

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, ) Case No. 13-CV-4102  
 )  
vs. )  
 )  
THIRTY-TWO THOUSAND EIGHT )  
HUNDRED TWENTY DOLLARS AND )  
FIFTY-SIX CENTS (\$32,820.56) )  
FROM MRS. LADY'S INC. BANK )  
ACCOUNT #XXXXXX23264 )  
 )  
Defendant. )

**VERIFIED COMPLAINT OF FORFEITURE IN REM**

COMES NOW, plaintiff, United States of America, by and through its attorneys, Sean R. Berry, United States Attorney, and Martin J. McLaughlin, Assistant United States Attorney, and respectfully state as follows:

1. This is a civil action in rem brought to enforce the provision of Title 31, United States Code, Section 5317(c) and Title 18, United States Code, Section 984(a) for the forfeiture of property which represents proceeds traceable to and/or property involved in transactions in violation of Title 31, United States Code, Section 5324.
2. This Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 1345 and 1355.

3. The defendant property is described as:

Thirty-Two Thousand Eight Hundred Twenty Dollars and Fifty-Six Cents (\$32,820.56) in funds seized on or about May 22, 2013, from Mrs. Lady's Inc., Northwest Bank Account #XXXXXX23264, in Spencer, Iowa.

4. The facts and circumstances supporting the seizure and forfeiture of the defendant property are contained in Exhibit 1, (Affidavit of IRS Task Force Officer Christopher Adkins) which is attached hereto and incorporated herein by reference.

5. The United States alleges that the defendant property represents proceeds from structuring offenses committed by Carole Hinders, doing business as Mrs. Lady's Inc., in violation of Title 31, United States Code, Section 5324, and is, therefore subject to forfeiture to the United States of America pursuant to Title 31, United States Code, Section 5317(c) and Title 18, United States Code, Section 984(a).

Title 18, United States Code § 984 provides:

(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals—

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

Title 31, United States Code, § 5317(c)(1)(A) provides:

**In general.**—The court in imposing sentence for any violation of section 5313, 5316, or 5324 or this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

Title 31, United States Code, § 5317(c)(2) provides:

**Civil forfeiture.**—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

WHEREFORE, the United States of America prays:

- (1) process of warrant in rem issue for the arrest of the defendant property;
- (2) due notice be given to all parties to appear and show cause why the forfeiture should not be decreed;
- (3) judgment be entered declaring the defendant property be forfeited to the United States of America for disposition according to the law; and

- (4) the United States of America be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted,

SEAN R. BERRY  
United States Attorney

By: */s/ Martin J. McLaughlin*

MARTIN J. McLAUGHLIN  
Assistant United States Attorney  
111 - 7<sup>TH</sup> Avenue SE  
Cedar Rapids, IA 52401  
(319) 363-6333  
(319) 363-1990 - fax  
Marty.McLaughlin@usdoj.gov

EXHIBIT 1

STATE OF IOWA            )  
  )  
COUNTY OF LINN         )

AFFIDAVIT

I, Christopher Adkins, being duly sworn, depose and state the following:

1. I am employed as a Special Agent of the Iowa Division of Criminal Investigation (DCI), currently assigned as a Task Force Officer with the Internal Revenue Service (IRS), Criminal Investigation (CI), Cedar Rapids, Iowa. I have been employed with the DCI since May 2005 and assigned with the task force since October 2011. I have been employed as a state peace officer since 1994. As a Task Force Officer with the Internal Revenue Service, my duties and responsibilities include conducting investigations of individuals and businesses for criminal violations of Federal laws, particularly those found in Title 18, Title 26, and Title 31 of the United States Code.
2. My education includes a Bachelors Degree in Sociology from the University of Iowa. As a Special Agent with the Division of Criminal Investigation, I attended approximately fourteen (14) weeks of training at the Department of Public Safety Academy at Camp Dodge in Johnston, Iowa. I received training in various aspects of criminal investigations which included but not limited to financial investigations. Upon completion of the academy I was assigned to a Field Training Officer for seventy (70) days.
3. Since becoming a Task Force Officer with IRS-CI, I have received formal and informal training in conducting criminal financial investigations. Through my training and experience, and consultation with senior agents, I have become familiar with financial investigations involving the search and seizure of property. This knowledge includes recognizing the methods used to conceal assets and income from the government and other third parties, as well as the tracing of money through bank accounts, investment accounts, personal/business records, and other financial institutions.
4. Through my training and experience I have become familiar with the types of records businesses typically maintain in the course of their regular activity, including ledgers, journals, invoices, receipts, and bank documents. A large part of my duties as an IRS-CI Task Force Officer involves analyzing these types of records to determine the existence of criminal activity and to develop evidence of criminal activity. Bank funds are easily transferable and subject to withdrawals and transfers so a restraining order is not sufficient.

## AFFIANT KNOWLEDGE

5. The information included in this affidavit is based upon records provided by Northwest Bank pursuant to a subpoena. This affidavit does not purport to set forth all crimes believed to have been committed, all knowledge held by me, or a full accounting of all investigative efforts applied to this case.
6. This affidavit supports the filing of a Verified Complaint for Forfeiture *in rem* against Thirty-two thousand eight hundred twenty dollars and fifty-six cents (\$32,820.56) seized from Carole Hinders, doing business as Mrs. Lady's Inc., Northwest Bank Account #XXXXX23264, in Spencer, Iowa, which is subject to forfeiture pursuant to 31 U.S.C. § 5317 and 18 U.S.C. § 984(a) for violations of 31 U.S.C. § 5324(a), on the grounds the funds constitute property involved in, or traceable to, deposits structured to avoid currency reporting requirements, or are fungible with such property.

## CURRENCY TRANSACTIONS REPORTS AND STRUCTURING

7. Title 31, United States Code, Section 5313 and 31 C.F.R. part 103 of the Bank Secrecy Act (BSA) require any financial institution that engages with a customer in a currency transaction (i.e., a deposit or withdrawal) in excess of \$10,000 in US Currency to report the transaction to the United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN), using a Form 104, a Currency Transaction Report ("CTR"). These regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are conducted by, or on the behalf of, the same person, and they result in either currency received or disbursed by the financial institution totaling more than \$10,000 during any one business day.
8. CTRs are often used by law enforcement to uncover a wide variety of illegal activities including narcotics trafficking and money laundering. Many individuals involved in these illegal activities are aware of such reporting requirements and take active steps to cause financial institutions to fail to file CTRs. These active steps are often referred to as "smurfing" or "structuring" and involve beginning with an amount of cash in excess of \$10,000 and making multiple cash transactions, in amounts less than \$10,000.01 to multiple banks and/or branches of the same bank on the same day, on consecutive days, or non-consecutive days within a few days of each other. Structuring is itself a crime. See 31 U.S.C. § 5324(a)(3).

9. I am advised that to prove the crime of structuring transactions to evade reporting requirements, the government need not prove that an individual engaging in structuring know that his activity is illegal. *See, e.g. United States v. Sweeney*, 611 F.3d 459, 470 (8<sup>th</sup> Cir. 2010). Instead, the government must establish only that an individual structured or attempted to structure a transaction with a domestic financial institution for the purpose of evading the reporting requirements of 31 U.S.C. § 5313(a), or any regulation prescribed under that section.

### **BACKGROUND**

10. Carole Hinders owns and operates Mrs. Lady's, a Mexican Restaurant. The restaurant location of Mrs. Lady's is 24 S. Highway 71 in Arnolds Park, Iowa.
11. Mrs. Lady's maintains a business checking account, account XXXXX23264, at Northwest Bank, 101 W. 5<sup>th</sup> Street, P.O. Box 80, Spencer, Iowa. The Mrs. Lady's account was opened on January 21, 1997, at Liberty Bank and the account was purchased by Northwest Bank in April of 2012. Signatory authority of the account is held jointly by Carole Hinders and Josh Hinders.

### **ANALYSIS OF BANK RECORDS**

12. Your affiant has reviewed the details of Mrs. Lady's bank statements and deposit tickets from mid April 2012 through mid February 2013. During this time frame there were no currency deposits or withdrawals on a single calendar day greater than \$10,000. Since mid April 2012, there has been more than \$315,000 in currency deposits into account # XXXXX23264 under Mrs. Lady's, Inc. No individual transaction exceeded \$10,000 during this time period.
13. Your affiant has noted during a review of bank records, that there was a common pattern in the deposits made; nearly all of the transactions were made in even dollar increments usually exceeding \$1,000 in currency. Most transactions exceeded \$5000 in currency but none over \$10,000. An analysis of Mrs. Lady's business checking account from mid April 2012 thru mid February 2013 revealed that approximately 55 transactions were made in which currency was included. All of those transactions were deposits. Of the 55 transactions 37 transactions were for an amount between \$5,000 to \$9,500, 15 transactions were for an amount between \$3,000 to \$4,950, and 3 transactions were for an amount between \$1,000 to \$2,200.
14. The following is a sample of cash transactions made in this manner into account #XXXXX23264 between May 29, 2012, and August 22, 2012. This sample is consistent with the entire time period analyzed above:

| <u>Date</u>         | <u>Day</u> | <u>Cash In</u>             |
|---------------------|------------|----------------------------|
| 05/29/2012          | Tuesday    | \$1,900.00                 |
| 05/30/2012          | Wednesday  | \$9,000.00                 |
| 06/01/2012          | Friday     | \$6,480.00                 |
| 06/04/2012          | Monday     | \$5,920.00                 |
| 06/15/2012          | Friday     | \$8,130.00                 |
| 06/18/2012          | Monday     | \$4,330.00                 |
| 06/25/2012          | Monday     | \$7,500.00                 |
| 06/26/2012          | Tuesday    | \$7,000.00                 |
| 07/06/2012          | Friday     | \$4,400.00                 |
| 07/09/2012          | Monday     | \$8,000.00                 |
| 07/10/2012          | Tuesday    | \$5,660.00                 |
| 07/13/2012          | Friday     | \$7,500.00                 |
| 07/16/2012          | Monday     | \$5,500.00                 |
| 07/23/2012          | Monday     | \$5,000.00                 |
| 07/24/2012          | Tuesday    | \$9,200.00                 |
| 08/01/2012          | Wednesday  | \$2,200.00                 |
| 08/02/2012          | Thursday   | \$9,300.00                 |
| 08/07/2012          | Tuesday    | \$1,000.00                 |
| 08/08/2012          | Wednesday  | \$7,960.00                 |
| 08/09/2012          | Thursday   | \$8,900.00                 |
| 08/21/2012          | Tuesday    | \$5,000.00                 |
| 08/22/2012          | Wednesday  | \$9,500.00                 |
| <b><u>Total</u></b> |            | <b><u>\$139,380.00</u></b> |

#### SUMMARY

15. The pattern of cash transaction activity above, currency transactions in consistently large amounts below the reporting requirements, support a reasonable belief that



the person doing the transactions, herself or someone on her behalf, structured the cash transactions into Mrs. Lady's, Inc. Northwest Bank Account #XXXXX23264 to avoid the preparation and submission of CTRs.

### APPLICABLE FORFEITURE PRINCIPLES

16. Title 31 U.S.C. § 5317(c) (2) provides for the forfeiture of "any property involved in a violation of sections 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy," and that such property shall be forfeited in accordance with 18 U.S.C. § 981(a)(1)(A).

17. Civil forfeiture is triggered by the structuring of cash transactions in violation of 31 § 5324, regardless of whether the individual engaging in the transactions knew the conduct was unlawful. *United States v. Ratzlaf*, 510 U.S. 135, 146, n.16 (1994). Thus, for purposes of the seizure of the Mrs. Lady's, Inc. bank account at Northwest Bank, the government is not required to establish that any individual knew that structuring violated the law. The government need only establish that a total cash transaction involving more than \$10,000 was divided into smaller transactions of \$10,000 or less to evade the reporting requirements.

#### A. Fungible Property can be Forfeited

18. I am advised that, in pertinent part, 18 U.S.C. § 984(a) provides:

- 1). In any forfeiture action in rem in which the subject property is cash [or] funds deposited or withdrawn in or out of an account in a financial institution
  1. it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture:  
and
  2. (B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.
- 2). Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

19. Section 984 allows the United States to seize for civil forfeiture identical property found in the same place where the "guilty" property had been kept. See *United States v. All Funds Distributed to, or o/b/o Weiss*, 345 F.3d 49, 59 (2d Cir. 2003). Because of Section 984(a)(1)(B), this affidavit need not demonstrate that the monies now in the Mrs. Lady's Bank account at Northwest Bank are the particular monies involved in structuring, so long as the forfeiture is sought for other funds on deposit in that same account.

## **B. One-Year Limit on Fungibility**

20. The "fungibility" rule of Section 984(b) cannot reach back in time for an unlimited period. Section 984(b) provides:
- 1). No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.
21. Thus, Section 984 applies so long as the "action" to forfeit the property is commenced within one year from the date of the offense given the basis for the forfeiture. Here, as described above, the dates of the offense giving rise to the forfeiture are within the one year period.
22. Thus, Section 984 makes the property in the Mrs. Lady's account at Northwest Bank subject to seizure and forfeiture to the extent that monies involved in structuring were located in the account in the year preceding the seizure. In this case, as shown by the Northwest Bank records referenced in this affidavit, \$139,380 in currency transactions into the Mrs. Lady's account in structured amounts less than \$10,000 between May 29, 2012, and August 22, 2013. Although, only \$32,820.56 was in the Northwest Bank account #XXXXX23264 when seized on May 22, 2013, \$139,380 in currency transactions were structured into this account. These records and the analysis thereof demonstrate probable cause that the transactions were structured to avoid the currency reporting requirements within the last year.

## **EXECUTION OF SEIZURE WARRANT**

23. On May 22, 2013, I executed a seizure warrant issued in the United States District Court for the Northern District of Iowa for the seizure of money contained in business checking account XXXXX23264 at Norwest Bank, 101 W. 5<sup>th</sup> Street. P.O. Box 80, Spencer, Iowa. On that day I seized \$32,820.56 from the account.
24. Also, on May 22, 2013, I interviewed Carole Hinders who owns and operates Mrs. Lady's. I told her that I had seized from her account \$32,820.56. I asked why she conducted the cash transaction in the manner in which she had done. She told me Mrs. Lady's is a cash business that does not accept debit or credit cards. She also indicated that she does not break up the cash for deposits.
25. When asked if she was aware of the bank reporting requirements when an individual deposits a cash amount in excess of \$10,000, a bank would be required to file a Currency Transaction Report (CTR). She indicated she was aware of the report and that someone, who she did not identify, had told her about the reporting.

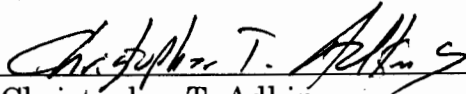
26. When asked if she had ever broke up deposits to stay below the \$10,000 limit, Hinders first indicated that she didn't, that she took what was at the restaurant. After being shown a spreadsheet, she said she broke up the deposits so the bank would not fill out the paperwork. When asked why, she indicated that it sounded like a good thing so the bank would not have to fill out extra paperwork. She then said her mother had told her to break up the deposits and keep them below \$10,000 as a convenience to the bank.

### CONCLUSION

27. This affidavit establishes a reasonable belief the \$32,820.56 seized from Mrs. Lady's Inc. Northwest Bank Account #XXXXX23264 on May 22, 2013, represents funds that were structured to evade currency reporting requirements in violation of 31 U.S.C. § 5324 and constitutes property involved in or traceable to violations of 31 U.S.C. § 5324 or are fungible with such property and, as such, are subject to seizure and forfeiture pursuant to 31 U.S.C. §§ 5317(c)(1) and(2).

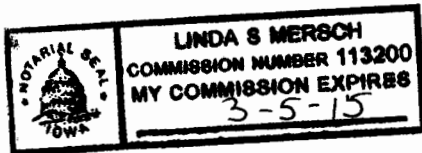
I declare under penalty of perjury that the above-foregoing facts and circumstances are true and correct to the best of my knowledge and belief.

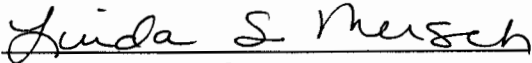
Executed this 24 day of October, 2013.

  
\_\_\_\_\_  
Christopher T. Adkins  
Task Force Officer, IRS-CI

Subscribed and sworn to before me

This 24<sup>th</sup> day of October 2013.



  
\_\_\_\_\_  
Linda S. Mersch  
Notary Public in and for the State of Iowa

My Commission expires: 3-5-15