

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Case No. 7:14-CV-00295-F**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 \$107,702.66 IN UNITED STATES )  
 CURRENCY SEIZED FROM LUMBEE )  
 GUARANTY BANK ACCOUNT NUMBER )  
 82002495, )  
 Defendant, )  
 )  
 And concerning )  
 )  
 LYNDON B. MCLELLAN and L&M )  
 CONVIENT MART, INC., )  
 )  
 Claimants. )  
 )

**ANSWER AND AFFIRMATIVE  
DEFENSES OF CLAIMANTS  
LYNDON B. MCLELLAN AND L&M  
CONVIENT MART, INC.**

Pursuant to Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Claimants Lyndon B. McLellan and L&M Convient Mart, Inc. (d/b/a “L&M Convenience Mart”) set forth the following Answer and Affirmative Defenses to the Complaint for Forfeiture In Rem.

**ANSWER**

1. Paragraph 1 states conclusions of law to which no response is required. To the extent that Paragraph 1 may be read to make allegations of fact concerning Claimants or the defendant property, those allegations are denied.

2. Paragraph 2 states conclusions of law to which no response is required. To the extent that Paragraph 2 may be read to make allegations of fact concerning Claimants or the

defendant property, those allegations are denied.

3. Admitted.

4. Claimants lack knowledge as to the present whereabouts of the defendant currency and thus neither admit nor deny the allegations in Paragraph 4.

5. Paragraph 5 is admitted as to Lyndon B. McLellan and L&M Convenience Mart. Claimants deny that Darlene Hunt and Mary Bruce Floyd have any potential claim to or interest in the defendant currency.

6. Claimants accept Plaintiff's representation that the affidavit of Andrew Pappas was submitted to the Court to justify the seizure of the defendant currency. Although Claimants lack independent access to the sealed records in the seizure warrant proceeding, Plaintiff provided Claimants with a copy of the affidavit and seizure warrant application. Claimants deny that the allegations set forth in the affidavit—which, notably, is neither attached to the Complaint nor incorporated by reference—set forth a true and complete account of the facts and circumstances surrounding the seizure. Claimants also deny that the allegations in the affidavit are sufficient to establish probable cause for seizure and forfeiture of the defendant currency.

7. Denied.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state claims upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Complaint does not comply with the requirement of Supplemental Rule G to "state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial." Indeed, apart from a bare reference to the affidavit of Andrew Pappas—which, again, is neither attached to the Complaint nor incorporated by reference—the

Complaint contains *no* allegations concerning the facts allegedly supporting forfeiture of the defendant currency.

### **THIRD AFFIRMATIVE DEFENSE**

The defendant currency was not involved in a violation of so-called “structuring” laws, and therefore is not subject to forfeiture. To establish a violation of the structuring laws, the government must prove that the defendant currency was deposited in amounts under \$10,000 for the *specific purpose* of evading bank reporting requirements. *See* 31 U.S.C. § 5324. Neither Claimants nor their employees had any such purpose.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff cannot establish a violation of the structuring laws because it cannot show that Claimants or their employees acted with knowledge that depositing cash in amounts under \$10,000 violates the law. That showing is required by the Due Process Clause of the Fifth Amendment to the United States Constitution, as otherwise the structuring laws set a trap for the unwary that violates fundamental principles of fair notice or warning.

### **FIFTH AFFIRMATIVE DEFENSE**

Forfeiture of the defendant currency violates the Due Process Clause of the Fifth Amendment to the United States Constitution because law enforcement officers involved in pursuing the forfeiture have a financial incentive in securing forfeiture. State and federal law enforcement agencies involved in the forfeiture may retain proceeds from the forfeiture to fund their activities. And, on information and belief, individual law enforcement officials within the relevant state and federal law enforcement agencies have an incentive to forfeit property to ensure their job security.

### **SIXTH AFFIRMATIVE DEFENSE**

Forfeiture of the defendant currency violates the Due Process Clause of the Fifth Amendment to the United States Constitution because the government lacks a rational basis for its failure to apply policy changes announced by the Internal Revenue Service in October 2014 and by the U.S. Department of Justice in March 2015 to the instant case.

### **SEVENTH AFFIRMATIVE DEFENSE**

Forfeiture of the defendant currency is barred by the Appropriations Clause of Article I, Section 9 of the United States Constitution. If the forfeiture is completed, law enforcement agencies will be able to use money from the forfeiture to fund their activities absent any appropriation from Congress. But, under the Appropriations Clause, money for government spending *must* be secured through congressional appropriation.

### **EIGHTH AFFIRMATIVE DEFENSE**

Forfeiture of the defendant currency is barred by the Tenth Amendment to the United States Constitution. North Carolina law does not permit civil forfeiture. Yet, on information and belief, proceeds of the forfeiture of defendant currency will be shared with state law enforcement under a procedure called “equitable sharing.” That procedure allows state officials to bypass state-law limitations on the use of civil forfeiture and thus contravenes fundamental principles of federalism.

### **NINTH AFFIRMATIVE DEFENSE**

Forfeiture of the defendant currency is barred by the prohibition against excessive fines set forth in the Eighth Amendment to the United States Constitution.

**WHEREFORE**, Claimants hereby demand that the Court deny Plaintiff’s claim for forfeiture of the defendant currency; order the defendant currency returned to Claimants; order

that Plaintiff pay Claimants' attorneys' fees and costs pursuant to 28 U.S.C. § 2465(b)(1)(A); order that Plaintiff pay pre- and post-judgment interest on the defendant currency to Claimants pursuant to 28 U.S.C. §2465(b)(1)(B)–(C); and enter such additional relief as the Court deems just and proper.

Respectfully submitted, this 30th day of April, 2015.

**COATS & BENNETT, PLLC**

**INSTITUTE FOR JUSTICE**

By: /s/ James R. Lawrence, III  
James R. Lawrence, III  
NC State Bar No. 44,560  
1400 Crescent Green, Suite 300  
Cary, North Carolina 27518  
Telephone: (919) 854-1844  
Facsimile: (919) 854-2084  
Email: [jlawrence@coatsandbennett.com](mailto:jlawrence@coatsandbennett.com)

**Local Civil Rule 83.1 Counsel for  
Claimants**

By: /s/ Robert Everett Johnson  
Robert Everett Johnson  
VA State Bar No. 83,219\*  
Scott Bullock  
DC Bar No. 442,379\*  
901 North Glebe Rd., Suite 900  
Arlington, VA 22203  
Telephone: (703) 682-9320  
Facsimile: (703) 682-9321  
Email: [sbullock@ij.org](mailto:sbullock@ij.org)  
[rjohnson@ij.org](mailto:rjohnson@ij.org)

Wesley Hottot  
WA State Bar No. 47,539\*  
10500 NE 8th Street, Suite 1760  
Bellevue, WA 98004-4309  
Telephone: (425) 646-9300  
Facsimile: (425) 990-6500  
Email: [whottot@ij.org](mailto:whottot@ij.org)

\* Admitted *Pro Hac Vice*

*Attorneys for Claimants  
Lyndon B. McLellan and L&M Convient Mart, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 30th day of April 2015, the foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF CLAIMANTS LYNDON B. McLELLAN AND L&M CONVIENT MART, INC.** was filed with the Clerk of Court using the CM/ECF system which will send notification to counsel at the following address:

Stephen A. West  
United States Attorney's Office  
310 New Bern Avenue  
Federal Building, Suite 800  
Raleigh, North Carolina 27601-1461  
Email: [steve.west@usdoj.gov](mailto:steve.west@usdoj.gov)

/s/ Robert Everett Johnson  
Robert Everett Johnson  
901 North Glebe Rd., Suite 900  
Arlington, VA 22203  
Telephone: (703) 682-9320  
Facsimile: (703) 682-9321  
Email: [rjohnson@ij.org](mailto:rjohnson@ij.org)

*Attorney for Claimant*