SHAWN R. PEREZ, CSB #164228
Law Offices of Shawn R. Perez
4564 Desert Bloom Court
Las Vegas, Nevada 89129
shawn711@msn.com
Telephone: (949) 492-9545
Facsimile: (702) 839-4425

THOMAS P. SLEISENGER, CSB #100254
Law Offices of Thomas P. Sleisenger
1901 Avenue of the Stars, Suite 615
Los Angeles, California 90067
Telephone: (310) 300-1314
Facsimile: (310) 861-0152
sleisengerlaw@yahoo.com

Attorneys for Claimant
George Ryan

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. REAL PROPERTY LOCATED IN GARDEN GROVE, CALIFORNIA (RYAN), Defendant. GEORGE RYAN, Claimant.	CASE NO.: CV 06-383 SGL (JWJx) **SUPPLEMENTAL BRIEF RE IMPACT OF *UNITED STATES vs. $493,850 IN U.S. CURRENCY*** Date: Time: 10:00 a.m. Crtrm: One

Claimant, George Ryan, through his attorneys of record, hereby submits the following Supplemental Brief concerning the impact of *United States v. $493,850.00 in U.S. Currency*, 2008 WL 659574 (9th Cir. March 13, 2008), on this case.

Dated: March 28, 2008

Respectfully submitted,

/s/

SHAWN R. PEREZ

Attorney for Claimant
George Ryan

I.

<u>The Newly Decided Case by the Ninth Circuit Supports Claimant's Previously Submitted Arguments That Illegally Obtained Evidence May not be Used to Establish Probable Cause in a Forfeiture Complaint.</u>

On March 13, 2008, the Ninth Circuit Court of Appeals decided *United States vs. $493,850 in U.S. Currency*, 2008 WL 659574 (9th Cir. March 13, 2008), wherein the court held, *inter alia*, that following the enactment of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), 19 U.S.C. section 1615 continues to require that the government show probable cause to institute a forfeiture action. That decision also solidifies claimant's argument that probable cause may only be based upon information *gathered before the complaint was filed*. (*$493,850*, WL 695574 at *7, citing, *United States v. $191,910 in U.S. Currency*, 16 F.3d 1051, 1071 (9th Cir. 1994), *superseded on other grounds as stated in United States v. $80,180 in U.S. Currency*, 303 F.3d 1182, 1184 (9th Cir. 2002).)

Further, the case supports claimant's previously submitted argument that the exclusionary rule applies in civil forfeiture cases and bars the admission of evidence obtained in violation of the U.S. Constitution, as well as "fruits of the poisonous tree." (*$493,850*, WL 695574 at *3; *United States v. Ramirez-Sandoval*, 872 F.2d 1392, 1395 (9th Cir. 1989).)

Thus, if the warrant obtained in the instant case is infirm, the government is precluded from seeking to admit illegally obtained evidence and the complaint should be dismissed for lack of probable cause. It is insufficient for the government to now contend that claimant's plea establishes probable cause as the basis for the complaint because the information contained in the plea agreement was gathered *after the forfeiture complaint was filed*. (See, *$493,850*, WL 695574 at *7.)

In *$493,850*, an officer of the Arizona Highway Patrol observed a Ford truck with Florida license plates swerve over the center line on an Arizona highway. The officer pulled the truck over and approached the driver. As he approached, the officer suspected the presence of narcotics because he could smell the strong odor of air freshener, often used to cover the odor of narcotics. He questioned the driver and the passenger and noted some minor inconsistencies between their statements, but issued the driver a warning and told him that he was free to leave.

As the driver walked back towards the truck, the officer called the driver back and began talking to him about drug trafficking. The officer asked for, but did not receive, consent to search the truck. He also asked for, and eventually received, consent to run a drug-sniffing dog around the truck. The dog alerted and the officer searched the truck and found $493,850 concealed throughout the truck. He seized the truck and the currency.

The government brought a civil complaint for forfeiture, separately naming $493,850 in U.S. currency and one 1993 Ford F-350 truck as in rem defendants. After an evidentiary hearing, the magistrate judge held that the officer had made a lawful investigatory stop of the truck, but that he unlawfully exceeded the scope of the investigatory stop by calling the driver back, questioning him and searching and seizing the truck and currency. The magistrate judge suppressed all evidence gathered after the officer issued the driver the warning.

At a motion for summary judgment, the government presented facts that were not previously disclosed to the claimants because of an ongoing and sealed criminal investigation. Those facts established that the driver was the subject of an ongoing DEA investigation in Miami, Florida; DEA agents had observed the driver's 1993 Ford F-350 truck during that investigation; and the driver was the subject of a separate narcotics investigation being conducted by the South Florida Money Laundering Strike Force. In addition, the government also submitted affidavits by two witnesses cooperating in the Miami investigations, which were both signed after the complaint was filed. The witnesses testified that long before the illegal search and seizure, the driver met separately with each of them to discuss the importation and sale of cocaine. One of the witnesses met the passenger during one of these meetings.

Based upon this information, the magistrate judge granted summary judgment in favor of the government, finding that the affidavits of the cooperating witnesses, as well as portions of the DEA agent's affidavit, were not tainted by the illegal search and seizure. The magistrate judge held that the government carried its burden in proving, by a preponderance of the evidence, a substantial connection between the in rem defendants and cocaine transactions.

Claimants argued on appeal that the magistrate judge should have excluded all information from the Miami investigations as fruit of the poisonous tree, because Arizona investigators would not have learned of the information but for the illegal seizure. The government responded by arguing that CAFRA eliminated section 1615's requirement that the government show probable cause to institute the forfeiture action.

The Court of Appeals agreed with claimants that section 1615's probable cause requirement survives CAFRA and that the exclusionary rule applies in civil forfeiture cases. However, in this instance it found that the "independent source exception" applied. That exception allows admission of evidence that is actually found by legal means through sources unrelated to the search and as a result is not 'fruit of the poisonous tree' because its discovery through independent legal means does not result from the official's illegal conduct. The Court determined that the admissible evidence obtained prior to the filing of the forfeiture complaint was sufficient to establish that the government had probable cause to institute the forfeiture action in that case.

II.

<u>The Only Evidence in this Case was Illegally Obtained</u>.

Claimant previously submitted argument on the validity of the state search warrant and contends that the warrant is infirm. The government has presented no facts to suggest that the independent source exception applies.

Therefore, based on the foregoing, should the Court grant claimant's motion to quash the warrant and suppress the illegally obtained evidence, the forfeiture complaint must be dismissed and judgment entered for claimant.

Dated: January 10, 2008

Respectfully submitted,

/s/

SHAWN R. PEREZ
Attorney for Claimant
George David Ryan

UNITED STATES OF AMERICA, Plaintiff, vs. REAL PROPERTY LOCATED IN GARDEN GROVE, CALIFORNIA (RYAN), Defendant.	CV 06-0383 SGL (JWJx) Declaration of Service

I, SHAWN R. PEREZ, am over the age of 18 and not a part to the within action. My business address is 633 South Fourth Street, Suite 7, Las Vegas, NV 89101.

On April 2, 2008, I served the foregoing documents described as **Supplemental Brief re Impact of United States vs. $493,850 In U.S. Currency** on the interested parties in the above entitled action by electronic transmission through the ECF system, by facsimile and by depositing in the United States Post Office in Las Vegas, Nevada and addressed as follows:

Monica E. Tait
U.S. Courthouse
1400 United States Courthouse
312 North Spring Street
Los Angeles, CA 90012
(213)894-7177 facsimile

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

Executed on April 2, 2008, at Las Vegas, Nevada.

/s/

SHAWN R. PEREZ, ESQ.