IN THE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

IN RE THE SEIZURE OF: )

a check in the amount of $318,836.00; )

and $309,750.00 in U.S. Currency, )

)

)

LAWRENCE EQUIPMENT, INC., )

a California corporation, and MIGUEL PINEDO, )

)

Movants, )

vs. ) No. 08 CV 5495

)

United States of America, Department of ) Justice, Drug Enforcement Administration, ) and the United States Marshal for the )

Northern District of Illinois. )

)

Respondents. )

**MOTION FOR RETURN OF PROPERTY PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 41(g)**

NOW COMES the Movants, LAWRENCE EQUIPMENT INC., a California corporation and MIGUEL PINEDO, by and through their attorneys Stephen M. Komie, Esquire, of Komie and Associates and Paul L. Gabbert, Esquire 1 pursuant to Federal Rule of Criminal Procedure 41(g) and moves this Honorable Court to return property seized from the Movants without probable cause and in violation of the Constitution of the United States of America. In support thereof state as follows:

1. That on Valentine's Day February 14, 2008, MIGUEL PINEDO was an employee of Movant LAWRENCE EQUIPMENT, INC., a California

1

Mr. Komie is a member of the trial bar of this court since 1980. Mr. Komie will move for the *pro hac vice* admission of Mr. Gabbert, a member of the bars of the State of California, United States District Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit.

corporation, and was authorized to transact business on behalf of LAWRENCE EQUIPMENT, INC.

1. That on Valentine's Day, February 14, 2008, the Movant MIGUEL PINEDO, the lawful possessor, had in his possession a check in the amount of Three Hundred Eighteen Thousand Eight Hundred Thirty-Six Dollars and no cents ($318,836.00) payable to Movant LAWRENCE EQUIPMENT, INC.
2. That on Valentine's Day, February 14, 2008, the Movant MIGUEL PINEDO was the lawful possessor of United States currency in the amount of Three Hundred Nine Thousand Seven Hundred Fifty Dollars and no cents ($309,750.00) of U.S. currency.
3. That said currency is the property of Movant LAWRENCE EQUIPMENT, INC.
4. That on Valentine's Day February 14, 2008, law enforcement officers in the Northern District of Illinois seized the lawful property of Movant LAWRENCE EQUIPMENT, INC. from Movant MIGUEL PINEDO in violation of the Fourth Amendment of the United States Constitution. This seizure was without **a** warrant, or other legal process, probable cause, or a judicially recognized exception to the Warrant Clause.
5. That law enforcement officers under the color of law seized Movants' property consisting of a cashier's check of $318,836.00 together with $309,750.00 in United States currency which has deprived the Movants of lawful possession of their property without lawful justification.
6. That Respondent U.S. Marshal received the seized property from law enforcement officers for deposit in the United States Treasury.
7. That Respondent Drug Enforcement Administration (hereinafter known as “DEA”) is a division of Respondent U.S. Department of Justice of the United States of America.
8. That Respondent Drug Enforcement Administration commenced administrative forfeiture proceedings against Movants' property

. 10. That on April 3, 2008, Movants timely submitted to DEA by Federal Express their claims as provided by law.

1. That on Friday, April 4, 2008, Movants' claims were timely received by Respondent DEA.
2. That on April 9, 2008, Respondent DEA accepted Movants' claims.
3. That pursuant to 18 United States Code Section 983 (a)(3)(A) and (B) Respondent United States was required to file a complaint for forfeiture of the seized property not later than 90 days after Movants' claim was received by Respondent DEA.
4. That by July 9, 2008, the Respondent United States had failed to file or serve a forfeiture complaint upon Movants.
5. That on or about September 2, 2008, Movants' counsel, Mr. Paul Gabbert, Esquire, sent a letter to Ms. Marcia McClellan, Assistant United State's Attorney, Chief of the Forfeiture Section of the United States Attorneys Office for the Northern District of Illinois. The letter set forth the facts as pled in this motion, and requested return of the funds or an explanation as to their continued unlawful detention.
6. That to date, counsel for the Movants have not received a written explanation for the unlawful detention of Movants’ property.
7. That Federal Rule of Criminal Procedure 41(g) provides: "A person aggrieved by an unlawful search and seizure of the property or by deprivation of the property may move for the property’s return."
8. That in addition to the grant of jurisdiction to the court pursuant to Federal Rule of Criminal Procedure 41(g), this Court has jurisdiction by virtue of 18

U.S.C. § 983 (a) (3) (A) and (B) and 28 U.S.C. § 1331 to enforce the Civil

Asset Forfeiture Reform Act (hereinafter “CAFRA”) against the Respondents.

1. That at the time of the filing of this Motion for Return of Property there is no pending criminal action against the Movants.
2. That there is no other lawful possessor entitled to possession or ownership of the property which is being unlawfully detained by United States.
3. That the Movants' business is irreparable harmed by the continued unlawful detention of this property by the Respondent United States Marshal.
4. That the purpose**s** of Federal Rule of Criminal Procedure 41(g) are to protect the public from search**es** and seizure**s** by law enforcement officers, and from the unlawful retention of property. In the case at bench**,** law enforcement officers unlawfully seized the property from Movants and deprived them of their lawful possession. See, *United States of America v. $506,231*, 125 F.3d 442 (7th Cir. 1997).

WHEREFORE, for the foregoing reasons, Movants, LAWRENCE EQUIPMENT, INC., a California corporation, and MIGUEL PINEDO pray for the following relief:

* 1. That the Court enter the Motion for Return of Property and command the United States to answer or otherwise plead;
  2. That the Court convene a hearing to decide the merits of this case;
  3. That at the conclusion of a hearing in this matter the Court grant the Movants' motion and command the United States Marshal for the Northern District of Illinois to return the property seized together with the interest earned by law as made and provided; and
  4. That the Court award attorney fees and costs as provided by law.
  5. Declare that the Respondents may not take any further action to affect forfeiture of this property in light of their failure to obey the time limitations imposed by CAFRA.

Respectfully submitted,

LAWRENCE EQUIPMENT, INC., and MIGUEL PINEDO, Movants

by their attorneys Komie and Associates

By: Stephen M. Komie

Trial Bar Member Komie and Associates

One N. LaSalle Street, #4200 Chicago, Illinois 60602

(312) 263-2800

and

Paul L. Gabbert\* 2115 Main Street

Santa Monica, CA 90405 (310) 399-3259

\*Subject to admission *pro hac vice*