UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-20896-CV-SCOLA/TORRES

KEITH STANSELL, *et al.*,

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES OF COLOMBIA, *et al.*,

Defendants.
_____/

OMNIBUS REPORT AND RECOMMENDATION ON MOTIONS FOR TRIA TURNOVER JUDGMENTS

This Omnibus Report and Recommendation pertains to five pending Motions filed by SAMARK JOSE LOPEZ BELLO, YAKIMA TRADING CORPORATION, EPBC HOLDINGS, LTD., 1425 BRICKELL AVE 63-F, LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 64E LLC, and 200G PSA HOLDINGS LLC (hereinafter, "Lopez Bello" or "Movants"). These Motions seek entry of final turnover judgments on writs of garnishment issued to five separate banking/investment institutions: UBS Financial Services, Inc., RJA Financial Services, Inc., Branch Banking & Trust Co., Morgan Stanley Smith Barney, LLC, and Safra National Bank of New York. [D.E. 116, 120, 155, 168, 170]. These Motions are fully briefed and ripe for disposition. For the reasons stated below, we **RECOMMEND** that the Motions be **GRANTED**.

I. BACKGROUND

In 2003, members of the Revolutionary Armed Forces of Colombia ("FARC") targeted a reconnaissance airplane carrying Plaintiffs, forcing the aircraft to crash land in the Colombian jungle. FARC forces immediately executed Plaintiff Thomas Janis on the day of the crash,[1] and held the other Plaintiffs in captivity for the next five years. In 2013, seeking justice for all they endured, Plaintiffs sued the FARC in federal court; FARC never appeared. The Middle District of Florida entered default judgment against the paramilitary group, and Plaintiffs were awarded $318,030,000 in damages.

Plaintiffs registered their judgment against the FARC in this Court on June 15, 2010. [D.E. 1]. The pending Motions seek to enforce the $318 million judgment by seizing assets owned, maintained or operated by Samark Jose Lopez Bello, a Venezuelan national, purported billionaire, and current fugitive-at-law.[2] To do so, Plaintiffs utilize language found within the Terrorist Risk Insurance Act of 2002 ("TRIA"), which states

> Notwithstanding any other provision of law, … in every case in which a person has obtained judgment against a terrorist party on a claim based

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[1] Janis' interests are represented by his wife and sons, the personal representatives of his estate.

[2] The United States Immigration and Customs Enforcement Agency recently named Lopez Bello as one of its "10 Most Wanted" fugitives. *See* ASSOCIATED PRESS, *Former Venezuelan VP Among 10 Most Wanted Fugitives*, ABC NEWS, July 31, 2019, https://abcnews.go.com/International/wireStory/ice-venezuelan-vp-10-wanted-fugitives-64685419.

> upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Pub.L. No. 107-297, § 201(a), 116 Stat. 2322.[3]

Plaintiffs argued that they can show that Lopez Bello's activities can be traced back to the FARC, which would allow us to deem him an "agency or instrumentality" of that organization. If bore fruit, any "blocked" assets belonging to Lopez Bello could be used to satisfy the approximately $300 million that remains outstanding on the judgment entered against the FARC. Plaintiffs submitted that Lopez Bello's assets are "blocked" as a result of action taken by the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") on February 13, 2017. [D.E. 18-2]. On that date, OFAC issued a press release designating Lopez Bello and a second individual, Tareck Zaidan El Aissami Maddah ("El Aissami"), as "specially designated narcotics traffickers," or "SDNTs," under the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"). *Id.* OFAC designated El Aissami for his purported ties to international drug trafficking operations throughout South America; Lopez Bello's designation stems from his alleged role as El Aissami's "primary frontman," and for providing material assistance and financial support for the narco-trafficking activities engaged in by El Aissami and his associates. *Id.* As a result of this

[3] This provision is codified as a note to 28 U.S.C. § 1610. For ease of reference, we will continue to refer to the provision as Section 201 of TRIA.

designation, OFAC blocked assets belonging to Lopez Bello and thirteen companies owned or controlled by him. *Id*.

Lopez Bello has never been directly linked to FARC forces. Plaintiffs instead seek to connect Lopez Bello to FARC utilizing *indirect* connections he maintains with El Aissami. This argument zeroes in on El Aissami's association with an organization known as the "Cartel of the Suns." The cartel, led by members of the Venezuelan armed forces,[4] allegedly traffic cocaine manufactured and produced by the FARC. To prevail, then, Plaintiffs must show that Lopez Bello can be connected to the FARC – the terrorist group on the hook for the $318 million judgment – through El Aissami and his related affiliates, including the Cartel of the Suns.

A. District Court Proceedings

Seeking to do just that, Plaintiffs filed an ex parte motion on February 13, 2019, asking for this Court to issue post-judgment writs of garnishment and execution against assets located in the Miami area and belonging to Lopez Bello. [D.E. 18]. In support of that Motion, Plaintiffs submitted affidavits and other documents that allegedly tied Lopez Bello to El Aissami, and reflected El Aissami's connections to the FARC. As a result, Plaintiffs asked the Honorable Judge Robert N. Scola to deem Lopez Bello an "agency or instrumentality" of the FARC so that each could attach on Movant's assets, which appear to be significant.

[4] The cartel purportedly gets its name from the yellow sun insignia decorating the uniforms worn by high-ranking military officials in Venezuela.

Judge Scola granted Plaintiffs' Motion on February 15, 2019. [D.E. 22]. The Court found that Plaintiffs' evidence supported a finding that El Aissami and Lopez Bello each served as agencies or instrumentalities of the FARC, and that the assets Stansell sought to attach were "blocked" as the term is defined by TRIA and the Antiterrorism Act ("ATA"), 18 U.S.C. § 2333. *Id.* Judge Scola then ordered that the Clerk of Court issue writs of garnishment on various bank accounts. *Id.* This was in addition to writs of execution on three parcels of real property, two vessels (yachts), an aircraft and four automobiles.

Lopez Bello, upon receiving notice of the proceedings brought against him, moved to intervene in this matter on February 27, 2019. [D.E. 55]. In doing so, he argued that the *ex parte* proceedings violated his rights to due process, and that Judge Scola erroneously declared him to be an agency or instrumentality of the FARC. *Id.* He followed this up with a Motion to Amend the February 15 Order pursuant to Rule 59(e) of the Federal Rules of Procedure, asking that the sale of four Miami-area properties and personal property be delayed until Lopez Bello could contest Judge Scola's designation. [D.E. 80]. The Motion failed to persuade the Court, and Judge Scola denied it on March 22, 2019. [D.E. 101].[5]

Lopez Bello then facially challenged Plaintiffs' attempts to execute on the bank accounts held in his name and to which the writs of garnishment had been issued.

[5] Lopez Bello asked for reconsideration of that Order the following week, which Judge Scola again denied on March 28. [D.E. 106, 108].

He did so by filing Motions to Dissolve the Writs of Garnishment for accounts maintained with the following garnishees: (1) UBS Financial Services, Inc. [D.E. 97]; (2) Raymond James & Associates, Inc. [D.E. 103]; (3) Branch Banking & Trust Co. [D.E. 112]; (4) Morgan Stanley Smith Barney, LLC [D.E. 123]; (5) Safra National Bank of New York [D.E. 125]; and (6) Citibank, N.A. [D.E. 134]. Lopez Bello sought summary judgment on the writs [D.E. 109], relying on the same arguments he raised in his Motions to Dissolve.

The undersigned held a hearing on those Motions on June 11, 2019. [D.E. 209]. There, we heard testimony from witnesses offered by both parties, including William C. Marquardt and Ernesto Carrasco Ramirez, Movants' two experts. Marquardt, a forensic accountant, compared a list of sixty-eight entities associated with Lopez Bello, looking to see if any traced back to the FARC. He testified that no such association could be found. Ramirez, a Colombian attorney that previously practiced criminal law in that country, testified that he never met, came across, or heard of Lopez Bello during his time in Colombia, despite the time he spent investigating corruption, bribery of public officials, and the inner workings of Colombian and Venezuelan drug cartels.

The Court also heard testimony from Douglas Farah and Col. Luis Miguel Cote, Plaintiffs' proffered witnesses. According to Farah, a national security consultant who previously worked for the Washington Post as a foreign correspondent covering South America, Lopez Bello laundered money for El Aissami, a well-known affiliate of the Cartel of the Suns. Similar evidence was heard from Cote and Paul

Crain, who each connected El Aissami directly to the FARC – and Lopez Bello directly to El Aissami.

In addition to this testimony, both parties filed evidentiary materials to support their respective Motions. After due consideration of all of Lopez Bello's arguments, we found that Plaintiffs had sufficiently linked Lopez Bello to the FARC via his connection to El Aissami, such that the arguments raised in opposition to the issuance of the writs did not support dissolution. [D.E. 248]. We recommended that Lopez Bello's motions challenging the writs as a matter of law be Denied.

Lopez Bello filed objections to this Report and Recommendation. [D.E. 261]. Judge Scola, however, rejected Lopez Bello's objections, which were grounded largely on well-worn arguments that the Court lacked subject matter jurisdiction, that the burden of proof in the dispute was wrongly placed on Lopez Bello's doorstep, that fundamental due process rights like a jury trial were wrongfully denied, and ultimately that the evidence did not support a finding that the owners of the accounts at issue were agents or instrumentalities of the FARC.

Judge Scola reviewed the record and overruled those objections. [D.E. 279]. He found that the Court did have subject matter jurisdiction, at least based on Florida's rejection of the separate entity rule. He also found that no procedural error had been made and that Lopez Bello was granted all the due process legally required. And Judge Scola concluded that objections to the Court's finding that Lopez Bello was an agent or instrumentality of the FARC were meritless. Judge Scola relied in part on the extensive analysis of this issue in his prior Orders, including the Order denying

Lopez Bello's motion to stay the enforcement action pending appeal. [D.E. 247]. Accordingly, Lopez Bello's motions to dissolve the writs and for summary judgment were Denied and the objections overruled.

B. Appellate Court Proceedings

Since Plaintiffs began enforcement proceedings over their Middle District of Florida judgment, Lopez Bello and similarly situated parties have also filed multiple appeals to the Eleventh Circuit, most of which have been unsuccessful. In the first appeal, other similarly situated claimants filed an appeal from writs of execution and garnishment issued by the Middle District of Florida, arguing like Lopez Bello that this process under TRIA and Florida law was unlawful and violated their due process rights. *See Stansell v. Revolutionary Armed Forces of Colom.,* 771 F.3d 713 (11th Cir. 2014) ("*Stansell I*"). The Court affirmed the district court's finding that each claimant was in fact an agency or instrumentality of FARC, that the relevant assets were blocked assets under TRIA, and thus were subject to attachment and execution. *Id.* at 724-25. The Court also found that the claimants had a right to be heard to challenge the agency or instrumentality issue prior to execution. *Id.* at 727-29. But so long as they received actual notice and a fair opportunity to be heard so as to contest the grant of a writ of execution, due process was amply satisfied. *Id.* at 741.

After the District Court proceedings were instituted in this Southern District of Florida registration action, and after the Court's issuance of writs of execution on Lopez Bello's real and personal property, Lopez Bello also appealed those writs and the Court's Orders denying his motions to amend and motions to reconsider

referenced earlier. *See Stansell v. Lopez Bello,* No. 19-11415, 2020 WL 290423 (11th Cir. Jan. 21, 2020) ("*Stansell II*").[6] There, as before, Lopez Bello launched a multi-argument attack on the Court's rulings, both in substance and on procedural and due process grounds. The Court of Appeals, however, rejected each of those theories. In the first place, the Court found that many of the due process arguments raised anew by Lopez Bello in this appeal were addressed in *Stansell I*, albeit with different claimants, where the Court found that the claimants were entitled to challenge the district court's findings but failed to present evidence showing that those findings were incorrect. 2020 WL 290423, at *3. The panel opinion explained that Lopez Bello had received actual notice of the execution proceedings and had a full and fair opportunity to make his case such that any qualms about purported state law notice violations had no consequence. *Id.*

The *Stansell II* panel decision further affirmed this Court's Order with respect to the constitutional challenge raised by Lopez Bello to subjecting him to TRIA and Florida post-judgment statutes in the first place. The Court found that he had not timely raised a constitutional challenge to the Court's Orders and thus waived them for purposes of that appeal. *Id.* In short, Judge Scola's Orders enforcing the writs of execution were affirmed.

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[6] Lopez Bello moved to stay the pending enforcement proceedings related to the writs of garnishment on the bank accounts while this appeal was being litigated. Those motions were denied. [D.E. 207, 247, 254].

This Court, upon considering this panel opinion, awaited issuance of the mandate before adjudicating the pending writs of garnishment in the interests of judicial economy. The panel decision has not resulted in a mandate, however, because Lopez Bello timely filed a petition for rehearing en banc. That petition remains pending as of this date. Given the passage of time, however, we will proceed with disposing of the pending motions related to these bank account garnishments. Obviously if the *Stansell II* opinion is vacated or otherwise modified, the Court can revisit its application at the appropriate time. For now, we need only take it as established that most of the arguments that Lopez Bello has raised to challenge these District Court proceedings have proven to be meritless. Our findings and judgments to date are now the law of the case. And we should thus proceed to adjudicate the pending writs of garnishment with that in mind.

II. APPLICABLE LEGAL PRINCIPLES

Plaintiffs obtained judgment against the FARC by way of the ATA, 18 U.S.C. § 2333, which allows any person "injured…by an act of international terrorism" to bring suit against the responsible terrorist organization in federal district court. 18 U.S.C. § 2333(a). Having done so, Plaintiffs now seek to enforce the judgment awarded in the Middle District of Florida pursuant to the Section 201 of TRIA. In order to execute against the assets of a terrorist party's agency or instrumentality under that statute, the moving party must: (1) establish that it obtained judgment against a terrorist party for a claim based on an act of terrorism; (2) show that the assets of the terrorist party are blocked, as that term is defined by TRIA; and (3)

establish that the purported agency or instrumentality is actually an agency or instrumentality of the terrorist party. *Stansell I,* 771 F.3d at 722-23 (citations omitted).

Under Florida law:

> Every person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person…and any tangible or intangible personal property of defendant in the possession or control of a third person.

Fla. Stat. § 77.01. This statute outlines specific requirements for notice and an opportunity to be heard that have been fully satisfied in this case, as both the District Court and the Court of Appeals have now finally determined. *See* Fla. Stat. § 77.055 (requiring service of garnishee's answer to the writ on "any…person disclosed in the garnishee's answer to have any ownership interest in the" asset); § 77.07(2) (permitting "any other person having an ownership interest in [garnished] property" to move to dissolve the writ with a motion "stating that any allegation in plaintiff's motion for writ is untrue."). "In a nutshell, Florida law provides certain protections to third parties claiming an interest in property subject to garnishment or execution." *Stansell I*, 771 F.3d at 725. Those protections have been met here. We can proceed to adjudicate the merits of these turnover motions.

III. ANALYSIS

In seeking to block turnover of these accounts on the writs of garnishment, Lopez Bellow sets forth four overarching arguments: (1) Florida's post-garnishment

statute, as applied to third party non-judgment debtors under TRIA, is unconstitutional because it violates due process; (2) this Court lacks subject matter jurisdiction over the accounts at issue because each is allegedly located outside the state of Florida; (3) the agency or instrumentality designation is erroneous or, at minimum, disputed to the point that a jury must resolve the issue; and (4) we cannot order TRIA turnover for these accounts because of other constitutional challenges that name other entities, in addition to Lopez Bello, as having an interest in those accounts. We previously rejected these arguments in denying Lopez Bello's motions to dissolve. We reincorporate that analysis here in summary fashion, except where discussed further below. For the most part, all these rehashed arguments are now final and law of the case to the extent that the Court of Appeals considered and rejected them in *Stansell II*.

A. Due Process

"Due process requires that persons deprived of a right must be afforded notice and an opportunity to be heard." *First Assembly of God of Naples, Fla., Inc. v. Collier County, Fla.*, 20 F.3d 419, 422 (11th Cir. 1994). Lopez Bello challenges Florida's post-judgment statute, arguing that it must be deemed unconstitutional as applied to non-judgment debtors under TRIA because it fails to afford such individuals sufficient notice and an opportunity to contest an agency or instrumentality designation.

This argument misses the mark. First, we note that Bello Lopez's claim rests on faulty logic: he contends that *Stansell I* is not applicable here because it did not

involve writs issued to accounts maintained in the name of non-original defendants and non-judgment debtors. This is incorrect.

Indeed, in *Stansell I* the Court confronted due process challenges made by third parties in Lopez Bello's exact position – non-original defendants who had never been linked to the FARC by OFAC or any other judicial or executive authority. *Stansell I*, 771 F.3d at 739. To be specific:

> Typically…[post-judgment motions] are directed at the judgment debtor, *not at third parties* such as Claimants. The difference – one that the district court did not appropriately consider – is crucial. Whether the owner of the asset being garnished is the judgment debtor, notice upon [commencement] of a suit is adequate to give a judgment debtor advance warning of later proceedings undertaken to satisfy a judgment. That same type of notice is not sufficient where the claimant is a *third party*, who cannot be expected to be on notice of the judgment.
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> …
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> Without notice and a fair hearing where both sides are permitted to present evidence, the third party never has an opportunity to dispute the classification as an agency or instrumentality. … Therefore, due process entitled Claimants to actual notice of the post-judgment proceedings against them.

Id. at 726. (emphasis added; quotations and citations omitted). *Stansell I* therefore applies. *See also Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 50 (2d Cir. 2010) ("Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment debtor, even if the instrumentality is not itself named in the judgment.").

Next, Lopez Bello erroneously claims that he should have received notice and an opportunity to be heard *prior to* Judge Scola's issuance of the original writs. *See generally* D.E. 103-1, p. 12 ("Thus, any attachment of the Moving Parties' bank accounts required pre-deprivation notice and a hearing."). Once again, Movants ignore the fact that such an argument was raised and rejected in *Stansell I*.

> Mere attachment is a minimally intrusive manner of reducing these risks, especially because the blocked assets, by definition, already have more substantial restraints on their alienation. Because the factors weigh in favor of immediate attachment, *Claimants were not constitutionally entitled to a hearing before the writ issued.*

Stansell I, 771 F.3d at 729 (citations omitted; emphasis added). Lopez Bello is therefore incorrect when he argues he should have been notified of the *ex parte* proceedings initiated by Plaintiffs here. *Id*. ("In sum, Claimants were entitled to notice and to be heard before execution, though not necessarily before attachment.").

Third, Lopez Bello's due process argument entirely ignores the fact that he was, in fact, provided actual notice of these proceedings and given an opportunity to contest Judge Scola's findings. Since that time, and before any execution on the bank accounts at issue have taken place, he has (1) sought to amend the February 15, 2019 Order, (2) asked Judge Scola to reconsider that decision, (3) appeared at a special set hearing before the undersigned to refute the agency or instrumentality designation, (4) moved to dissolve the writs of garnishment issued to the various banking institutions, and (5) opposed the grant of the turnover motions for these accounts.

In *Stansell I*, the Eleventh Circuit deemed this more than sufficient:

> The Partnerships were also afforded an opportunity to be heard. As discussed *supra*, the Partnerships were not entitled to a pre-writ hearing. Nevertheless, they had the opportunity to present evidence refuting the agency or instrumentality designation. They simply did not present any evidence that changed the district court's position on the agency or instrumentality determination.
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> …The Partnerships were [also] not prevented from taking advantage of Florida law specifically providing for third-party challenges to garnishment proceedings. *See* Fla. Stat. § 77.07(2). The third party can move to dissolve the writ of garnishment by "stating that any allegation in plaintiff's motion for writ is untrue." *Id*. The Partnerships followed this procedure, and the district court, after due consideration of their argument, concluded that the agency or instrumentality allegations [were] "proved to be true." *See id*. It therefore properly denied the motion to dissolve the writ.

Stansell I, 771 F.3d at 741-42 ("Any failure by the district court to conform to Florida's notice procedures was harmless because the Partnerships received actual notice and were able to contest the allegations as provided in § 77.07[.]").

Fourth, even after all this due process, in opposition to the pending turnover motions Lopez Bello has had yet another opportunity to present evidence to support his position. We have reviewed the materials submitted in his opposition and find, apart from the legal arguments counsel has raised, no additional evidence that causes us to take a different course, either by scheduling any further evidentiary hearings or even a jury trial, or by instituting any other process to further develop the record. The same affidavits and declarations filed in support of Lopez Bello's earlier motions to dismiss the garnishment writs are being relied upon again here. [D.E. 184-5, 184-6, 184-7, 184-8, 184-11]. They are the same factual recitations of evidence that have

been repeatedly rejected as insufficient. And as evidenced by the opinion in *Stansell II* this same conclusory is not enough to defeat Judge Scola's original finding, which is now law of the case, that Lopez Bello is an agency or instrumentality of the FARC for TRIA purposes. Lopez Bello has thus failed to meet his burden, even on these final turnover motions, to show that issues of fact preclude granting summary judgment in Plaintiffs' favor.

The same is true of the additional pieces of "evidence" submitted in connection with these turnover motions. The first two items Claimants have added are two U.N. reports [D.E. 184-9, 10] designed to show that the FARC—the narco-terrorist group that killed, tortured, and/or imprisoned these Plaintiffs—are now not as bad as it used to be. But that hardly allows us to undermine that for TRIA purposes the FARC is a U.S. designated Foreign Terrorist Organization and "terrorist party" under TRIA. That was true from the outset of this process and it remains true today. These pieces of "evidence" do not alter the record that we are bound by at this point. Nor does it present any compelling factual conflict requiring further evidentiary proceedings.

The other evidence cited in the response is another fourth affidavit from Lopez Bello's lawyer, Jeffrey Scott, which fails to address the agency or instrumentality finding in any meaningful way. For our purposes that "evidence" is irrelevant. That is also true for the other "new' evidence Lopez Bello presented [D.E. 184-4] which is his second declaration in opposition to these writs of garnishment that, again, present only conclusory statements of innocence. No actual facts are presented nor any proffer of facts that could be presented to a trier of fact that would make any

difference. Lopez Bello's conclusory declarations only reinforce the totally conclusory nature of the entire evidentiary response to these writs. The best that can be said is that Lopez Bello portrays himself an innocent victim of this process who is not affiliated with Tareck El Aissami, the Cartel of the Suns, or the FARC. But the underlying factual reasons why he was deemed an agency or instrumentality are never rebutted. Conclusory allegations or legal conclusions wrapped in factual clothing will not defeat entry of a TRIA turnover judgment that is otherwise merited. *Cf. Evers v. Gen. Motors Corp.,* 770 F.2d 984, 986 (11th Cir. 1985) (affirming summary judgment where "[t]his court has consistently held that conclusory allegations without specific supporting facts have no probative value.") ("a party may not avoid summary judgment solely on the basis of an expert's opinion that fails to provide specific facts from the record to support its conclusory allegations."); *Buckler v. Israel,* 680 F. App'x 831, 835–36 (11th Cir. 2017) ("A plaintiff cannot survive summary judgment by merely providing hundreds of pages of investigative files supported only by an expert's general citations to those volumes.").

A relevant application of this principle is found in the Eleventh Circuit's recent treatment of taxpayer challenges to federal tax assessments. After finding *en banc* that self-serving affidavits were not barred as a matter of law in such tax challenges, *United States v. Stein,* 881 F.3d 853, 856-59 (11th Cir. 2018), and that Rule 56 principles governed that type of litigation just like any other, the case was remanded for review. On second appeal from the grant of summary judgment against the taxpayer, the Eleventh Circuit affirmed because the self-serving counter-affidavit

had to satisfy certain criteria including statements of personal knowledge and facts supported by admissible evidence to demonstrate why the presumptively accurate tax assessments were incorrect. *United States v. Stein,* 769 F. App'x 828, 832 (11th Cir. 2019). Citing *Evers,* the Court of Appeals agreed that the self-serving affidavit still failed to create an issue of fact on the validity of the assessment. So summary judgment was still appropriate, notwithstanding the taxpayer's claim that she was being denied due process. *Id.* at 832-33.

Here, the record supports the presumption that under TRIA these garnished accounts are blocked assets that may be turned over to enforce a judgment against an agent or instrumentality of the FARC. Given that record, Lopez Bello has to do more, a lot more, than file conclusory denials in a declaration that does not present any compelling new, admissible, or reliable facts that would show that his denials have a factual basis. Ironically, Lopez Bello cited the *Stein en banc* decision in support of his opposition to the turnover motions, ignoring the fact that this case did not and does not allow for conclusory and unsupported affidavits to defeat an otherwise merited motion. As the entire history of *Stein* shows, a district court must consider any self-serving affidavit but at the same time adhere to Rule 56 principles that preclude conclusory denials as a substitute for reliable facts. We agree with Lopez Bello that *Stein* is a very analogous case. The garnishment turnover motions may thus be granted on the same premise, even though technically Rule 56 procedures are not directly applicable given the summary nature of Florida's garnishment statutes. But those statutes contemplate a similar process; a summary

adjudication of the writs unless the debtor can show that further factual development is necessary. If not, then like a summary judgment order, a turnover judgment amounts to the same conclusion: that no issues of fact preclude judgment on the writs as a matter of law. We have reached that point here.

In short Lopez Bello's due process complaints ring hollow. Lopez Bello received actual notice of the proceedings, appeared, and was permitted – repeatedly – to submit evidence challenging Judge Scola's original agency and instrumentality designation. That designation has now withstood an appeal. And even after all this time, that designation has still not been sufficiently rebutted in this record to generate any issue of fact. In light of this record, the due process challenge to our enforcement of Florida's garnishment statute is unavailing. Lopez Bellow's opposition to these turnover motions on due process grounds fails. Florida's summary procedure may be enforced.

B. Subject Matter Jurisdiction

Lopez Bello continues to challenge our exercise of subject matter jurisdiction over bank accounts that are not located in Florida. We fully addressed that challenge in response to the motions to dissolve the writs, and we incorporate those arguments here. Lopez Bello has presented no new authority to undermine our conclusion, as well as Judge Scola's Order affirming that conclusion that relied in part on Florida's decision not to adopt the "separate entity rule." [D.E. 279 at 2 (citing *Tribie v. United Deveelp. Grp. Int'l LLC,* 2008 WL 5120769, at *3 (S.D. Fla. Dec. 2, 2008)].

Though we fully incorporate those conclusions here, since nothing really is new, we add a few points. First, to the extent any entity or person is the real party in interest over such an argument, Lopez Bello is not it. We have subject matter jurisdiction over any demand made against him based on the registration of the judgment in this District. He cannot thus complain on anyone else's behalf that we lack power to adjudicate these matters to the extent he is concerned.

Second, the real party in interest that could raise such a challenge has done so only in the case of Citibank N.A. Though we have rejected the subject matter jurisdiction argument as to that entity as well, we have taken a different course with respect to that writ of garnishment precisely because Citibank lodged timely and persuasive opposition to the relief sought here. And we are addressing those positions in a separate Report and Recommendation that proposes transferring that proceeding to the Southern District of New York. By granting that relief, however, we are not undermining our conclusion that we have the power to adjudicate that writ as a matter of subject matter jurisdiction. And that is certainly true with respect to the accounts maintained by the banking entities at issue here that, unlike Citibank, have answered the writs and not moved to transfer or dismiss those writs on any jurisdictional challenge.

With these caveats, we hold once again that Lopez Bello has no subject matter jurisdiction challenge to make to the turnover motions addressed in this Report.

C. The "Agency or Instrumentality" Designation

Lopez Bello's substantive challenge to the grant of these turnover motions is his claim that he cannot be deemed an agent or instrumentality of the FARC. We addressed this issue thoroughly in response to the motions to dissolve, and that analysis remains sound and is incorporated here.

To summarize, Plaintiffs have shown that they are entitled to relief on these writs of garnishments because we must grant great deference to OFAC with regard to its designation of El Aissami and Lopez Bello as SDNTs. *De Cuellar v. Brady*, 881 F.2d 1561, 1565 (11th Cir. 1989); *Paradissiotis v. Rubin*, 171 F.3d 983, 987 (5th Cir. 1999). We also note that the mere fact that OFAC designated them as SDNTs, standing alone, does not necessarily require us to grant the relief requested by Plaintiffs here; the evidence presented by Plaintiffs must link Lopez Bello *to the FARC*. *See* TRIA Section 201.

The Eleventh Circuit adopted the following definition as to who – or what – can be considered an "agency or instrumentality" of the FARC under TRIA:

> Any SDNT person, entity, drug cartel or organization, including all of its individual members, divisions *and networks*, that is or *was ever involved* in the cultivation, manufacture, processing, purchase, sale, trafficking, security, storage, shipment or transportation, distribution of FARC cocaine paste or cocaine, *or that assisted the FARC's financial or money laundering network*, is an agency or instrumentality of the FARC under TRIA because it was either:
>
> > (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker (FARC); and/or

> (2) owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker (FARC); and/or
>
> (3) playing a significant role in international narcotics trafficking (related to coca leaf, paste or cocaine manufactured or supplied by the FARC).

Stansell, 2013 WL 12133661, at *2 (M.D. Fla. May 2, 2013) (emphasis added); *adopted by Stansell I*, 771 F.3d at 731-32. This definition makes several things clear: past association with the FARC can result in a finding that a person is an agency or instrumentality under TRIA; indirect connections will suffice; and a person or group may be deemed an "agency or instrumentality" of the FARC even if that individual or group does not participate in the production, trafficking, or distribution of cocaine. *See Stansell I*, 771 F.3d at 732, 742. Money laundering qualifies as an associated act. *Id*. at 732 ("Indeed, the agencies or instrumentalities here were, according to OFAC, part of FARC's money laundering operations.").

Based on the evidence in this record, and applying the definition approved in *Stansell I* as well as *Stansell II* that expressly affirmed Judge Scola's original conclusion, for purposes of these turnover motions Lopez Bello and his affiliated entities are "agencies or instrumentalities" of the FARC. The incontrovertible record shows that their "agency or instrumentality" status is firmly rooted. *See Stansell I*, 771 F.3d at 741 ("The Partnerships followed [the statutory procedures] and the district court, after due consideration of their argument, concluded that the agency or instrumentality allegation was 'proved to be true.'") (citing Fla. Stat. § 77.07(2)).

For this reason, we again find no support for Lopez Bello's continued challenge to this designation.

The evidence in support of Plaintiffs' argument includes testimony elicited from Douglas Farah, who testified that Lopez Bello operates as the "frontman," or *testaferro*, for El Aissami, laundering and moving money flowing to El Aissami as a result of his ties to the Cartel of the Suns – an organization, in turn, that earns significant income from the sale and exportation of FARC cocaine. Farah's testimony therefore establishes an indirect link between Movants and the FARC, connecting the two through Lopez Bello's financial activities undertaken on behalf of El Aissami.

Plaintiffs also establish a link between Lopez Bello and the FARC through the testimony elicited from Col. Luis Miguel Cote, a retired member of the Colombian Marine Corps. Cote served in the military for 31 years and planned and executed numerous military operations against the FARC and its drug-trafficking operations. He testified that FARC relied on high-ranking members of the Cartel of the Suns to safeguard cocaine-producing laboratories and to help escort drug shipments from Colombia into Venezuela, where it was ultimately shipped to locations in the U.S., Europe, and Asia.[7] According to Cote, El Aissami was a known member of the Cartel

[7] The Court also heard testimony from Paul Craine, who worked for the DEA for 27 years and testified that he first became aware of Lopez Bello sometime in 2014 or 2015 during his investigation of El Aissami's financial activities. Crain echoed Farah's comments, testifying that Lopez Bello laundered and moved money for El Aissami that had been derived from the sale of cocaine produced and manufactured by the FARC.

of the Suns, and Lopez Bello was equally well-known as El Aissami's primary "frontman." Thus, we can draw a line from Lopez Bello to the FARC through El Aissami.

Indeed, El Aissami is the key link in the chain; his connection to the FARC, and Lopez Bello's connections to him, remain unrebutted. As but one example, Movants entirely failed to rebut Plaintiffs' submissions showing El Aissami's connection to Daniel Barrera Barrera, an individual OFAC described as "a Colombian drug lord" for whom El Aissami provided protection. In 2010, Barrera Barrera was designated as a SDNT due, in part, *to his partnership with the FARC*. *See* Press Release, U.S. Dept. of the Treasury, Office of Foreign Assets Control, *Treasury Targets Financial Network of Colombian Drug Lords Allied with the FARC* (Dec. 14, 2010), https://www.treasury.gov/press-center/press-releases/Pages/tg1002.aspx.[8] Lopez Bello's connection to El Aissami, and El Aissami's connection to the FARC through Barrerra Barrera, entirely undermines any serious argument that Lopez Bello cannot be connected to the FARC, at least indirectly. As we stated above, such indirect ties are enough to support an "agency or instrumentality" designation. *See Stansell I*, 771 F.3d at 742 ("The evidence Plaintiffs presented to the district court

[8] From that release: "Daniel Barrera Barrera and Pedro Oliveiro Guerrero Castillo maintain a partnership with the FARC (*Fuerzas Armadas Revolucionarias de Colombia*), a narco-terrorist organization identified by the President as a kingpin pursuant to the Kingpin Act in 2003. Barrera Barrera also faces narcotics-related criminal charges in the U.S. District Courts for the Southern and Eastern Districts of New York."

was sufficient to establish the required relationship between FARC and the Partnerships, even if that relationship was indirect.").

Again, Lopez Bello has failed to meet his burden of sufficiently raising a material factual dispute as to this indirect connection. In his submissions, Lopez Bello again relies on the testimony of William Marquardt, a forensic accountant tasked with examining the many entities owned or operated by Lopez Bello. Marquardt compared a list of 68 entities to determine whether any could be "traced back" to FARC, concluding that "none of the companies, directors, officers, shareholders and managers" of the entities disclosed as "owned or controlled by [ ] Lopez Bello are associated with the FARC." But as discussed above, this is not what needs to be shown for purposes of an agency or instrumentality designation; *indirect* ties are sufficient, so simply looking at whether the companies are connected to FARC is useless for purposes of our analysis. As there is no requirement that Plaintiffs establish direct connection between the FARC and the 68 companies Marquardt was tasked with analyzing, his opinions are entirely unhelpful.[9]

Likewise, Lopez Bello's reliance on the testimony and declarations submitted by Ernesto Carrasco Ramirez offer nothing to alter Judge Scola's now-affirmed

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[9] This is also why we are not persuaded that a genuine issue of fact remains based on the opinions offered by Richard Gregorie. He opines that (1) Lopez Bello has never been involved with narcotics or financial transactions with the FARC; (2) he has no relationship with any members of the FARC; and (3) the Cartel of the Suns is not the FARC. What is left unsaid – and goes unrebutted – by Gregorie's opinions is the fact that Plaintiffs tie Lopez Bello to El Aissami, and El Aissami to individuals associated with the FARC – i.e., Barrera Barrera. Such an indirect link is left unbroken by Gregorie's report and testimony.

designation decision. Ramirez stated that he never met with, heard of, or discussed Lopez Bello during his time as an attorney in Colombia; but he also admitted was not present in Colombia in 2013 through 2016, the *exact* timeframe in which Plaintiffs' evidence suggests Lopez Bello emerged as a key player in El Aissami's orbit. [D.E. 230 at 166-67 (Testimony of P. Craine)]. This undermines the argument that this evidence presents an obstacle to the grant of immediate relief on the turnover motions.

Lopez Bello also seeks to undermine once again the Court's reliance on the OFAC designation found in the OFAC press release. Lopez Bello says that the press release is inadmissible and irrelevant to the agency or instrumentality issue. We disagree. OFAC's designation and blocking is highly relevant because it is a "factual determination by a coordinate branch" which has authority from Congress for such fact finding under TRIA. *See Weinstein v. Islamic Republic of Iran,* 609 F.3d 43, 52 (2d Cir. 2010). But any dispute about this is settled law in this case. The Eleventh Circuit in *Stansell I* already recognized the relevance and reliability of OFAC's factual findings to an "agency or instrumentality" determination. 771 F.3d at 726. Given that, we cannot and should not change course now when Lopez Bello cites zero authority that OFAC factual findings are somehow inadmissible where the undisputed public record is what it is. Lopez Bello does not argue, for instance, that the agency vacated, undermined, or changed its position via another press release or any other agency action. OFAC's position at this point is uncontroverted. So the evidentiary objection Lopez Bello makes is meritless. *See* Fed. R. Evid. 803(8).

As a result, OFAC's findings fully undermine the factual disputes that Lopez Bello purports to rely upon. For instance, this record has an unrebutted OFAC factual findings that the Lopez Bello/El Aissami Network provided protection to a Colombian drug lord, Daniel Barrera Barrera. OFAC has also designated Barrera as a "FARC Drug Trafficking Partner." El Aissami used his position as a high-ranking government official in Venezuela to protect Barrera when Barrera fled from Colombia to Venezuela. OFAC further determined that Lopez Bello's role in the Network was to act as the "front-man" for El Aissami, running the front companies and laundering the drug trafficking proceeds to help make El Aissami's transactions look legitimate. The indirect nature of the "agency or instrumentality" standard reaches precisely that kind of relationship as the Eleventh Circuit has repeatedly found. *See, e.g., Stansell I,* 771 F.3d at 739.

In the face of these governmental findings, Lopez Bello's conclusory denial that "I am not, nor have I ever been, a frontman for Tareck El Aissami" does not in any way rebut the OFAC Factual Findings because it is devoid of facts. Lopez Bello does not even attempt to explain what his relationship to El Aissami actually is, much less try to support that with any sort of actual evidence or factual detail.

The same holds true for his argument that a critical link is missing in the record, to wit that El Aissami, with Lopez Bello's knowledge, engaged in any actions that provided financial, logistical, or any other assistance to the FARC. Moreover, El Aissami was not an employee, officer of director of any of the Lopez Bello entities. But the whole purpose of having a "frontman" is to avoid the formal, traceable

evidence of shareholders, corporate officers, and the like. The Eleventh Circuit has explained that the lack of a "corporate" relationship will not disturb an "agency or instrumentality" finding, because such a formality is immaterial. *Id.* at 732 ("For example, a corporation organized under Florida law will almost certainly not list FARC as a shareholder of record. Instead, it will operate through layers of affiliated individuals and front companies."). So all of Lopez Bello's protestations notwithstanding, the OFAC's designation remains essentially unrebutted in this record that provides the critical link between the FARC and Lopez Bello. That link supports granting these motions.

Lastly, at bottom of what Lopez Bello is saying to oppose these turnover motions is that his own self-serving evidence, at minimum, raises a factual dispute as to the truth of Plaintiffs' allegations, and that the agency or instrumentality issue must be decided by a jury as per Fla. Stat. § 77.07(2) ("On such motion this issue shall be tried, and if the allegation in plaintiff's motion which is denied is not proved to be true, the garnishment shall be dissolved."). While it is true that Florida garnishment law provides for jury trials in such actions, *see id.*; Fla. Stat. § 77.08, the Eleventh Circuit has also held that "the right to a jury trial in a garnishment action is not absolute, notwithstanding the statute's use of the word 'shall.' " *Zelaya/Capital Intern. Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1304 (11th Cir. 2014); *cf.* Fla. Stat. § 77.07(1) ("The defendant, by motion, may obtain the dissolution of a writ of garnishment *unless the petitioner proves the grounds upon which the writ was issued*[.]") (emphasis added).

And as we discussed in the preceding section, Lopez Bello's self-serving affidavits are not reliable based on their conclusory and non-detailed nature. At best, this evidence serves as a *denial* of the allegations – not a *rebuttal*. This distinction is key; in order for a garnishment proceeding to be tried, Lopez Bello's evidence must create a genuine issue of material fact as to his status as an agency or instrumentality of the FARC, especially in the face of such strong evidence submitted by Plaintiffs together with the OFAC designation. Lopez Bello failed once again to do that. Contrary to protest that he is being held responsible under some strict liability theory, the record submitted in support of Plaintiffs' position firmly supports the relief they seek. In the face of that record, Lopez Bello had the burden to factually undermine this evidence with factual rebuttals that a reasonable fact finder could rely upon. He has not done so despite a year and a half of motion practice and multiple appeals to the Eleventh Circuit.

In short, Plaintiffs have not only alleged that Lopez Bello is an agency or instrumentality of the FARC, but shown – with competent, reliable evidence and testimony – this to actually be true. *See* Fla. Stat. 77.07(1) (dissolution of writ of garnishment must take place *unless* the petitioner proves the grounds upon which the writ was issued). The evidence establishes that (1) OFAC deemed Lopez Bello to be the "frontman" for El Aissami; (2) El Aissami had previously been connected to both Barrerra Barrera and the Cartel of the Suns; and (3) both Barrerra Barrera and the Cartel of the Suns have been accused by OFAC of supporting and assisting the FARC's narco-trafficking activities. We simply do not see anything that would allow

us to preclude Plaintiffs relief on these turnover motions. *Cf. Doug Sears Consulting, Inc. v. ATS Servs, Inc.*, 752 So. 2d 668, 669-670 (Fla. 1st DCA 2000) (reversing trial court's refusal to dissolve writ in light of "woefully insufficient" evidence submitted to prove statutory grounds for issuance of the writs).

Creatively, Lopez Bello's responses in opposition seek to undermine the law of the case here, despite two appellate court decisions that sustained agency or instrumentality findings, on the theory that they are ignoring an important temporal limitation. Lopez Bello theorizes that this "temporal limitation" to the "agency or instrumentality" standard the Eleventh Circuit adopted for non-state actors means that it does not encompass conduct that occurred before OFAC's designation. And for conduct occurring thereafter, FARC had "totally disarmed" by the time these TRIA execution proceedings commenced. So, luckily for Lopez Bello, he falls in the sweet spot of protection from the OFAC designation time period. Anything he did with the El Aissami network took place prior to the designation, so that is outside the reach of TRIA. And by the time of the designation, his relationship with the FARC was harmless because at that point FARC turned over a new leaf and stopped engaging in criminality like the ones at the heart of this case.

Not surprisingly, this concocted theory has no legal basis. *Stansell I* has already affirmed a non-state actor "agency or instrumentality" standard that reaches "past dealings with the FARC." *Stansell v. FARC,* 2013 WL 12133661, at *2 (M.D. Fla. May 2, 2013), *aff'd in relevant part, Stansell I,* 771 F.3d at 732. There is no "temporal limitation" on providing assistance to terrorists at least in this Circuit.

Second, all that TRIA requires is that a plaintiff establish that "she has obtained a judgment against a terrorist party . . . for a claim based on an act of terrorism." *Id.* at 723. Plaintiffs have met that standard. There is no statutory limitation on when the underlying acts had to take place, or when those acts should be judged against any blocked asset designation, or whether the terrorists ultimately abandoned their aims. Plaintiffs have satisfied the statutory prerequisites for relief. As a result Lopez Bello's temporal limitation theory can be discarded.

In sum, Lopez Bello's designation as an agency or instrumentality of the FARC remains firmly rooted in this record and satisfies the legal requirements under TRIA and Florida's garnishment statutes. We thus recommend that these turnover Motions be granted because no issue of fact remains to preclude judgment on the writs of garnishment.

D. Constitutional Challenge to "Punitive" Damages

Lopez Bello offers one final argument why these turnover motions should not be granted. He claims that, unlike the original FARC judgment debtors, parties or entities in his position are liable only to the extent the underlying judgment is for compensatory damages. Specifically, Section 201 of TRIA is what governs this case over blocked assets held by agents or instrumentalities of terrorist organizations. And as a result, the limitation found in section 201(a) applies here:

> (a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of

> that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment *to the extent of any compensatory damages* for which such terrorist party has been adjudged liable.

Terrorism Risk Insurance Act of 2002, PL 107–297, November 26, 2002, 116 Stat 2322.

Lopez Bello further relies on the fact that, although the Anti-Terrorism Clarification Act of 2018 amended extended TRIA's definition of blocked assets to foreign designated Kingpin Assets, and that amendment was intended to be retroactive under Section 3(b) of the Act, 132 Stat. 3183 ("The amendments made by this section shall apply to any judgment entered before, on, or after the date of enactment of this Act."), it did not broaden TRIA's limitations for only compensatory damages. Hence, Lopez Bello argues, the retroactivity provision in the 2018 amendment only applied to that section of the civil remedies statute for terrorism-related action and left all other existing components in place. As a result, and because treble damages are not "compensatory damages," as they are instead akin to punitive damages, the only possible recovery that Plaintiffs may seek against him and his affiliated entities extends strictly to the compensatory damages element of the judgment.

Further support for Lopez Bello's position comes from the Supreme Court doubting that punitive damage liability could be expanded retroactively in *Landgraf v. USI Film Products,* 511 U.S. 244 (1994), where the Court held in the Title VII context that Congress had to expressly prescribe a statute's retroactive reach before

a Court could impose retroactive punitive liability. That showing had not been made in that case. And Lopez Bello makes the same claim here. Nothing in TRIA or the relevant amendments enacted prior to the date of the Middle District judgment allow for retroactive application of a punitive damage remedy against Lopez Bello. Absent such statutory authorization, any blocked assets traced to him cannot be used to satisfy anything more than the compensatory damages portion of the judgment.

Procedurally, Lopez Bello has raised this retroactivity argument in his opposition to the Court's disposition of his motions to dismiss and dissolve the writs, his objections to our Recommendations related to those motions, as well as now in filing a motion to stay disposition of the pending turnover motions. [D.E. 314]. For their part, Plaintiffs do not tackle head-on the retroactivity lynchpin of Lopez Bello's analysis, but argue nonetheless that the arguments fail, principally because treble damages under the ATA should not be treated as punitive damages as they are in fact more compensatory in nature than punitive.

We need not resolve this legal issue now, however. The amount of the underlying judgment is $318,030,000. Even taking Lopez Bello's arguments at face value, the compensatory damages portion of that judgment is $106,010,000.[10] Based on the garnished amounts for all the bank accounts at issue here, plus the amounts already awarded to Plaintiffs through other writs, we are not yet getting close to this

[10] Plaintiffs dispute this because the Middle District of Florida judgment itself reflected individual awards for each plaintiff "for compensatory damages". Thus they say this unambiguously rebuts any theory that Lopez Bello owes less than the total final judgment entered against the FARC.

"compensatory damage" ceiling. Perhaps after entry of these turnover judgments, Lopez Bello's complaints may be further considered in the appropriate forum. But for now, this retroactivity argument does not preclude us from granting the turnover judgment relief that Plaintiffs seek in these motions.

III. CONCLUSION

It is the law of the case that an "agency or instrumentality" as the result of *indirect* ties to a terrorist organization. *Stansell I*, 771 F.3d at 742. Movants here fall squarely within that definition. And the supporting record fully supports that finding as a matter of law. We therefore **RECOMMEND** as follows:

A. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. [D.E. 116] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer [D.E. 58], XXX952, in the name of Samark Jose Lopez Bello, in the amount of $28,970,462 or the existing balance, in favor of the Plaintiffs.

B. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee RJA Financial Services, Inc. [D.E. 120] should be GRANTED. A final judgment of garnishment should be entered on the account held by Raymond James & Assocs. and identified in the Garnishee's Answer [D.E. 61], XXX540, in the name of Samark Lopez Bello, in the amount of $2,361,839.10 or the existing balance, in favor of the Plaintiffs.

C. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee Branch Banking & Trust Co. [D.E. 155] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer

[D.E. 71], XXX9258, in the name of Samark Jose Lopez Bello, and XXX1848 in the name of Profit Corp. CA, and XXX9323 in the name of SMT Technologia CA, in the total amount of $1,332,859.11 or the existing balances, in favor of the Plaintiffs.

D. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee Morgan Stanley Smith Barney LLC [D.E. 168] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer [D.E. 76], XXX300, in the name of Yakima Trading Corp., and XXX945 in the name of Samark Jose Lopez Bello, in the total amount of $11,498,994.68 or the existing balances, in favor of the Plaintiffs.

E. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee Safra National Bank of New York [D.E. 170] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer [D.E. 78], XXX4131, in the name of Samark Jose Lopez Bello, and XXX5158 in the name of PYP International LLC, in the amount of $9,044,160.79 or the existing balances, in favor of the Plaintiffs.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have twenty-one (21) days from service of this Report and Recommendation within which to file written objections, if any, with the Honorable Judge Robert N. Scola. The Court finds good cause based on the existing exigent circumstances involving the national health emergency to grant additional time for the filing of objections as per Rue 4(b). Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar

the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell,* 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security,* 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND SUBMITTED in Chambers at Miami, Florida this 23rd day of March, 2020.

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge