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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

REAL PROPERTY LOCATED IN  
BEVERLY HILLS, CALIFORNIA

Defendant.

and Related litigation

No. 2:20-CV-6314-CAS-KS  
(consolidated)

**NOTICE OF MOTION AND MOTION  
TO FOR JUDGMENT ON THE  
PLEADINGS AGAINST CLAIM  
OPPOSING FORFEITURE BY THE  
GOVERNMENT OF THE STATE OF  
KUWAIT OR AN ORDER TO SHOW  
CAUSE ISSUED BY THIS COURT AS  
TO WHY THE GOVERNMENT OF  
THE STATE OF KUWAIT SHOULD  
NOT HAVE ITS CLAIM STRICKEN**

**DATE: April 29, 2024  
Time: 10:00 a.m.  
Courtroom 8D**

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that the Law Offices of Ronald Richards and  
3 Associates, A.P.C. by and through Ronald Richards, Esq., on behalf of Claimants Victor  
4 Franco Noval, individually and as Trustee of the Rexford Trust, 8484 Wilshire Blvd,  
5 LLC, Beverly Hills Real Estate Holdings, LLC, 1141 Summit Drive, LLC, Beverly Hills  
6 Exotic Collection, LLC, Secured Capital Partners, LLC, and Blue Orchid Financial, LLC  
7 (collectively, the “Noval Claimants”), hereby move for a judgment on the pleadings  
8 pursuant to Federal Rule of Civil Procedure 12(c) as it relates to the claim submitted by  
9 the Government of the State of Kuwait and/or for the Court to issue an order to show  
10 cause pursuant to Federal Rule of Civil Procedure 12(f)(1) why the Court should not  
11 strike the claim of the Government of the State of Kuwait for lack of prudential standing  
12 and/or Article III standing. This motion is made following the conference of counsel  
13 pursuant to L.R. 7-3 which took place on March 15, 2024.

14 Dated: March 22, 2024

15 LAW OFFICES OF  
16 RONALD RICHARDS & ASSOCIATES, A.P.C

17 By: /s/ Ronald Richards

18  
19 RONALD N. RICHARDS  
20 Attorneys for Claimants VICTOR FRANCO NOVAL,  
21 INDIVIDUALLY AND AS TRUSTEE OF THE  
22 REXFROD TRUST, 8484 WILSHIRE BLVD, LLC,  
23 BEVERLY HILLS REAL ESTATE HOLDINGS, LLC,  
24 1141 SUMMIT DRIVE, LLC, BEVERLY HILLS  
25 EXOTIC COLLECTION, LLC, SECURED CAPITAL  
26 PARTNERS, LLC, and BLUE ORCHID FINANCIAL,  
27 LLC  
28

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1 *United States. V. Approximately \$133,803.53 in U.S. Currency Seized from Wash.*  
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8 5(f) 4

## I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

On July 16, 2020, the Plaintiff United States of America (“Plaintiff”) initiated civil forfeiture proceedings on various assets owned by Victor Franco Noval and his various entities (hereinafter collectively the “Noval Claimants”). Dkt. 1.

On November 2, 2020, the Court stayed the case due to a criminal investigation. Dkt. 34

On February 24, 2022, the Plaintiff requested to lift the stay. Dkt. 48.

On March 21, 2022, the cases were ordered consolidated. Dkt. 54. On May 9, 2022, Plaintiff filed its Consolidated Master Verified Complaint for Forfeiture (“CMVC”). Dkt. 55.

On May 20, 2022, the Government of the State of Kuwait (“Kuwait”) filed a state court complaint (LASC 22SMCV00728) against many defendants including the Noval Claimants. A copy of the complaint is attached as Exhibit “E”.

On February 6, 2023, Plaintiff filed a motion to strike claimant Khaled J. Al-Sabah's (“Al-Sabah” or “KAS”) claim to the defendant assets, arguing that he lacks standing to contest forfeiture. Dkt. 94. On March 13, 2023, Al-Sabah filed an opposition to Plaintiff’s motion to strike. Dkt. 109. On March 20, 2023, Plaintiff filed a reply in support of its motion to strike Al-Sabah’s claim. Dkt. 110.

On March 24, 2023, following the filing of Plaintiff’s reply in support of motion to strike Al-Sabah’s claim, without any warning in this case Plaintiff decided via a stipulation that was not signed by the Noval Claimants or Al-Sabah to allow an extremely late claim from Kuwait. Dk.112. The stipulation requested that the Kuwait be granted leave to file a claim contesting forfeiture, despite the deadline to file claims having passed. Dkt. 112. In the stipulation, Kuwait indicated that it intended to file a response to Al-Sabah's opposition to the motion to strike. *Id.* That same day, the Court granted the relief requested in the stipulation.

On March 27, 2023, Kuwait filed its claim asserting it is the owner of the

1 defendant assets reserving jurisdiction and venue. Dkt. 114. (See Exhibit “A”).

2 On April 7, 2023, Al-Sabah filed a statement of response to Kuwait's claim. Dkt.  
3 121. Later that same day, Kuwait filed a response in support of Plaintiff’s motion to  
4 strike Al-Sabah’s claim. Dkt. 122.

5 On April 10, 2023, the Court held a hearing on Plaintiff’s motion to strike Al-  
6 Sabah’s claim.

7 On April 14, 2023, Kuwait filed an answer to the CMVC. Dkt. 127. The answer  
8 asserts three affirmative defenses relating to receiving the proceeds if the Plaintiff is  
9 successful in the forfeiture action—offset, recoupment, and unjust enrichment. Kuwait  
10 does not plead an innocent owner defense. Kuwait’s answer also denies many of the  
11 allegations in the CMVC. A true and correct copy of Kuwait’s Answer is attached hereto  
12 as Exhibit “B” showing the numerous disputed allegations.

13 On April 17, 2023, this Court issued a ruling “reserving judgment” on Plaintiff’s  
14 motion to strike Al-Sabah’s claim. Dkt 131, Exhibit “F”

15 On May 3, 2023, Al-Sabah filed supplemental evidence showing the public  
16 prosecutor in Kuwait exonerated Al-Sabah in the criminal Army Fund case pending in  
17 Kuwait finding that money was stolen and creating more confusion as to Kuwait’s  
18 knowledge of the transfers which clearly were sent with Kuwait’s knowledge by at least  
19 numerous people. Dkt. 139.

20 Due to Kuwait’s inept procedures and in-fighting between different factions of its  
21 Royal Family and the government, the Noval Claimants have been victims of what was  
22 supposed to be a business loan by a known, vetted wealthy Arab Royal, Al-Sabah. The  
23 Noval Claimants had attorneys vet him and his money. Funds were wired to attorney  
24 client trust accounts and disbursed. The transactions were not secret and had all the  
25 appearances of a legitimate foreign real estate investor. The wires were sent by the  
26 “Embassy of Kuwait” through a Kuwaiti-owned bank, Ahli United Bank. The wires  
27  
28

1 were initiated by Kuwaiti government officials pursuant to official written mandates by  
2 the Kuwaiti Deputy Prime Minister and Minister of Defense.

3 Since being allowed by Plaintiff to file its untimely claim, Kuwait has taken on the  
4 role of co-prosecutor in this case. Because the Noval Claimants are now faced with an  
5 incredibly unfair tag team by two separate sovereigns and where the Plaintiff has lost its  
6 role, the Noval Claimants have no choice but to file this motion for judgment on the  
7 pleadings to dismiss Kuwait's meritless claim which has no place in the law in a  
8 forfeiture case.

9 Al-Sabah's original not guilty finding was overturned by a Kuwait appeal court,  
10 known as The Court of Cassation, without any new trial at a one-day hearing on  
11 November 26, 2023. The appeal to the Court of Cassation was filed by The Public  
12 Prosecution, The Permanent Investigation Committee of the Court of Ministers, Hamad  
13 Sabah Al-Sabah, and Abdullah Nasser Sabah Al-Sabah. A true and correct copy of The  
14 Court of Cassation's opinion reversing Al-Sabah's innocence and finding the Kuwaiti  
15 Officials guilty of various criminal offenses is attached as Exhibit "H" to a state court  
16 cross-complaint filed by the Noval Claimants on March 19, 2024 attached hereto as  
17 Exhibit "D".

18 Kuwait should receive funds, if any, from the Attorney General as a crime victim,  
19 if that is ever proven which we are a long way off from. Furthermore, this Court must  
20 rule on prudential and statutory standing. The Plaintiff, for whatever reason, ignored  
21 Kuwait's complete lack of prudential standing for the first time in 30 years. The Noval  
22 Claimants could not find a case where the Plaintiff has taken the position that an alleged  
23 embezzled sovereign has statutory or prudential standing. Typically, in a civil forfeiture  
24 case, the Plaintiff wants to get rid of claimants, not include them. This case is a first.

25 "Judgment on the pleadings is proper when the moving party clearly establishes  
26 on the face of the pleadings that no material issue *of fact remains to be resolved and that*  
27 *it is entitled to judgment as a matter of law.*" *Hal Roach Studios, Inc. v. Richard Feiner*  
28



1 & Co., 896 F.2d 1542, 1550 (9th Cir. 1989) (emphasis added) (citing *Doleman v. Meiji*  
 2 *Mutual Life Ins. Co.*, 727 F.2d 1480, 1482 (9th Cir. 1984); accord, *United States v.*  
 3 *\$223,000.00 in U.S. Currency*, No. 520CV02079FLASPX, 2023 WL 6538383, at \*3  
 4 (C.D. Cal. Sept. 19, 2023).

5 The general allegations in this case are that certain high-ranking Kuwait  
 6 government officials, including Al-Sabah, surreptitiously opened new government  
 7 accounts at the AUB and funded those new accounts with hundreds of millions of dollars  
 8 from other Kuwait accounts at the AUB and from the National Bank of Kuwait. Plaintiff  
 9 alleges Kuwaiti public funds were unlawfully wired by those high-ranking Kuwait  
 10 government officials to the United States to accounts controlled by the Noval Claimants  
 11 through attorneys and others. These contentions are contradicted by the CMVC,  
 12 Kuwait's answer, and by the facts and evidence. The contentions that Kuwait did not  
 13 know about these accounts at its state-owned bank, the transfers of hundreds of millions  
 14 of dollars into the accounts from other Kuwait government accounts, and the wire  
 15 transfers to the Noval Claimants lacks credibility. The Plaintiff has no evidence of how  
 16 these accounts were funded or where the money came from that was sent to the Noval  
 17 Claimants. The funds were used to purchase real property that the Noval Claimants have  
 18 owned for years. The funds were also used to maintain and develop a large property  
 19 worth hundreds of millions of dollars called the Mountain. The Plaintiff also brought a  
 20 forfeiture action against that property but settled it for a measly \$700,000.00. (*See* 2:20-  
 21 cv-06313-CAS-KS, Dkt. 30, showing dismissal.)

22 This Court made the findings and observations detailed below in its April 17, 2023  
 23 ruling relating to a motion to strike brought by the Plaintiff against KAS that are binding  
 24 on the parties to this case. (*See*, Dkt. 94, Dkt. 131.)

## 25 A. ARGUMENT

26 As a general rule, "a person who surrenders his money to a third party by putting  
 27 his money in the third party's bank account becomes, at most, an unsecured creditor with  
 28

1 a cause of action against the account holder." *Cassella, Stefan D., Asset Forfeiture Law*  
 2 *in the United States* (2d ed. 2013), § 10-5(f). Such unsecured creditors lack Article III  
 3 standing to contest the forfeiture of property owned by their debtors. *See, United States*  
 4 *v. \$20,193.39 U.S. Currency*, 16 F.3d 344, 346-47 (9th Cir. 1994) (hereinafter  
 5 "\$20,193.39").

6 This Court did not make any ruling as to prudential standing in the April 17, 2023  
 7 order because the Plaintiff never raised that issue. Why Plaintiff didn't is unknown to  
 8 the moving parties. As will be shown in this brief, Kuwait lacks both prudential standing  
 9 and Article III standing. Plaintiff's allowance of Kuwait's claim does not confer  
 10 standing. The Plaintiff has other motives for its lax standard and inconsistent basis for  
 11 allowing Kuwait's claim. Only this Court can confer standing. No litigant can ever  
 12 dictate to a Court who has standing. This is for the Court to decide.

13 In its April 17, 2023 ruling this Court opined that in *United States v.*  
 14 *\$4,224,958.57*, 392 F.3d 1002, 1004 (9th Cir. 2004) ("*Boylan*"), the Ninth Circuit  
 15 narrowly relaxed the standing rule and concluded that fraud victims have Article III  
 16 standing to contest forfeiture of funds traceable to the fraud perpetrated against them. In  
 17 reaching this conclusion, the Ninth Circuit reasoned that, under California law, "when a  
 18 fraudster acquires property from a victim by fraud, the fraudster holds the property in  
 19 constructive trust for his victim." *Id.* The court concluded that if the claimants "can prove  
 20 their claims to have been defrauded by [the fraudster], they are the beneficiaries of the  
 21 constructive trust and have, therefore, equitable interests in it ... [and consequently have  
 22 Article III standing in the proceeding for forfeiture." *Id.* at 1005 (citing *Harris Trust &*  
 23 *Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 250-51 (2000)).

#### 24 A. Inapplicability of *Boylan*

25 This Court further addressed KAS's argument he made to confer standing.  
 26 According to claimant KAS, the Noval Claimants defrauded him when they allegedly  
 27 misappropriated funds transferred by KAS to purchase the defendant assets. Dkt. 109 at  
 28

1 pp. 11-12. Claimant KAS contended that, as a victim of this alleged fraud, he had an  
2 equitable interest in the defendant assets in the form of a constructive trust and therefore  
3 has standing to contest forfeiture under *Boylan*. *Id.* at p. 11.

4 In its motion to strike, Plaintiff asserted that KAS does not have standing under a  
5 constructive trust theory because, unlike in *Boylan*, the fraud of which claimant asserts  
6 he is a victim is not the fraud charged in the CMVC. Dkt. 94 at p. 16. Additionally, as  
7 Plaintiff points out, KAS had not accepted as true Plaintiff's allegations of fraud. *Id.* at  
8 pp. 15-16. Nothing has changed as it relates to Kuwait. Neither Kuwait nor the Noval  
9 Claimants have accepted Plaintiff's complaint as true. Kuwait has asserted many denials  
10 to the CMVC. (See highlighted CMVC showing all the allegations Kuwait has disputed  
11 and put at issue attached hereto as Exhibit "C.")

12 Thus, Plaintiff contended in its motion to strike KAS's claim that this case is  
13 distinguishable from *Boylan*, which involved claimants who were victims of the proven  
14 fraud that was the subject of the forfeiture action. Dkt. 94 at pp. 15-16. In *Boylan*, the  
15 criminal activity giving rise to the forfeiture action was an alleged fraud committed by  
16 James Carroll Sexton. *Boylan*, 392 F.3d at 1003. According to the Government, Sexton  
17 persuaded a number of individuals to transfer money to him, which he represented would  
18 be invested on their behalf. *Id.* In reality, he shuffled the funds through bank accounts in  
19 Liechtenstein and did not invest them as represented. *Id.* The parties asserting standing  
20 under the constructive trust theory were the individuals who transferred their money to  
21 Sexton, believing that he would invest it on their behalf. *Id.*

22 The facts of the fraud alleged by the Government in *Boylan* were undisputed by  
23 the fraud victims. *Id.* In this case, however, Kuwait has denied many of the allegations.  
24 KAS and the Noval Claimants also have denied many of the allegations. (See, Dkt. 127,  
25 71, 72, answers for all three claimants.)

26 Thus, as Plaintiff noted, this case is distinct from *Boylan* because the fraud the  
27 KAS asserted gave rise to a constructive trust is not the fraud alleged in the forfeiture  
28

1 action but rather a separate fraud allegedly involving the same funds. And relatedly, there  
2 was no factual dispute in *Boylan* as to whether the fraud underlying the constructive trust  
3 had occurred. In this case, as the Plaintiff already argued and is judicially estopped from  
4 changing its position, the embezzlement of these funds is disputed. Any fraud is  
5 disputed. Plaintiff cannot have the other claimants rely on its position in *Boylan* then  
6 switch positions. The Noval Claimants joined the Plaintiff's strike motion. Dkt. 111.

7 While *Boylan* does not explicitly limit its holding to cases where the fraud giving  
8 rise to the constructive trust is the subject of the complaint for forfeiture, this Court  
9 found that Plaintiff made a persuasive argument that to find otherwise would allow the  
10 *Boylan* exception to swallow the general rule that unsecured creditors lack Article III  
11 standing in civil forfeiture proceedings. *See, \$20,193.39*, 16 F.3d at 346-47. That is,  
12 accepting Kuwait's position would allow any party to contest forfeiture so long as they  
13 assert that they were defrauded out of funds traceable to the defendant assets.

14 At best, this is all Kuwait is, a defrauded party. They certainly are not an owner of  
15 the defendant assets. They do not have legal title. This is a CAFRA case, civil forfeiture.  
16 It is unheard of that a fraud victim could claim standing in a civil forfeiture case. The  
17 Plaintiff should be moving separately to strike Kuwait's claim instead of the Noval  
18 Claimants seeking judgment on the pleadings. Plaintiff instead allowed the claim and  
19 turned a blind eye to the obvious lack of standing.

20 This Court also found that KAS had not identified any post-*Boylan* case in this  
21 circuit finding standing under a constructive trust theory in such circumstances. And at  
22 least one court, as this Court noted, in this district has concluded that establishing Article  
23 III standing under *Boylan* requires that the fraud giving rise to the constructive trust be  
24 proven. *See, United States v. Real Property Located at 475 Martin Lane*, 2006 WL  
25 8421793, at \*4 (C.D. Cal. July 12, 2006) (finding "*Boylan's* constructive trust holding []  
26 inapplicable" where perpetrator of the alleged fraud denied committing the fraud  
27 "because *Boylan's* holding presumed a proven fraud"). KAS has never admitted there  
28

1 was a fraud against Kuwait, and neither have the Noval Claimants.

2 In ruling on Plaintiff's motion to strike KAS's claim, this Court held, "it is not  
3 clear to the Court that claimant's assertion that he is a fraud victim is sufficient to confer  
4 Article III standing in this forfeiture action." Dkt 131 at p. 10 of 18. What this Court  
5 did not address, however, is the lack of prudential standing. This brief will address this  
6 issue because it applies with great force.

7 B. Kuwait Lacks Prudential Standing

8 Kuwait's answer and claim the Plaintiff allowed clearly show it is an unsecured  
9 creditor or at best, a victim of embezzlement. Kuwait does not have prudential standing  
10 in this case. The Plaintiff was motivated to avoid attorney's fees per 28 USCA § 2465 so  
11 they allowed Kuwait's claim. (*See*, Recognition of Claims of the Government of the  
12 State of Kuwait Pursuant to 28 U.S.C. § 2465) Dkt. 117.

13 However, that is not a basis for the Plaintiff to ignore the lack of prudential  
14 standing or Article III standing. The fact that this was not raised earlier by the Plaintiff is  
15 not significant. *See, e.g., Gonzales v. Department of Homeland Security*, 508 F.3d 1227,  
16 1235 (9th Cir. 2007) ("issues that are not raised or discussed are unstated assumptions  
17 on non-litigated issues [and] are not precedential holdings binding further decisions")  
18 (internal citations omitted).

19 There are two district court cases post CAFRA addressing prudential standing and  
20 Plaintiff's failure to raise it previously. Both show the lack of prudential standing of  
21 Kuwait. *See, United States. V. Approximately \$133,803.53 in U.S. Currency Seized from*  
22 *Wash. Mut. Bank, N.A.*, 683 F.Supp.2d 1090 (2010); *United States v. All Funds on*  
23 *Deposit with R.J. O'Brien & Associates* (2012) (ND ILL) 2012 WL 1032904. Plaintiff's  
24 allowance of Kuwait's claim has zero to do with the judicial requirement of prudential  
25 standing.

26 "In every federal case, the party bringing the suit must establish standing to  
27 prosecute the action." *Elk Grove Unified Sch. Dist. v. Newdow* ("Newdow"), 542 U.S. 1,  
28

11 (2004). The standing doctrine establishes “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *United States v. Lazarenko* (“*Lazarenko*”), 476 F.3d 642, 649 (9th Cir.2007) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Standing jurisprudence is comprised of two strands: “Article III standing, which enforces the Constitution's case-or-controversy requirement; and prudential standing, which embodies judicially self-imposed limits on the exercise of jurisdiction.” *Newdow*, 542 U.S. at 11 (internal quotations and citations omitted).

Prudential standing encompasses, *inter alia*, “the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked.” *Lazarenko*, 476 F.3d at 650. “[T]he breadth of the zone of interests varies according to the provisions of law at issue.” *Bennett v. Spear*, 520 U.S. 154, 163 (1997). “Congress legislates against the background of [the] prudential standing doctrine, which applies unless it is expressly negated.” *Id.*

18 U.S.C. § 981(a) provides that any real or personal property involved in money laundering or derived from loan, document, mail, wire, or bank fraud is subject to civil forfeiture to the United States. In April 2000, Congress amended 18 U.S.C. § 981 to provide that forfeited assets could be restored to victims of the offense giving rise to forfeiture. 18 U.S.C. § 981(e)(6) (“[T]he Attorney General ... is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine as restoration to any victim of the offense giving rise to forfeiture.”).

In adopting this forfeiture/victim remission model, Congress granted the Attorney General sole discretion to address claims by victims through a remissions process that occurs after the successful prosecution of the forfeiture case. 18 U.S.C. § 981(d) (“The Attorney General shall have sole responsibility for disposing of petitions for remissions or mitigation with respect to property involved in a judicial forfeiture proceeding”). Federal regulations provide guidance on who may file a petition for remission with the



1 Attorney General and the procedure for filing. 28 C.F.R. 9.4. These regulations also set  
 2 forth the criteria to be considered by the Attorney General in exercising its discretion.  
 3 (See, 28 C.F.R. § 9.5.) The regulations also contain specific rules for a variety of  
 4 specific petitioners, including crime victims “who do not have a present ownership  
 5 interest in the forfeited property,” like Kuwait here. (28 C.F.R. §§ 9.6–9.8.)

6 Congress's creation of the remission process for crime victims and explicit  
 7 delegation of responsibility to the Attorney General over petitions filed pursuant to that  
 8 process, combined with the absence of statutory language negating the application of the  
 9 prudential standing doctrine to potential claims of victims, compels the conclusion that  
 10 Kuwait lacks prudential standing. *United States v. Real Property Located at 730 Glen–*  
 11 *Mady Way* (“*Glen–Mady*”), 590 F.Supp.2d 1295, 1303 (E.D.Cal. 2008) (holding that  
 12 victims/investors in a fraudulent scheme lacked prudential standing to file a claim in a  
 13 civil forfeiture action under § 981); *United States v. Wilson*, 640 F.Supp.2d 1257, 1262  
 14 (E.D.Cal.2009) (holding that victims/investors in a fraudulent scheme lacked prudential  
 15 standing to file a claim in criminal forfeiture action, overturned under different facts  
 16 discussed below).

17 The Court held *United States v. Approximately \$133,803.53 in U.S. Currency*  
 18 *Seized from Washington Mut. Bank, N.A.*, 683 F. Supp. 2d 1090, 1094 (E.D. Cal. 2010)  
 19 that the claimant’s interest is not within the zone of interest Congress intended to protect  
 20 within this civil forfeiture proceeding. The claimant in that case, like Kuwait,  
 21 transferred his money to another account from a loan fraud. Claimant was the lender.  
 22 However, the Court held:

23 To decide otherwise would convert this forfeiture case into a trust administration  
 24 proceeding and “shun the procedures Congress deliberately enacted to vindicate  
 25 third-party claims.” *Lazarenko*, 476 F.3d at 652; *Glen–Mady*, 590 F.Supp.2d at  
 26 1303; *Wilson*, 640 F.Supp.2d at 1262; see *United States v. Bright*, 353 F.3d 1114,  
 27 1124 (9th Cir.2004) (holding that requiring district courts to attempt to apply  
 28

1 forfeited funds would conflict with the grant of discretion § 981(e) expressly and  
 2 specifically gives to executive actors); *United States v. Schwimmer*, 968 F.2d  
 3 1570, 1584 (2d Cir.1992) (referring to similar RICO criminal forfeiture provisions  
 4 as “a statute that states that the Attorney General, and not the judiciary, shall make  
 5 decisions about how to divide up the funds in order to compensate victims....  
 6 Because Congress has chosen to allocate to the Attorney General the power to  
 7 remit funds for victim compensation, it is inappropriate in the context of this case  
 8 to relax conceptions of property rights in order to permit courts to compensate  
 9 victims”); *United States v. BCCI Holdings*, 46 F.3d 1185, 1191–92 (D.C.Cir.1995)  
 10 (declining to recognize claim of general' creditor, because “[w]ere it otherwise, the  
 11 court litigating the forfeiture issue would be converted into a bankruptcy court,”  
 12 which “appears patently at odds with the statutory scheme, which directs parties  
 13 without an interest in specific property to seek relief from the Attorney General,  
 14 not the court adjudging the forfeiture”).

15 *Id.* at 1095.

16 Kuwait simply is an alleged crime victim. Kuwait’s admissions show that  
 17 authorized officials submitted legal wire transfer requests through their own inept  
 18 procedures via their own embassy accounts at a state-owned bank. These lax procedures  
 19 have cost the Noval Claimants hundreds of millions of dollars and Kuwait is going to  
 20 have to pay the price for this negligence in a separate state civil action.

21 The moving parties have not located a single case where an embezzled sovereign  
 22 was granted contested standing to participate in a forfeiture case. Due to the  
 23 schizophrenic nature and non-democratic monarchy of the Kuwait government, there is a  
 24 power tug of war between factions of the ruling royal family. Incredibly, there are  
 25 Kuwait officials, namely Nawaf AlMahamel, who have provided contradictory testimony  
 26 as it relates to the Army Fund at issue in this forfeiture case.  
 27  
 28



1 Plaintiff has a duty to protect its own citizens from the system Kuwait employs  
2 within its borders if it jeopardizes the American people and its citizens. Instead, here  
3 Plaintiff has curiously sided with the foreign sovereign and ignored the factual nuances  
4 of the underlying funds which originated from Kuwait.

5 During the pre-filing conference for this motion, Plaintiff has made a 180° pivot in  
6 its position to the Noval Claimants' surprise and is trying to change its estopped position  
7 that the Noval Claimants relied on when they joined the prior motion to strike Al-  
8 Sabah's claim. Now, incredibly, Plaintiff is trying to suggest Kuwait has both Article III  
9 standing and prudential standing. Nonsense!

10 Presumably from the meet and confer pre-filing conference, Plaintiff will now rely  
11 on *United States vs. Wilson* ("Wilson"), 659 F.3d 947 (9<sup>th</sup> Cir. 2011), in a tortured attempt  
12 to beg for prudential standing for the defacto co-plaintiff Kuwait.

13 Before discussing the facts of *Wilson*, it should be noted that *Wilson* is not a  
14 CAFRA case, is not a civil forfeiture case, and resulted from a criminal case forfeiture.  
15 It is truly inapposite but since this was the only case Plaintiff provided in the pre-filing  
16 conference, the Noval Claimants will address it and dispense of it.

17 First, in criminal cases which *Wilson* derived from, third-party challenges to an  
18 order of forfeiture are resolved in a post-trial ancillary proceeding governed by 21  
19 U.S.C. § 853. The purpose of the ancillary proceeding is to ensure that the property  
20 belonging to third parties - who are excluded from participating in the criminal trial - is  
21 not inadvertently forfeited in the criminal case. The only purpose of the ancillary  
22 proceeding is to determine the ownership of the forfeited asset. It is not a liquidation  
23 proceeding in which the defendant's assets are distributed among his creditors; nor is it a  
24 forum in which third parties may seek to relitigate the issues tried in the criminal case, to  
25 collect debts the defendant may owe, or to seek relief from wrongs the defendant may  
26 have done.

1           Rather, the ancillary proceeding is a quiet title proceeding in which the court must  
2 determine whether the forfeited property belongs to a third party or to someone else. If it  
3 belongs to the third party, it must be stricken from the order of forfeiture; if it does not  
4 belong to a third party, the order of forfeiture becomes final and the property is forfeited  
5 to the United States. *See*, 21 U.S.C. § 853(n)(6). It is much different than this case  
6 which is CAFRA Civil Forfeiture case.

7           In *Wilson*, Stefan Wilson operated a fraudulent investment fund. His Ponzi scheme  
8 took almost \$13 million from over 50 investors. A person named Gray was among the  
9 investors. *Wilson*, 659 F.3d at 949.

10           Here are salient facts. Gray wired a total of \$2.3 million to Wilson's account at  
11 Washington Mutual Bank. Wilson then transferred Gray's funds to an Ameritrade  
12 brokerage account, which Wilson had been using to carry out his fraud. Prior to the  
13 transfer of Gray's funds, the account balance was allegedly \$324.43. Another victim  
14 Johnson demanded that Wilson return her investment. Wilson transferred \$425,000 from  
15 the Ameritrade account to an account held by Johnson. Wilson then was arrested, the  
16 balance of the Ameritrade account was seized, and the \$425,000 Wilson had transferred  
17 to Johnson was seized. Wilson was indicted and entered into a plea agreement with the  
18 Government. *Id.* at 949-950.

19           In *Wilson*, the Government was acting normally. They of course took the opposite  
20 position they are taking here and as to an unsecured claimant, they moved to dismiss  
21 Gray's petition. Gray argued that he could trace all of the \$425,000 in Johnson's account  
22 to his investment. He argued that all but \$324.43 of the funds seized from the Ameritrade  
23 account are traceable to his investment. The remainder of Gray's investment—  
24 \$384,905.86—was diffused via lulling payments, trading losses, and margin calls during  
25 the two weeks that Wilson held the investment. *Id.* at 950.

26           Pursuant to the plea agreement, the district court entered its preliminary order  
27 forfeiting to the Government the \$1,490,418.57 balance in the Ameritrade account and the  
28

1 \$425,000 in Johnson's account. Gray's petition, filed under 21 U.S.C. § 853(n)(2), alleged  
 2 that Gray had an interest in \$1,915,094.14 of the forfeited funds, and that his interest was  
 3 superior to that of Wilson and that of the Government. Again, this was a criminal forfeiture  
 4 case, not a civil forfeiture CAFRA case. The Government filed a motion to dismiss the  
 5 petition, and, after the issue was fully briefed and a hearing was held, the district court  
 6 granted the motion to dismiss. *Id.*

7 The issue on appeal was whether the government's interest which they acquired by  
 8 stepping into the shoes of Wilson was greater than Gray's. The government even asked  
 9 the 9<sup>th</sup> Circuit to overturn *Boylan*. The government argued vigorously that fraud victims  
 10 simply do not have standing, like they did against KAS in this case to strike his claim.  
 11 *Id.* at 954. The Government argued that in *Boylan*, the 9<sup>th</sup> Circuit did not accurately  
 12 interpret California law. Under *Boylan*, the 9<sup>th</sup> Circuit held that constructive trusts arise  
 13 as a matter of law at the time the fraud is perpetrated.

14 It is unclear what the government's theory is here. It should be the same as the  
 15 one they argued against KAS, a person who transfers money to another person's account  
 16 has no standing in a forfeiture proceeding to file a claim. They are an unsecured  
 17 creditor. Why the Plaintiff is taking a new position now is still a mystery but should not  
 18 be allowed as that has not and is not the position they have advanced in this case.

19 In *Wilson* the Ninth Circuit noted that critics argue that *Boylan* runs counter to a  
 20 number of California appellate and California Supreme Court cases—*Embarcadero*  
 21 *Mun. Imp. Dist. v. Cnty. of Santa Barbara*, (2001) 88 Cal.App.4th 781 and *Davies v.*  
 22 *Krasna*, (1975) 14 Cal.3d 502—which hold that constructive trusts only arise at the time  
 23 they are put into effect by a court, after determining that the elements of California Civil  
 24 Code §§ 2223 and 2224 have been met. *Wilson*, 659 F.3d at 954–55. Nevertheless, the  
 25 *Wilson* panel stated, “in *Boylan*, we scoffed at the notion that a constructive trust could  
 26 not come into existence until a court so decided.” *Id.* (citing *Boylan*, 392 F.3d at 1004).  
 27  
 28

1 In *American Master Lease LLC v. Idanta Partners, Ltd.*, (2014) 225 Cal.App.4th  
 2 1451, 1485, as modified (May 27, 2014), observed that state courts continue to make it  
 3 clear under California law: “A constructive trust is an involuntary equitable trust created  
 4 by operation of law as a remedy to compel the transfer of property from the person  
 5 wrongfully holding it to the rightful owner. [Citations.] The essence of the theory of  
 6 constructive trust is to prevent unjust enrichment and to prevent a person from taking  
 7 advantage of his or her own wrongdoing. [Citations.]” (*Communist Party v. 522*  
 8 *Valencia, Inc.* (1995) 35 Cal.App.4th 980, 990.) Imposition of “[a] constructive trust is  
 9 an equitable remedy to compel the transfer of property by one who is not justly entitled  
 10 to it to one who is. [Citation.]” (*Habitat Trust for Wildlife, Inc. v. City of Rancho*  
 11 *Cucamonga* (2009) 175 Cal.App.4th 1306, 1332; accord, *Farmers Ins. Exchange v. Zerin*  
 12 (1997) 53 Cal.App.4th 445, 457.) It is not “a substantive claim for relief.” (*PCO, Inc. v.*  
 13 *Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th  
 14 384, 398.; see *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001)  
 15 88 Cal.App.4th 781, 793, [“[a] constructive trust is not a substantive device but merely a  
 16 remedy...”].) The issue of whether to impose a constructive trust is an equitable issue for  
 17 the court. (See *Fowler v. Fowler* (1964) 227 Cal.App.2d 741, 747 [“it is for the trial  
 18 court to decide whether” the plaintiff has proven entitlement to a constructive trust].)”  
 19 (*American Master Lease LLC*, 225 Cal.App.4th at 1485.)

20 There is no substantive right to a constructive trust, it is a remedy. Federal  
 21 interpretation of California law is incorrect. Nothing attaches to any funds allegedly  
 22 embezzled to Kuwait’s bank account.

23 However, where the Plaintiff really loses here is for the following reasons:

24 In *Boylan*, the government brought a civil action for forfeiture alleging a fraud  
 25 committed by James Sexton on the 25 appellants and 53 other victims. The facts of the  
 26 fraud alleged by the government were undisputed by the appellants and for the purposes  
 27  
 28

1 of appeal were assumed to be true. *Boylan*, 392 F.3d at 1003. This is not the case here.  
2 The facts are disputed by all the claimants.

3 In *Boylan*, the government initially took defaults even though they knew who the  
4 victims were. The only parties to the forfeiture case were the victims of the actual fraud,  
5 not the criminal defendant or fraudster or innocent owner. Under these unique facts  
6 where there were victim only claimants, the 9<sup>th</sup> Circuit allowed standing. Prudential  
7 standing was not even discussed in *Boylan*. There is no authority that provides  
8 prudential standing for a mixed bag of victim claimants and the actual parties involved in  
9 the conversion of the funds.

10 Since 2004, *Boylan* has been criticized and is an outlier case. The Plaintiff  
11 government always argues in other forfeiture cases for exceptions to *Boylan* like they did  
12 here when they were adverse to KAS and moving to strike his claim. Incredibly, because  
13 something is not right, Plaintiff's counsel is now arguing for an expansion of *Boylan* to  
14 alleged crime victims in a disputed embezzlement/fraud case where the alleged  
15 wrongdoers are and were also claimants.

16 The Plaintiff is judicially estopped from now changing positions like this. It is  
17 highly prejudicial to the Noval Claimants who joined the Plaintiff in many of these same  
18 positions that the Court then ruled on. Now that is easier to side with Kuwait Plaintiff is  
19 literally doing a 180 here.

20 Here are the other reasons found by Districts Courts why *Boylan* does not apply to  
21 save Kuwait's claim.

22 In *Glen-Mady, supra*, 590 F. Supp. 2d at 1302, another Court clearly pointed out  
23 that *Boylan* did even begin to address prudential standing:

24 "In particular, the *Boylan* decision does not address the separate prudential strand  
25 of the standing doctrine. See *United States v. Lazarenko*, 476 F.3d 642, 651–52  
26 (9th Cir.2007) (holding that even if litigants had Article III standing to contest  
27 criminal forfeiture, "we would still dismiss because this case raises prudential  
28

1 concerns ...”); see also *Fulfillment Serv. Inc. v. United Parcel Serv.*, 528 F.3d 614  
2 (9th Cir.2008) (prudential standing addresses concerns apart from Article III  
3 standing). Thus, even if the *Boylan* decision suggests the government or the court  
4 must give direct written notice to the victim/investors in this case because it  
5 reasonably appears they have Article III standing, it does not preclude this court  
6 from reaching a different conclusion under the doctrine of prudential standing.  
7 See, e.g., *Gonzales v. Department of Homeland Security*, 508 F.3d 1227, 1235 (9th  
8 Cir.2007) (“issues that are not raised or discussed are unstated assumptions on  
9 non-litigated issues [and] are not precedential holdings binding further  
10 decisions”).”

11 This is a CAFRA case. This is not a Rule 32.2 case. In April 2000, Congress  
12 amended Section 981, Title 18, United States Code, to provide that forfeited assets could  
13 be restored to crime victims of the offense giving rise to forfeiture. 18 U.S.C. §  
14 981(e)(6). The amendment reflects a policy choice to have the Attorney General use civil  
15 forfeiture laws as a means of restoring assets to crime victims. In adopting this forfeiture/  
16 victim remission model, Congress left it to the discretion of the Attorney General to  
17 address victim claims through a remission process that occurs after the successful  
18 prosecution of the forfeiture case. 18 U.S.C. § 981(d) (“The Attorney General shall have  
19 sole responsibility for disposing of petitions for remission or mitigation with respect to  
20 property involved in a judicial forfeiture proceeding”);

21 Crime victims do not have standing to contest forfeiture cases. This applies to all  
22 crime victims. (See *United States v. One–Sixth–Share*, 326 F.3d 36, 45 (1st Cir. 2003)  
23 (family of murder victim has no standing to contest forfeiture of defendant's property:  
24 “Congress has provided for justice a different way; it has provided that the Government,  
25 which stands for all citizens, may take the criminal's property by forfeiture, and it has  
26 limited those who may assert competing claims”).

27 In *Glen-Mady* the Court also held:  
28



1 “The court is persuaded by plaintiff's argument that Congress's explicit referral of  
2 victims' claims to forfeited assets to the discretion of the Attorney General;  
3 combined with the absence of statutory language negating the application of the  
4 prudential standing doctrine to the potential claims of victim/investors, leads to the  
5 conclusion that victim/investors in this case lack prudential standing. See 18  
6 U.S.C. § 983(d) (defining innocent owners entitled to protection from forfeiture  
7 and omitting specific reference to crime victims). To decide otherwise, to convert  
8 this forfeiture case into a trust administration proceeding, would shun the  
9 procedures Congress deliberately enacted to vindicate victim interests in forfeited  
10 property, in contravention of circuit precedent. See *Lazarenko*, 476 F.3d at 652  
11 (“Moreover, affording third parties standing under the circumstances here, before  
12 a district court holds an ancillary proceeding, would shun the procedures Congress  
13 deliberately enacted to vindicate third-party claims”).”

14 *Glen-Mady*, 590 F. Supp. 2d at 1302-04.

15 The *Glen-Mady* Court made it clear that 9<sup>th</sup> Circuit law controls the prudential  
16 standing issue:

17 The prudential standing analysis set forth above finds support in the court of  
18 appeals' decision in *United States v. Bright*, 353 F.3d 1114, 1123–25 (9th  
19 Cir.2004). In *Bright*, the defendant pleaded guilty to five counts of mail fraud and  
20 was ordered to pay restitution to the victims of the fraud scheme. *Id.* at 1116. At  
21 sentencing, the district court inquired about the availability of money that the  
22 Postal Service had seized and forfeited to satisfy the defendant's restitution  
23 obligation. *Id.* at 1117. The prosecutor responded the forfeited assets were not  
24 available for restitution. *Id.* On appeal, the defendant argued, among other things,  
25 that the district court's equitable Article III powers obligated it to order that the  
26 forfeited funds be applied toward restitution. *Id.* at 1124.

1 The court of appeals rejected the argument, noting that the exercise of Article III  
 2 equitable power presumes a right of action and Congressional silence on the  
 3 question of remedies. *Id.* at 1124. The forfeiture statutes, the court concluded, do  
 4 not lend themselves to the exercise of such equitable power. In language that  
 5 anticipates the prudential standing issue raised in this case, the court wrote:  
 6 “Requiring district courts to attempt to apply forfeited funds toward restitution  
 7 would not carry out [the Civil Asset Forfeiture Reform Act's (CAFRA)] mandate,  
 8 but rather would conflict with the grant of discretion CAFRA expressly and  
 9 specifically gives to the Postal Service.” *Id.* at 1124. These considerations—  
 10 concerns about reaching a decision in conflict with Congress's grant of discretion  
 11 to the Attorney General—come to bear here as well.

12 *Glen-Mady*, 590 F. Supp. 2d at 1303-04.

13 Finally, additional considerations support the conclusion that alleged  
 14 embezzlement victims like Kuwait lack prudential standing. First, a practical  
 15 consequence of *Boylan*'s Article III standing analysis is that it grafts a restitution remedy  
 16 for crime victims onto the back of the government's authority to preserve assets for  
 17 forfeiture by seizing, restraining or, as in this case, by filing a *lis pendens*. *See*, 18 U.S.C.  
 18 § 985(a)(2). The policy choice, however, to import asset forfeiture-like preservation  
 19 authority directly into the victim restitution statute is one for Congress to make, not the  
 20 Plaintiff who has now become schizophrenic in this case.

21 The Noval Claimants also cite to *United States v. Real Prop. Located in Los*  
 22 *Angeles, California*, No. 22CV06314-CAS-KSX, 2023 WL 3564732, at \*5–6 (C.D. Cal.  
 23 Apr. 17, 2023, Hon. CHRISTINA A. SNYDER) where at the Plaintiff's request, this  
 24 Court held:

25 “And at least one court in this district has concluded that establishing Article III  
 26 under *Boylan* requires that the fraud giving rise to the constructive trust be proven.  
 27 See *United States v. Real Property Located at 475 Martin Lane*, 2006 WL  
 28



8421793, at \*4 (C.D. Cal. July 12, 2006) (finding “*Boylan's* constructive trust holding [ ] inapplicable” where perpetrator of the alleged fraud denied committing the fraud “because *Boylan's* holding presumed a proven fraud”).”

“In light of these considerations, it is not clear to the Court that claimant's assertion that he is a fraud victim is sufficient to confer Article III standing in this forfeiture action.” at 6.

Here again, no proven fraud. The fraud is hotly contested.

The Plaintiff and the Noval Claimants should have also argued lack of prudential standing as well in the prior motion to strike the KAS claim. However, the adage better late than never applies because the Constitution and judicial law requires both. Now, the Noval Claimants are squarely placing the prudential standing argument front and center.

The United States Court of Appeals for the District of Columbia Circuit does not subscribe to the limited *Boylan, supra* constructive theory of standing in forfeiture cases. In *United States v. BCCI Holdings (“Luxembourg”), S.A.*, 46 F.3d 1185 (D.C.Cir. 1995), the court of appeals considered the claims of an intervenor in a forfeiture action brought under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961–1968 (1988 and Supp. V 1993). A number of intervening parties claimed to be “entitled to a constructive trust over the funds [to be forfeited] because the alternative ... would unjustly enrich BCCI.” *Luxembourg* 46 F.3d at 1188. The court of appeals rejected the notion that such a constructive trust could be asserted as a cognizable interest under the forfeiture statute. Under the applicable statute, a third-party's interest in the property could trump the government's only if that interest was superior “at the time of the commission of the acts which gave rise to the forfeiture of the property.” 18 U.S.C. § 1963(1)(6)(A). “[A] third party's claim” is thus “to be measured not as it might appear at the time of litigation, but rather as it existed at the time the illegal acts were committed.” *Luxembourg*, 46 F.3d at 1190. But a constructive trust, as “a remedy that a court devises after litigation,” could not “be[ ] shown to exist at the time the acts were committed.” *Id.*

at 1191; *see also*, *United States v. All Assets Held at Bank Julius Baer & Co.*, 772 F. Supp. 2d 191, 200 (D.D.C. 2011). Most courts do not recognize constructive trust standing.

Another reason to reject Kuwait's claim is because it is not necessary for this Court to apply equity to create standing as there is a valid legal remedy and process in place. The Plaintiff already said they are going to give any recovery to Kuwait. (Recognition of Claims of the Government of the State of Kuwait Pursuant to 28 U.S.C. § 2465, at ¶ 5) Dkt. 117.

**C. Kuwait Must Go through the Victim Remission Process, Not as a Claimant/Co-Plaintiff in this Forfeiture Case**

In *United States v. One Hundred Thirty Three U.S. Postal Serv. Money Ords.*, 780 F. Supp. 2d 1084, 1097–98 (D. Haw. 2011), *aff'd sub nom. United States v. One Hundred Thirty-Three (133) U.S. Postal Serv. Money Ords. Totaling \$127,479.24 In U.S. Currency*, 496 F. App'x 723 (9th Cir. 2012), Judge J. Michael Seabright issued a fantastic and well-reasoned opinion about this. Judge Seabright said that,

“...the court follows the principle that a constructive trust is unnecessary where alternative legal remedies are available. *See, e.g., United States v. Approximately \$133,803.53 in U.S. Currency Seized from Washington Mutual Bank*, 683 F.Supp.2d 1090, 1095–96 (E.D.Cal.2010) (reasoning that a constructive trust is not necessary where a potential remedy is available under a remission process under 18 U.S.C. § 983(d) and 28 C.F.R. § 9.8); *United States v. Ribadeneira*, 105 F.3d 833, 837 n. 5 (2d Cir.1997) (indicating that remission process is an adequate remedy at law obviating the need for an equitable remedy of a constructive trust); *United States v. Lavin*, 942 F.2d 177, 185 (3d Cir.1991) (“For the majority of third parties ... who assert an equitable, rather than a legal, entitlement to relief, petitioning

1 the Attorney General for remission and mitigation remains the exclusive  
2 remedy.”)”

3 Stated alternatively, the potential availability of remission for victims means such  
4 claimants lack prudential standing because they are not “within the zone of interest  
5 Congress intended to protect within [the] civil forfeiture proceeding.” *Approximately*  
6 *\$133,803.53 in U.S. Currency, supra*, 683 F.Supp.2d at 1095. Victims have the remission  
7 process. Under 28 C.F.R. § 9.8, certain “victims” of “an offense underlying the forfeiture  
8 of property, or of a related offense, who do not have a present ownership interest in the  
9 forfeited property” may seek remission. 28 C.F.R. § 9.8 (emphasis added). In general,  
10 courts should be careful in imposing constructive trusts in this forfeiture context.  
11 Recognizing claims of general creditors and litigating potentially conflicting claims of  
12 victims and owners to seized assets “convert[s] the forfeiture action into something akin  
13 to a bankruptcy proceeding.” *Approximately \$133,803.53 in U.S. Currency*, 683  
14 F.Supp.2d at 1096. Doing so conflicts with the remission process. *See, United States v.*  
15 *One Hundred Thirty Three U.S. Postal Serv. Money Ords.*, 780 F. Supp. 2d 1084, fn 17.

16 If there is a forfeiture, Kuwait then must obtain relief through the remission  
17 process via the Attorney General, not in this case. In *McCarthy v. Martinelli*, No.  
18 22CV7359AMDJRC, 2023 WL 385405, at \*2 (E.D.N.Y. Jan. 11, 2023), a respected  
19 District Court in New York affirmed the Eastern District and Hawaii court’s view:

20 “Forfeited assets may be restored to crime victims of the offense giving rise to  
21 forfeiture. 18 U.S.C. § 981(a); 18 U.S.C. § 981(e)(6) (“[T]he Attorney General ...  
22 is authorized to retain property forfeited pursuant to this section, or to transfer  
23 such property on such terms and conditions as he may determine as restoration to  
24 any victim of the offense giving rise to forfeiture.”). However, “**Congress granted**  
25 **the Attorney General sole discretion to address claims by victims through a**  
26 **remissions process that occurs after the successful prosecution of the**  
27 **forfeiture case.**” *United States v. Approximately \$133,803.53 in U.S. Currency*,

683 F. Supp. 2d 1090, 1094-95 (E.D. Cal. 2010) (citing 18 U.S.C. § 981(d)) (“The Attorney General shall have sole responsibility for disposing of petitions for remissions or mitigation with respect to property involved in a judicial forfeiture proceeding.”). The remission process allows for victims to recover “a specific amount ... directly caused by the criminal offence, or related offense, that was the underlying basis of the forfeiture.” 28 C.F.R. § 9.8(b).”

*Id.* at \*2 (emphasis added).

The Plaintiff has no authority to circumvent this process by allowing a claim by Kuwait in this case. Similarly, the Plaintiff has no authority to grant Kuwait prudential standing.

In *United States v. Nava*, 404 F.3d 1119, 1123–24 (9th Cir. 2005), the 9<sup>th</sup> Circuit displayed the difference between civil and criminal forfeiture, very different vehicles. The government may seek the forfeiture of property in either a civil or a criminal proceeding. The principal civil drug forfeiture provision, 21 U.S.C. § 881, operates *in rem* against the property itself on the theory that the property itself is guilty of wrongdoing. *See, Austin v. United States*, 509 U.S. 602, 614–18 (1993); *United States v. Lester*, 85 F.3d 1409, 1414 n. 8 (9th Cir.1996) (“[A] civil forfeiture is an *in rem* proceeding in which liability attaches to a particular property and not particular institutions or individuals.” (quoting *United States v. \$814,254.76 in United States Currency*, 51 F.3d 207, 210–11 (9th Cir.1995))).

In contrast, criminal forfeiture provisions operate *in personam* against the assets of the defendant and serve as part of the penalty for the defendant's conviction. *See, e.g.*, 18 U.S.C. § 1963; 21 U.S.C. § 853; *see also, United States v. \$814,254.76*, 51 F.3d 207, 210–11 (9<sup>th</sup> Cir. 1995) (“A criminal forfeiture is an *in personam* judgment against a person convicted of a crime” (citing *Alexander v. United States*, 509 U.S. 544, 558–59 n. 4, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993); *United States v. Certain Real Property at 2525 Leroy Lane*, 910 F.2d 343, 346 (6th Cir.1990) (§ 853 “authorizes an *in personam*

1 action against a defendant in a criminal case, and forfeiture in such a case is imposed as  
2 a sanction against the defendant upon his conviction.”).

3 In a proceeding under Section 853, “the sole legal issue before the court is the  
4 ownership interests of the competing parties, a consideration that is often irrelevant in an  
5 in rem civil forfeiture action, which turns instead on the culpability of the owner and the  
6 role of the property in the prohibited activity.” *United States v. McHan*, 345 F.3d 262,  
7 281 (4<sup>th</sup> Cir. 2003) (Luttig, J., concurring in part and concurring in the judgment in part);  
8 *see also*, *United States v. \$814,254.76*, 51 F.3d at 210–11. Because the principal criminal  
9 forfeiture statute for drug offenses, 21 U.S.C. § 853, acts in personam, it permits the  
10 forfeiture of the defendant's interests only, not the property of innocent parties. *See*,  
11 *United States v. Chavez*, 323 F.3d 1216, 1219 (9th Cir.2003) (citing *Lester*, 85 F.3d at  
12 1413).

13 In this case, the personal assets of the Noval Claimants are not at stake. They  
14 already own the properties at issue and have legal title. The Plaintiff’s sole basis here to  
15 win is to try and drag the purchase of the assets into some wrongdoing.

16 Kuwait is merely a potential victim here in a case where there are disputed facts.  
17 There was never a criminal case. The facts are highly contested. The Plaintiff is bound  
18 to the remedies provided in CAFRA, not other types of criminal forfeiture cases that  
19 have no bearing here. The law in this case and the law on civil forfeiture cases is very  
20 well decided, an alleged victim of embezzlement does not have standing, Article III or  
21 Prudential Standing, to come into a civil forfeiture case and start claiming ownership.

22 It is patently ridiculous if you think about. Kuwait cannot be the owner under any  
23 theory. Crime victims do not become owners of property. Someone who has their  
24 money stolen from them does not become the owner of a real property if some of that  
25 money was used to buy the property or like in this case, a refinance for many of the  
26 properties.

Civil forfeiture decides forfeitability and innocent owners, period. Kuwait is neither. Kuwait had no business intervening in this case and the Plaintiff, if it wins, can give money or rem to whoever it chooses. But for now, the Noval Claimants do not need to be spending time and resources battling against one of the richest countries on Earth plus the United States government simply because it is easier for the Plaintiff to give Kuwait back any winnings from this case. This is not the law nor how this works. Kuwait must follow the remission procedure and it is up to the Attorney General to decide whether to award any forfeited assets to Kuwait.

## **II. CONCLUSION**

The Court should strike the claim of the Government of the State of Kuwait to restore some integrity to these proceedings and apply the law of forfeitures, not the law when convenient for the Plaintiff.

Dated: March 22, 2024

LAW OFFICES OF  
RONALD RICHARDS & ASSOCIATES, A.P.C

By: /s/ Ronald Richards

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