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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DONALD LEO MELLEIN,
Plaintiff,

v.

**UNITED STATES OF AMERICA;
Federal Bureau of Investigation
Special Agent LYNNE ZELLHART,
in her individual capacity; and DOES
1 through 5, Federal Bureau of
Investigation agents in their
individual capacities,**

Defendants.

Case No. 2:23-cv-07970

COMPLAINT

INTRODUCTION

1
2 1. When the government takes someone’s personal property, it should be
3 responsible for keeping it safe. Yet all too often, government officials take people’s
4 property—to forfeit, to use as evidence, or simply because they can—and when the
5 government’s asserted need for the property ends, the government fails to return the
6 property, in whole or in part.

7 2. That’s what happened to Plaintiff Donald Mellein. The government
8 broke into Don’s safe-deposit box at U.S. Private Vaults (USPV) in Beverly Hills,
9 California, which he used to store part of his retirement savings, including cash, a
10 gold bar, and 110 gold coins. Without any evidence that Don had done anything
11 wrong, the government tried to administratively forfeit the gold bar and cash. The
12 government eventually abandoned its unjustified forfeiture attempt and tried to
13 return the property. But by that time, the gold coins in Don’s box had disappeared.

14 3. Don’s problems began on March 22, 2021, when the FBI raided
15 USPV’s business premises based on suspicion that the business itself had
16 committed various crimes. The FBI’s warrant application stated that by seizing
17 USPV’s property, the FBI would end up with custody of the individual safe-deposit
18 boxes, too. And to address the obvious constitutional concerns that presented, the
19 FBI promised the magistrate judge in its warrant application that the FBI would
20 “preserve the property for safekeeping” and return the property to the rightful
21 owners.

22 4. But the FBI also had a separate plan—concealed from the magistrate
23 judge who approved the warrant—to administratively forfeit all boxes containing
24 property worth at least \$5,000 (the FBI’s minimum threshold for profitability), and
25 to conduct investigatory searches of the boxes for evidence to support the
26 forfeitures. These investigatory searches demanded significant time and effort—for
27 instance, running all cash by drug-sniffing dogs and documenting agents’ notes and
28 observations to use in later forfeiture proceedings. The resulting time crunch left

1 agents scrambling to search each box as quickly as possible so they could move on
2 to the next one.

3 5. This left little time for complying with the government's promises to
4 safeguard the boxes and return the contents to the owners. The point of opening the
5 boxes was to create "inventories" of the contents that would protect them against
6 loss or theft. But in the dash to process each box as quickly as possible, the agents
7 often didn't even take the time to carefully check for and protect all the valuable
8 property in the box, once they confirmed that the contents were worth more than
9 \$5,000 and therefore subject to forfeiture. And the resulting "inventories" they
10 created were all but useless, describing property worth anywhere from a few dollars
11 to a million dollars with vague terms like "miscellaneous coins." In the rush to
12 finish, it was inevitable that valuable property would go missing, never to be
13 returned to the rightful owners.

14 6. After the FBI abandoned its efforts to forfeit Don's property, it
15 returned his cash and gold bar. But it didn't return his 110 gold coins. After he filed
16 an earlier lawsuit, represented by different counsel, the government "found" 47 of
17 his coins. But it never returned the remaining 63 gold coins, which were worth
18 \$123,419. And it told him that his earlier lawsuit couldn't challenge the missing
19 coins until he filed an administrative claim with the government first.

20 7. Don therefore dismissed his earlier lawsuit without prejudice and filed
21 an administrative claim with the FBI, explaining when and how he had purchased
22 his gold coins, that he was storing them in his USPS box up until the USPS raid,
23 and that the FBI had not returned 63 of the coins. Adding insult to injury, however,
24 the FBI denied any responsibility, disingenuously stating that there was "no
25 evidence of negligence or wrongful acts on the part of any FBI employee."

26 8. That's wrong. Don's gold coins were completely secure until FBI
27 agents broke open the safe-deposit box looking for property that could be forfeited.
28 Their disappearance can only be explained by the acts or omissions of the FBI

1 agents who broke into the box and rummaged through it. The FBI never should
2 have broken into the safe-deposit boxes in the first place but, once it did, it became
3 responsible for returning everything it had custody of, unless it had a lawful reason
4 to keep it.

5 9. Don is entitled to have his gold coins returned, or to be reimbursed for
6 their loss, regardless of whether he can prove that some FBI employee did
7 something wrong or was negligent. Whatever the reason for the coins disappearing,
8 the government is responsible for either returning the coins to Don or compensating
9 him for what it took.

10 10. This lawsuit therefore seeks to hold the government to its word. The
11 government promised that it would safeguard and return the property it took from
12 the USPV safe-deposit boxes. It should be accountable for taking Don's property
13 and not giving it back.

14 **JURISDICTION AND VENUE**

15 11. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346(b)(1), 1367,
16 2201, and 2202.

17 12. Venue is proper in the United States District Court for the Central
18 District of California under 28 U.S.C. §§ 1402(b) and 1391(e)(1).

19 **PARTIES**

20 13. Plaintiff Donald Leo Mellein is a retired civil servant residing in Los
21 Angeles County, California. At USPV's Beverly Hills facility, Don and his wife
22 rented a safe deposit box in which they placed cash, a gold bar, and 110 gold coins,
23 as well as various personal documents.

24 14. Defendant United States of America (the "United States" or the
25 "government") is the national federal government established by the U.S.
26 Constitution. It is liable for the acts of its officials under the Federal Tort Claims
27 Act, 28 U.S.C. §§ 1346, 2671–80. References to conduct by the United States
28 include acts taken by its agents and employees.

1 15. Defendant Lynne Zellhart is a special agent with the Federal Bureau of
2 Investigation who is responsible for the acts, violations, and injuries alleged in this
3 action. She spearheaded the government’s secret plan to break into the USPV safe-
4 deposit boxes. Among other conduct, she made representations to the magistrate
5 judge and to boxholders about safeguarding the property so it could be returned to
6 the rightful owners; led the development of the secret plan to seize and forfeit boxes
7 containing property worth more than \$5,000 and to conduct investigatory searches
8 for evidence to support the forfeitures; created specialized procedures to conduct
9 the investigatory searches of the boxes at the expense of safeguarding their
10 contents; and directly supervised the process of breaking into the USPV boxes,
11 conducting investigatory searches of the contents, seizing the contents for
12 forfeiture, and eventually returning (or failing to return) the contents to the
13 boxholders.

14 16. Defendants Does 1–5 (the “Doe Defendants”) are agents of the Federal
15 Bureau of Investigation who, along with Defendant Zellhart, are responsible for the
16 acts, violations, and injuries alleged in this action. Among other conduct, they
17 searched or assisted in the search of Plaintiff’s USPV safe-deposit box and, in that
18 role, were entrusted with safeguarding the contents, including the gold coins stored
19 in the box, so that they could be safely returned to Plaintiff. Their identities and
20 their number are currently unknown to Plaintiff but can be determined by the
21 government based on its internal records. They will be added as named Defendants
22 when their identities are disclosed. They are sued in their individual capacities
23 under the Constitution, *Bivens*, the Westfall Act (28 U.S.C. § 2679(b)(2)(A)), and
24 California statutory and common law. The acts, violations, and injuries for which
25 they are responsible in this action also form the basis for liability of the United
26 States of America under the Federal Tort Claims Act.

27 17. The Doe Defendants, together with Defendant Zellhart, are referred to
28 collectively as the “Individual Defendants.”

1 **FACTUAL ALLEGATIONS**

2 **Don Deposited His Personal Property With USPV**

3 18. USPV is a corporation that operated a safe-deposit-box facility at 9182
4 West Olympic Blvd., Beverly Hills, California.

5 19. USPV's Beverly Hills facility housed about 1,400 safe-deposit boxes
6 in its vault.

7 20. USPV safe-deposit-box service provided renters with several
8 advantages over traditional banks. It had better hours of operation than most banks,
9 and customers could access the outer vault themselves using biometric data (like an
10 iris scan) rather than having to wait for a USPV employee to assist them.

11 21. USPV also provided enhanced security and privacy. For example, all
12 the keys for USPV's safe deposit boxes are left in customers' hands, so USPV and
13 its employees cannot access its customers' safe-deposit boxes without their
14 knowledge.

15 22. On or about September 2017, Don rented safe-deposit box number 224
16 at USPV.

17 23. This created a relationship between Don as bailor and USPV as the
18 bailee. As bailee, USPV had duties under California law to safeguard Don's
19 property and was liable for the failure to return his property when required to do so.

20 24. Additionally, as part of the contract between USPV and Don, USPV
21 agreed to provide complete and total security for the contents of Don's safe-deposit
22 box and to be liable for loss of, theft of, or unauthorized access to the contents of
23 the box.

24 25. For many years, Don stored his property in a safe-deposit box at Wells
25 Fargo. Due to concerns about banking instability, Don chose to rent a safe-deposit
26 box at USPV and move his property there because he believed it would be safer. He
27 also liked that USPV had a convenient location.

28

1 26. Don trusted and expected USPV to safeguard his property. He had
2 every impression that USPV was a trustworthy, legitimate business.

3 27. Don used his box to store part of his retirement savings, including
4 cash, a gold bar, and 110 gold coins. He also stored copies of personal documents.

5 28. Don and his wife had purchased the gold coins largely from the
6 proceeds of selling their home in Malibu in 2002. On or about January 5, 2005, they
7 purchased 30 Canadian Maple Leaf gold one-ounce coins. Around late March 2006,
8 they purchased 60 American Eagle gold one-ounce coins. And on or about May 5,
9 2008, they purchased 20 American Eagle gold one-ounce coins.

10 29. Consistent with USPV's recommendation, Don also placed his contact
11 information, as well as information identifying his beneficiaries, on top of the
12 interior sleeve of his box. The remaining contents of his box were contained within
13 that interior sleeve.

14 30. Don was current on the lease payment for his USPV safe-deposit box
15 as of March 22, 2021.

16 31. Don visited his box at USPV three or four times a year. He last visited
17 his box and viewed the contents in about January 2021. At that time, in addition to
18 other property, the box contained his gold coins, stacked neatly in plastic tubes, and
19 placed at the back of his box.

20 32. As of March 22, 2021, Don's USPV safe-deposit box contained cash, a
21 gold bar, 110 gold coins, and personal documents, such as receipts for the gold
22 purchases.

23 **The Government And Defendant Zellhart Obtain A Warrant To Seize USPV's**
24 **Nest Of Safe-Deposit Boxes By Promising To Safeguard The Contents**

25 33. On March 9, 2021, the United States indicted USPV, the company, for
26 money laundering and drug trafficking.

27 34. On March 17, 2021, the government applied to a magistrate judge for a
28 warrant to search USPV's business premises and to seize certain business property

1 owned by USPV. Defendant Zellhart had been in charge of drafting the affidavit for
2 the warrant application and ultimately swore under oath that it was true.

3 35. In the application, Defendant Zellhart made representations under oath
4 to the magistrate judge about how the government would conduct the search.

5 36. One item the warrant application requested permission to seize was the
6 “nests of safety deposit boxes,” that is, the relatively worthless structure that houses
7 all the individual safe-deposit boxes.

8 37. The application explained that the government sought to seize “the
9 nests of boxes themselves, not their contents.” But by seizing the nests, the
10 government would “end up with custody of what is inside those boxes.”

11 38. To alleviate the obvious concerns arising from the government taking
12 the property of so many innocent third parties, the warrant application promised to
13 safeguard the contents of the safe-deposit boxes so that they could be returned to
14 their rightful owners.

15 39. The warrant application assured the magistrate judge that agents would
16 follow their written inventory policies to “protect their agencies from claims of
17 theft or damage to the contents of the boxes.”

18 40. The warrant application also represented that agents would seek to
19 “identify the owner and preserve the property for safekeeping.”

20 41. Relying on these statements that the government would safeguard the
21 contents of the boxes and reunite them with the rightful owners, the magistrate
22 judge issued the warrant to search USPV’s business premises and to seize the nest
23 of safe-deposit boxes.

24 42. The warrant, however, specifically did not authorize a “criminal search
25 or seizure of the contents of the safety deposit boxes.”

26 43. Instead, the warrant instructed agents to conduct an “inventory” of the
27 boxes “to protect their agencies and the contents of the boxes.”
28

1 44. The warrant also directed agents to inspect the boxes in order to
2 identify ownership, so that the property could be safely returned to the rightful
3 owners.

4 **The Government and Defendant Zellhart Separately Plan To Forfeit**
5 **Everything Over \$5,000 And To Search The Boxes For Evidence Of Crimes**

6 45. But in contrast to the statements in its warrant application, the
7 government had also formulated a separate plan for the USPV boxes that it did not
8 disclose to the magistrate judge.

9 46. Defendant Zellhart testified about this plan during depositions in an
10 earlier lawsuit. According to her testimony as the government's 30(b)(6)
11 representative, the government decided to move forward with indicting USPV and
12 raiding its business in the summer or fall of 2020.

13 47. Defendant Zellhart also testified that from the beginning, she and the
14 government planned to seize the nest of safe deposit boxes in the USPV raid.
15 Defendant Zellhart also confirmed that the government did not want the nest for its
16 evidentiary value, but instead to bring USPV's business to a "screeching halt."

17 48. Defendant Zellhart also testified that by about this time, she and the
18 government were already planning to use civil forfeiture against some or all the
19 property at USPV.

20 49. As part of this planning, the FBI agent in charge of the Los Angeles
21 Field Office criminal division spoke with the head of the asset forfeiture unit for the
22 office in summer 2020. He asked whether the unit could handle the anticipated
23 forfeiture of hundreds of USPV boxholders' property. The forfeiture head
24 confirmed that the office could process that volume.

25 50. As planning for the raid progressed, and before applying for the
26 warrant, the forfeiture head of the FBI's Los Angeles Field Office "made a
27 determination that there was probable cause to proceed [with civil forfeiture] on
28 assets seized in the investigation from U.S. Private Vaults," including "the contents

1 of the boxes.” That is, even before applying for the warrant, the government “had
2 already determined that there was probable cause to move forward” with forfeiture
3 actions against the box contents. The only factor determining whether the
4 government tried to forfeit the box contents was whether it “met the minimum
5 monetary threshold” of \$5,000, because below that, “the cost [to forfeit] would be
6 more than the value of the asset.”

7 51. To carry out this large-scale forfeiture, Defendant Zellhart created
8 specialized one-time search procedures for the USPV boxes. These procedures were
9 admittedly designed to identify evidence to support the forfeitures. As Agent
10 Zellhart confirmed in her 30(b)(6) deposition, she “wanted agents to gather
11 information concerning, for instance, whether the money smelled like drugs, or if it
12 was banded -- packaged in an unusual manner.” The specialized search procedures
13 included, for example, running currency by drug sniffing dogs, documenting
14 agents’ “cash observations,” and providing copies of all paperwork to the asset
15 forfeiture unit.

16 **In The Rush To Search For Evidence To Support The Forfeitures, Defendants**
17 **Fail To Safeguard The Contents Of The Boxes Like They Promised**

18 52. On March 22, 2021, the government executed its search and seizure
19 warrant at USPV’s business premises, seized the “nest” of safe-deposit boxes, and,
20 in so doing, “end[ed] up with custody of what [was] inside those boxes.”

21 53. Having obtained custody of the contents of the boxes, the government
22 assumed the role and accompanying duties of bailee of the contents previously held
23 by USPV.

24 54. Having obtained custody of the contents of the boxes, the government
25 assumed responsibility for safeguarding the property and returning the contents to
26 the rightful owners, as the government represented it would do in its warrant
27 application.
28

1 55. When the government obtained custody of the USPV safe-deposit
2 boxes and the contents of the boxes, the contents were safe and secure because they
3 were in locked boxes that could only be accessed by those boxes' owners using
4 their keys.

5 56. Instead of honoring its promises to safeguard the safe-deposit boxes
6 and return the contents to the rightful owners, the government instead spent the
7 week of March 22, 2021, breaking into the safe-deposit boxes to look for property
8 to forfeit and searching for evidence to support the forfeitures (such as running cash
9 by drug-sniffing dogs, describing the condition of cash, and looking inside sealed
10 envelopes).

11 57. The resulting search was hectic. Searching nearly 1,400 boxes for
12 evidence to support the forfeitures took days longer than anticipated. This led to
13 time constraints that required Defendants to cut corners in their efforts to safeguard
14 boxholders' property. (They did not, of course, cut corners in their efforts to search
15 for evidence to support the forfeitures.)

16 58. For example, one way to safeguard the contents of the boxes was to
17 videotape the process of opening the boxes. But as Defendant Zellhart confirmed in
18 her deposition, "reality got in the way," and Defendants did not videotape about
19 half of the boxes they opened.

20 59. Another way to safeguard the contents of the boxes would have been
21 to create meaningful inventories describing the valuable property taken from the
22 boxes. But in the chaos following the raid and the rush to search for evidence to
23 support their forfeiture plans, Defendants failed to create meaningful inventories.
24 As one agent involved in the searches testified in an earlier deposition, the agents
25 were trying to be "speedy" with each box so they could "move on to the next one."
26 And as the searches dragged on, adjoining businesses became frustrated by the
27 government's lingering presence, further pressuring Defendants to "move as
28 quickly as [they] could," and putting a "premium" on "processing boxes quickly."

1 60. This rushed, slapdash process created inventories that were essentially
2 useless for their ostensible purpose of safeguarding the contents of the boxes.
3 Instead, the inventories described the contents in vague, general terms, like
4 “miscellaneous coins” or “assorted jewelry” or “miscellaneous general items.”
5 These descriptions could cover anything from novelty items worth a couple bucks
6 to rare and valuable coins and jewelry worth millions.

7 61. Another way of safeguarding the contents of the boxes against theft,
8 damage, or loss would have been to leave the safe-deposit boxes locked. But that
9 would not have accomplished the government’s purpose of finding boxes with
10 property that could be forfeited. To achieve that purpose, the government broke into
11 the boxes and deliberately exposed those contents to theft, damage, and loss.

12 62. The foreseeable and probable result of breaking open the boxes was
13 that valuable property would be stolen, damaged, misplaced, or lost. The locked
14 boxes were safe, so opening them inevitably created a risk of loss. And trying to
15 process so many boxes in such a short period of time would inevitably lead to some
16 property going missing, even in the best of circumstances. And these were not the
17 best of circumstances, with agents searching for evidence to support the forfeitures
18 at the expense of being careful to safeguard the property.

19 63. Valuable property stored in the USPV safe-deposit boxes was in fact
20 stolen, damaged, misplaced, or lost after the government broke into them.

21 64. For example, one safe-deposit box held the retirement savings of an
22 80-year-old, semi-retired doctor, who later filed suit under the name Dr. Linda R.
23 The agents searching her box created a written inventory that listed “misc. coins”
24 and a video inventory that only vaguely depicted envelopes containing coins,
25 without quantifying the number, type, or value of coins they contained. Dr. R. filed
26 a lawsuit and a motion for the return of her property under Federal Rule of Criminal
27 Procedure 41(g) after discovering the government had lost dozens of gold coins that
28 were worth more than \$75,000. The government successfully moved to dismiss that

1 lawsuit for lack of jurisdiction on the ground that Rule 41(g) does not provide a
2 remedy for lost property.

3 65. In another case, a married couple used their box to store \$2,000 in cash
4 and silver coins they had purchased as a retirement nest egg. After initially trying to
5 forfeit the silver, the government eventually agreed to return the property it had
6 seized from the couple's box. The government returned the silver, but it never
7 returned the \$2,000 in cash. To this day, the government has neither returned the
8 cash nor reimbursed the couple for the missing property. (They are represented by
9 the same counsel as Don and are filing a lawsuit at the same time as this one
10 challenging the government's loss of their cash.)

11 **Defendants Take Don's Property**

12 66. As with the other USPV safe-deposit boxes, the government also took
13 custody of Don's box on or about March 22, 2021.

14 67. Sometime during the week of March 22, 2021, the Doe Defendants
15 broke into Don's box.

16 68. According to the government's representations to the magistrate judge
17 and restrictions contained in the warrant, the Doe Defendants broke into Don's box
18 to safeguard the property in the government's custody until it could be safely
19 returned to Don.

20 69. Consistent with those representations, the Doe Defendants had a duty
21 to safeguard the contents of Don's box so that the property could be returned to
22 Don.

23 70. But instead of safeguarding Don's property, the Doe Defendants broke
24 into Don's box to look for property to forfeit, and to search for evidence to support
25 the forfeiture.

26 71. When the Doe Defendants estimated that the contents of Don's box
27 were worth more than \$5,000, they seized those contents for the purpose of
28 subjecting them to administrative forfeiture.

1 72. The Doe Defendants also prepared the inventory forms for Don’s box.

2 73. On information and belief, those forms do not refer to the 110 gold
3 coins stored in Don’s box.

4 74. Don first learned about the FBI’s USPV raid in about early April 2021.

5 75. The FBI had posted a notice at USPV, directing boxholders to go to a
6 “uspvclaims” webpage on the FBI website “to initiate a claim for your US Private
7 Vaults box.” The link directed users to a “U.S. Private Vaults Claim Form,” which
8 instructed users to provide certain information “[t]o make a claim for property
9 stored at U.S. Private Vaults in Beverly Hills, California.”

10 76. Don, through his prior attorney, submitted his claim to the FBI on
11 April 12, 2021. He then received through counsel an email from the FBI explaining
12 that “all property seized is in a secure FBI facility. FBI agents and staff are working
13 diligently, in a methodical and systematic way, to process all claims and address
14 each safe deposit box that is in our custody.” The email further stated that “it is
15 important to us that we ensure property is returned to the lawful owner,” and that
16 the FBI would either “make arrangements to return your property” or “request
17 additional information.”

18 **After Attempting To Forfeit His Property, The**
19 **Government Returns Don’s Gold Bar And Cash, But Not His Gold Coins**

20 77. As the government had planned to do before the raid, it “initiated civil
21 administrative forfeiture against all of the boxes that met the minimum monetary
22 threshold.” The property in Don’s box was worth more than \$5,000, so the
23 government initiated administrative forfeiture proceedings against his box, despite
24 no evidence that the property was properly subject to forfeiture.

25 78. On or about May 24, 2021, Don received a “Notice of Seizure of
26 Property and Initiation of Administrative Forfeiture Proceedings.” The notice was
27 dated May 21, 2021, and stated that the government was initiating administrative
28 forfeiture proceedings with respect to the cash and gold bar the government had

1 taken from Don's safe-deposit box. The notice did not refer to the gold coins that
2 Don stored in his box.

3 79. On May 20, 2021, the government also issued an omnibus notice of
4 seizure directed to USPV. The omnibus notice stated that the government was
5 initiating administrative forfeiture proceedings with respect to the contents of
6 several hundred USPV safe-deposit boxes, including the cash and gold bar that Don
7 stored in his box. The omnibus notice did not reflect the gold coins that Don stored
8 in his box.

9 80. In early June 2021, Don's former counsel spoke with Defendant
10 Zellhart, who agreed to abandon the government's effort to forfeit the contents of
11 Don's box and to return his property to him. When Don's counsel asked about the
12 gold coins that were not identified in the forfeiture notices, Defendant Zellhart
13 replied that perhaps the gold coins had become separated from the rest of Don's
14 property.

15 81. On or about June 14, 2021, the government returned Don's cash and
16 gold bar.

17 82. The government did not return Don's 110 gold coins, which were not
18 reflected in the property receipt he received.

19 83. Don's counsel immediately informed the government about the 110
20 missing coins and reached out several times over the ensuing weeks to try to find
21 the missing coins. Those attempts were unsuccessful.

22 84. On August 13, 2021, Don, through his former counsel, filed a lawsuit
23 against the government seeking to have his 110 gold coins returned or to otherwise
24 be compensated for the missing coins.

25 85. On December 2, 2021, the government notified Don that it had
26 "found" 47 of his gold coins and would return them. The government stated,
27 however, that it had not been able to find the remaining 63 coins.
28

1 because they committed those tortious acts and caused those injuries while acting
2 on behalf of the FBI.

3 102. Don timely and properly exhausted the FTCA's administrative claims
4 process.

5 103. Don owned and had the right to possess the gold coins he stored in his
6 USPV safe-deposit box.

7 104. The Individual Defendants, while acting on behalf of the FBI,
8 exercised dominion over the contents of Don's USPV safe-deposit box when they
9 took custody of the box and searched it on or about the week of March 22, 2021,
10 and in so doing, the Individual Defendants engaged in a wrongful act or otherwise
11 disposed of Don's property rights in the 63 gold coins.

12 105. Defendant Zellhart engaged in a wrongful act that interfered with
13 Don's property rights when she instructed the Doe Defendants to break into Don's
14 box, seize the contents for forfeiture, and search for evidence to support the
15 forfeiture.

16 106. The Doe Defendants engaged in a wrongful act that interfered with
17 Don's property rights when they broke into his box, seized the contents for
18 forfeiture, and searched for evidence to support the forfeiture.

19 107. The Doe Defendants engaged in a wrongful act that interfered with
20 Don's property rights to the extent they stole Don's gold coins or allowed them to
21 be stolen by others. In the absence of any explanation for the 63 missing gold coins,
22 their disappearance can only be explained by the wrongful acts of the Doe
23 Defendants.

24 108. Even assuming they acquired initial possession of the gold coins
25 lawfully, Defendants also wrongfully interfered with Don's property rights when
26 Defendants refused to return all the gold coins upon request.

27
28

1 109. As a result of Defendants' unwarranted interference with Don's
2 property and possessory rights, Don has incurred damages in the amount of
3 \$123,419.

4 110. The United States is therefore liable under the FTCA for the torts of
5 conversion and trespass to chattels.

6 **COUNT II: Breach of Bailment**

7 **Against Defendant United States of America**

8 **Under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b)(1), 2671–80)**

9 111. Plaintiff re-alleges and incorporates by reference each and every
10 allegation set forth in ¶¶ 1 through 98 above.

11 112. Under the FTCA, Defendant United States of America is liable for
12 injury or loss of property caused by the negligent or wrongful acts or omissions of
13 its employees acting within the scope of their office or employment.

14 113. Defendant United States of America is liable for the tortious acts and
15 injuries caused by the Doe Defendants and other agents working on its behalf
16 because they committed those tortious acts and caused those injuries while acting
17 on behalf of the FBI.

18 114. Don timely and properly exhausted the FTCA's administrative claims
19 process.

20 115. USPV held the contents of the safe-deposit boxes as bailee, and
21 Defendants took on the obligations of a bailee when they transferred custody of the
22 contents of Don's box from USPV to themselves.

23 116. The contents of the USPV safe-deposit boxes were delivered into the
24 custody of Defendants for the purpose of safeguarding the contents until they could
25 be returned to the rightful owners.

26 117. Defendants made statements, both to the magistrate judge and directly
27 to boxholders, that they were taking delivery of the contents of the USPV boxes for
28

1 the purpose of caring for the property until the rightful owners could request
2 redelivery.

3 118. The contents of the USPV safe-deposit boxes were also delivered into
4 Defendants' custody to benefit Defendants by helping them to shut down USPV's
5 business and search for property that could be forfeited.

6 119. As bailees, Defendants received delivery of the contents of Don's box,
7 including the gold coins.

8 120. Don has demanded the return of his property, including his gold coins.

9 121. Defendants failed to return all the property, specifically 63 of the gold
10 coins, when Don demanded redelivery.

11 122. Defendants have not offered any justification for their failure to re-
12 deliver Don's property, nor is there any possible explanation other than the
13 wrongful or negligent acts of Defendants.

14 123. Defendant United States of America is therefore liable for breaching
15 its bailment obligations in the amount of \$123,419.

16 **COUNT III: Negligence**

17 **Against Defendant United States of America**

18 **Under the Federal Tort Claims Act (28 U.S.C. §§ 1346(b)(1), 2671–80)**

19 124. Plaintiff re-alleges and incorporates by reference each and every
20 allegation set forth in ¶¶ 1 through 98 above.

21 125. Under the FTCA, Defendant United States of America is liable for
22 injury or loss of property caused by the negligent or wrongful acts or omissions of
23 its employees acting within the scope of their office or employment.

24 126. Defendant United States of America is liable for the tortious acts and
25 injuries caused by the Doe Defendants and other agents working on its behalf
26 because they committed those tortious acts and caused those injuries while acting
27 on behalf of the FBI.
28

1 127. Don timely and properly exhausted the FTCA's administrative claims
2 process.

3 128. Defendants had a duty, pursuant to the representations in the warrant
4 application, the limitations in the warrant, their representations to boxholders, and
5 from their own conduct in taking custody of the boxes, to safeguard the contents of
6 the boxes in their custody, to ensure that those contents were not lost, stolen, or
7 destroyed, and ultimately to return the contents of the USPV boxes to their rightful
8 owners.

9 129. Defendants breached this duty when they lost or stole 63 of Don's gold
10 coins.

11 130. The government and Defendant Zellhart breached this duty when they
12 failed to take reasonable care to prevent Don's gold coins from being lost or stolen.
13 They instructed the agents searching the boxes to search for evidence to support the
14 forfeitures instead of safeguarding the contents of the boxes, created instructions for
15 searching the boxes that were calculated to uncover evidence to support the
16 forfeitures at the expense of safeguarding the contents, and directly created the
17 frenzied environment that required agents to search the boxes as quickly as
18 possible.

19 131. The Doe Defendants also breached this duty when they failed to take
20 reasonable care to prevent Don's gold coins from being lost or stolen. They failed
21 to take the time to secure the contents against theft or loss, instead processing the
22 box as quickly as they could so they could move on to the next one. The Doe
23 Defendants also failed to create a meaningful inventory of the valuable property
24 inside Don's box. Finally, under the circumstances, the disappearance of 63 of the
25 gold coins can only be explained by the Doe Defendants' failure to take reasonable
26 care to guard the contents of Don's box.

27 132. Don's gold coins were secure in his box before Defendants broke into
28 it. In the absence of any explanation or evidence from the government about how

1 the gold coins disappeared, the only explanation under the circumstances is that
2 Defendants were negligent or worse.

3 133. As a proximate result of Defendants' breach of that duty, Don has been
4 damaged in the amount of \$123,419.

5 134. The United States is therefore liable under the FTCA for the tort of
6 negligence.

7 **COUNT IV: Conversion and Trespass to Chattels**

8 **Against Individual Defendants**

9 **Under California Law**

10 135. Plaintiff re-alleges and incorporates by reference each and every
11 allegation set forth in ¶¶ 1 through 98 above.

12 136. Don owned and had the right to possess the gold coins he stored in his
13 USPV safe-deposit box.

14 137. The Individual Defendants exercised dominion over the contents of
15 Don's USPV safe-deposit box when they took custody of the box and searched it on
16 or about the week of March 22, 2021, and in so doing, the Individual Defendants
17 engaged in a wrongful act or otherwise disposed of Don's property rights in the
18 cash.

19 138. Defendant Zellhart engaged in a wrongful act that interfered with
20 Don's property rights when she instructed the Doe Defendants to break into Don's
21 box, seize the contents for forfeiture, and search for evidence to support the
22 forfeiture.

23 139. The Doe Defendants engaged in a wrongful act that interfered with
24 Don's property rights when they broke into Don's box, seized the contents for
25 forfeiture, and searched for evidence to support the forfeiture.

26 140. The Doe Defendants engaged in a wrongful act that interfered with
27 Don's property rights to the extent they stole Don's gold coins or allowed them to
28 be stolen by others. In the absence of any explanation for the 63 missing gold coins,

1 their disappearance can only be explained by the wrongful acts of the Doe
2 Defendants.

3 141. Even assuming they acquired initial possession of the gold coins
4 lawfully, the Individual Defendants also wrongfully interfered with Don's property
5 rights when they refused to return all the gold coins upon request.

6 142. As a result of the Individual Defendants' unwarranted interference
7 with Don's property and possessory rights, Don has incurred damages in the
8 amount of \$123,419.

9 143. The tortious conduct by the Individual Defendants also violated the
10 Constitution, including the Fourth Amendment.

11 144. As a result of the tortious and unconstitutional conduct of the
12 Individual Defendants, Don has incurred damages in the amount of \$123,419.

13 145. Individual Defendants' tortious conduct also violated the Constitution
14 and therefore falls under the Westfall Act exception for claims "brought for a
15 violation of the Constitution of the United States." 28 U.S.C. § 2679(b)(2). To the
16 extent the claim remains barred by 28 U.S.C. § 2679(b)(1) under current precedent,
17 Don preserves the issue.

18 **COUNT V: Breach of Bailment**
19 **Against Individual Defendants**
20 **Under California Law**

21 146. Plaintiff re-alleges and incorporates by reference each and every
22 allegation set forth in ¶¶ 1 through 98 above.

23 147. USPV held the contents of the safe-deposit boxes as bailee, and the
24 Individual Defendants took on the obligations of a bailee when they transferred
25 custody of the contents of Don's box from USPV to themselves.

26 148. The contents of Don's USPV safe-deposit box were delivered into the
27 custody of the Individual Defendants for the purpose of safeguarding the contents
28 until they could be returned to the rightful owners.

1 149. Defendants made statements, both to the magistrate judge and directly
2 to boxholders, indicating that the Individual Defendants were taking delivery of the
3 contents of the USPV boxes for the purpose of caring for the property until the
4 rightful owners could request redelivery.

5 150. The contents of the USPV safe-deposit boxes were also delivered into
6 the Individual Defendants' custody to benefit the Individual Defendants by helping
7 them to accomplish their objectives of shutting down USPV's business and
8 searching for property that could be forfeited.

9 151. As bailees, the Individual Defendants received delivery of the contents
10 of Don's box, including the gold coins.

11 152. Don has demanded the return of his property, including his gold coins.

12 153. The Individual Defendants failed to return all the property, specifically
13 63 of the gold coins, when Don demanded redelivery.

14 154. The Individual Defendants have not offered any justification for their
15 failure to re-deliver Don's property, nor is there any possible explanation other than
16 the wrongful or negligent acts of the Individual Defendants

17 155. The conduct by the Individual Defendants, which was both tortious
18 and breached the bailment contract, also violated the Constitution, including the
19 Fourth Amendment.

20 156. As a result of the tortious conduct, breach of contract, and
21 unconstitutional conduct of the Individual Defendants, Don has incurred damages
22 in the amount of \$123,419.

23 157. Individual Defendants' tortious conduct also violated the Constitution
24 and therefore falls under the Westfall Act exception for claims "brought for a
25 violation of the Constitution of the United States." 28 U.S.C. § 2679(b)(2). To the
26 extent the claim remains barred by 28 U.S.C. § 2679(b)(1) under current precedent,
27 Don preserves the issue.
28

1 **COUNT VI: Negligence**
2 **Against Individual Defendants**
3 **Under California Law**

4 158. Plaintiff re-alleges and incorporates by reference each and every
5 allegation set forth in ¶¶ 1 through 98 above.

6 159. The Individual Defendants had a duty pursuant to the representations
7 in the warrant application, the limitations in the warrant, the representations to
8 boxholders, and from their own conduct in taking custody of the boxes, to
9 safeguard the contents, to ensure the contents were not lost, stolen, or destroyed,
10 and ultimately to return the contents of the USPV boxes to their rightful owners.

11 160. The Individual Defendants breached this duty when they lost or stole
12 63 of Don's gold coins.

13 161. Defendant Zellhart breached this duty when she failed to take
14 reasonable care to prevent Don's gold coins from being lost or stolen. She
15 instructed the agents searching the boxes to search for evidence to support the
16 forfeitures instead of safeguarding the contents of the boxes, created instructions for
17 searching the boxes that were calculated to uncover evidence to support the
18 forfeitures at the expense of safeguarding the contents, and directly created the
19 frenzied environment that required agents to search the boxes as quickly as
20 possible.

21 162. The Doe Defendants also breached this duty when they failed to take
22 reasonable care to prevent Don's gold coins from being lost or stolen. They failed
23 to take the time to secure the contents against theft or loss, instead processing the
24 box as quickly as they could so they could move on to the next one. The Doe
25 Defendants also failed to create a meaningful inventory of the valuable property
26 inside Don's box. Finally, under the circumstances, the disappearance of 63 of the
27 gold coins can only be explained by the Doe Defendants' failure to take reasonable
28 care to guard the contents of Don's box.

1 163. Don’s gold coins were secure in his box before the Doe Defendants
2 broke into it. The mere fact of its disappearance necessarily implies negligence by
3 the Individual Defendants.

4 164. As a proximate result of the Individual Defendants’ breach of that
5 duty, Don has been damaged in the amount of \$123,419.

6 165. The tortious conduct by the Individual Defendants also violated the
7 Constitution, including the Fourth Amendment.

8 166. As a result of the tortious and unconstitutional conduct of the
9 Individual Defendants, Don has incurred damages in the amount of \$123,419.

10 167. Individual Defendants’ tortious conduct also violated the Constitution
11 and therefore falls under the Westfall Act exception for claims “brought for a
12 violation of the Constitution of the United States.” 28 U.S.C. § 2679(b)(2). To the
13 extent the claim remains barred by 28 U.S.C. § 2679(b)(1) under current precedent,
14 Don preserves the issue.

15 **COUNT VII: Unreasonable Search In Violation Of The Fourth Amendment**
16 **Against Individual Defendants**

17 **Under *Bivens*, Westfall Act, Bane Act, and directly under the Fourth**
18 **Amendment**

19 168. Plaintiff re-alleges and incorporates by reference each and every
20 allegation set forth in ¶¶ 1 through 98 above.

21 169. The Fourth Amendment protects against unreasonable searches of
22 personal property, including safe-deposit boxes. Warrantless searches are
23 presumptively unreasonable unless a historically recognized exception applies.

24 170. The USPV warrant only authorized the search and seizure of USPV’s
25 property. It did “not authorize a criminal search or seizure of the contents of the
26 safety deposit boxes.” When the Doe Defendants, as ordered by Defendant
27 Zellhart, searched Don’s safe-deposit box for forfeitable property and for evidence
28

1 to support the forfeitures, the search was presumptively unreasonable unless an
2 exception to the warrant requirement applies.

3 171. The Individual Defendants sought to justify their search of Don's box
4 (and the other USPV boxes) under the inventory exception to the warrant
5 requirement, but that exception only applies in well-defined situations (like taking
6 custody of an automobile), not seizing locked boxes belonging to hundreds of
7 individuals. The inventory exception is further limited to searches pursuant to
8 standardized policies, while the Individual Defendants searched Don's box
9 pursuant to special supplemental procedures created by Defendant Zellhart solely
10 for the USPV searches.

11 172. The inventory exception also does not apply here because the
12 Individual Defendants did not actually conduct an inventory search of Don's box
13 and, on information and belief, did not create a meaningful inventory of the
14 contents. Instead, the Individual Defendants were searching Don's box for
15 forfeitable property and for evidence to support the forfeiture.

16 173. To the extent the USPV warrant permitted the Individual Defendants
17 to break into Don's boxes to conduct an inventory, the search was still
18 unreasonable. The warrant expressly stated that it did "not authorize a criminal
19 search or seizure of the contents of the safety deposit boxes," yet the inventory
20 search here was a mere pretext to search Don's box for forfeitable property and
21 evidence to support the forfeitures.

22 174. To the extent the USPV warrant permitted the Individual Defendants
23 to break into Don's boxes to conduct an inventory, the search was still
24 unreasonable, because the warrant only authorized the inventory searches because
25 Defendant Zellhart misrepresented the true scope of the searches Defendants
26 intended to conduct and failed to disclose the plan to search the boxes for
27 forfeitable property and for evidence to support the forfeitures.
28

1 175. It is clearly established, and every reasonable FBI agent has fair
2 warning, that agents may not search safe-deposit boxes without a warrant or an
3 exception to the warrant requirement.

4 176. It is clearly established, and every reasonable FBI agent has fair
5 warning, that the inventory exception does not permit searches that are a pretext
6 for investigatory searches.

7 177. It is clearly established, and every reasonable FBI agent has fair
8 warning, that the inventory exception applies to specific situations like taking
9 custody of an automobile or booking people into jail, not to breaking into hundreds
10 of safe-deposit boxes.

11 178. It is clearly established, and every reasonable FBI agent has fair
12 warning, that the inventory exception applies to searches under standardized
13 procedures, not specialized, one-time procedures created for that specific search.

14 179. It is clearly established, and every reasonable FBI agent has fair
15 warning, that searches pursuant to a warrant may not exceed the express
16 limitations of the warrant.

17 180. It is clearly established, and every reasonable FBI agent has fair
18 warning, that warrants may not be obtained by misstating the scope of the intended
19 search and omitting material facts about the intended search.

20 181. Despite these clearly delineated rights, the Individual Defendants
21 deliberately acted in a manner calculated to deprive Don of his rights.

22 182. Don is therefore entitled to damages in the amount of \$123,419 for the
23 unreasonable search of his USPV safe-deposit box.

24 183. Don is entitled to these damages of 123,419 directly under the Fourth
25 Amendment, which contains clear, prohibitory, enforceable language that binds the
26 government and each of its officers, including the Individual Defendants.

27 184. Don is alternatively entitled to damages of \$123,419 pursuant to
28 *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.

1 388 (1971), which provides a cause of action against agents who violate the Fourth
2 Amendment. Additionally, Don has no alternative remedies for his injuries caused
3 by Defendants, and Don’s claims do not implicate separation of powers, national
4 security considerations, or any other special factors counseling hesitation against a
5 damages remedy for his injuries.

6 185. Don is alternatively entitled to damages of \$123,419 pursuant to the
7 Westfall Act, which provides that its bar on actions against federal employees
8 “does not extend or apply to a civil action against an employee of the Government
9 ... which is brought for a violation of the Constitution of the United States.” 28
10 U.S.C. § 2679(b)(2)(A).

11 186. Don is alternatively entitled to damages of \$123,419 pursuant to
12 California’s Bane Act, which provides a right of action against any person who
13 “interferes by threat, intimidation, or coercion ... with the exercise or enjoyment
14 by any individual or individuals of rights secured by the Constitution ... of the
15 United States” Cal. Civ. Code § 52.1(b), (c).

16 **COUNT VIII: Unreasonable Seizure In Violation Of The Fourth Amendment**
17 **Against Individual Defendants**

18 **Under *Bivens*, Westfall Act, Bane Act, and directly under the Fourth**
19 **Amendment**

20 187. Plaintiff re-alleges and incorporates by reference each and every
21 allegation set forth in ¶¶ 1 through 98 above.

22 188. The Fourth Amendment protects against unreasonable seizures of
23 personal effects, including cash. Even if the seizure is lawful at its inception, it can
24 nevertheless violate the Fourth Amendment because its manner of execution
25 unreasonably infringes possessory interests. And if the original justification for the
26 seizure dissipates, the government must cease the seizure or secure a new
27 justification.
28

1 189. When the Doe Defendants searched and seized the contents of Don's
2 safe-deposit box in accordance with Defendant Zellhart's instructions, they either
3 unreasonably allowed 63 of the gold coins to be stolen or otherwise executed the
4 seizure in an unreasonable manner resulting in the loss of the property.

5 190. The Individual Defendants have not returned Don's gold coins, and the
6 seizure is ongoing. And because the original justification for the seizure has
7 dissipated, the Individual Defendants must secure a new justification for the
8 ongoing seizure. Having stolen, lost, or destroyed the 63 gold coins is not a valid
9 justification for refusing to return them to Don.

10 191. It is clearly established, and every reasonable FBI agent has fair
11 warning, that when seizing personal property like gold coins, agents may not take
12 the property for their own use or allow others to take the property for their own use.

13 192. It is clearly established, and every reasonable FBI agent has fair
14 warning, that when seizing personal property like gold coins, agents must conduct
15 the seizure in a manner that does not unreasonably infringe possessory interests,
16 including by acting reasonably to ensure the property is not stolen, lost, or
17 destroyed.

18 193. It is clearly established, and every reasonable FBI agent has fair
19 warning, that the continuing seizure of personal property like gold coins requires an
20 ongoing justification, and that having stolen, lost, or destroyed the property is not a
21 valid justification.

22 194. Despite these clearly delineated rights, the Individual Defendants
23 deliberately acted in a manner calculated to deprive Don of his rights.

24 195. Don is therefore entitled to damages in the amount of \$123,419 for the
25 unreasonable manner of the seizure and unjustified continuing seizure of his
26 personal property.

27
28

1 196. Don is entitled to these damages of \$123,419 directly under the Fourth
2 Amendment, which contains clear, prohibitory, enforceable language that binds the
3 government and each of its officers, including the Individual Defendants.

4 197. Don is alternatively entitled to damages of \$123,419 pursuant to
5 *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.
6 388 (1971), which provides a cause of action against agents who violate the Fourth
7 Amendment. Additionally, Don has no alternative remedies for his injuries caused
8 by Defendants, and Don’s claims do not implicate separation of powers, national
9 security considerations, or any other special factors counseling hesitation against a
10 damages remedy for his injuries.

11 198. Don is alternatively entitled to damages of \$123,419 pursuant to the
12 Westfall Act, which provides that its bar on actions against federal employees “does
13 not extend or apply to a civil action against an employee of the Government ...
14 which is brought for a violation of the Constitution of the United States.” 28 U.S.C.
15 § 2679(b)(2)(A).

16 199. Don is alternatively entitled to damages of \$123,419 pursuant to
17 California’s Bane Act, which provides a right of action against any person who
18 “interferes by threat, intimidation, or coercion ... with the exercise or enjoyment by
19 any individual or individuals of rights secured by the Constitution ... of the United
20 States” Cal. Civ. Code § 52.1(b), (c).

21 **COUNT IX: As-Applied Deprivation of Property Without Due Process Of Law**
22 **Under the Fifth Amendment Due Process Clause**

23 200. Plaintiff re-alleges and incorporates by reference each and every
24 allegation set forth in ¶¶ 1 through 98 above.

25 201. The Fifth Amendment Due Process Clause states, “No person shall be
26 ... deprived of life, liberty, or property, without due process of law.”

27 202. Don had property, his 63 gold coins, stored in his USPS safe-deposit
28 box.

1 D. To the extent the Court determines that the FTCA, Westfall Act, or
2 any other law deprives Plaintiff of a remedy for the deprivation of his property,
3 declare that those statutes would violate Plaintiff's rights under the Fifth
4 Amendment Due Process Clause, as applied to the facts of this case, by permitting
5 Plaintiff to be deprived of his property without due process of law.

6 E. Award Plaintiff attorneys' fees, costs, and expenses under 28 U.S.C.
7 § 2412 and any other applicable provisions of law or equity; and

8 F. Award any further legal and equitable relief the Court may deem just
9 and proper.

10 Dated: September 22, 2023

Respectfully Submitted,

11
12 /s/ Lou Egerton-Wiley

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