No. 13-56823

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

REAL PROPERTY LOCATED AT 475 MARTIN LANE, ET AL.,

Defendants.

OPTIONAL CAPITAL, INC. a/k/a OPTIONAL VENTURES,

Claimant - Appellant

Appeal from the United States District Court for the
Central District of California, Los Angeles
Hon. Audrey Collins

D. C. Cons. Nos. CV-04-2788-ABC; CV-04-3386-ABC; CV-05-3910-ABC

APPELLANT'S REPLY BRIEF

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Optional Capital, Inc., submits the following in reply to the answering brief of the United States of America.

1. IN CAFRA, THE LEGISLATURE DID NOT CREATE AN EXEMPTION TO THE GOVERNMENT'S MANDATORY OBLIGATION TO PAY REASONABLE ATTORNEYS FEES TO A SUCCESSFUL CLAIMANT WHERE THE GOVERNMENT LOSES ITS CLAIM BEFORE THE SUCCESSFUL CLAIMANT ESTABLISHES OWNERSHIP OF THE SEIZED PROPERTIES.

This appeal is not complicated. It concerns whether Optional is entitled to attorneys' fees under the Civil Asset Forfeiture Reform Act ("CAFRA"), which provides that in "any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant." 28 U.S.C. § 2465(b)(1)(A); *U.S. v. $186,416.00 in U.S. Currency*, 642 F.3d 753 (9th Cir. 2011).

In its 68-page answering brief, the government acknowledges this mandatory fee shifting provision was enacted to benefit civil forfeiture claimants "whose property had been seized or otherwise restrained by the government for purposes of seeking forfeiture" and to give owners innocent of any wrongdoing the means to recover their property and make themselves whole. (Appellee's Brief;

pg. 31.) Optional is such a claimant, but it has been denied the protections of the mandatory fee provisions.

The material facts relevant to Optional's attorney fee claim are largely admitted by the government. The government admits it commenced three civil forfeiture actions in United States District court seeking to forfeit to itself, two homes and numerous items of personal property. (Appellee's Brief; pgs. 3-6) It admits Optional filed claims and answers in each district court proceeding, alleging it was an innocent owner of the homes and personal property. (Appellee's Brief; pgs. 4-5.) It admits Optional extensively litigated its claims in the three consolidated forfeiture proceedings as a claimant until a judgment was entered in its favor on May 23, 2013.[1] (Appellee's Brief; pgs. 5-10, 12-13, 17-22.) Although the government ignores that judgment, that judgment decreed Optional the owner of the two homes that were the subject of forfeiture cases CV 04-2788 and CV 04-3386, as well as all the items of seized personal property to which it made claim in case CV 05-3910. (2ER 289-293.) The "Kim Claimants" – KJ Kim, Erica Kim, Bora Lee, Alexandria Investments LLC and First Stephora Ave.,

[1] At pages 13-17 of its brief, the government discusses at length its litigation of the Kim Claimants' fee requests. Except as demonstrative of the government's change of position in 2009, the discussion is not relevant to this appeal. The government's appeals of the fee awards in favor of the Kim Claimants are currently pending before this court in docket numbers 12-569222, 13-55555 and 13-55556.

Inc. – recovered nothing.[2]

Yet the government continues to maintain, illogically and contrary to all existing legal authorities, that Optional was not a "substantially prevailing" claimant so as to be entitled to its fees. The government's position should be rejected as "alchemy." See *Newnham v. United States*, 813 F.2d 1384, 1387 (9th Cir. 1987 (reversing district court decision accepting government's argument, noting "though faced with express statutory language contrary to its position, the government nevertheless attempts to call Newnham's interest something that it is not. Alchemy will not suffice for legal argument.") The district court's ruling that Optional was not a substantially prevailing party within the meaning of §2465 should be reversed and the case referred to the appellate commissioner for a determination of reasonable attorneys fees, including Optional's fees on this appeal.

[2] Si Young Kim and Young Ai Kim recovered two cars that were titled in their name and that they possessed at the time of the seizure, as well as money from the sale of their home that had been seized from a bank account in their name.

A. The May 23, 2013 Judgment awarding the seized properties to Optional was a "judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law." The government's inability to establish its right to forfeit any property to itself in response to motions filed by the Kim Claimants did not end its responsibility to pay attorneys fees to Optional, the claimant who ultimately prevailed in these consolidated forfeiture proceedings.

The government reprises its argument below that Optional should be denied attorneys fees upon the conclusion of the civil forfeiture proceedings the government admittedly commenced, on grounds those forfeiture proceedings were mysteriously transmuted into some other type of proceeding not subject to CAFRA before Optional secured a judgment in its favor. As it did to the district court, the government argues to this Court that this transmutation occurred in two stages. Regarding the "Summary Judgment properties," the government contends the transmutation occurred on October 3, 2008, when a panel of this Court affirmed the district court's dismissal of the government's claims to those properties. Regarding the "May 2004 properties," the government contends the transmutation occurred when the district court entered judgment in favor of the Kim Claimants on October 13, 2009, and the government decided to not appeal that judgment. Thus, by losing its claims before Optional won a judgment returning the properties to it, the government claims it obtained an exemption from its mandatory obligation to pay Optional's attorneys fees.

Nothing the government advances in its lengthy brief supports its "win by losing" argument. As discussed in Optional's opening brief, the government's transmutation argument is illogical. Under the government's view, during the period of October 3, 2008, through the date it decided not to appeal the judgment entered October 13, 2009, this action would have been both a civil forfeiture proceeding and not a civil forfeiture proceeding. The argument also ignores that Optional appealed the October 13, 2009 order and the order was reversed; as the government admits, the district court was directed on remand to "adjudicate DAS and Optional's claims against the Summary Judgment and May 2004 Properties." [3] (Appellee's Brief; pg. 12.)

The argument is also contrary to the plain language of the statute requiring the forfeiture proceeding to be concluded by a judgment for the claimant with

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[3] As also set forth in Optional's opening brief, shortly after this Court's decision of January 2, 2011, which reinstated Optional's jury verdict against the Kims, then-claimant DAS, pursuant to a conspiracy with the Kims, stole more than 13 million dollars from the Credit Suisse account. DAS then dismissed its claims in the forfeiture proceedings. In its brief, the government calls DAS's theft a "transfer pursuant to a settlement agreement" that it investigated but found "insufficient evidence of wrongdoing to justify formal proceedings." (Appellee's brief pg. 13.) The California state appeals court, Second Appellate District, had no difficulty seeing evidence of wrongdoing. It concluded, "DAS did not merely 'beat' Optional to the Credit Suisse account, but instead participated in a scheme to prevent Optional from obtaining the monies in the forfeiture proceeding." *Optional Capital, Inc. v. DAS et al.* (2014) 222 Cal.App.4th 1388, 1403.

respect to the seized property or properties at issue before an entitlement to fees will arise. As Optional discussed in its opening brief, in interpreting the related interest- payment provision of 28 U.S.C. § 2465(b)(1) (C), this Court concluded:

> [The] most natural reading of the text is that "any civil proceeding to forfeit property" refers to a proceeding in court. **The entirety of this statute comes into play only "[u]pon the entry of a judgment for the claimant" in a proceeding to forfeit property.** 28 U.S.C. § 2465(a). **A judgment is required, and a judgment occurs at the conclusion of a court proceeding.**

Synagogue v. U.S, 482 F.3d 1058, 1062-1063 (9th Cir. 2007) (emphasis added); *see also Carvajal v. U.S.,* 521 F.3d 1242, 1247 (9th Cir. 2008) (it is clear from the statutory text that CAFRA's interest payment provision, 28 U.S.C.§ 2465(b)(1)(C), is triggered only when the government institutes civil forfeiture proceedings and a plaintiff substantially prevails).

Thus, it is clear from these cases and the statutory text that the attorney fee provision of CAFRA, 28 U.S.C § 2465(b)(1)(A) was triggered in this case. The government instituted civil forfeiture proceedings, and a claimant, Optional, not only substantially, but totally prevailed on its claims, securing a Judgment decreeing it to be the owner of the properties.[4]

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[4] While the district court initially entered judgments in favor of the Kim Claimants, those judgments were reversed on Optional's appeals and the district court was twice instructed to adjudicate the ownership claims of Optional to the defendant properties. The forfeiture proceedings were not concluded until the

That additional proceedings took place after the government lost its claims and before the district court entered its judgment is irrelevant to the issue of Optional's entitlement to fees. Indeed, in a multi-claimant case as was this one, additional proceedings to determine ownership among competing claimants after the issue of forfeitability is resolved is not unexpected. In any case, by the time such a forfeiture claimant has prevailed and obtained recovery of seized property under §2465 (a)(1), the government will necessarily have lost its claim to that property.

Moreover, while the government continually represents that §2465(b) requires a claimant to substantially prevail "against the government," if not obtain a "judgment against the government" to be entitled to fees, no such language exists in §2465(b). The full text of 28 U.S.C. § 2465 is set forth in appendix 1 at the end of this brief. Nor would one expect such language to be in the statute; for unlike the fee-shifting statutes involved in the *in personam* cases cited by the government, which pitted an individual against the government, proceedings under CAFRA are *in rem* proceedings where any judgment obtained is not a judgment "against the government" or even any party, but a judgment against the properties themselves - the *res*. A claimant like Optional, who obtains a judgment under

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district court did so.

§2465(a) ordering return of properties the government seized, thus necessarily "prevails" against the government - indeed it prevails against the whole world.

Likewise, that the district court adopted the government's argument is irrelevant. Statutory construction is a question of law subject to *de novo* review. *United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), cert. denied, 469 U.S. 824, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984). The government itself admits, "elements of statutory interpretation that figure into a district court determination whether to award fees are reviewed de novo." (Appellee's Brief; pg. 28 citing *Childress v. Darby Lumber, Inc.* 357 F.3d 1000, 1011 (9th Cir. 2004).)

Finally, the government's complaint that it was already ordered to pay fees to the Kim Claimants as a basis for denying Optional its fees must fall on deaf ears. At the trial of a forfeiture case, particularly a multi-claimant forfeiture case like this one, each claimant has the burden of establishing, by a preponderance of the evidence, he has an interest in the seized property. *U.S. v. 133,420.00 in U.S. Currency* 672 F.3d 629, 638 (9th Cir. 2012). CAFRA at §2465(b)(2)(C) expressly permits the government to limit its exposure to multiple attorney fee demands where there are multiple claimants to the same property, so long as it meets certain conditions, one being that it obtain forfeiture against at least one

claimant. [5] Since the government failed to obtain forfeiture of any property here against any claimant, it cannot bring itself within that exception. In this respect, CAFRA is consistent with Ninth Circuit law prior to CAFRA, in recognizing that each defendant property seized is viewed separately, and that a claimant prevailing on one property, even though that property was worth only 28.7 % of all the properties seized by the government, was a significant issue in the litigation which achieved some of the benefit the claimant sought in bringing suit, and the claimant was therefore entitled to attorneys fees. *U.S. v. Real Property Known as 22249 Dolorosa Street*, 190 F.3d 977 (9th Cir. 1999).

In this case, where Optional recovered all of the properties to which it made claim, and the government did not obtain forfeiture of any property so as to implicate section 2465(b)(2)(C), Optional was not only a substantially prevailing party but a totally prevailing party entitling it to an award of fees. The district

[5] In various parts of its brief, the government makes assertions about what the district court, or this Court, stated in ruling on the various attorney fee requests the Kims made. Those rulings are irrelevant because at the time the Kims made their motions, Optional's ownership claims had not yet been litigated. Optional also had no stake in the Kims' fee claims against the government and did not participate in the litigation of such claims. At the same time, commencing in April, 2009, the government changed its position with respect to the Kims' attorney fee claims. The government began asserting it was entitled to offset the Kims' tax liabilities against any obligation it owed the Kims for attorney fees. The government's appeals of the various orders on the Kims' requests are currently pending before this court in docket numbers 12-56922, 13-55555 and 13-55556.

court's order denying Optional fees should be reversed.

B. The May 2013 Judgment was not a judgment "against the Kims." It was a judgment by which Optional was adjudicated to be the owner of the properties against the world, including the government, and thus constituted a "material alteration of the legal relationship" between Optional and the government.

While the government is correct that a material alteration of the legal relationship of the parties is necessary for a claimant to recover attorneys fees as a prevailing party, the May 23, 2013 judgment effected a material alteration of Optional's relationship with the government and all other persons claiming an interest in the defendant properties. The government's citation to *Buckhannon Board & Care Home v. West Virginia Dept. Of Health & Human Resources*, 532 U.S. 598 (2001) does not support its contrary claim, it supports Optional. For in *Buckhannon*, the Supreme Court, like Congress in §2465, expressly recognized that an enforceable judgment creates a material alteration of the legal relationship of the parties necessary to permit an award of attorneys fees:

> [T]hese decisions, taken together, establish that enforceable judgments and court ordered defense decrees create the material alternation of the legal relationship of the parties necessary to permit an award of attorneys fees.

Buckhannon, supra, 532 U.S at 604.

Consequently, the May 23, 2013 judgment provides the necessary

foundation for a Optional's status as a prevailing party because by it, Optional received at least some relief based on the merits of its claim. *Perez–Arellano v. Smith*, 279 F.3d 791, 795 (9th Cir.2002).

The Government's contention that Optional's May 23, 2013 judgment was only "against the Kim Claimants" is meritless. As this Court noted in *Real Property 1*: "*In rem* actions are generally considered proceedings 'against all the world.' Restatement (Second) of Judgments § 6 cmt. a (1980) (internal quotation marks omitted). In this type of proceeding, the court undertakes to determine all claims that anyone has to a thing in question." *Id.* at 1144. Indeed, the very essence of a forfeiture action is to decide property rights in a *res* among competing complainants. *United States v. One 1985 Cadillac Seville* 866 F.2d 1141, 1148 (9th Cir. 1989). Consequently, the May 23, 2013 judgment of the district court was not a judgment "against the Kims."

For the same reason, the judgment clearly effected a material alteration in the terms of the relationship between Optional and the government, even though the government had by then already lost its claims. For the government was required to return the seized properties to Optional, and it, along with everyone else in the world, was required to recognize Optional as the owner of all right, title and interest in those properties. *Hansen v. Denckla*, 357 U.S. 235, 246 fn 12

(1958) (a judgment *in rem* affects the interests of all persons in designated property); *Shaffer v. Heitner*,433 U.S. 186, 199 n. 17 (same). *See also U.S. v. One 2008 Toyota Rav 4 Sports Utility Vehicle*, 2012 WL 5272281 C.D.Cal.,2012. (where court dismissed case with prejudice and claimants recovered the car in dispute, the parties' legal relationship has materially changed by the court's order because the government is "judicially precluded" from refiling the claim against the claimants; the claimants have therefore substantially prevailed for purposes of § 2465(b)(1).)

Indeed, the government's claim that the May 23, 2013 judgment effected a material change in the relationship solely between Optional and the Kim Claimants does not withstand its own admissions regarding its tax liens. For the government admits that its tax liens in the defendant properties were rendered null and void by the ownership determination in favor of Optional – the very tax liens that it refused to voluntarily withdraw so that Optional could avoid the time and expense to prove ownership and instead, take the properties pursuant to Optional's judgment lien. (Appellee's brief pgs. 44-46)

In short, the May 23, 2013 judgment effected a material alteration of the legal relationship between Optional and the rest of the world, including the government, with respect to the defendant properties that Optional was adjudicated

the owner of. The order of the District Court finding that Optional was not a substantially prevailing party within the meaning of CAFRA should be reversed and the case either referred to the Appellate Commissioner or remanded for a determination a reasonable fee.

2. OPTIONAL ALSO PREVAILED ON THE GOVERNMENT'S INTERVENTION COMPLAINT. SINCE THE GOVERNMENT, BY THAT INTERVENTION COMPLAINT, SOUGHT TO COLLECT A TAX OBLIGATION OWED BY THE KIMS AGAINST OPTIONAL'S PROPERTY, THE GOVERNMENT IS ALSO LIABLE FOR OPTIONAL'S ATTORNEY FEES UNDER 26 U.S.C. §7430.

In its answering brief, the government admits that upon losing its forfeiture claims, it intervened back into the forfeiture proceedings to litigate a tax lien for more than 25 million dollars against the defendant properties. (Appellee's brief, pgs 45-46.) It now argues that although it also lost on its intervention complaint, it is not liable for attorneys fees under §7430(a), that Optional was not a prevailing party under §7430(c)(4)(A), and that it was substantially justified in contradicting the verified allegations it made in its forfeiture complaints by the allegations of the intervention complaint .

None of these arguments are supported by authority. The government instead relies upon conclusions and assertions contradicted by the record, all while

ignoring the issues raised by Optional in its opening brief. Since Optional was the prevailing party on the government's intervention complaint, the contrary decision of the district court should be reversed and the matter remanded to the appellate commissioner for a determination of what is a reasonable fee.

A. Optional was the prevailing party on the government's intervention complaint within the plain language of §7430(a).

Title 26 U.S.C. § 7430 was enacted on September 3, 1982, as part of the Tax Equity and Fiscal Responsibility Act. Pertaining to the awarding of court costs and certain fees, it provides:

> (a) In general—In the case of any civil proceeding which is—
>
> > (1) brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, and
> >
> > (2) brought in a court of the United States (including the Tax Court),
>
> the prevailing party may be awarded a judgment for reasonable litigation costs incurred in such proceeding.

Here – as the government admits – after losing its forfeiture claims, it filed a complaint in intervention in the very same forfeiture proceedings it had commenced seven years earlier. The purpose of the government's second filing was to collect from the defendant properties taxes it claimed the Kims owed.

Although contending Optional does not meet the plain language of the

statute, the government does not dispute that both its forfeiture complaints, and its complaint in intervention, were civil proceedings brought by the United States in a court of the United States. The government also does not dispute that its complaint in intervention was brought in connection with the collection of taxes and penalties due under the Internal Revenue Code, for by its intervention complaint, it sought to recover more than 25 million dollars in taxes and penalties it contends KJ Kim, Erica Kim, Bora Lee, Alexandria Investments LLC and First Stephora Ave., Inc. owed. [1ER: pgs. 194-209]

That leaves only the issue as to whether Optional was a prevailing party. [6] As Optional discussed at length in its opening brief, a "prevailing party" is one who has "substantially prevailed with respect to the amount in controversy" or "has substantially prevailed with respect to the most significant issue or set of issues presented." 26 U.S.C. §7430 (c) (4) (A). By not discussing, and therefore conceding that *Bermensolo v. United States,* 883 F.2d 58, 60 (9th Cir. 1989), which it cited to the district court, provides no support for its claim Optional was not a

[6] The government also asserts in its brief at page 45, fn 18 that Optional did not establish in the District Court that its net worth was less than seven million at the time the Government sought leave to intervene. This is not true. Optional's representative director provided a declaration attesting to this fact. [2ER: pg. 370]

prevailing party[7], the government now argues that because Optional only went to trial against the Kims, Optional only prevailed against the Kims. This unsupported assertion also has no merit, for the net result of the judgment finding that Optional, not the Kims, owned the defendant properties, was that the government was barred from asserting it was entitled to collect from the defendant properties the 25 million dollars in taxes and penalties the Kims allegedly owed it. Optional's win allowed it to recover its property free and clear of the liens the government had first asserted in these properties in April, 2009.

The government makes a further, unsupported and unreasoned assertion that Optional did not prevail against it because, according to the government, it stood on the sidelines of the ownership dispute between the Kims and Optional. (Appellee's brief pg. 48) This is a falsehood. The record shows that, having secured an order that it had lien priority over Optional's judgment claim, the government doggedly took positions and filed pleadings at every possible opportunity in an effort to block Optional from establishing ownership of the properties, steps which are meticulously set forth in Optional's opening brief at pgs. 7-8. Further, as the District Court pointed out when striking the

[7]Optional demonstrated how the district court's reliance on *Bermensolo* was erroneous at pg. 25 of its Opening Brief.

government's final effort to persuade the court to not enter judgment in favor of Optional, but to enter judgment in favor of the Kims, the government never objected to having a limited role and waived any argument it should have been allowed to participate at the ownership trial. [1ER: 278] If the government believed the District Court was wrong, it should have appealed.

At the same time, while the government correctly argues that Optional did not prevail on its lien priority motion, that is irrelevant to Optional's status as a prevailing party on the government's intervention complaint. While a lien claimant is not entitled to fees under §7430, Optional prevailed by proving ownership of the properties, not as a judgment creditor. The government's attempts to distinguish *Newnham v. United States*, 813 F.2d 1384 (9th Cir 1987) and *Miller v. Alamo* 983 F.2d 856 (8th Cir. 1993) fail. No matter how often the government may call a cow a horse, the cow remains a cow. Optional not only prevailed against the Kims, it prevailed against the entire world, including the government. Optional discussed, *ante,* how an *in rem* judgment binds the entire world; it will not bore this court by repeating those arguments here.

Finally, since the government itself recognizes Optional lost on its motion to take the defendant properties by virtue of its judgment lien, it argument that Optional prevailed as a creditor, not as an owner of the defendant properties, is

nonsensical.

In short, having forced Optional to litigate its ownership claim by not allowing it to take the properties pursuant to its judgment lien, the government cannot complain that it is now required to pay Optional's attorneys fees under the Tax Equity and Fiscal Responsibility Act.

B. The Government did not establish that its tax position, which contradicted its forfeiture pleading, was substantially justified.

In its answering brief, the government does not address how, given that it had asserted for years that the Kims had acquired the defendant properties with proceeds traceable to money stolen from Optional, it was reasonable to force Optional to establish against the Kims that it could trace the purchase of the subject properties to the money they stole from it. Particularly after this court reinstated Optional's conversion verdict against the Kims, and Optional could thereby take the properties pursuant to its judgment lien if the government simply withdrew its tax liens.

Given the government's prior assertion that the properties were traceable to money stolen from Optional, that should not have been hard for the government to do. As it well knows, a tax lien only attaches to property and property rights of a taxpayer. 26 U.S.C. §6321. A taxpayer has no property interest in stolen funds, or

in property purchased with stolen funds. Optional again submits that the government's actions in first asserting the Kims had no interest in the properties, and then claiming the Kims had such an interest, thereby requiring Optional to spend two more years and hundreds of thousands of dollars litigating, was completely unreasonable. In the words of the District Court:

> The Court is troubled that the Government has taken contrary positions in this case. At the beginning of this case, the Government represented that it could trace the funds the Kim Claimants wrongfully took (from Optional, among others) to the properties. Indeed, its forfeiture case depended on tracing. Now, the Government contends that such tracing cannot be shown and that therefore the properties should be returned to the Kim Claimants. The Government has thus aligned itself with the Kim Claimants despite initially seeking to forfeit their properties. The Government has thus taken contradictory positions on tracing and other issues. It appears to the Court that the Government did so only as a matter of expediency - to position itself to be able to execute its tax liens - and not because this was a principled position. The Court expects more from the Government, and by taking such positions, the Government has lost credibility with the Court.
>
> For the foregoing reasons, the Court suggests to the administration of the United States Attorney's Office, Central District of California, that it review how this case was litigated from its inception to its conclusion.

[1ER; pg. 279]

3. CONCLUSION.

For all the reasons discussed in Optional's opening brief and in this reply brief, Optional requests that the District Court's order denying Optional's motion for attorneys fees be vacated and a new order entered granting Optional's motion.

Optional further requests that the case be referred to the Appellate Commissioner for the determination of a reasonable fee.

Respectfully submitted,

Date: September 15, 2014

REHM & ROGARI

/S/ *Ralph Rogari*
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CERTIFICATE OF COMPLIANCE

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REHM & ROGARI

Date: September 15, 2014

/S/ *Ralph Rogari*
By: RALPH ROGARI
Attorneys for appellant
OPTIONAL CAPITAL, INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

REHM & ROGARI

Date: September 15, 2014

/S/ *Ralph Rogari*
By: RALPH ROGARI
Attorneys for appellant
OPTIONAL CAPITAL, INC.

APPENDIX 1

28 U.S. Code § 2465 - Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

(1) such property shall be returned forthwith to the claimant or his agent; and

(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

b)

(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(B) post-judgment interest, as set forth in section 1961 of this title; and

(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

(i) interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

(ii) an imputed amount of interest that such currency

instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

(2)

(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

(i) promptly recognizes such claim;

(ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

(iii) does not cause the claimant to incur additional, reasonable costs or fees; and

(iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

(D) If the court enters judgment in part for the claimant and in part for

the Government, the court shall reduce the award of costs and attorney fees accordingly.