

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERARD MARCHELLETTA, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. <u>1:14-cv-02923-ELR</u>
)	
PATRICIA BERGSTROM, C. ANDRÉ)	
MARTIN, PAUL MONNIN, JUSTIN)	
ANAND, RANDY CHARTASH,)	
KIMBERLY SELLERS, MARK)	
SEWELL, SHAWN MCBRIDE, and)	
JOHN AND JANE DOES 1-100,)	
)	
Defendants.)	
)	

FIRST AMENDED COMPLAINT

COMES NOW the Plaintiff, GERARD MARCHELLETTA, JR. (“Marchelletta”), by and through his attorneys of record, The Bernhoft Law Firm, S.C. and Wimberly, Lawson, Steckel, Schneider, & Stine, and timely files his First Amended Complaint as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B) and the court’s order of March 10, 2015. (Doc. 20.) That order granted Marchelletta’s unopposed motion for an extension of time to file an amended complaint as a matter of course or to otherwise respond to the Defendants’ several pre-answer motions to dismiss. (Docs. 19-20.)

As and for his Complaint against the Defendants, PATRICIA BERGSTROM, C. ANDRÉ MARTIN, PAUL MONNIN, JUSTIN ANAND, RANDY CHARTASH, KIMBERLY SELLERS, MARK SEWELL, SHAWN MCBRIDE, AND JOHN AND JANE DOES 1-100, Marchelletta states as follows:

INTRODUCTION

1. This federal civil rights action seeks redress and remedy for the Defendants' violations of rights secured to Plaintiff Gerard Marchelletta, Jr. ("Marchelletta") by the Constitution of the United States, and by the Laws of the state of Georgia.

2. Before his exoneration on September 12, 2012, Marchelletta was persecuted and unlawfully hounded by the Defendants since at least 1999, including the wrongful indictment and trial conviction he suffered at their hands in 2007.

3. Marchelletta's wrongful trial conviction was the direct result of the Defendants' intentional misconduct. Marchelletta brings this federal civil rights action to obtain redress and remedy for the economic, physical, and mental injuries he suffered as a result of their malicious scheme.

JURISDICTION AND VENUE

4. This is a civil action seeking compensatory, punitive, injunctive, and other legal and equitable relief, and the Court has jurisdiction over the

subject matter of this action pursuant to 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over Marchelletta's Georgia state law claims under 28 U.S.C. § 1367.

5. This action is properly venued in this federal judicial district under 28 U.S.C. § 1391, because on information and belief, most of the Defendants reside in this district, and the events giving rise to the claims asserted herein occurred within the district.

THE PARTIES

6. Plaintiff Gerard Marchelletta, Jr. is a resident of the State of Georgia.

7. On information and belief, Defendant Patricia Bergstrom ("Bergstrom") is a resident of the State of Georgia, and at all times relevant hereto, was an Internal Revenue Service "IRS" Criminal Investigation Division Special Agent.

8. On information and belief, Defendant C. André Martin is a resident of the State of Georgia, and at all times relevant hereto was a Special Agent in Charge ("SAC") in the Criminal Investigation Division of IRS, and Bergstrom's supervisor.

9. On information and belief, Defendant Paul Monnin ("Monnin") is a resident of the State of Georgia, and at all times relevant hereto, was a prosecuting attorney with the U.S. Attorney's Office, Northern District of Georgia.

10. On information and belief, Defendant Justin Anand (“Anand”) is a resident of the State of Georgia, and at all times relevant hereto, was a prosecuting attorney with the U.S. Attorney’s Office, Northern District of Georgia.

11. On information and belief, Defendant Randy Chartash (“Chartash”) is a resident of the State of Georgia, and at all times relevant hereto, was a both a prosecuting attorney and supervisor with the U.S. Attorney’s Office, Northern District of Georgia.

12. On information and belief, Defendant Kimberly Sellers (“Sellers”) is a resident of the District of Columbia, and at all times relevant hereto, was a Special Agent in the United States Customs Service, and then a Special Agent with Immigration and Customs Enforcement (“ICE”).

13. On information and belief, Defendant Mark Sewell (“Sewell”) is a resident of the State of Georgia, and at all times relevant hereto, was a Special Agent with the Federal Bureau of Investigation (“FBI”) and member of the Organized Crime Drug Enforcement Task Force (“OCDETF”).

14. On information and belief, Defendant Shawn McBride (“McBride”) is a resident of the State of Kentucky, and at all times relevant hereto, was a Confidential Informant (“CI”) for the government, and in that capacity was an agent of the United States for purposes of *Bivens* liability.

15. Defendants John and Jane Does 1-100 are employees, officers, or agents of the United States who participated in the conspiracy and other allegations in this Complaint, whose identities are currently unknown to Marchelletta.

BACKGROUND AND FACTS

Marchelletta's Wrongful Indictment and Trial Conviction:

16. Plaintiff Marchelletta was wrongfully indicted on April 3, 2007 at the instigation of the U.S. Attorney's Office for the Northern District of Georgia ("USAO-NDGA"), in a federal criminal tax case styled: *United States v. Gerard Marchelletta, et al.*, Case No. 1:07-CR-00107-TCB. The USAO-NDGA caused a superseding indictment to issue on July 2, 2007. The superseding indictment alleged nine counts of felony tax fraud variously against Plaintiff Marchelletta, his father Gerard Marchelletta, Sr., and Theresa Kottwitz, the bookkeeper for the Marchellettas' Circle Group company.

17. Trial commenced on September 17, 2007, and the jury returned its mixed verdict on October 3, 2007. Plaintiff Marchelletta was found not guilty on Count 2, but guilty on Counts 1, 3, and 6. Marchelletta was sentenced by the Honorable Judge Timothy C. Batten on June 20, 2008 to 36 months of imprisonment, three years of supervised release, and a criminal fine of \$50,000.

All Wrongful Convictions Reversed on Appeal:

18. Marchelletta pursued a merits appeal before the U.S. Court of Appeals for the Eleventh Circuit.¹ As to Marchelletta, after briefing and oral argument, the 11th Circuit Panel's initial decision reversed and remanded Count 6 with instructions to enter a judgment of acquittal for insufficient evidence, reversed and remanded Count 3 for a new trial, but affirmed the Count 1 conviction on the *Klein* tax conspiracy.

19. Marchelletta subsequently filed a petition for panel rehearing on September 9, 2010, seeking to have Count 1 similarly reversed. While that petition was pending, Marchelletta also filed a Rule 33 Motion for a New Trial in the district court on October 4, 2010.² The basis for Marchellettas' motion for a new trial was newly discovered evidence of outrageous government misconduct that deprived him of a fair trial, including, but not limited to: intentional *Brady*, *Giglio*, and Jencks Act discovery violations; fabricating evidence; trial perjury by Defendants Bergstrom and Sellers, the two lead testifying special agents; trial perjury by Defendant McBride, the government's undisclosed Confidential Informant; trial perjury by prosecution witness and CPA Gary Schwartz; the subornation of the trial

¹ See *United States v. Kottwitz*, 614 F.3d 1241 (11th Cir. 2010).

² See *United States v. Gerard Marchelletta, et al.*, Case No. 1:07-CR-00107-TCB, Docs. 238 through 238-82 (motion, supporting memorandum, and 73 exhibits).

perjury of Sellers, Bergstrom, McBride, and Schwartz; and intimidating and threatening witnesses.

20. On October 5, 2010, the very next day after Marchelletta filed his Rule 33 motion, the 11th Circuit Panel granted his petition for rehearing and ordered supplemental briefing, after which the Panel went forward on December 22, 2010, and reversed and remanded for retrial the sole remaining conviction count, the Count 1 *Klein* tax conspiracy.³ At this point in time, all conviction counts relating to Marchelletta had been reversed and remanded.

The Prosecution Announces a Retrial, while Marchelletta’s Government Misconduct Investigation Continues:

21. The USAO-NDGA announced its intention to retry Counts 1 and 3 against Marchelletta in 2011, after obtaining several extensions of time from the district court. Meanwhile, Marchelletta continued his investigation into outrageous government misconduct, including prosecuting Freedom of Information Act (“FOIA”) lawsuits against both the United States Customs Service (“USCS”) and the IRS.

22. Prior to summary judgment filings in Marchelletta’s FOIA litigation against the IRS, U.S. Department of Justice Tax Division litigation counsel (representing the IRS) disclosed approximately 90,000 document pages from Bergstrom’s and the IRS’s criminal investigation files relating specifically to

³ See *United States v. Kottwitz*, 627 F.3d 1383 (11th Cir. 2010).

Marchelletta. The USAO-NDGA had previously disclosed only approximately 25,000 document pages to Marchelletta as criminal discovery before and during the 2007 trial, a difference of approximately 65,000 document pages. The concealment of these documents by these Defendants, individually and in concert, violated Marchelletta's fundamental Fifth Amendment right to a fair trial, as they were required to be disclosed variously by Fed. R. Crim. P. 16, *Brady*, *Giglio*, and the Jencks Act.

23. In response to Marchelletta's administrative FOIA requests to USCS and ICE, the agency's disclosure function provided a total of 18 Customs reports, albeit heavily redacted, in contrast to the six Customs reports provided to Marchelletta before and during his 2007 trial. The necessary context provided by all 18 Customs reports showed that the sixth report provided to the defense in 2007 was a composite forgery of pages taken from two undisclosed Customs reports, intentionally arranged to appear to be from a single report. Neither of the two Customs reports that provided the page source for the composite forgery were ever provided to the defense in 2007.

24. When read in necessary sequence and totality, the 18 Customs reports told a completely different story than Sellers and Bergstrom told the jury, the district court, and the defense at trial. Both special agents committed streaming perjury before the jury in order to railroad Marchelletta

and wrongfully convict him, and Marchelletta was deprived of any effective cross-examination because of the massive discovery violations perpetrated against him by federal special agents and prosecutors, particularly Defendants Sellers, Bergstrom, Martin, Sewell, Monnin, Chartash, and Anand, but also John and Jane Does 1-100.

Marchelletta Exonerated:

25. Marchelletta brought all of the fruits of his misconduct investigation to the highest levels of the USAO-ND GA through the latter part of 2011 and well into 2012. Finally, on August 6, 2012, Marchelletta filed a Motion to Dismiss the Retrial Indictment for Outrageous Government Misconduct, and the district court heard argument on August 10, 2012.⁴ The district court denied the motion in a one-page order on August 13, 2012.⁵

26. Marchelletta was exonerated on September 12, 2012, when the district court granted the parties' joint motion to dismiss all of the retrial counts against him, with prejudice.⁶

⁴ See *United States v. Gerard Marchelletta, et al.*, Case No. 1:07-CR-00107-TCB, Docs. 293 through 293-40 (motion, memorandum, and 37 exhibits); Doc. 308 (transcript of oral argument).

⁵ *United States v. Gerard Marchelletta, et al.*, Case No. 1:07-CR-00107-TCB, Doc. 300.

⁶ *United States v. Gerard Marchelletta, et al.*, Case No. 1:07-CR-00107-TCB, Doc. 305.

Defendant Bergstrom's and Other Defendants' Unlawful Interference with the IRS Civil Tax Process Regarding Marchelletta's Filed Tax Returns:

27. Marchelletta filed his 2001, 2002, 2003, and 2004 income tax returns in September of 2006 with Special Agent Bergstrom, and the IRS stamped them received on September 14, 2006. These returns were filed late upon the instructions of Marchelletta's then-criminal tax counsel.

28. Marchelletta's 2003 and 2004 income tax returns were promptly processed by the IRS and income tax assessed in October of 2006, about one month after filing.

29. Marchelletta's 2002 income tax return was not processed nor any tax assessed until June 11, 2007, about nine months after filing.

30. Marchelletta's 2001 income tax return filed in September of 2006 was stamped received by IRS on September 14, 2006, but mysteriously never processed by IRS. In early 2008, in preparation for federal sentencing, one of Marchelletta's tax representatives inquired of IRS about the 2001 tax return. This tax representative was advised that the IRS had no record of ever receiving, much less processing, any 2001 1040 income tax return for Marchelletta, and was further advised to print a copy of the 2001 return, have Marchelletta re-sign it, and re-submit this second 2001 income tax return to the IRS.

31. Marchelletta re-signed and re-submitted a 2001 1040 tax return on March 7, 2008, but the IRS did not process the return and assess any tax until August 25, 2008, about five months after filing, and well after Marchelletta had been sentenced.

32. The IRS is now attempting to collect approximately \$1 million dollars in tax, penalty, and interest that Marchelletta does not owe.

33. On information and belief, Defendant Bergstrom, either individually or in concert with Defendants Martin, Sellers, Monnin, Sewell, Anand, Chartash, and John and Jane Does 1-100, intentionally interfered with, impeded, and obstructed the IRS's lawful computation and assessment functions, with the intent of depriving Marchelletta of his Fifth Amendment right to a fair trial, and with the additional purpose of causing the IRS to assess and then collect tax, penalty, and interest that Marchelletta does not owe.

The Government Defendants Unlawful Recruitment and Use of Rogue Union Operatives to Terrorize Marchelletta, his Business, and his Family with Illegal Acts, in an Intentional Conspiracy to Deprive Marchelletta of Fundamental Constitutional Rights:

34. Defendants Bergstrom, Sellers, Monnin, and other defendants whose identity is currently unknown to Marchelletta, recruited rogue officials and members of the Southeastern Carpenters Regional Council ("the Union") to conduct illegal activities against Marchelletta, his Circle Group company,

and his family, all part of the Defendants conspiracy to deprive Marchelletta of rights secured him by the Constitution of the United States, and the Laws of the state of Georgia.

35. Bergstrom, Monnin, Sellers, and other unknown Defendants recruited the Union's Chris Freitag, Steve Shelton, Jimmy Gibbs, and others to send in Union undercover operatives to try and entrap the Circle Group into federal employment violations. With the Government Defendants encouragement and approval, the rogue Union operatives also performed trash runs on Circle, Marchelletta, and his family; illegally picketed daycare centers where Marchelletta's sister's children were enrolled; illegally picketed and protested at Marchelletta's residential home and the homes of other Marchelletta family members; illegally mocked Marchelletta's father's devout faith by handbilling his residential neighborhood with fake minister ordination flyers; and created and sent fake Valentine's Day cards to Marchelletta's children, disguised to appear as if they were from the children's friends so the children would open them, with harsh language written inside disparaging Marchelletta and the family name.

36. The rogue Union operatives Freitag, Shelton, Gibbs, and others provided all of the information they collected during their lengthy campaign of terror against Marchelletta, his business, and his extended family to Bergstrom, Sellers, Monnin, and other unknown Government Defendants.

Conversely, Bergstrom, Sellers, Monnin, and other unknown Government Defendants provided information obtained during the IRS's criminal investigation against Marchelletta to the rogue Union operatives, including a surveillance photo of one of Marchelletta's daughters on a hotel balcony in Florida where Marchelletta, his wife, and his children were vacationing.

37. None of the documents, pictures, audiotapes, and information described above in paragraphs 35 and 36 was provided to Marchelletta in discovery, in violation of his constitutional right to a fair trial, not to mention basic norms of human morality, decency, and civility.

The Defendants' Coverup Conspiracy:

38. While Marchelletta's appeal to the 11th Circuit was pending, Marchelletta sued the IRS under FOIA on October 30, 2009, because IRS FOIA Disclosure had denied in full all of his administrative FOIA requests for documents in his IRS criminal investigation file, based upon lies Defendant Bergstrom told to her own IRS FOIA Disclosure colleagues.⁷ Bergstrom deceived her own IRS FOIA colleagues about the existence of responsive documents, variously misrepresented the nature of those documents to the IRS FOIA analysts and disclosure manager, and then when all else had apparently failed in her efforts to obstruct Marchelletta's access

⁷ See *Gerard Marchelletta, Sr., et al. v. Internal Revenue Service*, Case No. 1:09-CV-3037-TCB.

to her criminal investigation file documents, falsely told her disclosure colleagues Marchelletta was a dangerous mobster who would hurt or kill people if documents were released to him.

39. U.S. Department of Justice Tax Division Special Litigation Counsel (“DOJ Counsel”) entered an appearance for the IRS upon service of Marchelletta’s FOIA lawsuit. As summary judgment filing deadlines approached in May of 2010, DOJ Counsel released approximately 90,000 document pages from the IRS’s criminal investigative files, all personally identifiable to Marchelletta, only approximately 25,000 of which had been disclosed to Marchelletta before and during his 2007 trial. These never before released documents showed, among other things, that: Bergstrom had violated Fed. R. Crim. P. 6(e) by obtaining unauthorized access to grand jury materials from Customs SA Sellers; both Sellers and Bergstrom had committed perjury at Marchelletta’s trial in order to obtain a conviction; Sellers, Bergstrom, Sewell, Monnin, Anand, and Chartash knew that prosecution witness McBride was a confidential government informant during both the Gold Club and Marchelletta criminal investigations, controlled by FBI SA Sewell, and lied to the Court and defense counsel about it; and prosecution witness and CPA Gary Schwartz committed perjury at the 2007 trial, perjury suborned by Sellers, Bergstrom, Monnin, Anand, and unidentified others among John and Jane Does 1-100.

40. The undisclosed documents identified and described above in paragraph 39 also showed that Bergstrom had deliberately concealed multiple Memorandum of Interview (“MOI”) reports of witness interviews that she, sometimes along with Sellers, had taken, and which witnesses provided exculpatory information as to Marchelletta on several of the prosecution’s main trial themes.

41. One previously undisclosed MOI memorialized a telephone interview Bergstrom had with Attorney Bruce Morris, counsel for unindicted co-conspirator George Gorman. Attorney Morris had telephoned Bergstrom to advise that his client, Gorman, was going to demand repayment of a \$250,000 loan he’d made to Marchelletta. Bergstrom threatened Morris that she would construe any attempt by Gorman to have Marchelletta repay the \$250,000 loan as an overt conspiratorial act, because her theory of criminality was that the \$250,000 was not a loan at all. In addition to this act of criminal obstruction of justice, Marchelletta’s investigation revealed that Bergstrom had economically and otherwise threatened numerous witnesses, but none of this information was disclosed to the defense.

42. After summary judgment briefing was completed in the IRS FOIA litigation, the district court denied the IRS’s motion for summary judgment based upon its finding that SA Bergstrom had told three different stories about the origin, scope, and chronology of her criminal investigation against

Marchelletta – three different sworn stories that were materially inconsistent – and that the IRS had not even attempted to explain those material inconsistencies. Bergstrom committed trial perjury in 2007, then committed perjury in her two sworn affidavits tendered in support of the IRS’s summary judgment motion, as part of her continuing coverup conspiracy to conceal her previous misconduct against Marchelletta, all in violation of rights secured Marchelletta by the Constitution of the United States and the Laws of the state of Georgia.

COUNT ONE:

***Bivens* Claim for Multiple *Brady* Violations,
in Violation of Rights Guaranteed Marchelletta by the
Fifth Amendment to the United States Constitution**

43. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 42 of this Complaint as if fully set forth herein.

44. All of the Defendants, and each of them save Shawn McBride, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, violated Marchelletta’s Fifth Amendment Due Process right to receive all documents, materials, and information the prosecution team was required to produce to him under the U.S. Supreme Court’s decision in *Brady v. Maryland*, 373 U.S. 83 (1963).

45. All of the Defendants save Shawn McBride had a legal duty to produce all *Brady* material to Marchelletta, and each such Defendant knew they had this legal duty.

46. Defendants Martin, Bergstrom, Sewell, Sellers, Monnin, Anand, Chartash, and other individuals unknown to Marchelletta (Jane and John Does 1-100) failed to provide Marchelletta with thousands of pages of exculpatory and impeachment material from amongst the approximately 65,000 pages of undisclosed discovery from IRS SA Bergstrom's own criminal investigation files. The Defendants' non-disclosure of these *Brady* materials severely prejudiced Marchelletta by depriving him of any fair trial opportunity to effectively cross-examine IRS Special Agent Bergstrom, ICE Special Agent Sellers, and undisclosed Confidential Informant McBride, among others, and precluded his trial counsel from exposing the prosecuting attorneys' false themes and deeply misleading argument to the jury.

47. The *Brady* material these Defendants suppressed in violation of Marchelletta's Fifth Amendment rights includes, but is not limited to, twelve official U.S. Customs Reports generated during its undisclosed, multi-year criminal investigation of Marchelletta and his Circle Group company. These suppressed official reports would have precluded ICE SA Sellers from perjuringly declaring to the jury that she was merely conducting a "routine administrative" inquiry into a seized check, that her inquiry was merely

administrative (not criminal), and that her investigation was basically concluded by October of 2001. This undisclosed *Brady* material alone would have both allowed Marchelletta to impeach SA Sellers, IRS SA Bergstrom, undisclosed Confidential Informant Shawn McBride, and CPA Gary Schwartz, and substantially undermine the prosecution's entire theory of criminality in an already very close case.

48. SA Sellers' lies to the jury were necessary to support the prosecution's main trial theme, namely, that Marchelletta "saw the sirens in the rearview mirror," and that this constituted evidence of guilty knowledge. The prosecution argued strenuously, based on perjured testimony and forged documents that SA Sellers was just conducting some merely administrative inquiry which was basically concluded by October of 2001, so why were Marchelletta's lawyers badgering her in 2002 when they had no reason to contact her at all, and certainly no reason to ask if IRS was involved or would be notified? Marchelletta sicced his attorneys on SA Sellers because he had guilty tax knowledge – "saw the sirens in the rearview mirror," putting aside the prosecution's inapt metaphor – or so the prosecution falsely argued to the judge and jury.

49. In fact, and contrary to Sellers' perjury, she was conducting an aggressive criminal grand jury investigation against Marchelletta throughout, began issuing multiple grand jury subpoenas starting in January

of 2002, and did not close her criminal investigation until February 21, 2003, over fifteen months after she testified she “was basically done.” Sellers’ own special agent’s reports that detailed her grand jury subpoena work were never disclosed to Marchelletta, and neither was her Report of Interview (“ROI”) of the re-interview of undisclosed Confidential Informant and prosecution trial witness McBride she conducted on February 6, 2002. Instead, it took years of FOIA litigation against both IRS and CPB/ICE for Marchelletta to obtain these crucial documents that would have put the lie to Sellers’ trial perjury and the prosecution’s false case.

50. These intentional suppressions of *Brady* material allowed the prosecution team, including all of the Defendants here save McBride, to conceal the nature, extent, and lengthy timeline of Sellers’ grand jury criminal investigation against Marchelletta for money laundering, mail fraud, and wire fraud, so that the prosecuting attorneys could falsely tell the jury there was no reason for Marchelletta’s attorneys to even be contacting Sellers at all after October of 2001, much less hound her about whether IRS was involved or would be notified in 2002. This “sirens in the rearview” falsehood was the most important intent evidence in the entire trial, and the massive *Brady* violations committed by these Defendants precluded Marchelletta from impeaching, much less even challenging, the two special agents’ and McBride’s streaming perjury, CPA Gary Schwartz’s material

misstatements about home construction costs knowledge, and the prosecutor's intentionally misleading questions to witnesses and false statements to both the court and the jury.

51. SA Sellers also perjurally testified that two attorneys for the Circle Group, Marianne Boston and Richard Abbey, had both asked her whether IRS was involved or would be notified, Boston purportedly in a meeting with Sellers, and Abbey purportedly in a telephone call. Attorney Boston has since adamantly denied asking any such question, as has Attorney Abbey, the former Chief Counsel of the U.S. Customs Service. Mr. Abbey, in fact, has since stated that a U.S. Customs Attorney named Richard Resin had advised him that SA Sellers herself had shared her concerns (with Resin) over possible criminal tax violations, and wanted to bring IRS into the case. According to Abbey, Resin told him he advised Sellers to close her Customs investigation down and hand it off to IRS if that's what she thought.

52. Sellers' memoranda of these interviews were never provided to the defense in violation of *Brady*. Marchelletta was consequently ambushed at trial with no opportunity to effectively cross-examine Sellers on these crucial intent issues, which formed the basis of the prosecution's false "sirens in the rearview mirror" trial theme and theory of criminality, much less call their own witnesses in rebuttal.

53. Similarly, the prosecution team, including all the Defendants save McBride, committed additional *Brady* violations by failing to disclose evidence from Sellers' own investigation files of her trial perjury. This information would have been both exculpatory to Marchelletta and impeaching as to government witness Sellers. For example, Marchelletta obtained numerous Sellers' emails through post-trial FOIA litigation that put the direct lie to many of her false trial statements, including that she had nothing to do with whether or when the Fines, Penalties, and Forfeitures ("FP&F") division of Customs in New Orleans would release Circle's money. In fact, according to her own emails, she had everything to do with those issues, at one point ordering FP&F not to return the money because she was still investigating, at another point advising FP&F that she didn't want Circle to know anything about her criminal investigation or IRS involvement, and finally, instructing FP&F in early 2003 that they could now release Circle's money, less any civil penalty, because her criminal investigation was concluding, over fifteen months after she falsely told the jury she was "basically done."

54. All of these Defendants, save McBride, also manufactured false evidence to support their false trial themes and perjury, and they failed to provide the evidence in their possession of their misconduct, unconstitutionally precluding Marchelletta from exculpating himself and

impeaching various government witnesses with that *Brady* material. For example, the sixth Customs Report disclosed to Marchelletta was a composite forgery, cobbled together from two undisclosed official reports and passed off as a *bona fide* complete report, to deceive Marchelletta into believing that the Customs investigation had been terminated much earlier than it had, thereby both supporting ICE SA Sellers' false timeline and related perjury, and allowing the prosecution team, including these Defendants and other unknown individuals (John and Jane Does 1-100), to conceal the treasure-trove of exculpatory and impeachment material contained in the undisclosed thirteen reports.

55. The prosecution team, including all of these Defendants save McBride, also failed to disclose *Brady* material regarding the IRS's criminal tax investigation of Marchelletta, which ultimately yielded the indictment charges. For example, IRS SA Bergstrom's own Special Agent's Report ("SAR") was never disclosed to Marchelletta, along with all of the Memoranda of Interview ("MOIs") appended to it but never disclosed.

56. The prosecution team also never disclosed SA Bergstrom's IRS Form 9131, the essential agency form required for IRS to obtain authorization to join a non-tax grand jury investigation, such as SA Sellers' Customs grand jury. Defendant Martin, SA Bergstrom's direct supervisor and Special Agent in Charge ("SAC") of Atlanta Criminal Investigation Division ("CID"),

personally reviewed and signed off on Bergstrom's recommendation that she be allowed to join CBP/ICE SA Sellers in a joint Customs/IRS grand jury criminal investigation of Marchelletta.

57. Prosecutors Monnin, Anand, and Chartash were also personally aware of the existence of Bergstrom's Form 9131 and its *Brady* significance, because the U.S. Attorney's Office ("USAO") must always be directly involved in authorizing IRS to join an existing non-tax grand jury investigation. In fact, according to one of the three different sworn stories Bergstrom has told about the origin, scope, and chronology of her investigation (one at trial, and two in Marchelletta's FOIA litigation, all on oath), the USAO specifically requested IRS SAC Martin to assign Bergstrom to review SA Sellers' Customs grand jury materials to that date, and complete and file the 9131 form with a recommendation for IRS involvement.

58. In spite of the direct and personal knowledge of SAC Martin, SA Sellers, SA Bergstrom, and prosecutors Monnin, Anand, and Chartash, this crucial 9131 report was never disclosed to Marchelletta. This intentional *Brady* suppression allowed both Sellers and Bergstrom, and prosecutors Monnin and Anand – who prepared their testimony and questioned them at trial – to tell a completely false story about the all-important origin, scope, chronology, and significant events of the criminal investigation that yielded the criminal tax indictment. This Form 9131 was both exculpatory to

Marchelletta and impeaching as to both SA Sellers and SA Bergstrom, in that it detailed the course of Sellers' criminal money laundering investigation and Bergstrom's early IRS involvement in that, putting the lie to substantial portions of both Sellers' and Bergstrom's trial testimony and gutting the prosecution's "sirens in the rearview mirror" intent theme.

59. The prosecution team, including all of the Defendants save McBride, also failed to disclose a remarkable Memorandum of Conversation ("MOC") in which Bergstrom memorialized a conversation she had with Bruce Morris, attorney for unindicted alleged co-conspirator George Gorman. Attorney Morris had called Bergstrom to advise that Marchelletta had never repaid the \$250,000 loan Gorman had made to him, and that Gorman wanted to demand repayment. Bergstrom threatened in response that if Gorman made any attempt to demand repayment of the loan, she would consider that an overt conspiracy act, as her "theory of investigation was that the funds were not a loan to Marchelletta." SA Bergstrom has apparently never been accused of letting the facts get in the way of a preordained "theory of criminality."

60. In direct and irreconcilable contrast to reliable evidence in the prosecution team's possession, but not disclosed to Marchelletta, the prosecution falsely urged throughout the trial that the \$250,000 money Gorman gave to Marchelletta was never really a loan, but just a way for Marchelletta to disguise the receipt of taxable income. Bergstrom herself

perjuriously testified before the grand jury that Marchelletta had never made payments on the loan, and that Gorman had never done anything to collect. Hammered home in both opening statement and closing argument, the prosecutors aggressively argued that the loan was a tax evasion sham, observing in closing argument that: “[W]hen you’re making your decision as to whether this is a loan or not, you need to look at whether the creditor [George Gorman] took it seriously, which he certainly did not.”

61. The USAO had granted full immunity to unindicted, alleged co-conspirator Gorman, but this immunity agreement was never provided to Marchelletta. The undisclosed MOI with Gorman’s attorney shows that Bergstrom and the prosecution team had specific knowledge from their own immunized witness, George Gorman, that the loan was real and that he wanted payment, but she threatened to prosecute Gorman if he ever demanded repayment from Marchelletta. In addition to a criminal obstruction of justice and witness tampering by Bergstrom, this significant *Brady* violation precluded the defense from proving that the loan was bona fide by pointing to Gorman’s demands for payment and possible lawsuit, and was clearly exculpatory to Marchelletta on this very important trial issue that prosecutors Monnin and Anand emphasized throughout the trial.

62. Defendants Monnin, Chartash, Sellers, Bergstrom, and Sewell, along with other individuals unknown to Marchelletta (John and Jane Does

1-100), initiated an Organized Crime/*La Cosa Nostra* investigation with the FBI in early 2003, telling the FBI Organized Crime Squad that Marchelletta was a dangerous mobster guilty of money laundering and other crimes, after SA Sellers had already determined that Marchelletta had committed no criminal acts, but particularly that he had not committed any money laundering.

63. Although the FBI organized crime investigation was relatively short lived – because responsible and knowledgeable agents other than Defendant FBI Special Agent Sewell knew the difference between organized crime and personal fantasy – their investigation did yield numerous FBI interview reports, called “302s” or “serials.” Marchelletta obtained these FBI interview reports through FOIA requests to the FBI, and several of them contained spectacular impeachment material regarding CPA Stanley Schleger, an important government intent witness at trial.

64. These Defendants on the prosecution team completely concealed the existence of this FBI investigation of Marchelletta, including the fact it was shut down fairly quickly because no evidence of criminality could be found. This information would have been very helpful to Marchelletta’s defense. The Defendants concealment of the FBI interview reports that contained sensational impeachment material against prosecution witness Stanley

Schleger were never provided to Marchelletta, an intentional and material *Brady* suppression that violated Marchelletta's Fifth Amendment rights.

65. As a result of these multiple *Brady* violations by these Defendants, save McBride, Marchelletta suffered injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

66. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' serial violations of his fundamental constitutional rights.

COUNT TWO:

***Bivens* Claim for Malicious Prosecution,
in Violation of Rights Guaranteed Marchelletta by the
Fourth and Fifth Amendments to the United States Constitution**

67. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 66 of this Complaint, inclusive, as if fully set forth herein.

68. All of the Defendants, including Shawn McBride, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, violated Marchelletta's Fourth and Fifth Amendment rights to be free from malicious prosecution. These Defendants, and each of them, acting with evil motive and bad intent, intentionally and willfully committed acts and omissions that were so egregious as to shock the reasonable conscience by distorting and corrupting the processes of law.

69. In securing the indictment against Marchelletta, the prosecution team, including Defendants Sellers, Bergstrom, Martin, Sewell, Monnin, Chartash, and Anand, arranged for perjured testimony before the grand jury, and IRS SA Bergstrom committed that perjury. In so doing, these Defendants committed deliberate and malicious fraud.

70. Defendant FBI Special Agent Mark Sewell used his access to his Organized Crime Drug Enforcement Task Force ("OCDETF") resources,

including Defendant Shawn McBride, his Confidential Informant in the Gold Club case (undisclosed to the Gold Club defense team), to arrange for perjury before the Marchelletta grand jury. Most of the information SA Bergstrom testified to in the grand jury originally came from several comprehensive interviews with McBride, whom Sewell controlled as his confidential informant, only one of which interview memoranda was disclosed to Marchelletta.

71. SA Sewell knew that most of McBride's statements about Marchelletta, Gorman, and Circle were false, and maliciously so, and SA Sewell intended these many false statements to falsely inculcate Marchelletta, to be used by all of the investigating special agents, including Sellers and Bergstrom, and ultimately lead to Marchelletta's indictment. Defendant Sewell committed a deliberate and malicious fraud when he suborned McBride's perjury, knowing that it would make its way before both the indictment grand jury and trial jury.

72. In addition to intentionally misleading the grand jury about basic tax law principles, SA Bergstrom also intentionally, knowingly, and willfully committed perjury before the grand jury, and by doing so committed a malicious fraud upon the grand jury and other processes of law. As detailed in paragraphs 61-63 above, already generally incorporated into this *Bivens* Count Two but particularly incorporated again here, the entire prosecution

team, and Bergstrom in particular, knew that Gorman – their own immunized, unindicted, alleged co-conspirator witness – had testified, and would testify again, that his loan to Marchelletta was really a loan, that he considered repayment to be enforceable, and that he wanted to demand repayment from Marchelletta or sue him.

73. Gorman would have further testified, based upon Bergstrom’s own undisclosed MOC of her conversation with Gorman’s attorney, Bruce Morris, that Bergstrom had threatened to indict Gorman along with Marchelletta if he made any attempt to even demand a repayment of the loan, because such lawful conduct conflicted with her theory of criminality. Nevertheless, Bergstrom shamelessly testified to the grand jury that Gorman had never done anything to enforce payment of the loan note. Well of course he hadn’t. Years earlier Bergstrom committed criminal obstruction of justice and witness tampering by threatening Gorman with federal prosecution if he even made a simple demand for repayment, much less sued Marchelletta to collect.

74. The entire prosecution team, including Defendants Martin, Bergstrom, Sewell, Sellers, Monnin, Anand, and Chartash, arranged for additional perjury before the grand jury, and once again SA Bergstrom herself dutifully committed that perjury. SA Bergstrom falsely testified that she hadn’t had “access” to Marchelletta’s 2001 personal 1040 return, when in

fact Marchelletta filed that very return on September 6, 2006, which was received by Bergstrom's office on September 14, 2006, approximately seven months prior to her grand jury testimony on April 3, 2007.

75. Based upon this perjury, Bergstrom was able to concentrate the grand jury's attention on some draft return allegedly prepared by CPA Schwartz that conformed with her theory of criminality, while falsely telling the grand jury that Marchelletta hadn't filed an actual tax return for 2001, and then making some nonsensical comment that she hadn't issued grand jury subpoenas for the 2001 tax year. All the time, SA Bergstrom well knew that Marchelletta had, in fact, filed his 2001 1040 return, and that as an IRS CI Special Agent she had direct and unfettered access to any documents in the IRS system, but particularly a tax return Marchelletta had actually filed with IRS, and did not need to subpoena any such documents.

76. As a result of these malicious frauds perpetrated by the Defendants against the grand jury, our federal judicial process, and Marchelletta – including arranging for and committing perjury before the grand jury, concealing thousands of pages of exculpatory and impeachment material, suborning the trial perjury of Sellers, Bergstrom, McBride, and Schwartz, manufacturing false evidence knowing that it would be used against Marchelletta at trial, and other serial misconduct set forth in this First Amended Complaint – Marchelletta suffered injuries, including, but not

limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, pretrial liberty restrictions, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

77. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputational, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' serial violations of his fundamental constitutional rights.

COUNT THREE:

Bivens Claim for Manufacturing False Evidence, Including Suborning and Committing Perjury, as Well as Forging Documents, in Violation of Rights Guaranteed Marchelletta by the Fourth and Fifth Amendments to the United States Constitution

78. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 77 of this Complaint, inclusive, as if fully set forth herein.

79. All of the Defendants, including Shawn McBride, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, violated Marchelletta's Fourth and Fifth Amendment right not to be unlawfully indicted and unlawfully restrained of his liberty as the foreseeable consequences of the Defendants' manufacture of false evidence, including subornation of perjury and perjury, as well as document fabrication.

80. As particularly set forth in ¶¶ 23-24, 47-51, 53-54, 58-61, and 69-75, the Defendants, and each of them, manufactured false evidence by arranging for perjury before the grand jury and the trial jury, and by forging and presenting fabricated documents as evidence. It was foreseeable to each of these Defendants that their manufactured evidence would be used to procure an illegal indictment and unlawfully restrain Marchelletta's liberty, as well as unlawfully convict Marchelletta at trial. All of this manufactured evidence,

in fact, was actually used by the Defendants to accomplish these unlawful and unconstitutional objectives, and the unlawful indictment, restraint on liberty, and trial convictions were the legally cognizable result of the Defendants' manufacture and use of false evidence.

81. Prosecutors Monnin, Chartash, and Anand coordinated, strategized, and assisted in the manufacture and use of this false evidence in their investigative capacities, and actually knew and intended that all of this false evidence would then be used before the grand jury and trial jury in derogation of Marchelletta's fundamental constitutional rights.

82. As a foreseeable and legally cognizable result of this intentional fabrication of false evidence perpetrated by the Defendants against the grand jury, our federal judicial process, and Marchelletta – including arranging for and committing perjury before the grand jury, suborning the trial perjury of Sellers, Bergstrom, McBride, and Schwartz, manufacturing false evidence knowing that it would be used against Marchelletta at trial, and other serial misconduct set forth in this First Amended Complaint – Marchelletta suffered injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the

prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

83. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputational, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' serial violations of his fundamental constitutional rights.

COUNT FOUR:

***Bivens* Claim for Unlawfully Damaging Marchelletta's Reputation, in Violation of Rights Guaranteed Him by the Fifth Amendment to the United States Constitution**

84. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 83 of this Complaint, inclusive, as if fully set forth herein.

85. All of the Defendants, including Shawn McBride, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, violated Marchelletta's Fifth Amendment rights when they intentionally inflicted a stigma upon him, thereby damaging both his personal and professional

reputations, and infringing and economically harming his business and business interests.

86. As particularly set forth in ¶¶ 34-38, all of these Defendants save McBride intentionally inflicted a stigma on Marchelletta, by strategizing, devising, coordinating, and directing rogue Union operatives to stigmatize Marchelletta publicly with false accusations of being a member of the Mafia, Organized Crime (“OC”), and/or *La Cosa Nostra*. The Defendants encouraged and assisted the Union and its rogue operatives in organizing and conducting a defamatory campaign against Circle Group, Marchelletta, and his family, which included multiple secondary boycotts that were illegal under federal law, all in a willful attempt to stigmatize and scandalize Marchelletta where he lived and worked.

87. These illegal secondary boycotts were specifically designed and directed by the Defendants and the rogue Union operatives with whom they conspired and colluded with to have the natural and foreseeably consequential effect of destroying Marchelletta’s business relationships and harming him economically. The Defendants’ illegal conspiracy with rogue Union operatives did, in fact, destroy business relationships and inflicted very substantial economic harm on both Marchelletta’s Circle Group company and himself personally.

88. The Defendants' further purpose in conspiring to commit illegal acts in concert with rogue Union operatives was to inhibit, obstruct, and thwart Marchelletta's ability to successfully defend the false and fraudulent allegations they would eventually make against him through the federal judicial process.

89. At all relevant times, the prosecutors Monnin, Anand, and Chartash, and each of them, inserted themselves directly into the criminal investigations, and acting in their investigative capacities, orchestrated, devised, strategized, and caused to be executed their unlawful plan to economically terrorize the Circle Group and Marchelletta through the Union's illegal secondary boycotts of Circle Group, Marchelletta, his father, and his family, all done intentionally in service of their unlawful conspiracy to violate Marchelletta's fundamental constitutional rights.

90. As a result of the Defendants' illegal conspiracy with rogue Union operatives to inflict a stigma on Marchelletta in order to defame and economically harm him, Marchelletta did, in fact, suffer injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's

fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

91. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' intentional infliction of stigma, defamation, and economic harm.

COUNT FIVE:

***Bivens* Claim for Denying Marchelletta Access to the Courts, In Violation of Rights Guaranteed Him by the Sixth Amendment to the United States Constitution**

92. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 91 of this Complaint, inclusive, as if fully set forth herein.

93. All of the Defendants save McBride, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, violated Marchelletta's Sixth Amendment right of access to the courts.

94. As particularly set forth in ¶¶ 22-33, 38-42, 44-61, 68-75, and 79-81, all of these Defendants save McBride intentionally concealed the existence of

evidence and arranged for or committed perjury in violation of Marchelletta's fundamental constitutional rights. One of the Defendants' purposes in concealing evidence that would reveal their outrageous misconduct and arranging for or committing perjury was to mislead Marchelletta and prevent him from discovering the evidence upon which he could sue them for violations of his rights. In addition, all of the Defendants took affirmative steps to prevent Marchelletta's attorneys from accessing documents that would have been helpful to him at trial, thereby also unconstitutionally depriving him of his Sixth Amendment right of access to the courts.

95. At all relevant times, prosecutors Monnin, Anand, and Chartash, and each of them, acting in their investigative capacities, intentionally suppressed evidence from Marchelletta to prevent themselves from being sued by him for their outrageous misconduct.

96. SA Bergstrom, and others unknown to Marchelletta at this time (John and Jane Does 1-100), committed additional acts of deception and obstruction to mislead Marchelletta and prevent him from discovering evidence of her outrageous misconduct in order to prevent him from suing her and others involved in the investigation and prosecution. As particularly set forth in ¶¶ 38-42, Bergstrom lied to her own colleagues in the IRS's FOIA function, first advising the official IRS FOIA Disclosure Specialist that she had no documents in her possession responsive to Marchelletta's FOIA

request for all documents and records in the IRS's criminal investigative files pertaining to him. According to the sworn testimony of the IRS Disclosure Specialist, Bergstrom eventually admitted that she had "20 boxes or so" of responsive documents, but that none of them should be released to Marchelletta because he was a dangerous mobster who would hurt or kill people based upon the information in the documents.

97. This, too, turned out to be one of Bergstrom's many lies, as evidenced by DOJ FOIA counsel ultimately identifying 44 boxes of documents from Bergstrom's own criminal investigation files pertaining to Marchelletta, consisting of approximately 90,000 pages of documents. DOJ Counsel also refused to defend the "people are gonna get hurt or whacked if Marchelletta gets the documents" FOIA disclosure exemption initially championed by Bergstrom, and removed this exemption ground from the summary judgment papers ultimately filed, thereby refusing to be a part of Bergstrom's cover up conspiracy and anti-Italian defamation campaign against Marchelletta.

98. As a result of the Defendants' intentional suppression of evidence that would have been very helpful to Marchelletta's defense at trial in terms of exculpation and impeachment, and which also would have revealed their outrageous misconduct and provided grounds to sue them, Marchelletta did, in fact, suffer injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and

concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

99. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' intentional violation of his Sixth Amendment right of access to the courts.

COUNT SIX:

***Bivens* Claim for Failing to Adequately Train and Supervise, in Violation of Rights Guaranteed Marchelletta by the Fifth Amendment to the United States Constitution**

100. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 99 of this Complaint, inclusive, as if fully set forth herein.

101. Defendants Chartash and Martin, and other individuals unknown at this time by Marchelletta (John and Jane Does 1-100), failed to adequately train and supervise the prosecuting attorneys and special agents involved in the Marchelletta investigation, indictment, and trial.

102. At all relevant times, Defendants Chartash, Martin, and other unknown supervisors from amongst John and Jane Does 1-100 were federal officers, employees, or agents acting in their individual capacities under color of federal law.

103. Each of these Defendants had an obligation to train and supervise their subordinate attorneys and agents, they each breached that duty, and their breaches of this constitutionally cognizable duty to adequately train and supervise were the proximate cause of the constitutional and economic injuries inflicted upon Marchelletta by his unlawful indictment and trial, and Defendants' cover up conspiracy.

104. Plaintiff Marchelletta suffered injuries as a result of Defendant Martin's, Defendant Chartash's, and other unknown supervisor Defendants' failure to adequately train and supervise their subordinate attorneys and agents, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation

against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

105. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the specified Defendants' failure to adequately train and supervise their subordinates, in violation of rights secured Marchelletta by the Fifth Amendment to the United States Constitution.

COUNT SEVEN:

***Bivens* Claim for Conspiring to Deprive Marchelletta of a Fair Trial,
in Violation of Rights Guaranteed Him by the Fifth and Sixth
Amendments to the United States Constitution**

106. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 105 of this Complaint, inclusive, as if fully set forth herein.

107. The Defendants, and each of them, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers,

or agents, and under color of federal law, conspired to deprive Marchelletta of his Fifth and Sixth Amendment rights to a fair trial.

108. The Defendants, and each of them, agreed, confederated, and conspired to deprive Marchelletta of these fundamental constitutional rights, and their unconscionable actions and omissions in furtherance of the conspiracy did, in fact, deprive Marchelletta of his Fifth and Sixth Amendment rights to a fair trial.

109. Plaintiff Marchelletta suffered injuries as a result of the Defendants' conspiracy to deprive him of a fair trial, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

110. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through

this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' conspiracy to deprive him of the fair trial guaranteed him by the Fifth and Sixth Amendments to the United States Constitution.

COUNT EIGHT:

***Bivens* Claim for Conspiring to Deprive Marchelletta of Rights Guaranteed Him by the Fourth, Fifth, and Sixth Amendments to the United States Constitution**

111. Plaintiff Marchelletta incorporates by this reference all facts and allegations set forth in paragraphs 1 through 110 of this Complaint, inclusive, as if fully set forth herein.

112. The Defendants, and each of them, while acting individually, jointly, and in conspiracy in their individual capacities as federal employees, officers, or agents, and under color of federal law, conspired to deprive Marchelletta of fundamental constitutional rights guaranteed him by the Fourth, Fifth, and Sixth Amendments to the United States Constitution.

113. The Defendants, and each of them, agreed, confederated, and conspired to deprive Marchelletta of these fundamental constitutional rights, and their unconscionable actions and omissions in furtherance of the conspiracy did, in fact, deprive Marchelletta of his Fourth, Fifth, and Sixth Amendment rights.

114. Plaintiff Marchelletta suffered injuries as a result of the Defendants' conspiracy to deprive him of his Fourth, Fifth, and Sixth Amendment rights,

including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years.

115. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress, for which this *Bivens* claim provides an appropriate money damages remedy. Marchelletta has no other effective means, other than invoking federal judicial process through this lawsuit, to enforce his rights and receive meaningful remedies for the Defendants' conspiracy to deprive him of his fundamental Fourth, Fifth, and Sixth Amendment rights guaranteed him by the United States Constitution.

COUNT NINE:

Georgia State Law Claim For Civil Conspiracy

116. Plaintiffs incorporate by this reference all allegations contained in paragraphs 1 through 115 of this Complaint as if fully set forth herein.

117. The Defendants, and each of them, acting in concert, agreed,

confederated, and conspired with one another to achieve the unlawful objects of: depriving Marchelletta of his Fourth, Fifth, and Sixth Amendment rights guaranteed him by the United States Constitution; intentionally inflicting emotional distress upon him; intentionally perpetrating a fraud against him; intentionally libeling, slandering, and defaming him; and intentionally inflicting economic harm upon him.

118. As set forth in paragraphs 1 through 117 of this Complaint, the Defendants, and each of them, engaged in conduct that constituted a tort by committing at least one affirmative act in furtherance of the civil conspiracy against Marchelletta.

119. Each of the Defendants was acting in their individual capacity, and not within the scope of their employment as federal officers, employees, or agents.

120. As a result of the Defendants' civil conspiracy and tortious conduct, Plaintiff Marchelletta suffered injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous

government misconduct directed at him for over thirteen years. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress.

COUNT TEN:

**Georgia State Law Claim For
Intentional Infliction of Emotional Distress**

121. Plaintiffs incorporate by this reference all allegations contained in paragraphs 1 through 120 of this Complaint as if fully set forth herein.

122. The Defendants, and each of them, committed acts that were so terrifying or insulting as naturally to humiliate, embarrass, or frighten Marchelletta.

123. Each of the Defendants was acting in their individual capacity, and not within the scope of their employment as federal officers, employees, or agents.

124. As a result of the Defendants' intentional infliction of emotional distress, Plaintiff Marchelletta suffered injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in

order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress.

COUNT ELEVEN:

Georgia State Law Claim for Fraud

125. Plaintiffs incorporate by this reference all allegations contained in paragraphs 1 through 124 of this Complaint as if fully set forth herein.

126. The Defendants, and each of them, intentionally made false representations to induce Marchelletta to act or refrain from acting, upon which Marchelletta relied to his detriment.

127. Each of the Defendants was acting in their individual capacity, and not within the scope of their employment as federal officers, employees, or agents.

128. The Defendants' false discovery representations before and during the 2007 trial, including: their forgery of discovery documents; the perjurious testimony of Bergstrom, Sellers, McBride, and Schwartz; the threatening of witnesses; the withholding of exculpatory evidence as against Marchelletta's demands; and Marchelletta's reliance upon same, caused him to refrain from

requesting additional discovery and performing further investigation, all in aid of his defense and to all of which he was entitled.

129. As a result of the Defendants' fraud, Plaintiff Marchelletta suffered injuries, including, but not limited to, the legal fees and costs spent: (1) defending against the fraudulent criminal investigation and concomitant wrongful indictment, prosecution, and convictions he suffered; (2) pursuing a merits appeal to obtain his appellate vindication; (3) pursuing FOIA litigation against both IRS and CBP/ICE in order to obtain the documents to prove the prosecution's fraud and serial misconduct; and (4) otherwise investigating and exposing the outrageous government misconduct directed at him for over thirteen years. In addition, Marchelletta suffered economic losses in the form of lost business opportunities and revenue, damage to his personal and professional reputation, and emotional pain, suffering, and distress.

JURY DEMAND

Marchelletta hereby respectfully requests and demands a jury trial on all triable issues of fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court enter judgment in favor of Plaintiff and against the Defendants, and award:

(A) compensatory damages in an amount to be determined for: lost business opportunity; damage to personal and professional reputation;

emotional distress; and the legal fees and costs of defending the underlying criminal matter, prosecuting his merits appeal, prosecuting the FOIA litigation against both IRS and CBP/ICE, and his investigation of the Defendants' outrageous misconduct, imposing said damages both individually and severally against the Defendants;

(B) punitive damages against each of the Defendants individually, in that each Defendant acted or refused to act with evil motive or intent, or at a minimum acted or refused to act with callous indifference to Marchelletta's fundamental constitutional rights;

(C) attorneys fees and costs of this litigation;

(D) a permanent injunction enjoining the Defendants, and each of them, from stalking, harassing, or otherwise interfering with Marchelletta's and his family members' lawful personal and professional lives and activities; and

(E) any other relief this Court deems just and equitable under the circumstances.

Respectfully submitted on this the 1st day of May, 2015.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GERARD MARCHELLETTA, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. <u>1:14-cv-02923-ELR</u>
)	
PATRICIA BERGSTROM, C. ANDRÉ)	
MARTIN, PAUL MONNIN, JUSTIN)	
ANAND, RANDY CHARTASH,)	
KIMBERLY SELLERS, MARK)	
SEWELL, SHAWN MCBRIDE, and)	
JOHN AND JANE DOES 1-100,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2015, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

NONE.

Signed this 1st day of May, 2015.

THE BERNHOFT LAW FIRM, S.C.
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