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23 **UNITED STATES DISTRICT COURT**
 24 **NORTHERN DISTRICT OF CALIFORNIA**

25 *In the Matter of Summons Number HSI-PH-2025-
 26 082814-001 & HSI-PH-2025-082819-001:*

27 J. DOE,

28 Movant,

v.

29 THE UNITED STATES DEPARTMENT OF
 30 HOMELAND SECURITY,

31 Respondent.

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50 Misc. Case No. 3:25-mc-80325-PHK

51 **NOTICE OF MOTION AND
 52 MOTION FOR ATTORNEYS' FEES
 53 UNDER EAJA AND RULE 45(d)(1)
 54 OF THE FEDERAL RULES OF
 55 CIVIL PROCEDURE**

56 Date: March 12, 2026
 57 Time: 1:30PM
 58 Courtroom: F, 15th Floor

59 Hon. Peter H. Kang

NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES

PLEASE TAKE NOTICE that on March 12, 2026, at 1:30PM, or as soon as the matter may be heard before the Honorable Peter H. Kang, Movant moves for the recovery of attorneys' fees and costs in the amount of \$92,984.18 pursuant to 28 U.S.C. § 2412, the Equal Access to Justice Act ("EAJA"), and Rule 45(d)(1) of the Federal Rules of Civil Procedure. This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, concurrently filed declarations and exhibits, all pleadings and papers on file, and any other arguments and evidence that may be presented.

In compliance with Local Rule 54-5(b)(1), Movant, through counsel, states that counsel for the parties exchanged several emails between February 2 and February 10, 2026, and spoke by phone on February 9, 2026, for the purpose of attempting to resolve any disputes with respect to this motion. While Respondent expressed a willingness to discuss a resolution to this matter, Respondent would not agree that Movant was entitled to attorneys' fees, and the parties were unable to reach a resolution as the deadline for filing this motion under Local Rule 54-5(a) neared.

STATEMENT OF RELIEF REQUESTED

Movant seeks an award of fees and costs as a prevailing party under EAJA and as a party subject to undue burden or expense under Rule 45(d)(1) of the Federal Rules of Civil Procedure in the amount of \$92,984.18 (\$91,626.50 in fees; \$1,357.68 in costs).

MEMORANDUM OF POINTS AND AUTHORITIES TO BE DECIDED

STATEMENT OF THE ISSUES TO BE DECIDED

1. Whether Movant is entitled to an award of fees and costs in the amount of \$92,984.18 as a prevailing party under EAJA?
2. Whether Movant is entitled to an award of fees and costs in the amount of \$92,984.18 as a party subject to undue burden or expense under Rule 45(d)(1) of the Federal Rules of Civil Procedure?

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INTRODUCTION

Movant, through counsel, moves the Court to grant them an award of fees and costs under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), and Rule 45(d)(1) of the Federal Rules of Civil Procedure for time reasonably expended by counsel to address the Department of Homeland Security’s (“DHS’s”) invalid, abusive, and unduly burdensome administrative subpoenas. Movant operates the “MontCo Community Watch” Facebook and Instagram accounts, which document public immigration enforcement activity in Montgomery County, Pennsylvania, and share content embodying Movant’s personal moral and political commitments to immigrants’ rights. In a climate in which DHS officials have demonstrated a growing hostility towards constitutionally-protected speech critical of immigration enforcement operations, Movant operates these accounts anonymously due to fear of government retribution. Movant’s fears were justified: On September 11, 2025, Respondent issued two administrative Summons to Meta Platforms, Inc. (“Meta”) seeking to unmask the identities of the users behind the MontCo Community Watch Facebook and Instagram accounts.

14 Respondent lacked any basis, in fact or in law, for issuing the Summonses in the first instance, let
15 alone any basis to force Movant to fight them in court. The Summonses exclusively cited a federal statute,
16 19 U.S.C. § 1509, that only authorizes customs investigations relating to merchandise. But the MontCo
17 Community Watch accounts have nothing to do with commerce and do not import anything. DHS does
18 not claim otherwise. After Movant filed a Motion to Quash on October 16, 2025, Respondent revealed
19 that the Summonses were issued not to investigate activity even tangentially related to commerce or
20 importation, but to investigate an imagined violation of the criminal law, 18 U.S.C. § 115, which addresses
21 assaults, kidnappings, or murders of certain federal officials, or conspiracies, threats, or attempts to do so,
22 with the intent to impede such official's performance of official duties. Even so, Respondent offered no
23 information to support its assertion that Movant's constitutionally-protected operation of the MontCo
24 Community Watch accounts related in any way to a violation of any criminal law, much less one involving
25 threats to assault, kidnap, or murder federal agents. And Respondent proved unable to identify any support
26 for the assertion that DHS had the authority to issue the Summonses to administer or enforce the cited
27 criminal law.

28 Despite their patent legal and factual insufficiencies, Respondent chose to prolong the proceedings

1 on Movant's Motion to Quash, rather than withdrawing the Summonses (as DHS did when faced with
 2 similar objections to other similar "unmasking" subpoenas). Respondent continued to litigate the Motion
 3 to Quash for three months, forcing Movant to expend resources seeking an order from this Court that
 4 would protect Movant's First Amendment rights. Only after a hearing before this Court on January 14,
 5 2026—in which Respondent took numerous unsupportable positions in defense of the Summonses—did
 6 Respondent withdraw the Summonses, presumably after concluding that this Court was poised to describe
 7 the unlawful and abusive nature of their conduct in a written order.

8 Having been forced to devote substantial resources to challenging the Summonses, which were
 9 unduly burdensome and for which Respondent lacked substantial justification, Movant is entitled to fees
 10 under both EAJA and Rule 45(d)(1) of the Federal Rules of Civil Procedure. EAJA entitles litigants that
 11 meet certain net worth requirements to recover reasonable attorneys' fees and costs from the federal
 12 government if they are a "prevailing party", the government fails to show that its position was
 13 "substantially justified," and no "special circumstances make an award unjust." *Ibrahim v. U.S. Dep't of*
 14 *Homeland Sec.*, 912 F.3d 1147, 1167 (9th Cir. 2019) (quoting *Commissioner, I.N.S. v. Jean*, 496 U.S. 154,
 15 158 (1990)). Movant is entitled to reasonable fees and costs under EAJA as a prevailing party, because
 16 the Court's January 28, 2026, order memorializing the parties' stipulated dismissal materially altered the
 17 parties' legal relationship. That order granted Movant the relief they had requested in their Motion to
 18 Quash—that is, Respondent withdrawing the Summonses—as well as Respondent agreeing in a judicially
 19 enforceable order not to issue materially similar subpoenas in the future. Additionally, fees and costs under
 20 EAJA are available because Respondent failed to take substantially justified positions in: (1) issuing the
 21 Summonses without statutory authority to chill Movant's First Amendment rights; and (2) defending
 22 against the Motion to Quash for three months despite the plainly unlawful nature of the Summonses.
 23 Similarly, Movant is entitled to fees and costs under Rule 45(d)(1) of the Federal Rules of Civil Procedure,
 24 which required Respondent to "take reasonable steps to avoid imposing undue burden or expense on a
 25 person subject to the subpoena." Respondent failed to take such reasonable steps by issuing the
 26 Summonses in bad faith, for the improper purpose of chilling Movant's constitutional rights, and in a
 27 manner inconsistent with existing law, by attempting to use Section 1509 to seek records wholly unrelated
 28 to commerce. For these reasons, and others discussed in this Motion, Movant respectfully requests its

1 reasonable fees and costs under EAJA and Rule 45(d)(1) of the Federal Rules of Civil Procedure.

2 BACKGROUND

3 I. The MontCo Community Watch Accounts

4 Through the anonymous MontCo Community Watch Facebook and Instagram accounts, Movant
 5 spreads awareness of immigration enforcement activity in Montgomery County, Pennsylvania, and to
 6 share alerts, documentation, and resources to help inform both the immigrant and non-immigrant
 7 communities within Montgomery County of the rights, due process, and the humanity of their neighbors.
 8 Dkt. No. 1-2 (“Doe Decl.”) at ¶ 4. These accounts provide information about, among other things, where
 9 agents are publicly conducting immigration enforcement activities within Montgomery County.¹ In
 10 addition, Movant posts content to the Facebook and Instagram accounts that reflects Movant’s personal
 11 political and moral beliefs regarding the rights and value of the Montgomery County immigrant
 12 community. Doe Decl at ¶ 8. These accounts are designed to shine a light on government activity and
 13 events of public concern in the community. *Id.* at ¶¶ 4–9. The content that appears in the accounts’ feeds
 14 includes both content that Movant creates and content that they repost as part of a curated feed that the
 15 accounts’ followers can see. *Id.*

16 II. DHS Hostility to First Amendment-Protected Advocacy.

17 At its highest levels, DHS officials have revealed an agency-wide intent to weaponize criminal
 18 and administrative law to intimidate people engaging in protected activities, such as taking pictures or
 19 video of ICE officers or posting such media online, asserting that such long-established First Amendment
 20 activity somehow constitutes illegal harassment or “violence.”² Two days before DHS issued the
 21 Summons here, DHS’s Assistant Secretary for Public Affairs was reported as stating that “videotaping
 22 ICE law enforcement and posting photos and videos of them online is doxing our agents,” and “[w]e will
 23

24 ¹ The accounts do not provide non-public identifying information about the individual agents conducting
 25 these activities.

26 ² Grace Bellinghausen, *Secretary Kristi Noem addresses surge in attacks on ICE agents in Tampa*, WBMA
 27 (Jul. 13, 2025), <https://abc3340.com/news/nation-world/secretary-kristi-noem-addresses-surge-in-attacks-on-ice-agents-in-tampa-dhs-us-immigration-and-customs-enforcement-agents-florida-department-of-homeland-security-july-13-2025> (In July 2025, DHS Secretary Kristi Noem announced that “[v]iolence is anything that threatens [ICE officers] and their safety,” including “videotaping them where they’re at when they’re out on operations”).

1 prosecute those who illegally harass ICE agents to the fullest extent of the law.”³ And more recently, the
 2 DHS’s Office of Public Affairs again stated that following or recording a federal law enforcement officer
 3 “sure sounds like obstruction of justice” in response to which “we will hunt you down and you will be
 4 prosecuted”⁴

5 In addition to “informally ‘enforcing’ their disapproval of at-the-scene recording by shoving,
 6 beating and even shooting ... journalists, freelance photographers, and others with cellphone cameras,”⁵
 7 DHS is openly targeting people anonymously sharing videos and photos of ICE activity online. One week
 8 before DHS issued the Summonses, it issued an administrative “Immigration Enforcement Subpoena” to
 9 Meta seeking to unmask six other Instagram accounts, at least three of which were publishing or reposting
 10 content critical of DHS’s activity in Los Angeles.⁶ After account holders filed motions to quash the
 11 subpoena, asserting First Amendment arguments, DHS withdrew the subpoena targeting those accounts.⁷

12 **III. DHS Issues the Summonses to Meta.**

13 On September 11, 2025, Meta received two documents labeled “Summons” from DHS citing to
 14 19 U.S.C. § 1509. Doe Decl.; Dkt. Nos. 1-3, 1-4. The Summonses demanded that records be produced
 15 “[p]ursuant to an investigation being conducted by U.S. Department of Homeland Security, Homeland
 16 Security Investigations[.]” *Id.* The Summonses specifically sought: “the identity of the [MontCo
 17 Community Watch accounts’] user, consisting of name, postal code, country, all email address(es) on file,

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 19
 20 ³ Matthew Cunningham-Cook, *DHS Claims Videotaping ICE Raids Is ‘Violence’*, THE AMERICAN
 21 PROSPECT (Sep. 9, 2025), <https://prospect.org/2025/09/09/2025-09-09-dhs-claims-videotaping-ice-raids-is-violence/>.

22 ⁴ C.J. Ciaramella, *DHS Says Recording or Following Law Enforcement ‘Sure Sounds Like Obstruction of
 23 Justice’*, REASON (Dec. 22, 2025), <https://reason.com/2025/12/22/dhs-says-recording-or-following-law-enforcement-sure-sounds-like-obstruction-of-justice/>.

24 ⁵ Walter Olson, *DHS Says Videotaping ICE Agents Is Illegal. Federal Courts Disagree*, CATO INSTITUTE
 25 (Oct. 9, 2025) <https://www.cato.org/commentary/dhs-says-videotaping-ice-agents-illegal-federal-courts-disagree>.

26 ⁶ E.g., J. Doe’s Motion to Quash Administrative Subpoena, *In the Matter of Subpoena Number FY25-ELC-0105: Doe v. DHS*, No. 3:25-mc-80286, (N.D. Cal. Sep. 18, 2025), Dkt. No. 1 (Motion to quash filed by
 27 a Doe associated with a targeted account); *Doe/LBRRN v. DHS*, No. 25-mc-80288-AGT, (N.D. Cal. Sep. 19, 2025), Dkt No. 1 (same for a second Doe); *Doe v. DHS*, No. 25-mc-80284, (N.D. Cal. Sep. 18, 2025),
 Dkt No. 1 (same for third Doe).

28 ⁷ Stipulation of Dismissal Pursuant to Rule 41(a)(1)(A)(ii), Nos. 3:25-mc-80284, 3:25-mc-80286, 3:25-mc-80288 (N.D. Cal. Dec. 8, 2025).

1 date of account creation, registered telephone numbers, IP address at account sign up, and logs showing
 2 IP address and date stamps for account accesses from 02/01/2025 to the present.” *Id.*

3 Neither the government nor Meta informed Movant of these Summons before the original return
 4 date reflected on their face. According to Respondent’s submissions in this litigation, someone from Meta
 5 asked Respondent about the basis for the Summons, and someone from DHS’s Homeland Security
 6 Investigations responded by referencing 18 U.S.C. § 115. Dkt. No. 28-1. Meta apparently did not press
 7 further and did not file any motions in relation to the Summons. Instead, on October 3, 2025, Meta
 8 notified Movant via e-mail that unless “[Meta] receive[s] a copy of documentation that [Movant has] filed
 9 in court challenging this legal process,” by October 13, 2025, it “will respond to the requesting agency
 10 with information about the requested [] account[s].” Doe Decl. at ¶ 10.

11 **IV. Movant and DHS Litigate Movant’s Motion to Quash.**

12 On October 16, 2025, Movant filed the Motion to Quash in the United States District Court for the
 13 Northern District of California seeking an order quashing the Summons in their entirety. Dkt. No. 1
 14 (“Motion to Quash”). The following day, this Court ordered “Meta (including its officers, directors,
 15 employees, agents, and those acting under the control of or in concert with Meta) not to produce any
 16 documents or information in response to the summonses at issue here without further order of the Court,”
 17 pending resolution of the Motion to Quash. Dkt. No. 3 at 3. Both parties subsequently briefed their
 18 positions on the Motion to Quash. Dkt. No. 28; Dkt. No. 30. With its brief, Respondent submitted a
 19 barebones declaration from Eric D. McLoughlin, “Special Agent in Charge (SAC) for the U.S. Department
 20 of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Homeland Security
 21 Investigations (HSI) in Philadelphia, Pennsylvania.” Dkt. No. 28-1 at ¶ 1. Mr. McLoughlin stated only
 22 that HSI “receiv[ed] information concerning the stalking and gathering of intelligence on federal agents”
 23 and referenced the following rationale for the Summons:

24 4. On September 26, 2025, after additional correspondence from Meta, HSI responded to Meta by
 25 citing “18 U.S.C § 115” and explaining “It’s a federal crime to assault, kidnap, or murder—or
 26 threaten to do so—a federal law enforcement officer with the intent to impede, intimidate, or
 27 interfere with them in the performance of their official duties. This deals with the open organization
 28 of people to impede immigration[-]based investigations and operations. This is also a serious threat
 to law enforcement officer safety.”

5. The information HSI sought from Meta is relevant to an investigation within HSI’s mission and
 investigative authority.

1 *Id.* at ¶ 4-5. Movant filed a reply in further support of its Motion on December 23, 2025, Dkt. No. 30, and
2 this Court held a hearing on the Motion to Quash on January 14, 2026, at which both parties appeared and
3 argued. Exhibit A (“Notes of Testimony”).

4 Almost immediately after the hearing, Respondent informed Meta that it was withdrawing the
5 Summons, and on January 21, 2026, Respondent filed a “Notice of Withdrawal of Summons”
6 informing the Court that it had withdrawn the Summons by email to Meta on January 16, 2026. Dkt.
7 No. 34. The parties subsequently submitted a Stipulation of Dismissal on January 28, 2026, in which the
8 parties agreed that “(1) DHS no longer seeks any information pursuant to the summonses that are the
9 subject of the Motion to Quash; (2) DHS will not attempt to reissue the withdrawn summonses, nor will
10 it issue any other administrative summonses or subpoenas seeking information about Montco Community
11 Watch in connection with social media activity prior to January 20, 2026, or any materially similar social
12 media activity generated after that date; and; (3) Movant consents to dismissal of their Motion to Quash.”
13 Dkt. No. 36. The parties also agreed that neither party would “waive any other rights or remedies they
14 may have” by agreeing to dismiss the Motion to Quash. *Id.* On the same day, this Court ordered that the
15 Stipulation to Dismissal was “so ordered,” and dismissed the case. Dkt. No. 37.

ARGUMENT

I. Movant is Entitled to Attorneys' Fees Under EAJA.

Under EAJA, Movant is entitled to the reasonable fees and costs that Movant’s counsel expended to litigate the Motion to Quash because Respondent’s decisions to issue the Summonses and to litigate the Motion to Quash were not substantially justified. “The clearly stated objective of the EAJA is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby to deter the unreasonable exercise of Government authority.” *Ibrahim v. U.S. Dep’t of Homeland Sec.*, 912 F.3d 1147, 1166–67 (9th Cir. 2019) (quoting *Ardestani v. I.N.S.*, 502 U.S. 129, 138 (1991)). EAJA entitles individual litigants to recover attorneys’ fees and costs from the federal government if: (1) they meet U.S.C. § 2412(d)(2)(B)’s net worth requirements; (2) they are a “prevailing party”; (3) the government fails to show that its position was “substantially justified”; (4) no “special circumstances make an award unjust”; and (5) the fees requested are reasonable. *See id.* at 1167 (quoting *Commissioner, I.N.S. v. Jean*, 496 U.S. 154, 158 (1990)). Here, Movant meets the net worth requirements under 28 U.S.C. §

1 2412(d)(2)(B) because Movant is an individual with a net worth not exceeding \$2,000,000 at the time
 2 Movant filed the Motion to Quash. *See* Dkt. Nos. 39–40. Additionally, Movant is a prevailing party
 3 because the Court’s January 28, 2026, order incorporating the parties’ stipulation, which prevents
 4 Respondent from issuing materially similar subpoenas regarding MontCo Community Watch, materially
 5 altered Movant’s legal relationship with Respondent. Next, Respondent cannot satisfy its burden to show
 6 that it took substantially justified positions in issuing the Summons without reasonable legal or factual
 7 bases or continuing to defend the Summons from the Motion to Quash despite these glaring
 8 insufficiencies. Finally, because there are no “special circumstances [to] make an award unjust” and
 9 Movant seeks reasonable attorneys’ fees and costs, this Court should grant Movant’s request for attorneys’
 10 fees and costs under EAJA.

11 **a. Movant is a Prevailing Party.**

12 Movant is a prevailing party because the Court’s January 28, 2026, order incorporating the parties’
 13 stipulation materially altered the parties’ legal relationship. The Supreme Court has held that a litigant is
 14 a prevailing party if their lawsuit resulted in a “material alteration of the legal relationship of the parties”
 15 that was “judicially sanctioned.” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Hum.*
 16 *Res.*, 532 U.S. 598, 604–605 (2001); *Perez–Arellano v. Smith*, 279 F.3d 791, 793–94 (9th Cir. 2002)
 17 (applying *Buckhannon*’s prevailing party requirements to EAJA fee petitions). The “material alteration”
 18 inquiry asks whether the resolution of a case “modifies] the defendant’s behavior in a way that directly
 19 benefits the plaintiff.” *Richard S. v. Dep’t of Developmental Servs.*, 317 F.3d 1080, 1087 (9th Cir. 2003)
 20 (quoting *Barrios v. Cal. Interscholastic Fed’n*, 277 F.3d 1128, 1134 (9th Cir. 2002)); *id.* at 1087 (“the
 21 present settlement agreement materially altered the legal relationship between the parties, because the
 22 defendants were required to do something directly benefitting the plaintiffs that they otherwise would not
 23 have had to do”).

24 *Buckhannon* does not require that a court issue a decision on the merits in order for a litigant to be
 25 a prevailing party. A litigant can be a prevailing party even if they enter into a settlement agreement, as
 26 long as a court incorporates that agreement into an order and the agreement materially alters the parties’
 27 legal relationship. *Richard S.*, 317 F.3d at 1088. The Ninth Circuit decision in *Carbonell v. I.N.S.* is
 28 instructive, as the court agreed with the appellant that he “qualifies as a ‘prevailing party’ under EAJA

1 because he obtained a court order incorporating a voluntary stipulation which awarded him a substantial
 2 portion of the relief he sought.” 429 F.3d 894, 895 (9th Cir. 2005).

3 As in *Carbonell*, where the litigant was held to have materially altered his legal relationship with
 4 I.N.S. when he achieved the primary goal of his litigation (a stay of deportation) through a stipulated
 5 agreement, Movant materially altered their legal relationship with Respondent by achieving the primary
 6 goal of their litigation—quashing the Summons—as well as the further benefit of Respondent agreeing
 7 not to issue materially similar subpoenas in the future. As a result of the Court’s January 28, 2026, order,
 8 DHS was “required to do something directly benefitting the plaintiff[] that they otherwise would not have
 9 had to do.” 429 F.3d at 900. Additionally, Movant is the prevailing party because the material alteration
 10 in the parties’ legal relationship was judicially sanctioned through this Court’s incorporation of the parties’
 11 stipulation into its January 28, 2026, order. As in *Carbonell*, the Court’s issuance of an order incorporating
 12 the stipulation stamped the parties’ agreement with judicial imprimatur, because if DHS were to reissue
 13 its Summons (or a materially similar subpoena), Movant could return to this Court to enforce their
 14 stipulated agreement.

15 Movant has achieved a judicially sanctioned, material alteration of their legal relationship with
 16 DHS through the Court’s January 28, 2026, order and is therefore a prevailing party under EAJA.

17 **b. Neither Respondent’s Basis for Issuing the Summons Nor Its Legal Positions in
 18 Opposing the Motion to Quash Were Substantially Justified.**

19 Respondent cannot satisfy its burden to prove that *both* the Summons themselves and
 20 Respondent’s legal defense of those Summons were substantially justified in light of both the law and
 21 the facts. A prevailing party is rebuttably presumed to be entitled to EAJA fees unless the government can
 22 show its position was substantially justified. *Thomas v. Peterson*, 841 F.2d 332, 335 (9th Cir. 1988). “The
 23 government bears the burden of showing that it was substantially justified in ‘both its litigation position
 24 and the underlying agency action giving rise to the civil action.’” *Meza-Vazquez v. Garland*, 993 F.3d
 25 726, 729 (9th Cir. 2021) (citing *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013)). That means “the
 26 government’s position must have a ‘reasonable basis both in law and fact.’” *Meier*, 727 F.3d at 870; *id.*
 27 (the government’s position must have been “justified to a degree that could satisfy a reasonable person.”
 28 (quoting *Meier*, 727 F.3d at 870)).

i. Respondent's Issuance of the Summons was not Substantially Justified.

Respondent’s decision to issue the Summons was not substantially justified, because: (1) the Summons are not authorized under 19 U.S.C. § 1509; (2) the Electronic Communications Privacy Act (“ECPA”) prohibits Meta from disclosing the information sought; and (3) the Summons violate core First Amendment protections.

1. The Summons are not authorized under 19 U.S.C. § 1509.

Respondent was not substantially justified in issuing the Summonses because they exceeded DHS's statutory authority under 19 U.S.C. § 1509. Dkt. Nos. 1 at 7–10; 30 at 2–9. The Summonses were issued under the title “SUMMONS,” “To Appear and/or Produce Records,” under “19 U.S.C. § 1509.” Dkt. Nos. 1-3, 1-4. Section 1509 confers limited authority to DHS in customs investigations to seek “records,” as defined in the statute, related to the importation of merchandise. 19 U.S.C. § 1509(d). But neither the plain text of the statute, nor the principles of statutory construction, nor the statute’s legislative history support DHS’s interpretation of the statute allowing it to employ Section 1509 to investigate speech critical of ICE agents or baseless allegations of violations of federal criminal law related to threats to such agents. When offered multiple opportunities—in its written response to the Motion to Quash and in argument at a live hearing—Respondent proved unable to identify a single statutory provision authorizing the Summonses outside the context of a customs investigation involving importation of merchandise.

Section 1509 authorizes the U.S. Customs Service to request any “record” that may be relevant to a customs investigation for the purpose of “1) ascertaining the correctness of any entry [of merchandise]; 2) determining the liability of any person for duties, fees, and taxes due to the United States; 3) determining liability for fines and penalties or 4) insuring compliance with the laws of the United States administered by the [Customs Service].” *Id.*, §§ 1509(a), (d)(1)(A). The first three categories permit limited requests pertaining to imports and exports. *Id.*, §§ 1508, 1509(a)(2), (d)(1)(A). Under the statutory construction principles of *ejusdem generis* and *noscitur a sociis*, the fourth category is restrained by the first three. *See Yates v. United States*, 574 U.S. 528 (2015). Otherwise, the first three categories would be rendered meaningless and the statute would be “giv[en] unintended breadth” inconsistent with Section 1509’s legislative history. *Yates*, 574 U.S. at 543; Dkt. No. 30 at 4—7. As such, Section 1509(a) only authorizes

1 subpoenas to produce records pertaining to imports and exports and records for which there is probable
2 cause to believe pertain to merchandise that is illegal to import. DHS's own Office of Inspector General
3 ("OIG") adopted this straightforward reading of Section 1509 in a 2017 report condemning exactly this
4 type of DHS overreach.⁸

5 Respondent does not dispute that the subscriber information for social media accounts publishing
6 speech critical of ICE that DHS seeks is completely unrelated to the importation/exportation of
7 merchandise. Instead, Movant's activities, as demonstrated by the comprehensive list of MontCo
8 Community Watch's public Instagram and Facebook account activity filed at dockets 30-3 through 30-5,
9 involved communications by the account holders of their moral and political views and of local news and
10 events related to DHS's public immigration enforcement activities. DHS's stated purpose of investigating
11 speech critical of ICE agents, or alleged threats to such agents, is beyond the purpose of the statute and
12 the authority granted therein. Therefore, DHS was not substantially justified in issuing the Summonses
13 under Section 1509.

2. ECPA Bars Meta from Complying with the Summons

15 Because DHS lacked statutory authority to issue the Summons, Respondent could not have been
16 substantially justified in issuing the Summons because ECPA prohibits Meta from providing the
17 requested information. The Stored Communications Act (the “SCA”), enacted as Title II of the ECPA, 18
18 U.S.C. §§ 2701–2713, “protects the privacy of stored electronic files held by providers about their users,
19 customers, and subscribers.” *See In re AT&T Non-Disclosure Order*, No. 25-MR-1769, 2025 WL
20 3079326, at *3 (D. N. M. Nov. 4, 2025). Under the SCA, “a provider of remote computing service or
21 electronic communication service to the public” may only disclose “information pertaining to a subscriber
22 to or customer of such service” if certain specific requirements are met, 18 U.S.C. § 2702(c), including
23 the condition that the governmental entity use a valid “administrative subpoena authorized by a Federal
24 or State statute,” *id.*, § 2703(c)(2). As an electronic communication service provider under the ECPA, *see*
25 *In re AT&T*, 2025 WL 3079326 at *1, Meta may be compelled to provide the information sought by DHS

⁸ Management Alert – CBP’s Use of Examination and Summons Authority Under 19 U.S.C. § 1509, DHS: Office of Inspector General (Nov. 16, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-18-18-nov17.pdf> (“OIG Rpt.”); see also Dkt. No. 1 at 9–10 (discussing OIG Rpt.).

1 in the Summons only through a warrant, a court order, consent, or a statutorily authorized administrative
 2 subpoena. 18 U.S.C. §§ 2702(a)(3), 2703(c). For the reasons discussed above, DHS lacked statutory
 3 authority under 19 U.S.C. § 1509 to issue the Summons. As such, Meta was prohibited under ECPA
 4 from disclosing to DHS the subscriber records requested in the Summons. DHS could not have been
 5 substantially justified in issuing the Summons because Meta could not lawfully comply with them under
 6 ECPA.

7 Respondent offered a bogus procedural argument in response to this clear-cut ECPA limitation.
 8 Dkt. No. 28 at 10. And at the Motion to Quash hearing, Respondent argued only that applying the ECPA
 9 would render DHS's authority under Section 1509 a nullity. Neither argument passes the smell test.
 10 Respondent's procedural argument has already been dispensed with. *See* Dkt. No. 30 at 1–2. And there is
 11 no conceivable issue with the ECPA overriding DHS's actual authority under Section 1509 to request
 12 records relating to importation of merchandise. The only reason ECPA is triggered here is because
 13 Respondent has attempted to reach beyond its authority under Section 1509 to get subscriber data from an
 14 electronic communications service provider that does not relate to any importation of merchandise that
 15 might be governed by Section 1509.

16 **3. The Summons violate Movant's First Amendment Rights.**

17 Finally, Respondent's position in response to Movant's First Amendment objections was not
 18 substantially justified. It is beyond legitimate dispute that the Summons chilled Movant's First
 19 Amendment rights without achieving a sufficiently important governmental interest.

20 The First Amendment protects the rights to criticize governmental activity, to publish recordings
 21 of government officers conducting official duties in public, and to associate anonymously with others. *See*
 22 Dkt. No. 1 at 10–15; Dkt. No. 30 at 9–11. This Court has recognized “the ability to speak anonymously
 23 on the Internet promotes the robust exchange of ideas and allows individuals to express themselves freely
 24 without ‘fear of economic or official retaliation … [or] concern about social ostracism.’” *United States v.*
 25 *Google LLC*, 690 F. Supp. 3d 1011, 1023 (N.D. Cal. 2023) (quoting *In re Anonymous Online Speakers*,
 26 661 F.3d 1168, 1173 (9th Cir. 2011) and *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341–42
 27 (1995)). The unmasking of anonymous online speakers chills their First Amendment rights. *Ams. for*
 28 *Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (“[C]ompelled disclosure of affiliation with groups

1 engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of
 2 governmental action.” (quoting *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958)); *id.* at 610
 3 (“when it comes to ‘a person’s beliefs and associations,’ ‘[b]road and sweeping state inquiries into these
 4 protected areas … discourage citizens from exercising rights protected by the Constitution’” (quoting
 5 *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971)). Here, DHS’s efforts to unmask Movant implicate this
 6 recognized right to anonymous association and chill Movant’s First Amendment rights to criticize
 7 governmental activity and to publish content regarding DHS officials’ public exercise of their official
 8 duties, by putting Movant in fear of baseless and retaliatory persecution. *See* Doe Decl. at ¶ 19 (“I believe
 9 the government is targeting me because it disagrees with the content of the speech that I have posted and
 10 reposted online.”); *id.* (“I believe that my anonymity is the only thing standing between me and unfair and
 11 unjust persecution by the government of the United States.”).

12 Because the Summonses implicate Movant’s First Amendment rights, DHS’s decision to issue the
 13 Summonses could be substantially justified only if DHS could satisfy exacting scrutiny. *Bonta*, 594 U.S.
 14 at 607; *Ward v. Thompson*, No. 22-16473, 2022 WL 14955000, at *1 (9th Cir. Oct. 22, 2022) (applying
 15 *Bonta*’s exacting scrutiny test to a governmental investigative subpoena). “[E]xacting scrutiny requires
 16 that there be ‘a substantial relation between the disclosure requirement and a sufficiently important
 17 governmental interest,’ … and that the disclosure requirement be narrowly tailored to the interest it
 18 promotes.” *Bonta*, 594 U.S. at 611 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010) (cleaned up) and citing
 19 *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). Baseless and generic accusations of alleged criminal activity
 20 are insufficient to meet this standard. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (“[w]e long have recognized
 21 that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes
 22 cannot be justified by a mere showing of some legitimate governmental interest”). Additionally, federal
 23 administrative subpoenas may be unenforceable if it “would be an abusive use of the court’s process,”
 24 such as if the subpoenas were “issued for an improper purpose, such as to harass the [recipient].” *United*
 25 *States v. Powell*, 379 U.S. 48, 51, 58 (1964); *see In re Subpoena No. 25-1431-014*, No. MC 25-39, 2025
 26 WL 3252648, at *12 n.109 (E.D. Pa. Nov. 21, 2025) (collecting cases from recent months in which United
 27 States District Courts have quashed administrative subpoenas issued by Federal entities for improper
 28 purposes).

1 Here, the Summons could never have survived exacting scrutiny because DHS has failed to show
 2 how any of Movant’s activities might possibly violate federal criminal law. DHS proved unable to make
 3 this showing because, as a review of MontCo Community Watch’s public Instagram and Facebook
 4 account activity demonstrates, Movant’s online conduct is entirely lawful. Rather than serving any
 5 legitimate interest in investigating criminal conduct, DHS officials’ public statements demonstrate a desire
 6 to stop the public from advocating against their immigration policies by threatening anyone who is
 7 “videotaping ICE law enforcement and posting photos and videos of them online” with criminal
 8 prosecution. *See* Dkt. No. 30 at 14–15. Thus, DHS has not met its burden to demonstrate the Summons
 9 are directed to the important governmental interest of a good faith criminal investigation. Because the
 10 Summons cannot survive exacting scrutiny, DHS was not substantially justified in issuing them.

11 **ii. Respondent’s Positions in Opposing the Motion to Quash were not
 12 Substantially Justified.**

13 In addition to lacking substantial justification for issuing the Summons⁹, Respondent’s conduct
 14 in opposing the Motion to Quash was also not substantially justified. As such, Movant is independently
 15 entitled to fees under EAJA for Respondent’s litigation conduct.

16 As an initial matter, Respondent’s decision not to withdraw the Summons until January 16, 2026,
 17 was not substantially justified. Movants filed their Motion to Quash on October 16, 2025, identifying that
 18 the Summons were unlawful for the reasons described in Section I.b.i. above. Dkt. 1. Instead of
 19 withdrawing the Summons, as DHS did in response to similar motions to quash other administrative
 20 “unmasking” subpoenas, Respondent submitted a brief on December 3, 2025. In it, Respondent incorrectly
 21 asserted that Section 1509 granted DHS sweeping statutory authority to investigate violations of the
 22 criminal law unrelated to commerce and that the First Amendment did not protect against administrative
 23 subpoenas to unmask anonymous social media users. Dkt. 28 at 10, 13. Respondent’s position under §

24 ⁹ If this Court agrees that Respondent’s pre-litigation conduct in issuing the Summons was not
 25 substantially justified, it need not decide whether Respondent’s litigation conduct (i.e., its opposition to
 26 the Motion to Quash) was substantially justified. EAJA entitles litigants to fees where the United States
 27 engaged in unreasonable pre-litigation conduct, irrespective of whether the United States later made
 28 reasonable arguments to defend it. *United States v. Marolf*, 277 F.3d 1156, 1163–64 (9th Cir. 2002)
 (“reasonable litigation position does not establish substantial justification in the face of a clearly
 unjustified underlying action.”); *Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013) (“Because the
 government’s underlying position was not substantially justified, we need not address whether the
 government’s litigation position was justified”).

1 1509 could not be squared with the text of the statute. And its First Amendment argument ignored decades
 2 of binding Supreme Court precedent, relying instead on an unpublished decision—*Doe v. United States*
 3 *SEC*, No. 3:11-mc-80184, 2011 WL 4593181 (N.D. Cal. Oct. 4, 2011) (“*SEC I*”—while ignoring that the
 4 magistrate’s analysis in that case was rejected weeks later by the District Court in *Doe v. United States*
 5 *SEC*, No. 3:11-mc-80209, 2011 WL 5600513, at *3 (N.D. Cal. Nov. 17, 2011) (discussing *In re*
 6 *Anonymous Online Speakers*, 661 F.3d 1168 (9th Cir. 2011)).

7 Movant responded to each argument made by Respondent in its Reply to Respondent’s Opposition
 8 to Motion to Quash, which Movant filed December 23, 2025. Dkt. 30. But Respondent still did not
 9 withdraw the Summonses. At the January 14, 2026, hearing, the Court gave Respondent an opportunity
 10 to withdraw the Summonses, which it declined. Ex. A, N.T. 1/14/2026 at 7:20–21 (“we don’t have a
 11 present intention to discuss that [i.e., withdrawal of the Summonses] right now”). Instead, the Respondent
 12 chose to roll the dice in the hopes of convincing the Court that the Summonses should not be quashed.
 13 Only after proving unable to substantially justify its positions at the hearing, likely recognizing that it had
 14 failed to convince the Court of its positions, did Respondent withdraw the Summonses. Respondent’s
 15 decision to wait three months after Movant filed their Motion to Quash, and to feel out the Court’s
 16 reception to its meritless arguments, before withdrawing its defective Summonses was not substantially
 17 justified.

18 In addition, Respondent took numerous specific positions during the January 14, 2026, hearing
 19 that were not substantially justified. For example, when pressed for “some theory” as to how the
 20 Summonses would survive a finding that section 1509 does not apply, Respondent’s counsel responded,
 21 without explanation, that “this investigation and the subpoena for records from a communications provider
 22 is within the scope of traditional Customs duties if the Court’s interpretation was to limit the scope that
 23 way,” *id.* at 13:10–14. As the Court immediately indicated, that position was not substantially justified
 24 especially in light of Respondent’s “concession that there are no cases using 1509 to go after subscriber
 25 information.” *Id.* at 13:15–18.

26 Next, Respondent asserted that DHS administers and enforces the criminal law as it pertains to
 27 alleged violations of 18 U.S.C. § 115 for threats or impediments to DHS’s officers. *Id.* at 13:22–15:8. As
 28 the Court noted, however, “normally, if there’s a criminal statute out there, agree that DOJ is the

1 department -- or the U.S. Attorney's Office is the department that -- that enforces those laws or administers
 2 those laws[.]” *Id.* at 14:16–19. When the Court asked Respondent’s counsel for *any* support for its position,
 3 including even “nonbinding authority elsewhere in the country that supports that position,” *id.* at 15:5–7,
 4 Respondent could not provide a single authority, *id.* at 14:23–15:8. Respondent’s inability to provide any
 5 support for the proposition that DHS administers the criminal laws using its Section 1509 summons power
 6 demonstrates that this position was not substantially justified.

7 Respondent’s other unjustified positions included asserting that the 2017 OIG report which
 8 highlighted the “limit[ed] scope of third party summonses” under Section 1509 to “‘records’ pertaining to
 9 prohibited *merchandise*, or records required to be kept under 19 U.S.C. § 1508”, relating to the importation
 10 of merchandise,¹⁰ was not relevant because the report addressed the conduct of Customs and Border
 11 Protection, not ICE. *Id.* at 23:19–20. As the Court observed, “they’re all under DHS,” *id.* at 23:22–23, and
 12 Respondent could not provide “any authority that an Agency Inspector General report with regard to one
 13 part of the Agency somehow doesn’t apply to the entirety of the Agency,” *id.* at 24:1–4.

14 These examples highlight that Respondent’s conduct in litigating the Motion to Quash throughout
 15 this action was unreasonable. As such, Movant is entitled to attorneys’ fees and costs under EAJA for
 16 such conduct.

17 **c. Movant Seeks Reasonable Fees and Costs.**

18 To calculate an award of attorneys’ fees, the Court begins with the “lodestar,” the number of hours
 19 reasonably expended multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 435
 20 (1983). The “resulting product is *presumed* to be the reasonable fee to which counsel is entitled.” *Pa. v.*
 21 *Del. Valley Citizens Council for Clean Air*, 478 U.S. 546, 564 (1986) (internal quotations omitted).
 22 “Where a plaintiff has obtained excellent results, [their] attorney should recover a fully compensatory fee.
 23 Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases
 24 of exceptional success an enhanced award may be justified.” *Hensley*, 461 U.S. at 435. As detailed in the
 25 accompanying declarations of counsel, the fees for each attorney calculated using the lodestar method in
 26 this case are as follows:

27
 28 ¹⁰ “Management Alert – CBP’s Use of Examination and Summons Authority Under 19 U.S.C. § 1509.” Available at <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-18-18-nov17.pdf>.

Attorney¹¹	Years of Experience	Total Hours	Hourly Rate	Amount
Jonathan H. Feinberg	25	2.5	\$725	\$1,812.50
Grace Harris	6	7.2	\$315	\$2,268.00
Seth Kreimer	49	4.5	\$800	\$3,600.00
Susan M. Lin ¹²	22	23.1	\$650	\$15,015.00
Stephen A. Loney, Jr.	22	82.9	\$630	\$52,227.00
Ariel Shapell	5	26	\$290	\$7,540.00
Jacob Snow	19	15.8	\$580	\$9,164.00
TOTAL		162		\$91,626.50

i. Movant Claims a Reasonable Number of Hours.

“[C]ourts generally defer to the ‘winning lawyer’s professional judgment as to how much time [] was required to spend on the case.’” *Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012). This principle applies equally in pro bono cases, including because private and public interest law firms forego matters where they would receive rates far above those permitted under EAJA and opportunities to help others in need. *Cf. Dennis v. Chang*, 611 F.2d 1302, 1306 n.12 (9th Cir. 1980) (“Legal services organizations often must ration their limited financial and manpower resources. Allowing them to recover fees enhances their capabilities to assist in the enforcement of congressionally favored individual rights.”).

Here, the number of hours devoted to this matter reflect the extraordinary efforts required to develop arguments and evidence to protect Movant from having their identity exposed to a government agency that has targeted their social media accounts using plainly unlawful subpoenas when Movant has done nothing more than exercise their rights to free speech and association on matters of public importance. *See* Dkt. Nos. 42-48.

¹¹ Further demonstrating the reasonableness of Movant’s request, Movant’s counsel exercised billing discretion by not seeking recovery for (a) *de minimis* time spent by team members who are not listed below, and (b) more than 40 hours of research conducted by an ACLU of Pennsylvania legal fellow.

¹² Although the appearances of attorneys Harris and Lin were not entered in this Court before Respondent withdrew the Summons, their input, review and strategic consultation with co-counsel on this matter (including their law partner, attorney Feinberg) were a critical component of the successful representation of Movant and are compensable. See, e.g., *Cruceta v. City of New York*, No. 10-5059, 2012 WL 2885113, at *4 (E.D.N.Y. Feb. 7, 2012) (citing *Shadis v. Beal*, 692 F.2d 924, 927 (3d Cir. 1982)).

ii. **Movant's Attorneys Are Entitled to Enhanced Rates.**

As Movant is located in the Philadelphia metropolitan area, and lead counsel in this matter practice primarily in Philadelphia, counsel has calculated their fees based on the prevailing rates for civil rights attorneys of similar skill and experience in the Philadelphia market. The standard public interest attorney fee schedule published by Community Legal Services (CLS) in Philadelphia has been widely accepted by federal courts as “a fair reflection of the prevailing market rates in Philadelphia.”¹³ *MP ex rel. VC v. Parkland Sch. Dist.*, No. 5:20-cv-4447, 2021 WL 5177012, at *2 (E.D. Pa. Nov. 5, 2021) (quoting *Maldonado v. Houstoun*, 256 F.3d 181, 187 (3d Cir. 2001)). An attorney’s admission to the bar is the relevant starting point for evaluating experience. *Id.*

Moreover, enhanced rates above the cost-of-living adjusted rate can be justified by “a special factor,” 28 U.S.C. § 2412(d)(2)(A)(ii), such as when there is a limited availability of “attorneys having some distinctive knowledge or specialized skill needful for the litigation in question.” *Pierce v. Underwood*, 487 U.S. 552, 572 (1988). In general, special factors can include “an identifiable practice specialty such as patent law, or knowledge of foreign law or language.” *Id.* An attorney’s experience in earlier litigation involving similar issues is sufficient prior experience to justify an enhanced fee award, *Nat. Res. Def. Council, Inc. v. Winter*, 543 F.3d 1152, 1160–61 (9th Cir. 2008), when their “knowledge or skill is not available elsewhere at the statutory rate” within the market where they practice, *Nat’l Family Farm Coal. v. EPA*, 29 F.4th 509, 511 (9th Cir. 2022) (internal quotation omitted).

In this case, Movant’s lead attorneys are specialists in complex constitutional litigation. *See Dkt. Nos. 42-48.* Movant’s counsel are also uniquely suited to their role in this case, having previously litigated similar motions to quash DHS subpoenas. *See Dkt. No. 48 at ¶ 7.* Movant would not have been able to locate counsel with comparable knowledge or skill within the relevant markets who would have taken on a matter of this size, complexity, and intensity at the statutory rate. *See Dkt. Nos. 42-48.* Locating counsel with that knowledge or skill is particularly challenging for motions like Movant’s, which often must be filed in a matter of days in order to stop the disclosure of the identities of the account holders to Respondent.

¹³ See <https://clsphila.org/about-community-legal-services/attorney-fees/> (last visited Jan. 28, 2026).

iii. Movant is Entitled to Recover Out-Of-Pocket Costs.

2 The EAJA provides that the prevailing party can recover litigation expenses and costs in addition
3 to attorneys' fees. 28 U.S.C. §§ 2412(a)(1), 2412(d)(1)(A); *see Int'l Woodworkers of Am., AFL-CIO,*
4 *Local 3-98 v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1985) (upholding "costs that are ordinarily billed to
5 a client," including those for telephone calls, postage, air courier and attorney travel expenses); *Bickley v.*
6 *CenturyLink, Inc.*, No. CV 15-1014-JGB, 2016 WL 9046911, at *8 (C.D. Cal. Nov. 29, 2016) (awarding
7 costs for travel expenses and time). Here, Movant seeks an award for "other expenses" including out-of-
8 pocket costs typically billed to a client, including the cost of transcripts, filing fees, and travel expenses.
9 *See* Dkt. No. 48 at ¶ 15; Dkt. No. 46 at ¶ 17–18. Specifically, as detailed in the accompanying declarations
10 of attorneys Loney and Snow, *see* Dkt. No. 48 at ¶ 15, Dkt. No. 46 at ¶ 17–18, Movant's counsel incurred
11 the following reimbursable costs:

Item	Cost
N.D. Cal. filing fees	\$52.00
Airfare (for 1/14/26 hearing)	\$610.68
Lodging (for 1/14/26 hearing)	\$192.87
Carfare (for 1/14/26 hearing)	\$152.58
Airport parking (for 1/14/26 hearing)	\$84.00
Transcript (for 1/14/26 hearing)	\$265.55
TOTAL	\$1,357.68

II. Movant is Entitled to Attorneys' Fees Under Rule 45(d)(1).

In addition to their entitlement to fees and costs under EAJA, Movant is entitled to fees and costs under Rule 45(d)(1) of the Federal Rules of Civil Procedure, as DHS issued the Summons without statutory authority and for the improper purpose of chilling Movant's First Amendment rights. Rule 45(d)(1) provides that “[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Under the Rule, “[t]he court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.” *Id.* A court may “impose sanctions when a party issues a subpoena in bad faith, for an improper purpose, or in a manner inconsistent with existing law.” *Legal Voice v. Stormans*

1 *Inc.*, 738 F.3d 1178, 1185 (9th Cir. 2013); *see, e.g.*, *Beaver Cnty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, No. 16-MC-80076-JSC, 2017 WL 446316, at *4 (N.D. Cal. Feb. 2, 2017) (awarding \$51,961 in attorneys' fees under Rule 45(d)(1) for time spent defending against a motion to compel an overbroad third-party subpoena); *McAllister v. St. Louis Rams, LLC*, No. 2:17-MC-157-AB (KSX), 2018 WL 6164281, at *6 (C.D. Cal. July 2, 2018) (finding that a \$47,000 attorneys' fee award would be reasonable under Rule 45(d)(1) for time spent preparing and arguing a motion to quash third-party subpoenas).

7 DHS issued the Summonses in a manner inconsistent with existing law, because it did not have
8 the authority under 19 U.S.C. § 1509 to seek information unrelated to the importation or exportation of
9 merchandise. As further discussed in Section I.b.i.1. above, Section 1509 authorizes DHS to issue
10 subpoenas for records related to commerce. The statute's subpoena authority does not extend to
11 investigations of alleged violations of the criminal law, the unfounded basis upon which Respondent's
12 claimed to have issued the Summonses. *See* Dkt. No. 28 ("Respondent's Opposition to Motion to Quash").

13 Additionally, the Summonses were issued for the improper purpose of chilling Movant's First
14 Amendment rights to associate anonymously and speak on issues of public importance. As discussed in
15 Section II of the Background above, immediately prior to the Summonses' issuance and during the course
16 of this litigation, DHS made public statements demonstrating hostility to First Amendment protected
17 activity critical of their immigration enforcement operations. Additionally, Respondents issued similar
18 unmasking subpoenas for other social media accounts critical of their conduct, which they later withdrew.
19 Given the absence of *any* evidence to support the proposition that the Summonses were issued to
20 investigate Movant's supposed involvement in conspiracies, threats, or attempts to assault, kidnap, or
21 murder federal officials, it is clear that the Summonses were issued to silence Movant, a patently improper
22 purpose.

23 By serving and then litigating the Summonses without legal authority or proper purpose,
24 Respondent failed to take reasonable steps to avoid imposing undue burden or expense on Movant. As a
25 result, Movant bore the undue burden of litigating the Motion to Quash. Therefore, Movant is entitled to
26 fees and costs under Rule 45(d)(1) of the Federal Rules of Civil Procedure.

27
28

CONCLUSION

For the foregoing reasons, Movant respectfully requests that the Court award them attorneys' fees and costs in the amount of \$92,984.18.

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Respectfully submitted,

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