

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TARIK DEHKO; SANDRA THOMAS;
DEHKO FOODS, INC.
d/b/a SCHOTT'S SUPERMARKET; and
MARK ZANIEWSKI d/b/a METRO
MARATHON,

Plaintiffs,

Case No. 13-cv-14085

Hon. Terrence G. Berg
United States District Judge

v.

ERIC H. HOLDER, Jr., in his official capacity
as Attorney General of the United States;
DANIEL I. WERFEL, in his official capacity
as Acting Internal Revenue Service
Commissioner; and BARBARA L.
McQUADE, in her official capacity as United
States Attorney for the Eastern District of
Michigan,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a civil-rights lawsuit seeking declaratory and injunctive relief. Plaintiffs are Dehko Foods, Inc., d/b/a Schott's Supermarket ("Dehko Foods"); its president, Tarik Dehko; Sandra Thomas, who is Tarik Dehko's daughter, an employee of Dehko Foods, and the joint signatory, with her father, on Dehko Foods' PNC Bank account from which money was seized by the IRS for alleged violations of 31 U.S.C. § 5324;¹ and Mark Zaniewski, owner and operator of the Metro Marathon service station, and the signatory on Metro Marathon's TCF Bank

¹ These three plaintiffs are sometimes referred to collectively as "the Dehkos."

account from which money was seized by the IRS for alleged violations of 31 U.S.C. § 5324. Plaintiffs challenge the Government's application of federal "structuring" law, 31 U.S.C. § 5324, and the Government's use of civil forfeiture to take money belonging to them for allegedly making deposits into their businesses' bank accounts for the purpose of avoiding currency reporting requirements that apply to cash transactions above \$10,000.

2. The Dehkos and Mr. Zaniewski seek a declaratory judgment that whenever currency is seized in a civil forfeiture action, due process requires a pre-seizure or prompt post-seizure evidentiary hearing to determine whether the seizure was justified.

3. The Dehkos seek a declaratory judgment that the conduct alleged in the Government's recently dismissed forfeiture action against them, *United States v. Thirty Five Thousand Six Hundred And Fifty-One Dollars And Eleven Cents (\$35,651.11) In U.S. Currency From PNC Bank Account Number XXXXXX6937*, No. 4:13-cv-13118 (E.D. Mich. filed July 19, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. § 5324.

4. Mr. Zaniewski seeks a declaratory judgment that the conduct alleged in the Government's recently dismissed forfeiture action against him, *United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars and Eighty-Six Cents (\$33,244.86) In U.S. Currency From TCF National Bank Account #6883796598*, No. 2:13-cv-13990 (E.D. Mich. filed Sept. 18, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. § 5324.

5. The Dehkos and Mr. Zaniewski also seek a declaratory judgment that making frequent cash deposits into a bank account for legitimate business purposes does not violate federal structuring law. *See* 31 U.S.C. § 5324.

6. The Dehkos and Mr. Zaniewski seek injunctive relief as well, preventing the United States from seizing currency from them and other persons or businesses similarly situated

in the Eastern District of Michigan for alleged violations of federal structuring law, 31 U.S.C. § 5324, without (a) providing a pre-seizure hearing, or (b) committing itself to providing a prompt post-seizure hearing by a date certain following its receipt of a claim from the property owner.

7. No money damages are sought by Plaintiffs.

JURISDICTION AND VENUE

8. Plaintiffs bring this civil-rights lawsuit pursuant to the Fifth Amendment to the United States Constitution.

9. The Court has original jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

10. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e)(1) as this is a suit against officers of the United States and one of the Defendants resides in this district, and because a substantial part of the events or omissions giving rise to this action occurred in this district, and because the Plaintiffs reside in this district.

PARTIES

11. Tarik “Terry” Dehko is the president and owner of Dehko Foods, Inc., d/b/a Schott’s Supermarket. Sandra “Sandy” Thomas is his daughter, and she participates in the operation of the store, including making cash deposits into the store’s bank account. Plaintiffs Terry Dehko and Sandy Thomas have both engaged in conduct that the Government alleged constituted a violation of federal structuring law in a recently dismissed forfeiture action, *United States v. Thirty Five Thousand Six Hundred And Fifty-One Dollars And Eleven Cents (\$35,651.11) In U.S. Currency From PNC Bank Account Number XXXXXX6937*, No. 4:13-cv-13118 (E.D. Mich. filed July 19, 2013).

12. Mark Zaniewski is the owner of an independent gas station, Metro Marathon, which he operates as a sole proprietorship. Mr. Zaniewski has engaged in conduct that the Government alleged constituted a violation of federal structuring law in a recently dismissed forfeiture action, *United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars and Eighty-Six Cents (\$33,244.86) In U.S. Currency From TCF National Bank Account #6883796598*, No. 2:13-cv-13990 (E.D. Mich. filed Sept. 18, 2013).

13. Plaintiff Tarik Dehko is a United States citizen and resident of Michigan.

14. Plaintiff Sandra Thomas is a United States citizen and resident of Michigan.

15. Plaintiff Dehko Foods, Inc., d/b/a Schott's Supermarket is a Michigan corporation with its principal place of business in Fraser, Michigan.

16. Plaintiff Mark Zaniewski is a United States citizen and resident of Michigan.

17. Defendant Eric H. Holder is the Attorney General of the United States and is sued in his official capacity.

18. Defendant Daniel I. Werfel is Acting Commissioner of the Internal Revenue Service and is sued in his official capacity.

19. Defendant Barbara L. McQuade is the United States Attorney for the Eastern District of Michigan and is sued in her official capacity.

FACTUAL ALLEGATIONS

The Dehkos

20. Tarik Dehko was born in Iraq but moved to the United States in 1970 to join his parents and other family members in Michigan. Dehko became an American citizen in 1974.

21. Dehko purchased Schott's Supermarket, located on 14 Mile Road in Fraser, Michigan, in 1978. Schott's Supermarket employs about 30 people, and Dehko runs the store with help from his daughter, Sandy Thomas.

22. The retail grocery business necessarily involves significant amounts of cash. Many customers still pay for their groceries using cash, and many stores, including Schott's Supermarket, cash customers' checks, sell money orders, and provide other services involving receipt or disbursement of cash. Naturally, prudent business owners do not wish to accumulate large amounts of cash on the premises, but choose instead to deposit that money in a bank.

23. Like many small businesses, Dehko Foods has a commercial general liability policy that covers various losses, including theft or other loss of cash. As is common in such insurance policies, Dehko Foods' insurance policy limits reimbursement for cash losses to \$10,000.

24. Both because it is a sound business practice to avoid accumulating large amounts of cash at the location of a retail business, and because the store's insurance policy only covers cash losses up to \$10,000, it has been a longstanding policy of Dehko Foods to make frequent deposits of cash into the store's bank account. Relatedly, due to fear of robbery and other losses, it has been Dehko Foods' policy to not have employees carry more than \$10,000 when going to the bank. That practice is reflected in the store's Financial Procedures Manual prepared for Dehko Foods by its outside CPA firm.

25. Representatives of the IRS visited Schott's Supermarket in 2010 to discuss banking laws, including currency reporting requirements and the law against structuring transactions to avoid those requirements. Terry Dehko discussed his store's cash-handling practices during that interview, and he signed a "Notification of Law" acknowledging his

discussion with the IRS representatives regarding federal banking laws. The Notification of Law is laden with legal terms and references to United States Code sections and its contents made little sense to Mr. Dehko, for whom English is a second language.

26. Representatives of the IRS returned to Schott's Market again in 2012 to perform a "Bank Secrecy Act" examination. The Bank Secrecy Act includes provisions requiring banks to report substantial cash transactions and prohibiting individuals from structuring transactions to avoid those requirements.

27. During the Bank Secrecy Act examination in 2012, Dehko Foods' cash-handling practices were again discussed, and the individual performing the examination specifically reviewed the store's bank statements. Upon conclusion of the audit, Dehko Foods received a notice dated April 18, 2012, stating that "no violations were identified."

28. Just nine months after informing the Dehkos that "no violations" of banking laws were identified in the course of an audit that included a review of their store's bank deposits, the IRS obtained a warrant in January 2013 authorizing it to seize the contents of the store's bank account at the PNC Bank, located about one block from the store.

29. The Dehkos were neither given pre-seizure notice of the Government's intent to seize the contents of their store's bank account, nor were they provided with an opportunity to be heard before a neutral magistrate before the seizure occurred.

30. The Government did not advise the Dehkos of any statutory process by which they could obtain a prompt post-seizure hearing before a neutral magistrate in order to contest the validity of the Government's seizure of their store's bank account.

31. In fact, it is the Government's position, asserted in the forfeiture proceeding referred to in Paragraph 11 above and in other forfeiture proceedings in this and other

jurisdictions, that federal law provides no procedure for property owners to obtain a prompt post-seizure, pre-judgment hearing when the Government seizes currency or other monetary instruments or electronic funds from a business unless the Government has seized those assets as part of the seizure of an entire business. Likewise, the Government has asserted, in the forfeiture proceeding referred to in Paragraph 11 above and in other forfeiture proceedings in this and other jurisdictions, that property owners have no constitutional right to a prompt post-seizure, pre-judgment hearing when the Government seizes currency or other monetary instruments or electronic funds from a business unless the Government has seized those assets as part of the seizure of an entire business.

32. The basis for the Government's civil forfeiture action was its assertion that Terry and Sandy violated federal law by "structuring" a series of cash deposits "to evade the currency reporting requirements in violation of Title 31, United States Code, Section 5324."

33. Terry Dehko and Sandy Thomas are the authorized signers of the PNC Bank account number XXXXXX6937 that belonged to Dehko Foods, before the Government removed the funds from the account.

34. Terry Dehko and Sandy Thomas have frequently deposited (or caused to be deposited) substantial amounts of cash in increments of less than \$10,000 into Dehko Foods' PNC Bank account. Upon information and belief, that series of deposits is the sole basis upon which the Government based its allegations that Terry Dehko and Sandy Thomas committed a violation of federal structuring law.

35. Repeatedly making substantial cash deposits of less than \$10,000 into a bank account is not illegal and does not, by itself, violate federal structuring law. It is only when cash

transactions are structured “for the purpose of evading” currency transaction reporting requirements that such transactions are unlawful. *See* 18 U.S.C. § 5324(a).

36. Upon information and belief, the Government has no factual basis upon which to dispute the Dehkos’ assertion that they deposited amounts less than \$10,000 into Dehko Foods’ bank account for the legitimate business purposes described above, namely, their desire to avoid accumulating substantial amounts of cash on store premises and to avoid a situation where they might lose more cash through theft or accident than would be covered by the store’s insurance policy.

37. There can be legitimate business reasons for repeatedly making substantial cash deposits or withdrawals of less than \$10,000 from a bank.

38. Seeking to avoid accumulating substantial amounts of cash on the premises of a retail business is a legitimate reason for making repeated cash deposits of less than \$10,000.

39. Seeking to avoid non-covered losses is a legitimate reason for a business covered by an insurance policy with a limit of \$10,000 for cash losses to make frequent cash deposits of less than \$10,000.

40. The Dehkos have not, in fact, ever made deposits of less than \$10,000 for the purpose of attempting to evade federal currency transaction reporting requirements.

41. The Government’s seizure of Dehko Foods’ entire bank account has caused the company substantial financial hardship. Among other things, Dehko Foods has had significant difficulties with vendors and in some cases has been required to pay for inventory on a cash-on-demand basis instead of on credit as has been its customary arrangement with vendors, and the company’s reputation has been damaged.

42. Given the nature of their business, the Dehkos need and intend to continue making substantial deposits of less than \$10,000 into their store's bank account. The Dehkos reasonably fear that if they continue making frequent cash deposits of less than \$10,000 into their store's bank account they will be subject to future forfeiture actions by the IRS and the Department of Justice. This fear is founded on the visits the Dehkos have previously had from IRS agents, as well as the Government's conduct in the recent forfeiture action against them for making frequent cash deposits of less than \$10,000 into their store's bank account in the past. During a visit to the Dehkos, for instance, an IRS agent told them that substantially more money than was seized could have been seized pursuant to the structuring law. Throughout the forfeiture action against the Dehkos, the Government has taken the position that the Dehkos' past conduct constituted a structuring violation and that similar conduct in the future would constitute a structuring violation.

43. The Government's current policy with respect to the enforcement of Section 5324, and its enforcement of Section 5324 against the Dehkos, has continuing, present adverse effects on the Dehkos.

44. Due solely to their reasonable fear that continuing to make frequent deposits of their store's cash receipts in amounts of less than \$10,000 will result in future seizures, the Dehkos have incurred and continue to incur substantial expenses to change their banking policies. For instance, to avoid the risks of having more than \$10,000 in cash at risk of theft or other loss, they have paid for and installed in their store a sophisticated, time-locked safe, into which cash receipts are deposited throughout the day.

45. As a result of the forfeiture action describe above in paragraph 11, the Dehkos have spent nearly \$500 per month to have an armored car service to pick up the cash from their

safe and bring it to their bank for deposit rather than send employees to the bank with substantial amounts of cash, or risk further seizures by the IRS for frequently depositing amounts under \$10,000.

46. The Dehkos are entitled to know whether these extraordinary procedures and related expenses are necessary under the law, or whether they can return to the normal procedures and policies they used prior to the seizure that gave rise to the civil forfeiture action described in paragraph 11. The Dehkos intend to return to their former cash-handling procedures if they do not risk future seizures by doing so.

47. It is a bedrock principle of due process that property owners be given notice and an opportunity to be heard before a neutral magistrate when the Government takes their property. Among the concerns presented when the Government takes private property, through forfeiture or otherwise, are the possibility of erroneous deprivation, the interests of innocent owners, hardship caused by the loss of property, and, as in this case, the incentives created by legal regimes that allow the same agencies that initiate or participate in a seizure of property to benefit from it financially.

48. The Government failed to provide the Dehkos with a pre-seizure or prompt post-seizure hearing at which they would have had the opportunity to demonstrate, before a neutral magistrate, that the Government was not justified in seizing or retaining their property.

49. There is no compelling reason why the Government should be permitted to eschew the most basic requirements of procedural due process in forfeiture cases, and certainly no reason why it should be permitted to do so in this case.

50. Had the Dehkos received due process in their recent civil forfeiture action, they would have had an opportunity to demonstrate that the Government filed its complaint untimely and would have had their funds immediately returned.

51. Had the Dehkos received due process in their recent civil forfeiture action, they would have had an opportunity to show that they make frequent cash deposits of less than \$10,000 for legitimate business reasons.

52. Had the Dehkos received due process in their recent civil forfeiture action, they would have had an opportunity to demonstrate that they had no intention or purpose to evade currency reporting requirements.

Mark Zaniewski d/b/a Metro Marathon

53. Mark Zaniewski is the owner of the Metro Marathon service station, located on 3700 Van Dyke Avenue in Sterling Heights, Michigan. The service station has been operated by the Zaniewski family since 1973, when Mark Zaniewski's father purchased the station.

54. Mr. Zaniewski operated the service station for many years with his brother, but became its sole owner in 2004, when his brother fell ill and was unable to continue working. Since 2004, Mr. Zaniewski has operated the service station as a sole proprietorship and has been solely responsible for the business, including its bank deposits.

55. Mr. Zaniewski opens the service station each day at 6 a.m., closes the service station at 10 p.m. on weekdays and 8 to 9 p.m. on weekends, and on most days he works the hours in between opening and closing. He frequently works more than 16 hours per day. On many days he works alone. During the past year, Mr. Zaniewski has had one full-time or two part-time employees at the station, who have worked approximately 40 hours per week. On

some days his employees operate the service station during business hours, allowing Mr. Zaniewski to leave the business to run errands, care for his elderly father, and go to the bank.

56. Metro Marathon customers can pay by credit card, check, or cash. The store typically takes in two to three thousand dollars per day in cash receipts from customers for the purchase of gas, snacks, and other items sold at the service station.

57. Mr. Zaniewski goes to the bank to deposit cash receipts often enough to ensure that the station's bank balance is sufficient to cover vendor bills, typically paid weekly. Due to the modest income of the station and few employees, however, it is impractical for Mr. Zaniewski to leave the station every day to make bank deposits.

58. Mr. Zaniewski goes to the bank when he can, typically once every few days, to deposit cash receipts in amounts necessary to cover that week's vendor bills and to safeguard surplus cash. The amount of Metro Marathon's cash deposits are frequently, but not always, under \$10,000.

59. Mr. Zaniewski is aware that banks file currency transaction reports with the federal government about currency transactions in excess of \$10,000. He was made aware of those reporting requirements in 2012 by representatives of PNC Bank, a bank at which Metro Marathon formerly held an account.

60. Mr. Zaniewski sometimes makes cash deposits in excess of \$10,000.

61. Mr. Zaniewski has provided information to bank officials to assist in the filing of currency transaction reports on cash deposits in excess of \$10,000 whenever bank officials have requested it.

62. The IRS obtained a warrant in March 2013 authorizing it to seize the contents of Metro Marathon's bank account at TCF Bank. On March 28, 2013, the IRS executed that

warrant and seized the entire balance of Metro Marathon's TCF Bank account in the amount of \$33,244.86.

63. On the day of the seizure, two IRS agents visited Mr. Zaniewski at Metro Marathon's location and informed him of the seizure. One agent advised him that the seizure had occurred and that the IRS would be pursuing forfeiture of only the \$33,244.86 that had already been taken from the company's bank account. The agent told Mr. Zaniewski that he should go ahead and deposit any additional funds belonging to Metro Marathon (such as recent cash receipts that had not yet been deposited or funds from as-yet unprocessed credit card transactions) into Metro Marathon's TCF Bank account to avoid bouncing checks to his vendors.

64. During the next few days, Mr. Zaniewski borrowed \$10,000 from his sister-in-law and deposited it into the TCF Bank account. He also made an additional deposit of the service station's recent cash receipts into the same TCF Bank account, and further deposits were made automatically into that account from his credit card provider as a result of credit card transactions made at the service station's gas pumps.

65. On or about April 3, 2013, the Government returned to TCF Bank to seize all of the newly deposited money in Metro Marathon's account—\$37,601.64—including the \$10,000 loan received from Mr. Zaniewski's sister-in-law. In total, nearly \$71,000 was seized from Metro Marathon's account.

66. Mr. Zaniewski was not given pre-seizure notice of the Government's intent to seize the contents of his service station's bank account, nor was he provided with an opportunity to be heard before a neutral magistrate before either of the seizures occurred.

67. The Government did not advise Mr. Zaniewski of any statutory process by which he could obtain a prompt post-seizure hearing before a neutral magistrate in order to contest the validity of the Government's seizures of his service station's bank account.

68. In fact, it is the Government's position, asserted in the *Dehko* forfeiture proceeding referred to in Paragraph 11 above and in other forfeiture proceedings in this and other jurisdictions, that federal law provides no procedure for property owners to obtain a prompt post-seizure, pre-judgment hearing when the Government seizes currency or other monetary instruments or electronic funds from a business unless the Government has seized those assets as part of the seizure of an entire business. Likewise, the Government has asserted, in the *Dehko* forfeiture proceeding referred to in Paragraph 11 above and in other forfeiture proceedings in this and other jurisdictions, that property owners have no constitutional right to a prompt post-seizure, pre-judgment hearing when the Government seizes currency or other monetary instruments or electronic funds from a business unless the Government has seized those assets as part of the seizure of an entire business.

69. The basis for the Government's civil forfeiture action was its assertion that Mr. Zaniewski violated federal law by "structuring" a series of cash deposits "to evade the currency reporting requirements in violation of Title 31, United States Code, Section 5324."

70. Mark Zaniewski is the authorized signer of TCF Bank account number 6883796598 that belonged to Metro Marathon before the Government removed the funds from the account.

71. Mr. Zaniewski has frequently deposited substantial amounts of cash in increments of less than \$10,000 into Metro Marathon's TCF Bank account. Upon information and belief,

that series of deposits is the sole basis upon which the Government bases its allegations that Mr. Zaniwski committed a violation of federal structuring law.

72. Repeatedly making substantial cash deposits of less than \$10,000 into a bank account is not illegal and does not, by itself, violate federal structuring law. It is only when cash transactions are structured “for the purpose of evading” currency transaction reporting requirements that such transactions are unlawful. *See* 18 U.S.C. § 5324(a).

73. Upon information and belief, the Government has no factual basis upon which to dispute Mr. Zaniwski’s assertion that he deposited amounts less than \$10,000 into Metro Marathon’s bank account for the legitimate purposes describe above, namely, in order to safeguard surplus cash and ensure that Metro Marathon’s account maintains a balance sufficient to cover periodic vendor bills.

74. There can be legitimate reasons for repeatedly making substantial cash deposits or withdrawals of less than \$10,000 from a bank.

75. Seeking to avoid accumulating substantial amounts of cash on the premises of a service station is a legitimate reason for making repeated cash deposits of less than \$10,000.

76. The lack of assistance at the service station, which makes it difficult for Mr. Zaniwski to go to the bank each day and causes cash to accumulate to amounts near \$10,000, is a legitimate reason for making repeated cash deposits of less than \$10,000.

77. Depositing funds in amounts and with a frequency necessary to ensure that one’s bank balance is sufficient to cover vendor bills is a legitimate reason for making repeated cash deposits of less than \$10,000.

78. Mark Zaniwski has not, in fact, ever made deposits of less than \$10,000 for the purpose of attempting to evade federal currency transaction reporting requirements.

79. The Government's seizure of Metro Marathon's entire bank account—not once, but twice—has caused Mr. Zaniewski substantial financial hardship. Among other things, Mr. Zaniewski was required to close the service station for two weeks due to lack of funds to purchase gasoline inventory, and to rely on family for financial support while the Government has held his company's money.

80. Given the nature of his business, Mr. Zaniewski needs and intends to continue making substantial deposits of less than \$10,000 into Metro Marathon's bank account. Mr. Zaniewski reasonably fears that if he continues making frequent cash deposits of less than \$10,000 into Metro Marathon's bank account he will be subject to future forfeiture actions by the IRS and the Department of Justice. This fear is founded on the recent forfeiture action against him for making frequent cash deposits of less than \$10,000 into his service station's bank account in the past. Among the allegations in that forfeiture action was that substantially more money than was actually seized could have been seized pursuant to the structuring law. In addition, after the IRS seized \$33,244.86 from Mr. Zaniewski on March 28, 2013, an IRS agent informed him that only that \$33,244.86 would be seized. Mr. Zaniewski was subsequently shocked to discover that the IRS seized another \$37,601.64 from Metro Marathon's TCF Bank account less than a week later. Throughout the forfeiture action against Mr. Zaniewski, the Government has taken the position that Mr. Zaniewski's past conduct constituted a structuring violation and that similar conduct in the future would constitute a structuring violation.

81. The Government's current policy with respect to the enforcement of Section 5324, and its past enforcement of Section 5324 against Mr. Zaniewski, has continuing, present adverse effects on him. The trauma of the civil forfeiture action, and the past misrepresentations of an IRS agent concerning the amount of money that would be seized from Metro Marathon's bank

account, have left Mr. Zaniwski understandably fearful and confused as to how he should conduct business in the future.

82. Due solely to his reasonable fear that continuing to make frequent deposits of his service station's cash receipts in amounts of less than \$10,000 will result in future seizures, Mr. Zaniwski has changed his banking behavior and incurred new risks and expenses. For instance, he often hoards surplus cash from his service station in an effort to avoid making deposits of less than \$10,000. This puts him at risk of theft or other loss, which he wants to avoid.

83. Mr. Zaniwski has become fearful of maintaining a significant balance in his service station's bank account. This fear is reasonably based on the Government's allegations about his past conduct, its position with respect to that conduct in the future, and the second seizure he experienced after being informed by an IRS agent that no such seizure would occur. In order to avoid the possibility that money deposited will be abruptly seized with no means of promptly challenging that seizure before a neutral magistrate, he spends more time managing deposits and paying bills. This creates additional work for Mr. Zaniwski, which is necessary only due to his reasonable fear of future seizures.

84. In order to be available to make deposits when necessary, Mr. Zaniwski has changed his and his helpers' schedules, so that Mr. Zaniwski is available to do the service station's banking during business hours. Mr. Zaniwski must work more nights and weekends alone in order to accommodate this change.

85. Mr. Zaniwski is entitled to know whether the extraordinary procedures and efforts described above are necessary under the law, or whether he can return to the normal procedures and policies he used prior to the seizure that gave rise to the seizures described in

paragraphs 62 and 65. Mr. Zaniewski intends to return to his former cash-handling procedures if he does not risk future seizures by doing so.

86. It is a bedrock principle of due process that property owners be given notice and an opportunity to be heard before a neutral magistrate when the Government takes their property. Among the concerns presented when the Government takes private property, through forfeiture or otherwise, are the possibility of erroneous deprivation, the interests of innocent owners, hardship caused by the loss of property, and, as in this case, the incentives created by legal regimes that allow the same agencies that initiate or participate in a seizure of property to benefit from it financially.

87. The Government also failed to provide Mr. Zaniewski with a pre-seizure or prompt post-seizure hearing at which he would have had the opportunity to demonstrate, before a neutral magistrate, that the Government was not justified in seizing or retaining his property.

88. There is no compelling reason why the Government should be permitted to eschew the most basic requirements of procedural due process in forfeiture cases, and certainly no reason why it should be permitted to do so in this case.

89. Had Mr. Zaniewski received due process in his recent civil forfeiture action, he would have had an opportunity to demonstrate that the Government filed its complaint untimely and would have had his funds immediately returned.

90. Had Mr. Zaniewski received due process in his recent civil forfeiture action, he would have had an opportunity to show that he makes frequent cash deposits of less than \$10,000 for legitimate business reasons.

91. Had Mr. Zaniewski received due process in his recent civil forfeiture action, he would have had an opportunity to demonstrate that he had no intention or purpose to evade currency reporting requirements.

92. Had Mr. Zaniewski received due process in his recent civil forfeiture action, he would have had an opportunity to demonstrate that the funds seized on or about April 3, 2013, were not related to any alleged structuring activity.

INJURY TO PLAINTIFFS

The Dehkos

93. The \$35,651.11 taken by the Government from Dehko Foods' PNC Bank account represented the operating funds of a lawful business with numerous financial obligations, including vendors and employees to pay, inventory to maintain, utility bills, and a monthly rental payment. In fact, Terry Dehko was just preparing to pay his monthly bills when representatives from the Government arrived at Schott's Supermarket to tell him that they had seized all of the money in the store's bank account.

94. By using their personal savings, the Dehkos have managed to keep Schott's Supermarket running, but it has not been easy. The Government's seizure of the store's operating funds has had dire financial consequences and has significantly impaired the Dehkos' standing and reputation with vendors and made it much more difficult for them to conduct regular store operations.

95. As a result of the Government taking their store's entire operating account of \$35,651.11 abruptly and without notice, the Dehkos were unable to pay all vendors on time in recent months, leading some vendors to terminate credit to Schott's Supermarket and increasing the hardship on the company.

96. The forfeiture action has also caused Terry and Sandy to suffer significant stress and anxiety. They have never been accused, let alone convicted, of any crime, and the Government's baseless allegations of serious financial improprieties and criminal violations of federal structuring law in this case have taken a significant emotional toll on the Dehkos.

97. The stress and anxiety caused by the Government's groundless forfeiture actions against the Dehkos has been exacerbated by the absence of any process by which the Plaintiffs could obtain a prompt hearing before a neutral magistrate with the power to order the Government to return their property during the pendency of the forfeiture action. The Government held the Dehkos' funds for more than 10 months. At no time during this lengthy proceeding did the Government offer to provide, or advise the Dehkos about the availability of, any post-seizure hearing process to determine the probable validity of the Government's seizure of their money.

98. Based on the Government's conduct in this case and others of which they have knowledge, the Dehkos reasonably fear additional future forfeiture actions if they continue making frequent cash deposits of less than \$10,000, as they have every intent to do and as is an integral part of their normal business practices. These reasonable fears have continuing, adverse effects on the Dehkos, causing them to change their business practices and incur substantial expenses, as described above in paragraphs 44-45.

99. But for their continuing fear of additional future forfeiture actions, the Dehkos would be able to return to less expensive practices that are more appropriate for their business.

Mark Zaniewski d/b/a Metro Marathon

100. The nearly \$71,000 taken by the Government from Metro Marathon's TCF Bank account represented the operating funds of a lawful business with numerous financial obligations, including vendors and employees to pay, gasoline inventory to maintain, and utility bills.

101. The second seizure of funds in Metro Marathon's TCF Bank account took not only the legitimate funds of Metro Marathon's normal operation, but also funds received as a loan from Mr. Zaniewski's sister-in-law intended to be used to purchase new gasoline inventory. The second seizure deprived Mr. Zaniewski of those funds, resulting in the inability to pay Metro Marathon's gasoline vendor and necessitating the closure of the service station for nearly two weeks.

102. As a result of the Government's seizure of nearly \$71,000 from Metro Marathon's operating account, Mr. Zaniewski had to borrow money from his father to pay essential vendors in order to reopen the store and keep it open since the seizures occurred.

103. As a result of the Government's seizure, Mr. Zaniewski has been forced to assign credit card receipts from the station's gas pumps directly to Metro Marathon's gasoline vendor to ensure future deliveries. Mr. Zaniewski has also been required to pay a higher rate for gasoline than he would under normal circumstances, because gasoline vendors will not extend further credit to his service station. This has reduced and continues to reduce the service station's profitability.

104. The forfeiture action also caused Mr. Zaniewski to suffer significant stress and anxiety. He has never been accused, let alone convicted, of any crime, and the Government's baseless allegations of serious financial improprieties and criminal violations of federal structuring law in this case have taken a significant emotional toll on Mr. Zaniewski.

105. The stress and anxiety caused by the Government's groundless forfeiture action against Mr. Zaniewski has been exacerbated by the absence of any process by which he could obtain a prompt hearing before a neutral magistrate with the power to order the Government to return his property during the pendency of the forfeiture action. The Government held Mr. Zaniewski's funds for more than seven months. At no time during this lengthy proceeding did the Government offer to provide, or advise Mr. Zaniewski about the availability of, any post-seizure hearing process to determine the probable validity of the Government's seizure of his money.

106. Based on the Government's conduct in this case and others of which he has knowledge, Mr. Zaniewski reasonably fears additional future forfeiture actions if he continues making frequent cash deposits of less than \$10,000, as he has every intent to do and as is an integral part of his normal business practices. These reasonable fears have continuing, adverse effects on Mr. Zaniewski, causing him to change his business practices and incur substantial new risks and expenses, as described above in paragraphs 82-84.

107. But for his continuing fear of additional future forfeiture actions, Mr. Zaniewski would be able to return to banking practices that impose less work and expense on him and are more appropriate for his business.

LEGAL CLAIMS

Count I

Declaratory judgment that Plaintiffs did not violate federal structuring law

108. Plaintiffs re-allege and incorporate every allegation set forth in paragraphs 1 through 107 as though fully set forth herein.

109. Making repeated cash deposits of substantial amounts less than \$10,000 is not unlawful unless done for the purpose of evading currency transaction reporting requirements.

110. Because Plaintiffs did not deposit cash into their businesses' bank accounts for the purpose of evading currency transaction reports, they have not violated 31 U.S.C. § 5324(a).

111. Tarik Dehko, Sandra Thomas, and Dehko Foods, Inc., request a declaratory judgment that the conduct alleged in the Government's forfeiture action, *United States v. Thirty Five Thousand Six Hundred And Fifty-One Dollars And Eleven Cents (\$35,651.11) In U.S. Currency From PNC Bank Account Number XXXXXX6937*, No. 4:13-cv-13118 (E.D. Mich. filed July 19, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. § 5324.

112. Mark Zaniewski d/b/a Metro Marathon, requests a declaratory judgment that the conduct alleged in the Government's forfeiture action, *United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars And Eighty-Six Cents (\$33,244.86) In U.S. Currency From TCF National Bank Account #6883796598*, No. 2:13-cv-13-13990 (E.D. Mich. filed Sept. 18, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. § 5324.

Count II

Declaratory and injunctive relief regarding violation of due process for failing to provide adequate notice and hearing in connection with the *ex parte* forfeiture of property

113. Plaintiffs re-allege and incorporate every allegation set forth in paragraphs 1 through 107 as though fully set forth herein.

114. Federal civil forfeiture law fails to provide a process for a pre-seizure or prompt post-seizure hearing before a neutral magistrate to determine whether the Government is justified in seizing, or is justified in retaining, seized currency, prior to a final judgment of forfeiture.

115. Tarik Dehko, Sandra Thomas, Dehko Foods, Inc., and Mark Zaniewski d/b/a Metro Marathon, request a declaratory judgment that the Due Process Clause of the Fifth Amendment requires either a pre-seizure or prompt post-seizure hearing in every civil forfeiture action where property is seized prior to final judgment.

116. Tarik Dehko, Sandra Thomas, Dehko Foods, Inc., and Mark Zaniewski d/b/a Metro Marathon, request injunctive relief, enjoining the Government from seizing their property—or the property of any others in the Eastern District of Michigan—upon an allegation of a violation of 31 U.S.C. § 5324, without ensuring a pre-seizure or prompt post-seizure evidentiary hearing at which claimants may challenge the factual basis of that seizure.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter a final judgment in favor of them as follows:

a. Declare that because Plaintiffs did not make deposits into their businesses' bank accounts for the purpose of evading currency transaction reports, they have not violated 31 U.S.C. § 5324;

b. Declare that the conduct alleged in the Government's forfeiture complaint styled *United States of America v. Thirty Five Thousand Six Hundred And Fifty-One Dollars And Eleven Cents (\$35,651.11) In U.S. Currency From PNC Bank Account Number XXXXXX6937*, No. 4:13-cv-13118 (E.D. Mich. filed July 19, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. §5324;

c. Declare that the conduct alleged in the Government's forfeiture complaint styled *United States v. Thirty-Three Thousand Two Hundred Forty-Four Dollars And Eighty-Six Cents (\$33,244.86) In U.S. Currency From TCF National Bank Account #6883796598*, No. 2:13-cv-13-13990 (E.D. Mich. filed Sept. 18, 2013), was lawful and did not violate federal structuring law, 31 U.S.C. § 5324;

d. Declare that the Due Process Clause of the Fifth Amendment requires either a pre-seizure or prompt post-seizure hearing in civil forfeiture actions where property is seized prior to final judgment;

e. Enjoin the Defendant United States from seizing Plaintiffs' property—or the property of any others in the Eastern District of Michigan—for alleged violations of federal structuring law, 31 U.S.C. § 5324, without providing either a pre-seizure hearing or committing itself, as a condition of issuance of a forfeiture warrant, to providing a prompt post-seizure evidentiary hearing at which claimants may challenge the factual basis of the seizure;

f. For an award of attorneys' fees, costs, and expenses in this action pursuant to 28 U.S.C. § 2412 or other applicable authority; and

g. For such further non-monetary legal and equitable relief as the Court may deem just and proper.

Respectfully submitted,

INSTITUTE FOR JUSTICE

Dated: December 10, 2013

By: /s/ Clark M. Neily III
Clark M. Neily III (DC Bar No. 475926)
Lawrence G. Salzman (CA Bar No. 224727)
Dan Alban (VA Bar No. 72688)
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320;
Fax: (703) 682-9321
Email: cneily@ij.org; lsalzman@ij.org;
dalban@ij.org

DUNN COUNSEL PLC

Stephen J. Dunn (P38182)
2855 Coolidge Hwy., Suite 210

Troy, MI 48084
Tel: (248) 643-8130
Fax: (248) 928-1295
Email: sjd@dunn-counsel.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Amended Complaint for Declaratory and Injunctive Relief was filed through the Electronic Court Filing system on December 10, 2013, and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Clark M. Neily III
INSTITUTE FOR JUSTICE