UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THIRTY FIVE THOUSAND SIX HUNDRED FIFTY-ONE DOLLARS AND ELEVEN CENTS ($35,651.11) IN U.S. CURRENCY SEIZED FROM PNC BANK ACCOUNT NUMBER XXXXXX6937,

Defendant.

DEHKO FOODS, INC., a Michigan corporation,

Claimant/Counterclaimant,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant.
_____/

Case No. 4:13-cv-13118.

Honorable Terrence G. Berg
United States District Judge

Honorable Laurie J. Michelson
United States Magistrate Judge

CLAIMANTS' MOTION FOR PROMPT
POST-SEIZURE HEARING AND RETURN OF PROPERTY

Claimant Dehko Foods, Inc., a Michigan corporation, ("Dehko Foods") owner of the subject bank account, by its counsel, INSTITUTE FOR JUSTICE, submits this Motion for Prompt Post-Seizure Hearing and Return of Property, pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule 7.1(b).

This motion asks the Court to do two things: (1) hold a prompt post-seizure hearing to determine whether the government is justified in retaining Claimant's property while this case

proceeds to a decision on the merits; and (2) order the immediate return of the Claimant's property pending final judgment based on the papers submitted by the parties or the live testimony of witnesses if the Court determines that an evidentiary hearing is required.

In support of its motion, Dehko Foods submits the accompanying brief. Pursuant to Local Rule 7.1, Claimant attempted to discuss the filing of this motion and its legal basis by telephone with opposing counsel on September 25, 2013 and left a voicemail message. Opposing counsel responded by e-mail that the Government did not concur with the relief sought.

Respectfully submitted,

INSTITUTE FOR JUSTICE

Dated: September 25, 2013 By: /s/ Clark M. Neily III
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BRIEF IN SUPPORT OF CLAIMANTS' MOTION FOR PROMPT POST-SEIZURE HEARING AND RETURN OF PROPERTY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case **Page(s)**

Statutes

Other Authorities

ISSUES PRESENTED

1) Whether Claimant is entitled to a prompt post-seizure hearing to determine whether the government is justified in retaining its property while this case proceeds to a decision on the merits; and 2) Whether Claimant's property must be returned pending final judgment in this action?

INTRODUCTION

Among the most basic requirements of due process is a timely opportunity to be heard before a neutral magistrate when the government seeks to take one's property. Somewhat surprisingly, the Supreme Court has not yet decided whether that requirement applies to forfeitures of personal property like vehicles and cash. While there is no controlling Sixth Circuit precedent, the weight of authority from other jurisdictions holds that due process almost invariably requires a prompt post-seizure hearing. Notably, the Supreme Court granted certiorari to address the issue in 2009, but the case was mooted before the Court could issue a decision on the merits. *Smith v. City of Chicago*, 524 F.3d 834 (7th Cir. 2008) (holding that due process requires a prompt post-seizure hearing), *vacated as moot, sub nom. Alvarez v. Smith*, 558 U.S. 87 (2009). Thus, it remains an open question in this Circuit whether victims of civil forfeiture—and we use the word "victims" advisedly here—are entitled to an interim hearing to determine whether the government may retain their property while the forfeiture case runs its course.

As demonstrated below, there are compelling reasons to provide a prompt post-seizure hearing in this case, and no sound reason not to do so. As further demonstrated below—and as underscored by the parchment-thin allegations in its forfeiture complaint—the Government has

no case against the Dehkos.[1] Accordingly, their property should be returned pending a final judgment on the merits.

FACTS

Tarik ("Terry") Dehko is the President of Dehko Foods, Inc., d/b/a Schott's Supermarket, a family-run grocery store in Fraser, Michigan. Ex. A, Dehko Dec. ¶ 1. He bought the market in 1978 and has managed it for the past 35 years. *Id.* His daughter, Sandra ("Sandy") Thomas, has helped him for more than 25 of those years, since she was 12 years old. Ex. B, Thomas Dec. ¶ 1. They have created and together operate a successful business that now employs approximately 30 people. Ex. A, Dehko Dec. ¶ 2.

On January 22, 2013, the IRS executed a seizure warrant, taking the entire balance of Schott's Supermarket's PNC Bank account in the amount of $35,651.11. Compl. ¶ 6 (Docket # 1). On July 19, 2013, ninety-one days after the Dehkos filed a claim with the IRS asserting their property interest in the money, the Government filed the instant civil forfeiture action against those funds. Ex. A, Dehko Dec. ¶ 14. The Government alleges that the Dehkos violated federal law by "structuring" deposits of their store's cash receipts to evade the requirement that banks report cash transactions in excess of $10,000 to the IRS. Compl. ¶ 12(i) (Docket # 1); 31 U.S.C. § 5324(a)(3).

The Dehkos are law-abiding people who have never been charged with or convicted of any crime. Ex. A, Dehko Dec. ¶ 21; Ex. B, Thomas Dec. ¶ 12. They did not "structure" their deposits to avoid currency reporting requirements or for any other unlawful purpose. Ex. A,

[1] The money at issue belongs to Dehko Foods, Inc. d/b/a Schott's Supermarket. Dehko Foods and Schott's Supermarket are owned by Tarik Dehko. Mr. Dehko's daughter Sandra helps him run the store and made many of the allegedly "structured" deposits at issue in this proceeding. Accordingly, Dehko Foods, Tarik Dehko, and his daughter Sandra are referred to collectively as "the Dehkos."

Dehko Dec. ¶ 9; Ex. B, Thomas Dec. ¶ 8. On the contrary, it has been the policy of Schott's Supermarket for decades to make frequent cash deposits of less than $10,000 into its bank account. Ex. A, Dehko Dec. ¶ 5; Ex. B, Thomas Dec. ¶ 3. The store takes in a significant amount of cash each day from customers, and it would pose unnecessary risks to allow that cash to accumulate in the store rather than deposit it in the PNC Bank located across the street. Moreover, as is standard for small businesses, the store's commercial insurance policy limits coverage for cash losses to $10,000. Ex. A, Dehko Dec. ¶ 4 & Dehko Ex. 1; Ex. B, Thomas Dec. ¶ 4. It has also been the policy of the store to avoid sending employees to the bank with more than $10,000 due to that coverage limit and concerns about employee safety. Ex. B, Thomas Dec. ¶ 5. The company's Financial Procedures Manual, prepared by an outside CPA firm, reflects those policies. Ex. A, Dehko Dec. ¶ 5 & Dehko Ex. 2.

IRS agents visited Schott's Supermarket and met with Terry Dehko in 2010. At that meeting he signed a "Notification of Law" acknowledging his discussion of 31 U.S.C. § 5324(a), which makes it unlawful to structure cash transactions "for the purpose of evading the reporting requirements" imposed on banks to report cash transactions in excess of $10,000. Ex. A, Dekho Dec. ¶ 6 & Dehko Ex. 3.

IRS agents again visited Schott's Supermarket in 2012 to conduct a Bank Secrecy Act examination, which tested the "implementation of [the store's] Anti-Money Laundering (AML) compliance program." Ex. A, Dehko Dec. ¶ 7; Ex. B, Thomas Dec. ¶ 10. The Bank Secrecy Act includes provisions requiring banks to report substantial cash transactions and prohibiting individuals from structuring transactions to avoid those requirements. Examinations are routinely conducted at stores, such as Schott's Supermarket, that cash checks or issue money orders. As part of that examination, IRS agents requested and received the store's bank

statements, which included the store's frequent cash deposits of less than $10,000. Ex. B, Thomas Dec. ¶ 10. On April 18, 2012—just nine months before the seizure—the IRS sent a letter to the Dehkos stating that the examination was concluded and "no violations were identified." Ex. A, Dehko Dec. ¶ 7 & Dehko Ex. 4; Ex. B, Thomas Dec. ¶ 10.

Although it mentions the 2012 IRS examination in its forfeiture complaint and notes that "CTRs [currency transaction reports] were discussed," Compl. ¶ 12(h) (Docket # 1), the Government omits the fact that it concluded the examination with a letter advising the Dehkos that it found "no violations" in the course of its Bank Secrecy Act examination. The structuring law that the Government alleges the Dehkos violated in this case, 31 U.S.C. § 5324, is part of the Bank Secrecy Act.

No one from the Government ever told the Dehkos that it was illegal to make frequent cash deposits of less than $10,000 (which it is not) or that it was the Government's policy to treat frequent cash deposits of less than $10,000 as prima facie evidence of a structuring violation, as the Government appears to have done in this case. *See* Ex. A, Dehko Dec. ¶ 8; Ex. B, Thomas Dec. ¶ 7.

Neither the Dehkos nor their employees have ever made cash deposits of less than $10,000 for the purpose of evading currency transaction reporting requirements. Ex. A, Dehko Dec. ¶ 9; Ex. B, Thomas Dec. ¶ 8. Yet more than eight months after the seizure, the Government still holds the store's funds. Ex. A, Dehko Decl. ¶ 17. The money is needed to pay employees, vendors, utility bills, and the store's rent, among other expenses. Ex. A, Dehko Dec. ¶ 11. Despite the hardship the seizure of their store's operating funds has caused the Dehkos, the Government has refused to return the money and has not informed the Dehkos of any process

prior to final judgment in this action by which they can receive a hearing before a neutral magistrate to test the validity of the seizure. Ex. A, Dehko Dec. ¶ 17.

ARGUMENT

The argument section is divided into three parts. First, the Dehkos will show that due process requires a prompt post-seizure hearing where they may seek the return of their property pending final judgment. Second, the Dehkos will explain why it falls to this Court to craft the procedure for that hearing and what principles should guide that effort. Finally, the Dehkos will explain why the government should be required to give back their property pending resolution of this case on the merits: namely, because (1) the Government missed the deadline to file its forfeiture action; and because (2) the available evidence strongly supports the Dehkos' assertion that they had a valid business purpose for making frequent cash deposits of less than $10,000 into their store's bank account and that they did not make those deposits for the purpose of evading currency reporting requirements.

I. The Dehkos Are Entitled to a Prompt Post-Seizure Hearing.

If the local sheriff had come to Schott's Supermarket to repossess an oven or a refrigerator, the Dehkos would plainly have been entitled to a pre-seizure hearing or, if there were exigent circumstances, to a prompt post-seizure hearing. *See Fuentes v. Shevin*, 407 U.S. 67, 90, 96-97 (1972) (striking down state replevin provisions that allowed vendors to have goods seized by sheriff's deputies without prior hearing and noting that "extraordinary" circumstances "may justify postponing notice and opportunity for a hearing"). The question presented here is whether the seizure of Schott's Supermarket's *entire bank account*—used by the Dehkos to pay employees, vendors, utility bills, and the store's rent, among other expenses—is of so much less significance than the seizure of a kitchen appliance that due process requires neither a pre-seizure

nor a prompt post-seizure hearing. To ask that question is to answer it, as evidenced in part by the unanimity of court decisions in other jurisdictions.

Thus, for example, in *Krimstock v. Kelly*, 306 F.40, 53 (2d Cir. 2002), then-judge Sotomayor conducted a comprehensive review of Supreme Court precedent and concluded that due process required New York City to provide interim forfeiture hearings to drivers charged with driving while intoxicated whose vehicles had been seized at the time of their arrest. The New York Court of Appeals reached the same conclusion the following year in a nearly identical case involving the use of civil forfeiture by Nassau County. *County of Nassau v. Canavan*, 1 N.Y.3d 134, 141 (N.Y. 2003). The U.S. District Court for the District of Columbia recently took the same position. *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 104 (D.D.C. 2012).

Courts have also required prejudgment hearings in forfeiture cases involving currency instead of tangible items like automobiles. *E.g.*, *United States v. E-Gold, Ltd*., 521 F. 3d 411, 415 (D.C. Cir. 2008) (seizure of financial assets without prejudgment evidentiary hearing violated due process); *United States v. Jones*, 160 F.3d 641, 647 (10th Cir. 1998) (prejudgment hearing required where the assets at issue were owner's sole means of paying for counsel in a related criminal prosecution).

Besides the weight of the case law in other jurisdictions, all three prongs of the test articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976), for determining whether due process requires an interim hearing cut decidedly in the Dehkos' favor. *See also Krimstock*, 306 F.3d at 60-68 (applying *Mathews* factors to conclude that interim hearing was required in civil forfeiture action); *E-Gold*, 521 F.3d at 315-18 (same); *Jones*, 160 F.3d at 645-47 (same); *Simms*, 872 F. Supp. 2d at 100-04 (same).

Mathews requires courts to consider three factors in determining whether a prejudgment hearing is required in a particular setting: (1) the private interest affected; (2) the risk of erroneous deprivation and the probable value of additional procedural safeguards beyond those already provided; and (3) the government's interest. The Dehkos will address those inquiries in turn.

A. ***Mathews* Factor 1: The Dehkos Have a Strong Interest in Their Store's Operating Account.**

As explained in the fact section, the government took Schott's Supermarket's entire operating account from the PNC Bank. Indeed, Mr. Dehko was about to send checks out to various vendors when government agents arrived to tell him that they had just emptied the store's bank account. Ex. A, Dehko Dec. ¶ 12. When Dehko asked one of the agents how he was supposed to pay his vendors, she responded, "I don't care." *Id*. The government may not care whether Schott's Supermarket meets its financial obligations—which include, among other things, making payroll for approximately 30 employees, *id*. ¶ 2—but the Dehkos certainly do. As explained in Mr. Dehko's declaration, the government's seizure of his store's bank account has caused serious harm to his ability to do business, including injuring his previously sterling reputation with vendors and causing some of them to no longer provide goods on credit and requiring cash-on-delivery instead. *Id*. ¶¶ 10-11, 15-16. Notably, courts have found that a particular concern with the seizure of automobiles is the threat to a person's livelihood when they can no longer drive to and from their job. *Krimstock*, 306 F.3d at 61; *Simms*, 872 F. Supp. 2d at 101. For a small business, the loss of its entire operating account represents a similar threat to the livelihood not only of those who operate the business, but of those who work there as well.

While the Dehkos have managed to keep Schott's Supermarket in business during the eight months since the government seized the store's bank account, it has been challenging and

traumatic for Terry and Sandy both. Ex. A, Dehko Dec. ¶¶ 15-16, 22; Ex. B, Thomas Dec. ¶¶ 11 & 13. Among other things, Terry has had to make late payments to vendors for the first time in thirty years, resulting in some vendors stopping deliveries or withdrawing credit, and both Terry and Sandy have had to have embarrassing discussions with vendors to explain why they do not have ready cash to meet the store's expenses. Ex. A, Dehko Dec. ¶ 22; Ex. B, Thomas Dec. ¶ 13. Accordingly, the Dehkos' have a strong interest in having their store's $35,611 operating account returned to them.

B. *Mathews* Factor 2: The Risk of Erroneous Deprivation in This Case Is High, and the Value of Additional Procedures Is Substantial.

Arguably the most important inquiry under *Mathews*, and certainly the one that receives the most attention from courts, is the risk of erroneous deprivation and the potential value of additional procedural safeguards. Justice Breyer illustrated this point during oral argument in the *Smith/Alvarez* case that was later dismissed as moot by hypothesizing a situation where a car is seized from an innocent owner because "there happened to be some big drug crime nearby," and the owner is given no prompt hearing to determine whether the police had probable cause to take the car.[2] The value of a prompt post-seizure hearing in cases involving that kind of mistake by law enforcement officers is manifest, *see E-Gold*, 521 F.3d at 418 (noting that "in the absence of a pre-seizure hearing, the most meaningful alternative available . . . is a pretrial adversary hearing"), and Justice Breyer's hypothetical involving the non-culpable car owner is closely analogous to the circumstances of this case.

As documented in the fact section and as further demonstrated in Part III below, the available evidence strongly supports the Dehkos' assertion that their property is not subject to

[2] Transcript of Oral Argument at 26-28, *Alvarez v. Smith*, 558 U.S. 87 (2009) (No. 08-351), *available at* http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-351.pdf (last visited September 24, 2013).

forfeiture because they did nothing illegal. Moreover, the forfeiture action itself appears to be procedurally invalid because the Government missed the statutory deadline for filing it. In *Krimstock*, the Second Circuit found it troubling that property owners had to wait three months or more for an adversarial hearing. 306 F.3d at 59. The Dehkos have been waiting more than *eight* months for their opportunity to be heard. Ex. A, Dehko Dec. ¶ 17.

The evident misuse of forfeiture in this case dramatically illustrates the importance of courts serving as a meaningful check on the other branches of government. And while it is unusual to see so many of them featured in one proceeding, it is precisely these sorts of risks—namely, that government agencies with a direct pecuniary interest in the proceeds will initiate groundless forfeiture proceedings and then refuse to return the property even after committing a procedural default—that makes a *prompt* adversarial hearing such a critical attribute of due process. *See, e.g.*, *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993) (explaining that the protection of an adversary hearing "is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding"); *Krimstock*, 306 F.3d at 63 (noting that the court's inquiry into the risk of error under the second prong of the *Mathews* test "is partly informed by the City's pecuniary interest in the outcome of [the] proceedings").

C. ***Mathews* Factor 3: The Government's Interest.**

The Government has no interest in retaining property—including even currency or other easily dissipated assets—that was seized on the strength of an inadequate warrant based on an "investigation" that: (1) identified no *actual* evidence of wrongdoing; and (2) either missed or disregarded highly persuasive evidence of innocence. Nor has the government any cognizable

interest in holding on to property after having missed the deadline to file a forfeiture action against it.

The Dehkos recognize that the government has a general interest in preventing forfeited assets, particularly liquid ones like cash, from being dissipated or otherwise placed beyond the Government's reach in the event it ultimately prevails on the merits. *See, e.g.*, *Krimstock*, 306 F.3d at 64 (noting government's interest in preventing forfeited vehicles "from being sold or destroyed before a court can render judgment in future forfeiture proceedings"). But the magnitude of that interest in this particular case is small. As set forth in Mr. Dehko's declaration, there are a variety of sources from which the Dehkos could satisfy a judgment in this case, including more than $800,000 in inventory owned by Schott's Supermarket, as well as real and personal property owned by Dehko Foods and Mr. Dehko himself. Ex. A, Dehko Dec. ¶ 18. To be sure, it would be inconvenient and expensive to liquidate those assets—which is why the taking of the store's $35,000 operating account has been such a hardship—but the Dehkos are good for any reasonably foreseeable judgment in this case. *Id*. ¶ 19.

Finally, while the Dehkos recognize that providing a prompt post-seizure hearing in forfeiture cases entails some additional burden on the courts and the Government, the nature of that burden, when compared to the substantial risk of erroneous deprivation, does not justify completely dispensing with the most fundamental requirement of procedural due process—namely, an opportunity to be heard "'at a *meaningful* time and in a *meaningful* manner.'" *Krimstock*, 306 F.3d at 51 (quoting *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)) (emphases added).

II. The Government Contends That Federal Law Provides No Post-Seizure Hearing for Forfeitures of Cash Unless It Takes the Entire Business.

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub.L. No. 106-185, 114 Stat. 202, provides for a post-seizure hearing in some cases but not others. Thus, a claimant "is entitled to immediate release of seized property" if the continued possession by the government during the litigation will cause a "substantial hardship" to the claimant. 18 U.S.C. § 983(f)(1). The request must first be made to "the appropriate official" at the relevant agency. *Id.* § 983(f)(2). If the property has not been released within 15 days of that request, the claimant may seek relief in the district court in which the forfeiture complaint was filed or that issued the warrant if no complaint has been filed yet. *Id.* § 983(f)(3).

But this procedure does not apply to most forfeitures of cash. Section 983(f)(8)(A) specifically states that currency and other monetary instruments are ineligible for the hardship-return process described in the preceding paragraph unless they constitute "the assets of a legitimate business which has been seized." As a result, the Government has taken the position in other cases that CAFRA's provision for seeking interim administrative and judicial relief in cases involving currency *only* applies where the government has seized an entire business along with the cash. And while there appear to be no appellate decisions on point, federal district courts have uniformly affirmed the government's interpretation. *See, e.g.*, *United States v. Approximately $15,034,66.33 in Funds*, 844 F. Supp. 2d 1216, 1218 (D. Utah 2011); *United States v. Contents of Account No. 4000393243*, No. C-1-01-729, 2010 WL 3398142, at *1 (S.D. Ohio Jan. 2, 2010); *In Re Seizure Warrants*, 593 F. Supp. 2d 892 (N.D. W. Va. 2009); *United States v. 8 Gilcrease Lane*, 587 F. Supp. 2d 133, 140 (D.D.C. 2008); *Kaloti Wholesale, Inc. v. United States*, 525 F. Supp. 2d 1067, 1070 n.2 (E.D. Wis. 2007).

In light of the United States' successful (and presumably consistent) litigating position regarding the non-applicability of Section 983(f)(1) to cases like this one, it appears the only avenue for obtaining a prompt post-seizure hearing in this case would be a judicially created one.

As for the nature of that hearing, Judge Sotomayor explained in *Krimstock* that "[t]here is no universal approach to satisfying the requirements" of due process in forfeiture cases. 306 F.3d at 69. The purpose of a post-seizure hearing is to determine whether the government is justified in retaining the property during the pendency of the forfeiture proceeding. "At a minimum, the hearing must enable claimants to test the probable validity" of the government's continued possession of the claimants' property. *Id*. The retention hearing need not be exhaustive and will not be a "forum for exhaustive evidentiary battles." *Id.* Accordingly, "due process should be satisfied by an initial testing of the merits of the [government's] case." *Id*. at 70. That is all the Dehkos seek to do here.

The Dehkos submit that the post-seizure hearing in this case could resemble the procedure for seeking a preliminary injunction, whereby the Court may decide whether to grant the requested relief—i.e., the interim return of the money seized from Dehko Foods' bank account—either on the basis of declarations and other papers submitted by the parties or a live hearing in court. As demonstrated below, the available evidence strongly supports the Dehkos' assertion that the Government lacks sufficient justification to retain their property and that it should be returned to them pending final judgment.

III. The Government Lacks Sufficient Justification to Retain the Dehkos' Property During the Pendency of These Proceedings.

The Government should be ordered to return the Dehkos' property pending resolution of this case on the merits because there is persuasive evidence that the Dehkos did nothing wrong and because the Government missed its deadline for filing this action.

As a preliminary matter, the Dehkos recognize that they could have presented one or both of these issues in a motion for summary judgment. From the Dehkos' perspective, however, there are at least two problems with that approach. First, the Government could move for leave to take discovery pursuant to Federal Rule of Civil Procedure 56(e), which might significantly delay resolution of this case on the merits and, necessarily, the return of the Dehkos' property. Second, unlike the post-seizure hearing sought by the Dehkos in this motion, there is no case law supporting the right to have a summary judgment motion decided promptly, even in forfeiture cases. As the Supreme Court has observed, "[g]iven the congested civil dockets in federal courts, a claimant may not receive an adversary hearing"—including a summary judgment hearing—"until many months after the seizure." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 56 (1993). That is certainly true in this case, where the government has been in possession of the Dehkos' property for more than *eight months* with no opportunity for the Dehkos to contest that seizure. Accordingly, the Dehkos believe the present motion for a prompt post-seizure hearing is the most appropriate vehicle for obtaining the relief to which they are constitutionally entitled. There are two compelling reasons why the Government should be ordered to return their money now.

A. The Government Missed Its Filing Deadline.

The procedures for initiating a forfeiture action are set forth in 18 U.S.C. § 983. Subsection 983(a)(3) states that if the Government does not file a complaint within 90 days after a claim to the property has been filed by the owner, "the Government shall promptly release the property" unless a court in the district where the complaint will be filed extends the time for filing "for good cause shown" or upon agreement of the parties. *Id.* § 983(a)(3)(A) & (B). As documented below, the government filed its forfeiture complaint on the *ninety-first* day after the

Dehkos' claim was filed and there is no agreement among the parties to extend that time. Nor are the Dehkos aware of any circumstances that would provide good cause for the Government's untimely filing.

After being notified of the seizure, Dehko Foods filed a claim with the IRS in this case as provided by 18 U.S.C. § 983(a)(2)(A). Ex. A, Dehko Dec. ¶ 14 & Dehko Ex. 5. The IRS's receipt of that claim on April 19, 2013, is evidenced by a return receipt from the United States Postal Service stamped by the IRS and signed by its representative. *Id.* The date "a claim has been filed" for purposes of § 983(a)(3)(A) is the date the agency received the claim. *See, e.g.*, *United States v. $65,930 in U.S. Currency*, No. 3:03CV01625 (RNC), 2006 WL 923704, at *2 (D. Conn. Mar. 28, 2006); *United States v. $34,480 in U.S. Currency*, 190 F. Supp. 2d 929 (W.D. Tex. 2002) (granting extension of time to file forfeiture complaint while noting that date of filing of claim is evidenced by date-stamp reflecting its receipt by the seizing agency).

The Government filed the instant action on July 19, 2013, which is 91 days after Dehko Foods filed its claim with the seizing agency. Absent a showing of good cause by the Government for missing its 90-day deadline, the Dehkos' money should be returned to them immediately. 18 U.S.C. § 983(a)(3)(B).

B. The Available Evidence Strongly Supports the Dehkos' Assertion That They Did Not Violate Federal Structuring Law.

The Government has accused the Dehkos of violating a federal law that prohibits "structuring" cash transactions for the purpose of evading currency transaction reporting requirements. Compl. ¶ 12(i) (Docket # 1). The sole basis for the Government's structuring allegation appears to be the fact—which the Dehkos do not dispute—that they frequently made cash deposits into their store's bank account in amounts less than $10,000. *Id.* ¶ 12(c). But there can be many reasons for a small business to make frequent cash deposits of less than $10,000,

including perfectly lawful ones. The Government, however, seems unaware of that fact because its investigators made no effort to determine what purpose the Dehkos actually had for making deposits the way they did. Instead, it appears the Government's case rests entirely on the fact that the Dehkos made frequent cash deposits of less than $10,000, along with an inference that there can be no innocent explanation for doing so. That inference is unsupported and incorrect.

As documented in the fact section above and in their declarations and supporting exhibits attached to those declarations, the Dehkos have a longstanding policy of frequently depositing cash generated by Schott's Supermarket into the store's bank account, and they have an entirely plausible—indeed, compelling—explanation for that policy. Simply put, it is imprudent for small businesses to allow substantial amounts of cash to accrue on the premises, and a business that engages in significant numbers of cash transactions, as Schott's Supermarket does, must put that cash somewhere safe. Accordingly, the Dehkos did what any other small business owner might do: Whenever cash started piling up at the store, they sent someone across the street to the PNC Bank to deposit it. Ex. A, Dehko Dec. ¶ 4; Ex. B, Thomas Dec. ¶ 4.

As suggested by the pattern of deposits documented in the government's complaint, the Dehkos had a specific figure they tried to avoid exceeding for cash on hand—$10,000. Why $10,000? Because their store's insurance policy only covers cash losses up to $10,000. *Id*. Both their insurance agent and outside accountants have warned the Dehkos to avoid allowing more than $10,000 in cash to accrue on store premises. Ex. B, Thomas Dec. ¶ 6. Indeed, the Dehkos' longstanding policy of depositing cash in amounts less than $10,000 is reflected in Schott's Supermarket's financial procedures manual, which was prepared by CPA firm and states: "[the store's] [c]ash management policy is to deposit cash and checks on hand that accumulate to $7,500.00 and to make frequent bank deposits to minimize risk of loss or theft." Ex. A, Dehko

Dec. ¶ 5, Dehko Ex. 2. Perhaps the government doesn't know that $10,000 is the standard limit for cash losses in commercial general liability policies for small businesses. *See* Ex. B, Thomas Dec. ¶ 6. Or perhaps it knows but doesn't consider that fact significant. Either way, the Dehkos have entirely persuasive reasons for depositing money the way they did, and the government has nothing—*nothing*—to challenge the Dehkos' sincerity or their credibility on that point.

CONCLUSION

Based on the arguments and supporting evidence contained in this motion, the Dehkos respectfully request that this Court hold a prompt post-seizure hearing—based either on the papers submitted by the parties or live testimony in court—and order the immediate return of the Dehkos' property pending resolution of this case on the merits.

INSTITUTE FOR JUSTICE

Dated: September 25, 2013 By: /s/ Clark M. Neily III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Claimants' Motion for Prompt Post-Seizure Hearing and Return of Property was filed through the Electronic Court Filing system on September 25, 2013, and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

INSTITUTE FOR JUSTICE

/s/ Clark M. Neily III
CLARK M. NEILY III