

SLR:CPK:ESW
2010V03105

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

Civil Action No.
11-CV-341 (JG)

FOUR HUNDRED TWENTY-ONE
THOUSAND NINETY
DOLLARS (\$421,090.00) IN UNITED
STATES CURRENCY,

Defendants.

----- X

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS THE
CLAIM OF MICHAEL MORALES FOR LACK OF STANDING OR, IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT

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United States Attorney
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(Of Counsel)

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PRELIMINARY STATEMENT

Plaintiff, the United States of America, by its attorney, Loretta E. Lynch, United States Attorney for the Eastern District of New York, Evan S. Weitz, Assistant United States Attorney, of counsel, submits this Memorandum of Law in support of its Motion to Dismiss the Claim of Michael Morales (the "Claimant") for lack of standing pursuant to Rule G(8)(c)(ii)(B) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules"), and in the alternative, for summary judgment. As set forth, the Claimant in this action lacks standing to contest this forfeiture because he has no ownership interest in the Defendant Funds. Additionally, summary judgment in favor of the government is appropriate.

FACTS AND PROCEDURAL HISTORY

As set forth in the Verified Complaint In Rem (attached to the Plaintiff's Statement Pursuant to Local Civil Rule 56.1 as Exhibit A), \$421,090 in U.S. currency (the "Defendant Funds") was recovered by agents of the Drug Enforcement Administration ("DEA") on August 12, 2010 from a vehicle being driven by the Claimant. See Exhibit A, at ¶¶ 6-13. The Defendant Funds were recovered from two suitcases in the trunk of the vehicle and were wrapped in pre-determined bundles held together by rubber bands, a common way in which narcotics proceeds are transported. Id. at ¶¶ 9-10. DEA agents also recovered a marijuana cigarette from the vehicle being driven by the Claimant. Id. at ¶ 8.

Upon questioning by agents about the source of the Defendant Funds, the Claimant stated that he thought the Defendant Funds might belong to his brother's father-in-law, "Charles." Id. at ¶ 12. Although the Claimant did not know Charles's last name, the Claimant stated that

Charles owns several "strip clubs" in New York and that his brother and Charles often travel to give money to people who have been involved in disasters. Id. at ¶ 11-12. The Claimant further indicated that the Defendant Funds might consist of money that his brother and Charles planned to give to such disaster victims. Id. at ¶ 12.

After filing its Verified Complaint, the government propounded a set of Special Interrogatories upon the Claimant pursuant to Supplemental Rule G(6) for the purpose of ascertaining the Claimant's standing to file a claim (attached to the Plaintiff's Statement Pursuant to Local Civil Rule 56.1 as Exhibit B). Such interrogatories are routinely relied upon to ensure that a Claimant in a civil forfeiture proceeding has standing and to guard against the danger of false claims. See e.g. United States v. \$133,420.00 in U.S. Currency, 2010 WL 2594304, *7 (D. Ariz. June 23, 2010) ("Rule G appears to tip the scale in favor of the Government's interest in not defending against claims without minimal evidence of standing [and] does so by allowing the Government to propound special interrogatories and to challenge a claimant's standing by summary judgment early in the proceeding"); United States v. \$410,000.00 in U.S. Currency, 2007 WL 4557647, *7 & n.5 (D.N.J. 2007) (special interrogatories are necessary to insure claimant has standing and to protect against nominee claimants).

In the Special Interrogatories, the Claimant was asked about his relationship to the Defendant Funds. Contrary to the Claimant's earlier statements, the Claimant stated in his response to the Special Interrogatories that the Defendant Funds were from an individual known only as "Primo," and that the Claimant would retain \$25,000 of the Defendant Funds as part of his employment. See Claimant's Answers to United States' Special Interrogatories, Question No. 3 Exhibit B. The Claimant admitted that he had no additional information about "Primo" or any

documents to support his claim to the Defendant Funds. Id. at ¶¶ 4-5. The Claimant further admitted to having not filed tax returns in at least the past five years and to be currently under indictment in New York State Supreme Court on narcotics distribution charges. Id. at ¶¶ 6 & 8.

ARGUMENT

Based upon even the limited discovery that has been conducted to date, it is apparent that the Claimant's claim to the Defendant Funds in this action should be struck as he possess neither an ownership nor a possessory interest sufficient to establish standing. Furthermore, summary judgment for the government is appropriate as the Claimant has not presented a material issue of fact or provided any supporting documentation for his bald assertion of ownership of the Defendant Funds.

A. The Claimant Lacks Standing To File A Claim To The Defendant Currency

Standing is of critical importance as it is a “threshold question in every federal case, determining the power of the court to entertain the suit.” United States v. Cambio Exacto, S.A., 166 F.3d 522, 526 (2d Cir. 1999) (citations omitted). In order to contest a civil forfeiture action, a claimant must demonstrate both statutory standing under the statutes governing his or her claims and standing under Article III the U.S. Constitution.¹ Id. At 526. While lack of statutory standing can be excused at the sound discretion of the trial judge, Article III standing is a prerequisite for a court to attain subject matter jurisdiction over a matter. United States v. Premises and Real Property at 4492 South Livonia Rd., 889 F.2d 1258, 1262 (2d Cir. 1989).

The burden of establishing both statutory standing and Article III standing falls on the

¹ The government does not dispute that the Claimant has timely filed his claims and has met the minimal technical requirements affording him statutory standing in this case.

claimant. Id.; United States v. \$557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 79 n.9 (2d Cir. 2002). Nevertheless, the government is always free to challenge a claimant's alleged standing, as well as to “flush out would-be claimants with no real interest in a defendant property.” United States v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 499 (6th Cir. 1998). Failure to establish Article III standing will result in dismissal of the claim. Sierra Club v. Morton, 405 U.S. 727, 731 (1972).

Standing is especially important in forfeiture proceedings where there is a "substantial danger of false claims" and which “usually involve substantial sums of money [that] lend themselves readily to the filing of false claims”. Mercado v. United States, 873 F.2d 641, 645 (2d Cir. 1989). As such, it is not only incumbent upon a claimant to state a claim on its face that affords the claimant standing, but the claimant must also produce evidence of standing to support that claim. See Kadonsky v. United States, 216 F.3d 499, 508 (5th Cir. 2000) (“[C]laimant must come forth with some evidence of his ownership interest to establish standing”) quoting United States v. \$38,570 U.S. Currency, 950 F.2d 1108, 1112-13 (5th Cir. 1992).

Even assuming, *arguendo*, either of the claimant's contradictory and implausible explanations for the source of the Defendant Funds was to be believed, neither version affords the Claimant standing to contest the forfeiture of the Defendant Funds. The Claimant has not demonstrated any set of facts which would establish his ownership of the Defendant Funds, and cannot otherwise demonstrate an injury-in-fact stemming from the seizure of the Defendant Funds. As such, the Claimant lacks Article III standing to contest the forfeiture.

Specifically, the Claimant alleges that he received the Defendant Funds, \$421,090 in currency, from an individual he can only identify by first name. Notably, the Claimant describes

no other relationship to the Defendant Funds other than having received them from this individual. In fact, the Claim is completely devoid of any facts that show that the Claimant exercised anything other than naked possession of the property, which is insufficient to establish standing. Cambio Exacto, 166 F.3d at 527. In order to establish Article III standing, a claimant must show that he has a possessory or security interest in the property or colorable ownership interest in the property. Mantilla v. United States, 302 F.3d 182, 185 (3d Cir. 2002). Without a possessory interest in the property, there can be no standing to contest forfeiture. See United States v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 498 (6th Cir. 1998) (claimant must present “factual allegations regarding how [he] came to possess the property, the nature of the claimant's relationship to the property, and/or the story behind the claimant's control of the property”).

Additionally, to establish an ownership or possessory interest, claimant must assert within reason that he will suffer injury if the property is forfeited. See Cambio Exacto, 166 F.3d at 527 (“[A] litigant must allege a 'distinct and palpable injury to himself’”)(citing Torres v. \$36,256.80 U.S. Currency, 25 F.3d 1154, 1157 (2d Cir. 1994) (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975))). By proving that injury will be caused by property being taken, a claimant distinguishes a possessory interest from mere custody. See Mercado, 873 F.3d at 645 (“There must be some indication that the claimant is in fact a possessor, not a simple, perhaps unknowing custodian . . .”). Again, the claim is devoid of any facts which demonstrate that the Claimant will suffer any real injury from the forfeiture of the Defendant Funds, a prerequisite to standing. See Cambio Exacto, 166 F.3d at 527; see also Munoz-Valencia v. United States, 169 Fed. Appx. 150, 152 (3d Cir. 2006) (simple possession does not create colorable interest if possessor cannot demonstrate dominion or control; courier paid only to accept delivery of money and to transport it to unknown

place for unknown person lacked standing to contest its forfeiture because he lacked authority to make any decisions regarding money).

Similarly, the Claimant cannot state a possessory interest in the Defendant Funds as a bailee of either “Primo” or “Charles.” In fact, Claimant does not even claim an interest in the Defendant Funds but rather states that either “Charles” or “Primo” own the Defendant Funds. Supplemental Rule G(5)(a)(iii) provides that a “claim filed by a person asserting an interest as a bailee must identify the bailor...” See also United States v. \$321,470.00 U.S. Currency, 874 F.2d 298, 303 (5th Cir. 1989); United States v. \$42,500 in U.S. Currency, 283 F.3d 977, 984 n.1 (9th Cir. 2002) (stating in dicta that if Government had moved to dismiss for lack of standing, motion could have been granted because currency courier refused to identify true owner of the currency that she was carrying); United States v. \$186,907.00 in U.S. Currency, 2008 WL 2331610, *3 (D. Minn. 2008) (to assert standing as bailee, claimant must identify the bailor and show that the requirements of a bailment are satisfied; statement that money belonged to “Roberto” without further identification is insufficient to confer standing). The Claimant has not provided any identifying information for either “Primo” or “Charles” and has conceded that he has no documentation to support having received money from any of these individuals. See Claimant's Answers to United States' Special Interrogatories, Question No. 5, Exhibit B. This too is fatal to his Claim. \$186,907.00 in U.S. Currency, 2008 WL 2331610, *3 (lack of evidence of any bailment agreement prevents finding of a bailment).

B. Summary Judgment Should Be Entered In Favor Of The Government

In the event the Court declines to dismiss the Claim for lack of standing, summary judgment is in favor of the government is appropriate. Under Federal Rule of Civil Procedure 56, a motion for summary judgment may only be granted when the evidence, which is to be viewed in the light most favorable to the non-movant, presents no genuine issue of material fact. Samuels v. Mockry, 77 F.3d 34, 35 (2d Cir. 1996), Fed. R. Civ. P. 56(c). The movant bears the initial burden of demonstrating the absence of any genuine issues of material fact. Adams v. Dept. of Juvenile Justice, 143 F.3d 61, 65 (2d Cir. 1998). The burden then shifts to the non-movant who must then come forward with specific facts showing that there is a genuine issue for trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). Additionally, a verified complaint for forfeiture may serve as the basis for a motion for summary judgment without additional supporting evidence. United States v. Parcels of Property Located at 14 Leon Drive, 2006 WL 2239231, *3 (M.D. Ala. 2006); United States v. \$131,551.03 Plus Accrued Interest from the Sale of 10 Table Bluff Road, 2010 WL 1135743, *4 (N.D. Cal. Mar. 22, 2010).

The contradictory and implausible explanations of the Claimant regarding the source of the Defendant Funds does not raise a genuine issue of fact to be determined by a jury. Summary judgment should therefore be granted in favor of the government. See United States v. \$138,381 in U.S. Currency, 240 F. Supp. 2d 220, 232-33 (E.D.N.Y. 2003) (claim of ownership not sufficient where, based on the undisputed evidence, no reasonable jury could find that claimant had an ownership interest in the property); see also United States v. Real Property Located at 7199 Grant Road, 2008 WL 3244268 (W.D. Wis. 2008) (granting summary judgment for the

Government where claimant's explanation for the presence of a marijuana-grow operation in his residence "did not pass the laugh test"); United States v. \$181,087.14 in U.S. Currency, 2002 WL 31951270, *3-4 (S.D. Ohio 2002) (claimants' failure to offer sufficient evidence of a legitimate source for money to create material issue of fact means that court may enter summary judgment for the Government); United States v. \$86,020.00 in U.S. Currency, 1 F. Supp. 2d 1034, 1040-41 (D. Ariz. 1997) (court may enter summary judgment for the Government even if the claimant offers evidence of a legitimate source for seized currency if the explanation is so implausible that no reasonable jury could find for the claimant). It is simply implausible to believe that the Claimant would be entrusted with currency in excess of \$420,000 by an individual he knows only by first name, with no indication of that individual's address or phone number. Even if this were the case, it strains all credibility to believe that the Claimant would have no documentation associated with the transfer of the funds or with the operation of any sort of money transmitting or courier business engaged to transport the Defendant Funds. Based upon the extraordinary unlikelihood of these events, summary judgment is appropriate as no reasonable jury can be expected to find an issue of fact based upon either of the Claimant's versions of events.

Moreover, the facts demonstrate, by a preponderance of the evidence, that the Defendant Funds are narcotics proceeds. As a matter of law, the possession of an extraordinary sum of cash is probative of illegal activity, specifically narcotics sales. See United States v. \$ 598,826, No. 00-CV-7073, 2007 U.S. Dist. Lexis 67938 (E.D.N.Y. September 13, 2007) (citing United States v. \$ 31,990 in U.S. Currency, 982 F.2d 851, 854 (2d Cir. 1993) (presence of a large amount of cash supports an inference of illegal activity)); United States v. \$ 2,500 in U.S. Currency, 689

F.2d 10, 16 (2d Cir. 1982) (noting that cash amount of \$ 2,500 “is substantially greater than is commonly kept in residential premises by law-abiding wage earners”); see also United States v. \$242,484.00, 389 F.3d 1149, 1161 (11th Cir. 2004). “A common sense reality of everyday life is that legitimate businesses do not transport large quantities of cash rubber-banded into bundles and stuffed into packages in [suitcases].” \$242,484.00, 389 F.3d at 1161. People do not transport cash in this manner because there are “better, safer means of transporting cash if one is not trying to hide it from the authorities.” Id. Drug dealers, however, prefer to deal in cash because cash is virtually impossible to trace. Dickerson v. United States, 1990 WL 169258, *4 (C.D. Cal. 1990); see also \$242,484.00, 389 F.3d at 1161 (“One would be hard-pressed to encounter a dealer in narcotics who accepted a personal check or a credit card payment.”).

Additionally, the method of packaging of the Defendant Funds is highly indicative of narcotics activity. Money used in connection with drug trafficking is frequently packaged in bundles and is bound with rubber bands or something other than standard currency-wrappers used by banks. See, e.g., \$242,484.00, 389 F.3d at 1162; United States v. Puche-Garcia, 2000 WL 1288181, at *2 (4th Cir. 2000). In the instant case, the Defendant Currency was transported in bundles held together by rubber bands and was secreted in two suitcases in the trunk of a car. As verified by the Special Agent Joseph Dill of the DEA, who signed the verification to the Complaint, this is a common way to transport narcotics proceeds. See Exhibit A, at ¶ 10.

Evidence that a claimant made false, inconsistent, or implausible statements during the investigation can also demonstrate that money is subject to forfeiture. See United States v. \$47,780 U.S. Currency, 920 F.2d 159, 163 (2nd Cir. 1990); see also \$242,484, 389 F.3d at 1164; U.S. v. \$22,991, More or Less, 227 F. Supp. 2d 1220, 1235 (S.D. Ala. 2002). In this case, the

Claimant has proffered two wholly inconsistent explanations for the source of the Defendant Funds. When the money was seized, the Claimant stated they came from “Charles”, who owns a strip club, and that the funds were possibly meant for disaster victims. However, in response to the Special Interrogatories, the Claimants stated the money came from “Primo” and that the Claimant was to retain \$25,000 of the Defendant Funds. Both stories are incompatible with each other and cannot be reconciled.

The defendant’s involvement with narcotics is also probative. United States v. Real Property . . . 90-23 201 Street, 2011 WL 1281209 (E.D.N.Y. Mar. 31, 2011) (reasonable jury could find drug nexus based on claimant’s prior criminal record and lack of legitimate income); United States v. \$110,873.00 in U.S. Currency, 2004 WL 2359726, *3-4 (N.D. Ohio 2004) (*prior drug arrests*, quantity of currency, and lack of legitimate income sufficient for summary judgment on forfeiture of cash seized from automobile) (emphasise added); United States v. \$52,000, More or Less, in U.S. Currency, 508 F. Supp. 2d 1036, 1044 (S.D. Ala. 2007) (same) ; United States v. U.S. Currency Totaling \$101,207.00, 2007 WL 4106262 (S.D. Ga. 2007)(same). In addition to the recovery of marijuana in the vehicle containing the Defendant Funds, the Claimant also admits in his response to the Special Interrogatories to two prior arrests for the possession of marijuana, and a case currently pending in New York State Supreme Court for a felony charge of possession with intent to distribute a controlled substance.

In addition to being implausible and contradictory, the Claimant has admitted that he has no documentation to support either version of events leading to his possession of the Defendant Funds. However, an implausible explanation for the source of the Defendant Funds is not sufficient to defeat summary judgment in the absence of supporting documentation. United

States v. Two Parcels in Russell County, 92 F.3d 1123, 1129 (11th Cir. 1996) (the mere allegation of a highly unlikely legitimate source of income without some support to give the allegation credibility cannot constitute an issue of material fact defeating summary judgment); United States v. \$10,000 in U.S. Currency, 348 F. Supp. 2d 612, 617 (M.D.N.C. 2004) (same); United States v. \$4,629.00 in U.S. Currency, 359 F. Supp. 2d 504, 509-10 (W.D. Va. 2005) (same). Claimant must do more than question the sufficiency of the government's case or speculate as to the source of the property; he must offer affirmative evidence of a legitimate source or use of the property. See United States v. \$13,391.00 in U.S. Currency, 2010 WL 1507980, *6 (D. Haw. Apr. 14, 2010) (claimant cannot create genuine issue of fact with conclusory statement that the defendant property was a gift from his sister; he must supply supporting evidence); United States v. \$223,178.00 in Bank Account Funds, 2008 WL 4735884, *6 (C.D. Cal. Apr. 30, 2008) (conclusory, self-serving affidavit not sufficient to create a genuine issue of fact regarding the source of the money without corroborating documentation); United States v. \$1,278,795.00 U.S. Currency, 2006 WL 870364, *2 (S.D. Tex. 2006) (Claimant's unsupported, self-serving and conclusory statement that he obtained funds legally does not create a material issue of fact); United States v. \$50,720.00 in U.S. Currency, 589 F. Supp. 2d 582, 584 (E.D.N.C. 2008) (to defeat summary judgment, claimant must do more than set forth an explanation for his possession of a large quantity of currency and its legitimate source; without corroboration, such statements are not sufficient to create a genuine issue of fact). As the Claimant has admitted here that he has no supporting documentation to support his claim, summary judgment in favor the government is appropriate.

CONCLUSION

For all of the foregoing reasons, the Plaintiff respectfully requests that the Claim of Michael Morales be dismissed for lack of standing or in the alternative that summary judgment be entered in favor of the government.

Dated: Brooklyn, New York
June 24, 2011

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SLR:CPK:ESW
2010V03105

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

PLAINTIFF'S STATEMENT
PURSUANT TO
LOCAL CIVIL RULE 56.1

FOUR HUNDRED TWENTY-ONE
THOUSAND NINETY
DOLLARS (\$421,090.00) IN UNITED
STATES CURRENCY,

Civil Action No.
11-CV-341 (JG)

Defendants.

----- X

Pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern and Eastern Districts of New York, plaintiff United States of America, by its attorney, Loretta E. Lynch, United States Attorney for the Eastern District of New York, Evan S. Weitz, Assistant United States Attorney, of counsel, submits the following statement of material facts as to which plaintiff contends there is no genuine issue to be tried in connection with plaintiff's motion for summary judgment against claimant Michael Morales pursuant to Fed. R. Civ. P. 56(c):

1. On August 12, 2010, agents from the United States Drug Enforcement Administration ("DEA") observed an individual, later identified as Michael Morales ("Morales"), approach an automobile in the vicinity of 904 Belmont Avenue, Brooklyn, New York. Morales was observed opening the trunk of the automobile and looking at two black

suitcases inside of the trunk. Morales then closed the trunk and entered the driver's side of the automobile and drove away. There appeared to be no other occupants of the vehicle. Verified Complaint (“Cmplt.”), attached hereto as Exhibit A, ¶ 6.

2. DEA agents observed that the automobile had illegally tinted windows. A stop of the automobile was then conducted in the vicinity of the on-ramp to the Jackie Robinson Parkway from Cyprus Hill Road. Cmplt. ¶ 7.

3. As the DEA agents approached the automobile they observed Morales in possession of a marijuana cigarette. Morales was then asked to exit the car. Morales then verbally consented to a search of the automobile. Cmplt. ¶ 8.

4. A search of the automobile revealed that the two black suitcases in the trunk of the car contained \$421,090.00 in U.S. currency (the “Defendant Funds”). Cmplt. ¶ 9.

5. The Defendant Funds were wrapped in pre-determined bundles held together by rubber bands. This is a common way in which to transport narcotics proceeds. Cmplt. ¶ 10.

6. Upon questioning, Morales stated that the vehicle belonged to his brother and that he was borrowing the car. Morales further stated that when he asked if he could borrow the car, Morales's brother told him that he had some money in the trunk of the car. Cmplt. ¶ 11.

7. Morales further stated that he thought the money may belong to his brother's father-in-law, “Charles.” Morales did not know the last name of his brother's father-in-law. Morales further stated that Charles owns several “strip clubs” in New York and that his brother and Charles often travel to give money to people who have been involved in disasters. Morales indicated that the Defendant Funds might consist of money that his brother and Charles planned to give to disaster victims. Cmplt. ¶ 11.

8. On or about April 25, 2011 Morales responded to the Plaintiff's Special Interrogatories propounded upon the Claimant pursuant to Rule G(8)(c)(ii)(B) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules"). Claimant's Answers to the United States' special interrogatories ("Special Interrogatories"), are attached hereto as Exhibit B.

9. In the Response to the Plaintiff's Special Interrogatories, Morales states that "I received the Defendant Funds from another individual known only as "Primo," whereby I would retain \$25,000.00 in United States currency from the Defendant Funds." Special Interrogatories ¶ 3.

10. In the Response to the Plaintiff's Special Interrogatories, Morales states that "There are no documents to support my claim to the Defendant Funds." Special Interrogatories ¶ 5.

11. In the Response to the Plaintiff's Special Interrogatories, Morales states that "I have previously been arrested based upon allegations of possession of marijuana in September 2010 and March 2011. The case from 2010 is scheduled to be dismissed and the case from 2011 I pleaded guilty to disorderly conduct, P.L. §240.20. In June 2009, I was arrested based upon an allegation of possession of stolen property. That case was resolved with a guilty plea to disorderly conduct, P.L. §240.20. I have a case that is currently pending in Queens County Supreme Court, based upon an allegation of possession of a controlled substance, P.L. § 220.16." Special Interrogatories ¶ 5.

12. P.L. § 220.16 is felony possession of a controlled substance with an intent to distribute under New York State law.

13. In the Response to the Plaintiff's Special Interrogatories, Morales states that "I have not filed federal or state income tax returns between 2005 and 2010." Special Interrogatories ¶ 8.

Dated: Brooklyn, New York
June 24, 2011

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
271 Cadman Plaza East, 7th Fl.
Brooklyn, New York 11201

By: /s/
Evan S. Weitz
Assistant U.S. Attorney
(718) 254-6148

EXHIBIT A

COPY

SLR:KAN:ESW
F. #2010V03105

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y
★ JAN 21 2011 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA,
Plaintiff,

BROOKLYN OFFICE
VERIFIED COMPLAINT
IN REM

-against-

FOUR HUNDRED TWENTY-ONE
THOUSAND AND NINETY DOLLARS
(\$421,090.00) IN THE UNITED
STATES CURRENCY,

Civil Action No.
CV 11 - 0341
GLEESON, J.

Defendant In Rem.

- - - - - X

INTRODUCTI_____

Plaintiff, United States of America, by its attorney,
LORETTA E. LYNCH, United States Attorney for the Eastern
District of New York, Evan S. Weitz, Assistant United States
Attorney, of counsel, alleges upon information and belief as
follows:

PRELIMINARY STATEMENT

1. This is a civil action in rem to forfeit and condemn
to the use of the United States the above-captioned defendant
funds, in accordance with 21 U.S.C. § 881 (a)(6) as representing
moneys or things of value furnished or intended to be furnished
in exchange for a controlled substance or listed chemical in

violation of Title 21, Subchapter I of the United States Code, or proceeds traceable to such an exchange or money intended to be used to facilitate a controlled substance offense.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355.

3. Venue lies in the Eastern District of New York pursuant to 28 U.S.C. §§ 1355 and 1395, in that the acts and omissions giving rise to the forfeiture occurred in the Eastern District of New York.

THE DEFENDANT IN REM

4. The defendant funds (the "Defendant Funds") consist of approximately four hundred twenty one thousand and ninety dollars (\$421,090.00) in U.S. currency seized on or about August 12, 2010, in the vicinity of the entrance to the Jackie Robinson Parkway from Cyprus Hill Road in Brooklyn, New York.

STATUTORY BACKGROUND

5. Pursuant to 21 U.S.C. § 881(a)(6), all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of Title 21, Subchapter I of the United States Code, or proceeds traceable to such an exchange or money used or intended to be used to facilitate a controlled substance offense are subject to

forfeiture to the United States.

FACTS

6. On August 12, 2010, agents from the United States Drug Enforcement Administration ("DEA") observed an individual, later identified as Michael Morales ("Morales"), approach an automobile in the vicinity of 904 Belmont Avenue, Brooklyn, New York. Morales was observed opening the trunk of the automobile and looking at two black suitcases inside of the trunk. Morales then closed the trunk and entered the driver's side of the automobile and drove away. There appeared to be no other occupants of the vehicle.

7. DEA agents observed that the automobile had illegally tinted windows. A stop of the automobile was then conducted in the vicinity of the on-ramp to the Jackie Robinson Parkway from Cyprus Hill Road.

8. As the DEA agents approached the automobile they observed Morales in possession of a marijuana cigarette. Morales was then asked to exit the car. Morales then verbally consented to a search of the automobile.

9. A search of the automobile revealed that the two black suitcases in the trunk of the car contained \$421,090.00 in U.S. currency (the "Defendant Funds").

10. The Defendant Funds were wrapped in pre-determined bundles held together by rubber bands. This is a

common way in which to transport narcotics proceeds.

11. Upon questioning, Morales stated that the vehicle belonged to his brother and that he was borrowing the car. Morales further stated that when he asked if he could borrow the car, Morales's brother told him that he had some money in the trunk of the car.

12. Morales further stated that he thought the money may belong to his brother's father-in-law, "Charles." Morales did not know the last name of his brother's father-in-law. Morales further stated that Charles owns several "strip clubs" in New York and that his brother and Charles often travel to give money to people who have been involved in disasters. Morales indicated that the Defendant Funds might consist of money that his brother and Charles planned to give to disaster victims.

13. The DEA agents then seized the Defendant Funds based upon, among other things, Morales's possession of marijuana, the large amount of cash and manner in which it was bundled, and the implausible explanation that Morales gave.

14. Thereafter, the DEA commenced administrative forfeiture proceedings against the Defendant Funds.

15. On November 10, 2010, Morales filed a claim to the Defendant Funds with the DEA in the administrative proceeding. Contrary to his earlier statements, in the claim

Morales stated that he was in fact the owner of the Defendant Funds.

CLAIM FOR RELIEF

16. Plaintiff repeats the allegations of paragraphs 1 through 15 as if fully set forth herein.

17. The Defendant Funds constitute moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished in exchange for a controlled substance or listed chemical in violation of Title 21, Subchapter I of the United States Code, or proceeds traceable to such an exchange or money used or intended to be used to facilitate a controlled substance offense.

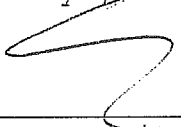
18. As a result of the foregoing, the Defendant Funds are liable to condemnation and forfeiture to the United States in accordance with 21 U.S.C. § 881(a)(6).

WHEREFORE, plaintiff requests that a warrant of this Court be issued for the arrest of the Defendant Funds; that notice of these proceedings be given to all interested persons; that the Defendant Funds be forfeited and condemned to the use of the United States of America; that the plaintiff be awarded its costs and disbursements in this action and for such other and further relief as this Court deems just and proper.

Dated: Brooklyn, New York
January 30, 2011.

LORETTA E. LYNCH
United States Attorney
Attorney for Plaintiff
Eastern District Of New York
271 Cadman Plaza East
Brooklyn, New York 11201

BY:



Evan S. Weitz
Assistant United States Attorney
(718) 254-6148

VERIFICATION

1. I am a Special Agent with the United States Drug Enforcement Administration ("DEA") and, as such, have knowledge of the facts underlying this action.

2. I have read the within verified complaint in rem and know the contents thereof.

3. The matters contained in the within verified complaint in rem are true and accurate to the best of my knowledge, information and belief.

4. The source of my information and the grounds for my belief are my personal knowledge, information provided by other law enforcement officers, and the official files and records of the DEA and other law enforcement agencies.

I, declare under penalty of perjury that the foregoing is true, to the best of my knowledge, information, and belief.

Dated:

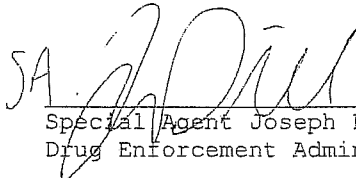
SA 
Special Agent Joseph Dill
Drug Enforcement Administration

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

v.

**ANSWERS TO UNITED
STATES' SPECIAL
INTERROGATORIES**

FOUR HUNDRED TWENTY-ONE
THOUSAND AND NINETY DOLLARS
(\$421,090.00) IN UNITED STATES
CURRENCY,

Civil Action No.: 11-CV-341 (JG)

Defendant.
-----X

Now comes, MICHAEL MORALES, being duly sworn, deposes and says, under the penalties of perjury, that the following is true:

1. I, MICHAEL MORALES, submit the following as answers to the United States' special interrogatories.

2. United States' question: State your name (including any alias(es)), where you reside, all address(es) you currently receive mail, and provide a copy of your driver's license and passport.

a. Claimant's Answer: My name is Michael Morales. I have no alias(es). I reside at 292 Willoughby Avenue, Brooklyn, New York 11205. I currently only receive mail at 292 Willoughby Avenue, Brooklyn, New York 11205.

3. United States' question: State the alleged source of the Defendant Funds. If you contend the Defendant Funds were derived by employment, please list your employer as well an address and phone number for your employer. If you contend the Defendant Funds were derived from a third party, please provide the name, address and phone number for that third party.

a. Claimant's Answer: I received the Defendant Funds from another individual known only as "Primo," whereby I would retain \$25,000.00 in United States currency from the

Defendant Funds. More information about the individual named "Primo" will be provided when available.

4. United States' question: Identify the name, address and telephone number of each person who has knowledge or claims to have knowledge of the facts that you contend support or tend to support your claims in this action, including any and all individuals with knowledge that the Defendant Funds are derived from a legitimate source and were intended for a legitimate use. For each person so identified, describe the substance of the facts known by that person and whether you expect to rely on the testimony of that person in relation to any claims asserted in this action.

a. Claimant's Answer: The individual described above as "Primo" would have knowledge of the facts to support my claim to the Defendant Funds. More information about the individual named "Primo" will be provided when available.

5. United States' question: Identify any and all documents, electronically stored information, and tangible things that you contend support or tend to support your claims in this action, including those which support your claim that the Defendant Funds are derived from a legitimate source.

a. Claimant's Answer: There are no documents to support my claim to the Defendant Funds.

6. United States' question: Describe in detail all of your arrests and/or criminal convictions and any guilty pleas you have entered to any crime. Include in your answer the date and place of any arrest, citation, information, indictment, and charge filed against you, and the disposition of each such action (such as any fines or penalties imposed, including any periods of incarceration, if applicable). This Interrogatory includes any pending or dismissed charges.

a. Claimant's Answer: I have previously been arrested based upon allegations

of possession of marijuana in September 2010 and March 2011. The case from 2010 is scheduled to be dismissed and the case from 2011 I pleaded guilty to disorderly conduct, P.L. § 240.20. In June 2009, I was arrested based upon an allegation of possession of stolen property. The case was resolved with a guilty plea to disorderly conduct, P.L. § 240.20. I have a case that is currently pending in Queens County Supreme Court, based upon an allegation of possession of a controlled substance, P.L. § 220.16.

7. United States' question: List every occasion in which you have been, or are now, a party to any civil litigation or action (excluding the present action). Include in your answer the date, county, state, court, and style of each case, and provide the case number, nature of the case, and the outcome thereof, specifying the amount of any monetary settlement or judgment, if applicable.

a. Claimant's Answer: I have never been a party to a civil litigation or action.

8. United States' question: State whether you have filed federal and state income tax returns for the years from 2005 to present. If your answer is in the affirmative, state the total income listed for each year, the years for which said returns were filed and identify each person having custody or control of any copies thereof. If you did not file a federal or state income tax return for any year from 2005 to present, identify the type of return and the year in which you did not file the return, and provide the reasons why a return was not filed.

a. Claimant's Answer: I have not filed federal or state income tax returns between 2005 and 2010.



MICHAEL MORALES

Sworn to before me this 25th day of April, 2011


NOTARY PUBLIC

JAMES W. KIRSHNER
NOTARY PUBLIC STATE OF NEW YORK
NO. 02K16091853
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES 5/5/11