

MATTHEW S. PAPPAS (SBN: 171860)
22762 Aspan Street, Suite 202-107
Lake Forest, CA 92630
Phone: (949) 382-1485
Facsimile: (949) 242-2605
E-Mail: matt.pappas@mattpappaslaw.com

INSTITUTE FOR JUSTICE
LAWRENCE B. SALZMAN (SBN: 224727)
lsalzman@ij.org
SCOTT G. BULLOCK*
sbullock@ij.org
JUSTIN M. PEARSON*
jpearson@ij.org
901 North Glebe Road, Suite 900
Arlington, VA 22203
Phone: (703) 682-9320
Facsimile: (703) 682-9321

* Application *pro hac vice* pending

Attorneys for Claimants,
TONY JALALI and MORGAN JALAEI

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

REAL PROPERTY LOCATED AT 2601
W. BALL ROAD, ANAHEIM,
CALIFORNIA (JALALI AND JALAEI),

Defendants.

TONY JALALI AND MORGAN JALAEI,

Titleholders.

TONY JALALI AND MORGAN JALAEI,

Counter-claimants,

v.

UNITED STATES OF AMERICA; and
DOES 1 TO 10,

Counter-defendants.

2013 MAY -1 PM 2:31
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPAN ST., #202-107
LAKE FOREST, CA 92630 • (949) 382-1485

1 Claimants Tony Jalali and Morgan Jalaei (the "Jalalis"), husband and wife, by and
2 through undersigned counsel, hereby file their Answer, Affirmative Defenses and
3 Counterclaim to Plaintiff's Verified Complaint for Forfeiture as follows.

4 **ANSWER**

5 1. Admitted.

6 2. Admitted.

7 3. Admitted.

8 4. Admitted. The Jalalis further state that they purchased the property,
9 which was the location of Morgan Jalaei's dental practice, when it came on the
10 market in 2003. Although she opened a new dental practice in Lake Forest, Calif.,
11 in 2009, selling the Anaheim practice in 2010, the Jalalis held onto the Anaheim
12 building as a rental property.

13 5. Partially admitted and partially denied. The Jalalis admit that they
14 own the real property located at 2601 W. Ball Road, Anaheim, Calif. They further
15 state that during February, 2012, they paid off all outstanding mortgages secured
16 by the property with proceeds from a second mortgage taken out on their primary
17 residence. The Jalalis admit that First United Bank and Corestates Bank
18 previously had financial interests in the building. The Jalalis have no direct
19 knowledge, however, of the specific documents or instrument numbers identified
20 by the government.

21 6. Partially admitted and partially denied. Admitted that the Jalalis
22 could lose the bulk of their personal savings should the government prevail in this
23 action and, therefore, are adversely affected by these proceedings. The Jalalis own
24 the property free and clear of any mortgage and therefore denied as to the banks.
25 Denied that Remedy Tree, Barney Lee, Nature's Top Shelf Collective, Inc.,
26 Nicholas Seth Edwards, Releaf Health & Wellness, Charles Ikai, or Bobby Holley
27 are currently tenants at the property. Admit that forfeiture will adversely affect the
28 Jalalis' other tenants by putting the stability of their future tenancy at risk.

LAW OFFICE OF MATTHEW PAPPAS
27762 ASPEN ST., #202-107
LAKE FOREST, CA 92650 • (949) 382-1485

1 7. Plaintiff has improperly combined different factual allegations
 2 including allegations for which the Jalalis have no direct knowledge. Therefore,
 3 they are denied. Claimants state further, however, that tenant Remedy Tree
 4 vacated the property on or about August 26, 2011; that the tenant in suite 212,
 5 Nicholas Seth Edwards, referred to by the government as "Nature's Top Shelf
 6 Collective" but known to the Jalalis as "Patient Premium Collective" vacated the
 7 property on an uncertain date between August 21, 2011 and September 21, 2011;
 8 that Tony Jalali served tenant Releaf Health & Wellness a three-day notice to cease
 9 any activities in violation of federal law and to quit the premises on August 23,
 10 2012, resulting in the tenant vacating the property.

11 8. The Jalalis are without knowledge as to what the government is
 12 informed or believes. Therefore, these allegations are denied.

13 9. The Jalalis are without knowledge as to what the government is
 14 informed or believes. Therefore, these allegations are denied. Nonetheless, the
 15 Jalalis admit that they are the owners of the defendant property and Tony Jalali
 16 manages the building.

17 10. Without knowledge, and therefore denied.

18 11. Without knowledge, and therefore denied.

19 12. Without knowledge, and therefore denied, as to the letter allegedly
 20 sent to Remedy Tree and Barney Lee. Denied as to the letter allegedly sent to
 21 Tony Jalali.

22 13. Without knowledge, and therefore denied.

23 14. Without knowledge, and therefore denied.

24 15. Without knowledge, and therefore denied.

25 16. Without knowledge, and therefore denied.

26 17. Without knowledge, and therefore denied.

27 18. Without knowledge, and therefore denied.

28 19. Without knowledge, and therefore denied.

LAW OFFICE OF MATTHEW PAPPAS
 22762 ASPEN ST., #202-107
 LAKE FOREST, CA 92630 • (949) 362-1445

1 20. Without knowledge, and therefore denied.

2 21. Without knowledge, and therefore denied.

3 22. Without knowledge, and therefore denied.

4 23. Without knowledge, and therefore denied, regarding the letter
5 allegedly sent to Releaf Health & Wellness, Charles Ikai and Bobby Holley.
6 Denied as to the letters allegedly sent to Tony Jalali.

7 24. Without knowledge, and therefore denied.

8 25. Without knowledge, and therefore denied.

9 26. Denied. The Jalalis further state that Tony Jalali served tenant Releaf
10 Health & Wellness a three-day notice to cease any activities in violation of federal
11 law and to quit the premises on August 23, 2012, resulting in the tenant vacating
12 the property.

13 27. Denied.

14 **AFFIRMATIVE DEFENSES**

15 **General Background**

16 Tony Jalali immigrated to the United States from Iran in 1978 with the hope
17 of a better life in the land of liberty. His wife, Morgan, joined him in 1988.
18 Together, they have found their American dream. Tony has become a successful
19 software engineer and Morgan has been a dentist in Orange County since 1995.
20 Morgan studied dentistry for seven years and graduated from Loma Linda
21 University School of Dentistry while raising their two sons, now in college. Tony
22 and Morgan have no criminal history; neither has ever been arrested or charged
23 with any crime.

24 In 1997, after working as an employee for another dentist, Morgan
25 purchased a dental practice operating in suites 101 and 102 of the building at 2601
26 W. Ball Road. In June 2003, the Jalalis purchased the entire building. In 2009,
27 Morgan began building a new practice in Lake Forest, Calif. In 2010, she sold the
28

LAW OFFICE OF MATTHEW PAPPAS
27162 ASPEN ST., #202-107
LAKE FOREST, CA 92650 - (949) 362-1485

1 Anaheim practice and began working exclusively from her offices in Lake Forest,
2 but the Jalalis retained the building in Anaheim as a rental property.

3 In February 2012, they paid off the mortgage on the building by taking a
4 second mortgage out on their family home. This residential mortgage came with a
5 lower interest rate that allowed them to keep the building as a rental property,
6 which they hope will fund their retirement. The property is a well-maintained,
7 two-story office building with approximately a half dozen tenants at any one time,
8 including a dental practice (not Morgan's), an insurance company, and a retail and
9 wholesale office of an auto sales company. During the past three years, the Jalalis
10 have also rented space in the building to two medical marijuana dispensaries,
11 including one at the time this action was filed. One tenant identified in the
12 government's complaint, Remedy Tree, represented itself to Tony Jalali and held a
13 business license as a "smoke shop" that did not sell marijuana. It was later
14 suspected by Tony Jalali of having marijuana on the premises and evicted.
15 Medical marijuana dispensaries are legal under California law and the federal
16 government has shown no interest in prosecuting either the operators or patients of
17 the dispensaries that were tenants of the Jalalis' property. No medical marijuana
18 dispensaries are currently located on the property and none have been located there
19 since August, 2012. The Jalalis have had no involvement with the dispensaries
20 themselves apart from being landlords. Morgan has no day-to-day involvement at
21 all with the operation of the building or its tenants.

22 Tony Jalali had observed that many medical marijuana dispensaries were
23 operating in the City of Anaheim at one time, however, and he was generally
24 aware that medical marijuana was legal under state law. He read in popular news
25 accounts statements by the federal government to the effect that federal authorities
26 would not prosecute cases concerning medical marijuana where state law had made
27 the use and sale of medical marijuana legal. When a medical marijuana dispensary
28 applied to rent space in his building in 2010, therefore, Tony Jalali had no concern

LAW OFFICE OF MATTHEW PAPPAS
22762 ARIAN ST., #202-107
LAKE FOREST, CA 92650 • (949) 382-1483

1 about their business apart from ensuring that they would make good tenants. His
2 attitude toward medical marijuana dispensaries was bolstered when he noticed that
3 in that year the Anaheim Convention Center, owned and operated by the City of
4 Anaheim, was host to the Kush Expo—the largest marijuana industry trade show in
5 the world, attended by nearly 15,000 people.

6 Upon information and belief, all of the dispensaries that have applied to rent
7 space in the Jalalis' building were attendees of the Kush Expo in 2010 and 2011.
8 The Anaheim Convention Center was again the site of the Kush Expo in 2012 and
9 has announced that it will host the event yet again in July of this year (2013).

10 Without prior notice from the federal government, however, Tony Jalali was
11 served with this action seeking the forfeiture of his and his wife's entire building
12 due to his renting of space to medical marijuana dispensaries from 2010-2012.

13 Upon receiving notice, Tony Jalali immediately requested that the dispensary
14 occupying the building leave. It ceased operation within 3 days of that request.
15 Now, approaching retirement age, the Jalalis mount this defense to save the
16 financial assets they have worked their lives to earn.

17 The government, for its part, seeks to use the draconian punishment of
18 forfeiture against the Jalalis, despite their having no direct involvement in the
19 operation of any medical marijuana dispensary, in order to send a message to the
20 State of California and other states in a continuing battle over the decriminalization
21 or legalization of medical marijuana. It seeks this punishment of the Jalalis while
22 turning a blind eye to the activities of medical marijuana dispensaries, their
23 patients, and even the activities of the City of Anaheim, which continues to profit
24 from a well-publicized, massive marijuana-related event operating in the city-
25 owned convention center each year.

26 Specific Affirmative Defenses

27 First Affirmative Defense—Tenth Amendment. The Plaintiff's claims fail,
28 in whole or in part, because they violate the system of federalism created by the

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPEN ST., #202-107
LAKE FOREST, CA 92650 • (949) 362-1485

1 United States Constitution, including, but not limited to, the Tenth Amendment.
 2 The Controlled Substances Act authorizes a federal program known as “equitable
 3 sharing,” whereby the federal government compensates local law enforcement
 4 officers where it “will serve to encourage further cooperation between the recipient
 5 State or local agency and Federal law enforcement agencies” in advancing federal
 6 law enforcement priorities. See 21 U.S.C. § 881(e)(3)(b). The equitable sharing
 7 program violates the Tenth Amendment because it encourages local officials to
 8 subvert state law. California cities are creatures of state law and the authority of
 9 local law enforcement officials is prescribed by state law. California explicitly
 10 permits the sale of medical marijuana and specifically prohibits the use of real
 11 property forfeiture where the property owner is not convicted of a crime. The
 12 equitable sharing program, however, allows local law enforcement agencies to
 13 benefit from forfeitures that they are prohibited from pursuing and could not
 14 accomplish under state law. The program grants the proceeds of those forfeitures
 15 to the local law enforcement agencies so long as they pursue federal law
 16 enforcement priorities instead of state law enforcement priorities.

17 Second Affirmative Defense—Fifth Amendment right to due process. The
 18 Plaintiff’s claims fail, in whole or in part, because the government’s actions violate
 19 the Jalalis’ right to due process. To the extent that the federal government has
 20 claimed its interest in the enforcement of the Controlled Substances Act as the
 21 basis for this forfeiture, the Jalalis assert that there is a constitutionally insufficient
 22 fit between that end and civil forfeiture of their property pursuant to 21 U.S.C. §
 23 881.

24 Third Affirmative Defense—Eighth Amendment. The Plaintiff’s claims fail,
 25 in whole or in part, because they violate the Eighth Amendment to the United
 26 States Constitution. Punishing the Jalalis with a fine likely to be more than \$1.5
 27 million dollars where they have never been convicted of a crime, and where they
 28

LAW OFFICE OF MATTHEW PAPPAS
 22762 ASPEN ST., #202-107
 LAKE FOREST, CA 92650 • (949) 382-1483

1 were engaging in conduct that was legal under California law, is constitutionally
2 excessive.

3 ~~Fourth Affirmative Defense—Innocent Owner Defense under the Civil~~
4 Asset Forfeiture Reform Act of 2000 (CAFRA). The Plaintiff's claims fail, in
5 whole or in part, because Tony and Morgan qualify as innocent owners pursuant to
6 18 U.S.C. § 983(d).

7 Fifth Affirmative Defense—No Substantial Connection between the
8 property and conduct giving rise to forfeiture under CAFRA. The Plaintiff's
9 claims fail, in whole or in part, because the property does not have a "substantial
10 connection" to felony conduct giving rise to forfeiture under 18 U.S.C. § 983(c).

11 Sixth Affirmative Defense—Gross Disproportionality under CAFRA. The
12 Plaintiff's claims fail, in whole or in part, because the proposed forfeiture is
13 grossly disproportionate to the underlying conduct giving rise to forfeiture
14 pursuant to 18 U.S.C. § 983(g).

15 Seventh Affirmative Defense—Reservation of Rights to Additional
16 Defenses. The Jalalis reserve the right to assert any affirmative defense, to the
17 extent that facts discovered in the course of this litigation support such an
18 affirmative defense.

19 **COUNTERCLAIMS**

20 Claimants Tony Jalali and Morgan Jalaei (collectively, the "Jalalis"),
21 husband and wife, file this Counterclaim against the United States of America as
22 follows.

23 **Jurisdiction and Venue**

24 1. This is an action for declaratory and injunctive relief regarding
25 questions of federal law, and this court therefore has jurisdiction.

26 2. Venue is proper in this district, as the relevant events took place in
27 this district, the defendant property is located in this district, the Jalalis reside in
28 this district and Plaintiff filed its Verified Complaint for Forfeiture in this district.

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPEN ST., #202-107
LAKE FOREST, CA 92650 • (949) 342-1485

The Parties

3. The Jalalis are husband and wife, reside in this district, and are the owners of the defendant real property located at 2601 W. Ball Road, Anaheim, Calif., that is the subject of the Verified Complaint for Forfeiture filed by Plaintiff United States of America in this case.

4. Plaintiff/Counter-Defendant United States of America is already within the jurisdiction of this court and is the Plaintiff in the Verified Complaint for Forfeiture.

General Allegations

5. The Jalalis immigrated to this country from Iran to escape an authoritarian government that did not respect their individual liberties.

6. Tony Jalali is a software engineer and Morgan Jalaei is a dentist.

7. Neither of the Jalalis have ever been charged with any crime.

8. Between 1997 and 2010, Morgan Jalaei's dental practice was located in the small office building at 2601 W. Ball Road, Anaheim, Calif. The Jalalis purchased the property in 2003.

9. In February 2012, the Jalalis paid off the mortgage on the commercial property with a combination of savings and the proceeds of a second mortgage on their family home. The Jalalis took this action in order to obtain a reduced interest rate on the debt associated with the commercial property, not realizing that a mortgage-free property would heighten the risk of their building being targeted for civil forfeiture.

10. The Jalalis have leased the different offices at their property to various businesses without incident, including a dental office unaffiliated with the Jalalis, automotive-related businesses, and insurance company.

11. Although the Jalalis own the building as husband and wife, only Tony Jalali manages the building and deals directly with its tenants.

12. The Jalalis have no involvement in the marijuana industry.

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPEN ST., #202-107
LAKE FOREST, CA 92650 • (949) 382-1485

1 13. In 2010, 2011, and 2012, the City of Anaheim has hosted the Kush
2 Expo, which claims to be the world's largest marijuana industry trade show, in the
3 City-owned and City-operated Anaheim Convention Center. The Kush Expo is
4 advertised to take place again in July, 2013 in the Anaheim Convention Center.

5 14. In 2010, Tony Jalali observed that medical marijuana dispensaries
6 were common in Anaheim.

7 15. After 2010, Tony Jalali began receiving inquiries from medical
8 marijuana dispensaries to rent space in the building. On information and belief, the
9 businesses that contacted him were motivated to move to the City of Anaheim after
10 participating as vendors and attendees of the Kush Expo.

11 16. Tony Jalali personally saw advertisements and banners at the
12 Anaheim Convention Center for the Kush Expo in 2011. He also saw billboard
13 advertisements for Kush Expo in 2012 while driving to and from his home and the
14 property on the highway (91 East) near Artesia Boulevard.

15 17. Prior to renting space to any medical marijuana dispensary, Tony
16 Jalali read news reports that California had legalized medical marijuana and that
17 the federal government had decided to respect California's decision by not
18 prosecuting medical marijuana dispensaries in states where they were legal under
19 state law.

20 18. As a result of the actions by the city, state and federal governments,
21 when Tony Jalali was approached by a medical marijuana dispensary regarding
22 leasing an office in the building, he believed that medical marijuana dispensaries
23 were legal businesses in Anaheim and that he had no valid reason to refuse to lease
24 office space to them.

25 19. Consequently, Tony Jalali has leased office space in the building to
26 two medical marijuana dispensaries, in 2011 and 2012.

27 20. At the time this lawsuit was filed by Plaintiff, there was only one (1)
28 medical marijuana dispensary leasing office space in the building.

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPEN ST., #202-107
LAUREL FOREST, CA 92630 • (949) 362-1463

1 21. At the time this lawsuit was filed by Plaintiff/Counter-Defendant, the
2 federal government had not given any prior notice or warning to the Jalalis that
3 there was any risk of their building being seized or forfeited.

4 22. The Jalalis' mortgage-free property is valued well in excess of
5 \$1,000,000.00, and the Jalalis roughly estimate that its current market value is
6 approximately \$1,500,000.00.

7 23. Upon learning of the government's lawsuit, Tony Jalali immediately
8 informed the one medical marijuana dispensary tenant located at the property that
9 it would need to leave the building, and the tenant agreed to do so.

10 24. Despite Tony Jalali's prompt action, the federal government has
11 continued this attempt to unjustly seize the Jalalis' property, to sell it and to keep
12 all of the proceeds for the government, even though the government has not taken
13 similar action against the former medical marijuana dispensary tenant(s) or
14 neighboring office buildings that have mortgages on them and lease to medical
15 marijuana dispensaries.

16 25. Upon information and belief, local government officials, including
17 Anaheim police officers, were directly involved in the federal government's
18 investigation of the Jalalis' property, even though doing so placed those local
19 government officials and police officers in direct violation of California law and
20 the policies chosen by the people of California.

21 26. Upon information and belief, prior to the involvement of the federal
22 government, the local authorities requested the assistance of California prosecutors
23 to take a similar action against the property, but were denied such assistance by
24 state officials due to California law and the policies chosen by the citizens of
25 California.

26 27. These California laws and policy choices by the citizens of California
27 include, but are not limited to, heightened burdens of proof placed on the
28 government in civil forfeiture actions, a requirement that real estate cannot be

LAW OFFICE OF MATTHEW PAPPAS
27762 ASPEN ST., #202-107
LAKE FOREST, CA 92650 • (949) 362-1483

1 seized without a criminal conviction, and California's medical marijuana program,
2 which decriminalizes the use and sale of marijuana in certain circumstances.

3 28. Upon information and belief, the federal government is involved in a
4 program known as "equitable sharing," by which it enables local law enforcement
5 agencies to participate in federal civil forfeiture investigations and benefit from the
6 proceeds of forfeitures that could not be achieved under state law.

7 29. Upon information and belief, the federal government has colluded
8 with and enabled the City of Anaheim to benefit from civil forfeiture that the city
9 is unable to accomplish under state law.

10 30. Upon information and belief, the federal government used the lure of
11 equitable sharing to entice the City of Anaheim to participate in the investigation
12 and attempted forfeiture of the Jalalis' property, subverting California law and the
13 state policies chosen by the citizens of California.

14 31. Plaintiff/Counter-Defendant's actions in inducing local authorities to
15 act in ways that violate state law and state policies is a violation of the Tenth
16 Amendment.

17 32. Plaintiff/Counter-Defendant's actions in attempting to seize the
18 Jalalis' property violated the Jalalis' right to due process.

19 33. Plaintiff/Counter-Defendant's actions are causing substantial financial
20 harm to the Jalalis, including irreparable harm to their relationships with their
21 tenants, who now have no assurance of the stability of their tenancy.

22 34. Due to the issues created by the Plaintiff/Counter-Defendant, the
23 Jalalis need this court to determine these questions of law and enter injunctive
24 relief preventing the ongoing abusive conduct by Plaintiff.

25 **REQUEST FOR RELIEF**

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

- 28 a. dismiss Plaintiff/Counter-Defendant's claims with prejudice;

LAW OFFICE OF MATTHEW PAPPAS
27762 ASPEN ST. #202-107
LAKE FOREST, CA 92630 (949) 382-1485

b. enjoin Plaintiff/Counter-Defendant from forfeiting the property at 2601 W. Ball Road, Anaheim, Calif.;

c. declare that Plaintiff/Counter-Defendant's actions violate the U.S. Constitution, including, but not limited to, the Fifth Amendment and Tenth Amendment;

d. declare that Plaintiff/Counter-Defendant's actions violate the Civil Asset Forfeiture Reform Act of 2000 (CAFRA);

e. declare that the federal equitable sharing program, as applied to the Jalalis and others similarly situated, violates the Tenth Amendment to the U.S. Constitution, and that 21 U.S.C. § 881(a)(7), as applied to the Jalalis and others similarly situated, violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

f. award the Jalalis any and all such other relief as the Court deems just and equitable, including, but not limited to, an award of attorneys' fees and costs to the extent provided for by law.

Respectfully submitted this 1st day of May 2013 by:

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPAN ST., #202-107
LAKE FOREST, CA 92630 • (949) 382-1485

LAW OFFICE OF MATTHEW PAPPAS


Matthew S. Pappas, CA Bar No. 171860
22762 Aspan Street, Suite 202-107
Lake Forest, CA 92630
Tel: (949) 382-1485
Fax: (949) 242-2605
Email: matt.pappas@mattpappaslaw.com

INSTITUTE FOR JUSTICE
Lawrence G. Salzman, CA Bar No. 224727
Scott G. Bullock*
Justin M. Pearson*
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tel: (703) 682 – 9320
Fax: (703) 682 – 9321
Email: lsalzman@ij.org
sbullock@ij.org
jpearson@ij.org
**Application pro hac vice pending*

Attorneys for Claimaints

LAW OFFICE OF MATTHEW PAPPAS
22762 ASPEN ST. #202-107
LAKE FOREST, CA 92650 • (949) 382-1485