IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:05-CV-767-FL(3)

UNITED STATES OF AMERICA, Plaintiff, v. $19,985.90 in U. S. CURRENCY, et. al., Defendants.	SUR-REPLY REGARDING CLAIMANTS' MOTION FOR RELEASE OF SEIZED ASSETS TO PAY COUNSEL'S FEES

The United States of America files this sur-reply to the reply of Claimants Avedis Djeredjian ("Djeredjian") and his wife, Carmen Badrian ("Badrian")(collectively "Claimants")[1] regarding their motion for release of seized assets to pay counsel's fees.[2]

In their reply, Claimants attempt to remedy the defects of their initial motion by submitting 709 pages of bank records and

[1]Badrian is a now a defendant in the related criminal case having been indicted by way of a superceding indictment returned by the grand jury on October 25, 2006.

[2]Similar to previous filings with this Court, in their reply to the Government's Response to Claimants' Motion for Release of Attorneys Fees, the Claimants, through their counsel, make numerous allegations of the Government having knowingly made false claims to this Court. Just as before, counsel for the Government does not believe it would be productive to respond to those accusations or helpful to the Court in determining the issues regarding the motion pending before the Court. Should the Court desire to discuss these accusations of undersigned counsel knowingly making false claims to the Court with counsel for the parties, undersigned counsel will certainly answer any questions or concerns the Court may have.

credit card statements as well as an additional declaration. The information, however, is incomplete, inadequate, and in some instances actually irrelevant to a determination of whether Claimants have a bona fide need to use seized property for counsel fees. The information submitted by Claimants in their reply is precisely why Courts require a threshold showing to be made before a request for a pre-trial post-restraint hearing is granted. Indeed, the Court in Farmer specifically warned against "open[ing] the floodgates to hearings on flimsy grounds or insubstantial grounds" like the Claimants request here. See U.S. v. Farmer, 274 F.3d 800, 805 (4th Cir. 2001); see also Government's Response In Opposition to the Motion by the Claimants for Release of Seized Assets for Counsel Fees, at 5-7 (noting Farmer's application of the three-factor test for identifying dictates of due process set forth in Mathews v. Eldridge, 424 U.S. 319 (1976)).

For the reasons set forth below, Claimants have failed to make the requisite showing, and their motion should, therefore, be denied.

First, Claimants have not submitted any records for at least two of the legitimate businesses they claim to have been operating and/or managing. In her Declaration filed on May 8, 2006, in support of her motion for the release of her BMW for substantial hardship, Badrian stated, in pertinent part:

> Additionally I operated a retail tobacco store, Tobacco World, in 2005. Our income tax records for the years 2003 and 2004 show the following income from our retail businesses: 2003 gross income of $88,696.00 and 2004 gross income of $90,047.00.

Id. at ¶ 1. Claimants have not produced any records pertaining to Tobacco World, which Badrian declares to have operated just last year. Moreover, despite the Government's suggestion that they do so, the Claimants still have not provided any tax returns they claim to have recently filed or documentation regarding the taxes they claim to have recently paid.[3]

Additionally, in their joint declaration filed on August 18, 2006, in support of their motion to release seized assets for attorneys fees, the Claimants stated, in pertinent part:

> 3. Avedis Djeredjian is employed as manager of Modern Video in California City, California (a store owned by his brother, Vicken). His salary depends on the business's earnings, but he is taking a draw of approximately $4,500 to $5,000 per month.
>
> 5. Our minimum monthly expenditures are:

House Mortgage	$2,938.97
Car Payment	837.90
Insurance	217.45
Utilities	Aprrox. 300.00
Christina's Heath Insurance	206.66
Credit Card Payments	600-750
Groceries	500
Gasoline	300

[3]Undoubtedly, Claimants will contend the Government has access to this information. The Government does not, however, without a Court Order. Furthermore, the burden is not on the Government to make any showing in this motion. Surely, Claimants have copies of their recently filed tax returns for these years.

Id., at ¶¶ 3, 5. Claimants, however, do not provide any records pertaining to Modern Video despite the fact that Djeredjian's "salary depends on the business's earnings." Such information is blatantly relevant inasmuch as this business may have substantial assets or income available for attorneys fees. Yet, no information regarding the business is provided to this Court.

It is also worth mentioning that on January, 17, 2006, Djeredjian filed a verified statement of interest with this Court indicating he was the owner of the bank account associated with Modern Video (Antelope Valley Account # XXXXXX3619). The name on the account is actually "Mike Capocci d/b/a Modern Video." (Mike Capocci is Djeredjian's alias.) Djeredjian's brother, Vicken, has not filed a claim with this Court indicating he has any ownership interest in this account. This should come as no surprise.[4]

Second, Claimants still have not provided any documentation to

[4] It is no surprise that Djeredjian claims to be the owner of an account for a business that his brother allegedly owns inasmuch as Djerdjian's brother, Vicken, is also listed as the record owner of the real property located at 1356 Doverwood Drive, Glendale California, to which only Djeredjian and Badrian, and not Vicken, have filed a claim as innocent owners. This address is also listed on each of the bank account statements provided by Claimants in their reply. See Verified Statements of Interest of Carmen Badrian, at ¶ 1, filed with this Court on January 17, 2007, Verified Statement of Interest of Avedis Djeredjian, at ¶ 5, Affidavit of Special Agent Michael Fanelly, at ¶¶ 156-165, Records submitted by Claimants in the reply dated October 16, 2006. Also, the Government intends to demonstrate that Modern Video is actually owned by Djeredjian, not Vicken as represented to this Court.

verify their monthly expenses, including their home mortgage. For the personal checking accounts that they have submitted account statements, Claimants do not provide any checks or deposit tickets so it can be discerned in what form money has been deposited or to whom checks have been written.[5] Even for the personal checking account statements they have produced, however, Claimants do not submit any statements with a statement date prior to January 9, 2006.

Third, of the 709 pages of documents submitted by Claimants, 483 pages relate to two of the bank accounts seized by the Government, which are business accounts. For one account, Djeredjian again used his alias, Mike Capocci, and lists the account in the name Mike Capocci d/b/a Modern Cigarettes. The other account is held in the name of Djeredjian's business partner, Allen Nazarian d/b/a Discount Outlet. Only Djeredjian, however, and not Allen Nazarian, has filed a verified claim alleging ownership of this account. Again, this should come as no surprise.[6]

Additionally, Claimants contend these business accounts

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[5]Claimants can clearly provide such information, as they have done so with respect to the business accounts for which they have provided account statements.

[6]While Claimants contend that Mr. Nazarian retained the inventory and Djeredjian the bank account as part of a dissolution, they provide no documentation regarding the partnership or the dissolution.

contain mostly rebate checks from tobacco companies, and that these rebates would not have been received if the "cigarettes were purchased on the black market as the government alleges." Reply, at 4. The Government, however, has not alleged the cigarettes were purchased on the black market. Rather, the affidavits of Special Agent Fanelly and the indictments in the related criminal case describe a conspiracy to traffic contraband cigarettes, which involved the purchase of large quantities of cigarettes from businesses in North Carolina that were shipped to, and then sold in, California with counterfeit tax stamps affixed. In fact, Appendix C, attached to the Affidavit of Special Agent Fanelly, identifies the locations of the purchases that make up the 495,412 cartons of cigarettes Djeredjian and his associates purchased in the Eastern District of North Carolina and elsewhere at a cost of $8,760,492.79. Given this admission of the source of the deposits, the rebates are potentially proceeds traceable to violations of the Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341, and are thus subject to forfeiture pursuant to 18 U.S.C. 981.

Even so, the account statements for these two business accounts are irrelevant to a determination of whether the Claimants have a bona fide need to use seized assets for their counsel fees because they do not have access to other funds. Rather, Claimants should be providing account statements for every account in their name, in a nominee's name, and/or in a name which they use as an alias to show they have no other funds available to them. If no other accounts exist, they should have stated as much. Instead, they claim to have submitted the account statements "for each bank account that we have had since January 2006." Second Declaration of Claimants, at ¶ 1. Given the propensity to use aliases and nominees, their qualified bald assertion is simply not enough to meet their burden.

Fourth, and even more reason to doubt their qualified bald assertion, the records produced by Claimants actually refer to other accounts to which payments are made or from which payments are received, but for which there is no documentation. Additionally, many of the entries have little to no explanation to guide the Government or this Court to where the money came from or where it is going.

For example, the records for the Wells Fargo Account, Account No. XXX-XXX1208, indicate electronic payments to "Kpf Card Svcs," but no information or documentation is provided regarding "KPF Card Svcs." On April 17, 2006, the same bank records show a wire transfer in the amount of $26,250.00 without any indication in the records produced regarding the source of the funds or to whom or where the funds were wired. On April 19, 2006, an electronic payment to Juniper Credit Card in the amount of $4,825.97 was made, but no information or documentation is provided regarding a Juniper Credit Card. On June 13, 2006, a deposit from DDA Account # XXXXX

XXXXXX8614 in the amount of $1,350.00 was made, but no information regarding a "DDA" account is provided. On July 10, 2006, a deposit is made from a PayPal Account in the amount of $2,000.00, but no information or documentation regarding a PayPal Account is provided. Claimants do admit in their most recent Declaration that they have a few more credit cards that they did not include, but their cherry-picking accounts they do not mind this Court seeing does not build confidence in their bald assertions and self-serving declarations.

Additionally, in some instances account information has been redacted or omitted. For example, in one instance, a "Convenience Check" is charged to a MasterCard account on August 17, 2006, in what appears to be an amount of $4,925.00,[7] but is redacted without explanation. See Exhibit 1, hereto.[8] In another instance, page 1 of 3 for the Capital One Credit Card Statement for April 26 to May 25, 2006 is submitted. The page produced lists a "Purchase Check" for $2,938.97, but no explanation regarding this charge is provided. See Exhibit 2, hereto.[9]

Despite producing 709 pages of records, Claimants have not submitted information to this Court that could justify a

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[7]Transactions for this statement period total $5,500.00, but only $60.00, $500.00, and 15.00 is shown. A Transaction Date of August 17, 2006 can be seen, but the amount has been redacted.

[8]See Page 57 of 58, creditcardstatements.pdf.

[9]See Page 8 of 58, creditcardstatements.pdf.

determination that Claimants have demonstrated a bona fide need to use seized assets to pay for counsel fees. No documentation has been submitted indicating they have applied for loans,[10] but been denied, nor is there any documentation regarding personal property they have sold, documentation regarding their home mortgage, records pertaining to Modern Video, records pertaining to Badrian's business, or records pertaining to liquidation of assets. In addition to attaching a "Financial Statement for a Business" and a "Financial Statement for a Debtor," and suggesting completion of these documents would be a good start to determining whether a need to use seized assets truly existed, the Government also suggested inclusion of the above-referenced items in its response. See Government's Response, at 8. In addition to failing or refusing to provide the suggested information, Claimants have submitted information that is either incomplete or not helpful to a determination of whether a bona fide need for use of seized assets for counsel fees exists.

In short, Claimants' promises of meeting their burden at an evidentiary hearing have proven empty. As they have not met their burden entitling them to a hearing, their motion should be denied.

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[10]In fact, counsel for Claimants represents they do have more available credit. See Reply, at 2.

CONCLUSION

For the reasons set forth herein and in the Government's Response, the Claimants' motion should be denied.

Respectfully submitted this 14th day of November, 2006.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 14th day of November, 2006, served a copy of the foregoing upon the below-listed party electronically and/or by placing a copy of the same in the U.S. Mails, addressed as follows:

Brenda Grantland
20 Sunnyside Suite A-204
Mill Valley, CA 94941

Joseph Zeszotarski
Poyner & Spruill
P.O. Box 10096
Raleigh, NC 27605

/s/ Joshua B. Royster

JOSHUA B. ROYSTER
Assistant United States Attorney
Civil Division

Account Number 5102-4109-0006-1653 Period: Augus.

Transaction Date		Description		
Aug 1[illegible]	940003	CONVENIENCE CHECK	90701 13623394	[illegible]
Aug 15	940003	BALANCE TRANSFER FEE		$ 30.00
Aug 25	620004	CONVENIENCE CHECK	90702 21631162	$ 500.00
Aug 25	520004	BALANCE TRANSFER FEE		$ 15.00

FINANCE CHARGES

APR for this billing cycle is 16.23 %

30 Days in Billing Cycle

	Average Daily Balance	Periodic Daily Rate*	Corresponding ANNUAL PERCENTAGE RATE	FINANCE CHARGES
Purchases	$ 0.00	0.0000%	0.00%	$ 0.00
Cash	$ 0.00	0.0630%	22.99%	$ 75.00
Balance Transfers	$ 3,761.66	0.0000%	0.00%	$ 0.00

* This rate may vary

See reverse for important information

FOR YOUR INFORMATION

GOVERNMENT EXHIBIT

1

Capital One

No Hassle REWARDS

PLATINUM MASTERCARD ACCOUNT

APR 26 - MAY 25, 2006

Page 1 of 3

Account Summary

[illegible]	$[illegible]
Payments, Credits and Adjustments	$[illegible]
[illegible]	$2,938.97
[illegible]	$[illegible]
[illegible]	$2,938.97
[illegible]	$[illegible]
[illegible]	[illegible] 24, 2[illegible]
[illegible]	$[illegible]
[illegible]	$[illegible]
[illegible]	$1,[illegible]
[illegible]	$[illegible]

Account Service

[illegible]

1-800-903-3637

[illegible]

Capital One
P.O. Box [illegible]
[illegible]

Capital One
P.O. Box [illegible]
[illegible]

Payments, Credits and Adjustments

Transactions

[illegible] MAY PURCHASE CHECK [illegible]425	$2,[illegible]

[illegible] current No Hassle Rewards balance is [illegible] rewards [illegible] reported here may not reflect purchases on this statement or recent redemptions [illegible] www.capitalone.com [illegible] rewards [illegible] ready to redeem.

Finance Charges

[illegible]

	Balance subject to finance charge	Periodic rate	Corresponding APR	FINANCE CHARGE
PURCHASES	$.00	[illegible] P	[illegible]%	$[illegible]
CASH	$.00	[illegible] P	23.40%	$[illegible]

ANNUAL PERCENTAGE RATE applied this period 0.00%

▼ PLEASE RETURN PORTION BELOW WITH PAYMENT ▼

GOVERNMENT EXHIBIT 2