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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. APPROXIMATELY $20,725.00 IN U.S. CURRENCY, APPROXIMATELY $24,855.00 IN U.S. CURRENCY SEIZED FROM SAFE DEPOSIT BOX #235, APPROXIMATELY $129,676.77 SEIZED FROM BANK OF AMERICA ACCOUNT NUMBER 02816-06729, APPROXIMATELY $11,196.18 SEIZED FROM BANK OF AMERICA ACCOUNT NUMBER 02810-16004, APPROXIMATELY $117,302.47 SEIZED FROM BANK OF AMERICA CD ACCOUNT NUMBER 02819-08191, APPROXIMATELY $185,247.84 SEIZED FROM BANK OF AMERICA CD ACCOUNT NUMBER 02810-08280, APPROXIMATELY $5,242.55 SEIZED FROM CHASE BANK ACCOUNT NUMBER 18212938435,	2:11-MC-00003-JAM-EFB CLAIMANT'S ***CORRECTED*** MEMORANDUM OF LAW IN SUPPORT OF CLAIMANTS' MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND AN ORDER RETURNING SEIZED PROPERTY TO THE CLAIMANTS, THOMAS EDWARD FRANKOVICH AND MARGARET C. ATKINSON

APPROXIMATELY $479,170.28 SEIZED FROM WEST AMERICA BANK ACCOUNT NUMBER 1505054492,

APPROXIMATELY $12,305.80 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 25630085,

APPROXIMATELY $6,403.46 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 25630413,

APPROXIMATELY $12,186.97 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 802820151,

APPROXIMATELY $39,715.64 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 2800578,

APPROXIMATELY $37,895.74 SEIZED FROM WEST AMERICA BANK ACCOUNT NUMBER 505107300,

APPROXIMATELY $17,928.84 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 802820585,

APPROXIMATELY $12,413.49 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 2249995,

APPROXIMATELY $19,675.65 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 2249669,

APPROXIMATELY $98,515.79 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 25630652,

APPROXIMATELY $7,119.45 SEIZED FROM CITY NATIONAL BANK ACCOUNT NUMBER 25630099,

APPROXIMATELY $292,573.97 SEIZED FROM WELLS FARGO BANK ACCOUNT NUMBER 3598404063,

APPROXIMATELY $103,117.83 SEIZED FROM WELLS FARGO BANK ACCOUNT NUMBER 910442044750301, and

APPROXIMATELY $63,160.41 SEIZED)
FROM WELLS FARGO BANK ACCOUNT)
NUMBER 7936680284,)
)
Defendants.)
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STATEMENT OF FACTS

Claimant, Thomas Frankovich is a successful attorney, specializing in disability law. For the past year, Tehama County officials and later federal officials have seized and held the above bank accounts, totaling $1.5 million. Every bank account, checking account, savings account, Certificate of Deposit, that Thomas Frankovich owned except for his attorney client trust account, was seized leaving him in a financially destitute position. These funds have been detained illegally, without probable cause to believe they are proceeds of any crime.

Claimant has submitted to federal and state agents Frankovich's declarations and bank account documents tracing most of the funds in these accounts to: the sales of real estate owned by Frankovich, attorneys fees paid Frankovich in his law practice, income tax refunds, and a Certificate of Deposit owned his late father on which he was beneficiary.

On June 24, 2010 – one year ago today – agents of the Tehama County Sheriff's Department obtained a state search warrant and used the authority of that warrant to seize all of the funds from the above described bank accounts and one other bank account not named above, all accounts belonging either to Thomas Edward Frankovich alone, or to Thomas Frankovich and Margaret C. Atkinson. The funds in these seized accounts totaled over $2 million dollars. Thereafter Tehama County officials mailed to Frankovich a notice of non-judicial forfeiture pursuant to California Health & Safety Code § 11488.4(j) (See Exhibit, Doc. 11-4), which initiated a state administrative forfeiture process very similar to the federal administrative forfeiture process. Under § 11488.4(j), a property owner who wants to contest the forfeiture in court must file a claim in Superior Court in the county in which it was seized, and if he/she fails to do so the property is forfeited without any judicial proceedings. If a Claimant files a Claim, however, § 11488.4(j) requires the District Attorney to file a forfeiture petition within 30 days of the filing of the claim.

On August 6, 2010, Frankovich filed a Claim Opposing Forfeiture in Tehama County Superior Court. See Tehama computer docket (Exhibit, Doc. 13-2), and Claim (Exhibit, Doc. 11-5). Tehama County failed to file a forfeiture petition within the 30 days required by the statute. On September 27, 2010, Frankovich filed a motion for return of property (Exhibit, Doc. 11-6), which, under California law, entitled him to an evidentiary hearing at which time the government would be required to show probable cause to believe the seized property was forfeitable or return the property.

Shortly thereafter, Frankovich and Atkinson began receiving federal DEA admininstrative forfeiture notices for the seized bank accounts. Frankovich and Atkinson submitted timely administrative claims to the DEA. The Claimants also notified the Tehama County District Attorney's Office that, since Tehama County had initiated the state nonjudicial forfeiture process, and Frankovich had responded by filing a Claim in Tehama Superior Court – prior to any purported federal adoption – the state court still had jurisdiction over the res, as well as Frankovich's pending motion for return of property, and that he fully intended to put the state to its burden of showing probable cause at the evidentiary hearing scheduled on November 17, 2010.

On November 17, 2010, Frankovich and counsel appeared in Superior Court of Tehama County for the evidentiary hearing. District Attorney Matt Rogers stated that the property had been turned over to the federal government through the federal adoption program, and that the State would not be pursuing forfeiture under state law, therefore it was not required to show probable cause. Frankovich insisted that the evidentiary hearing go forward, and that the government be required to show probable cause or release the property, but the court stated that since Tehama County was not pursuing forfeiture under state law, there was no controversy to require it to show probable cause. The district attorney wanted the order to say the property was released to the federal government for forfeiture, but Frankovich insisted that the order say the property was being released unconditionally from state jurisdiction. The district attorney had with him a draft order which the parties and the judge modified by striking out the language saying it was released to the federal government. Exhibit, Doc. 11-7 and 11-8. Tehama County never having filed a forfeiture petition in case

CI63918, the court dismissed the action (Frankovich's Claim Opposing Forfeiture) without prejudice.

In the meantime, Frankovich's and Atkinson's submission of timely federal administrative forfeiture claims to the DEA required the DEA to forward the federal case to the U.S. Attorney's Office and triggered 90 day deadlines for the filing of judicial forfeiture complaints by the U.S. Attorney's Office.

Immediately Claimants' counsel began discussions with the U.S. Attorney's Office about the fact that these bank accounts were not proceeds of crime, but legitimate income from Frankovich's practice of law and other legitimate sources. Frankovich gave the U.S. Attorney's Office bank records and other documentation showing the legitimate sources of the funds in the bank accounts. After reviewing this evidence, the U.S. Attorney's Office declined forfeiture of the largest bank account and DEA official Lawrence D'Orazio notified Claimants of that fact on October 27, 2010. Thereafter, in order to give the U.S. Attorney's Office a chance to complete its investigation, Claimants agreed to several months of extensions of the government's deadline for filing a complaint[1] against the remaining bank accounts, totaling over $1.5 million. See Doc. 4 (extending

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[1] As was stated in the previously filed stipulations extending time for the United States to file a complaint,

> Under 18 U.S.C. § 983(a)(3)(A), the United States is required to file a complaint for forfeiture against the defendant funds and/or to obtain an indictment alleging that the defendant funds are subject to forfeiture within 90 days after a claim has been filed in the administrative forfeiture proceedings, unless the court extends the deadline for good cause shown or by agreement of the parties. That deadline was originally January 10, 2011.
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> By Stipulation and Order filed January 10, 2011, the parties stipulated to extend to February 28, 2011, the time in which the United States is required to file a civil complaint for forfeiture against the defendant funds and/or to obtain an indictment alleging that the defendant funds are subject to forfeiture.

Stipulation filed in this case on 2/25/2011, pp. Doc. 7 pp. 3-4.

the deadline to 2/28/2011), Doc. 8 (extending the deadline to 4/15/2011). On May 17, 2011, the United States gave notice of its election not to file a complaint for forfeiture. Doc. 10.

Unlike the return of the funds from the first bank account, in which the DEA paperwork commenced immediately, and the funds were wire transferred in approximately six weeks, nothing happened after the United States filed its notice declining forfeiture. On June 21, undersigned counsel spoke to Lawrence D'Orazio of the Asset Forfeiture Section of the DEA, and was told that Tehama County wanted the money sent back to them so they could pursue forfeiture under state law. Undersigned counsel explained to Mr. D'Orazio that there had already been state court proceedings which Tehama County District Attorney initiated and then failed to prosecute, including its failure to file a petition within 30 days of the filing of a Claim in Tehama County Superior Court, and its refusal to show probable cause at the November 17, 2010 hearing.

An email from DEA counsel Lawrence D'Orazio received late today shows the DEA intends **imminently** to turn the funds over to Tehama County, notwithstanding the court order from Tehama County ordering the release of the property from state court jurisdiction. See Exhibit, Doc. 11-3.

ARGUMENT

This motion for a Temporary Restraining Order must be granted to avoid irreparable harm. One year ago the Tehama County government seized virtually all of the funds Thomas Frankovich had. These remaining bank accounts totaling $1.5 million have now been detained one entire year without probable cause, and without due process of law. Both the state and federal government have missed every applicable deadline required by statutory forfeiture procedures. Moreover, Tehama County has already had its procedural bite at the apple by initiating the state non-judicial forfeiture process, then defaulting when Frankovich filed a claim. It then defaulted again when Frankovich's motion for return of property came on for an evidentiary hearing at which it refused to show probable cause. The Tehama County Superior Court has issued an order releasing the property from state jurisdiction.

In light of this procedural history, this Court should grant this temporary restraining order and prohibit the United States from releasing or transferring any of the subject funds to anyone other than claimants pending further order from this Court.

Dated: 6/24/2011

Respectfully submitted,

/s/ Brenda Grantland

BRENDA GRANTLAND
Attorney for Claimants