfeiture Section
8701 Morrissette Dr
Springfield, VA 22152
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MAY 08 2023
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AT F
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EXHIBIT A

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRENDAN WHITE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:24-cv-02159-MAR

[[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT

The Court, having considered Defendant United States of America's Notice of Motion and Motion to Dismiss Plaintiff's First Amended Complaint, and Memorandum of Points and Authorities in support thereof, and good cause appearing therefore, IT IS HEREBY ORDERED THAT Defendant United States' Motion is GRANTED in its entirety, and Plaintiff's Complaint is dismissed with prejudice.

Dated: _____, 2024

_____

HONORABLE MARGO A. ROCCONI
UNITED STATES MAGISTRATE JUDGE

Presented by,

E. MARTIN ESTRADA
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Jill S. Casselman
JILL S. CASSELMAN
Assistant United States Attorneys

Attorneys for Defendant United States of America