

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

VOCATURA'S BAKERY, INC.,

*Plaintiff,*

v.

INTERNAL REVENUE SERVICE,

JOHN KOSKINEN, COMMISSIONER  
OF INTERNAL REVENUE,

LORETTA LYNCH, ATTORNEY  
GENERAL OF THE UNITED STATES,

UNITED STATES OF AMERICA,

*Defendants.*

Case No. 3:16mc-00147-RNC

May 24, 2016

FILED  
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DISTRICT COURT  
NEW HAVEN, CT.

**MOTION FOR RETURN OF PROPERTY UNDER RULE 41(g)**

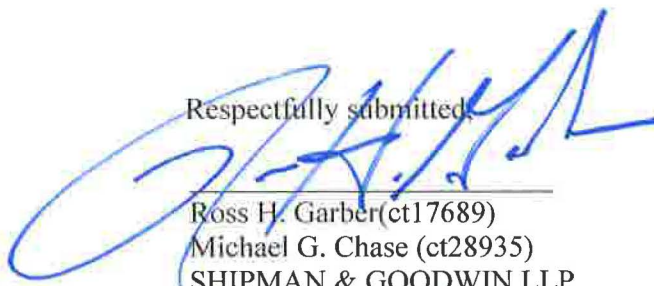
Pursuant to Federal Rule of Criminal Procedure 41(g) and 18 U.S.C. § 983(a)(3)(B), Plaintiff Vocatura's Bakery, Inc. hereby moves this Court for the return of \$68,382.22 seized on May 1, 2013. This Court "should construe a motion requesting return of property under Rule 41[g] as initiating a civil action in equity." *Lavin v. United States*, 299 F.3d 123, 127 (2d Cir. 2002) (citing *Mora v. United States*, 955 F.2d 156, 158 (2d Cir. 1992)).

As explained in detail in the accompanying memorandum, return of the seized property is required both because the government has failed to comply with mandatory statutory deadlines set by Congress, 18 U.S.C. § 983(a)(3)(B), and because the government's three-year delay in this case is so extreme that to commence forfeiture proceedings at this stage would violate Plaintiff's constitutional right to due process of law.

For these and other reasons set forth in the accompanying memorandum, Plaintiff respectfully requests an order from this Court directing the United States to immediately return the money it has seized.

Dated: May 24, 2016

Respectfully submitted,



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*Pro Hac Vice* to be filed  
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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RETURN OF PROPERTY UNDER RULE 41(g)**

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Pursuant to Federal Rule of Criminal Procedure 41(g) and 18 U.S.C. § 983(a)(3)(B), Plaintiff Vocatura's Bakery, Inc. ("Vocatura's Bakery" or "the bakery") submits the following memorandum in support of its motion for the return of \$68,382.22 seized on May 1, 2013. This Court "should construe a motion requesting return of property under Rule 41[g] as initiating a civil action in equity." *Lavin v. United States*, 299 F.3d 123, 127 (2d Cir. 2002) (citing *Mora v. United States*, 955 F.2d 156, 158 (2d Cir. 1992)).

Vocatura's Bakery is a small family business located in Norwich, Connecticut. The bakery was founded in 1919, and several generations of the Vocatura family have grown up at the bakery. The current generation of Vocaturas works around the clock to keep the business going: Family members bake bread in the middle of the night, drive delivery trucks in the morning, and oversee the retail store throughout the day.

On May 1, 2013, the Internal Revenue Service seized the entire contents of the bakery's bank account. The funds seized by the IRS are the lawful earnings of the bakery's legitimate business. The IRS initially sought to justify its seizure under so-called "structuring" laws, which make it a crime to deposit cash in the bank in amounts of \$10,000 or less with a specific intent to evade federal bank reporting requirements. In the more than three years since the seizure, however, neither Vocatura's Bakery nor anyone associated with the bakery has been charged with structuring or any other crime. At this point, for reasons explained below, any attempt to prosecute the Vocaturas under the structuring laws would violate IRS and DOJ policies limiting enforcement of the structuring laws to cases where the pattern of bank deposits was intended to conceal some *other* illegal activity. No such allegation has been made in this case. In the three years that the government has held the Vocaturas' money, the government has not made any effort to prove its allegation of structuring in a court of law.

Instead of initiating a legal case, federal prosecutors have spent three years aggressively pressuring the Vocaturas to agree to the “voluntary” forfeiture of their funds. Most recently, in February 2016, the government presented two of the Vocatura brothers with proposed plea agreements under which they would have pleaded guilty to criminal charges of structuring and consented to forfeiture of the bakery’s approximately \$68,000 as well as approximately \$160,000 in personal assets—and also faced three to four years in prison. The Vocaturas rejected that plea, as they believe they have done nothing wrong. Shortly thereafter, rather than seeking an indictment on criminal structuring charges, the government retaliated by serving Vocatura’s Bakery with an incredibly broad and far-reaching grand jury subpoena seeking *eight years* of financial records—a burdensome and expensive fishing expedition into every aspect of the bakery’s finances.

The law is clear that, three years after the seizure of the bakery’s funds, the money must be returned. The government is not entitled to hold the bakery’s money indefinitely while it searches for some basis that could possibly justify the seizure. The government has blown far past the mandatory 90-day deadline established by the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”), 18 U.S.C. § 983(a)(3)(A), for initiating forfeiture proceedings. Congress has established a clear remedy for that failure: the property must be returned. *See* 18 U.S.C. § 983(a)(3)(B). Even absent that statutory command to return the funds, the government’s delay is so extreme that to commence forfeiture proceedings at this stage would violate the bakery’s constitutional right to due process of law. Vocatura’s Bakery respectfully requests an order from this Court directing the United States to immediately return the money it has seized.



## BACKGROUND

### A. Plaintiff's Business

Vocatura's Bakery is a family business founded in 1919 and located in Norwich, Connecticut. *See* Declaration of David Vocatura in Support of Motion for Return of Property Under Rule 41(g) ("Vocatura Decl.") ¶¶ 2-3. The current generation of Vocaturas—David, Larry, Richard, and Frankie—grew up in the bakery. *Id.* ¶ 3. As children, they would crawl into the industrial sized oven (when not in use) and ride on the baking trays as they circulated like the cars of a carousel. *Id.* Today, David and Richard run the front of the store, Larry does the baking, and Frankie bakes bread and drives a delivery truck. *Id.* ¶ 2. The bakery is a fixture in the community and wins awards for its grinder sandwiches and outstanding white pizza. *Id.* ¶ 5. The bakery provides bread to local schools, as well as other pizza houses and restaurants. *Id.*

For almost its entire history, the bakery's retail store operated primarily as a cash business. *Id.* ¶ 6. The Vocaturas place cash receipts in a safe located on the premises of the bakery and make a weekly trip to the bank to deposit the week's earnings. *Id.* ¶ 7. The deposited funds consist entirely of the bakery's lawfully earned cash receipts. *Id.* There has been no allegation that the funds seized by the government are the proceeds of any illegal activity. Indeed, there can be no such allegation. Throughout almost a century in business, Vocatura's Bakery has made its money lawfully, selling freshly made bread, sandwiches, grinders, and pizza that the Vocatura family makes by hand. *Id.* ¶¶ 3-7.

### B. Federal Banking Regulations

Federal law requires banks to file a currency transaction report with the U.S. Treasury whenever a customer engages in a cash transaction in excess of \$10,000. *See* 31 U.S.C. § 5313. In addition, federal law makes it unlawful for the bank customer to break up cash deposits or



withdrawals into amounts of \$10,000 or less “for the purpose of evading” federal currency reporting requirements. *See id.* § 5324. A person who has violated this latter prohibition is said to have impermissibly “structured” his cash transactions. Funds involved in structured transactions are subject to civil or criminal forfeiture, and individuals who engage in structuring can potentially be charged with a felony. *See id.* § 5317.

These laws were intended to target drug dealers, money launderers, and hardened criminals, but overly aggressive federal prosecutors have sought to apply them to small business owners accused of nothing more than doing business in cash. In October 2014, *The New York Times* reported on two such cases involving Carole Hinders, an elderly restaurant owner in small-town Iowa, and Jeff, Richard, and Mitchell Hirsch, three brothers in the convenience-store distribution business on Long Island. *See* Shaila Dewan, *Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required*, N.Y. Times, Oct. 25, 2014, at A1. In both of those cases, the government seized the business’s entire bank account, only to back down months or years later and return all the money it had seized.<sup>1</sup>

Notably, federal anti-structuring laws do not criminalize every cash transaction of \$10,000 or less. Structuring is a crime only if a person engages in cash transactions of \$10,000 or less with the *specific intent* to evade currency reporting requirements. *See United States v.*

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<sup>1</sup> Other small business owners targeted under the structuring laws include Terry Dekho, a grocery store owner in Michigan; Mark Zaniewski, the proprietor of a gas station also located in Michigan; and Lyndon McLellan, the owner of a North Carolina convenience store. *See* Institute for Justice, Taken: Federal Lawsuit In Michigan Challenges Forfeiture Abuse, <http://www.ij.org/michigan-civil-forfeiture-background> (last visited May 16, 2016); Institute for Justice, Government Unreformed: IRS Seizes \$107,000 From Innocent Small Business, Despite Recent Policy Changes Meant To Prevent Exactly This Kind Of Case, <http://ij.org/case/north-carolina-forfeiture/> (last visited May 16, 2016). The Institute for Justice, which represents Vocatura’s Bakery here, has also represented all these property owners.

*MacPherson*, 424 F.3d 183, 189 (2d Cir. 2005). A person who makes deposits of \$10,000 or less for a legitimate business purpose is not guilty of any crime.<sup>2</sup>

### C. The Seizure and Further Proceedings

On May 1, 2013—over three years ago—the IRS seized the entire contents of the bakery’s bank account. *See* Vocatura Decl. Exs. A, B. Following the seizure, a group of armed IRS agents visited the bakery and began asking a number of outlandish questions about implausible criminal conduct. Vocatura Decl. ¶¶ 8-9. At the conclusion of the interview, the IRS notified the Vocaturas that all of the funds in the bakery’s bank account had been seized. *Id.* ¶ 11. The IRS sent Vocatura’s Bakery notice of administrative forfeiture proceedings on June 12, 2013, Vocatura Decl. Ex. B, and Vocatura’s Bakery filed a claim with the agency on July 8, 2013 to avoid the automatic forfeiture of their funds. Vocatura Decl. Ex. C. Through their attorneys, the Vocaturas provided significant financial information to the federal prosecutor in an attempt to resolve the case. Vocatura Decl. ¶ 17.

Subsequent to those events, as seizures under the structuring laws generated significant public attention and outrage, the government announced a change of policy intended to rein in enforcement of the structuring laws. In October 2014, the IRS announced that, absent “exceptional circumstances,” it would henceforth limit application of the structuring laws to “illegal-source” cases, meaning cases where the money involved in the structured transaction was derived from illegal activity. *See* Exhibit A to Declaration of Ross H. Garber in Support of

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<sup>2</sup> *See, e.g., United States v. \$255,427.15 in United States Currency*, 841 F. Supp. 2d 1350, 1356-60 (S.D. Ga. 2012) (denying government’s motion for summary judgment despite 286 cash transactions of \$9,000 by owner of convenience store because the court could not conclude from mere pattern of transactions that store owner knew about and was trying to avoid Treasury reporting); *United States v. \$79,650.00 Seized From Bank of Am. Account*, No. 1:08-cv-01233, 2010 WL 1286037, at \*4-5 (E.D. Va. Mar. 29, 2010) (denying summary judgment to government because, although claimant admitted knowing that the bank had to fill out a form if he deposited more than \$10,000, he did not know it was a government form).

Motion for Return of Property Under Rule 41(g) (“Garber Decl.”). DOJ announced a similar policy change in March 2015. *See* Garber Decl. Ex. B.

Around the time of these policy changes, it appeared that government prosecutors had lost interest in pursuing a structuring case against the Vocaturas. The Vocaturas heard nothing from the government for about a year. Vocatura Decl. ¶ 18. But, then, in February 2016, federal prosecutors contacted the Vocaturas and proposed criminal plea agreements. *Id.* ¶¶ 19-20. Under the proposed plea agreements, David and Larry Vocatura would have pleaded guilty to charges of structuring the bakery’s bank deposits; waived their right to a grand jury indictment; stipulated to a Guidelines sentencing range of 37 to 46 months and a fine range of \$15,000 to \$150,000; consented to the forfeiture of the approximately \$68,000 seized from the bakery’s bank account; consented to the forfeiture of an additional approximately \$160,000 in personal assets; and waived any right to make a constitutional challenge to the forfeiture. *See* Vocatura Decl. Exs. D & E. David and Larry rejected these plea agreements, as they believe they have done nothing wrong.<sup>3</sup> Vocatura Decl. ¶ 21.

In retaliation for David and Larry’s refusal to agree to forfeiture of the bakery’s funds, on May 10, 2016, the government did *not* seek to proceed with criminal structuring charges and instead served the Vocaturas with an extraordinarily overbroad grand jury subpoena. *See* Vocatura Decl. ¶¶ 22-24, Ex. F. The subpoena heralds an unbounded fishing expedition into the bakery’s business, seeking some retroactive justification for the seizure of the bakery’s funds. It

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<sup>3</sup> Notably, the proceeds of forfeiture settlements or judgments are used to augment the budgets of the agencies involved in the seizure. *See* 31 U.S.C. § 9703 (authorizing payment of seizure and forfeiture proceeds to agencies under control of the U.S. Treasury); 21 U.S.C. § 881(e)(2)(A)-(B) & 28 U.S.C. § 524(c) (authorizing payment of seizure and forfeiture proceeds to agencies under control of the U.S. Department of Justice); *United States v. Funds Held in the Name or for the Benefit of Wetterer*, 210 F.3d 96, 110 (2d Cir. 2000) (“[T]he agency that conceives the jurisdiction and ground for seizures, and executes them, also absorbs their proceeds.”).



demands *eight years* of practically every record generated by the bakery, including “[a]ll books, general ledgers, records, bank statements, canceled checks, deposit tickets, work-papers, financial statements, correspondence, Forms W-2’s and Forms 1099’s issued, payroll records for any and all employees, list of employees with addresses and contact information, records of suppliers and distributors, cash receipts journals, cash disbursement journals, and other pertinent documents,” “[a]ll records, books of account, and other documents or papers relative to financial transactions,” and “[a]ll invoices, receipts, sales slips, and billing records for [the bakery’s] clients/customers, including . . . all correspondence with this client/customer.” *Id.*

### ARGUMENT

When the government seizes property but fails to commence a forfeiture proceeding in a timely way, a Rule 41(g) motion is the appropriate means to seek the return of the property. *See Mora v. United States*, 955 F.2d 156, 158 (2d Cir. 1992) (“[W]here no criminal proceedings against the movant are pending or have transpired, a motion for return of property is treated as a civil equitable proceeding.”) (quotation marks and alterations omitted); *United States v. Sims*, 376 F.3d 705, 708 (7th Cir. 2004) (“The proper office of a Rule 41(g) motion is, before any forfeiture proceedings have been initiated, or before any criminal charges have been filed, to seek the return of property . . . held an unreasonable length of time without the institution of proceedings that would justify the seizure and retention of the property.”). The availability of this procedural mechanism ensures that the government may not hold seized property indefinitely without commencing judicial proceedings. *See, e.g., United States v. Kramer*, No. 1:06-cr-200, 2006 WL 3545026, at \*3-4 (E.D.N.Y. Dec. 8, 2006) (granting Rule 41(g) motion on the ground that the government did not comply with deadlines set by Section 983(a)(3)(B)); *Application of*

*Mayo*, 810 F. Supp. 121, 125 (D. Vt. 1992) (“In the absence of a properly commenced forfeiture proceeding, this Court now orders the return of the seized property.”).

Given the amount of time that has elapsed since the government seized the bakery’s funds, the government’s continued possession of the funds violates not only the timelines established by CAFRA, but also the Due Process Clause of the Fifth Amendment. CAFRA and due process demand the property be returned immediately.

**A. The Government Has Violated the Deadlines Set by CAFRA and Is Therefore Obligated to Return the Funds.**

While CAFRA included numerous reforms intended to prevent abuse of the forfeiture laws, the most sweeping change enacted by the law was the creation of strict deadlines that the government must follow when initiating forfeiture proceedings. *See* 18 U.S.C. § 983(a). Congress also was quite clear about the appropriate remedy if the government failed to comply with the statutory deadlines: “[T]he Government *shall* promptly release the property.” 18 U.S.C. § 983(a)(3)(B)(ii) (emphasis added). Under CAFRA, there can be no question about the proper resolution of this case. The government has not complied with the deadlines established by Congress, and thus must be ordered to return the bakery’s money.

CAFRA carefully sets forth a series of deadlines that apply to both civil and criminal forfeiture proceedings. Following a seizure, the government has 60 days to either send “written notice to interested parties” of a “nonjudicial civil forfeiture proceeding,” commence “a civil judicial forfeiture action,” or “obtain a criminal indictment containing an allegation that the property is subject to forfeiture.” 18 U.S.C. § 983(a)(1). The government complied with this first deadline on June 12, 2013 by sending notice of administrative forfeiture proceedings, thereby triggering a 30-day deadline for Vocatura’s Bakery to file an administrative claim. *See* Vocatura Decl. Ex. B. Vocatura’s Bakery filed a timely claim for the money, thus avoiding automatic

forfeiture of the property. *See* Vocatura Decl. ¶ 16, Ex. C. This, in turn, triggered a 90-day deadline for the government to either “file a complaint for forfeiture” *or* “obtain a criminal indictment containing an allegation that the property is subject to forfeiture” and “take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.” 18 U.S.C. § 983(a)(3)(B). If the government allows the 90-day period to lapse without either commencing civil or criminal forfeiture proceedings, CAFRA provides that “the Government *shall* promptly release the property.” *Id.* (emphasis added).<sup>4</sup>

In this case, the government has long since passed that 90-day deadline without taking any action to commence civil or criminal forfeiture proceedings. The 90-day deadline for the government to commence forfeiture proceedings expired on October 6, 2013—over two-and-a-half years ago. Yet the government has continued to hold the bakery’s property and, rather than initiate legal proceedings, has sought to persuade the Vocaturas to agree to the “voluntary” forfeiture of their funds.<sup>5</sup>

The remedy for the government’s extraordinary course of conduct is plainly spelled out by Congress in CAFRA and should be ordered without delay: “[T]he Government shall promptly release the property.” 18 U.S.C. § 983(a)(3)(B). So, for instance, the court in *United States v. Funds from Fifth Third Bank Account* ordered the return of seized property where the

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<sup>4</sup> *See, e.g., In the Matter of 2000 White Mercedes ML 320 Five-Door SUV*, 174 F. Supp. 2d 1268, 1269 (M.D. Fla. 2001) (“In order to avoid releasing the property, within ninety days from the filing of the claim, the government must either file a civil forfeiture complaint or obtain a criminal indictment naming the property as subject to forfeiture.”).

<sup>5</sup> The government’s delay violates Department of Justice policies, in addition to Congress’s statutory command. The policy memorandum issued in March 2015 provides that, “[w]ithin 150 days of seizure based on structuring,” “a prosecutor must either file a criminal indictment or a civil complaint against the asset.” Garber Decl. Ex. B at 3. This 150-day deadline may be extended only by the United States Attorney. *Id.* Barring special approval from the United States Attorney, “the prosecutor *must* direct the seizing agency to return the full amount of the seized money to the person from whom it was seized.” *Id.* (emphasis added).



government commenced a civil forfeiture proceeding just one day after the expiration of the 90-day deadline. No. 13-11728, 2013 WL 5914101, at \*7 (E.D. Mich. Nov. 4, 2013); *see also United States v. \$80,891.25 in U.S. Currency*, No. 4:11-cv-183, 2011 WL 6400420, at \*1 (S.D. Ga. Dec. 19, 2011) (same, but filing was two days late). Indeed, in *Kramer*, the court invoked section 983(a)(3)(B) even where the government *had* obtained a criminal indictment against the property owner, on the ground that the government had failed to take *other* steps required to satisfy the 90-day deadline—including obtaining a criminal (as opposed to civil) seizure warrant. 2006 WL 3545026, at \*3; *see also United States v. Numisgroup Int’l Corp.*, 128 F. Supp. 2d 136, 146 (E.D.N.Y. 2000) (ordering return of property lacking evidentiary value, following criminal indictment, because government failed to allege in indictment that the property was subject to criminal forfeiture).

Here, where the government has threatened criminal forfeiture but has not even taken the initial step of obtaining an indictment—and, indeed, has not taken *any* formal legal action against the Vocaturas or Vocatura’s Bakery apart from the issuance (over three years after the seizure) of a grand jury subpoena—the government’s obligation to return the property is all the more clear. On this basis alone, the Motion for Return of Property should be granted.

**B. Return of The Bakery’s Funds Is Also Required by Due Process.**

The government’s delay in this case does not merely run afoul of CAFRA, but also violates the bakery’s right to due process of law under the Fifth Amendment. After so much time has elapsed, any judicial forfeiture action would be so untimely that it would violate the due process standard established by the Supreme Court’s decision in *United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555 (1983). *See also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (due process entitles a property owner to a hearing “at

a meaningful time”).<sup>6</sup> Because due process acts as a total bar to any eventual forfeiture of the funds, there is no conceivable point to the government’s continued possession of the funds and they must be immediately returned.

The Supreme Court explained, in *Eight Thousand Eight Hundred and Fifty Dollars*, that the test for whether delay in initiating forfeiture proceedings violates due process is the same as the test for whether a delayed trial violates a defendant’s right to a speedy trial. *See* 461 U.S. at 564 (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). In other words, the court looks to “four factors: length of delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.” *Id.* The Court explained that “none of these factors is a necessary or sufficient condition for finding unreasonable delay,” and that “these elements are guides in balancing the interests of the claimant and the Government to assess whether the basic due process requirement of fairness has been satisfied.” *Id.* at 565. Of all the factors, “the overarching factor is the length of the delay.” *Id.* Where a court finds that delay in initiating forfeiture proceedings amounts to a violation of due process, the proper remedy is to bar any forfeiture of the property and order its immediate return. *See, e.g., United States v. \$23,407.69 in U.S. Currency*, 715 F.2d 162, 166 (5th Cir. 1983) (13-month delay); *United States v. \$19,440.00 in U.S. Currency*, 829 F. Supp. 303, 305, 308 (D. Alaska 1993) (33-month delay); *United States*

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<sup>6</sup> Vocatura’s Bakery also reserves the argument that, should the funds not be immediately returned, due process separately guarantees the right to a prompt hearing to contest the government’s continued retention of the money during the pendency of any forfeiture action. *See, e.g., Krimstock v. Kelly*, 306 F.3d 40, 69 (2d Cir. 2002) (Sotomayor, J.) (holding that property owners “must be given an opportunity to test the probable validity of the [government’s] deprivation of their [property] *pendente lite*”). At this time, however, discussion of that question would be premature.

*v. Sharp*, 655 F. Supp. 1348, 1352 (W.D. Mo. 1987) (23-month delay).<sup>7</sup> In other words, just as the remedy for a speedy trial violation is to bar the defendant's trial, the remedy for unreasonable delay in the forfeiture context is to bar further forfeiture proceedings.

In this case, the most significant factor is the length of the delay. *See Eight Thousand Eight Hundred and Fifty Dollars*, 461 U.S. at 565 (delay is the “overarching factor” in light of which all other factors must be assessed). Over thirty-six months have elapsed since the government seized the money belonging to Vocatura's Bakery. Courts have found violations of due process based on substantially shorter periods of delay. *See, e.g., United States v. One Motor Yacht Named Mercury*, 527 F.2d 1112, 1113-14 (1st Cir. 1975) (12 months); *United States v. One (1) 1984 Nissan 300 ZX*, 711 F. Supp. 1570, 1572-74 (N.D. Ga. 1989) (18 months). Indeed, in this case, the Vocaturas went approximately sixteen months without hearing *anything* from the government—only to have that lengthy period of silence broken by a sudden demand to enter a guilty plea. Vocatura Decl. ¶¶ 18-19. The government is not entitled to hold property for years while searching for some retroactive justification to uphold a property seizure.

The second factor—the lack of any apparent explanation for the delay—also weighs heavily in favor of Vocatura's Bakery. As the Fifth Circuit has explained, “the government must explain and justify substantial delays in seeking forfeiture of seized property.” *\$23,407.69 in U.S. Currency*, 715 F.2d at 166 (citing cases).<sup>8</sup> Thus, where courts have approved lengthy delays

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<sup>7</sup> Notably, all these cases predate Congress's enactment of a statutory deadline for forfeiture actions. When Congress set a statutory deadline in CAFRA, 18 U.S.C. § 983, it provided that a forfeiture action would have to be filed at most 180 days following the seizure. Congress's judgment that 180 days provides a sufficient amount of time for prosecutors to commence forfeiture proceedings following a seizure surely is relevant to the due process analysis in this case, where the government has held the property for over 1,110 days.

<sup>8</sup> *See also, e.g., \$19,440.00 in U.S. Currency*, 829 F. Supp. at 305 (“In situations such as this where the government substantially delays in instituting forfeiture proceedings, it must justify



in the initiation of forfeiture proceedings, they generally have done so because the government has offered a valid explanation for the delay; in *Eight Thousand Eight Hundred and Fifty Dollars*, for instance, the Supreme Court found that a delay of 18 months was “substantial” and was only “justified by the Government’s diligent efforts in processing [a] petition for mitigation or remission and in pursuing related criminal proceedings.” 461 U.S. at 569. Here, there can be no explanation for the government’s delay. Any investigation by the government has been half-hearted at best, consisting only of the initial raid on the business and some subsequent requests for financial information. Three years ago, when the bakery’s funds were originally seized, all of the members of the family voluntarily cooperated with the government’s investigation, expecting the government to act expeditiously and in good faith. They produced voluminous financial documentation to the government and they submitted to extensive, lengthy interviews with law enforcement agents. But it was only after the government failed in its efforts to convince the Vocaturas to plead guilty and relinquish any claims to their funds that the government issued a grand jury subpoena in this case, more than *three years* after the seizure, seeking all of the bakery’s financial records for an eight-year period. If such an unfocused fishing expedition is the best the government can do three years after the seizure, the government can hardly be heard to suggest that it has been diligently pursuing the case. To be sure, the government has used this time to pressure the Vocaturas to agree to “voluntary” forfeiture of the funds, but an effort to pressure property owners to plead guilty to criminal charges in the absence of a grand jury indictment cannot possibly be accepted as a valid justification for delay in initiating forfeiture proceedings.

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the delay.”); *One (1) 1984 Nissan 300 ZX*, 711 F. Supp. at 1573 (explaining that, “where the delay is significant . . . the government must establish additional justification” beyond mere need for deliberation).

The third factor in the test—the steps Plaintiff has taken to secure return of the property—likewise weighs in favor of Vocatura’s Bakery.<sup>9</sup> The Vocaturas have worked diligently to secure the return of their property, including by filing a claim for the property, retaining counsel to negotiate with the government, and promptly contacting the government in an effort to resolve the case. Vocatura Decl. ¶¶ 14, 16-17. When the government requested financial information from the Vocaturas—including information about their personal net worth, assets and liabilities, and monthly cash flow—the Vocaturas voluntarily complied with that request. *Id.* ¶ 17. The only thing the Vocaturas have not done is agree to the plea deal proposed by the government, which would not only involve pleading guilty to felony structuring charges and paying substantial fines, but would also require them to forfeit the seized property.

Finally, the prejudice to Vocatura’s Bakery from the deprivation of the property is manifest and significant. As the Supreme Court recognized in *Eight Thousand Eight Hundred and Fifty Dollars*, “[b]eing deprived of [a] substantial sum of money for a year and a half is undoubtedly a significant burden.” 461 U.S. at 565; *see also* \$23,407.69 in U.S. Currency, 715 F.2d at 166 (same). Indeed, “prejudice to the [property owner] can be presumed where he is deprived of the use of his property by the government without justifiable cause.” *Sharp*, 655 F. Supp. at 1352. Vocatura’s Bakery has been deprived of over \$68,000 in operating funds for over three years; if the Vocaturas had not had other funds in savings, the bakery might well have been forced out of business by the seizure. Vocatura Decl. ¶ 13. And the bakery also has been “hampered . . . in presenting a defense on the merits.” *Eight Thousand Eight Hundred and Fifty Dollars*, 461 U.S. at 569. The delay in this case has allowed evidence to go stale and

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<sup>9</sup> This factor is entitled to less weight in the analysis than the length of the government’s delay and purported justifications for such delay. *See, e.g., Sharp*, 655 F. Supp. at 1352 (ordering property returned notwithstanding that claimant’s “first assertion of right” came in motion for return of property).

recollections to fade; for instance, the longtime accountant for Vocatura's Bakery passed away during the three years following the seizure, compromising their ability to explain the business's finances to the government. *See* Vocatura Decl. ¶ 25. Also, the bank where the bakery made the allegedly offending deposits has seen its personnel change repeatedly over the years, and it is increasingly likely that the employees whom the Vocaturas interacted with no longer work at the bank. *Id.* There is also an increasing risk that important documents will be lost or misplaced over the years. Indeed, even beyond such specific examples of prejudice, the Supreme Court has recognized that "excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Doggett v. United States*, 505 U.S. 647, 655 (1992). The government must offer some justification—apart from a desire to exert pressure to obtain a voluntary forfeiture—for imposing that burden on the bakery. Because it cannot do so, any forfeiture proceeding would be barred by due process and the property must be returned.

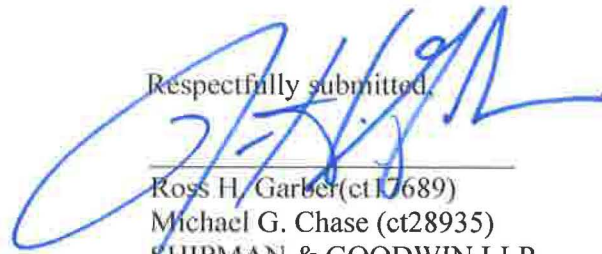
### CONCLUSION

Both the provisions of CAFRA and the Due Process Clause of the Fifth Amendment to the U.S. Constitution require the immediate return of the \$68,382.22 seized from Vocatura's Bakery. The accompanying motion for return of property should, therefore, be granted.



Dated: May 24, 2016

Respectfully submitted,



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\*Applications for Admission  
*Pro Hac Vice* to be filed  
forthwith.

*Attorneys for Plaintiff Vocatura's Bakery, Inc.*



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

VOCATURA'S BAKERY, INC.

*Plaintiff,*

v.

Case No. \_\_\_\_\_

May 24, 2016

INTERNAL REVENUE SERVICE,

JOHN KOSKINEN, COMMISSIONER  
OF INTERNAL REVENUE,

LORETTA LYNCH, ATTORNEY  
GENERAL OF THE UNITED STATES,

UNITED STATES OF AMERICA,

*Defendant.*

**DECLARATION OF ROSS H. GARBER IN SUPPORT OF  
MOTION FOR RETURN OF PROPERTY UNDER RULE 41(g)**

I, ROSS H. GARBER, declare under penalty of perjury that the following is true:

1. My name is Ross H. Garber. I am a citizen of the United States and a resident of Glastonbury, Connecticut. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge.

2. I am an attorney with Shipman & Goodwin LLP, which represents Plaintiff Vocatura's Bakery, Inc. in the above-captioned action.

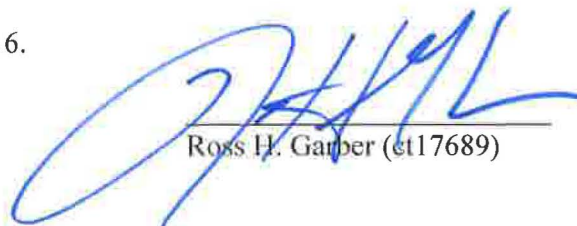
3. I submit this declaration in support of Plaintiff's Motion for Return of Property.

4. Attached as Exhibit A to this declaration is a true and correct copy of an Internal Revenue Service policy memorandum issued on October 17, 2014.

5. Attached as Exhibit B to this declaration is a true and correct copy of a Department of Justice policy memorandum issued on March 31, 2015.

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

Executed this 24<sup>th</sup> day of May, 2016.



Ross H. Garber (et17689)

# Exhibit A



CRIMINAL INVESTIGATION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

October 17, 2014

MEMORANDUM FOR SPECIAL AGENTS IN CHARGE  
CRIMINAL INVESTIGATION

FROM

Rebecca A. Sparkman   
Director, Operations Policy and Support  
Criminal Investigation SE:CI:OPS

SUBJECT

IRS Structuring Investigation Policy Changes

The purpose of this memorandum is to set forth IRS-CI policy concerning seizure and forfeiture activities involving "legal source" structuring.

IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in "illegal source" structuring cases remains unchanged by this memorandum.

In cases where legal source income is involved in alleged structuring activity, consideration should be given to initiating a Title 26 criminal tax investigation. In certain circumstances, the structuring activity can be treated as an affirmative act of evasion under 26 U.S.C. § 7201,<sup>1</sup> evidence of willfulness, an overt act of conspiracy (18 U.S.C. § 371), or it may support Title 31 violations. This policy update will ensure that CI continues to focus our limited investigative resources on identifying and investigating violations within our jurisdiction that closely align with CI's mission and key priorities.

Individuals who are structuring cash deposits or withdrawals are more often than not doing so in an attempt to conceal the existence and source of the funds from the U.S. Government. While the structuring activities violate 31 U.S.C. § 5324, the activity should be treated as just an indicator that another violation of law might have occurred. Therefore, authorized investigative activities should be performed to determine the source of the funds and if there are other related violations of law that should be investigated prior to initiating a seizure of funds related to the criminal activities.

<sup>1</sup> See *United States v. Mounkes*, 204 F.3d 1024, 1030 (10<sup>th</sup> Cir. 2000)



IRS-CI continues to be committed to investigating criminal violations of the federal anti-money laundering and Bank Secrecy statutes. Our partnerships with state, local and county law enforcement agencies through IRS-CI led Financial Crimes Task Forces (FCTFs) provide CI with valuable resources to further the commitment to investigate violations of these laws. The primary focus of FCTFs is to conduct significant criminal investigations of anti-money laundering and Bank Secrecy violations occurring in their area of responsibility and related statutes.

The applicable Internal Revenue Manual sections, the Suspicious Activity Report Review Team, and the FCTF Standard Operating Procedures will be revised to include this guidance as soon as practical. If you have any questions regarding this policy, please contact Global Financial Crimes Director XXXXXXXXXXXXXXXXXXXX.

cc: CI Senior Staff  
CT Counsel

# Exhibit B



U.S. Department of Justice

Criminal Division

Asset Forfeiture and Money Laundering Section

Washington, D.C. 20530

**POLICY DIRECTIVE 15-3**

**TO:** Heads of Department Components  
United States Attorneys

**FROM:** M. Kendall Day, Chief *MKD 3/3/15*  
Asset Forfeiture and Money  
Laundering Section

**SUBJECT:** Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Title 31, United States Code, Section 5324(a) prohibits evasion of certain currency transaction-reporting and record-keeping requirements, including structuring schemes. Generally speaking, structuring occurs when, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a domestic financial institution, the violator conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. On October 17, 2014, the Internal Revenue Service-Criminal Investigation (IRS-CI) issued guidance on how it will conduct seizures and forfeitures in its structuring cases, and specifically in what it calls "legal source" structuring cases. Pursuant to the IRS guidance, IRS-CI will not pursue seizure and forfeiture of funds associated only with "legal source" structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

As part of the Department's ongoing review of the federal asset forfeiture program, the Department has conducted its own review of forfeiture in structuring cases, including analysis of the new IRS-CI policy. The guidance set forth in this memorandum, which is the result of that review, is intended to ensure that our investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities. The guidance applies to all federal seizures for civil or criminal forfeiture based on a violation of the structuring statute, except those occurring after an indictment or other criminal charging instrument has been filed.<sup>1</sup>

<sup>1</sup> These guidelines apply to all structuring activity whether it constitutes "imperfect structuring" chargeable under 31 U.S.C. § 5324(a)(1) or "perfect structuring" chargeable under 31 U.S.C. § 5324(a)(3). See *Charging Imperfect Structuring: 31 U.S.C. § 5324(a)(1) or (a)(3) or Both?*, Money Laundering Monitor, at 1 (Oct.-Dec. 2014) (available at [AFMLS Online](#)).

Memorandum for Component Heads and United States Attorneys

Page 2

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses**1. Link to Prior or Anticipated Criminal Activity**

If no criminal charge has been filed and a prosecutor has not obtained the approval identified below, a prosecutor shall not move to seize structured funds unless there is probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity. For these purposes, “unlawful activity” includes instances in which the investigation revealed no known legitimate source for the funds being structured. Also for these purposes, the term “anticipated unlawful activity” does not include future Title 26 offenses. The basis for linking the structured funds to additional unlawful activity must receive appropriate supervisory approval and be memorialized in the prosecutor’s records.<sup>2</sup>

Where the requirements of the above paragraph are not satisfied, unless criminal charges are filed, a warrant to seize structured funds may be sought from the court only upon approval from an appropriate official, as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority.<sup>3</sup>
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney’s Office, approval must be obtained from the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS). The Chief of AFMLS may not delegate this approval authority.

The U.S. Attorney or Chief of AFMLS may grant approval if there is a compelling law enforcement reason to seek a warrant, including, but not limited to, reasons such as: serial evasion of the reporting or record keeping requirements; the causing of domestic financial institutions to file false or incomplete reports; and violations committed, or aided and abetted, by persons who are owners, officers, directors or employees of domestic financial institutions.

If the U.S. Attorney or Chief of AFMLS approves the warrant, the prosecutor must send a completed “Structuring Warrant Notification Form” to AFMLS by e-mail at [AFMLS.Structuring@usdoj.gov](mailto:AFMLS.Structuring@usdoj.gov). A copy of that form is attached.

These requirements are effective immediately. For any case in which seizure was effected prior to the issuance of this memorandum, the forfeiture may continue so long as it otherwise comports with all other applicable law and Department policy.

<sup>2</sup> In order to avoid prematurely revealing the existence of the investigation of the additional unlawful activity to the investigation’s targets, there is no requirement that the evidence linking the structured funds to the additional unlawful activity be memorialized in the seizure warrant application.

<sup>3</sup> Although this authority is ordinarily non-delegable, if the U.S. Attorney is recused from a matter or absent from the office, the U.S. Attorney may designate an Acting United States Attorney to exercise this authority, in the manner prescribed by regulation. See 28 C.F.R. § 0.136.



Memorandum for Component Heads and United States Attorneys

Page 3

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

## 2. No Intent to Structure

There may be instances in which a prosecutor properly obtains a seizure warrant but subsequently determines that there is insufficient admissible evidence to prevail at either civil or criminal trial for violations of the structuring statute or another federal crime for which forfeiture of the seized assets is authorized. In such cases, within seven (7) days of reaching this conclusion, the prosecutor must direct the seizing agency to return the full amount of the seized money. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

## 3. 150-Day Deadline

Within 150 days of seizure based on structuring, if a prosecutor has not obtained the approval discussed below, a prosecutor must either file a criminal indictment or a civil complaint against the asset.<sup>4</sup> The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

With the written consent of the claimant, the prosecutor can extend the 150-day deadline by 60 days. Further extensions, even with consent of the claimant, are not allowed, unless the prosecutor has obtained the approval discussed below.

An exception to this requirement is permissible only upon approval from an appropriate official as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority, except as discussed in footnote 3, *supra*.
- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of AFMLS. The Chief of AFMLS may not delegate this approval authority.

If additional evidence becomes available after the seized money has been returned, an indictment or complaint can still be filed.

## 4. Settlement

Settlements to forfeit and/or return a portion of any funds involved in a structuring investigation, civil action, or prosecution, must comply with the requirements set forth in the *Asset Forfeiture Policy Manual* and the *United States Attorneys' Manual*. See *Asset Forfeiture*

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<sup>4</sup> This deadline does not apply to administrative cases governed by the independent time limits specified by the Civil Asset Forfeiture Reform Act.



Memorandum for Component Heads and United States Attorneys

Page 4

Subject: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

*Policy Manual* (2013), Chap. 3; *United States Attorneys' Manual* § 9-113.000 *et seq.* In addition, settlements must be in writing, include all material terms, and be signed by a federal prosecutor. Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.

This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion, and does not alter in any way the Department's authority to enforce federal law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of 31 U.S.C. § 5324(a). This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

VOCATURA'S BAKERY, INC.

*Plaintiff,*

v.

INTERNAL REVENUE SERVICE,

JOHN KOSKINEN, COMMISSIONER  
OF INTERNAL REVENUE,

LORETTA LYNCH, ATTORNEY  
GENERAL OF THE UNITED STATES,

UNITED STATES OF AMERICA,

*Defendants.*

Case No. \_\_\_\_\_

May 24, 2016

**DECLARATION OF DAVID VOCATURA IN SUPPORT OF  
MOTION FOR RETURN OF PROPERTY UNDER RULE 41(g)**

I, DAVID VOCATURA, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Connecticut. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently under oath to the facts set forth below.

2. Along with my brothers Larry and Frankie, as well as my cousin Richard, I own and operate Vocatura's Bakery in Norwich, Connecticut. Richard and I mostly work in the front of the store, Larry mostly bakes the bread, and Frankie both bakes bread and drives a delivery truck—although we all do other tasks as necessary to keep the business running.

3. Vocatura's Bakery is a multi-generation family business, founded by my grandfather in 1919. My parents and their siblings grew up working at the bakery; my generation all grew up working at the bakery; and many of our children also worked at the bakery summers or after school. I have fond memories of being at the bakery as a child, including crawling into the industrial sized oven (while the heat was off, of course) and riding on the baking trays as they circulated like the cars of a carousel.

4. At almost any time of day or night, some member of the Vocatura family is working at the bakery. We bake bread at night, pack it up in the morning, and then sell it throughout the day. My brother Larry is turning seventy years old this year, but he still comes in at night to bake the bread as he has been doing for years. My brother Frankie is over seventy years old, and he still bakes bread and delivers bread. My cousin Richard works at the retail store from 8 a.m. to 8 p.m. on Monday and Tuesday, and from 7 a.m. to 3 p.m. Wednesday through Friday. I typically work from 10:30 a.m. to 8:30 p.m. Wednesday through Friday, and from 8 a.m. to 8 p.m. on Saturday and Sunday.

5. Vocatura's Bakery is a fixture in the community. We have won awards for our bread and other products, including the *Norwich Bulletin* People's Choice Award for "best bakery," the *New London Day* People's Choice Award for "best bakery" and "best sandwiches," and an award for "Best Pizza In Connecticut" from *Connecticut Magazine*. We sell bread to schools, as well as to other successful pizza houses and restaurants.

6. For almost its entire history, the bakery's retail store has operated primarily as a cash business, although we might sometimes also take checks from trusted customers. My grandfather operated the store as a cash business, my father and uncles operated the store as a cash business, and as the current generation took over increasing responsibility for the bakery we

continued to operate the store as a cash business. We operated a cash business simply because that was how it was always done.

7. Every day, we put cash earned through the business in a safe in the small office at the rear of the store. Then, once a week, I make a trip to the bank to deposit that week's earnings. My Uncle John was previously in charge of making that weekly bank deposit, but I took over from him gradually as his health declined and after he died in 2007. All the cash that I deposit in the bank is legitimately earned through hard work at our bakery business.

8. On May 1, 2013, a group of eight to ten armed IRS agents arrived unannounced at the bakery. I was working at the front of the store at the time. My brother Larry had just left the bakery, so I called him and asked him to return.

9. The agents asked to speak to me in the back of the bakery, where we bake the bread, and a group of agents surrounded me as we spoke. Other agents took my brother Larry to the bakery's small office to interrogate him there. The agents asked me a series of outlandish questions, including whether we were dealing drugs or operating a prostitution ring. Obviously, I told them we were not.

10. During this interview, I repeatedly asked if I needed to speak with a lawyer. The agents responded that it was not necessary.

11. At the conclusion of the interview, the agents informed me that the IRS had seized the bakery's entire bank account—over \$68,000. I asked what we had to do to get the money back, and the agents gave me the phone number for Assistant United States Attorney Peter Jongbloed. They advised that I call to speak with him to seek the return of the money.

12. The agents left me with a copy of the seizure warrant. I have attached a copy of that warrant as Exhibit A.



13. We were forced to scramble to find additional funds to keep the business running after the seizure. Fortunately, we had money in a savings account, which we were able to use to replenish the bakery's checking account. If we had not had that extra money, we very well might have been put out of business by the seizure of our account.

14. Immediately after the agents left, I called the bakery's corporate lawyer, and I understand that he reached out to Assistant United States Attorney Jongbloed to request the return of the money. Our corporate lawyer also referred us to another attorney to represent us in connection with the seizure. I understand that attorney also reached out to Assistant United States Attorney Jongbloed to seek to negotiate the return of the money.

15. On June 12, 2013, the IRS sent notice that the agency was seeking to forfeit the \$68,382.22 seized from the bakery's account. I have attached a copy of that notice as Exhibit B.

16. Our attorneys filed a claim to the money on July 8, 2013. I have attached a copy of the claim and accompanying correspondence as Exhibit C.

17. Our attorneys were in regular contact with Assistant United States Attorney Jongbloed, seeking to find a way to resolve the case. Jongbloed asked for financial information relating to the bakery and its owners, and we provided all the information that was requested. For instance, we provided significant information about our personal net worth, personal assets and liabilities, and monthly cash flow. This back-and-forth with the government continued through at least August 2014.

18. Then, on October 25, 2014, the *New York Times* ran a front-page article about the IRS using the structuring laws to seize money from other small businesses. From that time forward, until over a year later in February 2016, I understand that there was no further contact with Jongbloed about our case.

19. On February 18, 2016, I received through my attorneys a copy of a proposed plea agreement, under which I would plead guilty to criminal structuring charges and face 37 to 46 months in prison as well as significant forfeitures and penalties—including forfeiture of the initial \$68,382.22 seized in May 2013. A copy of that proposed plea agreement is attached as Exhibit D.

20. My attorneys also forwarded a similar proposed plea agreement for my brother, Larry. A copy of that proposed plea agreement is attached as Exhibit E.

21. My brother and I rejected the government's proposed plea agreements, although we understood that by doing so we would risk criminal prosecution. We do not believe that we have done anything wrong, and we are not willing to give up our property or go to prison simply because of how we deposited the bakery's money in the bank.

22. I understand that Jongbloed told my attorney that the IRS would begin a criminal tax investigation if we did not reconsider our decision to reject the plea deals. I understand that the same IRS agents who seized my money would be conducting the investigation.

23. On May 10, 2016, I received through my attorney a copy of a grand jury subpoena directed to Vocatura's Bakery, Inc. A copy of that subpoena is attached as Exhibit F.

24. Based on my understanding of what Jongbloed told my attorney when we refused the plea deal, it is my feeling that the government would not have served us with that subpoena if not for our refusal to plead guilty to structuring.

25. I worry that the government's prolonged delay has prejudiced my ability to defend myself against the government's accusations. For instance, our longtime accountant passed away during the three years following the seizure, and I worry that his absence may also prejudice our ability to defend ourselves against accusations from the government. Also, in the

three years that have passed since the seizure, I have observed changes in the personnel at our bank, and I worry that the bank employees who we've regularly interacted with may no longer be employed at the bank. The government's subpoena also seeks financial records from eight years ago, and I worry that the passage of time will cause memories to fade and make it more difficult to put those records in the proper context.

26. The government's conduct in this case also has exacted a significant personal toll. These past three years have been extraordinarily stressful, as the government has been demanding that we agree to give up our money and go to jail even though we feel we have done nothing wrong. I have suffered stomach pains and other physical symptoms of stress. My wife and I are both cancer survivors, and we also worry that the stress of this experience could cause a recurrence of the disease. It also has been difficult for the family, as my wife and I worry how our two teenage children will be affected when they hear about these issues.

27. Prior to this experience, I have never been accused of a crime by the government. I have never been arrested, much less charged with a criminal offense.

28. I cannot believe that the government has singled us out for this kind of treatment. The government is supposed to protect the public, but in our case the government is trying to take our money and put me and my brother in jail just because I deposited legitimately-earned cash in the bank in a certain way.

29. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

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

Executed this 23 day of May, 2016.

A handwritten signature in black ink, appearing to read "David Vocatura", is written over a horizontal line.

David Vocatura

# Exhibit A



ADSA

Peter Jongbloed

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 3:13M (TPS)

DIME BANK

ACCOUNT NUMBER [REDACTED]

Defendant.

SEIZURE WARRANT

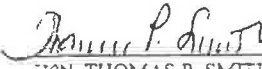
TO: ANY SPECIAL AGENT OF THE CRIMINAL DIVISION OF THE INTERNAL REVENUE SERVICE OR OTHER FEDERAL OFFICER:

An affidavit having been made before me by Special Agent Maria Papageorgiou, Criminal Division of the Internal Revenue Service, that she has reason to believe that the Defendant, total funds of \$353,200 on deposit in Dime Bank, whose main office is located at 290 Salem Turnpike, Norwich, Connecticut 06360, in account number [REDACTED] in the name and/or benefit of Vocaturas Bakery/Richard Vocatura, Lawrence Vocatura, Frank Vocatura, and David Vocatura ("Subject Funds"), constitutes property involved in a violation of 31 U.S.C. § 5324 and/or property traceable to any such violation, and as I am satisfied that there is probable cause to believe that the Subject Funds constitute property involved in a violation of 31 U.S.C. § 5324 and/or property traceable to any such violation, and that the Subject Funds are therefore subject to seizure and forfeiture pursuant to 31 U.S.C. § 5317(c), so that grounds for issuance of a Seizure Warrant exist as stated in the supporting affidavit:

YOU ARE HEREBY AUTHORIZED AND COMMANDED pursuant to 18 U.S.C. § 981(b)(2)(B), and 31 U.S.C. § 5317, to search for and seize the Subject Funds, within ten days of the issuance of this Warrant, leaving a copy of this Warrant and a receipt for the property taken, and prepare a written inventory of the property seized and promptly return this Warrant to a United States Magistrate Judge in the District of Connecticut, as required by law.

IT IS FURTHER ORDERED that this Warrant and the Application and Affidavit shall be sealed until otherwise ordered by the Court, except that a copy of the Warrant may be provided to the employees of Dime Bank to the extent needed to execute the Warrant.

Issued at Hartford, Connecticut, this 2<sup>nd</sup> day of April, 2013.

  
\_\_\_\_\_  
HON. THOMAS P. SMITH  
UNITED STATES MAGISTRATE JUDGE

# Exhibit B



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

CRIMINAL INVESTIGATION

June 12, 2013

Mr. David Vocatura  
1 Orleans Court  
Westerly, Rhode Island 02891

In Re:

04130023-01	U.S. Currency seized at Dime Bank, Norwich, CT	\$68,382.22
-------------	--	-------------

Dear Mr. Vocatura:

Our records indicate that you may have an ownership interest in the above-described U.S. currency seized by the Internal Revenue Service (IRS) at Dime Bank, 290 Salem Turnpike, Norwich on May 1, 2013. The property is subject to forfeiture to the United States Government in that it was involved in a transaction, or attempted transaction, in violation(s) of:

☐ Title 31 U.S.C. 5313(a)  
☒ Title 31 U.S.C. 5324(a)

☐ Title 18 U.S.C. 1956  
☐ Title 18 U.S.C. 1957

Title 18 U.S.C. 981(a)(1)(A) and Title 31 U.S.C. 5317(c)(2) provide that any property involved in a transaction, or attempted transaction, in violation of the above statutes(s), or any property traceable to such property, may be seized and forfeited to the United States Government.

This letter is to advise you that administrative proceedings have been initiated to perfect forfeiture of the property. Notice of these proceedings, as required by law, is scheduled for publication beginning on Wednesday, June 12, 2013 in the Harford Courant. A copy of the Notice of Seizure to be published is enclosed for your information. This property is subject to forfeiture 30 days from the date of last publication of this notice. Absent the filing of a claim of ownership by you or any other person transferring this matter to U.S. District Court, the property will be administratively forfeited by the IRS Boston Field Office on July 29, 2013.

If you have an ownership interest in the property, then a judicial determination or administrative review is available to you.

### **JUDICIAL DETERMINATION**

If you disagree with the IRS's claim that the property is subject to forfeiture and desire a judicial determination of the matter, then you must file a claim of ownership. Your claim must be received by July 17, 2013. You are cautioned that the timely filing of a claim of ownership is a necessary condition for obtaining a judicial determination.

Your claim of ownership must identify the property and explain the extent of your ownership interest. You must provide documentary evidence of your interest, if available, and state that your claim is not frivolous. Your claim must be signed under oath, subject to the penalty of perjury. For your ready reference, the acceptable language required by statute is as follows:

I declare, (or certify, or verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on (Sworn Date)  
(Party Signature)

Unsupported submissions signed by attorneys are insufficient to satisfy the requirement that claims be personally executed. You do not need a specific form in order to file your claim; however, a claim of ownership form is enclosed for your convenience. You should send your claim of ownership to the Internal Revenue Service, Special Agent in Charge, IRS-CI, 150 Court Street, Room 214, New Haven, CT 06510-2053, Attn: Asset Forfeiture Coordinator Steven Hickey. It is suggested, but not required, that you send your claim of ownership by certified mail, return receipt requested.

### **RELEASE OF PROPERTY TO AVOID SUBSTANTIAL HARDSHIP**

If you choose to contest the forfeiture by filing a claim of ownership as set forth above, you may be entitled to the immediate release of the seized property, pursuant to 18 U.S.C. § 983(f), if:

1. You have a possessory interest in the property;
2. You have sufficient ties to the community to provide assurance that the property will be available at the time of trial;
3. You demonstrate that continued possession by the Government, pending the final disposition of any forfeiture proceeding, will cause you a substantial hardship. Examples of qualifying hardships include: preventing the functioning of a business; preventing an individual from working; or leaving an individual homeless;
4. You demonstrate that the likely hardship from the Government's continued possession of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred, if it is returned to you while any proceedings are pending; and



5. All of the following conditions must exist:

- a. The property is not evidence of a violation of the law, is not currency, or other monetary instruments, or electronic funds (such as bank accounts), unless such currency, monetary instruments, or electronic funds constitute the assets of a legitimate business which has been seized;
- b. The property is not contraband, or by reason of its design or other characteristics, is particularly suitable for use in an illegal activity; and
- c. The property is not likely to be used to commit additional criminal acts if it is returned to you.

If you wish to seek release of qualifying property, you must submit a request for possession of the property setting forth the basis on which the requirements listed above are met. Your request should be sent to the Internal Revenue Service, Special Agent in Charge, IRS-CI, 150 Court Street, Room 214, New Haven, CT 06510, Attn: Asset Forfeiture Coordinator Steven Hickey. It is suggested, but not required, that you send your request by certified mail, return receipt requested.

In the event the property is not released to you within 15 days following our receipt of your request, or if your request is denied, you may file a petition in district court for the release of the property. Additional information relative to the filing of a petition with the court will be provided to you if your request is denied. It is also available, upon request, by contacting Asset Forfeiture Coordinator Steven Hickey at the address listed above, or by calling [REDACTED].

**ADMINISTRATIVE REVIEW**  
**BY THE INTERNAL REVENUE SERVICE**

As to administrative review, if you would like to request a pardon of the forfeited property, or you believe there are mitigating circumstances that should be considered, you must submit a Petition for Remission or Mitigation of Forfeiture pursuant to 19 U.S.C. § 1618. The petition must identify the property seized, the date of seizure, and proof of your ownership interest in the property. You should describe the facts and circumstances that you believe justify the return of the property. Copies of documentary evidence should be submitted where appropriate. The petition should be signed, under oath subject to the penalty of perjury as noted under **Judicial Determination**. Your petition is subject to investigation. Should the Chief, Criminal Investigation, find the violation was committed without willful negligence, or without any intention on your part to defraud the Government or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of the resulting forfeiture, then the forfeiture may be remitted or mitigated as is deemed reasonable and just.

Your petition must be submitted to the Internal Revenue Service, Special Agent in Charge, IRS-CI, 150 Court Street, Room 214, New Haven, CT 06510, Attn: Asset Forfeiture Coordinator Steven Hickey, within 35 days of the mailing of this letter.

**WARNING CONCERNING FORFEITURE PROCEDURE**

The administrative forfeiture is not subject to judicial review. In the event that a claim of ownership is timely filed, the forfeiture would convert to a judicial matter as noted under **Judicial Determination**. In this case, any pending Petition for Remission or Mitigation of Forfeiture of the property would be transferred to the United States Attorney for appropriate action.

You are cautioned that the timely filing of a Petition for Remission or Mitigation of Forfeiture does not extend the time for filing a valid claim of ownership. If you have any questions concerning this, or any other matter in this letter, please contact Asset Forfeiture Coordinator Steven Hickey at [REDACTED]

Sincerely,

*William P. Offord* <sup>E</sup>

William P. Offord  
Special Agent in Charge,  
Criminal Investigation  
Boston Field Office

Enclosures: (2)  
Legal Notice  
Seized Asset Claim Form

***NOTICE OF SEIZURE***

***TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
CRIMINAL INVESTIGATION***

On May 1, 2013, pursuant to a seizure warrant, \$68,382.22 in United States currency was seized from Dime Bank, 290 Salem Turnpike, Norwich, CT. This property is intended for administrative forfeiture for violations of Title 31 U.S.C. § 5324, pursuant to Title 18 U.S.C. § 981. Any person claiming an ownership interest in this property must file a claim on or before 30 days from the date of the last publication, which is July 26, 2013, otherwise, the property will be forfeited and disposed of according to law. The claim should be mailed to the Internal Revenue Service, Criminal Investigation, Special Agent in Charge, IRS-CI, 150 Court Street, Room 214, New Haven, CT 06510, Attn: Steven Hickey. For further information contact Special Agent Steven Hickey at [REDACTED].



**SEIZED ASSET CLAIM FORM**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Date of Seizure \_\_\_\_\_

Seizure Location (Address, City, State) \_\_\_\_\_  
\_\_\_\_\_

**Part I**

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

**Part II**

State your interest in each item of property listed above. Provide any documents that support your claim of interest, such as titles, registrations, bills of sale, receipts, and so forth. Attach additional sheets of paper if more space is needed.

**Part III (Attestation and Oath)**

I attest and declare *under penalty of perjury* that my claim to this property is not frivolous and that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

***A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.***

# Exhibit C



**CONVICER, PERCY & GREEN, LLP**  
*ATTORNEYS AND COUNSELORS AT LAW*

---

Richard G. Convicer  
Robert J. Percy  
Eric L. Green  
Jeffrey M. Sklarz  
Laura E. Pisarello

**CERTIFIED MAIL**

July 8 2013

Internal Revenue Service  
Special Agent in Charge IRS-CI  
150 Court Street, Room 214  
New Haven, CT 06510-2053

Attn: Asset Forfeiture Coordinator Steven Hickey

RE: Vocaturas Bakery  
04130023-01  
U.S Currency Seized at Dime Bank, Norwich, CT  
\$68,382.22

Dear Special Agent Hickey

Reference is made to your letter dated June 12, 2013 a copy of which is attached.

Please find enclosed the Seized Asset Claim Form for this matter.

Very truly yours,



Robert J. Percy  
Enclosure

C: AUSA Peter S. Jongbloed

**MAIN OFFICE:**

701 Hebron Avenue  
Glastonbury, CT 06033

Tel: (860) 657-9040 Fax: (860) 657-9039

60 Long Ridge Rd., Ste. 202  
Stamford, CT 06902

Tel: (203) 602-5550 Fax: (203) 286-1311

Riverside Center  
275 Grove Street, Suite 2-400  
Newton, MA 02466

Tel: (617) 999-2448 Fax: (617) 663-6108

**SEIZED ASSET CLAIM FORM**

Name Vocaturas Bakery  
 Address 695 Boswell Ave. Norwich, CT 06360  
 Telephone Number (860) 887-2220  
 Date of Seizure May 1, 2013  
 Seizure Location (Address, City, State) Dime Bank  
Norwich, CT 06360

**Part I**

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

*See Attachment A*

**Part II**

State your interest in each item of property listed above. Provide any documents that support your claim of interest, such as titles, registrations, bills of sale, receipts, and so forth. Attach additional sheets of paper if more space is needed.

*See Attachment A*

**Part III (Attestation and Oath)**

I attest and declare *under penalty of perjury* that my claim to this property is not frivolous and that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

Vocaturas Bakery

by LAURENCE VOCATURA  
 Name (Print)

7/8/13  
 Date

ITS PRESIDENT

*[Signature]*  
 Signature

**A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.**

**ATTACHMENT A**

**Vocaturas Bakery  
695 Boswell Avenue  
Norwich, Connecticut 06360**

The following statement of facts is made in support of the claim for the seized \$68,382.22 in U.S. Currency seized at Dime Bank, Norwich, CT on May 1, 2013, case # 04230023-01:

- Vocaturas Bakery (the "Company") through its officers and/or employees deposited all of the funds involved weekly into the account at Dime Bank, Norwich, CT.
- The funds deposited represented the Company's cash and check receipts from its bakery business located at the above address.
- The funds were all generated from the legal commercial bakery business activity of the Company.
- At no time did the Company intend to violate any federal laws.
- The funds seized belong entirely to the Company.

# Exhibit D



**U.S. Department of Justice**

*United States Attorney  
District of Connecticut*

*Connecticut Financial Center  
157 Church Street, 25<sup>th</sup> Floor  
New Haven, Connecticut 06510*

*(203)821-3700  
Fax (203) 773-5376  
[www.justice.gov/usao/ct](http://www.justice.gov/usao/ct)*

Subject to internal review

February 18, 2016

Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
71 Hebron Avenue  
Glastonbury, Connecticut 06033

Re: United States v. David Vocatura  
Case No. 3:16 \_\_\_\_\_ ( )

Dear Counsellors:

This letter confirms the plea agreement between your client, David Vocatura (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal case.

**THE PLEA AND OFFENSE**

The defendant agrees to plead guilty to a single count Information charging him with conspiring to structure financial transactions, in violation of 31 U.S.C. §§ 5324(a)(3) and 5324(d)(1), and 31 C.F.R. § 103.11 and 18 U.S.C. § 2 (aiding and abetting). The defendant understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied:

1. The defendant engaged in currency transactions with or at a domestic financial institution;
2. He possessed knowledge that a report is required for currency transactions in excess of \$10,000;
3. The defendant engaged in a series of currency transactions in amounts less than \$10,000.01;
4. He acted with the intent to evade the reporting requirement;  
and
5. The defendant did so as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period.



Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
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### **THE PENALTIES**

The offense carries a maximum penalty of 10 years' imprisonment and a \$500,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than three years to begin at the expiration of any term of imprisonment. The defendant understands that, should he violate any condition of the supervised release, he may be required to serve a further term of imprisonment of up to two years with no credit for time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$500,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on each count of conviction. The defendant agrees to pay the \$100 special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Unless otherwise ordered, should the Court impose a fine or restitution of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of the fine or restitution not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine or restitution pursuant to 18 U.S.C. § 3572 (h), (i) and § 3612(g).

#### **Restitution**

In addition to the other penalties provided by law, the Court must also order, where appropriate, that the defendant make restitution under 18 U.S.C. § 3663A. The parties agree that no bank suffered a loss and, therefore, there is no restitution in this case.

#### **Forfeiture**

The defendant agrees that he shall forfeit to the United States of America pursuant to 31 U.S.C. § 5317(c) and based on his illegal structuring activity charged in the Information, all right, title, and interest in \$115,000 of the United States currency involved in the structuring offense, and all property traceable to such property. This property includes but is not limited to approximately \$2,854,980 in United States currency, which funds he or others deposited in structured amounts at Dime Bank from March 5, 2007 to April 28, 2013.

On May 1, 2013, pursuant to a court-authorized federal seizure warrant, Special Agents of the Internal Revenue Service ("IRS") seized \$68,382.22 from commercial business account number ending in 2445 in the name of Vocaturas Bakery at Dime Bank. The defendant agrees to the forfeiture of those seized funds, with half (\$34,191.11) being applied to his \$115,000

Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
Page 3

forfeiture amount, leaving a balance of \$80,808.89. The other half of the seized funds is likewise being applied to his brother Lorenzo Vocatura's forfeiture of \$115,000.

The defendant further agrees that the agreed-upon money judgment forfeiture shall become a part of the judgment of sentence, and the United States shall be entitled to pursue the seizure and forfeiture of any and all substitute assets in order to satisfy the money judgment forfeiture, pursuant to 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e), according to the dates above.

The defendant agrees to consent to the entry of an order of forfeiture for the above-specified money judgment amount, and waives the requirements of Rules 32.2 and 43(a), Fed. R. Crim. P., regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), Fed. R. Crim. P., at the time his guilty plea is accepted.

The defendant agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of the above-listed assets covered by this agreement. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also understands and agrees that by virtue of his plea of guilty he waives any rights or cause of action to claim that he is a "substantially prevailing party" for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

## **THE SENTENCING GUIDELINES**

### **Applicability**

The defendant understands that the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case and is not bound by this plea agreement. The defendant agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Office. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated, including if the sentence is outside any of the ranges set forth in this agreement.

### **Acceptance of Responsibility**

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's adjusted offense level under § 3E1.1(a) of the Sentencing Guidelines, based on



Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
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the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. Moreover, should the defendant qualify for a decrease under § 3E1.1(a) and his offense level determined prior to the operation of subsection (a) is level 16 or greater, the Government will file a motion with the Court pursuant to § 3E1.1(b) which recommends that the Court reduce the defendant's Adjusted Offense Level by one additional level based on his prompt notification of his intention to enter a plea of guilty. The defendant understands that the Court is not obligated to accept the Government's recommendations on the reductions.

The above-listed recommendations are conditioned upon the defendant's affirmative demonstration of acceptance of responsibility, by (1) truthfully admitting the conduct comprising the offense(s) of conviction and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 of the Sentencing Guidelines, and (2) truthfully disclosing to the United States Attorney's Office and the United States Probation Office personal information requested, including the submission of a complete and truthful financial statement detailing the defendant's financial condition.

In addition, the Government expressly reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant engages in any acts, unknown to the Government at the time of the signing of this agreement, which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (§ 3E1.1 of the Sentencing Guidelines); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (§ 3C1.1 of the Sentencing Guidelines); or (3) constitute a violation of any condition of release. Moreover, the Government reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant seeks to withdraw his guilty plea or takes a position at sentencing, or otherwise, which, in the Government's assessment, is inconsistent with affirmative acceptance of personal responsibility. The defendant understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make one or both of the recommendations or seeks denial of the adjustment for acceptance of responsibility.

#### Stipulation

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into the attached stipulation, which is a part of this plea agreement. The defendant understands that this stipulation does not set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

#### Guideline Stipulation

The parties agree as follows:

Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
Page 5

The Guidelines Manual in effect on the date of sentencing is used to determine the applicable Guidelines range.

The defendant's base offense level under U.S.S.G. § 2S1.3(a)(2) is 22 because the base offense level is 6 plus 14 levels under U.S.S.G. § 2B1.1(b)(1)(I) as the total amount structured (\$2,854,980) is greater than \$1.5 million and less than \$3.5 million. This level is increased by two levels under U.S.S.G. § 2S1.3(b)(2) because the defendant was convicted of a Title 31 offense and committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12-month period, resulting in an adjusted offense level of 24. Three levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, as noted above, resulting in a total offense level of 21.

Based on an initial assessment, the parties agree that the defendant falls within Criminal History Category I. The parties reserve the right to recalculate the defendant's Criminal History Category and corresponding sentencing ranges if this initial assessment proves inaccurate.

A total offense level 21, assuming a Criminal History Category I, would result in a range of 37 to 46 months of imprisonment (sentencing table) and a fine range of \$15,000 to \$150,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of one to three years. U.S.S.G. § 5D1.2.

The defendant reserves his right to seek a departure or non-Guidelines sentence, and the Government reserves its right to object and seek whatever sentence it deems appropriate. The defendant will contend that, among other things, the Guideline range overstates the seriousness of the offense. Neither party will suggest that the Probation Department consider an adjustment not set forth herein, or suggest that the Court sua sponte consider an adjustment not identified above.

The defendant understands that the Court is not bound by this agreement on the Guideline ranges specified above. The defendant further understands that he will not be permitted to withdraw the guilty plea if the Court imposes a sentence outside any of the ranges set forth in this agreement.

In the event the United States Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the parties reserve the right to defend any sentencing determination, even if it differs from that stipulated by the parties, in any post-sentencing proceeding.

Waiver of Right to Appeal or Collaterally Attack Conviction and Sentence

The defendant acknowledges that under certain circumstances he is entitled to challenge his conviction and sentence. The defendant agrees not to appeal or collaterally attack his conviction in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255



Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
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and/or § 2241. Nor will he pursue such an appeal or collateral attack to challenge the sentence imposed by the Court if that sentence does not exceed 46 months of imprisonment, a three-year term of supervised release, a \$150,000 fine, a \$115,000 forfeiture order as outlined above, and a \$100 special assessment, even if the Court imposes such a sentence based on an analysis different from that specified above. Similarly, the Government will not appeal a sentence imposed within or above the stipulated sentencing range. The Government and the defendant agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with, in whole or in part, the undischarged portion of any other sentence that has been imposed on the defendant at the time of sentencing in this case. The defendant acknowledges that he is knowingly and intelligently waiving these rights. Furthermore, the parties agree that any challenge to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentence that is inconsistent with (or not addressed by) this waiver. Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum.

#### Information to the Court

The Government reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to material in its file, with the exception of grand jury material.

### **WAIVER OF RIGHTS**

#### Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant acknowledges that he is knowingly and intelligently waiving his right to be indicted.

#### Waiver of Trial Rights and Consequences of Guilty Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, the right to testify and present evidence, and the right to compel the attendance of witnesses to testify in his defense. The defendant understands that



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by pleading guilty he waives those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that, if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

#### Waiver of Statute of Limitations

The defendant agrees that, should the conviction following defendant's guilty plea be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

#### REPRESENTATION BY CONFLICT FREE COUNSEL

The defendant acknowledges his complete satisfaction with the representation and advice received from his undersigned attorneys. The defendant understands that he is being represented by the same retained attorneys who represent his brother Lorenzo Vocatura, a co-defendant, for the same offense conduct. The defendant understands that he has the right to the effective assistance of counsel, including separate representation, and that he is entitled to conflict free representation. He submits that his and his brother's interests are the same in this case and his interests do not conflict with those of his brother. The defendant voluntarily and knowingly waives his right to separate representation in this case and wishes to proceed with his attorneys.

#### ACKNOWLEDGMENT OF GUILT AND VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

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The defendant acknowledges that he is not a “prevailing party” within the meaning of Public Law 105-119, section 617 (“the Hyde Amendment”) with respect to the count of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek attorney’s fees and other litigation expenses under the Hyde Amendment.

#### **SCOPE OF THE AGREEMENT**

The defendant acknowledges that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

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The defendant understands that he will be adjudicated guilty of each offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to hold public office, to serve on a jury, to possess firearms and ammunition, and in some states, the right to vote. Further, the defendant understands that if he is not a citizen of the United States, a plea of guilty may result in removal from the United States, denial of citizenship, and denial of admission to the United States in the future. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Federal Bureau of Prisons or the United States Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

#### **SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH**

The defendant’s guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participating in the structuring of financial transactions to evade reporting requirements, which forms the basis of the Information in this case.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his guilty plea.

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**NO OTHER PROMISES**

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

DEIRDRE M. DALY  
UNITED STATES ATTORNEY

---

PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

---

DAVID VOCATURA  
The Defendant

---

Date

I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.

---

RICHARD G. CONVICER, ESQ.  
ROBERT J. PERCY, ESQ.  
Attorneys for the Defendant

---

Date



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**STIPULATION OF OFFENSE CONDUCT**

The defendant and the Government stipulate to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the Information.

1. From on or about March 5, 2007 through on or about April 28, 2013, the defendant and his co-defendant brother Lorenzo Vocatura along with two other family members owned Vocaturas Bakery, a wholesale and retail bakery in Norwich, Connecticut. The retail store only accepted cash. The defendant was the treasurer and handled the business's finances. Lorenzo Vocatura, who uses the first name Lawrence, was the president. Vocaturas Bakery maintained a commercial business account ending in 2445 in its name at Dime Bank in Norwich ("Vocaturas Account"). All four owners had signature authority over the account. Dime Bank was a domestic financial institution with branch offices in Connecticut.

2. From on or about March 5, 2007 through on or about April 28, 2013, the defendant and his codefendant conducted a total of \$2,854,980 in cash deposits into the Vocaturas Account in amounts less than \$10,000.01. Approximately 309 cash deposits in even dollar increments between \$7,000 and 9,900 were made into the Vocaturas Account. The regular weekly deposits of cash for more than six years averaged \$9,239, with 29 deposits in amounts between \$7,000 and \$8,000, 62 in amounts between \$8,100 and \$9,080, and 218 in amounts between \$9,100 and \$9,900. The defendants used a Dime Bank bag to make the cash deposits.

3. By conducting these financial cash transactions in amounts less than \$10,000.01, the defendant intended that the currency transaction reporting requirement be evaded.

4. On May 1, 2013, IRS special agents interviewed the defendant and Lorenzo Vocatura. Both voluntarily provided oral statements.

(a) The defendant said the following: He made a majority of the deposits for the bakery business and that he was aware of a form that was required to be filed by the bank when a transaction was in excess of \$10,000. After his uncle, the former treasurer of Vocaturas Bakery, died in 2007, his brother Lorenzo Vocatura received a phone call from an unknown party at Dime Bank informing him that a deposit had exceeded \$10,000 and that they needed to file some paperwork. This prompted the defendant to keep the deposits under the \$10,000 mark. [The defendant's uncle died on February 18, 2007.]

(b) Lorenzo Vocatura said the following: That his brother David Vocatura handled the finances for Vocaturas Bakery, that David made all the business bank deposits, and that he, Lorenzo, only goes to the bank once a month. He was aware the bank must fill out a form if deposits of cash are in amount of \$10,000 or more. He was under the impression that the bank did not want to do the paperwork although no one at the bank ever told him not to deposit more than \$10,000 at a time. There was often more than \$10,000 on hand at the bakery, but that cash was held back in order to make deposits less than \$10,000 to avoid the filing of the form. The remaining cash was kept in a safe in the office at the bakery. He had conversations with David

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Vocatura about the deposits and they agreed to keep all of the cash deposits under \$10,000 so that they did not have to fill out a Currency Transaction Report. This was the policy he and David Vocatura agreed upon because they did not want to be bothered with the form. The cash deposits into the bank were receipts from the bakery business. During the interview, Lorenzo Vocatura opened the safe, took out a stack of cash while leaving some cash in the safe, and estimated that there was more than \$10,000 in cash in the safe. He estimated that about 80% of the bakery's receipts are reported on the business's tax returns and he described that as a high percentage. David Vocatura handled the finances and David would know a more accurate percentage. The remaining 20% of the receipts gets put into the safe in the office. He sometimes takes a couple of hundred dollars from the end of the day receipts and he puts it into his pocket. Depending on how busy the bakery was, the amount of money he took could be as high as \$2,000 a month and as low as \$400 a month. The cash he took did not come from the cash register and that it came from cash left over. He did not report this cash on his personal tax returns.

5. Also on May 1, 2013, the IRS, pursuant to a federal seizure warrant, seized \$68,382.22 from the Vocaturas Account at Dime Bank.

6. Title 31, United States Code, Section 5313(a), and the regulations promulgated by the Secretary of the Treasury, required domestic financial institutions, such as Dime Bank, to file a report of cash transactions in excess of \$10,000. These reports are known as Currency Transaction Reports ("CTRs"). These reports are provided to the IRS and are available to federal law enforcement authorities.

The written stipulation above is incorporated into the preceding plea agreement. The defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

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DAVID VOCATURA  
The Defendant

---

PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

---

RICHARD G. CONVICER, ESQ.  
ROBERT J. PERCY, ESQ.  
Attorneys for the Defendant



# Exhibit E



**U.S. Department of Justice**

*United States Attorney  
District of Connecticut*

*Connecticut Financial Center  
157 Church Street, 25<sup>th</sup> Floor  
New Haven, Connecticut 06510*

*(203)821-3700  
Fax (203) 773-5376  
[www.justice.gov/usao/ct](http://www.justice.gov/usao/ct)*

Subject to internal review

February 18, 2016

Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
71 Hebron Avenue  
Glastonbury, Connecticut 06033

Re: United States v. Lorenzo Vocatura  
Case No. 3:16 ( )

Dear Counsellors:

This letter confirms the plea agreement between your client, Lorenzo Vocatura (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal case.

**THE PLEA AND OFFENSE**

The defendant agrees to plead guilty to a single count Information charging him with conspiring to structure financial transactions, in violation of 31 U.S.C. §§ 5324(a)(3) and 5324(d)(1), and 31 C.F.R. § 103.11 and 18 U.S.C. § 2 (aiding and abetting). The defendant understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied:

1. The defendant engaged in currency transactions with or at a domestic financial institution;
2. He possessed knowledge that a report is required for currency transactions in excess of \$10,000;
3. The defendant engaged in a series of currency transactions in amounts less than \$10,000.01;
4. He acted with the intent to evade the reporting requirement;  
and
5. The defendant did so as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period.

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### **THE PENALTIES**

The offense carries a maximum penalty of 10 years' imprisonment and a \$500,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than three years to begin at the expiration of any term of imprisonment. The defendant understands that, should he violate any condition of the supervised release, he may be required to serve a further term of imprisonment of up to two years with no credit for time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$500,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on each count of conviction. The defendant agrees to pay the \$100 special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Unless otherwise ordered, should the Court impose a fine or restitution of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of the fine or restitution not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine or restitution pursuant to 18 U.S.C. § 3572 (h), (i) and § 3612(g).

#### **Restitution**

In addition to the other penalties provided by law, the Court must also order, where appropriate, that the defendant make restitution under 18 U.S.C. § 3663A. The parties agree that no bank suffered a loss and, therefore, there is no restitution in this case.

#### **Forfeiture**

The defendant agrees that he shall forfeit to the United States of America pursuant to 31 U.S.C. § 5317(c) and based on his illegal structuring activity charged in the Information, all right, title, and interest in \$115,000 of the United States currency involved in the structuring offense, and all property traceable to such property. This property includes but is not limited to approximately \$2,854,980 in United States currency, which funds he or others deposited in structured amounts at Dime Bank from March 5, 2007 to April 28, 2013.

On May 1, 2013, pursuant to a court-authorized federal seizure warrant, Special Agents of the Internal Revenue Service ("IRS") seized \$68,382.22 from commercial business account number ending in 2445 in the name of Vocaturas Bakery at Dime Bank. The defendant agrees to the forfeiture of those seized funds, with half (\$34,191.11) being applied to his \$115,000

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forfeiture amount, leaving a balance of \$80,808.89. The other half of the seized funds is likewise being applied to his brother David Vocatura's forfeiture of \$115,000.

The defendant further agrees that the agreed-upon money judgment forfeiture shall become a part of the judgment of sentence, and the United States shall be entitled to pursue the seizure and forfeiture of any and all substitute assets in order to satisfy the money judgment forfeiture, pursuant to 21 U.S.C. § 853(p) and Fed. R. Crim. P. 32.2(e), according to the dates above.

The defendant agrees to consent to the entry of an order of forfeiture for the above-specified money judgment amount, and waives the requirements of Rules 32.2 and 43(a), Fed. R. Crim. P., regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), Fed. R. Crim. P., at the time his guilty plea is accepted.

The defendant agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure or forfeiture of the above-listed assets covered by this agreement. The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also understands and agrees that by virtue of his plea of guilty he waives any rights or cause of action to claim that he is a "substantially prevailing party" for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

## **THE SENTENCING GUIDELINES**

### **Applicability**

The defendant understands that the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case and is not bound by this plea agreement. The defendant agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Office. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated, including if the sentence is outside any of the ranges set forth in this agreement.

### **Acceptance of Responsibility**

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's adjusted offense level under § 3E1.1(a) of the Sentencing Guidelines, based on



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the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. Moreover, should the defendant qualify for a decrease under § 3E1.1(a) and his offense level determined prior to the operation of subsection (a) is level 16 or greater, the Government will file a motion with the Court pursuant to § 3E1.1(b) which recommends that the Court reduce the defendant's Adjusted Offense Level by one additional level based on his prompt notification of his intention to enter a plea of guilty. The defendant understands that the Court is not obligated to accept the Government's recommendations on the reductions.

The above-listed recommendations are conditioned upon the defendant's affirmative demonstration of acceptance of responsibility, by (1) truthfully admitting the conduct comprising the offense(s) of conviction and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 of the Sentencing Guidelines, and (2) truthfully disclosing to the United States Attorney's Office and the United States Probation Office personal information requested, including the submission of a complete and truthful financial statement detailing the defendant's financial condition.

In addition, the Government expressly reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant engages in any acts, unknown to the Government at the time of the signing of this agreement, which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (§ 3E1.1 of the Sentencing Guidelines); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (§ 3C1.1 of the Sentencing Guidelines); or (3) constitute a violation of any condition of release. Moreover, the Government reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant seeks to withdraw his guilty plea or takes a position at sentencing, or otherwise, which, in the Government's assessment, is inconsistent with affirmative acceptance of personal responsibility. The defendant understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make one or both of the recommendations or seeks denial of the adjustment for acceptance of responsibility.

#### Stipulation

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into the attached stipulation, which is a part of this plea agreement. The defendant understands that this stipulation does not set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

#### Guideline Stipulation

The parties agree as follows:



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The Guidelines Manual in effect on the date of sentencing is used to determine the applicable Guidelines range.

The defendant's base offense level under U.S.S.G. § 2S1.3(a)(2) is 22 because the base offense level is 6 plus 14 levels under U.S.S.G. § 2B1.1(b)(1)(I) as the total amount structured (\$2,854,980) is greater than \$1.5 million and less than \$3.5 million. This level is increased by two levels under U.S.S.G. § 2S1.3(b)(2) because the defendant was convicted of a Title 31 offense and committed the offense as part of a pattern of unlawful activity involving more than \$100,000 in a 12-month period, resulting in an adjusted offense level of 24. Three levels are subtracted under U.S.S.G. § 3E1.1 for acceptance of responsibility, as noted above, resulting in a total offense level of 21.

Based on an initial assessment, the parties agree that the defendant falls within Criminal History Category I. The parties reserve the right to recalculate the defendant's Criminal History Category and corresponding sentencing ranges if this initial assessment proves inaccurate.

A total offense level 21, assuming a Criminal History Category I, would result in a range of 37 to 46 months of imprisonment (sentencing table) and a fine range of \$15,000 to \$150,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of one to three years. U.S.S.G. § 5D1.2.

The defendant reserves his right to seek a departure or non-Guidelines sentence, and the Government reserves its right to object and seek whatever sentence it deems appropriate. The defendant will contend that, among other things, the Guideline range overstates the seriousness of the offense. Neither party will suggest that the Probation Department consider an adjustment not set forth herein, or suggest that the Court sua sponte consider an adjustment not identified above.

The defendant understands that the Court is not bound by this agreement on the Guideline ranges specified above. The defendant further understands that he will not be permitted to withdraw the guilty plea if the Court imposes a sentence outside any of the ranges set forth in this agreement.

In the event the United States Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the parties reserve the right to defend any sentencing determination, even if it differs from that stipulated by the parties, in any post-sentencing proceeding.

#### Waiver of Right to Appeal or Collaterally Attack Conviction and Sentence

The defendant acknowledges that under certain circumstances he is entitled to challenge his conviction and sentence. The defendant agrees not to appeal or collaterally attack his conviction in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255

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and/or § 2241. Nor will he pursue such an appeal or collateral attack to challenge the sentence imposed by the Court if that sentence does not exceed 46 months of imprisonment, a three-year term of supervised release, a \$150,000 fine, a \$115,000 forfeiture order as outlined above, and a \$100 special assessment, even if the Court imposes such a sentence based on an analysis different from that specified above. Similarly, the Government will not appeal a sentence imposed within or above the stipulated sentencing range. The Government and the defendant agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with, in whole or in part, the undischarged portion of any other sentence that has been imposed on the defendant at the time of sentencing in this case. The defendant acknowledges that he is knowingly and intelligently waiving these rights. Furthermore, the parties agree that any challenge to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentence that is inconsistent with (or not addressed by) this waiver. Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum.

#### Information to the Court

The Government reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to material in its file, with the exception of grand jury material.

#### WAIVER OF RIGHTS

##### Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant acknowledges that he is knowingly and intelligently waiving his right to be indicted.

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Robert J. Percy, Esq.  
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The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participating in the structuring of financial transactions to evade reporting requirements, which forms the basis of the Information in this case.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his guilty plea.

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**NO OTHER PROMISES**

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

DEIRDRE M. DALY  
UNITED STATES ATTORNEY

---

PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

---

LORENZO VOCATURA  
The Defendant

---

Date

I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.

---

RICHARD G. CONVICER, ESQ.  
ROBERT J. PERCY, ESQ.  
Attorneys for the Defendant

---

Date



Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
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**STIPULATION OF OFFENSE CONDUCT**

The defendant and the Government stipulate to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the Information.

1. From on or about March 5, 2007 through on or about April 28, 2013, the defendant and his co-defendant brother David Vocatura along with two other family members owned Vocaturas Bakery, a wholesale and retail bakery in Norwich, Connecticut. The retail store only accepted cash. The defendant Lorenzo Vocatura, who uses the first name Lawrence, was the president of Vocaturas Bakery. David Vocatura was the treasurer and handled the business's finances. Vocaturas Bakery maintained a commercial business account ending in 2445 in its name at Dime Bank in Norwich ("Vocaturas Account"). All four owners had signature authority over the account. Dime Bank was a domestic financial institution with branch offices in Connecticut.

2. From on or about March 5, 2007 through on or about April 28, 2013, the defendant and his codefendant conducted a total of \$2,854,980 in cash deposits into the Vocaturas Account in amounts less than \$10,000.01. Approximately 309 cash deposits in even dollar increments between \$7,000 and 9,900 were made into the Vocaturas Account. The regular weekly deposits of cash for more than six years averaged \$9,239, with 29 deposits in amounts between \$7,000 and \$8,000, 62 in amounts between \$8,100 and \$9,080, and 218 in amounts between \$9,100 and \$9,900. The defendants used a Dime Bank bag to make the cash deposits.

3. By conducting these financial cash transactions in amounts less than \$10,000.01, the defendant intended that the currency transaction reporting requirement be evaded.

4. On May 1, 2013, IRS special agents interviewed the defendant and David Vocatura. Both voluntarily provided oral statements.

(a) The defendant said the following: David Vocatura handled the finances for Vocaturas Bakery, that David Vocatura made all the business bank deposits, and that the defendant only goes to the bank once a month. The defendant was aware the bank must fill out a form if deposits of cash are in amount of \$10,000 or more. He was under the impression that the bank did not want to do the paperwork although no one at the bank ever told him not to deposit more than \$10,000 at a time. There was often more than \$10,000 on hand at the bakery, but that cash was held back in order to make deposits less than \$10,000 to avoid the filing of the form. The remaining cash was kept in a safe in the office at the bakery. The defendant had conversations with David Vocatura about the deposits and they agreed to keep all of the cash deposits under \$10,000 so that they did not have to fill out a Currency Transaction Report. This was the policy he and David Vocaturas agreed upon because they did not want to be bothered with the form. The cash deposits into the bank were receipts from the bakery business. During the interview, the defendant opened the safe, took out a stack of cash while leaving some cash in the safe, and estimated that there was more than \$10,000 in cash in the safe. He estimated that about 80% of the bakery's receipts are reported on the business's tax returns and he described

Richard G. Convicer, Esq.  
Robert J. Percy, Esq.  
February 18, 2016  
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that as a high percentage. David Vocatura handled the finances and David would know a more accurate percentage. The remaining 20% of the receipts gets put into the safe in the office. He, Lorenzo Vocatura, sometimes takes a couple of hundred dollars from the end of the day receipts and he puts it into his pocket. Depending on how busy the bakery was, the amount of money he took could be as high as \$2,000 a month and as low as \$400 a month. The cash he took did not come from the cash register and that it came from cash left over. He did not report this cash on his personal tax returns.

(b) David Vocatura said the following: He made a majority of the deposits for the bakery business and that he was aware of a form that was required to be filed by the bank when a transaction was in excess of \$10,000. After his uncle, the former treasurer of Vocaturas Bakery, died in 2007, his brother Lorenzo Vocatura received a phone call from an unknown party at Dime Bank informing him that a deposit had exceeded \$10,000 and that they needed to file some paperwork. This prompted David Vocatura to keep the deposits under the \$10,000 mark. [The defendant's uncle died on February 18, 2007.]

5. Also on May 1, 2013, the IRS, pursuant to a federal seizure warrant, seized \$68,382.22 from the Vocaturas Account at Dime Bank.

6. Title 31, United States Code, Section 5313(a), and the regulations promulgated by the Secretary of the Treasury, required domestic financial institutions, such as Dime Bank, to file a report of cash transactions in excess of \$10,000. These reports are known as Currency Transaction Reports ("CTRs"). These reports are provided to the IRS and are available to federal law enforcement authorities.

The written stipulation above is incorporated into the preceding plea agreement. The defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

LORENZO VOCATURA  
The Defendant

PETER S. JONGBLOED  
ASSISTANT UNITED STATES ATTORNEY

RICHARD G. CONVICER, ESQ.  
ROBERT J. PERCY, ESQ.  
Attorneys for the Defendant

# Exhibit F

May-10-2016 11:55 AM USAO 203-773-5389

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**U.S. Department of Justice**

**United States Attorney  
District of Connecticut**

*Connecticut Financial Center  
137 Church Street, Floor 23  
New Haven, Connecticut 06510*

*(203) 821-3700  
Fax (203) 773-5376  
[www.justice.gov/usao/ct](http://www.justice.gov/usao/ct)*

## **FACSIMILE TRANSMISSION COVER PAGE**

**DATE:** May 10, 2016  
**TO:** Richard Convicer, Esq.  
**FROM:** Kathy Libby for AUSA Peter S. Jongbloed

United States Attorney's Office  
157 Church Street  
New Haven, CT 06510  
Fax Number (203) 773-5389

**TOTAL NUMBER OF PAGES (INCLUDING COVER PAGE): 6**

**SPECIAL INSTRUCTIONS:**

**AUSA PETER JONGBLOED ASKED ME TO FAX TO YOU THIS  
GRAND JURY SUBPEONA, ISSUED TO VOCATURAS  
BAKERY.**

If you do not receive all pages, please call 203-821-3700 and ask for Kathy Libby [REDACTED]

### **UNITED STATES ATTORNEY FACSIMILE TRANSMISSION**

*This facsimile message, and any and all accompanying documents, contains sensitive information. This information is the property of the United States Attorney's Office, and is subject to several legal privileges, including the attorney client, work product, law enforcement, and deliberative process privileges. It is exempt from disclosure under applicable law. If you are not the intended recipient of this information, and disclosure, copying, distribution, or the taking of any action in reliance on the information is strictly prohibited. If you received this message in error, please notify us immediately at (203) 821-3700 to make arrangements to return the information to us. Thank you.*



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SA Maria Papageorgiou, IRS CI  
N-15-3-80

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

## UNITED STATES DISTRICT COURT

for the

District of Connecticut

## SUBPOENA TO TESTIFY BEFORE A GRAND JURY

Custodian of Records  
To: Vocaturas Bakery Inc.  
2 Nichols Lane, Westerly, RI 02891

**YOU ARE COMMANDED** to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: Gialmo Federal Building 150 Court Street, Rm. 125 New Haven, CT	Date and Time: June 21, 2016 9:00 a.m.
--	--

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

SEE ATTACHMENT

Date: 05/10/2016

CLERK OF COURT



Signature of Clerk of Court

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Peter S. Jongbloed, AUSA  
U.S. Attorney's Office  
157 Church St., 23rd Fl., New Haven, CT 06510  
(203) 821-3700  
CONTROL NO. 841

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AO 110 (Rev. 06/09) Subpoena to Testify Before Grand Jury (Page 2)

N-15-3-80-841

**PROOF OF SERVICE**

This subpoena for *(name of individual or organization)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**ATTACHMENT TO SUBPOENA ISSUED TO:**

**Custodian of Records  
VOCATURAS BAKERY INC.  
2 NICHOLS LANE  
WESTERLY, RHODE ISLAND 02891  
ATTENTION: CUSTODIAN OF RECORDS**

**FOR THE YEARS: JANUARY 1, 2008 THROUGH THE PRESENT**

**With respect to the following five entities and persons:**

**VOCATURAS BAKERY, INC.**  
[REDACTED]

**DAVID VOCATURA**  
[REDACTED]

**FRANK VOCATURA**  
[REDACTED]

**LAWRENCE VOCATURA**  
[REDACTED]

**RICHARD VOCATURA**  
[REDACTED]

**any and all documents in your custody or control relative, including, but not limited to, the following:**

- 1. All books, general ledgers, records, bank statements, canceled checks, deposit tickets, work-papers, financial statements, correspondence, Forms W-2's and Forms 1099's issued, payroll records for any and all employees, list of employees with addresses and contact information, records of suppliers and distributors, cash receipts journals, cash disbursement journals, and other pertinent documents furnished by or on behalf of the above named entity or person for the preparation of state and federal income tax returns and for any other entity in which person or entity has a financial interest.**
- 2. All records used in or resulting from the preparation of federal and state income tax returns consisting of but not limited to work-papers, notes, papers, memoranda and correspondence used or prepared by you relative to the preparation of the aforementioned returns.**
- 3. Copies of federal and state income and payroll tax returns, state sales tax returns and amended tax returns.**

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4. All records, books of account, and other documents or papers relative to financial transactions of named person or entity.

5. All invoices, receipts, sales slips, and billing records for Vocaturas Bakery, Inc.'s clients/customers, including, but not limited to records disclosing the dates and types of goods provided, client/customer account cards, billing invoices, records reflecting the dates, amounts, purpose, and method of all payments (cash or check), and all correspondence with this client/customer.

**RECORD FORMAT:** In addition to hard copies, records are requested in the form of magnetic media. Data may be provided in 3 1/2 inch diskettes or compact disks (CDs). ASCII fixed length files are preferred, however, ASCII delimited format is acceptable. A record layout for the data is also requested.

**Personal appearance is not required if the requested documents are produced on or before the return date to:**

**IRS-CID  
150 Court Street  
Room 214  
New Haven, Connecticut 06510  
Attention: Special Agent Maria Papageorgiou**

**If you have any questions about this subpoena, please contact Special Agent Maria Papageorgiou at (860) 883-8172**



**telephone number:** \_\_\_\_\_