

IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY

PAULA SEXTON
COURT CLERK

Defendant.

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) **Case No. CV-2016-66**
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Page 1 of 11

CASH for the other owners and Claimants. In addition, he claims a possessory interest in all of the seized CASH as the person who was in legal possession of the CASH at the time it was seized.

2. Claimant Klo & Kweh Music Team is a Karen Christian rock/pop band from Yangon, Myanmar (Burma). Klo & Kweh Music Team owns and claims an ownership or co-ownership interest (with the Karen Christian Revival Church, Inc.) in approximately \$32,000 of the seized CASH, which was stored in a red and white gift bag in Eh Wah's car (much of it in envelopes labeled with the location where the money was raised). That money was raised from concert ticket sales, love offerings collected by churches, and individual donations during their 2015-2016 U.S. tour, the proceeds from which (less expenses and tithe) were intended to be donated to the Dr. T. Thanbyar Christian Institute (TCI), a nonprofit Karen Christian liberal arts education institution in Burma. Klo & Kweh Music Team also owns and claims an ownership interest in approximately \$7,300 of the seized CASH, which were the proceeds from souvenir and CD sales during the tour.
3. Claimant Karen Christian Revival Church, Inc. is a non-profit organization in Omaha, Nebraska. Karen Christian Revival Church, Inc. was the sponsoring organization for the Klo & Kweh Music Team's 2015-2016 U.S. tour, and which owns and claims an ownership or co-ownership interest (with the Klo & Kweh Music Team) in approximately \$32,000 of the seized CASH which was stored in a red and white gift bag in Eh Wah's car (much of it in envelopes labeled with the location where the money was raised). That money was raised from concert ticket sales, love offerings collected by churches, and individual donations during their 2015-2016 U.S. tour, the proceeds from

which (less expenses and tithe) were intended to be donated to the Dr. T. Thanbyar Christian Institute (TCI), a nonprofit Karen Christian liberal arts education institution in Burma.

4. Claimant Hsa Thoo Lei Orphanage - IDP Learning Center is a refugee orphanage and nonprofit community-based organization in Thailand which owns and claims an ownership interest in an estimated \$1,000 of the seized CASH, which was stored in Eh Wah's car in a bundle of approximately 30 envelopes with the name of the orphanage on the front, each envelope of which was a directed donation from individuals or families in the Karen community to the Hsa Thoo Lei Orphanage - IDP Learning Center.
5. Claimant Saw Win Ston is an individual citizen of Myanmar (and the bassist/audio technician for the Klo & Kweh Music Team) who owns and claims a personal ownership interest in \$10,980, or approximately that amount, of the seized CASH, which was stored in a blue and white gift bag in Eh Wah's car, and which was a gift/love offering for him from relatives and friends in Buffalo, New York that was entrusted to Claimant Eh Wah for delivery to Claimant Saw Win Ston.

CLAIMANTS' RESPONSES TO THE STATE'S ALLEGATIONS

6. Claimants admit that the CASH was seized on or about February 27, 2016 from Claimant Eh Wah in Muskogee County, Oklahoma by the Muskogee County Sheriff's Department, but lack sufficient knowledge to admit or deny the specific amount of the CASH seized.
7. Claimants deny that \$53,234.00 was the full amount of the cash seized and demand strict proof thereof. The property receipt received by Claimant Eh Wah from Muskogee County Sheriff's Department Deputy Ben Moore on February 27, 2016 states that "\$53,249 U.S. CURRENCY mixed d[en]ominations" was seized.

8. Claimants deny that the seizure of the CASH was in compliance with Title 63 O.S. Section 2-502 and Section 2-506 and demand strict proof thereof.
 - a. Claimants deny that there was reasonable suspicion for the further detention of Claimant Eh Wah beyond the time necessary to issue the warning for his car's defective brake light and demand strict proof thereof.
 - b. Claimants deny that there was probable cause for the warrantless search of Claimant Eh Wah's vehicle and demand strict proof thereof.
 - c. Claimants deny that there was probable cause to seize the CASH and demand strict proof thereof.
9. Claimants deny that the intended forfeiture of the CASH is in compliance with Title 63 O.S. Section 2-502 and Section 2-506 and demand strict proof thereof.
 - a. Claimants deny that the CASH was in close proximity to any controlled dangerous substance and demand strict proof thereof.
 - b. Claimants deny that the CASH was used to facilitate the sale of any controlled dangerous substance and demand strict proof thereof.
10. No other factual allegations were made.

CLAIMANTS' DEFENSES

- I. The unnecessary extension of the traffic stop without reasonable suspicion, the warrantless search of Claimant Eh Wah's vehicle, and the seizure of the CASH were done without authority of law and were in violation of Claimant Eh Wah's state and federal constitutional rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and Sections 2, 7, 23, and 30 of Article II of the Constitution of the State of Oklahoma.

- II. The intended forfeiture of the seized CASH is not authorized by the relevant provisions of Oklahoma law and violates the due process rights and other constitutional rights of the Claimants under the Fifth and Fourteenth Amendments to the United States Constitution and Sections 2, 7, and 23 of Article II of the Constitution of the State of Oklahoma.
- III. There was no relationship, real or implied, between the seized CASH and any controlled dangerous substance, and no evidence supports such allegations.
- IV. In fact, the seized CASH was all derived from legitimate activities, primarily from charitable fundraising during the Klo & Kweh Music Team's 2015-2016 U.S. tour.
- V. The seized CASH was not "furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act" nor was it "proceeds traceable to such an exchange," nor was it "used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act," and Plaintiff cannot show that it was by a preponderance of the evidence. Thus, the seized CASH is not subject to forfeiture under 63 O.S. Section 2-503(A)(6).
- VI. The seized CASH was not "found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances," and Plaintiff cannot show that it was by a preponderance of the evidence. Thus, the seized CASH is not subject to forfeiture under 63 O.S. Section 2-503(A)(7).
- VII. The seized CASH was not "acquired by [any] person during the period of [any] violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after [any] such period," Plaintiff cannot show that it was by a preponderance of the evidence,

and there is a “likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.” Thus, the seized CASH is not subject to forfeiture under 63 O.S. Section 2-503(B).

- VIII. Claimants are bona fide legal owners of the CASH who have an innocent ownership interest in the CASH under 63 O.S. Section 2-506(H)-(I).
- IX. The statutory requirement that Claimants must “prove” that they have “a bona fide or innocent ownership interest” in the seized CASH in order to bring an innocent-owner claim under 63 O.S. Section 2-506(H) effectively requires them to prove their own innocence in order to keep their property, which violates Claimants’ due process rights and other constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution and Sections 2, 7, and 23 of Article II of the Constitution of the State of Oklahoma.
- X. The seizure and intended forfeiture of the seized CASH violates Claimants’ constitutional due process rights because the Muskogee County Sheriff’s Department and the Muskogee County District Attorney’s Office have a direct financial stake in seizing and forfeiting the CASH. The profit incentive created by putting the proceeds from seized and forfeited property under the direct control of the very public officials who seize and forfeit property interferes with the fair and impartial administration of justice guaranteed by the due process clauses of the Fourteenth Amendment to the United States Constitution and Section 7 of Article II of the Constitution of the State of Oklahoma, and thus violates Claimants’ due process rights under those same provisions.

- A. If the CASH is forfeited, it will be deposited in a revolving fund controlled by the Muskogee County District Attorney and spent at his discretion on specified law

enforcement activities related to controlled substances pursuant to 63 O.S. Section 2-506(L)(3). This gave the Muskogee County District Attorney's Office a direct financial incentive to seek to forfeit the CASH.

- B. Upon information and belief, the Muskogee County Sheriff's Department receives a percentage of the proceeds of forfeited property pursuant to an agreement with the Muskogee County District Attorney's Office, as described generally in 63 O.S. Section 2-506(L)(3). This gave the Muskogee County Sheriff's Department a direct financial incentive to seize the CASH.
- C. The Muskogee County Sheriff's Department seized all of the currency (the CASH) that Claimant Eh Wah had with him in his car on February 27, 2016 because they claimed it was drug proceeds. However, the deputies actually returned a \$300 personal check made out to Claimant Eh Wah. If the true purpose of the seizure of the CASH was to seize drug proceeds or evidence of illegal drug trafficking, it would make no sense to return a personal check to someone who the deputies believed was involved in illegal drug trafficking. But if the true purpose of the seizure of the CASH was to generate additional revenue that could be spent by the Muskogee County Sheriff's Department and the Muskogee County District Attorney's Office, then it does make sense for deputies to not keep a personal check that Muskogee County authorities were not authorized to cash.

- XI. The exercise of the spending power over the proceeds from forfeited property—including the CASH that Plaintiff seeks to forfeit in this case—by the Muskogee County District Attorney's Office and the Muskogee County Sheriff's Department is an unconstitutional delegation of legislative authority that violates the separation of powers under the

Constitution of the State of Oklahoma. The Muskogee County District Attorney's Office's control and discretion over spending of the proceeds from forfeited property from the revolving fund pursuant to 63 O.S. Section 2-506(L)(3), and the Muskogee County Sheriff's Department's control and discretion over a percentage of the proceeds from forfeited property pursuant to an agreement with the Muskogee County District Attorney's Office, as described generally in 63 O.S. Section 2-506(L)(3), improperly allows executive branch officials to engage in appropriations to self-finance their own activities, in violation of the separation and distribution of powers under Article IV of the Constitution of the State of Oklahoma and the delegation of the power to make appropriations to the Oklahoma Legislature in Section 55 of Article V of the Constitution of the State of Oklahoma. This failure to respect the constitutional separation and distribution of powers violates Claimants' due process rights and other constitutional rights under Sections 2, 7, and 23 of Article II of the Constitution of the State of Oklahoma.

XII. Plaintiff's failure to provide prompt notice of the intended forfeiture to any of the Claimants violates Claimants' due process rights and other constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution and Sections 2, 7, and 23 of Article II of the Constitution of the State of Oklahoma.

XIII. If successful, the intended forfeiture of the seized CASH would be an excessive fine in violation of Claimants' rights under the Eighth Amendment to the United States Constitution and Section 9 of Article II of the Constitution of the State of Oklahoma.

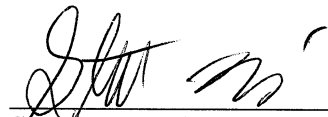
PRAYER FOR RELIEF

Wherefore, Claimants respectfully pray that this Court grant the following relief:

- (A) Enter judgment in favor of the Defendant CASH and the Claimants;
- (B) Order this matter dismissed with prejudice;
- (C) Declare that Claimants are the legitimate, lawful owners of the seized CASH;
- (D) Order that the CASH be immediately returned to Claimant Eh Wah—or if he is unavailable to receive it, to Claimant Karen Christian Revival Church, Inc.—for distribution to the other Claimants;
- (E) Award attorney's fees and costs related to defending this matter;
- (F) Award pre-judgment and post-judgement interest as determined by statute; and
- (G) Order any and all such further relief the Court deems appropriate.

Dated this 22nd day of April, 2016

Respectfully submitted,



Steven P. Minks OBA#32077
McLaughlin Law Firm
109 Beard Ave. Ste. 106
Poteau, OK 74953
(918) 647-1170

Dan Alban*
Virginia State Bar No. 72688
Institute for Justice
901 N. Glebe Rd., Suite 900
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dalban@ij.org

Matthew Miller**
Texas Bar No. 24046444
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816 Congress Ave., Suite 960
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(512) 480-5936
Fax: (512) 480-5937
mmiller@ij.org

Attorneys for Claimants

*Member of the Bars of Virginia and the District of Columbia.

Mr. Alban's *pro hac vice* application is being assembled and will be filed forthwith.

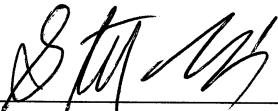
**Member of the State Bar of Texas.
Mr. Miller's *pro hac vice* application is being assembled and will be filed forthwith.

Certificate of Service

The undersigned certifies that on the 22nd day of April, 2016, a true and correct copy of the foregoing Claim for Property and Verified Answer was caused to be delivered by hand delivery to:

Orvil Loge
District Attorney
District 15 – Muskogee County
Muskogee County Courthouse
220 State Street
Muskogee, OK 74401
(918) 682-3374
(918) 687-3347 FAX

*Attorney for Plaintiff:
State of Oklahoma*



Steven P. Minks OBA#32077

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED
2016 APR 22 PM 12:09

IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY

THE STATE OF OKLAHOMA, ex. rel.,
ORVIL LOGE, DISTRICT ATTORNEY,
Plaintiff,

vs.

\$53,234.00 CASH;

(Eh Wah)

Defendant.

Case No. CV-2016-66

PAULA SEXTON
COURT CLERK

VERIFICATION OF CLAIMANT EH WAH

State of TEXAS)

County of ^{NP.} ~~Texas~~ Dallas) ss.

I, Eh Wah, being an adult of legal age and first duly sworn upon oath, depose and state as follows:

That I am an individual U.S. citizen residing in Dallas, Texas.

That I served as the U.S. tour manager for the Klo & Kweh Music Team ("the Band") during their 2015-2016 U.S. tour from November 2015 to March 2016.

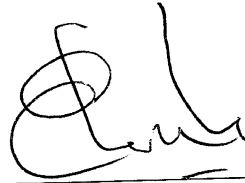
That I am the legal owner of approximately \$2,000 of the seized CASH, as described in paragraph 1 of the foregoing Claim for Property and Verified Answer.

That I was in legal possession of all of the CASH at the time of the seizure on February 27, 2016, because the other owners of the CASH had entrusted it to me for safekeeping, transportation, and delivery during the Band's 2015-2016 U.S. tour.

That the seized CASH was not used for, earned from, in close proximity to, or otherwise associated with any type of illegal drug or controlled dangerous substance whatsoever.

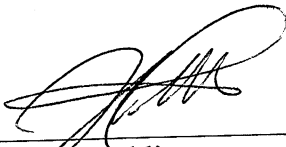
That all factual statements made in this Verification and in the foregoing Claim for Property and Verified Answer are true and correct to the best of my knowledge and belief.

Further Affiant Sayeth Not.

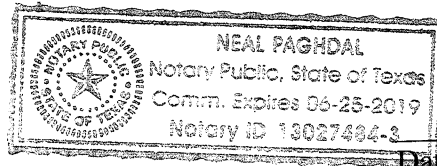


Eh Wah

Subscribed and sworn before me this 20 day of April, 2016. On this date, before me, Eh Wah did personally appear and affirm.



Notary Public



Date

N.P.
~~06/25~~ 04/20/16

(My commission expires: 06/25/19)

(My commission #: 13027484-3)

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED

2016 APR 22 PM 12: 1

PAULA SEXTON
COURT CLERK

**IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY**

**THE STATE OF OKLAHOMA, ex. rel.,
ORVIL LOGE, DISTRICT ATTORNEY,
Plaintiff,**

vs.

Case No. CV-2016-66

\$53,234.00 CASH;

(Eh Wah)

Defendant.

VERIFICATION OF CLAIMANT KAREN CHRISTIAN REVIVAL CHURCH, INC.

State of Nebraska)
) ss.
County of Douglas)

I, Rev. Saw Kaw Khu, being an adult of legal age and first duly sworn upon oath, depose and state as follows:

That I am the President of the Mission Board, and authorized representative, of Claimant Karen Christian Revival Church, Inc., ("the Church") a nonprofit organization in Omaha, Nebraska.

That I am authorized to execute this Verification on behalf of the Church.

That the Church is a legal owner or co-owner (with the Klo & Kweh Music Team), or otherwise has a legal ownership interest in approximately \$32,000 of the seized CASH, as described in Paragraph 3 of the foregoing Claim for Property and Verified Answer.

That the Church's seized money was not used for, earned from, in close proximity to, or otherwise associated with any type of illegal drug or controlled dangerous substance whatsoever.

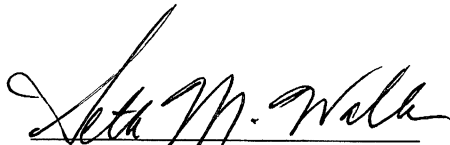
That all factual statements made in this Verification and in Paragraph 3 of the foregoing Claim for Property and Verified Answer are true and correct to the best of my knowledge and belief.

Further Affiant Sayeth Not.



Rev. Saw Kaw Khu
President of the Mission Board of
Karen Christian Revival Church, Inc.

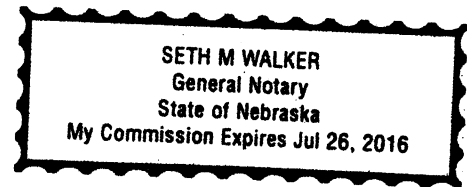
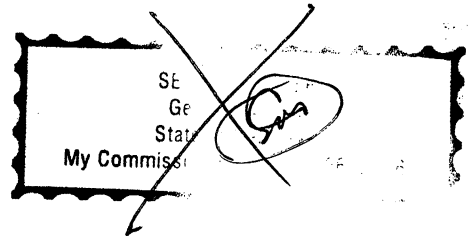
Subscribed and sworn before me this 20th day of April, 2016. On this date, before me, Rev. Saw Kaw Khu did personally appear and affirm.


Notary Public

4/20/2016
Date

(My commission expires: 7/26/16)

(My commission #: N/A)





STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED

2016 APR 22 PM 12:11

IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY

PAULA SEXTON
COURT CLERK

THE STATE OF OKLAHOMA, ex. rel.,
ORVIL LOGE, DISTRICT ATTORNEY,
Plaintiff,

vs.

Case No. CV-2016-66

\$53,234.00 CASH;

(Eh Wah)

Defendant.

VERIFICATION OF CLAIMANT HSA THOO LEI ORPHANAGE
- IDP LEARNING CENTER

Country of Thailand)

Mae Sot, Tak)

) ss.

I, Mrs. Paw Ray, being an adult of legal age and first duly sworn upon oath, depose and state as follows:

That I am the Director, and authorized representative, of Claimant Hsa Thoo Lei Orphanage - IDP Learning Center ("the Orphanage") a refugee orphanage and nonprofit community-based organization in Mae Sot, Tak, Thailand.

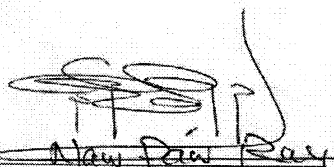
That I am authorized to execute this Verification on behalf of the Orphanage.

That the Orphanage is the legal owner of an estimated \$1,000 of the seized CASH from direct donations made to the Orphanage, as described in Paragraph 4 of the foregoing Claim for Property and Verified Answer.


That the Orphanage's seized money was not used for, earned from, in close proximity to, or otherwise associated with any type of illegal drug or controlled dangerous substance whatsoever.

That all factual statements made in this Verification and in Paragraph 4 of the foregoing Claim for Property and Verified Answer are true and correct to the best of my knowledge and belief.

Further Affiant Sayeth Not.


Paw Ray

Subscribed and sworn before me this _____ day of April, 2016. On this date, before me, Mrs. Paw Ray did personally appear and affirm.


(Mr. Theerarat Jaiprong)
Notary Public or Thai Attorney Witness

April. 20, 2016
Date

(My commission expires: _____)

(My commission #: _____)



Reg.No./ทะเบียนเลขที่ 353/1558
Commission Expires/ทะเบียนหมดอายุ
Date/วันที่ December 13, 2017

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED



IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY

PAULA SEXTON
COURT CLERK

THE STATE OF OKLAHOMA, ex. rel.,
ORVIL LOGE, DISTRICT ATTORNEY,
Plaintiff,

vs.

Case No. CV-2016-66

\$53,234.00 CASH;

(Eh Wah)

Defendant.

VERIFICATION OF CLAIMANT KLO & KWEH MUSIC TEAM

County of Myanmar)
City of Yangon) ss.
Ahlone Township)

I, Saw Marvellous Soe, being an adult of legal age and first duly sworn upon oath, depose and state as follows:

That I am the band leader, and authorized representative, for Claimant Klo & Kweh Music Team ("the Band"), a Karen Christian rock/pop band from Yangon, Myanmar.

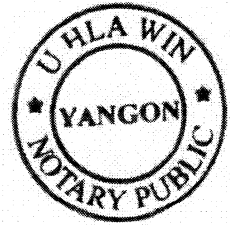
That I am authorized to execute this Verification on behalf of the Band.

That the Band is a legal owner or co-owner (with the Karen Christian Revival Church, Inc.), or otherwise has a legal ownership interest in approximately \$32,000 of the seized CASH, as described in Paragraph 2 of the foregoing Claim for Property and Verified Answer.


That the Band is also the legal owner or otherwise has a legal ownership interest in approximately \$7,300 of the seized CASH, as described in Paragraph 2 of the foregoing Claim for Property and Verified Answer.

That the Band's seized money was not used for, earned from, in close proximity to, or otherwise associated with any type of illegal drug or controlled dangerous substance whatsoever.

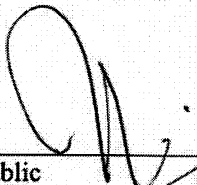
That all factual statements made in this Verification and in Paragraph 2 of the foregoing Claim for Property and Verified Answer are true and correct to the best of my knowledge and belief.



Further Affiant Sayeth Not.

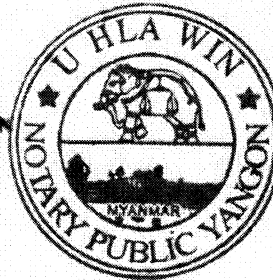

Saw Marvellous Soe

Subscribed and sworn before me this 20th day of April, 2016. On this date, before me, Saw Marvellous Soe did personally appear and affirm.


Notary Public

20 APR 2016
Date

U HLA WIN
B.Sc. H.G.P, R.L, D.B.L, D.M.L, D.I.L, M.Dev.S
(My commission expires 2016/11/16)
NOTARY PUBLIC
NO.52, MYANMA GONYAUNG HOUSING,
NANTHUMAR ROAD, TAMWE TOWNSHIP, YANGON
REPUBLIC OF THE UNION OF MYANMAR
TEL. 09-2029179



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STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
FILED

IN THE DISTRICT COURT OF THE FIFTEENTH JUDICIAL DISTRICT OF
THE STATE OF OKLAHOMA SITTING IN AND FOR MUSKOGEE COUNTY

2016 APR 14 PM 12:10
PAULA SEXTON
COURT CLERK

THE STATE OF OKLAHOMA, ex. rel.,
ORVIL LOGE, DISTRICT ATTORNEY,
Plaintiff,

vs.

\$53,234.00 CASH;

(Eh Wah)

Defendant.

Case No. CV-2016-66

VERIFICATION OF CLAIMANT SAW WIN STON

Country of Myanmar)
City of Yangon) ss.
North Okkalapa)

I, Saw Win Ston, being an adult of legal age and first duly sworn upon oath, depose and state as follows:

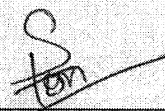
That I am an individual citizen of Myanmar residing in the City of Yangon.

That I am the legal owner of \$10,980, or approximately that amount, of the seized CASH as described in Paragraph 5 of the foregoing Claim for Property and Verified Answer.

That the seized CASH was not used for, earned from, in close proximity to, or otherwise associated with any type of illegal drug or controlled dangerous substance whatsoever.

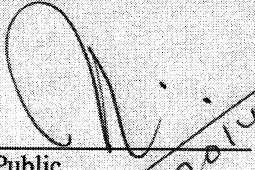
That all factual statements made in this Verification and in Paragraph 5 of the foregoing Claim for Property and Verified Answer are true and correct to the best of my knowledge and belief.

Further Affiant Sayeth Not.


Saw Win Ston



Subscribed and sworn before me this 20th day of April, 2016. On this date, before me, Saw Win Ston did personally appear and affirm.


Notary Public

20 APR 2016
Date

U HLA WIN
B.Sc. H.G.P. R.L. D.B.L. D.M.L. D.I.L. M.Dev.S
(My Commission Expires) NOTARY PUBLIC
NO.52, MYANMA GONYAUNG HOUSING,
(My Commission) ROAD, TAMWE TOWNSHIP, YANGON
REPUBLIC OF THE UNION OF MYANMAR
TEL 09-2029179

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