**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF NORTH CAROLINA**
**WESTERN DIVISION**
**NO. 5:05-CV-767-FL**

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| **UNITED STATES OF AMERICA,** | ) | |
| **Plaintiff** | ) | **RESPONSE OF CLAIMANT** |
| | ) | **CHASE FIDELITY BANCORP TO** |
| **v.** | ) | **CLAIMANTS' MOTION TO** |
| | ) | **CHANGE VENUE** |
| **$19,985.90 in U.S. CURRENCY, et al.,** | ) | |
| **Defendants** | ) | |

The Claimant, Chase Fidelity Bancorp, a Nevada Corporation (Chase Fidelity), comes by and through undersigned counsel and responds to the motion by claimants Avedis Djeredjian, Carmen Badrian, Ashkhen Djeredjian, and Star Tobacco, Inc., to change venue to the Central District of California as follows:

Based on the points and authorities set forth in the contemporaneously filed Memorandum in Support of Response of Claimant Chase Fidelity Bancorp to Claimant's Motion to Change Venue, Chase Fidelity joins the request to change venue and further respectfully asks the Court not to dispose of the venue matters before the Court in such a way that would expose Chase Fidelity to defending its ownership of the real property at 821-823 ½ East Colorado Street, Glendale, California, both here in the Eastern District of North Carolina and also in the Central District of California.

Respectfully submitted, this the 25th day of April, 2007.

CHESHIRE, PARKER,
SCHNEIDER, BRYAN & VITALE

/s/ John Keating Wiles

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing Response of Claimant Chase Fidelity Bancorp to Claimants' Motion to Change Venue to has been duly served on the following:

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This the 25th day of April, 2007.

/s/ John Keating Wiles

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**NO. 5:05-CV-767-FL**

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| **UNITED STATES OF AMERICA,** | ) | |
| **Plaintiff** | ) | **MEMORANDUM IN SUPPORT OF** |
| | ) | **RESPONSE OF CLAIMANT** |
| **v.** | ) | **CHASE FIDELITY BANCORP TO** |
| | ) | **CLAIMANTS' MOTION TO** |
| **\$19,985.90 in U.S. CURRENCY, et al.,** | ) | **CHANGE VENUE** |
| **Defendants** | ) | |

The Claimant, Chase Fidelity Bancorp, a Nevada Corporation (Chase Fidelity), comes by and through undersigned counsel and submits the following memorandum in support of its request to change venue, as already requested by claimants Avedis Djeredjian, Carmen Badrian, Ashkhen Djeredjian, and Star Tobacco, Inc.

## STATEMENT OF FACTS

The United States only purported to have the legal authority to forfeit Chase Fidelity's property located at 821-823 ½ East Colorado Street, Glendale, California ("Colorado Street Property"), in the second amended complaint filed in this action. So far as the pleadings show, it pursues its claim to forfeit the Colorado Street Property solely on its speculation that "the subject property [i.e., the Colorado Street Property] *may* be owned by Carmen Badrian, the wife of Mike Djeredjian, and/or Mike Djeredjian, but is being held by a nominee." *See United States v. \$19,985.90 et al*, EDNC Docket No. 5:05CV767-FL, Document # 59, p. 3 of 6 (emphasis added).

The United States has only purported to allege any factual claims that might suggest that (or any other) nominee speculation on the basis of Agent Fanelly's supplemental affidavit. That affidavit describes instruments and writings showing the following: (a) negotiations for the sale of the property by Miguel Palacios to Hogap Kokshanian and Maral Kokshanian; and (b) the

Kokshanians' assignment of their right to purchase to Carmen Badrian and Mike Djeredjian, which right was to be exercised solely by Carmen Badrian who would "obtain a loan to allow the escrow to be closed before August 1, 2005, or failing that she [would be] prepared to pay the full purchase price of $600,000 in cash."[1] Agent Fanelly's title search on the Colorado Street Property then showed (c) that Miguel Palacios had ultimately conveyed the property to Chase Fidelity Bancorp, a Nevada corporation, and (d) Agent Fanelly was unable to locate a phone number for Chase Fidelity, but he was able to locate a phone number with a California area code for Chase Publications, the "Resident Agent" of Chase Fidelity. *See* EDNC Docket No. 5:05CV767-FL, Document # 58, pp. 1-3. In sum, Agent Fanelly's supplemental affidavit only permitted the United States to speculate nominee ownership (i.e., "*may* be owned by Carmen Badrian") on the basis of an unexplained "gap" between Carmen Badrian's right and apparent

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[1] Apparently in response to that statement, the declarations of Carmen Badrian and Barry Jacobs, as well as the original claimants' pleading in opposition to leave to file the second amended complaint all go to some pains to make the point that "$600,000 in cash" did not mean (and should not be construed to mean) $600,000.00 in U.S. currency, *see* EDNC Docket No. 5:05CV767-FL, Document # 62-1, p. 3 of 7, and Document # 62-2, pp. 3 and 10 of 16. Undersigned counsel does not understand the United States' pleading to make that mis-construction. Indeed, such a misunderstanding would contradict the fairly obvious sense of the use of "cash" in Exhibit 2 attached to Agent Fanelly's supplemental affidavit. Thus, section 2.2.2 in that exhibit, which obviously uses a lot of real estate transaction boilerplate, states, "The Total Consideration shall be Six Hundred Thousand Dollars ($600,000.00) *cash to the Seller at the Closing Date*. Seller shall have no obligation to carry any financing for Buyer. Buyer's obtaining funds or financing is not a contingency of this Agreement." (emphasis added) It is seriously doubtful that, in such boilerplate language, "cash" means U.S. currency. It simply means liquid funds; for example, the Seller will not take a promissory note. This use of the term "cash" to mean liquid funds is so widespread that it even appears on the standard HUD-1 statement used in thousands of real estate transactions all over the United States every day. (A blank HUD-1 Statement is conveniently available at www.hudclips.org/sub_nonhud/html/pdfforms/1.pdf.) If "cash" in real estate transactions were commonly understood to mean U.S. currency, then the real estate market in the United States would probably grind down to a snail's pace, if not a halt. (Just imagine the security arrangements necessary to transport *every day* enough U.S. currency to service the real estate market! How many CTRs would have to be filed by homebuyers, homesellers, builders, law firms, and other stake-holders in routine real estate transactions? *Cf. United States v. $200,000*, 805 F.Supp. 585, 587 (N.D. Ill. 1992)(narrating the problems raised by one couple's attempt to conduct a residential real estate purchase with U.S currency). Those additional transaction costs would be a huge, probably debilitating, burden on the market.) Finally, even the more generalized legal definitions of "cash" are (1) "money *or its equivalent*" and (2) "currency or coins, *negotiable checks, and balances in bank accounts*." Bryan A. Garner, ed., BLACK'S LAW DICTIONARY (7th ed. 1999) 208a (emphasis added). In short, attacking the Colorado Street Property because of a representation that Carmen Badrian was supposedly "prepared to pay the full purchase price of $600,000 in cash," where "cash" was (mis)understood mean "U.S. currency," is without merit, and, in fact, undersigned counsel does not even think that the United States had intended to bring its attack on that ground. Hence, this digression is in a footnote.

intention to purchase and the ultimate conveyance of the Colorado Street Property into the hands of Chase Fidelity.

But that "gap" permitting such speculation was already suspect before the second amended complaint was filed, for verified materials before the Court had already bridged the "gap." Thus, even before the United States filed its second amended complaint, verified declarations had been filed showing that the sole shareholder of Chase Fidelity Bancorp is Yisaperte Maldjian, *see United States v. $19,985.90 et al*, EDNC Docket No. 5:05CV767-FL, Document # 62-2, p. 13 of 16, thereby undermining the United States' speculation that Chase Fidelity might be a mere nominee of Carmen Badrian: Ms. Badrian has no right in or control over Chase Fidelity. Further undermining speculation of nominee holding, verified declarations had also been filed before the second amended complaint was filed showing that Carmen Badrian had assigned her right to purchase to Chase Fidelity (a corporation in which she held no interest), that Jason Gulvartian, who is Ms. Maldjian's son, had been authorized by Chase Fidelity to accept the assignment of the right to purchase the property and to consummate the purchase. *See* EDNC Docket No. 5:05CV767-FL, Document # 62-2, pp. 12, 13 of 16. In short, the verified materials presently before the Court in this matter show the following:

a. That the Kokshanians contracted to purchase the Colorado Street Property from Miguel Palacios (in whose hands the United States has never alleged it was forfeitable), *see* EDNC Docket No. 5:05CV767-FL, Document # 58 (Supplemental Affidavit of Agent Fanelly), pp. 1-2;

b. That the Kokshanians assigned their right to purchase to Carmen Badrian, *see* EDNC Docket No. 5:05CV767-FL, Document # 58 (Supplemental Affidavit of Agent Fanelly), pp. 1-2;

c. That Carmen Badrian assigned her right to purchase to Chase Fidelity, *see* EDNC Docket No. 5:05CV767-FL, Document # 62-2 (Verified Declaration of Carmen Badrian), pp. 1-2;

d. That neither Carmen Badrian nor any other person named in Agent Fannelly's original affidavit and his supplemental affidavit had any interest in or control over Chase Fidelity, *cf.* EDNC Docket No. 5:05CV767-FL, Document # 62-2 (Verified Declaration of Jason Gulvartian), pp. 13;

e. That Chase Fidelity authorized Jason Gulvartian, who is the son of Chase Fidelity's sole shareholder, to accept the assignment of the right to purchase the property and to consummate the purchase, *see* EDNC Docket No. 5:05CV767-FL, Document # 62-2 (Verified Declaration of Barry Jacobs), p. 12 and (Verified Declaration of Jason Gulvartian) p 14;

f. That Chase Fidelity did, in fact, consummate the purchase, *see* EDNC Docket No. 5:05CV767-FL, Document # 58 (Supplemental Affidavit of Agent Fanelly), p. 1; and, now,

g. That Chase Fidelity claims to be the true and *bona fide* owner of the Colorado Street Property, *see* EDNC Docket No. 5:05CV767-FL, Document # 93 (Chase Fidelity's Verified Claim of Interest).

In addition to the verified materials that have been before the Court since before the United States filed its second amended complaint—and it was only then that Chase Fidelity's ownership rights in the Colorado Street Property were attacked—undersigned counsel has spent considerable time preparing Chase Fidelity's defense of its claim. Thus, although formal discovery has not commenced and the matter has been stayed pending the criminal matter, *United States v. Avedis Djeredjian, et al*, EDNC Docket No. 5:06CR41-FL, undersigned counsel has gathered and voluntarily discovered to counsel for the United States various documentary materials (e.g., settlement statement, bank records, escrow instructions, California state court pleading, affidavit, power of attorney, corporate resolution). Those materials not only show that the funds used to consummate the purchase of the Colorado Street Property for Chase Fidelity's benefit did not come from anyone connected to the alleged contraband cigarette business activities, but they also confirm Chase Fidelity's legitimate, non-nominee, right to purchase the Colorado Street Property.

**ARGUMENT**

Title 28 U.S.C. § 1404(a) permits the Court to transfer venue of this case "to any other district . . . where it might have been brought" "for the convenience of parties and witnesses, in the interest of justice." Because the Colorado Street Property is located in the Central District of California, the action could have been brought in that district. 28 U.S.C. § 1395(b)("A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.")

Where an action has been brought in one district and could have been brought in another, as in this case, Congress has vested the transfer decision in the district court's sound discretion. *Lynch v. Vanderhoef Builders*, 237 F.Supp.2d 615, 617 (D. Md. 2002). In exercising its discretion when ruling on a motion to transfer venue a district court commonly considers the following factors: (1) the ease of access to the sources of proof; (2) the convenience of the parties and witnesses; (3) the cost of obtaining attendance of the witnesses; (3) the availability of compulsory process; (4) the possibility of view by a jury; (6) the interest in having local controversies decided at home; and (7) the interests of justice. *United States v. $78,850.00*, 446 F. Supp. 2d 428, 431 n. 2 (D.S.C. 2006).

In this case, the sources of proof that the United States relied on when it first dragged Chase Fidelity's property into this action were documentary, and (apart from materials retrieved from on-line sources available via the internet) the documentary materials came from California. The materials that undersigned counsel has already voluntarily discovered to counsel for the United States are all documentary, and they also came from California. Any further fund tracing, which is what will be primarily necessary for the United States to find any support for its already undermined speculation about nominee ownership, will probably involve documentary materials, and those materials are more likely to be available in California than in this district. Of course, if the United States is hoping that depositions will locate some sources of proof in support of its speculation, those sources of proof will more likely be in California than in North Carolina. This factor weighs in favor of transfer.

With respect to the convenience of the parties and witnesses, Chase Fidelity is an artificial person and can only act through a natural person. Mr. Jason Gulvartian was authorized by Chase Fidelity to consummate the purchase of the Colorado Street Property for the benefit of Chase Fidelity and, acting in his capacity as secretary of Chase Fidelity, Mr. Gulvartian verified Chase Fidelity's claim. Mr. Gulvartian resides in California and, therefore, California will be a far more convenient venue for Chase Fidelity. The United States, on the other hand, although it brought the action here in this district, already has offices and authorized representatives in California. Further, although it brought the action here and might be inconvenienced by having to litigate the matter long-distance or arrange for lawyers in the U.S. Attorney's office for the Central District of California to take over the case, the long-standing authority of 28 U.S.C. § 1404(a) put it plainly on notice that it risked the possibility of transfer of venue to California. With respect to witnesses, because the transaction that conveyed the Colorado Street Property into Chase Fidelity's hands occurred in California, the witnesses with personal knowledge of the circumstances surrounding that transaction are in California, and it will be far more convenient for witnesses if the matter is transferred to California. This factor weighs in favor of transfer.

Because the witnesses with personal knowledge of the circumstances of the transaction that establish Chase Fidelity's claim to the Colorado Street Property are in California, the cost of obtaining attendance of the witnesses will be considerably less in California than in this district. This factor weighs in favor of transfer.

Compulsory process in this action will be available in either district, but its implementation to compel witnesses who are more likely to have personal knowledge of the circumstances of the transaction would be less cumbersome in California. *See* Fed. R. Civ. P. 45(b)(2). This factor weighs in favor of transfer.

Of course, the possibility of view by a jury of the Colorado Street Property is much less here in North Carolina than it might be in California, but a view of the property is not particularly probative of Chase Fidelity's claim. So far as undersigned counsel understands, neither would a view of the Colorado Street Property be probative of the United States' nominee speculation. Insofar as a jury view would be probative, this factor weighs in favor of transfer, but because a jury view is not likely to be probative of the issues in dispute, this factor is probably neutral.

With respect to the interest in having local controversies decided at home, the allegations in the United States' complaint point more particularly to California than they do to this district, and Chase Fidelity's property ownership rights in the Colorado Street Property are grounded in California's regulation of property. Therefore, this factor weighs in favor of transfer.

With respect to interests of justice, fairness to the parties' respective conveniences and expenses in marshalling their evidence and witnesses weighs in favor of transfer.

On balance, the factors weigh in favor of transfer. Although there is authority for the proposition that "[u]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed," *Collins v. Straight, Inc.*, 748 F.2d 916, 921 (4th Cir. 1984), when it is taken into account that at least six (6) of the above factors weigh in favor of transfer and one (1) is practically neutral, it is respectfully submitted that the reasons to transfer venue to the Central District of California are "strongly in favor" of transfer. Therefore, venue should be transferred.

**CONCLUSION**

In sum, for all the reasons set forth above, Chase Fidelity respectfully asks this Court to grant the request to transfer venue. Chase Fidelity is not a party in the parallel criminal case—and obviously does not desire to be a party! Neither it nor its principals are, or have been, involved in the cigarette business or in the business activities that the United States alleges in the criminal action or in the allegations used to lay a predicate for its civil attack on Chase Fidelity's ownership of the Colorado Street Property. The superseding indictment's forfeiture allegation that includes the Colorado Street Property, however, indisputably implicates Chase Fidelity's property rights. Accordingly, Chase Fidelity respectfully asks that however the Court finally disposes of the venue questions raised by its order filed in this case, EDNC Docket No. 5:05CV767-FL, Document # 113, as well as in the parallel criminal case, EDNC Docket No. 5:06CR41-FL, the Court's determination not place Chase Fidelity in the position of having to litigate its claim to the Colorado Street Property in two districts.

Respectfully submitted, this the 25th day of April, 2007.

CHESHIRE, PARKER, SCHNEIDER,
BRYAN & VITALE

/s/ John Keating Wiles

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