

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CIVIL ACTION NO.
	*	
ALL FUNDS ON DEPOSIT IN ARZI	*	
BANK, ZURICH, SWITZERLAND,	*	1:08-CV-1899-RWS
ACCOUNT NO. 220707, AND ALL	*	
FUNDS TRACEABLE THERETO; AND	*	
ALL FUNDS ON DEPOSIT IN HONG	*	
KONG SHANGHAI BANKING	*	
CORPORATION (HSBC) REPUBLIC	*	
BANK, GENEVA, SWITZERLAND,	*	
ACCOUNT NO. 43555TN, FORMERLY	*	
HSBC ACCOUNT NO. 31241, AND	*	
ALL FUNDS TRACEABLE THERETO,	*	
	*	
Defendants.	*	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR FORFEITURE BY DEFAULT**

I. STATEMENT OF FACTS¹

Since 2003, DEA and other law enforcement agencies in the United States and Canada have participated in a joint investigation of an international drug trafficking and money laundering organization that has smuggled large quantities of hydroponic marijuana and 3,4 methylenedioxymethamphetamine ("MDMA"), which is commonly known as ecstasy, into the United States from Canada. From their investigation, the Canadian law enforcement officials

¹ This Statement of Facts is supported by the Declaration of Assistant U.S. Attorney Michael J. Brown, which was previously filed with Plaintiff's Request for Entry of Default.

learned that Mai Le was laundering drug proceeds for several major Canadian drug traffickers through an extensive network of business entities, couriers, and money remitters. The Canadian law enforcement officials also learned that Mai Le controlled an extensive network of hydroponic marijuana grow houses in the Ottawa, Canada area. Canadian court-authorized wire intercepts of Mai Le's telephone calls revealed that her organization laundered drug proceeds through an extensive network of money remitters and couriers in Canada and the United States, including Atlanta. Mai Le's money laundering contacts in the Atlanta area included Hoang Nguyen, a/k/a David, and An Chau, a/k/a An Thein Chau. Hoang Nguyen is the "money manager" of the organization, who coordinates money laundering activities in Texas, Illinois, North Carolina, and Georgia by overseeing the activities of money couriers and remitters. An Chau operated An Chau Services, a/k/a An Chau Inc., a money remitting business located on Buford Highway in Doraville, Georgia. Intercepted telephone calls in Canada and Atlanta revealed that An Chau laundered large amounts of drug proceeds for Mai Le's organization by using his status as a money remitter.

Based on information obtained from the Canadian wire intercepts, DEA Special Agent Kenneth A. McLeod applied for and received a Title III intercept order in the Northern District of Georgia for telephones used by Hoang Nguyen. From December 10,

2003 through March 31, 2004, DEA agents intercepted numerous telephone calls during which Hoang Nguyen discussed the laundering of drug proceeds and the sale and movement of marijuana, and during which Hoang Nguyen coordinated money deliveries to various money remitters, including Hoa Nguyen of HO Express in Atlanta, Georgia, and Hoang Nhung Express in Atlanta, Georgia. On or about March 29, 2004, DEA agents arrested Phuong Truong and Hau Ngo and seized approximately 160 pounds of hydroponic marijuana. Hau Ngo agreed to cooperate with the DEA's investigation, and Special Agent McLeod interviewed Hau Ngo as part of the agreement. Hau Ngo stated that he distributed marijuana for a Canadian male he knew as "Anh." From July 2003 through March 22, 2004, Hau Ngo made numerous cash deliveries to Hoang Nguyen at Anh's request and delivered more than \$1 million to Hoang Nguyen.

Special Agent McLeod also interviewed a cooperating defendant, who laundered drug proceeds for "Hung" through An Chau and Hoa Nguyen. The cooperating defendant further stated that in June 2003, Mai Le had instructed him to pick up drug proceeds from "Hung" and deliver them to Hoang Nguyen. Special Agent McLeod later determined from business records seized from An Chau and Hoa Nguyen that from February 2003 through September 2003, the cooperating defendant had laundered more than \$1,000,000 in drug proceeds received from "Hung." The investigation revealed that

Hoang Nguyen moved approximately \$8 million for the organization, that he employed various money remitters to launder drug proceeds, including An Chau and Hoa Nguyen of HO Express Atlanta, and that Mai Le and Hoang Nguyen laundered some of their drug money by purchasing diamonds.

On March 31, 2004, Special Agent McLeod arrested the Atlanta members of Mai Le's organization, including An Chau, Hoang Nguyen, Hoa Nguyen, Phuong Truong, and Hau Ngo. On or about that same date, Special Agent McLeod and other law enforcement officers executed search warrants at various locations in the Atlanta area, including money remitters An Chau Services, HO Express, and Hoang Nhung, and the agents seized thousands of documents and computer hard drives from these businesses. The agents also executed a search warrant at Hoang Nguyen's residence, located at 2337 Huntcrest Way, Lawrenceville, Georgia ("the Huntcrest Way property"), and seized paperwork, which revealed that Hoang Nguyen wire transferred money to Vietnam and to various bank accounts around the world. Wire transfer information seized at the Huntcrest Way property revealed Hong Kong Shanghai Banking Corporation account number 31241 ("HSBC 31241"), located in Geneva, Switzerland with the beneficiary of the wired funds as "CMNTN," and HSBC account number 14025AE ("HSBC 14025AE") at the same Geneva, Switzerland bank branch location but with the beneficiary of those

wired funds as "ALAIN." The agents also found a wire transfer application form from An Chau Services, which shows that on February 26, 2003, An Chau Services wire transferred \$80,000 into HSBC 14025AE and that the beneficiary of the transfer was "ALAIN." The seized documents further reveal that Hoang Nguyen was laundering money through Vietnam, Israel, the United Arab Emirates, Panama, Singapore, Canada, and Mexico, using An Chau, HO Express, and other money remitters in Atlanta, Georgia and other cities.

On or about April 14, 2004, the United States Attorney's Office for the Northern District of Georgia filed a Mutual Legal Assistance Treaty ("MLAT") request with the United States Department of Justice, Office of International Affairs, and requested that the Swiss Central Authority freeze HSBC 31241 and HSBC 14025AE. On or about April 15, 2004, Swiss authorities froze HSBC 31241, which contained approximately \$324,000.00. On April 28, 2004, a Grand Jury in the Northern District of Georgia returned an indictment against the Atlanta members of Mai Le's organization, including An Chau, Hoang Nguyen, Hoa Nguyen, Phuong Truong, and Hau Ngo and others, charging them with money laundering in Criminal Indictment 1:04-CR-232-BBM. During July 2004, Swiss authorities released the freeze on the HSBC bank accounts, and on or about July 21, 2004, someone, later determined to be Anh Ngoc Nguyen, closed HSBC 31241 and withdrew all funds. Anh Ngoc Nguyen then opened

HSBC account number 43555TN ("HSBC 43555TN") and transferred the funds from HSBC 31241 into it. As a result, the United States Attorney's Office for the Northern District of Georgia filed a supplemental MLAT and requested that the Swiss authorities freeze HSBC 43555TN. When the Swiss authorities froze the account in late July 2004, HSBC 43555TN held only \$103,722.00.

In approximately September 2004, Swiss authorities provided Special Agent McLeod with a summary of information for HSBC 31241. The information revealed that the holder of HSBC 31241 was Ahn Ngoc Nguyen at 18 Beverly Street, Suite 902-P, Toronto, Ontario, Canada. The documents also included a limited summary of account activity for HSBC 31241, including wire transfers from An Chau Services, HO Express in Atlanta, Beitz Corporation, Bertex Corporation, and other money remitters in the United States. The investigation revealed that Mai Le laundered and moved her drug proceeds using "paper corporations," which are companies that exist only on paper and have no function other than as alter egos for the incorporator, thereby making it more difficult to trace the source of drug proceeds. Beitz Corporation and Bertex Corporation were two paper corporations that Mai Le owned and controlled. The documents provided by the Swiss authorities reveal that Beitz Corporation and Bertex Corporation transferred a total of \$259,000 into HSBC 31241.

Based on the information obtained from the MLAT request, on

October 28, 2004, Special Agent McLeod traveled to Toronto, Canada to interview Anh Ngoc Nguyen. Anh Ngoc Nguyen stated that he is a diamond merchant who lives in Canada but conducts all of his business in Europe and Vietnam. Anh Ngoc Nguyen also stated that he did not maintain any business records because he conducts business entirely on "trust." Anh Ngoc Nguyen further stated that the \$690,000 wired into HSBC 31241 and HSBC 14025AE by An Chau Services was for the purchase of diamonds. During the interview, Anh Ngoc Nguyen stated that HSBC 31241 belonged to him and that HSBC 14025AE belonged to Intercontinental Diamond Company, which is one of his European diamond suppliers. Anh Ngoc Nguyen further stated that "Alain" owned Intercontinental Diamond Company. The documents provided by the Swiss authorities reveal that HSBC 14025AE is owned by a Belgian diamond merchant named Alain Lesser. Bank records revealed that Unis Dich Vu had wire transferred a total of \$182,400 into HSBC 31241 and that Beitz Corporation and Bertex Corporation had wired transferred a total of \$259,000 into that same account. Consequently, Special Agent asked Anh Ngoc Nguyen about the wire transfers from Unis Dich Vu, Beitz Corporation, and Bertex Corporation. Anh Ngoc Nguyen stated that the \$182,400 in wire transfers from Unis Dich Vu was for diamond sales to an Indian client he met in Brussels, Belgium and that he did not know who had wired the money from Beitz Corporation and

Bertex Corporation but that those wires must have been for the purchase of diamonds. Special Agent McLeod later learned that Unis Dich Vu actually wire transferred a total of \$1,624,270.00 into HSBC 31241 from five different banks. Based on his investigation and the information learned at the interview, Special Agent McLeod believes that Anh Ngoc Nguyen was laundering money through HSBC 31241 and HSBC 14025AE.

On January 3, 2005, the Swiss authorities produced detailed transfer documents for HSBC 31241, which showed that on June 27, 2003, Anh Ngoc Nguyen wire transferred \$45,000 to the account of Shimon Yelinek at Bank Hapoalim, Ramat Gan, Israel. That wire transfer document contains the same transfer information as found during the search of Hoang Nguyen's residence and printed from emails found on Hoang Nguyen's computer. The email requesting the \$45,000 wire transfer was accompanied by a subject header of "Hi Boss" and concluded with the request, "I want \$45,000.00 okay boss." Consequently, Special Agent McLeod believes that Hoang Nguyen or a close associate actually controlled the funds contained in HSBC 31241. The bank records also show that Anh Ngoc Nguyen wire transferred an additional \$126,129.74 from HSBC 31241 into two separate accounts held by Shimon Yelinek at Bank Leumi, Israel. The bank records also show that a wire transfer of \$75,000 from HSBC 31241 had been made into an account at J.P. Morgan Chase Bank

in New York, for the benefit of N.M. Rothschild and Sons LTD in Singapore and directed to the attention of M. Razumom. Other documents seized from Hoang Nguyen's residence show additional wire transfers from An Chau Services to that same account, which is held by M. Momiruzzaman Razu ("Razu"). The investigation revealed that Hoang Nguyen sent \$410,000 to Razu using An Chau Services. Special Agent McLeod learned from the RCMP that Razu was the target of an active money laundering investigation in Canada and that Razu was using his Canadian bank accounts to launder money for a Canadian cocaine distribution organization.

Special Agent McLeod's further analysis of the bank records revealed a wire transfer of \$80,000 from HSBC 31241 into account number XXXXX7695 at Citibank in New York, for the benefit of Goldrich Brothers Intl Inc. The wire transfer documentation contains the same transfer information as documents seized from Hoang Nguyen's residence. During an interview, the Goldrich brothers told Special Agent McLeod that the \$80,000 wire transfer from HSBC 31241 was used to purchase diamonds in the name of Bao Ngoc Jewelry, located at 325a Spadina Avenue, Toronto, Ontario, which is the business address for Anh Ngoc Nguyen. Consequently, Special Agent McLeod believes that Anh Ngoc Nguyen owned Bao Ngoc Jewelry. An e-mail dated June 20, 2003, which agents seized during the search of Hoang Nguyen's home in March 2003, contained a

request that \$21,400 be wired to the Goldrich Brothers' account at Citibank. That e-mail originated from the same Canadian e-mail account that had requested the Shimon Yelinek funds and contained the same transfer information as the other documentation seized from Hoang Nguyen's residence. Hoa Nguyen told Special Agent McLeod that Hoang Nguyen brought the \$21,400 to him and asked him to send it to the Goldrich Brothers account in New York. Documents seized from Ho Express in March 2003 show that \$21,400 was in fact wire transferred to the Goldrich Brothers account. During an interview, the Goldrich brothers revealed that the \$21,400 wire transfer to their account was used to purchase diamonds and that a Vietnamese male known to them as "Lenny" came in person to pick up the diamonds. During his investigation, Special Agent McLeod positively identified "Lenny" as Anh Ngoc Nguyen. Other documents show that Anh Ngoc Nguyen uses an alias of "Lenny" to conduct diamond and banking business. Special Agent McLeod learned that the RCMP was conducting a money laundering investigation of the Spadina Avenue business and that Anh Ngoc Nguyen was a target of a joint RCMP/United States Immigration and Customs Enforcement ("ICE") money laundering operation, which had laundered approximately \$750,000.00 in Canadian money. As part of the joint RCMP/ICE investigation, agents of ICE established an undercover bank account at Citibank, New York, to receive laundered funds.

Also during that investigation, Canadian law enforcement officials intercepted telephone calls from "Lenny," during which he discussed the laundering of money and during which he provided identifying information, such as a fax number, which was the same fax number that Anh Ngoc Nguyen listed on his account application for HSBC 31241. On October 10, 2003, a wire transfer of \$113,022.73 was made from HSBC 31241 into the ICE undercover account at Citibank. Additional laundered Canadian funds were wire transferred into the ICE undercover account at Citibank, including \$45,000 from An Chau in Atlanta and \$41,000 from Hoa Nguyen of Ho Express in Atlanta. The RCMP conducted an undercover money drop-off. As a result, an additional \$250,000 in Canadian funds was laundered through an account at Vattanac Bank, located in Phnom Penh, Cambodia and held in the name of Vannlida Jewelry CO, and then wire transferred in two installments into the ICE undercover account at Citibank.

The investigation revealed that accounts at Vattanac Bank in Phnom Penh, Cambodia, held in the name of Vannlida Jewelry CO and Glorious CO Ltd, also wire transferred a total of \$3,195,740 into HSBC 31241. Special Agent McLeod's analysis of the bank records reveals that a total of \$7,646,000.00 was wire transferred into HSBC 31241, and of that total, \$2,703,270.00 came from money launderers in the United States known to be under the control of Mai Le, Hoang Nguyen and their organization. The records further

show that HSBC 31241 received a total of \$1,049,872.00 from sources in Riga, Latvia, and a total of \$3,195,740.00 from sources in Phnom Penh, Cambodia, both of which are known money laundering destinations for Mai Le's organization. The bank records show that from the time it was opened in April 2002 through July 2004, \$2,703,270.00 was wire transferred into HSBC 31241 from accounts associated with known money launderers, including An Chau, Van Thanh Le, Hoa Nguyen, Beitz Corporation, and Bertex Corporation. Special Agent McLeod obtained account information for various wire transfers from the United States, which appear on the credit documents for HSBC 31241. That information revealed that Van Thanh Le, d/b/a Unis Dich Vu, wire transferred a total of \$1,624,270.00 into HSBC 31241 from five different banks.

The bank records revealed that the majority of money wired out of HSBC 31241 was deposited into other Swiss accounts. Approximately \$447,000 was wired into ARZI Bank Account No. 220707 ("ARZI 220707") from HSBC 31241. Documents seized during the search of An Chau Services on March 31, 2004 showed that An Chau wire transferred \$100,000 to ARZI 220707. The bank records show a wire transfer of \$51,020.29 from HSBC 31241 to an account at Emirates Bank International, for the benefit of Zohair M. Masih. The wire transfer documentation contains the same transfer information as documents seized at Hoang Nguyen's residence. The bank records show that on April 25, 2003, Zohair Masih wire

transferred \$124,960.46 into ARZI 220707.

Based on the wire transfer information regarding ARZI 220707, the United States Attorney's Office for the Northern District of Georgia filed a supplemental MLAT with the Swiss authorities requesting account information for ARZI 220707. The documents revealed that ARZI 220707 was owned by Ronen Yechiel Yelinek, who is the brother of Shimon Yelinek. Shimon Yelinek received a total of more than \$171,129 in wire transfers from HSBC 31241. An analysis of ARZI 220707 shows that Ronen Yechiel Yelinek opened the account on February 3, 2003, with a \$400.00 deposit. Numerous wire transfers of drug proceeds were made into ARZI 220707 immediately after the account was opened, including \$259,986 in funds from HSBC 31241 and \$100,000 in funds from Hoang Nguyen, which were sent through An Chau Services in Atlanta. The ARZI 220707 account received wire transfers totaling \$547,000.00 from HSBC 31241 and An Chau, and all wire transfers into ARZI 220707 came from known money laundering sources.

The bank records show that there was only one transfer of funds out of ARZI 220707. The document produced by the Swiss authorities was Ronen Yechiel Yelinek's hand written transfer instructions to Arzi Bank dated March 31, 2003, ordering the transfer of \$205,000 to Carlos Carrillo at Banco Panameno De La Vividenda. Carlos Carrillo is an attorney who represented Shimon Yelinek in a large scale international gun smuggling case. Hoang

Nguyen transferred \$260,000 from HSBC 31241 to an account at MultiCredit Bank in Panama, which Special Agent McLeod believes was for the benefit of Shimon Yelinek.

On April 26, 2005, a Grand Jury in the Northern District of Georgia returned a sealed indictment against Anh Ngoc Nguyen, charging him with money laundering in Criminal Indictment 1:05-CR-196-BBM. On August 9, 2005, Anh Ngoc Nguyen was arrested in connection with the indictment in Buffalo, New York, after he entered the United States with his family. On May 26, 2006, Hoang Nguyen was convicted in this district of money laundering, as charged in Criminal Indictment No. 1:04-CR-232-BBM, NDGa. On November 7, 2006, DEA agents obtained federal seizure warrants in the Northern District of Georgia for HSBC 43555TN, and ARZI 220707. See Case Numbers 1:06-MJ-1351 and 1:06-MJ-1357.

On August 7, 2007, Special Agent McLeod and DEA Special Agent Michael Rountree interviewed Ahn Ngoc Nguyen with his lawyer present. Ahn Ngoc Nguyen stated that he began selling diamonds in 1996, which he sold in Vietnam and in Canada. Ahn Ngoc Nguyen stated that he was paid in cash for his diamond sales in Vietnam, which he took to an Asian male he knew as "Uncle Five." For a 1% commission, Uncle Five wire transferred the money back to Ahn Ngoc Nguyen in Canada. At some point after he opened a bank account in Switzerland, Ahn Ngoc Nguyen paid a commission of 1% to an Asian female in Houston, Texas named "Van" to transfer the money.

According to Ahn Ngoc Nguyen, Van would sometimes front him the money that was to be transferred, and when this happened, Ahn Ngoc Nguyen would pay back Van through an intermediary in Toronto, Canada named Sammy. From their investigation, the agents believe that Sammy is the brother of Hoang Nguyen. Ahn Ngoc Nguyen stated that Sammy was a very large money mover in Toronto, Canada, and that Sammy also moved money to Korea, Japan, and Vietnam. Ahn Ngoc Nguyen also stated that Sammy is associated with Bertex Corporation. Ahn Ngoc Nguyen later began to deal directly with Sammy instead of Van. In 2003, Ahn Ngoc Nguyen met an individual known as Moshe. From their investigation, the agents believe that Moshe is an alias used by Shimon Yelinek. Moshe also introduced Ahn Ngoc Nguyen to Adeli Tabrizi, who owned Dana Jewelry located in Toronto, Canada. Anh Ngoc Nguyen eventually began transferring money for both Moshe and Tabrizi for a 1% commission on each transfer.

On October 17, 2007, Special Agent Rountree and DEA Special Agent James R. Cockrell again interviewed Ahn Ngoc Nguyen. During a photo line-up consisting of nine photos, Ahn Ngoc Nguyen identified one photo as being Moshe, which was in fact a photo of Shimon Yelinek. Ahn Ngoc Nguyen stated that he originally believed that Yelinek was conducting legitimate diamond purchases. However, Ahn Ngoc Nguyen later realized that he was involved in a money laundering scheme being conducted by Yelinek. Ahn Ngoc Nguyen

admitted that after realizing he was involved in money laundering, he continued conducting business with Yelinek.

On May 30, 2008, the United States filed a Complaint for Forfeiture against the funds held in HSBC 43555TN (formerly HSBC Account No. 31241) and ARZI 220707 (collectively, "the Defendant Funds") pursuant to 18 U.S.C. § 981(a)(1)(A) on the grounds that they were involved in or are traceable to a money laundering transaction or an attempted money laundering transaction in violation of 18 U.S.C. § 1956 or 18 U.S.C. § 1957; pursuant to 18 U.S.C. § 981(a)(1)(C) on the grounds that they constitute or were derived from proceeds of a specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), or a conspiracy to commit such offense; and pursuant to 21 U.S.C. § 881(a)(6) on the grounds that they were furnished or intended to be furnished in exchange for a controlled substance, that they constitute proceeds traceable to such an exchange, or they were used or intended to be used to facilitate the sale or exchange of a controlled substance. [Doc 1].

On June 9, 2008, pursuant to Rule G(3)(b)(ii) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims,² Plaintiff filed its Ex Parte Application for Warrants of

²Rule G(3)(b) provides in pertinent part:

If the defendant is not real property: . . .
the court - on finding probable cause - must
issue a warrant to arrest the property if it
is not in the government's possession,

Arrest in Rem, because the Defendant Funds were not in the Government's possession, custody or control and were not subject to a judicial restraining order. [Doc 4]. As a result, the Court issued Warrants of Arrest in Rem for the Defendant Funds. [Doc 5].

On July 18, 2008, Plaintiff's counsel filed with the United States Department of Justice, Office of International Affairs a supplemental MLAT requesting that the Swiss authorities³ serve the Warrants of Arrest in Rem, Notices of Filing Complaint for Forfeiture,⁴ and copies of the Complaint for Forfeiture on Arzi Bank, Zurich, Switzerland, regarding Arzi 220707, and on HSBC Republic Bank, Geneva, Switzerland, regarding HSBC 43555TN.⁵

On August 21, 2008, the Swiss authorities served on Arzi Bank,

custody, or control and is not subject to a
judicial restraining order. . . .

Rule G(3)(b)(ii).

³Pursuant to Rule G(3)(c)(iv), "[i]f executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located."

⁴The Notice of Filing Complaint for Forfeiture is to be served once the court has in rem jurisdiction over defendant property. See Rule G(4). In the instant action, however, because the Warrants of Arrest in Rem had to be executed in Switzerland, Plaintiff sent the Notices and the Warrants of Arrest in Rem to the Office of International Affairs and requested that the Swiss authorities serve the documents simultaneously. [Doc 8-9].

⁵Prior to sending the documents to Switzerland, the Warrants of Arrest in Rem, the Notices of Filing Complaint for Forfeiture, and the Complaint for Forfeiture were translated into French.

Zurich, Switzerland and HSBC Republic Bank, Geneva, Switzerland the Warrants of Arrest in Rem and copies of the Complaint for Forfeiture and the Notice of Filing Complaint for Forfeiture. [Doc 10-11].

On August 25, 2008, the Swiss authorities served Ronen Yechiel Yelinek, via his attorney, Bernhard Korolnik, with the Notice of Filing Complaint for Forfeiture and copies of the Complaint for Forfeiture and Warrants of Arrest in Rem. [Doc 12]. As required under Rule G(4)(b)(ii), the Notice expressly stated that Ronen Yechiel Yelinek's deadline for filing a claim was 35 days after the notice was received and that an answer or a motion under Rule 12 must be filed no later than 20 days after filing the Claim. [Doc 12]. Therefore, Ronen Yechiel Yelinek's deadline for filing a claim was September 29, 2008.

On August 21, 2008, the Swiss authorities served Anh Ngoc Nguyen, via his attorney, Rodolphe Gautier, with the Notice of Filing Complaint for Forfeiture and copies of the Complaint for Forfeiture and Warrants of Arrest in Rem. [Doc 13]. As required under Rule G(4)(b)(ii), the Notice expressly stated that Anh Ngoc Nguyen's deadline for filing a claim was 35 days after the notice was received and that an answer or a motion under Rule 12 must be filed no later than 20 days after filing the Claim. [Doc 13]. Therefore, Anh Ngoc Nguyen's deadline for filing a claim was September 25, 2008.

On or about September 5, 2008, Plaintiff's counsel received a letter from Bruce H. Morris, who is the attorney representing Anh Ngoc Nguyen in criminal case 1:05-CR-196-BBM, NDGa., stating that Anh Ngoc Nguyen was not going to file a claim or answer in this action.

Pursuant to Rule G(4)(a)(iv)(C), the United States posted notice of the forfeiture action on an official government internet site (www.forfeiture.gov) for at least 30 consecutive days, beginning on November 11, 2008.⁶ [Doc 14].

No one has filed a claim to the Defendant Funds as required by 18 U.S.C. § 983(a)(4)(A) and Rule G(5)(a), and the time in which to do so has expired.

No one has filed an Answer to the Complaint for Forfeiture as required by 18 U.S.C. § 983(a)(4)(B) and Rule G(5)(b), and the time in which to do so has expired.

Plaintiff previously filed a Request for Entry of Default in this case pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. As a result, the Clerk of the District Court entered the default of all potential claimants to the Defendant Funds, including Ronen Yechiel Yelinek and Anh Ngoc Nguyen.

⁶The official government internet site, www.forfeiture.gov, became active on or about December 24, 2007. During an initial transition period, the United States published notices on both the official government internet site and in the newspaper. Newspaper publication of judicial forfeiture notices, however, was discontinued on September 1, 2008.

Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, Plaintiff now seeks a default judgment against all potential claimants to the Defendant Funds, including Ronen Yechiel Yelinek and Anh Ngoc Nguyen, and the entry of an Order forfeiting the Defendant Funds to the United States.

II. ARGUMENT AND CITATION OF AUTHORITY

The time for filing a Claim in a civil forfeiture action is governed by 18 U.S.C. § 983(a)(4)(A), which states as follows:

In any case in which the Government files ... a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

18 U.S.C. § 983(a)(4)(A); see also Supplemental Rule G(5)(a)(ii)(A) ("Unless the court for good cause sets a different time, the claimant must be filed . . . by the time stated in a direct notice sent under Rule G(4)(b).").

The time for filing an Answer in a civil forfeiture action is governed by 18 U.S.C. § 983(a)(4)(B), which states as follows:

A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

18 U.S.C. § 983(a)(4)(B); see also Supplemental Rule G(5)(b) ("A claimant must serve and file an answer to the complaint or a motion

under Rule 12 within 20 days after the filing of the claim.”).

Ronen Yechiel Yelinek was served with direct notice of the forfeiture action on August 25, 2008. As required under Rule G(4)(b)(ii), the Notice expressly stated that Ronen Yechiel Yelinek's deadline for filing a claim was 35 days after the notice was received. Therefore, the last date on which Ronen Yechiel Yelinek could have filed a Claim to the Defendant Funds was September 29, 2008.

Anh Ngoc Nguyen was served with direct notice of the forfeiture action on August 21, 2008. As required under Rule G(4)(b)(ii), the Notice expressly stated that Anh Ngoc Nguyen's deadline for filing a claim was 35 days after the notice was received. Therefore, the last date on which Anh Ngoc Nguyen could have filed a Claim to the Defendant Funds was September 25, 2008. Moreover, Anh Ngoc Nguyen represented to Plaintiff that he does not intend to file a Claim or an answer to the complaint.

The last date on which anyone other than Anh Ngoc Nguyen or Ronen Yechiel Yelinek could have filed a Claim to the Defendant Funds (based upon the notice of forfeiture published on the official government internet site (www.forfeiture.gov)) was January 10, 2009. See 18 U.S.C. § 983(a)(4)(A); Rule G(5)(a)(ii)(B). By not filing a Claim to the Defendant Funds and an Answer within the prescribed time limits, all potential claimants, including Anh Ngoc Nguyen or Ronen Yechiel Yelinek, have abandoned any claim they

might have had to the Defendant Funds.

The time limit for filing a Claim and an Answer in a civil forfeiture action is strictly enforced. United States v. \$230,963.88 in United States Currency, 2000 WL 1745130 (D.N.H. 2000). While a judgment of forfeiture by default may seem harsh, it is well settled that "the law ministers to the vigilant not to those who sleep upon perceptible rights." Puleio v. Vose, 830 F.2d 1197, 1203 (1st Cir. 1987). "[A] district judge must often be firm in managing crowded dockets and demanding adherence to announced deadlines." Mendez v. Banco Popular de Puerto Rico, 900 F.2d 4, 7 (1st Cir. 1990). "It is essential that a court's deadlines be followed in order to allow for the proper management of the court's caseload." Rosario Rivera v. PS Group of Puerto Rico, Inc., 186 F.Supp.2d 63 (D. Puerto Rico 2002). Once the time for filing claims and answers has expired, the district court may enter a default judgment against all potential claimants who did not file claims and answers. United States v. Commodity Account at Saul Stone & Co., 1999 WL 91910 (N.D. Ill. 1999), *aff'd*, 219 F.3d 595 (7th Cir. 2000); United States v. \$345,510.00, 2002 WL 22040 (D. Minn. 2002) (granting the government's motion to strike claimant's verified claim because "[claimant] has abandoned any claim that he might have had to the Defendant currency, because he did not file an answer within the prescribed time limit").

In the instant case, because no one filed a Claim to the Defendant Funds or an Answer to the complaint within the prescribed time limits, the Court should enter a default judgment against all potential claimants to the Defendant Funds, including Anh Ngoc Nguyen or Ronen Yechiel Yelinek, and enter a final order forfeiting the Defendant Funds to the United States. See United States v. Lot 65 Pine Meadow, 976 F.2d 1155 (8th Cir. 1992) (affirming district court's order issuing a decree of forfeiture by default); see also United States v. Real Property, 135 F.3d 1312 (9th Cir. 1998) (holding that claimant who received proper notice of forfeiture action but failed to file claim lacked standing to challenge default judgment).

VII. CONCLUSION

For all of the foregoing reasons, Plaintiff's Motion for Default Judgment should be granted.

This 2nd day of February, 2009.

Respectfully submitted,

DAVID E. NAHMIAS
UNITED STATES ATTORNEY

/s/ Michael J. Brown
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