

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

VOCATURA'S BAKERY, INC.

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

JOHN KOSKINEN, COMMISSIONER
OF INTERNAL REVENUE,

LORETTA LYNCH, ATTORNEY
GENERAL OF THE UNITED STATES,

UNITED STATES OF AMERICA,

Defendants.

Case No. _____

May 24, 2016

**DECLARATION OF DAVID VOCATURA IN SUPPORT OF
MOTION FOR RETURN OF PROPERTY UNDER RULE 41(g)**

I, DAVID VOCATURA, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Connecticut. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently under oath to the facts set forth below.

2. Along with my brothers Larry and Frankie, as well as my cousin Richard, I own and operate Vocatura's Bakery in Norwich, Connecticut. Richard and I mostly work in the front of the store, Larry mostly bakes the bread, and Frankie both bakes bread and drives a delivery truck—although we all do other tasks as necessary to keep the business running.

3. Vocatura's Bakery is a multi-generation family business, founded by my grandfather in 1919. My parents and their siblings grew up working at the bakery; my generation all grew up working at the bakery; and many of our children also worked at the bakery summers or after school. I have fond memories of being at the bakery as a child, including crawling into the industrial sized oven (while the heat was off, of course) and riding on the baking trays as they circulated like the cars of a carousel.

4. At almost any time of day or night, some member of the Vocatura family is working at the bakery. We bake bread at night, pack it up in the morning, and then sell it throughout the day. My brother Larry is turning seventy years old this year, but he still comes in at night to bake the bread as he has been doing for years. My brother Frankie is over seventy years old, and he still bakes bread and delivers bread. My cousin Richard works at the retail store from 8 a.m. to 8 p.m. on Monday and Tuesday, and from 7 a.m. to 3 p.m. Wednesday through Friday. I typically work from 10:30 a.m. to 8:30 p.m. Wednesday through Friday, and from 8 a.m. to 8 p.m. on Saturday and Sunday.

5. Vocatura's Bakery is a fixture in the community. We have won awards for our bread and other products, including the *Norwich Bulletin* People's Choice Award for "best bakery," the *New London Day* People's Choice Award for "best bakery" and "best sandwiches," and an award for "Best Pizza In Connecticut" from *Connecticut Magazine*. We sell bread to schools, as well as to other successful pizza houses and restaurants.

6. For almost its entire history, the bakery's retail store has operated primarily as a cash business, although we might sometimes also take checks from trusted customers. My grandfather operated the store as a cash business, my father and uncles operated the store as a cash business, and as the current generation took over increasing responsibility for the bakery we

continued to operate the store as a cash business. We operated a cash business simply because that was how it was always done.

7. Every day, we put cash earned through the business in a safe in the small office at the rear of the store. Then, once a week, I make a trip to the bank to deposit that week's earnings. My Uncle John was previously in charge of making that weekly bank deposit, but I took over from him gradually as his health declined and after he died in 2007. All the cash that I deposit in the bank is legitimately earned through hard work at our bakery business.

8. On May 1, 2013, a group of eight to ten armed IRS agents arrived unannounced at the bakery. I was working at the front of the store at the time. My brother Larry had just left the bakery, so I called him and asked him to return.

9. The agents asked to speak to me in the back of the bakery, where we bake the bread, and a group of agents surrounded me as we spoke. Other agents took my brother Larry to the bakery's small office to interrogate him there. The agents asked me a series of outlandish questions, including whether we were dealing drugs or operating a prostitution ring. Obviously, I told them we were not.

10. During this interview, I repeatedly asked if I needed to speak with a lawyer. The agents responded that it was not necessary.

11. At the conclusion of the interview, the agents informed me that the IRS had seized the bakery's entire bank account—over \$68,000. I asked what we had to do to get the money back, and the agents gave me the phone number for Assistant United States Attorney Peter Jongbloed. They advised that I call to speak with him to seek the return of the money.

12. The agents left me with a copy of the seizure warrant. I have attached a copy of that warrant as Exhibit A.

13. We were forced to scramble to find additional funds to keep the business running after the seizure. Fortunately, we had money in a savings account, which we were able to use to replenish the bakery's checking account. If we had not had that extra money, we very well might have been put out of business by the seizure of our account.

14. Immediately after the agents left, I called the bakery's corporate lawyer, and I understand that he reached out to Assistant United States Attorney Jongbloed to request the return of the money. Our corporate lawyer also referred us to another attorney to represent us in connection with the seizure. I understand that attorney also reached out to Assistant United States Attorney Jongbloed to seek to negotiate the return of the money.

15. On June 12, 2013, the IRS sent notice that the agency was seeking to forfeit the \$68,382.22 seized from the bakery's account. I have attached a copy of that notice as Exhibit B.

16. Our attorneys filed a claim to the money on July 8, 2013. I have attached a copy of the claim and accompanying correspondence as Exhibit C.

17. Our attorneys were in regular contact with Assistant United States Attorney Jongbloed, seeking to find a way to resolve the case. Jongbloed asked for financial information relating to the bakery and its owners, and we provided all the information that was requested. For instance, we provided significant information about our personal net worth, personal assets and liabilities, and monthly cash flow. This back-and-forth with the government continued through at least August 2014.

18. Then, on October 25, 2014, the *New York Times* ran a front-page article about the IRS using the structuring laws to seize money from other small businesses. From that time forward, until over a year later in February 2016, I understand that there was no further contact with Jongbloed about our case.

19. On February 18, 2016, I received through my attorneys a copy of a proposed plea agreement, under which I would plead guilty to criminal structuring charges and face 37 to 46 months in prison as well as significant forfeitures and penalties—including forfeiture of the initial \$68,382.22 seized in May 2013. A copy of that proposed plea agreement is attached as Exhibit D.

20. My attorneys also forwarded a similar proposed plea agreement for my brother, Larry. A copy of that proposed plea agreement is attached as Exhibit E.

21. My brother and I rejected the government's proposed plea agreements, although we understood that by doing so we would risk criminal prosecution. We do not believe that we have done anything wrong, and we are not willing to give up our property or go to prison simply because of how we deposited the bakery's money in the bank.

22. I understand that Jongbloed told my attorney that the IRS would begin a criminal tax investigation if we did not reconsider our decision to reject the plea deals. I understand that the same IRS agents who seized my money would be conducting the investigation.

23. On May 10, 2016, I received through my attorney a copy of a grand jury subpoena directed to Vocatura's Bakery, Inc. A copy of that subpoena is attached as Exhibit F.

24. Based on my understanding of what Jongbloed told my attorney when we refused the plea deal, it is my feeling that the government would not have served us with that subpoena if not for our refusal to plead guilty to structuring.

25. I worry that the government's prolonged delay has prejudiced my ability to defend myself against the government's accusations. For instance, our longtime accountant passed away during the three years following the seizure, and I worry that his absence may also prejudice our ability to defend ourselves against accusations from the government. Also, in the

three years that have passed since the seizure, I have observed changes in the personnel at our bank, and I worry that the bank employees who we've regularly interacted with may no longer be employed at the bank. The government's subpoena also seeks financial records from eight years ago, and I worry that the passage of time will cause memories to fade and make it more difficult to put those records in the proper context.

26. The government's conduct in this case also has exacted a significant personal toll. These past three years have been extraordinarily stressful, as the government has been demanding that we agree to give up our money and go to jail even though we feel we have done nothing wrong. I have suffered stomach pains and other physical symptoms of stress. My wife and I are both cancer survivors, and we also worry that the stress of this experience could cause a recurrence of the disease. It also has been difficult for the family, as my wife and I worry how our two teenage children will be affected when they hear about these issues.

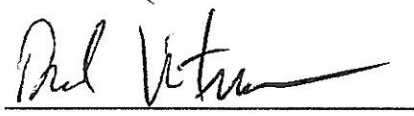
27. Prior to this experience, I have never been accused of a crime by the government. I have never been arrested, much less charged with a criminal offense.

28. I cannot believe that the government has singled us out for this kind of treatment. The government is supposed to protect the public, but in our case the government is trying to take our money and put me and my brother in jail just because I deposited legitimately-earned cash in the bank in a certain way.

29. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of May, 2016.

A handwritten signature in black ink, appearing to read "David Vocatura", written over a horizontal line.

David Vocatura