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12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,
16 Plaintiff,
17 v.

No. CV 11-3582-GW-SS
Consolidated With CV 13-9169-GW-SS
Hon. George H. Wu

18 ONE WHITE CRYSTAL-COVERED "BAD
19 TOUR" GLOVE AND OTHER MICHAEL
JACKSON MEMORABILIA;
20 REAL PROPERTY LOCATED ON
SWEETWATER MESA ROAD IN MALIBU,
21 CALIFORNIA; ONE 2011 FERRARI 599
22 GTO,
23 Defendants.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
GOVERNMENT'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

Hearing Date: July 8, 2021
Time: 8:30 a.m.
Place: Courtroom No. 9D

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. JURISDICTION**

26 The United States and claimants Teodoro Nguema Obiang Mangué and
27 Sweetwater Malibu California LLC (the "Parties") settled the instant
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1 matter in October 2014 through the filing of a Stipulation and
2 Settlement Agreement (the "Settlement Agreement"). (Dkt. 129-1).
3 Paragraph 50 of the Settlement Agreement states that this Court shall
4 retain jurisdiction to enforce the settlement agreement. See *id.*

5 Pursuant to Paragraph 51 of the Settlement Agreement, in the
6 event that the Parties to the Settlement Agreement cannot resolve
7 their disputes regarding the interpretation of one or more terms of
8 the Settlement Agreement, a party may move the Court for relief as
9 authorized by law or equity. See *id.*

10 **II. BACKGROUND**

11 Pursuant to the Settlement Agreement, claimants Teodoro Nguema
12 Obiang Mangué ("Mr. Obiang Mangué") and Sweetwater Malibu LLC, a
13 shell company Mr. Obiang Mangué controls, agreed to the liquidation
14 of certain specified property, with a portion of the proceeds of the
15 liquidation: 1) being deposited into a U.S. Government account that
16 would, at the agreement of the Parties, be dispersed later to a
17 charitable organization (the "Net Settlement Proceeds"); or 2) being
18 forfeited to the United States. See *id.* at ¶¶ 26 and 27.

19 Under the terms of the Settlement Agreement, if the Parties
20 cannot agree on a charitable organization to receive the Net
21 Settlement Proceeds, the Parties are to form a three person panel
22 (the "Panel") consisting of a representative selected by the United
23 States, a representative selected by claimants, and a chair selected
24 jointly by the Parties. If the Parties cannot agree on a chair, then
25 the Court may direct the Parties to mediate the issue or exercise its
26 discretion and select a panel chair. See *id.* at ¶ 26. After almost
27 seven years of trying to negotiate an agreed use of the Net
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1 Settlement Proceeds for the benefit of the people of Equatorial
2 Guinea without success, the Parties agreed to the use of a panel to
3 make the decision. The United States named its panelist, claimants
4 named a panelist, and both provided names for the Court to consider
5 for the Panel chair. See *id.* at ¶ 26. The Court selected a panel
6 chair on January 21, 2021. (Dkt. 154).

7 Pursuant to Paragraph 26 of the Settlement Agreement,

8 All decisions of the Panel will be decided by a majority
9 vote of its members. All decisions of the panel are final
10 and the Parties waive all rights to contest, appeal or
11 otherwise challenge the Panel's decisions so long as such
12 decisions are consistent with the terms of the Settlement
13 Agreement.

14 (Dkt. 127-1) at 19.

15 Between February 2021 and May 2021, the Panel met multiple
16 times. After considering several different causes and organizations,
17 the Panel, at the express request of the president of Equatorial
18 Guinea, decided to use a portion of the Net Settlement Proceeds to
19 vaccinate the population of Equatorial Guinea against the Covid-19
20 virus. On May 4, 2021, the Panel members unanimously agreed to
21 approve a final decision allocating \$19.25 million to the United
22 Nations to purchase and distribute Covid-19 vaccines to the people of
23 the Republic of Equatorial Guinea via the COVAX facility. (See Ex. 1
24 (Stevenson Decl.), ¶ 7). The Panel chair and the United States
25 representative signed the final decision. (See Ex. 1 (Stevenson
26 Decl.), ¶ 8 and Ex. B thereto).

27 Instead of signing the panel decision as the other two panel
28 members did, Mr. Obiang Mangué's panel representative requested
additional time to review the decision. Ten days after orally

1 approving the decision, Mr. Obiang Mangué's panel representative
2 unilaterally requested the panel meet again and vote on a new
3 proposal to vaccinate the population of Equatorial Guinea through a
4 different organization. (See Ex. 1 (Stevenson Decl.), ¶ 10 and Ex. C
5 thereto).

6 In addition to the Net Settlement Proceeds, Mr. Obiang Mangué is
7 also holding an additional \$6.4 million attributable to the sale of
8 his Malibu mansion. After the sale of Mr. Obiang Mangué's Malibu
9 mansion pursuant to the Settlement Agreement, allegations arose that
10 the real estate agent brokering the sale, who ultimately purchased
11 the property, breached his fiduciary duty to the sellers and had
12 multiple conflicts of interest. These allegations led to the filings
13 of a civil suit. See *Sweetwater Malibu CA LLC et al. v. Umansky et*
14 *al.*, No. 2:19-cv-01848-GW-SS (C.D. Cal.) ("Realtor Suit").

15 In March 2019, the parties to the Realtor Suit announced they
16 had reached an agreement in principle to resolve the Realtor Suit by
17 providing Mr. Obiang Mangué with an undisclosed sum, but needed to
18 discuss the matter with the United States given that "it is unclear
19 whether DOJ approval is required for the settlement proceeds to be
20 used in this manner instead of being deposited with the proceeds of
21 the sale where they could only be used with the agreement of DOJ."
22 (Realtor Suit Dkt. 49 at 1). During a December 12, 2019 status
23 conference, counsel for Mr. Obiang Mangué represented to the Court
24 that the Realtor Suit settlement funds would "go into my trust
25 account, which would then be used and my clients would coordinate
26 with the U.S. Ambassador for Equatorial New [sic] Guinea on the use
27 of those funds." (Dec. 12, 2019 Hearing Transcript at 4). The
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1 United States stated that based on discussions with counsel for Mr.
2 Obiang Mangué, it did not object to the plan. See *id.* After counsel
3 for Mr. Obiang Mangué deducted legal fees allegedly owed, the Realtor
4 Suit settlement funds amounts to \$6.4 million.

5 **III. ARGUMENT**

6 A. Mr. Obiang Mangué's Interference with the Distribution of
7 \$19.25 million in Net Settlement Proceeds

8 When the Panel decision directing \$19.25 million to the United
9 Nation for a Covid-19 vaccination program was circulated for
10 signature, Mr. Obiang Mangué's Panel representative signaled a
11 reluctance to proceed as agreed. For example, instead of signing the
12 panel decision as the other two panel members did, Mr. Obiang
13 Mangué's Panel representative requested additional time to review the
14 decision. (See Ex. 1 (Stevenson Decl.), ¶ 9). Mr. Obiang Mangué's
15 Panel representative unilaterally requested the Panel meet again and
16 vote on a new proposal to vaccinate the population of Equatorial
17 Guinea through a different organization. (See Ex. 1 (Stevenson
18 Decl.), ¶ 10 and Ex. C thereto). Putting aside the explicit language
19 of the Settlement Agreement that the majority decision of the Panel
20 is final, the Panel had already investigated different options to
21 deliver Covid-19 vaccinations to the people of Equatorial Guinea and
22 determined that the United Nations plan was not only the most cost
23 effective, but also would provide Covid-19 vaccinations the fastest.
24 See *id.* To the extent Mr. Obiang Mangué's Panel representative
25 raises additional concerns such as the specific Covid-19 vaccine to
26 be used, those issues can be resolved through direct discussions with
27 the United Nations, and should in no way impact the Panel's decision

1 to distribute \$19.25 million to the United Nations for Covid-19
2 vaccination efforts in Equatorial Guinea.

3 Unfortunately, the behavior of Mr. Obiang Mangué's Panel
4 representative is not atypical. Since 2016, Mr. Obiang Mangué and
5 his representatives have repeatedly negotiated a potential use for
6 the Net Settlement Proceeds based on proposals developed and
7 suggested by the United States, only to abruptly change course at the
8 last minute. First, in 2017 and 2018 the Parties engaged in
9 negotiations with the United Nations Development Programme to run
10 programs to improve access to basic services and engage in capacity
11 development. The United Nations Development Programme was set to
12 begin in March 2018, but Mr. Obiang Mangué refused to sign the
13 program agreement or allow any representative of the government of
14 the Republic of Equatorial Guinea to sign the agreement. Second,
15 from November 2020 through January 2021 the Parties discussed
16 allocating the Net Settlement Proceeds to two charitable
17 organizations for education efforts and Covid-19 and malaria
18 vaccination efforts. (See Ex. 1 (Stevenson Decl.), ¶ 3). The
19 Parties negotiated a memorandum of understanding to distribute the
20 funds, only to have Mr. Obiang demand unreasonable changes at the
21 last minute. (See Ex. 1 (Stevenson Decl.), ¶ 3 and Ex. A thereto).
22 This is what led the Parties to resort to the Panel to distribute the
23 Net Settlement Proceeds.

24 While the Settlement Agreement contemplates that the Panel can
25 unilaterally deliver funds for the benefit of the people of
26 Equatorial Guinea, the fact is that without the consent of the
27 government of the Republic of Equatorial Guinea, no organization will
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1 be able to operate in country to deliver much needed services. Given
2 the repeated actions of Mr. Obiang Mangué to thwart multiple
3 desirable programs, the United States requests that the Court affirm
4 the May 4, 2021 Panel decision to provide the United Nations with
5 \$19.25 million for Covid-19 vaccinations. If Mr. Obiang Mangué
6 continues to interfere with the United Nations program, then the
7 United States requests this Court modify the Settlement Agreement to
8 allow the United Nations to use the funds at its discretion in a
9 manner consistent with the terms of the Settlement Agreement.

10 B. Mr. Obiang Mangué's Distribution of Settlement Funds
11 Contradicts Statements Made to This Court and Should be
12 Corrected

13 The United States also seeks to enforce the Settlement Agreement
14 with respect to the \$6.4 million held in a lawyer trust account on
15 behalf of the Government of Equatorial Guinea. These funds are
16 additional Net Settlement Proceeds related to the disposition of Mr.
17 Obiang Mangué's Malibu mansion. While the Parties initially agreed
18 to permit Mr. Obiang Mangué to maintain control of these funds (Dec.
19 12, 2019 Hearing Transcript at 4), Mr. Obiang Mangué's actions
20 necessitate bringing these funds fully within the framework of the
21 Settlement Agreement.

22 The United States believes that the Realtor Suit settlement
23 funds should be subject to the Settlement Agreement. The Realtor
24 Suit was derived from the Settlement Agreement, as the terms of the
25 sale of Mr. Obiang Mangué's Malibu mansion and the use of the
26 proceeds of that sale were specified in the Settlement Agreement.
27 (Dkt. 127-1 at ¶¶ 7-19, 26-31). Any harm resulting from the sale of
28 Mr. Obiang Mangué's Malibu mansion as part of the Settlement

1 Agreement was born by the Parties to the Settlement Agreement, and
2 therefore any funds recovered from the Realtor Suit should fall under
3 the terms of the Settlement Agreement. Counsel for Mr. Obiang Mangué
4 acknowledged this point when he sought permission to deviate from the
5 Settlement Agreement to keep the Realtor suit settlement funds in his
6 trust account, but affirmed that the funds would be used for the
7 benefit of the people of Equatorial Guinea in coordination with the
8 United States. (Realtor Suit Dkt. 49 at 1; Dec. 12, 2019 Hearing
9 Transcript at 4).

10 Unfortunately, rather than retain the \$6.4 million in his trust
11 account and coordinate its use with the United States as counsel for
12 Mr. Obiang Mangué represented to the Court he would do (Realtor Suit
13 Dkt. 49 at 1), counsel for Mr. Obiang Mangué took steps to disburse
14 the funds without coordinating with the United States and in a manner
15 inconsistent with the Settlement Agreement. First, counsel for Mr.
16 Obiang Mangué issued a check directly to Mr. Obiang for a portion of
17 the Realtor Suit settlement proceeds. (See Ex. 1 (Stevenson Decl.),
18 ¶ 4). When he could not cash the check, a member of the government
19 of Equatorial Guinea showed the check to the U.S. Ambassador to
20 Equatorial Guinea, and asked if the ambassador could investigate why
21 Mr. Obiang Mangué was having difficulty removing the funds from the
22 United States. See *id.* Next, counsel for Mr. Obiang Mangué tried to
23 transfer the funds in their entirety to the treasury of the
24 government of Equatorial Guinea. As part of the process, all \$6.4
25 million was transferred to the trust account of U.S.-based counsel
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1 for Equatorial Guinea, where they currently reside.¹ (See Ex. 1
2 (Stevenson Decl.), ¶ 5). The United States was never consulted
3 regarding the attempt to transfer Realtor Suit settlement funds
4 directly to Mr. Obiang Mangué or to the government of Equatorial
5 Guinea.

6 Counsel for Mr. Obiang Mangué's actions run directly counter to
7 the requirements of the Settlement Agreement, which stipulates that
8 none of the settlement proceeds should be provided to, among others,
9 the government of Equatorial Guinea or individuals employed by the
10 government of Equatorial Guinea, including Mr. Obiang Mangué. (Dkt.
11 127-1 at ¶ 31). As a result, the United States requests that this
12 Court find that the Realtor Suit settlement proceeds are subject to
13 the terms of the Settlement Agreement, and that they should be
14 transferred to the United States and disbursed pursuant to the terms
15 of the Settlement Agreement.

16 **IV. CONCLUSION**

17 Based on the foregoing, the United States respectfully requests
18 that this Court end the almost seven year stalemate caused by Mr.
19 Obiang Mangué and enforce the settlement agreement and enter an
20 Order: 1) recognizing the Panel decision of May 4, 2021 as final
21 and permitting its implementation; 2) if the United Nations cannot
22 implement the Panel decision, allow the United Nations to disburse
23 the funds it receives pursuant to the Settlement Agreement at its
24 discretion; and 3) direct counsel for Equatorial Guinea to deposit
25 the funds it is holding on behalf of Mr. Obiang or the Republic of

26 ¹ The Parties agree that counsel for Equatorial Guinea shall
27 retain the \$6.4 million until ordered to disburse the funds by this
28 Court.


1 Equatorial Guinea into an escrow account pursuant to instructions
2 provided by the United States, to be distributed pursuant to the
3 terms of the Settlement Agreement. A proposed Order is attached.
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5 Dated: May 24, 2021

Respectfully submitted,

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10 
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