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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HEALTHVANA, INC.,	)	Case No. CV 20-04305 DDP (SKx)
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
v.	)	<b>FOR SUMMARY JUDGMENT</b>
	)	
TELEBRANDS CORP.,	)	
	)	[Dkt. 70]
Defendants.	)	
	)	

Presently before the court is a Motion for Summary Judgment filed by Defendants Telebrands Corp.; Hempvana, LLC; Bulbhead.com, LLC; and Healthbloom, LLC (collectively, "Telebrands"). Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

**I. Background**

Since 2014, Plaintiff Healthvana, Inc. ("Healthvana") has operated a "digital health platform" named Healthvana ("the Healthvana app"). Healthvana holds a trademark in the name "Healthvana" for use in connection with software and software as a service. Prior to 2020, the Healthvana app focused on delivering the results of HIV tests, and tests for other sexually transmitted diseases, to patients. With the onset of the COVID-19 pandemic in

1 March 2020, however, Healthvana shifted the focus of its digital  
2 platform to Covid test records, and later vaccination records. At  
3 all times, Healthvana's customers have not included end users of  
4 software or the Healthvana app, but rather governmental entities,  
5 healthcare firms, medical officers, laboratories, and employers.

6 Telebrands markets and sells "As Seen on TV" consumer  
7 household products via websites, phone numbers, and big box  
8 retailers such as Home Depot, Lowes, and Walgreens. Among  
9 Telebrands' products is a line of "Hempvana" products. Upon the  
10 outset of the pandemic, Telebrands made an effort to market and  
11 sell a hand sanitizer product. Because, however, retailers were  
12 historically reluctant to carry products associated with hemp,  
13 Telebrands opted to market a hand sanitizer under the name  
14 "Healthvana." Telebrands' marketing efforts initially included a  
15 "direct response" television commercial and a product website, and  
16 later expanded to big box stores.

17 In late March 2020, Healthvana contacted Telebrands to express  
18 concerns about Telebrands' use of the name "Healthvana."  
19 Telebrands' counsel indicated that Telebrands would rebrand the  
20 hand sanitizer as "Handvana" and change all "Healthvana" hand  
21 sanitizer marketing. Telebrands did not admit to any wrongdoing.  
22 By April 17, Telebrands represented that all changes had been made.  
23 Several hundred thousand bottles of hand sanitizer, however, had  
24 already been produced with the older, "Healthvana" label. Those  
25 bottles were filled and shipped to big box customers sometime after  
26 April 17. Once those pre-printed bottles had run out, subsequent  
27 shipments of hand sanitizer were delivered in the new "Handvana"  
28 bottles.

1 On May 12, 2020, Healthvana filed the instant suit. The  
2 Complaint alleges causes of action for trademark infringement,  
3 unfair competition, and false advertising in violation of both  
4 federal and state law, as well as a cause of action for violation  
5 of the AntiCybersquatting Consumer Protection Act ("ACPA").  
6 Telebrands now moves for summary judgment on all claims.

## 7 **II. Legal Standard**

8 Summary judgment is appropriate where the pleadings,  
9 depositions, answers to interrogatories, and admissions on file,  
10 together with the affidavits, if any, show "that there is no  
11 genuine dispute as to any material fact and the movant is entitled  
12 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
13 seeking summary judgment bears the initial burden of informing the  
14 court of the basis for its motion and of identifying those portions  
15 of the pleadings and discovery responses that demonstrate the  
16 absence of a genuine issue of material fact. See Celotex Corp. v.  
17 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
18 the evidence must be drawn in favor of the nonmoving party. See  
19 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the  
20 moving party does not bear the burden of proof at trial, it is  
21 entitled to summary judgment if it can demonstrate that "there is  
22 an absence of evidence to support the nonmoving party's case."  
23 Celotex, 477 U.S. at 323.

24 Once the moving party meets its burden, the burden shifts to  
25 the nonmoving party opposing the motion, who must "set forth  
26 specific facts showing that there is a genuine issue for trial."  
27 Anderson, 477 U.S. at 256. Summary judgment is warranted if a  
28 party "fails to make a showing sufficient to establish the

1 existence of an element essential to that party's case, and on  
2 which that party will bear the burden of proof at trial." Celotex,  
3 477 U.S. at 322. A genuine issue exists if "the evidence is such  
4 that a reasonable jury could return a verdict for the nonmoving  
5 party," and material facts are those "that might affect the outcome  
6 of the suit under the governing law." Anderson, 477 U.S. at 248.  
7 There is no genuine issue of fact "[w]here the record taken as a  
8 whole could not lead a rational trier of fact to find for the  
9 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio  
10 Corp., 475 U.S. 574, 587 (1986).

11 It is not the court's task "to scour the record in search of a  
12 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
13 1278 (9th Cir. 1996). Counsel have an obligation to lay out their  
14 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d  
15 1026, 1031 (9th Cir. 2001). The court "need not examine the entire  
16 file for evidence establishing a genuine issue of fact, where the  
17 evidence is not set forth in the opposition papers with adequate  
18 references so that it could conveniently be found." Id.

### 19 **III. Discussion**

#### 20 A. Trademark claims

21 The "core element" of a trademark infringement claim is the  
22 likelihood that the similarity of the marks will confuse consumers  
23 as to the source of goods or services. Freecycle Network, Inc. v.  
24 Oey, 505 F.3d 898, 902 (9th Cir. 2007). Relevant factors include  
25 the strength of the mark, proximity of the goods, similarity of the  
26 marks, evidence of actual confusion, marketing channels used, the  
27 degree of care likely to be exercised by consumers, the defendant's

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1 intent, and likelihood of expansion of product lines. AMF Inc. v.  
2 Sleekcraft Boats, 599 F.2d 941, 348-49 (9th Cir. 1979).

3 As an initial matter, Telebrands appears to suggest that a  
4 Sleekcraft, or likelihood of confusion, analysis is not applicable  
5 in the first instance unless the goods at issue are "related." The  
6 Ninth Circuit has explained that the purpose of a Sleekcraft  
7 analysis is to determine "whether consumers would likely be  
8 confused by related goods." Network Automation, Inc. v. Advanced  
9 Sys. Concepts, Inc., 638 F.3d 1137, 1145 (9th Cir. 2011) (emphasis  
10 added); see also M2 Software, Inc. v. Madacy Ent., 421 F.3d 1073,  
11 1080 (9th Cir. 2005) (describing Sleekcraft analysis' role in  
12 determining "whether there is a likelihood of confusion between the  
13 parties' allegedly related goods") (emphasis added). Thus, the  
14 argument appears to go, where goods are not related, a Sleekcraft  
15 analysis is neither necessary nor informative. This Court has,  
16 more than twenty years ago, applied a "relatedness" test as a  
17 threshold question in this sense.<sup>1</sup> See Bally Total Fitness Holding  
18 Corp. v. Faber, 29 F. Supp. 2d 1161, 1163 (C.D. Cal. 1998). The  
19 majority of courts, however, including several of the authorities  
20 cited by Telebrands, have since treated relatedness of goods not as  
21 an independent, predicate factor, but rather as a part of the  
22 Sleekcraft analysis, specifically as part of the analysis related  
23 to the "proximity" of the goods. See, e.g., Surfivor Media, Inc.  
24 v. Survivor Prods., 406 F.3d 625, 633 (9th Cir. 2005); Entrepreneur  
25 Media, Inc. v. Smith, 279 F.3d 1135, 1147 (9th Cir. 2002); Matrix

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27 <sup>1</sup> This Court went on, however, to assume for the sake of  
28 argument that the goods in question were related and conduct a full  
Sleekcraft analysis.

1 Motor Co. v. Toyota Jidosha Kabushiki Kaisha, 290 F. Supp. 2d 1083,  
2 1090 (C.D. Cal. 2003). The court finds that this approach is  
3 appropriate, and looks to relatedness as part of the overall  
4 confusion analysis.

5 1. Strength of Plaintiff's Mark

6 "The purpose of examining the strength of the plaintiff's mark  
7 is to determine the scope of trademark protection to which the mark  
8 is entitled." Surfvivor, 406 F.3d at 631. Here, the term  
9 "Healthvana" is fanciful or perhaps suggestive, insofar as the term  
10 evokes something that is somewhat health-related. In either case,  
11 the mark merits some degree of protection. Id.

12 2. Proximity/Relatedness of the Goods

13 As explained above, relatedness of the goods in question is  
14 but one of the factors relevant to likelihood of confusion.  
15 Healthvana's software product, however, bears little resemblance to  
16 Telebrands' hand sanitizer. Healthvana contends, correctly, that  
17 goods need not directly compete with one another to qualify as  
18 "related." Products and services related to a general industry  
19 may, in some cases, be related to each other, insofar as consumers  
20 are likely to associate one party's products with the other party.  
21 See Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp., 174 F.3d  
22 1036, 1056 (9th Cir. 1999). In Brookfield, for example, the  
23 plaintiff marketed "MovieBuff" software containing entertainment  
24 industry-related software. Id. at 1042. The defendant, a  
25 nationwide video chain, then, in the relatively early days of  
26 internet marketing, registered the web domain moviebuff.com. The  
27 Ninth Circuit found the two goods related, in that "both companies  
28 offer products and services relating to the entertainment industry

1 generally, and their principal lines of business both relate to  
2 movies specifically." Id. at 1056. The court came to the opposite  
3 conclusion, however, in Entrepreneur Media. There, the owners of  
4 Entrepreneur magazine brought trademark infringement claims against  
5 a public relations firm called "EntrepreneurPR," which also  
6 published a quarterly "Entrepreneur Illustrated" press release.  
7 Entrepreneur Media, 279 F.3d at 1138-39. The court concluded that  
8 "the fact that both parties' goods relate generally to  
9 entrepreneurs . . . can carry relatively little weight in  
10 determining the likelihood of confusion. This is so because any  
11 individual or company using the word 'entrepreneur' . . . is likely  
12 to do so because that product or service has something to do with  
13 the world of entrepreneurs." Id. at 1147.

14 Here, although the term "Healthvana" is less descriptive than  
15 "entrepreneur," any entity using any variation on the word "health"  
16 is likely to do so because its product has something to do with  
17 "health." As in Entrepreneur Media, therefore, the fact that both  
18 parties' products relate to the same, very general industry is of  
19 little moment. Furthermore, the universe of health-related  
20 products and services is far broader than that related to, for  
21 example, movies, as was pertinent in Brookfield. In apparent  
22 recognition of this reality, Healthvana suggests that the relevant  
23 universe is not health products generally, but rather Covid-related  
24 products specifically.<sup>2</sup> This argument is not persuasive. First,

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25  
26 <sup>2</sup> Healthvana is not entirely consistent, however, focusing on  
27 both parties' specific Covid-related products while also  
28 recognizing that "both companies offer products and services  
relating to medical issues generally." (Opp. at 14-15.) Indeed,  
for most of its history under the name Healthvana, Plaintiff's  
(continued...)

1 Healthvana's effort to paint Telebrands' product as "Covid hand  
2 sanitizer" (Opposition at 2:8) is not supported in the record.  
3 Although the pandemic undoubtedly played a role in Telebrands'  
4 decision to expand into the sanitizer market, the sanitizer  
5 indisputably has applications beyond the world of Covid.  
6 Telebrands' television advertisement does not use the word "Covid,"  
7 and Healthvana does not point to any other evidence of Covid-  
8 specific marketing in the record. Second, even if Telebrands had  
9 focused on the Covid-related market, the court is skeptical that  
10 Healthvana's phone app software would necessarily be "related to"  
11 every other product in the universe of arguably Covid-related  
12 products, including hand wipes, cleaning solutions, masks, gloves,  
13 face shields, prescription medicines, vaccines, pulse oximeters,  
14 UV-sanitizers, thermometers, and so on. For purposes of a  
15 Sleekcraft analysis, therefore, Healthvana's phone app is not  
16 closely related to Telebrands' moisturizing hand sanitizer.

### 17 3. Similarity of the Marks

18 "Obviously, the greater the similarity between the two marks  
19 at issue, the greater the likelihood of confusion." GoTo.com, Inc.  
20 v. Walt Disney Co., 202 F.3d 1199, 1206 (9th Cir. 2000). The marks  
21 at issue here are displayed below:



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27 <sup>2</sup>(...continued)  
28 "digital health platform" focused on the prevention and management  
of HIV and sexually transmitted diseases.



1 Clearly, the spelling of the two marks is identical, with the  
2 exception of an umlaut in Telebrands' mark. Marks should, however,  
3 "be considered in their entirety and as they appear in the  
4 marketplace." Entrepreneur Media, 279 F.3d at 1144. The color,  
5 font, and imagery incorporated within the two marks are distinct  
6 and distinguishable. Nor do the two marks appear in the same  
7 marketplace, as Healthvana's product is a phone app and Telebrands'  
8 product is a physical good. The similarity of the marks,  
9 therefore, weighs only slightly in favor of confusion.

#### 10 4. Actual Confusion

11 Although evidence of actual confusion is not required to  
12 demonstrate a likelihood of confusion, it "is strong evidence that  
13 future confusion is likely." Off. Airline Guides, Inc. v. Goss, 6  
14 F.3d 1385, 1393 (9th Cir. 1993). As an initial matter, the court  
15 does not agree with Healthvana's assertion that it has presented  
16 evidence of "hundreds of instances of actual confusion." As this  
17 Court has explained, "stand-alone enquiries and misdirected  
18 communications" are not evidence of actual consumer confusion.  
19 Delta Forensic Eng'g, Inc. v. Delta V Biomechanics, Inc., 402 F.  
20 Supp. 3d 902, 910 (C.D. Cal. 2019) (discussing mis-addressed  
21 mailings); see also Credit One Corp. v. Credit One Fin., Inc., 661  
22 F. Supp. 2d 1134, 1140-41 (C.D. Cal. 2009) (communications intended  
23 for one party but directed to another do not constitute evidence of  
24 actual confusion). Such evidence, rather, especially in electronic  
25 formats, may demonstrate only that consumers were "inattentive or  
26 careless, as opposed to being actually confused" about the source  
27 of a product. Therma-Scan, Inc. v. Thermoscan, Inc., 295 F.3d 623,  
28 636 (6th Cir. 2002). Nevertheless, Healthvana has presented

1 evidence that some consumers did believe that Healthvana was the  
2 company selling Healthvana-brand hand sanitizer. This evidence of  
3 actual confusion weighs in favor of a likelihood of confusion.

#### 4 5. Marketing Channels

5 There is no dispute that, unlike Telebrands, Healthvana does  
6 not market its phone app through television advertising or big box  
7 retail stores. Nevertheless, Healthvana contends that a likelihood  
8 of confusion exists because all parties market their products on  
9 the internet. Courts have, in the past, concluded that "the Web,  
10 as a marketing channel, is particularly susceptible to a likelihood  
11 of confusion." GoTo.com, 202 F.3d at 1207. That line of  
12 reasoning, however, has long since fallen by the wayside. Over a  
13 decade ago, the Ninth Circuit recognized that "[t]oday, it would be  
14 the rare commercial retailer that did not advertise online, and the  
15 shared use of a ubiquitous marketing channel does not shed much  
16 light on the likelihood of consumer confusion." Network  
17 Automation, 638 F.3d at 1151 (emphasis added). This factor,  
18 therefore, weighs against a likelihood of consumer confusion.

#### 19 6. Degree of Care Exercised by Consumers

20 Courts expect consumers to be "more discerning—and less easily  
21 confused," when purchasing expensive items. Brookfield, 174 F.3d  
22 at 1036. Similarly, a sophisticated consumer exercising a high  
23 degree of care is less likely to be confused by similar marks.  
24 Network Automation, 638 F.3d at 1152. Here, consumers of  
25 Healthvana's software product are sophisticated entities such as  
26 governments and laboratories who, if Healthvana's revenues are any  
27 indication, pay non-negligible amounts for Healthvana's services  
28 and products. Telebrands' consumers, on the other hand, are not

1 likely to be sophisticated or to exercise a high degree of care  
2 when purchasing a relatively inexpensive bottle of hand sanitizer.  
3 Although the Ninth Circuit has not spoken definitively as to what  
4 standard applies in "mixed buyer class" situations such as this  
5 one, the court has suggested that "the standard of care to be  
6 exercised by the reasonably prudent purchaser will be equal to that  
7 of the least sophisticated consumer." GoTo.com, 202 F.3d at 1209  
8 (9th Cir. 2000) (quoting Ford Motor Co. v. Summit Motor Prods.,  
9 Inc., 930 F.2d 277, 293 (3d Cir.1991); but see Cohn v. Petsmart,  
10 Inc., 281 F.3d 837, 843 n.9 (9th Cir. 2002) ("That standard,  
11 however, applies only when the plaintiff's products or services are  
12 marketed to different categories of purchasers, such as to both  
13 professional purchasers and the consuming public." (emphasis  
14 added)). Because Telebrands' customers exercise a low degree of  
15 care when purchasing inexpensive hand sanitizer, this factor weighs  
16 somewhat in favor of a likelihood of confusion.

#### 17 7. Telebrands' Intent

18 The intent factor is of "minimal importance." GoTo.com, 202  
19 F.3d at 1208. In any event, there is no evidence that Telebrands  
20 intended to confuse or deceive either its own or Healthvana's  
21 customers. Telebrands selected a brand name similar to its  
22 Hempvana branding yet evocative of health, and agreed to change  
23 that branding almost immediately when requested to do so. Although  
24 Healthvana makes much of the fact that Telebrands shipped out  
25 "Healthvana" labeled bottles even after agreeing to change its  
26 branding, the evidence is undisputed that the bottles had already  
27 been produced. A de-identification period spanning a matter of  
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1 weeks hardly constitutes evidence of any bad intent on Telebrands'  
2 part.

3 8. Expansion of Product Lines

4 There is no evidence that either party has any intention or  
5 plan of expanding into the others' product lines at any point in  
6 the future. This factor therefore weighs against a likelihood of  
7 confusion.

8 9. Balance of Sleekcraft factors

9 The balance of the Sleekcraft factors weighs against a  
10 likelihood of confusion. The actual confusion factor weighs in  
11 Healthvana's favor, and the strength of the mark, similarity of the  
12 marks, and degree of care factors weigh slightly in favor of  
13 confusion. The other factors, however, are either neutral or weigh  
14 against a likelihood of confusion. In particular, the relatedness  
15 of the goods, or lack thereof, weighs heavily against a likelihood  
16 of confusion. Telebrands is, therefore, entitled to summary  
17 judgment on Plaintiff's trademark claims.

18 B. False Advertising

19 Telebrands contends that Healthvana's false advertising claims  
20 fail because the parties are not competitors, and because  
21 Healthvana has presented no evidence that Telebrands' advertising  
22 statements caused any quantifiable loss of money or property.  
23 First, "there is no doubt that the Supreme Court expressly rejected  
24 any requirement that a plaintiff show direct competition to prevail  
25 on a [Lanham Act] false advertising claim." Geiger v. Creative  
26 Impact Inc., No. CV-18-01443-PHX-JAT, 2020 WL 4583625, at \*2 (D.  
27 Ariz. Aug. 10, 2020) (citing Lexmark International, Inc. v. Static  
28 Control Components, Inc., 572 U.S. 118, 136, 138-39 (2014)). Any

1 commercial injury, including harm to reputation, will suffice.  
2 Lexmark, 572 U.S. at 132; ThermoLife Int'l LLC v. Aesthetic  
3 Distribution, LLC, No. CV-19-02048-PHX-DJH, 2020 WL 12581996, at \*4  
4 (D. Ariz. Jan. 7, 2020). A plaintiff must, however, show injury  
5 "as a result of the false statement". Gaby's Bags, LLC v. Mercari,  
6 Inc., No. CR 20-00734 WHA, 2020 WL 1531341, at \*2 (N.D. Cal. Mar.  
7 31, 2020 (citing Southland Sod Farms v. Stover Seed Co., 108 F.3d  
8 1134, 1139 (9th Cir. 1997)). Where parties do not compete with  
9 each other, "it may be more difficult to establish proximate  
10 causation." Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l, LLC,  
11 310 F. Supp. 3d 1089, 1106 (S.D. Cal. 2018).

12 Healthvana argues that it has presented evidence that  
13 consumers were very angry with Healthvana in the period following  
14 certain Telebrands advertisements. Although that evidence  
15 certainly indicates reputational harm to Healthvana, the link  
16 between consumer anger and the allegedly false statements is less  
17 clear. Healthvana's First Amended Complaint alleges that  
18 Telebrands falsely stated that its version of Healthvana was a  
19 "trusted brand since 2015," had "over 100 million satisfied  
20 customers," that Telebrands' sanitizer contained an ingredient used  
21 in hospitals, and that Telebrands had maintained a website since  
22 2019, when in reality the website went live in 2020. Although the  
23 Declaration of Ramin Bastani refers to "hundreds of complaints,"  
24 and Healthvana attaches an exhibit of over 600 pages of  
25 correspondence, Healthvana identifies no particular instance of a  
26 complaint related to any of Telebrands' alleged false statements.

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1 Absent such evidence, Healthvana's Lanham Act claim cannot  
2 succeed.<sup>3</sup>

3 C. Cybersquatting

4 Healthvana alleges that Telebrands violated the Anti-  
5 Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), by  
6 registering the domain www.healthvanafoam.com with actual knowledge  
7 of Healthvana's registration of the Healthvana mark and without any  
8 fair use of Healthvana's mark on the website. ACPA "establishes  
9 civil liability for 'cyberpiracy' where a plaintiff proves that (1)  
10 the defendant registered, trafficked in, or used a domain name; (2)  
11 the domain name is identical or confusingly similar to a protected  
12 mark owned by the plaintiff; and (3) the defendant acted with bad  
13 faith intent to profit from that mark." DSPT Int'l, Inc. v. Nahum,  
14 624 F.3d 1213, 1218-19 (9th Cir. 2010) (internal quotation marks  
15 omitted). Telebrands argues that Healthvana cannot show bad faith.

16 "Bad faith intent . . . shall not be found in any case in  
17 which the court determines that the person believed and had  
18 reasonable grounds to believe that the use of the domain name was a  
19 fair use or otherwise lawful." 15 U.S.C. § 1125(d)(1)(B)(ii). In  
20 any event, "[t]he most important grounds for finding bad faith are  
21 the unique circumstances of the case." Interstellar Starship  
22 Servs., Ltd. v. Epix, Inc., 304 F.3d 936, 946 (9th Cir. 2002)  
23 (internal quotation marks and citation omitted). Healthvana's  
24 argument with respect to bad intent is not clear to the court.  
25 Healthvana appears to rely on the fact that Telebrands' website was  
26 still operational on April 4, four days after Telebrands

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27  
28 <sup>3</sup> Healthvana's false advertising claim under California  
Business & Professions Code § 17500 fails for the same reason.

1 voluntarily agreed to change its Healthvana branding. As discussed  
2 above, a de-identification period of less than one week hardly  
3 demonstrates bad faith or intent. Furthermore, given the court's  
4 trademark analysis, above, Telebrands' belief that its use of the  
5 domain name was lawful was a reasonable one. Healthvana's ACPA  
6 claim, therefore, fails.

7 **IV. Conclusion**

8 For the reasons stated above, Telebrands' Motion for Summary  
9 Judgment is GRANTED.

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12 IT IS SO ORDERED.

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15 Dated: February 24, 2022

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DEAN D. PREGERSON  
United States District Judge