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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 \$15,000.00 IN U.S. CURRENCY,
18 Defendant.

19 DAVID SCOTese

20 Claimant.
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27
28

No. EDCV 16-01166-DSF(KKx)

**NOTICE OF RENEWED MOTION FOR
SUMMARY JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF FRANK D. KORTUM**

**DATE: February 13, 2017
TIME: 1:30 p.m.
COURTROOM: D, 7th Floor First
Street Courthouse**

TRIAL DATE: Not set

[Proposed] Statement of
Uncontroverted Facts and
Conclusions of Law Lodged
Concurrently Herewith

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on February 13, 2017, plaintiff United
3 States of America (the "government") will and does move for Summary
4 Judgment. The motion will be heard at 1:30 p.m. in Courtroom D on
5 the 7th floor of the 1st Street Federal Courthouse, 350 West 1st
6 Street, Los Angeles; California, before the Hon. Dale S. Fischer,
7 United States District Judge.

8 The government, by and through its undersigned counsel,
9 respectfully moves this Court to grant summary judgment in its favor
10 pursuant to Rule 56 of the Federal Rules of Civil Procedure on the
11 ground that the undisputed facts establish as a matter of law that
12 the Defendant currency constitutes proceeds of, or was otherwise
13 involved in, one or more transactions conducted in violation of 18
14 U.S.C. § 1960, and is therefore forfeitable pursuant to 18 U.S.C. §
15 981(a)(1)(A) and (C). This motion is based on the attached
16 Memorandum of Points and Authorities, the Verified Amended Complaint
17 on file in this case, the Proposed Statement of Uncontroverted Facts
18 and Conclusions of Law lodged concurrently herewith, and upon such
19 other and further arguments, documents and grounds as the Court may
20 wish to consider at the hearing on this motion.

21 The government previously moved for summary judgment on October
22 17, 2016. Dkt. 24. Scotese opposed the motion. Dkt. 25. After the
23 government filed a reply (Dkt. 29), Scotese filed an unauthroized
24 sur-reply. Dkt. 30. Pursuant to a stipulation approved by the
25 Court, the government filed a response to the sur-reply. Dkt. 34.
26 On November 29, 2016, this Court denied the government's motion for
27 summary judgment "without prejudice to a renewed motion and new
28

1 briefing" so that Scotese would have a "fair opportunity to respond
2 to the arguments only raised in the government's most recent brief."
3 Dkt. 36. Accordingly, the arguments raised in the government's
4 response to Scotese's sur-reply (the government's "most recent
5 brief") are now included in the accompanying Memorandum of Points and
6 Authorities.

7 Because claimant Scotese is not represented by counsel the pre-
8 motion meeting requirement of Local Rule 7-3 does not apply to this
9 motion.¹ Nevertheless, in the interests of exploring the informal
10 resolution of this motion, counsel for the government discussed the
11 substance of this motion with Scotese on December 5, 2016.

12 Dated: January 12, 2017

Respectfully submitted,

13 EILEEN M. DECKER
14 United States Attorney
15 LAWRENCE S. MIDDLETON
16 Assistant United States Attorney
17 Chief, Criminal Division
18 Assistant United States Attorney
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/s/ Frank Kortum

19 FRANK D. KORTUM
20 Assistant United States Attorney
21 Asset Forfeiture Section

22 Attorneys for Plaintiff
23 UNITED STATES OF AMERICA
24
25
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27 ¹ Local Rule 7-3 requires counsel contemplating the filing of a
28 motion to meet with "opposing counsel," which by definition excludes
parties not represented by counsel.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This civil forfeiture action arises out of the seizure of \$15,000 in currency by the United States Postal Inspection Service. For the purpose of this motion, the government sets forth in a footnote the facts relating to the seizure of the currency,² so that

² On January 13, 2016, a USPS Postal Inspector was monitoring parcels being processed through the Redlands Sorting Facility. The Postal Inspector selected one of the parcels for further examination. The label on the selected parcel indicated that the sender (Woodie Ochle) had mailed the parcel from Atlanta, Georgia and addressed it to David Scotese at an address in Murrieta, California. The address information on the parcel's mailing label had been filled in by hand and the mailing charges had been paid in cash. Further investigation revealed that neither Ochle nor Scotese was associated with either of the addresses appearing on the parcel's mailing label. A trained narcotics detection canine, "Chewy," alerted to the parcel, indicating that the parcel contained a controlled substance or had recently been in contact with a controlled substance. Verified Complaint ¶ 8. Based on this evidence, a United States Magistrate Judge in this District issued a warrant on January 20, 2016, to search the parcel. The parcel, when opened, was found to contain three Priority Express Mail flat-rate envelopes. The envelopes were "nested" (i.e., the first envelope contained the second envelope, which in turn contained the third envelope). Within the inner-most envelope the Postal Inspector found three bundles of U.S. Currency, each of which had been wrapped with rubber bands. Neither the parcel nor the envelopes contained a letter, note, or other written documentation. The currency, when counted, totaled \$15,000.00, consisting mainly of \$20 bills (the defendant currency). Verified Complaint ¶ 9.

It was subsequently learned that when Ochle mailed the parcel containing the defendant currency, he was a subject of a drug trafficking investigation. The investigation led to Ochle's arrest in April of 2016 on drug-related charges in Florida. The State of Florida subsequently charged Ochle with trafficking in controlled substances, including methamphetamine. The criminal charges against Ochle remain pending. Verified Complaint ¶ 10.

Based on the above evidence, the government filed a civil forfeiture complaint against the defendant currency on June 3, 2016. The complaint alleges that the defendant currency represents or is traceable to proceeds of illegal narcotics trafficking, or was intended to be used in one or more exchanges for a controlled substance or listed chemical, in violation of 21 U.S.C. § 841 et seq.

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1 the Court may focus its attention on later-discovered evidence that
 2 supports summary judgment here. Specifically, claimant Scotese
 3 asserted in a discovery response that his interest in the defendant
 4 currency arose when he sent 32 bitcoins (a form of virtual currency)
 5 to Woodie Ochle in exchange for the defendant currency.³ Kortum
 6 Decl. ¶ 2 & Exh. "A" at p. 4:20-22 (response to Special Interrogatory
 7 No. 3).

8 Because at the time of the transaction described above Ochle was
 9 the subject of a drug trafficking investigation that led to his
 10 arrest in April of 2016 (Verified Complaint ¶ 10), and because
 11 bitcoin transactions are often associated with similar criminal
 12 activity,⁴ the government served further discovery on Scotese to

14 and the defendant currency is therefore subject to forfeiture
 15 pursuant to 21 U.S.C. § 881(a)(6). Verified Complaint ¶ 11. Scotese
 16 served a claim that this Court (at the request of the government)
 17 deemed filed on July 11, 2016. Dkt. 15.

18 The government does not base this summary judgment motion on the
 19 allegation that the defendant currency is proceeds of a transaction
 20 in a controlled substance. Ochle, the person who sent the defendant
 21 currency to Scotese, is still a defendant in the related criminal
 22 case referenced in the complaint. Depending on how much progress is
 23 made in that case, it may be necessary to seek a stay of discovery to
 24 prevent Scotese from interfering with the criminal case by conducting
 25 discovery on issues such as whether Ochle was a drug dealer. See 18
 26 U.S.C. § 981(g) (requiring stay of civil forfeiture case if discovery
 27 would prejudice a pending criminal case).

28 ³ Scotese himself has served (and the government has responded
 to) 19 interrogatories and nine requests for admissions. Kortum Decl.
 ¶¶ 6-7 & Exhs. "E" & "F". Several of Scotese's discovery requests
 were offensive in nature and/or sought irrelevant information. For
 example, Scotese's first interrogatory asked whether the government
 "pay[s] the salaries of judges Dale S. Fischer and Kenly Kiya Kato."
 Kortum Decl. ¶ 6 & Exh. "E" at p.2:27-28.

⁴ Virtual currencies such as bitcoin "attract[] criminals who
 value few things more than being allowed to operate in the shadows."
 Conor Desmond, Bitcoins: Hacker Cash or the Next Global Currency?,
 19 Pub. Int. L. Rep. 30, 34 (2013) (quoting letter from Senators
 Carper and Coburn); see also Benjamin Lo, Fatal Fragments: The

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determine if, in transmitting the bitcoin to Ochle, he was operating an unlicensed money transmitting business, or whether he had instead registered his business (as required by law) with the Financial Crimes Enforcement Network ("FinCEN") of the United States Treasury Department.⁵ In Scotese's verified response to the government's request for documents reflecting his registration of his bitcoin exchange business with FinCEN, he affirmatively stated that "if I remember correctly, I have not made any such registration" (id. ¶ 5 & Exh. "D" at p. 7:20-22), and he failed to provide any documents reflecting that he had done so.⁶

Scotese also made statements in discovery demonstrating that he considered his bitcoin exchanges to be a business activity.

Specifically,

- Scotese's discovery responses confirm statements appearing on one of his websites about how to make money from bitcoins. Kortum Decl. ¶¶ 3-4 & Exhs. "B" (Requests for Admissions) & "C" (Response to Requests for Admissions). For example, Scotese confirmed his website statement that "[d]ealing bitcoin supports my life and family."⁷

Effect of Money Transmission Regulation on Payments Innovation, 18 Yale J. L. & Tech. 111, 124 (2016)(noting the potential of bitcoin transactions to be "associated with criminal activity.").

⁵ See 31 U.S.C. § 312(a)(7) FinCEN "a bureau of the Department of the Treasury."

⁶ Scotese verified the response under penalty of perjury. Exh. "D" at p. 8.

⁷ This statement appears on Exhibit "A" to the Requests for Admissions (which are in turn attached hereto as Exhibit "B"). Scotese acknowledged that he made the statements and that they were accurate. Exh. "C" at p. 1-2 (response to RFA Nos. 1-2).

- 1 - Another website referenced in Scotese's discovery responses
2 contains his schedule of bitcoin exchange rates and
3 states that Scotese has made over 3,000 confirmed trades
4 with "1,499 different partners." Kortum Decl. ¶ 8 & Exh.
5 "G".⁸ Comments from "users with noticeable trade volume"
6 (Exh. "G" at p. 3) regarding the quality of the Scotese's
7 bitcoin exchange service also appear in the feedback section
8 of this website (id. ¶ 9 & Exh. "H"), suggesting that these
9 exchanges are properly characterized as business activities.
- 10 - Scotese sent a letter to a Postal Service employee in
11 connection with the seizure of the defendant currency. In
12 the letter Scotese stated that "I sell a lot of bitcoin in
13 return for cash . . ." and suggested that doing business
14 unofficially with the employee "might prove valuable to me
15 in the future." Id. ¶ 10 Exh. "I".

16 Based on the evidence above, the government filed a motion on
17 October 13, 2016, for leave to amend its complaint to allege that the
18 defendant currency was subject to forfeiture on the additional ground
19 that that it was the proceeds of Scotese's operation of an unlicensed
20 money transmitting business. Dkt. 21. On November 29, 2016, this
21 Court granted the motion for leave to amend. Dkt. 36. On November
22 30, 2016, the government filed its amended complaint. Dkt. 37. The
23 amended complaint alleges that the defendant currency constitutes
24 proceeds of, or was otherwise involved in, one or more transactions
25 conducted in violation of 18 U.S.C. § 1960, and is therefore

27 ⁸ Scotese cited the website in his response to the government's
28 request for production of documents. Exh. "D" at p. 5:25 (citing
<https://localbitcoins.com/accounts/profile/dscotese/>).

1 forfeitable pursuant to 18 U.S.C. § 981(a)(1)(A) and (C). Id. ¶ 13.

2 **II. THIS COURT SHOULD GRANT THE GOVERNMENT'S MOTION FOR SUMMARY**
 3 **JUDGMENT**

4 **A. The Summary Judgment Standard**

5 Federal Rule of Civil Procedure 56(a) authorizes the granting of
 6 summary judgment "if the movant shows that there is no genuine
 7 dispute as to any material fact and the movant is entitled to
 8 judgment as a matter of law." The movant bears the initial burden of
 9 establishing "the basis for its motion, and identifying those
 10 portions of 'the pleadings, depositions, answers to interrogatories
 11 and admissions on file, together with the affidavits, if any,' which
 12 it believes demonstrate the absence of a genuine issue of material
 13 fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting
 14 former Fed. R. Civ. P. 56(c)).

15 To meet its burden of production, the moving party must either
 16 produce evidence negating an essential element of the nonmoving
 17 party's claim or defense or show that the nonmoving party does not
 18 have enough evidence of an essential element to carry its ultimate
 19 burden of persuasion at trial. Nissan Fire and Marine Insurance
 20 Company, Ltd. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000).
 21 Documents produced in discovery and admissions made during discovery
 22 will support a summary judgment motion. Fed.R.Civ.P. 56(c)(1)(A)
 23 ("materials in the record" that will support summary judgment include
 24 "documents" and "admissions").⁹

25 _____
 26 ⁹ Summary judgment is appropriate at this time because even
 27 though this litigation is at a relatively early stage, Scotese has
 28 already conducted extensive discovery. Specifically, the government
 has already responded to 19 interrogatories and 10 requests for
 admission. Kortum Decl. ¶¶ 6-7 & Exhs. "E" & "F". The objectionable
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1 Once the moving party meets its initial burden of showing there
 2 is no genuine issue of material fact, the opposing party has the
 3 burden of producing competent evidence and cannot rely on mere
 4 allegations or denials in the pleadings. Matsushita Electric
 5 Industries Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).
 6 There is no genuine issue for trial where the record taken as a whole
 7 could not lead a rational trier of fact to find for the nonmoving
 8 party.

9 **B. The Burden of Proof**

10 In a suit or action brought under "any civil forfeiture statute"
 11 for the civil forfeiture of any property, "the burden of proof is on
 12 the Government to establish, by a preponderance of the evidence that
 13 the property is subject to forfeiture" 18 U.S.C. §
 14 983(c)(1). To satisfy its burden, the government may use evidence
 15 "gathered after the filing of the complaint for forfeiture to
 16 establish, by a preponderance of the evidence that property is
 17 subject to forfeiture" 18 U.S.C. § 983(c)(2).

18 **C. The Court Should Order the Forfeiture of the Defendant**
 19 **Currency**

20 Federal law prohibits the operation of an unlicensed money
 21 transmitting business. 18 U.S.C. § 1960. "Money transmitting" is
 22 statutorily defined as "transferring funds on behalf of the public by
 23 any and all means. . . ." 18 U.S.C. § 1960(b)(2) (emphasis added).

24 An "unlicensed money transmitting business" is statutorily defined as

25
 26 _____
 27 and offensive nature of much of Scotese's discovery (as discussed in
 28 Note 3, supra), suggests that allowing him to conduct further discovery
 would serve no useful purpose.

1 a money transmitting business that "fails to comply with the money
 2 transmitting business registration requirements under section 5330 of
 3 [T]itle 31, United States Code, or regulations prescribed under such
 4 section." 18 U.S.C. § 1960(b)(1)(B). 31 U.S.C. § 5330 in turn
 5 defines a "money transmitting business" as one that

- 6 - provides a "currency exchange" or "engages as a business in
 7 the transmission of funds";
- 8 - "is required to file reports under 31 U.S.C. § 5313";¹⁰ and
- 9 - "is not a depository institution (as defined in section
 10 5313(g))."

11 31 U.S.C. § 5330(d)(1). In this regard, an "exchanger" is "a person
 12 engaged as a business in the exchange of virtual currency for real
 13 currency, funds, or other virtual currency." FinCEN Guidance No.
 14 FIN-2013-G001 (March 18, 2013) at p. 2 ("Virtual Currency Guidance")
 15 (copy attached as Exh. "J").¹¹

16 Treasury Department regulations issued pursuant to Section 5330
 17 require money transmitting businesses to register with FinCEN.
 18 United States v. E-Gold, Ltd., 550 F.Supp.2d 82, 96 (D.D.C. 2008);
 19 accord United States v. Budovsky, No. 13cr368 (DCL), 2015 WL 5602853
 20 at *7 (S.D.N.Y. Sept. 23, 2015).¹² Congress enacted Section 5330's

21 ¹⁰ The regulation implementing Section 5313 provides that
 22 transactions exceeding \$10,000 must be "report[ed] to the government
 23" United States v. Wetselaar, No. 2:11-cr-00347-KJD-CWH, 2015
 WL 10734178 at *2 n.3 (D. Nev. Dec. 1, 2015)(citing 31 C.F.R.
 1010.311).

24 ¹¹ FinCEN's Virtual Currency Guidance is officially entitled
 25 "Application of FinCEN's Regulations to Persons Administering,
 Exchanging or Using Virtual Currencies" and is available at
 26 <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>.
 The Guidance is cited in United States v. 50.44 Bitcoins, Civil
 27 Action No. ELH-15-3692, 2016 WL 3049166 at *1 (D. Md. May 31, 2016).

28 ¹² The regulations cited in Budovsky are renumbered versions of
 the regulations cited in E-Gold.

1 registration requirement to assist law enforcement agencies in their
 2 efforts to "prevent . . . money transmitting businesses from engaging
 3 in illegal activities." E-Gold, supra, 550 F.Supp.2d at 96 (quoting
 4 legislative history).¹³

5 Scotese's conduct falls well within the statutory definitions of
 6 "money transmitting" set forth in both 18 U.S.C. § 1960 and 31 U.S.C.
 7 § 5330. First, his conduct falls within the definition set forth in
 8 Section 1960 because Scotese caused Ochle to transmit currency to him
 9 in exchange for Scotese's transmission of bitcoin to Ochle. Such
 10 conduct constitutes "transferring funds" within the meaning of
 11 Section 1960(b)(2).

12 Second, Scotese's conduct falls within the definition of "money
 13 transmitting" set forth in 31 U.S.C. § 5330. Specifically,

- 14 – Scotese provided a "currency exchange" service within the
 15 meaning of Section 5330(d)(1). For example, as discussed
 16 above, he posted bitcoin exchange rates on one of his
 17 websites. Kortum Decl. ¶ 8 & Exh. "G" at p. 2-3. He also
 18 stated that "I sell a lot of bitcoin in return for cash . . .
 19
 20
 21

22 ¹³ The legislative history for Section 5330 specifically states:
 23 It is the purpose of this section to establish a registration
 24 requirement for businesses engaged in providing check cashing,
 25 currency exchange, or money transmitting or remittance services,
 26 or issuing or redeeming money orders, travelers' checks, and
 27 other similar instruments to assist the Secretary of the
 Treasury, the Attorney General, and other supervisory and law
 enforcement agencies to effectively enforce the criminal, tax,
 and regulatory laws and prevent such money transmitting
 businesses from engaging in illegal activities.
 28 E-Gold, supra, 550 F.Supp.2d at 96 (emphasis omitted)(quoting 140
 Cong. Rec. 6642, 6666 (1994)).

. . . Id. ¶ 10 & Exh. "I".¹⁴ Scotese also "engaged as a business in the transmission of funds" within the meaning of Section 5330(d)(1)(A). Under Section 5330's implementing regulations the element of "transmission" is satisfied by a transfer to "another location or person by any means." 31 C.F.R. § 1010.100(ff)(5)(i) (emphasis added).¹⁵ FinCEN's Virtual Currency Guidance makes clear that when an exchanger or administrator of virtual currency accepts real currency from an individual and in exchange sends "value that substitutes for currency" (i.e., bitcoin) to the electronic account of that individual, "transmission [has occurred] to another location." Virtual Currency Guidance at 4.¹⁶

¹⁴ The courts recognize that bitcoin is a form of currency. See, e.g., 50.44 Bitcoins, supra, 2016 WL 3049166 at *2 (bitcoin is "virtual currency").

"Bitcoin is an electronic form of currency unbacked by any real asset and without specie, such as coin or precious metal." Sec. & Exch. Comm'n v. Shavers, No. 4:13-CV-416, 2013 WL 4028182, at *1 (E.D. Tex. Aug. 6, 2013). "Bitcoin can be easily purchased in exchange for ordinary currency, acts as a denominator of value, and is used to conduct financial transactions." United States v. Faiella, 39 F. Supp. 3d 544, 545 (S.D.N.Y. 2014). 50.44 Bitcoins, supra, 2016 WL 3049166 at *2 n.1.

¹⁵ 31 C.F.R. § 1010.100 is a regulation promulgated pursuant to 31 U.S.C. § 5330. Budovski, supra, 2015 WL 5602853 at *5.

¹⁶ The quoted section of the Virtual Currency Guidance appears under a subsection entitled "Centralized Virtual Currencies." The principle that "another location" may be an individual's account (for the purposes of defining money transmission") applies equally to decentralized currencies such as bitcoin, which are also held in accounts. As the court explained in S.E.C. v. Shavers, No. 4:13-CV-416, 2014 WL 4652121 (E.D. Tex., Sept. 18, 2014):

Bitcoins are held at, and sent to and from, bitcoin 'addresses.' A bitcoin 'wallet' is a software file that holds bitcoin addresses. Along with each bitcoin address, a bitcoin wallet stores the 'private key' for the address, essentially a password used by the holder to access the bitcoins held at the address, as well as the transaction history associated with the address.

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Furthermore, "[a]n administrator or exchanger [of virtual currency] that . . . transmits . . . or . . . buys and sells convertible virtual currency for any reason is a money transmitter under FinCEN's regulations" Id. at p. 3 (emphasis added).

- Scotese was "required to file reports under Section 5313" within the meaning of Section 5330(d)(1)(B) because the transaction at issue here involved more than \$10,000. Specifically, Scotese admitted that he received \$15,000 from Ochle, and in exchange sent bitcoin of comparable value to Ochle. Exh. "A" at p. 5. Scotese's transmission of bitcoin to Ochle thus constituted a "money transmission" to another location that Scotese was required to report pursuant to 31 U.S.C. § 5313 (which requires the reporting of transactions in excess of \$10,000 pursuant to the implementing regulations cited above). See 31 U.S.C. § 5330(d)(1)(B); 31 C.F.R. 1010.311.

- Scotese is not a "depository institution" within the meaning of 31 U.S.C. § 5330(d)(1)(C).

Because all three elements of Section 5330(d)(1) are satisfied here, Scotese was required under 18 U.S.C. § 1960 to register with

Whoever has the private key for a bitcoin address controls the bitcoins held at that address.

Id. at *1; accord 50.44 Bitcoins, supra, 2016 WL 3049166 at *2 n.4; see generally United States v. American Express Co., 88 F.Supp.3d 143, 190 (S.D. N.Y. 2015)(electronic wallets are a form of account), rev'd on other grounds, 838 F.3d 179 (2d Cir. 2016).

1 FinCEN.¹⁷ His failure to do so subjects the defendant currency to
 2 forfeiture as proceeds of a transaction in violation of 18 U.S.C. §
 3 1960.¹⁸ 18 U.S.C. § 981(a)(1)(C); 50.44 Bitcoins, supra, 2016 WL
 4 3049166 at *2. This Court should therefore grant the government's
 5 motion for summary judgment.

6 ///

8 ///

10 ///

18 ¹⁷ When given the opportunity to do so, Scotese failed to
 19 produce documents that would establish that he registered as a
 20 bitcoin exchanger with FinCEN (or any other government agency).
 21 Kortum Decl. ¶ 5 & Exh. "D". Most significantly, his affirmative
 22 statement that he has no recollection of registering his bitcoin
 23 exchange with any government agency (Exh. "D" at p. 7:20-22)
 24 constitutes an admission that he violated 18 U.S.C. § 1960. (The
 government respectfully suggests that had Scotese in fact registered
 as a bitcoin exchanger with FinCEN he could have produced documentary
 proof of that event, either in the form of registration documents
 that he submitted to FinCEN, or in the form of proof or
 acknowledgement of registration that he would have received from
 FinCEN.)

25 ¹⁸ 18 U.S.C. § 1960 is a "general intent crime for which a
 26 defendant is liable if he knowingly operates a money transmitting
 27 business." United States v. Dimitrov, 546 F.3d 409, 413 (7th Cir.
 28 2008). The government therefore need not prove that Scotese "knew
 about the federal registration requirements" See id.; accord
United States v. Talebnejad, 460 F.3d 563, 568 (4th Cir. 2006).

1 **III. CONCLUSION**

2 For the foregoing reasons, this Court should grant the
3 government's motion for summary judgment.
4

5 Dated: January 12, 2017

Respectfully submitted,

6 EILEEN M. DECKER
United States Attorney
7 LAWRENCE S. MIDDLETON
Assistant United States Attorney
8 Chief, Criminal Division
STEVEN R. WELK
9 Assistant United States Attorney
Chief, Asset Forfeiture Section
10

11 /s/ Frank Kortum
FRANK D. KORTUM
Assistant United States Attorney
12

13 Attorneys for Plaintiff
UNITED STATES OF AMERICA
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DECLARATION OF FRANK KORTUM

I, Frank D. Kortum hereby declare and state as follows:

1. I am an Assistant United States Attorney to the civil forfeiture case entitled U.S. v. \$15,000.00 in U.S. Currency, EDCV 16-01166-DSF(KKx). I have personal knowledge of the facts set forth in this Declaration and if necessary could competently testify thereto under oath.

2. Attached hereto as Exhibit "A" is a copy of claimant Scotese's responses to the government's First Set of Special Interrogatories.

3. Attached hereto as Exhibit "B" is a copy of a set of Requests for Admission served on claimant Scotese.

4. Attached hereto as Exhibit "C" is a copy of claimant Scotese's responses to the government's Requests for Admissions.

5. Attached hereto as Exhibit "D" is a copy of claimant Scotese's response to the government's document production request.

6. Attached hereto as Exhibit "E" is a copy of the government's response to interrogatories served by claimant Scotese.

7. Attached hereto as Exhibit "F" is a copy of the government's response to requests for admissions served by claimant Scotese.

8. Attached hereto as Exhibit "G" is a copy of an online profile of claimant David Scotese ("Scotese"), found at <https://localbitcoins.com/accounts/profile/dscotese/>. The profile is referenced at page 5:25 in Scotese's verified response to the government's request for production of documents (a copy of which is attached hereto as Exhibit "D").

9. Attached hereto as Exhibit "H" is a copy of the feedback

1 section of the website referenced in the preceding paragraph.

2 10. Attached hereto as Exhibit "I" is a letter received from
3 Scotese in 2016.

4 I declare under penalty of perjury, under the laws of the United
5 States of America, that to the best of my knowledge, the foregoing is
6 true and correct.

7 Executed on this 12 day of January, 2017 at Los Angeles,
8 California.

9 /s/ Frank Kortum
10 Frank D. Kortum
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EXHIBIT "A"

1 David Scotese

2 Murrieta, CA 92563

3 Fax Number: NA

4 Email:

5 David Scotese, IN PRO PER

6
7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION
10

11 UNITED STATES OF AMERICA

12 Plaintiff,

13 vs.

14 \$15,000.00 IN U.S. CURRENCY,

15 Defendant
16
17
18
19

) Case No.: CV 16-01166-DSF (KK)

) CLAIMANT DAVID SCOTese'S ANSWERS
) TO FIRST SET OF SPECIAL
) INTERROGATORIES

20
21 PROPOUNDING PARTY: PLAINTIFF UNITED STATES OF AMERICA

22 RESPONDING PARTY: CLAIMANT DAVID SCOTese

23 SPECIAL INTERROGATORY NO. 1: "State your current and all prior
24 names, including aliases or nicknames, date and place of birth,
25 Social Security number, visa or green card number, marital status,
26 number of children, all of your residential addresses and business
27 addresses for the last five (5) years, current residential
28 telephone number(s), current business telephone number(s), current

- 1 -

VERIFIED ANSWER TO FIRST SET OF SPECIAL INTERROGATORIES

18

1 cell phone number(s), current e-mail addresses, and the addresses
2 of any web sites or social networking sites maintained in your
3 name or on your behalf. If you own a business in whole or in part,
4 identify the business (including but not limited to the business
5 name, address and telephone number and the identities of all co-
6 owners) and describe the nature of the business and its
7 organizational structure."

8 Objection. This set of discovery relies on preliminary/intro-
9 ductory definitions in violation of Code of Civil Procedure
10 section 2030.060 subdivision (d). Objection. A party's social
11 security number is "clearly irrelevant to the subject matter of
12 the action." (Smith v. Superior Court of San Joaquin County (1961)
13 189 Cal.App.2d 6, 9, 13, [11 Cal.Rptr. 165, 168, 170].) Subject to
14 and without waiving said objections, claimant responds as follows:
15 Claimant's name is David James Scotese. Claimant was born in La

16 [REDACTED]
17 [REDACTED]
18 Murrieta, CA for most of the last five years and at 1975
19 Middlefield Drive in Riverside, CA before that, has no residential
20 or business phone number, but claimant's cell phone number is

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 The following websites are maintained in claimant's name:

27 [REDACTED]
28 [REDACTED]

1 <https://voluntaryist.liberty.me/>

2 Claimant owns a sole proprietorship named David James Scotese

3

4

5 **SPECIAL INTERROGATORY NO. 2:** "If you have ever been arrested or
6 convicted of a crime in any country, please state the date of the
7 arrest or conviction, the charge(s), the name and address of the
8 court in which you were convicted, the offense you were charged
9 with or were convicted of, and the sentence or other outcome. If
10 probation was imposed, list the time period during which you were
11 under probation and the name, address, and telephone number of
12 your probation officer. If you were incarcerated, list the
13 institution where you were incarcerated and the period of time
14 during which you were incarcerated. If you were paroled, list the
15 date of your parole and the name, address, and telephone number of
16 your parole officer. If you have been charged in a criminal case
17 which is currently pending before any court, please state the date
18 of the arrest, the charge(s), the name and address of the court in
19 which you were charged, and provide the current status of the
20 court case, including whether a guilty plea has been entered."

21 Objection. This set of discovery relies on preliminary/intro-
22 ductory definitions in violation of Code of Civil Procedure
23 section 2030.060 subdivision (d). Subject to and without waiving
24 said objection, claimant responds as follows: Not applicable

25 **SPECIAL INTERROGATORY NO. 3:** "State the extent and describe with
26 particularity the nature of your interest in each defendant asset
27 claimed by you in this action, and identify how you acquired that

28

1 interest. Your answer should include, but not be limited to, the
2 following:

- 3 a. The date(s), time, place and manner in which each defendant
4 asset claimed by you was obtained, including the names, address
5 and telephone numbers of the person(s) from whom each defendant
6 asset was obtained.
7 b. the circumstances of each transaction by which you acquired
8 or obtained any interest in each defendant asset.
9 c. the reason(s) each defendant asset was obtained. and
10 witnesses, including the names, addresses, and telephone numbers
11 of such witnesses, to any of the transactions by which each
12 defendant asset was obtained.
13 d. a description of each and every document evidencing,
14 recording, facilitating, or otherwise relating to any
15 transaction identified in response to Interrogatory No. 3 (a)
16 through (c) above."

17 Objection. This set of discovery relies on preliminary/intro-
18 ductory definitions in violation of Code of Civil Procedure
19 section 2030.060 subdivision (d). Subject to and without waiving
20 said objection, claimant responds as follows: On Tuesday, January
21 12, 2016, around 7 AM, claimant sent 32 bitcoins to a man known to
22 claimant as Woodie Ochle. Said man then sent claimant an image of
23 what is called "SUBJECT PARCEL" through the cellular network using
24

25 number of the package containing the cash being sent to claimant
26 to pay for the bitcoins. Claimant was at home at that time.
27 Claimant and Ochle are the only witnesses to the transaction as
28 far as claimant knows.

1 3.(d) Claimant's cell phone contains text messages that show the
2 transaction described above. The publicly available "Blockchain"
3 contains the transaction showing that the 32 bitcoins were
4 transferred to the bitcoin address

5 [REDACTED]
6 that text message conversation. An email to Joseph Bennett sent
7 on Thu, Jan 28, 2016 at 1:18 PM contained a screenshot of the
8 relevant part of that text message conversation. The webpage at
9 <https://blockchain.info/address/1FsvpwDipKKmJUHbDYpWiTGC6vd5sR21An>
10 shows the transaction. The US Postal Service has records showing
11 that the parcel was to be delivered to claimant. The Mail Center
12 & More at 39540 Murrieta Hot Springs Rd, Murrieta, CA 92563, Suite
13 219 has an agreement with claimant to provide box #32 to claimant
14 for an annual fee.

15 Several documents relating to the interception of claimant's
16 property by Joseph Bennett on behalf of the United States Postal
17 Inspection Service also evidence the transaction described above,
18 including:

- 19 • the interrogatories being answered herein,
 - 20 • a verified complaint for forfeiture in, the civil cover sheet for,
21 and a warrant to seize defendant in:
 - 22 o Case No. ED CV 16-01166,
 - 23 • a notice of seizure dated February 9, 2016 about, and a response
24 dated March 8, 2016 to claimant's claim for:
 - 25 o Seizure No 243-16-023, asset ID 16-USP-000679, and
 - 26 • a letter from Frank D. Kortum to Dave Scotese dated June 9, 2016
- 27 There are most likely other documents evidencing, recording,
28 facilitating, or otherwise relating to the transaction identified

1 above, which documents claimant cannot identify specifically
2 because he doesn't have access to identifying information about
3 them.

4 SPECIAL INTERROGATORY NO. 4: "If you have any records, documents,
5 or tangible items that reflect or are relevant to your interest in
6 any or all of the defendant assets or your claim to said assets
7 (other than those identified in response to special Interrogatory
8 No. 3), identify each piece of evidence with specificity,
9 including the name, address and telephone number of its
10 custodian."

11 Objection. This set of discovery relies on preliminary/intro-
12 ductory definitions in violation of Code of Civil Procedure
13 section 2030.060 subdivision (d). Subject to and without waiving
14 said objection, claimant responds as follows: Joseph Bennett left
15 claimant a voicemail on January 28, 2016 requesting that claimant
16 call him back because Michael Dawson, whom claimant had contacted
17 about the missing parcel, referred Mr. Bennett to claimant as the
18 owner of a parcel that Mr. Bennett had intercepted. Mr. Bennett
19 is also in possession of a letter claimant sent him in which
20 claimant reiterated the fact that the parcel contained money that
21 belonged to claimant as a payment for bitcoin, which fact claimant
22 had told him in a telephone conversation on January 28, 2016.
23 Joseph Bennett's telephone number and address are not known to
24 claimant but his work number is (909)386-1098 and the address to
25 which the letter was sent is PO Box 1684 San Bernardino, CA 92401.
26 SPECIAL INTERROGATORY NO. 5: "List each and every source (other
27 than those identified in response to Special Interrogatory No. 3)
28 from which you claim that each defendant asset was derived. Your

1 answer should also include: the date each defendant asset was
2 obtained, and from whom (name, residential address and telephone
3 number) each defendant asset was obtained and the reason you
4 obtained each defendant asset. Please identify each witness (by
5 name, address and telephone number) and each document (and the
6 name, address and telephone number of the custodian of the
7 document) that supports your answer."

8 Objection. This set of discovery relies on preliminary/intro-
9 ductory definitions in violation of Code of Civil Procedure
10 section 2030.060 subdivision (d). Subject to and without waiving
11 said objection, claimant responds as follows: No source other than
12 Woodie Ochle is known to claimant.

13 SPECIAL INTERROGATORY NO. 6: "List any facts establishing your
14 ownership of each defendant asset (other than those identified in
15 response to Special Interrogatory No. 3)."

16 Objection. This set of discovery relies on preliminary/intro-
17 ductory definitions in violation of Code of Civil Procedure
18 section 2030.060 subdivision (d). Subject to and without waiving
19 said objection, claimant responds as follows: All facts known to
20 claimant establishing claimant's ownership of the defendant asset
21 are listed in item 3.

22 SPECIAL INTERROGATORY NO. 7: "State the names and current
23 residential addresses and telephone (numbers of all persons known
24 or believed by you to have knowledge of or information pertaining
25 to your alleged ownership of each defendant asset (other than
26 those identified in response to Special Interrogatory No. 3), and
27 summarize what information you believe they have pertaining to
28 your alleged ownership of each defendant asset."

1 Objection. This set of discovery relies on preliminary/intro-
2 ductory definitions in violation of Code of Civil Procedure
3 section 2030.060 subdivision (d). Subject to and without waiving
4 said objection, claimant responds as follows: All persons known or
5 believed by claimant to have knowledge of or information
6 pertaining to claimant's ownership of the defendant asset are
7 listed in item 3.

8 **SPECIAL INTERROGATORY NO. 8:** "If any person or entity other than
9 you has an interest in any part of any defendant asset, please
10 identify that person or entity. State the nature of that interest
11 and describe in detail how it arose."

12 Objection. This set of discovery relies on preliminary/intro-
13 ductory definitions in violation of Code of Civil Procedure
14 section 2030.060 subdivision (d). Subject to and without waiving
15 said objection, claimant responds as follows: As a married man,
16 claimant shares ownership of all assets with claimant's wife,
17 Kimberlee N. Scotese, a registered nurse. This shared ownership
18 developed over their years together, having germinated on July 19,
19 1997 when they were wed, and coming into fullness only recently in
20 a way that no legal system can or should comprehend.

21 **SPECIAL INTERROGATORY NO. 9:** "Please identify any (by title and
22 docket number) any bankruptcy proceeding to which you are or have
23 been a party within the last 10 years."

24 Objection. This set of discovery relies on preliminary/intro-
25 ductory definitions in violation of Code of Civil Procedure
26 section 2030.060 subdivision (d). Subject to and without waiving
27 said objection, claimant responds as follows: Claimant is not
28

1 aware of any bankruptcy proceedings to which claimant is or has
2 been a party in the last 10 years.

3 SPECIAL INTERROGATORY NO. 10: "Please identify (by title and
4 docket number) any legal proceeding (including but not limited to
5 domestic relations proceedings) to which you are or have been a
6 party within the last 10 years and in which your ownership of any
7 defendant asset is or was an issue."

8 Objection. This set of discovery relies on preliminary/intro-
9 ductory definitions in violation of Code of Civil Procedure
10 section 2030.060 subdivision (d). Subject to and without waiving
11 said objection, claimant responds as follows: Claimant is not and
12 has not been a party to any legal proceeding in the last ten years
13 in which claimant's ownership of any defendant asset was an issue.

14 SPECIAL INTERROGATORY NO. 11: "If any defendant asset was the
15 proceeds of a loan, or served as collateral for a loan, please
16 describe the terms and purpose of the loan in detail, identify the
17 lender, identify all documents created in connection with the
18 loan, and describe the nature of the lender's interest in the
19 defendant asset."

20 Objection. This set of discovery relies on preliminary/intro-
21 ductory definitions in violation of Code of Civil Procedure
22 section 2030.060 subdivision (d). Subject to and without waiving
23 said objection, claimant responds as follows: Not applicable.

24 SPECIAL INTERROGATORY NO. 12: "Did you at any time disclaim
25 ownership of any defendant asset? If so, please describe in detail
26 the circumstances under which you disclaimed ownership, and
27 identify any documents you executed at or about the time you
28 disclaimed ownership."

1 Objection. This set of discovery relies on preliminary/intro-
 2 ductory definitions in violation of Code of Civil Procedure
 3 section 2030.060 subdivision (d). Subject to and without waiving
 4 said objection, claimant responds as follows: Claimant never
 5 disclaimed ownership of any defendant asset named in this case.
 6 **SPECIAL INTERROGATORY NO. 13:** "If you filed an income tax return
 7 for the years from 2010 through 2015, IDENTIFY and DOCUMENT the
 8 years filed, and the name, address and tax identification number
 9 used on each return. Complete and return the enclosed Tax
 10 Information Authorization."

11 Objection. This set of discovery relies on preliminary/intro-
 12 ductory definitions in violation of Code of Civil Procedure
 13 section 2030.060 subdivision (d). Objection. Information regarding
 14 tax returns, including income tax returns, W-2 and/or 1099 forms,
 15 is privileged under federal and state law. (See *Webb v. Standard*
 16 *Oil Co.* (1957) 49 Cal.2d 509 [319 P.2d 621]; *Brown v. Superior*
 17 *Court* (1977) 71 Cal.App.3d 141 [139 Cal.Rptr. 327]; *Aday v.*
 18 *Superior Court* (1961) 55 Cal.2d 789 [13 Cal.Rptr. 415]; *Schnabel*
 19 *v. Superior Court* (1993) 5 Cal.4th 704 [21 Cal.Rptr.2d 200].)
 20 This privilege is to be broadly construed. (*Sav-on Drugs, Inc. v.*
 21 *Superior Court* (1975) 15 Cal.3d 1, 6-7 [123 Cal.Rptr. 283, 287].)
 22 Subject to and without waiving said objections, claimant responds
 23 as follows: Claimant filed an original and an amended federal tax
 24 return and an original state tax return for each of the years
 25 2010, 2011, and 2012, original federal and state tax returns in
 26 2013, and on July 9, 2016, claimant filed federal and state tax
 27 returns for 2014 and 2015 using the name David J Scotese and the
 28 [REDACTED]

1 SPECIAL INTERROGATORY NO. 14: "IDENTIFY all individuals, other
2 than counsel who assisted you in responding to these
3 interrogatories, specifying the answer with which they assisted."
4 Objection. This set of discovery relies on preliminary/intro-
5 ductory definitions in violation of Code of Civil Procedure
6 section 2030.060 subdivision (d). Subject to and without waiving
7 said objection, claimant responds as follows: Kavita Sadana,
8 Esquire answered some questions about the discovery process, but
9 did not address any particular answer.

10 SPECIAL INTERROGATORY NO. 15: "IDENTIFY and DOCUMENT any
11 additional information relevant to the subject you identify and
12 your interest in each defendant asset, to the extent such
13 information is not previously set out in your answers above."
14 Objection. This set of discovery relies on preliminary/intro-
15 ductory definitions in violation of Code of Civil Procedure
16 section 2030.060 subdivision (d). Subject to and without waiving
17 said objection, claimant responds as follows: Claimant is not
18 aware of any additional information that is relevant at this time.

19 SPECIAL INTERROGATORY NO. 16: "Sign and notarize the following
20 attached documents:

- 21 A. Authorization to Release Financial Records and Documents;
- 22 B. Authorization to Release Customer Records and Documents;
- 23 C. Authorization to Release State Tax Documents; and
- 24 D. Form 6821 Tax release."

25 Objection. This set of discovery relies on preliminary/intro-
26 ductory definitions in violation of Code of Civil Procedure
27 section 2030.060 subdivision (d). Objection. Information regarding
28 tax returns, including income tax returns, W-2 and/or 1099 forms



1 is privileged under federal and state law. (See *Webb v. Standard*
 2 *Oil Co.* (1957) 49 Cal.2d 509 [319 P.2d 621]; *Brown v. Superior*
 3 *Court* (1977) 71 Cal.App.3d 141 [139 Cal.Rptr. 327]; *Aday v.*
 4 *Superior Court* (1961) 55 Cal.2d 789 [13 Cal.Rptr. 415]; *Schnabel*
 5 *v. Superior Court* (1993) 5 Cal.4th 704 [21 Cal.Rptr.2d 200].)
 6 This privilege is to be broadly construed. (*Sav-on Drugs, Inc. v.*
 7 *Superior Court* (1975) 15 Cal.3d 1, 6-7 [123 Cal.Rptr. 283, 287].)
 8 Objection. This discovery request is so broad and unlimited as to
 9 scope as to be an unwarranted annoyance, and an embarrassment. To
 10 comply with the request would be an undue burden on the claimant.
 11 (See Code of Civ. Proc., § 2030.090 subd. (b); and *Columbia*
 12 *Broadcasting System, Inc. v. Superior Court of Los Angeles County*
 13 (1968) 263 Cal.App.2d 12, 19 [69 Cal.Rptr. 348, 352].) Subject to
 14 and without waiving said objection, claimant responds as follows:
 15 There is no question for claimant to answer in this item.
 16 DATED: August 4, 2016

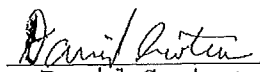
17 VERIFICATION

18 I, David Scotese, certify and declare that I have read the
 19 foregoing Plaintiff's First Set of Special Interrogatories to
 20 Claimant David Scotese and know its contents.

21 I am a party to this action and I make this verification for
 22 that reason. I am informed and allege on that ground that the
 23 answers provided above are true and correct.

24 I declare under penalty of perjury under the laws of the
 25 State of California that the foregoing is true and correct.

26 Executes on July 23, 2016 at Murrieta, California.

27 
 28 David Scotese
 In Pro Per

PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I own and operate Mail Center & More. My business address is 39520 MURRIETA HOT SPRINGS RD #219, MURRIETA, CALIFORNIA 92563. On ~~July~~ ^{AUG 4}, 2016, I served a copy of CLAIMANT'S FIRST SET OF SPECIAL INTERROGATORIES TO PLAINTIFF and CLAIMANT'S ANSWER TO FIRST SET OF SPECIAL INTERROGATORIES, on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices.

TO: FRANK D. KORTUM
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

I am familiar with the practice of this office for collection and processing correspondence for mailing. on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: ^{AUG}~~July~~ ⁴, 2016 at Murrieta, California.



Charles Hannum

EXHIBIT "B"

EILEEN M. DECKER
 United States Attorney
 LAWRENCE S. MIDDLETON
 Assistant United States Attorney
 Chief, Criminal Division
 STEVEN R. WELK
 Assistant United States Attorney
 Chief, Asset Forfeiture Section
 FRANK D. KORTUM
 California Bar No. 110984
 Assistant United States Attorney
 Asset Forfeiture Section
 1400 United States Courthouse
 312 North Spring Street
 Los Angeles, California 90012
 Telephone: (213) 894-5710
 Facsimile: (213) 894-7170
 E-mail: frank.kortum@usdoj.gov

Attorneys for Plaintiff
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

 \$15,000.00 IN U.S. CURRENCY,

 Defendant.

No. EDCV16-01166-DSF (KKx0
 PLAINTIFF'S FIRST REQUEST FOR
 ADMISSIONS TO CLAIMANT
 DAVID SCOTese

DAVID SCOTese,

 Claimant.

PROPOUNDING PARTY: PLAINTIFF UNITED STATES OF AMERICA

RESPONDING PARTY: CLAIMANT DAVID SCOTese

Pursuant to Rule 36 of the Federal Rules of Civil Procedure,
 plaintiff United States of America, by its attorneys, hereby requests
 that claimant David Scotese answer the following Requests for
 Admissions separately, in writing and under oath, and that such

1 answers be signed by the person making them and served upon plaintiff
2 within thirty days after the service hereof.

3 PLEASE TAKE FURTHER NOTICE that, pursuant to Local Rule 36-2 of
4 the Local Rules of the United States District Court for the Central
5 District of California, the person answering these Requests for
6 Admissions shall quote each Request for Admission in full immediately
7 preceding the statement of any answer thereto.

8 **DEFINITIONS**

9 a. "Complaint" shall mean and refer to the plaintiff's
10 Complaint for Forfeiture filed in this action.

11 b. "Verified claim of forfeiture" and "Answer" shall mean and
12 refer to the verified statement identifying interest and answer filed
13 by claimant in the above-entitled action on file herein.

14 c. "You" and "your" shall mean, refer to and be directed
15 at David Scotese.

16 d. "Defendant" means the above captioned defendant currency in
17 which you claim an interest.

18 **REQUESTS FOR ADMISSIONS**

19 **REQUEST FOR ADMISSION NO. 1:**

20 You provided the answers to the questions set forth on the
21 document attached hereto as Exhibit "A".

22 **REQUEST FOR ADMISSION NO. 2:**

23 The answers set forth on the document attached hereto as Exhibit
24 "A" are true and correct,

25
26 **REQUEST FOR ADMISSION NO. 3:**

27 You derive income from selling bitcoin.
28

1 REQUEST FOR ADMISSION NO. 4:

2 You derive income from selling bitcoin in exchange for cash.

3 REQUEST FOR ADMISSION NO. 5:

4 The income you derive from selling bitcoin supports your life
5 and family (as stated in Exhibit "A").

6 REQUEST FOR ADMISSION NO. 6:

7 You have placed advertisements stating that you are willing to
8 sell bitcoin (as stated in Exhibit "A").

9 Dated: August 19, 2016

Respectfully submitted,

10 EILEEN M. DECKER
11 United States Attorney
12 LAWRENCE S. MIDDLETON
13 Assistant United States Attorney
14 Chief, Criminal Division
STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture Section

15 /s/ Frank D. Kortum
16 FRANK D. KORTUM
17 Assistant United States Attorney

18 Attorneys for Plaintiff
19 UNITED STATES OF AMERICA
20
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Exhibit “A”

Search for questions, people, and topics

Sign In

**Dave Scotese**

Webmaster for voluntaryist.com, epiphany engenderer, writer of code, philosop..

Views on Dave's Answers

1,597

34,247

About Dave

March 14, 1974

Southern California

University of California, San Diego

Knows About

Taxes

Answers: 40

Ethics

I am the webmaster for voluntaryist.com. I don't own it and I don't get paid.
Answers: 16

Bitcoin

Dealing bitcoin supports my life and family.
Answers: 14

Total Views

Feeds

150 Answers

Most Recent 1 20 100 1,000

Answers 150

Questions 22

Posts 0

4th January

1st Jan 2016

Feb 1, 2016

Feb 1, 2016

What is the optimal rate for sugar tax also known as soda tax?

Dave Scotese, Webmaster for voluntaryist.com, epiphany engenderer, writer of code, philosop..

Does "the optimal rate" mean that the taxing authority gets the most money, or that society gets the most benefit? For the first, I have no idea because it really depends on how willing the sugar c... (more)

Can major Bitcoin mining pools manipulate exchange rates by alternating using and not using their equipment and exchange arbitrage to make more money?

Dave Scotese, Dealing bitcoin supports my life and family.

In a roundabout way, a miner who shuts down some of his equipment (I'll call him a slutter) will end up with less bitcoin to sell, which would allow the price to rise while supply is constrained. T... (more)

What business restrictions in a corporation can give tax benefits?

Dave Scotese, Webmaster for voluntaryist.com, epiphany engenderer, writer of code, philosop..

If you avoid using any kind of federal privilege, you do not incur liability for the U.S. income tax. The avoidance of income tax liability can benefit individual people, but I'm not sure a corpora... (more)

Why doesn't the U.S. Government go after Scientology's tax exempt status?

Dave Scotese, Webmaster for voluntaryist.com, epiphany engenderer, writer of code, philosop..

It may be the case that the Church of Scientology does not engage in taxable activity to earn any money, so its earnings might not be "income" at all. A careful reading of Title 26 and the history... (more)

What are some ways one can one make money around bitcoins?

Dave Scotese, Dealing bitcoin supports my life and family.

1. Practice being honest.
2. Learn how to use bitcoin without getting hacked or scammed. My newsletter (BTR "Traders") can help with this.
3. Place ads saying that you are willing to purchase bitcoin from those...

"BTR"

Dave Scotese's answer to What are some ways one can one make money around bitcoins?... Page 1 of 1

Search for questions, people, and topics

Sign In

What are some ways one can one make money around bitcoins?

Met a 21 year old a few days ago who was making over \$1500-2000 per month as passive income by having "several websites revolving around bitcoins"
He didn't want to expand but he seemed to know a lot about it and got me curious



Dave Scotese, Dealing bitcoin supports my life and family.

230 Views

1. Practice being honest.
2. Learn how to use bitcoin without getting hacked or scammed. My newsletter (BTC Traders) can help with this.
3. Place ads saying that you are willing to purchase bitcoin from those who need to sell it.
4. (Once you have some bitcoin) place ads saying that you are willing to sell bitcoin to those who need to buy it.
5. Be nice.

I started doing that almost three years ago, and I've never made more money any other way.

Written May 21 View Upvotes

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About the Author



Dave Scotese

Webmaster for voluntaryist.com, epiphany engenderer, writer of code, philosop...

Writes about Taxes, Ethics, Bitcoin, The World, Computer Programming, and 3 more

[More Answers from Dave Scotese](#)

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What are the top three character traits of the best leaders you know?

460 Views

A question to Anarcho-Capitalists: what is it about AnCap that interests you?

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If you failed in your first start up, how do you come back for your next venture without losing heart, especially if you are a lone warrior?

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Startup # A B C D E F G H I J K L M N O P Q R S T U V W X Y Z
About · Careers · Privacy · Terms · Contact

EXHIBIT "C"

1 David Scotese

2 Murrieta, CA 92563

3 Fax Number: NA

4 Email:

5 David Scotese, IN PRO PER

6
7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION
10

11 UNITED STATES OF AMERICA

) Case No.: CV 16-01166-DSF (KK)

12
13 Plaintiff,

) CLAIMANT DAVID SCOTese'S ANSWER
) TO FIRST REQUEST FOR ADMISSIONS

14 vs.

15 \$15,000.00 IN U.S. CURRENCY,

16 Defendant
17
18
19

20
21 PROPOUNDING PARTY: PLAINTIFF UNITED STATES OF AMERICA

22 RESPONDING PARTY: CLAIMANT DAVID SCOTese

23 REQUEST FOR ADMISSION NO. 1:

24 You provided the answers to the questions set forth on the
25 document attached hereto as Exhibit "A".

26 RESPONSE: Admitted

27 REQUEST FOR ADMISSION NO. 2:

28 The answers set forth on the document attached hereto as Exhibit

1 "A" are true and correct.

2 RESPONSE: Admitted.

3 REQUEST FOR ADMISSION NO. 3:

4 You derive income from selling bitcoin.

5 RESPONSE: Denied. The word "income" is used in statutory law,
6 without a legal definition, to refer to monetary gain that is
7 taxable, and selling my private property is not an income-tax
8 excisable activity.

9 REQUEST FOR ADMISSION NO. 4:

10 You derive income from selling bitcoin in exchange for cash.

11 RESPONSE: Denied. The word "income" is used in statutory law,
12 without a legal definition, to refer to monetary gain that is
13 taxable, and selling my private property is not an income-tax
14 excisable activity.

15 REQUEST FOR ADMISSION NO. 5:

16 The income you derive from selling bitcoin supports your life
17 and family (as stated in Exhibit "A").

18 RESPONSE: I object to this request for admission because it
19 implies that I have claimed to derive "income" from selling
20 bitcoin. The term "income" appears four times in Exhibit "A",
21 first stating that the exercise of federal privilege is required
22 to incur income tax liability, second, pointing out that avoiding
23 such liability can benefit individual people, third, suggesting
24 that the Church of Scientology might not earn what can be called
25 "income," and lastly, as part of a question someone else posted
26 referring to what a 21-year old was doing. I do exercise my right
27 to sell my own property after purchasing it for a lower price in
28 order to support my family without incurring any tax liability.

1 REQUEST FOR ADMISSION NO. 6:

2 You have placed advertisements stating that you are willing to
3 sell bitcoin (as stated in Exhibit "A").

4 RESPONSE: Admitted.

5 DATED: September 9, 2016

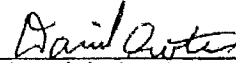
6
7 VERIFICATION

8 I, David Scotese, certify and declare that I have read the
9 foregoing Plaintiff's Request For Admissions to Claimant David
10 Scotese and know its contents.

11 I am a party to this action and I make this verification for
12 that reason. I am informed and allege on that ground that the
13 answers provided above are true and correct.

14 I declare under penalty of perjury under the laws of the
15 State of California that the foregoing is true and correct.

16 Executed on September 9, 2016 at Murrieta, California.

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26
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28


David Scotese
In Pro Per

EXHIBIT "D"

1 David Scotese

2 Murrieta, CA 92563

3 Fax Number: NA

4 Email:

5 David Scotese, IN PRO PER

6
7 UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION
10

11 UNITED STATES OF AMERICA

12
13 Plaintiff,

14 vs.

15 \$15,000.00 IN U.S. CURRENCY,

16 Defendant
17
18
19

) Case No.: CV 16-01166-DSF (KK)

) CLAIMANT'S ANSWER TO FIRST SET
) OF REQUESTS FOR THE PRODUCTION
) OF DOCUMENTS

20
21 PROPOUNDING PARTY: PLAINTIFF UNITED STATES OF AMERICA

22 RESPONDING PARTY: CLAIMANT DAVID SCOTese

23 REQUEST NO. 1:

24 All documents evidencing, reflecting, or referring to each and
25 every communication between you and Woodie Ochle from
26 January 1, 2011 through the present date.

27 ANSWER NO. 1: I propose to mail a thumbdrive containing the
28 requested documents, or to email a zip file containing the

-1-

CLAIMANT'S ANSWER TO FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS

41

1 requested documents, to PLAINTIFF's counsel, Frank Kortum,
2 whichever he chooses. I further propose to provide text messages
3 in a CSV ("Comma Separated Values") file which will indicate the
4 content of the message, which party sent the message, and when it
5 was sent, and that in the case of a message containing an image,
6 the image will be included in a separate file, the filename of
7 which will be indicated in the CSV file field that would otherwise
8 contain the content of the message.

9 **REQUEST No. 2:**

10 All documents identifying each and every e-mail account used by
11 you to communicate with Woodie Ochle from January 1, 2011 through
12 the present date.

13 **ANSWER No. 2:** I object to this discovery request insofar as it
14 seeks information not relevant to the subject matter of this
15 action or likely to lead to the discovery of admissible evidence.
16 I object because the request is overbroad and unduly burdensome to
17 the extent it seeks "all documents identifying each and every e-
18 mail account used by [me] to communicate with Woodie Ochle". I
19 object because the request is also an invasion of the privacy of
20 those correspondents of mine to whom I have identified said email
21 account. Subject to and without waiver of the foregoing
22 objections, I answer that many documents identify the e-mail
23 account I used to communicate with Woodie Ochle, but do not
24 indicate that I used it to communicate with him. All documents
25 that do identify said e-mail account as the one I used to
26 communicate with Woodie Ochle will be included in the answer to
27 number 1, above.

28 **REQUEST No. 3:**

1 All documents identifying any accounts held by you with any
2 provider of text communication services used by you to communicate
3 with Woodie Ochle from January 1, 2011 through the present date.

4 ANSWER No. 3: I object to this discovery request insofar as it
5 seeks information not relevant to the subject matter of this
6 action or likely to lead to the discovery of admissible evidence.
7 I object because the request is overbroad and unduly burdensome to
8 the extent it seeks "all documents identifying any account held by
9 [me] with any provider of text communications services used by
10 [me] to communicate with Woodie Ochle". Subject to and without
11 waiver of the foregoing objections, I answer that billing
12 statements from AT&T, Verizon, and Frontier fit this description
13 but none of them are in my possession. I propose to include in
14 the zip file or thumbdrive the one email from Apple which
15 identifies my "AppleID" which is my email address,

16

17 REQUEST No. 4:

18 All documents evidencing, reflecting or referring to the source of
19 the bitcoins that you sold to Woodie Ochle.

20 ANSWER No. 4: I object to this discovery request insofar as it
21 seeks information not relevant to the subject matter of this
22 action or likely to lead to the discovery of admissible evidence.
23 I object because the request is overbroad and unduly burdensome to
24 the extent it seeks "all documents evidencing, reflecting or
25 referring to the source of the bitcoins". I object because this
26 request is an invasion of my right to privacy and the right to
27 privacy of those from whom I purchase bitcoins. I also object
28 because all the bitcoin I have ever purchased is as

1 indistinguishable from any of the bitcoin I have ever sold to one
2 person as it is from bitcoin I sold to any other person. Subject
3 to and without waiver of the foregoing objections, I answer that I
4 have been buying bitcoins from people that want to sell them for
5 over three years, during which time I have created and published
6 numerous documents evidencing, reflecting, or referring to those
7 people in aggregate, which documents are all available in the
8 public domain.

9 **REQUEST No. 5:**

10 **All documents identifying each and every person to whom you sold**
11 **bitcoins between January 1, 2011 and the present date.**

12 **ANSWER No. 5:** I object to this discovery request insofar as it
13 seeks information not relevant to the subject matter of this
14 action or likely to lead to the discovery of admissible evidence.
15 I object because the request is overbroad and unduly burdensome to
16 the extent it seeks "all documents identifying each and every
17 person to whom [I] sold bitcoins". I object because this request
18 is an invasion of my right to privacy and the right to privacy of
19 those to whom I sold bitcoins.

20 **REQUEST No. 6:**

21 **All documents evidencing, reflecting or referring to the income**
22 **you derived from sales of bitcoins in each year from January 1,**
23 **2011 through the present date.**

24 **ANSWER No. 6:** I object to this discovery request because the term
25 "income" has no clear legal definition. I object to this discovery
26 request insofar as it seeks information not relevant to the
27 subject matter of this action or likely to lead to the discovery
28 of admissible evidence. I object because the request is overbroad

1 and unduly burdensome to the extent it seeks "all documents
2 evidencing, reflecting or referring to the income you derived from
3 sales of bitcoins". I object because this request is an invasion
4 of my right to privacy. Subject to and without waiver of the
5 foregoing objections, I answer that the amount of monetary gain I
6 have derived from engaging in taxable activities by selling
7 bitcoin is zero. I have published many statements evidencing,
8 reflecting, or referring to the taxability of private enterprise
9 and they are available in the public domain. I have also
10 submitted tax returns to the government which properly do not
11 include monetary gain from my private enterprise as income, which
12 tax returns are already in PLAINTIFF's possession.

13 **REQUEST No. 7:**

14 All documents evidencing, reflecting or referring to any
15 advertisements placed by you that mentioned bitcoins from January
16 1, 2011 through the present date.

17 **ANSWER No. 7:** I object to this discovery request insofar as it
18 seeks information not relevant to the subject matter of this
19 action or likely to lead to the discovery of admissible evidence.
20 I object because the request is overbroad and unduly burdensome to
21 the extent it seeks "all documents evidencing, reflecting or
22 referring to any advertisements placed by [me]". Subject to and
23 without waiver of the foregoing objections, I answer that aside
24 from the webpages to which there are links at the bottom of the
25 page at <https://localbitcoins.com/accounts/profile/dscotese/>, all
26 such documents are private communications and are therefore
27 unavailable to third parties. The advertisement Woodie Ochle
28 answered is equally available to PLAINTIFF as it is to me, at

1 <https://localbitcoins.com/ad/20948/purchase-bitcoin-cash-deposit->
2 [mt-click-for-discounts-options-united-states](#) although it has been
3 modified since he first answered it.

4 **REQUEST No. 8:**

5 **All documents evidencing, reflecting or referring to**
6 **communications about bitcoins made by you from January 1, 2011**
7 **through the present date on**

8 **a. internet web sites,**

9 **b. blog posts,**

10 **c. Facebook accounts,**

11 **d. Twitter accounts, or**

12 **e. any social media.**

13 **ANSWER No. 8:** I object to this discovery request insofar as it
14 seeks information not relevant to the subject matter of this
15 action or likely to lead to the discovery of admissible evidence.
16 I object because the request is overbroad and unduly burdensome to
17 the extent it seeks "all documents evidencing, reflecting or
18 referring to communications about bitcoins made by [me]". Subject
19 to and without waiver of the foregoing objections, I answer that I
20 have written about bitcoins on Quora.com, on localbitcoins.com, on
21 Facebook, on LinkedIn, on my personal blog at
22 litmocracy.blogspot.com, in comments on several websites that use
23 the Disqus commenting system, and on other websites that I am not
24 able to recall at this time.

25 **REQUEST No. 9:**

26 **All documents evidencing, reflecting, or referring to any reports**
27 **filed by you (or any business or entity under your control) with**
28 **any agency of the government of the United States, regarding any**

1 sales of bitcoins made by you (or any business or entity under
2 your control), for the period from January 1, 2011 through the
3 present date.

4 ANSWER No. 9: I object to this discovery request insofar as it
5 seeks information not relevant to the subject matter of this
6 action or likely to lead to the discovery of admissible evidence.
7 I object because all such documents are equally available to
8 PLAINTIFF as they are to me. Subject to and without waiver of the
9 foregoing objections, I answer that, as far as I know, there are
10 no such reports.

11 REQUEST No. 10:

12 If you registered any activity or business conducted by you (or
13 any entity under your control) with any agency of the government
14 of the United States, produce all documents evidencing, reflecting
15 or referring to such registration.

16 ANSWER No. 10: I object to this discovery request insofar as it
17 seeks information not relevant to the subject matter of this
18 action or likely to lead to the discovery of admissible evidence.
19 I object because all such documents are equally available to
20 PLAINTIFF as they are to me. Subject to and without waiver of the
21 foregoing objections, I answer that, if I remember correctly, I
22 have not made any such registration. If I have, the registration
23 is already in the possession of the government.

24 REQUEST No. 11:

25 If your responses to any of the Requests for Admission, served
26 concurrently herewith, are anything other than unqualified
27 admissions, produce all documents supporting your responses.

28 ANSWER No. 11: There are several documents supporting my

1 responses, many of which have been collected on Peter
2 Hendrickson's website at
3 <http://www.losthorizons.com/BulletinBoard.htm>. The document
4 Hendrickson provides at
5 [http://losthorizons.com/Documents/AllEconomicActivityIsNotIncome.h](http://losthorizons.com/Documents/AllEconomicActivityIsNotIncome.htm)
6 [tm](http://losthorizons.com/Documents/AllEconomicActivityIsNotIncome.htm) will be very helpful in showing that my answers are accurate.

7 **REQUEST No. 12:**

8 **Produce all documents identified in your response to the Special**
9 **Interrogatories served in this action, to the extent**
10 **said documents are not produced in response to any other Request**
11 **for Production set forth above.**

12 **ANSWER No. 12:** I know of no documents fitting this description.

13 DATED: September 9, 2016

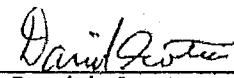
14
15 VERIFICATION

16 I, David Scotese, certify and declare that I have read the
17 foregoing PLAINTIFF'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF
18 DOCUMENTS to David Scotese and know its contents.

19 I am a party to this action and I make this verification for
20 that reason. I am informed and allege on that ground that the
21 answers provided above are true and correct.

22 I declare under penalty of perjury under the laws of the
23 State of California that the foregoing is true and correct.

24 Executes on September 9, 2016 at Murrieta, California.

25
26
27
28


David Scotese
In Pro Per

EXHIBIT "E"

1 EILEEN M. DECKER
 United States Attorney
 2 LAWRENCE S. MIDDLETON
 Assistant United States Attorney
 3 Chief, Criminal Division
 STEVEN R. WELK
 4 Assistant United States Attorney
 Chief, Asset Forfeiture Section
 5 FRANK D. KORTUM
 California Bar No. 110984
 6 Assistant United States Attorney
 Asset Forfeiture Section
 7 United States Courthouse
 312 North Spring Street, 14th Floor
 8 Los Angeles, California 90012
 Telephone: (213) 894-5710
 9 Facsimile: (213) 894-7177
 E-Mail: Frank.Kortum@usdoj.gov
 10

Attorneys for Plaintiff
 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14 EASTERN DIVISION

15 UNITED STATES OF AMERICA,
 16
 17 Plaintiffs,
 18 v.
 19 \$15,000.00 IN U.S. CURRENCY,
 20 Defendant.
 21

22 DAVID SCOTese,
 23 Claimant.

Case No.: EDCV 16-01166-DSF(KKx)
 PLAINTIFF'S VERIFIED RESPONSE TO
 FIRST SET OF INTERROGATORIES
 PROPOUNDED BY CLAIMANT DAVID
 SCOTese

24 PROPOUNDING PARTY: CLAIMANT, DAVID SCOTese
 25 RESPONDING PARTY: PLAINTIFF, UNITED STATES OF AMERICA
 26 SET NUMBER: ONE
 27
 28

1 PRELIMINARY STATEMENT

2 Plaintiff United States of America (the "government") hereby
3 objects to these interrogatories, both individually and in their
4 entirety, to the extent claimant has attempted to serve them as
5 Special Interrogatories. Rule G(6) of the Supplemental Rules for
6 Admiralty or Maritime Claims and Asset Forfeiture Actions provides
7 that the government may serve Special Interrogatories but does not
8 give claimants the right to serve such interrogatories. All
9 responses set forth herein are made subject to this objection. In
10 addition, plaintiff has not at this time fully completed its
11 discovery and investigation in this action. All responses
12 contained herein are based solely upon such information and
13 evidence as are presently available and specifically known to the
14 plaintiff at this time and disclose only those factual contentions
15 and legal conclusions which presently occur to the government at
16 this time. Further discovery, investigation, research and
17 analysis is expected to supply additional facts, add meaning to
18 currently known facts, and establish entirely new factual
19 contentions and legal conclusions, which may lead to substantial
20 additions or changes to the information provided herein.
21 Plaintiff reserves the right to add or change any and all
22 responses herein as additional facts are ascertained, legal
23 research is completed, and analyses are undertaken. The responses
24 herein are made in a good faith effort to supply as much
25 information as is presently known to the plaintiff in this action.

26 INTERROGATORY NO. 1:

27 Do you pay the salaries of judges Dale S. Fischer and Kenly
28 Kiya Kato?

1 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 1:

2 The government objects to this interrogatory pursuant to
3 Rule 26(b)(1) of the Federal Rules of Civil Procedure on the
4 grounds that it concerns a subject matter that is irrelevant to
5 any party's claim or defense. The government further objects to
6 this interrogatory on the ground that it is frivolous and
7 offensive to the extent it implies that the decisions of any
8 United States District Judge or United States Magistrate Judge
9 are influenced by the source of their salaries. The government
10 further objects to this interrogatory on the ground that it is
11 vague and ambiguous in that the term "you" is not defined, and
12 therefore could refer either to the person verifying the
13 interrogatory responses, or the entire United States government.

14 INTERROGATORY NO. 2:

15 Do you own, run, control, or otherwise have jurisdiction
16 over the court that is providing this due process?

17 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 2:

18 The government objects to this interrogatory on the ground
19 that it is vague, ambiguous, and unintelligible with respect to
20 the phrase "this due process." The government further objects to
21 this interrogatory pursuant to Rule 26(b)(1) of the Federal Rules
22 of Civil Procedure on the ground that it concerns a subject matter
23 that is irrelevant to any party's claim or defense. The
24 government further objects to this interrogatory on the ground
25 that it is frivolous and offensive to the extent it suggests that
26 the government "own[s], run[s], control[s] or ha[s] jurisdiction
27 over the {United States District} [C]ourt"

28

1 SPECIAL INTERROGATORY NO. 3:

2 If you have discussed Alternative Dispute Resolution, to what
3 conclusions did you come?

4 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 3:

5 The government objects to this interrogatory on the ground
6 that it is vague and ambiguous. The government further objects to
7 this interrogatory pursuant to Rule 26(b)(1) of the Federal Rules
8 of Civil Procedure on the ground that whether or when Alternative
9 Dispute Resolution is utilized is irrelevant to any party's claim
10 or defense. Further objection is made that any internal
11 discussions concerning this litigation are exempt from disclosure
12 under the attorney/client and/or attorney work product privileges.

13 INTERROGATORY NO. 4:

14 If defendant asset has been offered a public defender, what
15 is the name of the man or woman who will act as defendant's
16 counsel?

17 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 4:

18 The government objects to this interrogatory on the ground
19 that it is vague and ambiguous. The government further objects to
20 this interrogatory pursuant to Rule 26(b)(1) of the Federal Rules
21 of Civil Procedure on the ground that it concerns a subject matter
22 that is irrelevant to any party's claim or defense. Without
23 waiving the foregoing objections, the defendant in this action is
24 currency and is not entitled to legal representation.

25 SPECIAL INTERROGATORY NO. 5:

26 What evidence do you have, if any, that claimant ever
27 furnished or intended to furnish any moneys in exchange for any
28 controlled substance or listed chemical in violation of Subchapter

1 I of Chapter 13 of U.S. Code Title 21?

2 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 5:

3 As indicated in the government's verified complaint, claimant
4 sent bitcoins in exchange for cash (in the form of the defendant
5 currency) to a person who at the time was under investigation as a
6 drug dealer. The person who sent the defendant currency to
7 claimant packaged and shipped it in a manner that is consistent
8 with how drug dealers package and ship currency. The defendant
9 currency is therefore subject to forfeiture unless claimant can
10 establish that he was an innocent owner of the currency. To the
11 extent claimant asserts that he is an innocent owner of the
12 defendant currency, the assertion is without merit because there
13 is no evidence currently available to the government suggesting
14 that claimant exercised due diligence in obtaining any information
15 about the person to whom he sold the bitcoins, or in determining
16 whether the defendant currency was derived from a legal or
17 legitimate source.

18 INTERROGATORY NO. 6:

19 What evidence do you have, if any, that defendant asset is
20 traceable to any exchange for a controlled substance or listed
21 chemical in violation of Subchapter I of Chapter 13 of U.S. Code
22 Title 21?

23 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 6:

24 As indicated in the government's verified complaint, claimant
25 sent bitcoins in exchange for cash (in the form of the defendant
26 currency) to a person who at the time was under investigation as a
27 drug dealer. The person who sent the defendant currency to
28 claimant packaged and shipped it in a manner that is consistent

1 with how drug dealers package and ship currency. The defendant
2 currency is therefore subject to forfeiture unless claimant can
3 establish that he was an innocent owner of the currency. To the
4 extent claimant asserts that he is an innocent owner of the
5 defendant currency, the assertion is without merit because there
6 is no evidence currently available to the government suggesting
7 that claimant exercised due diligence in obtaining any information
8 about the person to whom he sold the bitcoins, or in determining
9 whether the defendant currency was derived from a legal or
10 legitimate source.

11 SPECIAL INTERROGATORY NO. 7:

12 What are the names of the men and/or women or the man or the
13 woman who will dispose of defendant asset if claimant's property
14 right in it is terminated by the forfeiture you seek?

15 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 7:

16 The government objects to this interrogatory on the ground
17 that it is vague and ambiguous. The government further objects to
18 this interrogatory pursuant to Rule 26(b)(1) of the Federal Rules
19 of Civil Procedure on the ground that it concerns a subject matter
20 that is irrelevant to any party's claim or defense, in that if a
21 judgment of forfeiture is issued in this action, claimant will
22 have no legitimate interest in ascertaining the identities of the
23 personnel responsible for disposing of the defendant asset.

24 INTERROGATORY NO. 8:

25 How many parcels does the Postal Inspector Joseph Bennett
26 select for further examination in a typical week at the Redlands
27 Sorting Facility?

28

1 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 8:

2 The government does not collect, acquire or maintain
3 information regarding the number of parcels selected for
4 inspection per week at the Redlands Sorting Facility. The
5 government accordingly objects to this interrogatory pursuant to
6 Rule 26(b)(1) of the Federal Rules of Civil Procedure on the
7 ground that the effort required to obtain the information sought
8 (assuming that the information even exists, which the government
9 specifically does not admit) is not proportional to the needs of
10 the case considering the importance of the issues at stake in the
11 action, the amount in controversy, the parties' resources, the
12 importance of the discovery in resolving the issue, and whether
13 the burden and expense of the proposed discovery outweighs its
14 likely benefit.

15 INTERROGATORY NO. 9:

16 Does Postal Inspector Joseph Bennett [sic]

17 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 9:

18 The government objects to this interrogatory on the ground
19 that it is not a complete sentence and does not constitute a
20 question, and is therefore vague, ambiguous and unintelligible.

21 INTERROGATORY NO. 10:

22 During the training of narcotics detection canine "Chewy",
23 what reward was used when Chewy did not alert to an item that had
24 no traces of narcotics but was selected for further examination?

25 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 10:

26 The government objects to this interrogatory to the extent it
27 is based on the premise that a reward was used when "Chewy" did
28

1 not alert to an item that had no traces of narcotics but was
2 selected for further examination.

3 INTERROGATORY NO. 11:

4 Assuming Chewy has a "work mode" in which he seeks out
5 narcotics, what causes him to exit "work mode"?

6 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 11:

7 The government objects to this interrogatory on the ground
8 that the term "work mode" is undefined, thus rendering the
9 interrogatory vague and ambiguous. The government further objects
10 to this interrogatory pursuant to Rule 26(b)(1) of the Federal
11 Rules of Civil Procedure on the ground that it seeks information
12 that is not proportional to the needs of the case considering the
13 importance of the issues at stake in the action, the amount in
14 controversy, the parties' resources, the importance of the
15 discovery in resolving the issue, and whether the burden and
16 expense of the proposed discovery outweighs its likely benefit.
17 Without waiving the foregoing objections, and solely as a courtesy
18 extended for the purpose of advancing the progress of this
19 litigation in general and the discovery process in particular, the
20 government responds that to the extent the term "work mode" can be
21 considered synonymous with deployment, the law enforcement officer
22 responsible for deploying a narcotics detection canine controls
23 the time, place and manner of deployment.

24 INTERROGATORY NO. 12:

25 On January 13, 2016, when Patrick Estrada first had his
26 "narcotics K9", Chewy, search an area with crates, carts, boxes,
27 and miscellaneous items, were there any recently mailed USPS
28 Priority Mail Express Parcels in the area?

1 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 12:

2 There was at least one recently-mailed USPS Priority Mail
3 Express parcel (namely, the parcel subsequently found to have
4 obtained the defendant currency (the "subject parcel")) in the
5 area of the sorting facility where "Chewy" searched. To the
6 extent this interrogatory seeks information about additional
7 parcels that may have been in the area, the government objects on
8 the following grounds: A law enforcement officer responsible for
9 deploying a narcotics detection canine has discretion to place
10 either a single parcel in the area to be searched, or more than
11 one parcel in the area to be searched. The government does not
12 regularly collect, acquire or maintain records concerning the
13 total number of parcels that may be placed in areas where
14 narcotics detection canines may be deployed. Pursuant to Rule
15 26(b)(1) of the Federal Rules of Civil Procedure, the government
16 therefore objects to this interrogatory on the ground that effort
17 involved in obtaining the information sought (assuming that the
18 information even exists, which the government specifically does
19 not admit) is not proportional to the needs of the case
20 considering the importance of the issues at stake in the action,
21 the amount in controversy, the parties' resources, the importance
22 of the discovery in resolving the issue, and whether the burden
23 and expense of the proposed discovery outweighs its likely
24 benefit. Without waiving the foregoing objection, the government
25 responds that it is not presently in possession of evidence
26 suggesting that at the time "Chewy" was deployed to the area
27 containing the subject parcel, there were any other recently-
28 mailed parcels in that area.

1 INTERROGATORY NO. 13:

2 On January 13, 2016, when Patrick Estrada had his narcotics
3 K9, Chewy, search an area into which Officer Estrada had just
4 placed USPS Priority Mail Express Parcel number EL 337571018 US
5 (SUBJECT PARCEL), was anything other than SUBJECT PARCEL placed
6 into the area?

7 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 13:

8 The government objects to this interrogatory on the
9 ground that the term "anything" is undefined, thus rendering the
10 interrogatory overbroad, vague and ambiguous. To the extent this
11 interrogatory seeks information about additional parcels that may
12 have been in the area, the government objects on the following
13 grounds: A law enforcement officer has discretion to place
14 either a single item or parcel in the area where the narcotics
15 detection canine is to be deployed, or to place more than one
16 item or parcel in that area. The government does not regularly
17 collect, acquire or maintain records concerning the total number
18 of items or parcels that may be placed in areas where narcotics
19 detection canines may be deployed. Pursuant to Rule 26(b)(1) of
20 the Federal Rules of Civil Procedure, the government objects to
21 this interrogatory on the ground that the effort involved in
22 obtaining the information sought (assuming that the information
23 even exists, which the government specifically does not admit) is
24 not proportional to the needs of the case considering the
25 importance of the issues at stake in the action, the amount in
26 controversy, the parties' resources, the importance of the
27 discovery in resolving the issue, and whether the burden and
28 expense of the proposed discovery outweighs its likely benefit.

1 Without waiving the foregoing objections, and solely as a
2 courtesy extended for the purpose of advancing the progress of
3 this litigation in general and the discovery process in
4 particular, the government responds when Chewy was deployed to
5 the area where the subject parcel had been placed, the area
6 contained other items (such as crates and carts) that had been
7 placed there from time to time over the preceding days, weeks,
8 months and/or years.

9 INTERROGATORY NO. 14:

10 What evidence, other than Chewy's alert, do you have that
11 the parcel to which Chewy alerted on January 13, 2016 actually
12 contained the traces of narcotics to which the canine was
13 allegedly trained to alert?

14 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 14:

15 The government objects to the apparent premise of this
16 interrogatory, which is that "Chewy" was trained to alert to
17 "traces of narcotics." Properly trained canines alert to
18 quickly-dissipating odors or byproducts of controlled substances,
19 so that a positive canine alert to currency (or a package
20 containing currency) constitutes evidence that the currency has
21 been in recent contact with a controlled substance. The
22 government further objects to this interrogatory pursuant to Rule
23 26(b) on the ground that the effort involved in obtaining the
24 information sought about "traces of narcotics" is not
25 proportional to the needs of the case considering the importance
26 of the issues at stake in the action, the amount in controversy,
27 the parties' resources, the importance of the discovery in
28 resolving the issue, and whether the burden and expense of the

1 proposed discovery outweighs its likely benefit.

2 INTERROGATORY NO. 15:

3 What are the names of any men and/or women at the Redlands
4 Sorting Facility who are able to cause Chewy to alert when no
5 narcotics are present?

6 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 15:

7 The government objects to the apparent premise of this
8 interrogatory, which is that narcotics detection canines are
9 trained to alert to the presence of narcotics. Properly trained
10 canines alert to quickly-dissipating byproducts of controlled
11 substances, so that a positive canine alert to currency (or a
12 package containing currency) constitutes evidence that the
13 currency has been in recent contact with a controlled substance.
14 The government further objects to this interrogatory to the extent
15 it implies that there are people at the Redlands Sorting Facility
16 who are able to cause narcotics detection canines to alert when no
17 controlled substances (and/or odors or byproducts of controlled
18 substances) are present. The government further objects to this
19 interrogatory pursuant to Rule 26(b)(1) of the Federal Rules of
20 Civil Procedure on the ground that in the absence of any evidence
21 that such people exist, the effort required to respond to this
22 interrogatory is not proportional to the needs of the case
23 considering the importance of the issues at stake in the action,
24 the amount in controversy, the parties' resources, the importance
25 of the discovery in resolving the issue, and whether the burden
26 and expense of the proposed discovery outweighs its likely
27 benefit. Without waiving the foregoing objection, the government
28 responds that it is not in possession of evidence suggesting that

1 there are people at the Redlands Sorting Facility who are able to
2 cause "Chewy" to falsely alert to the presence of odors or
3 byproducts of controlled substances.

4 INTERROGATORY NO. 16:

5 What is the name of the man or woman acting as custodian of
6 the defendant asset for the UNITED STATES MARSHAL SERVICE, LOS
7 ANGELES, CALIFORNIA, and if said custodian is insured with a
8 bond, who is the insurer?

9 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 16:

10 The government objects to this interrogatory pursuant to Rule
11 26(b)(1) of the Federal Rules of Civil Procedure on the ground
12 that the circumstances under which custody of the defendant
13 currency is being maintained by the United States Marshals Service
14 are not relevant to any party's claim or defense in this action.

15 INTERROGATORY NO. 17:

16 Who held the property rights to defendant before it was
17 seized?

18 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 17:

19 The government objects to this interrogatory on the ground
20 that it calls for a legal conclusion. Without waiving the
21 foregoing objection, the government responds that prior to the
22 shipment of the defendant currency to the claimant, it was in the
23 possession of Woody Ochle, but he forfeited to the United States
24 any property rights he may have had in the defendant currency
25 because his acquisition of the defendant currency occurred in
26 violation of 21 U.S.C. § 841 (as alleged in the verified complaint
27 herein).

28

1 INTERROGATORY NO. 18:

2 Who holds the property rights to defendant until the matter
3 before the court is resolved?

4 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 18:

5 The government objects to this interrogatory on the ground
6 that it calls for a legal conclusion. Without waiving the
7 foregoing objection, the government states that the entry of a
8 judgment of forfeiture in this action will constitute judicial
9 recognition of the government's currently existing property rights
10 in the defendant currency.

11 INTERROGATORY NO. 19:

12 Does plaintiff compensate innocent recipients of assets when
13 it successfully eliminates their property right in said assets
14 through forfeiture such as plaintiff seeks in the current case?

15 PLAINTIFF'S RESPONSE TO INTERROGATORY NO. 19:

16 The government objects to the apparent premise of this
17 interrogatory, which is that the government seeks to "eliminate"
18 the property rights of innocent owners. The government further
19 objects to this interrogatory pursuant to Rule 26(b)(1) of the
20 Federal Rules of Civil Procedure on the ground that the issue of
21 "compensation" is irrelevant to the claim or defense of any party
22 to this action. Specifically, the burden of proof is on claimant
23 in this action to establish that he is the innocent owner of the
24 defendant currency. If claimant is unable to establish that he
25 is the innocent owner of the defendant currency, the government
26 will be entitled to a judgment forfeiting the defendant currency,
27 and the issue of compensation will be irrelevant. Similarly, if
28 judgment in favor of the claimant is entered because he is able

1 to establish that he is the, innocent owner of the defendant
2 currency, he will acquire ownership of the defendant currency by
3 virtue of the judgment and the issue of compensation will be
4 irrelevant.

5 DATED: August 19, 2016

EILEEN M. DECKER
United States Attorney
LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division
STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture

/s/ Frank D. Kortum

FRANK D. KORTUM
Assistant United States Attorney
Asset Forfeiture Section

Attorneys for Plaintiff
UNITED STATES OF AMERICA

VERIFICATION

I, Anthony Jacobs, hereby declare that:

1. I am a Special Agent with the United States Postal Inspection Service, and am the case agent for the forfeiture matter entitled United States v. \$15,000 in U.S. Currency, SA CV 16-1166 DSF (KKx).

2. I have read the above Plaintiff's Verified Response To First Set of Interrogatories and know its contents.

3. Everything contained in the response is true and correct, to the best of my knowledge and belief.

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

Executed 8/10, 2016 in Los Angeles, California.

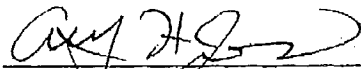

ANTHONY JACOBS

EXHIBIT "F"

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2 LAWRENCE S. MIDDLETON
Assistant United States Attorney
3 Chief, Criminal Division
STEVEN R. WELK
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9 Facsimile: (213) 894-7177
E-Mail: Frank.Kortum@usdoj.gov
10

Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 EASTERN DIVISION

15 UNITED STATES OF AMERICA,

16 Plaintiffs,

17 v.
18

19 \$15,000.00 IN U.S. CURRENCY,

20 Defendant.
21

22 DAVID SCOTese,

23 Claimant.

Case No.: EDCV 16-01166-DSF(KKx)

PLAINTIFF'S RESPONSE TO FIRST SET
OF REQUESTS FOR ADMISSIONS
PROPOUNDED BY CLAIMANT DAVID
SCOTese

24 PROPOUNDING PARTY: CLAIMANT, DAVID SCOTese

25 RESPONDING PARTY: PLAINTIFF, UNITED STATES OF AMERICA

26 SET NUMBER: ONE
27
28

1 4. The government objects to these Requests to the extent
2 that they seek information protected from disclosure by the
3 attorney-client privilege, the attorney work product doctrine, or
4 any other applicable privilege, protection, or immunity. No
5 information subject to such privilege, protection, or immunity
6 will be provided.

7 5. The inadvertent disclosure by the government of
8 information protected by the attorney-client privilege, the
9 attorney work product doctrine, or any other applicable
10 privilege, protection, or immunity, shall not constitute a waiver
11 by plaintiff of such protection.

12 6. In responding to these Requests, the government does
13 not concede that any of the Requests seek relevant evidence. The
14 government reserves the right to object, on the grounds of
15 competency, privilege, relevance, materiality, or otherwise, to
16 the use of this information for any purpose, in whole or in part,
17 in this action or in any other action.

18 7. The government objects to these Requests to the extent
19 that they call for legal conclusions or otherwise attempt to
20 recast legal issues as factual matters.

21 8. The government objects to any Request that employs
22 imprecise specifications of the information sought on the ground
23 that the Request is vague and ambiguous.

24 9. The claimant's Requests do not define the term
25 "plaintiff," and, therefore, the term will be interpreted and
26 used herein to mean the government.

27 10. Unless otherwise stated, the government will not
28 provide any information encompassed by the foregoing objections.

1 11. The following Responses reflect the government's
2 present knowledge, information and belief and may be subject to
3 change or modification based on plaintiff's further discovery, or
4 facts or circumstances which may come to the government's
5 knowledge. The government specifically reserves the right to
6 further supplement, amend or otherwise revise its Responses to
7 these Requests in accordance with Rule 26(e) of the Federal Rules
8 of Civil Procedure. The government has not at this time fully
9 completed its discovery and investigation in this action. All
10 responses contained herein are based solely upon such information
11 and evidence as are presently available and specifically known to
12 the government at this time and disclose only those factual
13 contentions and legal conclusions which presently occur to the
14 government at this time. Further discovery, investigation,
15 research and analysis is expected to supply additional facts, add
16 meaning to currently known facts, and establish entirely new
17 factual contentions and legal conclusions, which may lead to
18 substantial additions or changes to the information provided
19 herein. The government reserves the right to add or change any
20 and all responses herein as additional facts are ascertained,
21 legal research is completed, and analyses are undertaken. The
22 responses herein are made in a good faith effort to supply as
23 much information as is presently known to the government in this
24 action. In addition, any responses herein to requests regarding
25 the scope of the government's investigation and/or the issues
26 such as national origin, religion, or international travel are
27 made subject to a continuing objection regarding the relevancy to
28 such requests.

1 REQUEST FOR ADMISSION NO. 1:

2 Admit or deny that PLAINTIFF pays the salaries of the
3 employees of the United States Postal Inspection Service.

4 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 1:

5 The government objects to this Request on the ground that it
6 concerns a subject matter that is irrelevant to any party's claim
7 or defense.

8 REQUEST FOR ADMISSION NO. 2:

9 Admit or deny that receiving cash in the mail in exchange
10 for bitcoins is legal if the recipient believes the cash was
11 obtained legally.

12 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 2:

13 The government objects to this Request on the ground that it
14 is hypothetical in nature and calls for a legal conclusion, and/or
15 requires the government to interpret events to support a legal
16 conclusion. Without waiving the foregoing objection, the request
17 is denied because receiving currency in the mail in exchange for
18 bitcoins is not legal if, inter alia, the recipient has reason to
19 know that the currency is derived from an illegal source. The
20 request is also denied because the receipt of \$15,000 in currency
21 in the mail by the operator of a Money Service Business ("MSB") is
22 not legal if the currency was derived from an illegal source and
23 the operator of the MSB (A) failed to take sufficient affirmative
24 steps to verify that said currency was derived from a legal
25 source; and/or (B) failed to file a currency transaction report in
26 connection with the transaction.

27 REQUEST FOR ADMISSION NO. 3:

28 Admit or deny that PLAINTIFF has sought but not discovered

1 any fact that indicates that CLAIMANT was a party to a transaction
2 in violation of 21 USC 841 et seq.

3 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 3:

4 The government objects to the apparent premise of this
5 Request, which is that the government is seeking forfeiture of the
6 defendant currency on the ground that claimant was a party to a
7 transaction whereby currency was exchanged for a controlled
8 substance in violation of 21 U.S.C. § 841 et seq. The government
9 is not alleging at this time that claimant was a party to such a
10 transaction. The government instead alleges that claimant knew or
11 should have known that the defendant currency represents or is
12 traceable to proceeds of illegal narcotics trafficking, or was
13 intended to be used in one or more exchanges for a controlled
14 substance or listed chemical, in violation of 21 U.S.C. § 841 et
15 seq. The government accordingly objects to the Request on the
16 ground that it concerns a subject matter that is irrelevant to any
17 party's claim or defense.

18 REQUEST FOR ADMISSION NO. 4:

19 Admit or deny that CLAIMANT'S expected receipt of cash in the
20 mail from Woodie Ochle in exchange for bitcoins is the basis of
21 GOVERNMENT'S contention that CLAIMANT may have been a party to a
22 transaction in violation of 21 USC 841 et seq.

23 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 4:

24 The government objects to the apparent premise of this
25 Request, which is that the government is seeking forfeiture of the
26 defendant currency on the ground that claimant was a party to a
27 transaction whereby currency was exchanged for a controlled
28 substance in violation of 21 U.S.C. § 841 et seq. The government

1 is not alleging at this time that claimant was a party to such a
2 transaction. The government instead alleges that claimant knew or
3 should have known that the defendant currency represents or is
4 traceable to proceeds of illegal narcotics trafficking, in
5 violation of 21 U.S.C. § 841 et seq. The government accordingly
6 objects to the Request on the ground it concerns a subject matter
7 that is irrelevant to any party's claim or defense.

8 REQUEST FOR ADMISSION NO. 5:

9 Admit or deny that all established facts in PLAINTIFF'S
10 possession fail to meet PLAINTIFF'S standard to charge CLAIMANT
11 with any violation of 21 USC 841 et seq.

12 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 5:

13 The government objects to the apparent premise of this
14 Request, which is that the government is seeking forfeiture of the
15 defendant currency on the ground that claimant was a party to a
16 transaction whereby currency was exchanged for a controlled
17 substance in violation of 21 U.S.C. § 841 et seq. The government
18 is not alleging at this time that claimant was a party to such a
19 transaction. The government instead alleges that claimant knew or
20 should have known that the defendant currency represents or is
21 traceable to proceeds of illegal narcotics trafficking, in
22 violation of 21 U.S.C. § 841 et seq. The government accordingly
23 objects to the Request on the ground it concerns a subject matter
24 that is irrelevant to any party's claim or defense.

25 REQUEST FOR ADMISSION NO. 6:

26 Admit or deny that there is no evidence that CLAIMANT was a
27 party to a transaction in violation of 21 USC 841 et seq.

28 ///

1 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 6:

2 The government objects to the apparent premise of this
3 Request, which is that the government is seeking forfeiture of the
4 defendant currency on the ground that claimant was a party to a
5 transaction whereby currency was exchanged for a controlled
6 substance in violation of 21 U.S.C. § 841 et seq. The government
7 is not alleging at this time that claimant was a party to such a
8 transaction. The government instead alleges that claimant knew or
9 should have known that the defendant currency represents or is
10 traceable to proceeds of illegal narcotics trafficking, in
11 violation of 21 U.S.C. § 841 et seq. The government accordingly
12 objects to the Request on the ground it concerns a subject matter
13 that is irrelevant to any party's claim or defense.

14 REQUEST FOR ADMISSION NO. 7:

15 Admit or deny that U.S. currency is still in circulation
16 that has enough traces of controlled substances or listed
17 chemicals for a trained narcotics canine such as "Chewy" to alert
18 to a package that contains it.

19 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 7:

20 The government objects to the apparent premise of this
21 Request, which is that a trained narcotics detection canine
22 alerts to "traces of narcotics." Properly trained canines alert
23 to quickly-dissipating odors or byproducts of controlled
24 substances, so that a positive canine alert to currency (or a
25 package containing currency) constitutes evidence that the
26 currency has been in recent contact with a controlled substance.
27 The government further objects to this Request on the ground that
28 it is overbroad to the extent it calls for an admission about the

1 capabilities of narcotics detection canines other than "Chewy."
2 The government further objects to this Request on the ground that
3 it is vague, ambiguous and overbroad in terms of its reference to
4 an unspecified amount of United States currency "still in
5 circulation" that may have traces of controlled substances. The
6 government further objects to this Request on the ground that the
7 effort required to obtain the information sought is not
8 proportional to the needs of the case considering the importance
9 of the issues at stake in the action, the amount in controversy,
10 the parties' resources, the importance of the discovery in
11 resolving the issue, and whether the burden and expense of the
12 proposed discovery outweighs its likely benefit.

13 REQUEST FOR ADMISSION NO. 8:

14 Admit or deny that trained narcotics canines such as "Chewy"
15 can detect controlled substances and listed chemicals in amounts
16 too small for average human beings to detect.

17 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 8:

18 The government objects to the apparent premise of this
19 Request, which is that a trained narcotics detection canine
20 alerts to "controlled substances and listed chemicals." Properly
21 trained canines alert to quickly-dissipating odors or byproducts
22 of controlled substances, so that a positive canine alert to
23 currency (or a package containing currency) constitutes evidence
24 that the currency has been in recent contact with a controlled
25 substance. The government further objects to this Request on the
26 ground that it is overbroad to the extent it calls for an
27 admission about the capabilities of narcotics detection canines
28 other than "Chewy." The government further objects to this

1 Request on the ground the effort required to obtain the
2 information sought is not proportional to the needs of the case
3 considering the importance of the issues at stake in the action,
4 the amount in controversy, the parties' resources, the importance
5 of the discovery in resolving the issue, and whether the burden
6 and expense of the proposed discovery outweighs its likely
7 benefit.

8 REQUEST FOR ADMISSION NO. 9:

9 Admit or deny that PLAINTIFF seeks help from CLAIMANT to
10 establish whether or not CLAIMANT has ever been a party to a
11 transaction in violation of 21 USC 841 et seq.

12 PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION NO. 9:

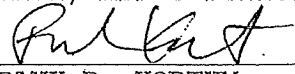
13 The government objects to this Request on the ground that it
14 is vague, ambiguous, and unintelligible with respect to the term
15 "seeks help." The government further objects to an apparent
16 premise of this Request, which is that the government is seeking
17 claimant's "help" by serving discovery requests on him. The
18 service of a discovery request does not constitute a request for
19 help, but is instead a request for evidence relevant to the claims
20 and/or defenses of the party upon whom the request is served. The
21 government further objects to another apparent premise of this
22 Request, which is that the government is seeking forfeiture of the
23 defendant currency on the ground that claimant was a party to a
24 transaction whereby currency was exchanged for a controlled
25 substance in violation of 21 U.S.C. § 841 et seq. The government
26 is not alleging at this time that claimant was a party to a
27 transaction. The government instead alleges that claimant knew or
28 should have known the defendant currency represents or is

1 traceable to proceeds of illegal narcotics trafficking, in
2 violation of 21 U.S.C. § 841 et seq.

3 The government accordingly objects to the Request on the ground
4 that it concerns a subject matter that is irrelevant to any
5 party's claim or defense.

6 DATED: October 13, 2016

EILEEN M. DECKER
United States Attorney
LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division
STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture

11 
FRANK D. KORTUM
Assistant United States Attorney
Asset Forfeiture Section

14 Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 PROOF OF SERVICE BY MAILING

2 I am over the age of 18 and not a party to the within
3 action. I am employed by the Office of the United States
4 Attorney, Central District of California. My business address
5 is 312 North Spring Street, 14th Floor, Los Angeles, California
6 90012.

7 On October 13, 2016, I served a copy of PLAINTIFF'S
8 RESPONSE TO FIRST SET OF REQUESTS FOR ADMISSIONS PROPOUNDED BY
9 CLAIMANT DAVID SCOTESE on each person or entity named below by
10 enclosing a copy in an envelope addressed as shown below and
11 placing the envelope for collection and mailing on the date and
12 at the place shown below following our ordinary office
13 practices.

14 TO: David Scotese

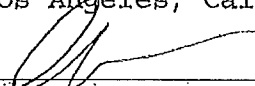
15 [REDACTED]
16 Murrieta, CA 92563

17 X I am readily familiar with the practice of this office for
18 collection and processing correspondence for mailing. On the
19 same day that correspondence is placed for collection and
20 mailing, it is deposited in the ordinary course of business with
21 the United States Postal Service in a sealed envelope with
22 postage fully prepaid.

23 I declare under penalty of perjury under the laws of the
24 United States of America that the foregoing is true and correct.

25 I declare that I am employed in the office of a member of
26 the bar of this court at whose direction the service was made.

27 Executed on: October 13, 2016 at Los Angeles, California.

28 
Angie Agsalog

28

EXHIBIT "G"

dscotese on LocalBitcoins.com

Page 1 of 4

dscotese

I DO NOT use steamcommunity.com. Impostors abound. Be careful!

Pgp: <http://goo.gl/MQTNmx>

Mailing List: <http://eepurl.com/Pp7jf>

Archives at <http://goo.gl/MzJC8S>

PMs to BTC - see my ads

Visit dscotese's homepage (<http://eepurl.com/Pp7jf>)

Information on dscotese

Trade volume

Higher than 150 BTC

Number of confirmed trades

3000+

...with 1520 different partners

Feedback score

100 %

Real name verification

4 trusted verifications, 1 verifications, 0 rejected verifications (/guides/real-name)

First purchase

3 years, 7 months ago (2013-04-03T12:41:39+00:00)

Account created

3 years, 9 months ago (2013-01-14T01:35:56+00:00)

Last seen

1 minute ago (2016-11-07T21:46:08+00:00)

Language

English

Email

Verified 6 months ago (2016-05-06T15:44:28+00:00)

Phone number

Verified 3 years, 5 months ago (2013-05-16T19:02:06+00:00)

ID, Passport or Driver's license

Verified 1 year, 7 months ago (2015-03-15T22:32:21+00:00)

Trust

79

dscotese on LocalBitcoins.com

Page 2 of 4

Trusted by **500+** people

Blocks

Blocked by **0** people**Pro Trader**

Trust dscotese

Please [log in \(/accounts/login/\)](/accounts/login/) or [sign up \(/register/\)](/register/) to give your trust to dscotese.

Signing up is free and takes only 30 seconds.

Seller escrow release times

Median: 2034 min

Average: 2411 min

[Report this user \(/support/request/?Indicator=7-2n&User name=dscotese\)](/support/request/?Indicator=7-2n&User name=dscotese)

Buy bitcoins online from dscotese

Seller	Payment method	Price / BTC	Limits
dscotese (3000+; 100%) (/accounts/profile/dscotese/)	Cash deposit: (/buy-bitcoins-online/cash-deposit/) M&T, Click for discounts & options.	752.91 USD	500 - 1506 USD
dscotese (3000+; 100%) (/accounts/profile/dscotese/)	Cash by mail (/buy-bitcoins-online/cash-by-mail/)	729.98 USD	500 - 4380 USD

Buy (/ad/20948/purch

dscotese on LocalBitcoins.com

Page 3 of 4

dscotese (3000+; 100%) (/accounts/profile/dscotese/)	Cash by mail (/buy-bitcoins-online/cash-by-mail/)	39.31 XAG	1 - 8 XAG
dscotese (3000+; 100%) (/accounts/profile/dscotese/)	Cash by mail (/buy-bitcoins-online/cash-by-mail/)	0.55 XAU	0 - 0 XAU

Show all user's ads to buy bitcoins online (/accounts/profile/dscotese/buy-bitcoins-online/)

Buy bitcoins with cash from dscotese

Seller	Distance	Location	Price
dscotese (3000+; 100%) (/ad/282966/buy-bitcoins-with-cash-columbia-mo-usa)	0 km	Columbia, MO, USA	755.6 USD
dscotese (3000+; 100%) (/ad/378839/buy-bitcoins-with-cash-corona-ca-usa)	0 km	Corona, CA, USA	748.1 USD
dscotese (3000+; 100%) (/ad/378843/buy-bitcoins-with-cash-san-marcos-ca-usa)	0 km	San Marcos, CA, USA	748.1 USD
dscotese (3000+; 100%) (/ad/14374/buy-bitcoins-with-cash-92563-murrieta-united-states)	0 km	92563, Murrieta, United States	729.6 USD

Show all user's ads to buy bitcoins with cash (/accounts/profile/dscotese/buy-bitcoins-with-cash/)

Feedback

Feedback left by users with noticeable trade volume.

July 16, 2015, 10:37 a.m.

☐ perfect

Feb. 3, 2015, 11:53 a.m.

☐ Awesome as always

July 23, 2013, 1:03 a.m.

☐ Quick and easy

March 9, 2015, 3:03 p.m.

☐

Nov. 17, 2014, 11:04 a.m.

☐ Quick, fast, and excellent pricing. Always my go to.

... see more feedback for dscotese (/accounts/profile/dscotese/feedback/)

dscotese on LocalBitcoins.com

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[Contact support \(/support/request/\)](#)

[Forgot password \(/password_reset/\)](#)

[Lost two-factor \(/faq#cp-2fa-not-working\)](#)

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[LocalBitcoins ATM \(/atm/order-your-own-bitcoin-atm\)](#)

[Affiliate \(/affiliate/\)](#)

[Block Explorer \(https://chain.localbitcoins.com\)](#)

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[IRC \(/irc\)](#)

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[Chinese Blog \(http://www.weibo.com/localbitcoins/\)](#)

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EXHIBIT "H"

Browse feedback for dscotese

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Browse feedback for dscotese

- All: 1180 (/accounts/profile/dscotese/feedback/) • Positive: 1168
- (/accounts/profile/dscotese/feedback/positive/) • Neutral: 12
- (/accounts/profile/dscotese/feedback/neutral/) • Negative: 0
- (/accounts/profile/dscotese/feedback/negative/)

←	1	2 (?page=2)	3 (?page=3)	4 (?page=4)	5 (?page=5)	6 (?page=6)
7 (?page=7)	8 (?page=8)	9 (?page=9)	10 (?page=10)	11 (?page=11)		
12 (?page=12)	13 (?page=13)	14 (?page=14)	15 (?page=15)	16 (?page=16)		
17 (?page=17)	18 (?page=18)	19 (?page=19)	20 (?page=20)	→ (?page=2)		

Nov. 5, 2016, 7:14 p.m.

☐ Terrific customer service! Prompt & proactive communication! Multiple fair deals over several months. Timely escrow releases! A+! Always a pleasure!

Nov. 2, 2016, 10:50 p.m.

☐ Low volume

Nov. 1, 2016, 10:40 p.m.

☐

Nov. 1, 2016, 6:02 p.m.

☐ Top-Notch! Extremely professional, helpful and responsive. Also VERY fast. My preferred vendor - highest recommendation. Low volume

Oct. 30, 2016, 12:37 p.m.

☐ Good trader, I made a small mistake myself on the first trade. 2nd one was smooth. Recommended trader

Oct. 30, 2016, 10:02 a.m.

☐ easy comms and quickly released coins

Oct. 30, 2016, 12:45 a.m.

☐ great and extremely trust worthy....i will deal with him anytime with my eyes closed.-3kachi4u

Oct. 30, 2016, 12:45 a.m.

☐ Quick trade, went well.

Oct. 30, 2016, 12:04 a.m.

☐ A+

Browse feedback for dscotese

Page 2 of 3

Oct. 29, 2016, 1:57 a.m.

☐ thank you

Oct. 26, 2016, 2:48 a.m.

☐ Excellent trade, fast release and great communication. Trade with confidence with dscotese!

Oct. 25, 2016, 11:47 p.m.

☐

Oct. 25, 2016, 10:06 p.m.

☐

Oct. 24, 2016, 11:04 p.m.

☐ Great transaction thanks 10/10

Oct. 24, 2016, 8:22 p.m.

☐ a++ fast trader will use again!!

Oct. 24, 2016, 7:55 p.m.

☐ Awesome vendor will return

Oct. 24, 2016, 7:31 p.m.

☐

Oct. 24, 2016, 7:09 p.m.

☐ Will do biz with again.

Oct. 23, 2016, 4:49 p.m.

☐ Good trader, will continue to do business with :)

Oct. 21, 2016, 7:22 a.m.

☐ Sent bitcoins the same day as the cash arrived. PERFECT! Thanks Dave!

←	1	2 (?page=2)	3 (?page=3)	4 (?page=4)	5 (?page=5)	6 (?page=6)
7 (?page=7)	8 (?page=8)	9 (?page=9)	10 (?page=10)	11 (?page=11)		
12 (?page=12)	13 (?page=13)	14 (?page=14)	15 (?page=15)	16 (?page=16)		
17 (?page=17)	18 (?page=18)	19 (?page=19)	20 (?page=20)	→ (?page=2)		



ABOUT

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Browse feedback for dscotese

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SUPPORT

[Contact support \(/support/request/\)](#)

[Forgot password \(/password_reset/\)](#)

[Lost two-factor \(/faq#cp-2fa-not-working\)](#)

[Report phishing \(/support/request/?indicator=2h-2l\)](#)

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[Reddit \(http://www.reddit.com/r/localbitcoins/\)](#)

[IRC \(/irc\)](#)

[Blog \(http://localbitcoins.blogspot.com/\)](#)

[Chinese Blog \(http://www.weibo.com/localbitcoins/\)](#)

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EXHIBIT "I"

Certified: 7015 3010 0001 9119 7625
USPIS Asset Forfeiture
I. Hasfurter
PO Box 91100
Washington, DC 20090-1100

March 2, 2016
Dave Scotese

2016 MAR -8 PM 11:01

Murrieta, CA 92563

ASSET FORFEITURE
Possible Claim for Seized Property

Re: Seizure # 243-16-023, Asset ID # 16-USP-000679, Tracking Number EL337571018US containing \$15,000 in U.S. currency

Dear I. Hasfurter,

Your letters (certified receipt # 7015 1730 0000 2768 9181) indicate that my intent was not clear in my last letter, certified tracking number 7015 3010 0001 9119 7847. My intent was to collect information and to claim that:

- USPIS has my property.
- The property is not subject to forfeiture according to 21 USC 881(a)

My intent was also to demand by right that USPIS return \$15,000 to me. Here are some questions that should make my intent to collect information clearer:

1. Is the belief of one or more men or women that the property seized meets the requirements of 21 USC 881(a) enough evidence for your organization to proceed with this forfeiture?
2. What is the name of the man (or woman or the names of the men and/or women), if any, holding the belief that the property seized meets the requirements of 21 USC 881(a)?
3. What is the name of the man or woman who violated 21 USC 841 et seq.?
4. How long does the USPIS expect it to take to determine whether or not the property seized meets the requirements of 21 USC 881(a)?

I also require information from you so that I may create a document titled "Claim for Seized Property" as your letter explains, admitting that it is seized property, but denying that it can be forfeited under 21 USC 811:

5. Is "\$15,000 in U.S. currency" a complete description of the property seized in Seizure # 243-16-023?
6. What was the date and place of Seizure # 243-16-023?
7. Is "The sender intended to furnish the currency to me in exchange for bitcoin. The bitcoin has already been furnished to the sender, so the \$15,000 rightfully belongs to me and should have been in my hands on the scheduled delivery day for this package, January 13, 2016." an adequate description of my interest in the property?

If the answers to questions 5 and 7 above are both "yes" and the date and place of the seizure was January 20th, 2016, and the place was Redlands, CA, please consider this letter as my formal Claim for Seized Property. If not, I have one last request:

- Please clarify which of items 5 - 7 I need to fix and in what way it or they are deficient.

I found an Ingrid Hasfurter in Washington D.C. Metro Area (on LinkedIn) and wondered if you are the same person. I sell a lot of bitcoin in return for cash in the mall from trusted people, so your affiliation with the USPIS (along with Joe Bennett and Mike Dawson) might prove valuable to me in the future. If you are Ingrid, or you'd like to connect in some way out of your official capacity, feel free to look me up, or let me know and I will use LinkedIn's connection feature.

Thank you for your help in this matter,

I sincerely consider possibility of property that are ongoing is true to the best of my knowledge.
Dave Scotese 2/2/2016

Dave Scotese,

D. Scortese

Manassas, VA 22543

2016 MAR -8 PM 1:00
ASSET FORFEITURE

CERTIFIED MAIL



7015 3810 0001 9114 7625

\$6.735
US POSTAGE
FIRST-CLASS
071501090232
B2863
900004199

L. Hasler
US Postal Inspection Service
Asset Forfeiture Unit
Criminal Investigations
PO Box 9900
Washington, DC 20040-1100

2009031100 B012

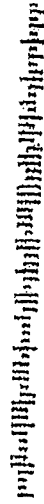


EXHIBIT "J"



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2013-G001

Issued: March 18, 2013

Subject: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies

The Financial Crimes Enforcement Network ("FinCEN") is issuing this interpretive guidance to clarify the applicability of the regulations implementing the Bank Secrecy Act ("BSA") to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies.¹ Such persons are referred to in this guidance as "users," "administrators," and "exchangers," all as defined below.² A user of virtual currency is *not* an MSB under FinCEN's regulations and therefore is not subject to MSB registration, reporting, and recordkeeping regulations. However, an administrator or exchanger *is* an MSB under FinCEN's regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person. An administrator or exchanger is not a provider or seller of prepaid access, or a dealer in foreign exchange, under FinCEN's regulations.

Currency vs. Virtual Currency

FinCEN's regulations define currency (also referred to as "real" currency) as "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance."³ In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. This guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

¹ FinCEN is issuing this guidance under its authority to administer the Bank Secrecy Act. See Treasury Order 180-01 (March 24, 2003). This guidance explains only how FinCEN characterizes certain activities involving virtual currencies under the Bank Secrecy Act and FinCEN regulations. It should not be interpreted as a statement by FinCEN about the extent to which those activities comport with other federal or state statutes, rules, regulations, or orders.

² FinCEN's regulations define "person" as "an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities." 31 CFR § 1010.100(mm).

³ 31 CFR § 1010.100(m).

Background

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to money services businesses ("MSBs").⁴ Among other things, the MSB Rule amends the definitions of dealers in foreign exchange (formerly referred to as "currency dealers and exchangers") and money transmitters. On July 29, 2011, FinCEN published a Final Rule on Definitions and Other Regulations Relating to Prepaid Access (the "Prepaid Access Rule").⁵ This guidance explains the regulatory treatment under these definitions of persons engaged in virtual currency transactions.

Definitions of User, Exchanger, and Administrator

This guidance refers to the participants in generic virtual currency arrangements, using the terms "user," "exchanger," and "administrator."⁶ A *user* is a person that obtains virtual currency to purchase goods or services.⁷ An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency.

Users of Virtual Currency

A user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is *not* an MSB under FinCEN's regulations.⁸ Such activity, in and of itself, does not fit within the definition of "money transmission services" and therefore is not subject to FinCEN's registration, reporting, and recordkeeping regulations for MSBs.⁹

⁴ *Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses*, 76 FR 43585 (July 21, 2011) (the "MSB Rule"). This defines an MSB as "a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States." 31 CFR § 1010.100(ff).

⁵ *Final Rule – Definitions and Other Regulations Relating to Prepaid Access*, 76 FR 45403 (July 29, 2011).

⁶ These terms are used for the exclusive purpose of this regulatory guidance. Depending on the type and combination of a person's activities, one person may be acting in more than one of these capacities.

⁷ How a person engages in "obtaining" a virtual currency may be described using any number of other terms, such as "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," depending on the details of the specific virtual currency model involved. For purposes of this guidance, the label applied to a particular process of obtaining a virtual currency is not material to the legal characterization under the BSA of the process or of the person engaging in the process.

⁸ As noted above, this should not be interpreted as a statement about the extent to which the user's activities comport with other federal or state statutes, rules, regulations, or orders. For example, the activity may still be subject to abuse in the form of trade-based money laundering or terrorist financing. The activity may follow the same patterns of behavior observed in the "real" economy with respect to the purchase of "real" goods and services, such as systematic over- or under-invoicing or inflated transaction fees or commissions.

⁹ 31 CFR § 1010.100(ff)(1-7).

Administrators and Exchangers of Virtual Currency

An administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason *is* a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person.¹⁰ FinCEN's regulations define the term "money transmitter" as a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means "the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means."¹¹

The definition of a money transmitter does not differentiate between real currencies and convertible virtual currencies. Accepting and transmitting anything of value that substitutes for currency makes a person a money transmitter under the regulations implementing the BSA.¹² FinCEN has reviewed different activities involving virtual currency and has made determinations regarding the appropriate regulatory treatment of administrators and exchangers under three scenarios: brokers and dealers of e-currencies and e-precious metals; centralized convertible virtual currencies; and de-centralized convertible virtual currencies.

a. E-Currencies and E-Precious Metals

The first type of activity involves electronic trading in e-currencies or e-precious metals.¹³ In 2008, FinCEN issued guidance stating that as long as a broker or dealer in real currency or other commodities accepts and transmits funds solely for the purpose of effecting a *bona fide* purchase or sale of the real currency or other commodities for or with a customer, such person is not acting as a money transmitter under the regulations.¹⁴

However, if the broker or dealer transfers funds between a customer and a third party that is not part of the currency or commodity transaction, such transmission of funds is no longer a fundamental element of the actual transaction necessary to execute the contract for the purchase or sale of the currency or the other commodity. This scenario is, therefore, money

¹⁰ FinCEN's regulations provide that whether a person is a money transmitter is a matter of facts and circumstances. The regulations identify six circumstances under which a person is not a money transmitter, despite accepting and transmitting currency, funds, or value that substitutes for currency. 31 CFR § 1010.100(ff)(5)(ii)(A)-(F).

¹¹ 31 CFR § 1010.100(ff)(5)(i)(A).

¹² *Ibid.*

¹³ Typically, this involves the broker or dealer electronically distributing digital certificates of ownership of real currencies or precious metals, with the digital certificate being the virtual currency. However, the same conclusions would apply in the case of the broker or dealer issuing paper ownership certificates or manifesting customer ownership or control of real currencies or commodities in an account statement or any other form. These conclusions would also apply in the case of a broker or dealer in commodities other than real currencies or precious metals. A broker or dealer of e-currencies or e-precious metals that engages in money transmission could be either an administrator or exchanger depending on its business model.

¹⁴ *Application of the Definition of Money Transmitter to Brokers and Dealers in Currency and other Commodities*, FIN-2008-G008, Sept. 10, 2008. The guidance also notes that the definition of money transmitter excludes any person, such as a futures commission merchant, that is "registered with, and regulated or examined by...the Commodity Futures Trading Commission."

transmission.¹⁵ Examples include, in part, (1) the transfer of funds between a customer and a third party by permitting a third party to fund a customer's account; (2) the transfer of value from a customer's currency or commodity position to the account of another customer; or (3) the closing out of a customer's currency or commodity position, with a transfer of proceeds to a third party. Since the definition of a money transmitter does not differentiate between real currencies and convertible virtual currencies, the same rules apply to brokers and dealers of e-currency and e-precious metals.

b. Centralized Virtual Currencies

The second type of activity involves a convertible virtual currency that has a centralized repository. The administrator of that repository will be a money transmitter to the extent that it allows transfers of value between persons or from one location to another. This conclusion applies, whether the value is denominated in a real currency or a convertible virtual currency. In addition, any exchanger that uses its access to the convertible virtual currency services provided by the administrator to accept and transmit the convertible virtual currency on behalf of others, including transfers intended to pay a third party for virtual goods and services, is also a money transmitter.

FinCEN understands that the exchanger's activities may take one of two forms. The first form involves an exchanger (acting as a "seller" of the convertible virtual currency) that accepts real currency or its equivalent from a user (the "purchaser") and transmits the value of that real currency to fund the user's convertible virtual currency account with the administrator. Under FinCEN's regulations, sending "value that substitutes for currency" to another person or to another location constitutes money transmission, unless a limitation to or exemption from the definition applies.¹⁶ This circumstance constitutes transmission *to another location*, namely from the user's account at one location (e.g., a user's real currency account at a bank) to the user's convertible virtual currency account with the administrator. It might be argued that the exchanger is entitled to the exemption from the definition of "money transmitter" for persons involved in the sale of goods or the provision of services. Under such an argument, one might assert that the exchanger is merely providing the service of connecting the user to the administrator and that the transmission of value is integral to this service. However, this exemption does not apply when the only services being provided are money transmission services.¹⁷

The second form involves a *de facto* sale of convertible virtual currency that is not completely transparent. The exchanger accepts currency or its equivalent from a user and privately credits the user with an appropriate portion of the exchanger's own convertible virtual currency held with the administrator of the repository. The exchanger then transmits that

¹⁵ In 2011, FinCEN amended the definition of money transmitter. The 2008 guidance, however, was primarily concerned with the core elements of the definition – accepting and transmitting currency or value – and the exemption for acceptance and transmission integral to another transaction not involving money transmission. The 2011 amendments have not materially changed these aspects of the definition.

¹⁶ See footnote 11 and adjacent text.

¹⁷ 31 CFR § 1010.100(ff)(5)(ii)(F).

internally credited value to third parties at the user's direction. This constitutes transmission *to another person*, namely each third party to which transmissions are made at the user's direction. To the extent that the convertible virtual currency is generally understood as a substitute for real currencies, transmitting the convertible virtual currency at the direction and for the benefit of the user constitutes money transmission on the part of the exchanger.

c. De-Centralized Virtual Currencies

A final type of convertible virtual currency activity involves a de-centralized convertible virtual currency (1) that has no central repository and no single administrator, and (2) that persons may obtain by their own computing or manufacturing effort.

A person that creates units of this convertible virtual currency and uses it to purchase real or virtual goods and services is a user of the convertible virtual currency and not subject to regulation as a money transmitter. By contrast, a person that creates units of convertible virtual currency and sells those units to another person for real currency or its equivalent is engaged in transmission to another location and is a money transmitter. In addition, a person is an exchanger and a money transmitter if the person accepts such de-centralized convertible virtual currency from one person and transmits it to another person as part of the acceptance and transfer of currency, funds, or other value that substitutes for currency.

Providers and Sellers of Prepaid Access

A person's acceptance and/or transmission of convertible virtual currency cannot be characterized as providing or selling prepaid access because prepaid access is limited to real currencies.¹⁸

Dealers in Foreign Exchange

A person must exchange the currency of two or more countries to be considered a dealer in foreign exchange.¹⁹ Virtual currency does not meet the criteria to be considered "currency" under the BSA, because it is not legal tender. Therefore, a person who accepts real currency in

¹⁸ This is true even if the person holds the value accepted for a period of time before transmitting some or all of that value at the direction of the person from whom the value was originally accepted. FinCEN's regulations define "prepaid access" as "access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number." 31 CFR § 1010.100(ww). Thus, "prepaid access" under FinCEN's regulations is limited to "access to funds or the value of funds." If FinCEN had intended prepaid access to cover funds denominated in a virtual currency or something else that substitutes for real currency, it would have used language in the definition of prepaid access like that in the definition of money transmission, which expressly includes the acceptance and transmission of "other value that substitutes for currency." 31 CFR § 1010.100(ff)(5)(i).

¹⁹ FinCEN defines a "dealer in foreign exchange" as a "person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery." 31 CFR § 1010.100(ff)(1).

exchange for virtual currency, or *vice versa*, is not a dealer in foreign exchange under FinCEN's regulations.

* * * * *

Financial institutions with questions about this guidance or other matters related to compliance with the implementing regulations of the BSA may contact FinCEN's Regulatory Helpline at (800) 949-2732.

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$15,000.00 IN U.S. CURRENCY,

Defendant.

DAVID SCOTese,

Claimant.

No. EDCV 16-01166-DSF(KKx)

**[PROPOSED] STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW**

**DATE: February 13, 2017
TIME: 1:30 p.m.
COURTROOM: D, 7th Floor First
Street Courthouse**

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1 Pursuant to Rule 56 of the Federal Rules of Civil Procedure and
2 Rule 56-1 of the Local Rules of Practice for the Central District of
3 California, the Court issues its Statement of Uncontroverted Facts
4 and Conclusions of Law.

5 **I.**

6 **UNCONTROVERTED FACTS**

7 1. On January 20, 2016, \$15,000 in U.S. Currency was seized by
8 the United States Postal Inspection Service pursuant to a search
9 warrant issued by a United States Magistrate Judge. Verified
10 Complaint ¶ 9.

11 2. Plaintiff United States of America (the "government") filed
12 a civil forfeiture complaint against the defendant currency on June
13 3, 2016. Dkt. 1. David Scotese served a claim that this Court (at
14 the request of the government) deemed filed on July 11, 2016. Dkt.
15 15.

16 3. Scotese has asserted that his interest in the defendant
17 currency arose when he sent 32 Bitcoins (a form of virtual currency)
18 to Woodie Ochle in exchange for the defendant currency. Kortum Decl.
19 ¶ 2 & Exh. "A" at p. 4:20-22 (response to Special Interrogatory No.
20 3). At the time of the transaction, Ochle was the subject of a drug
21 trafficking investigation that led to his arrest in April of 2016.
22 Verified Complaint ¶ 10.

23 4. In Scotese's verified response to the government's request
24 for documents reflecting his registration of his bitcoin exchange
25 business with FinCEN, he affirmatively stated that "if I remember
26 correctly, I have not made any such registration" (Kortum Decl. ¶ 5 &
27 Exh. "D" at p.7:20-22). Scotese failed to provide any documents
28 reflecting that he had registered his bitcoin exchange business with

1 FinCEN. Scotese verified the response under penalty of perjury.

2 Exh. "D" at p. 8

3 5. Scotese also made statements in discovery demonstrating
4 that he considered his bitcoin exchanges to be a business activity.
5 Specifically, Scotese's discovery responses confirm statements
6 appearing on one of his websites about how to make money from
7 bitcoins. Kortum Decl. ¶¶ 3-4 & Exhs. "B" (Requests for Admissions)
8 & "C" (Response to Requests for Admissions). For example, in his
9 responses to the government's Requests for Admission, Scotese
10 confirmed his website statement that "[d]ealing bitcoin supports my
11 life and family. Id. Exh. "C" at p. 1-2 (confirming accuracy of
12 statements appearing in Exhibit "A" to RFAs).

13 6. Another website referenced in Scotese's discovery responses
14 contains his schedule of bitcoin exchange rates and states that
15 Scotese has made over 3,000 confirmed trades with "1,499 different
16 partners." Kortum Decl. ¶ 8 & Exh. "G". Scotese cited the website
17 in his response to the government's request for production of
18 documents. Exh. "D" at p. 5:25 (citing
19 <https://localbitcoins.com/accounts/profile/dscotese/>). Comments from
20 "users with noticeable trade volume" regarding the quality of the
21 Scotese's bitcoin exchange service appear in the feedback section of
22 this website. Id. ¶ 9 & Exh. "H".

23 7. Scotese sent a letter to a Postal Service employee in
24 connection with the seizure of the defendant currency. In the letter
25 Scotese stated that "I sell a lot of bitcoin in return for cash . .
26 ." and suggested that doing business unofficially with the employee
27 "might prove valuable to me in the future." Id. ¶ 10 Exh. "I".

28 8. The government filed a motion on October 13, 2016, for

1 leave to amend its complaint to allege that the defendant currency
2 was subject to forfeiture on the additional ground that that it was
3 the proceeds of Scotese's operation of an unlicensed money
4 transmitting business. Dkt. 21.

5 9. On November 29, 2016, this Court granted the motion for
6 leave to amend. Dkt. 36.

7 10. On November 30, 2016, the government filed its amended
8 complaint. Dkt. 37.

9 11. The amended complaint alleges that the defendant currency
10 constitutes proceeds of, or was otherwise involved in, one or more
11 transactions conducted in violation of 18 U.S.C. § 1960, and is
12 therefore forfeitable pursuant to 18 U.S.C. § 981(a)(1)(A) and (C).
13 Id. ¶ 13.

14 12. To the extent that any Statements of Uncontroverted Fact
15 contained herein can be considered to be or are deemed to be
16 conclusions of law, they are incorporated by reference into the
17 conclusions of law.

18 II.

19 CONCLUSIONS OF LAW

20 1. This is a civil forfeiture action brought pursuant to 18
21 U.S.C. § 981(a)(1)(A) & (C) and 21 U.S.C. § 881(a)(6).

22 2. This Court has jurisdiction over this matter pursuant to 28
23 U.S.C. §§ 1345 and 1355.

24 3. Venue lies in this District pursuant to 28 U.S.C.
25 § 1395(b).

26 4. Federal Rule of Civil Procedure 56(a) authorizes the
27 granting of summary judgment "if the movant shows that there is no
28 genuine dispute as to any material fact and the movant is entitled to

1 judgment as a matter of law." The movant bears the initial burden of
2 establishing "the basis for its motion, and identifying those
3 portions of 'the pleadings, depositions, answers to interrogatories
4 and admissions on file, together with the affidavits, if any,' which
5 it believes demonstrate the absence of a genuine issue of material
6 fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting
7 former Fed. R. Civ. P. 56(c)).

8 5. To meet its burden of production, the moving party must
9 either produce evidence negating an essential element of the
10 nonmoving party's claim or defense or show that the nonmoving party
11 does not have enough evidence of an essential element to carry its
12 ultimate burden of persuasion at trial. Nissan Fire and Marine
13 Insurance Company, Ltd. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir.
14 2000). Documents produced in discovery and admissions made during
15 discovery will support a summary judgment motion. Fed.R.Civ.P.
16 56(c)(1)(A) ("materials in the record" that will support summary
17 judgment include "documents" and "admissions").

18 6. Once the moving party meets its initial burden of showing
19 there is no genuine issue of material fact, the opposing party has
20 the burden of producing competent evidence and cannot rely on mere
21 allegations or denials in the pleadings. Matsushita Electric
22 Industries Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).
23 There is no genuine issue for trial where the record taken as a whole
24 could not lead a rational trier of fact to find for the nonmoving
25 party.

26 7. In a suit or action brought under "any civil forfeiture
27 statute" for the civil forfeiture of any property, "the burden of
28 proof is on the Government to establish, by a preponderance of the

evidence that the property is subject to forfeiture" 18 U.S.C. § 983(c)(1). To satisfy its burden, the government may use evidence "gathered after the filing of the complaint for forfeiture to establish, by a preponderance of the evidence that property is subject to forfeiture" 18 U.S.C. § 983(c)(2).

8. Federal law prohibits the operation of an unlicensed money transmitting business. 18 U.S.C. § 1960. "Money transmitting" is statutorily defined as "transferring funds on behalf of the public by any and all means. . . ." 18 U.S.C. § 1960(b)(2) (emphasis added).

An "unlicensed money transmitting business" is statutorily defined as a money transmitting business that "fails to comply with the money transmitting business registration requirements under section 5330 of [T]itle 31, United States Code, or regulations prescribed under such section." 18 U.S.C. § 1960(b)(1)(B). 31 U.S.C. § 5330 in turn defines a "money transmitting business" as one that

- provides a "currency exchange" or "engages as a business in the transmission of funds";
- "is required to file reports under 31 U.S.C. § 5313"; and
- "is not a depository institution (as defined in section 5313(g))."

31 U.S.C. § 5330(d)(1). In this regard, an "exchanger" is "a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency." FinCEN Guidance No. FIN-2013-G001 (March 18, 2013) at p. 2 ("Virtual Currency Guidance").

9. Treasury Department regulations issued pursuant to Section 5330 require money transmitting businesses to register with FinCEN. United States v. E-Gold, Ltd., 550 F.Supp.2d 82, 96 (D.D.C. 2008); accord United States v. Budovsky, No. 13cr368 (DCL), 2015 WL 5602853

1 at *7 (S.D.N.Y. Sept. 23, 2015). Congress enacted Section 5330's
2 registration requirement to assist law enforcement agencies in their
3 efforts to "prevent . . . money transmitting businesses from engaging
4 in illegal activities." E-Gold, supra, 550 F.Supp.2d at 96 (quoting
5 legislative history).

6 10. Scotese's conduct falls well within the statutory
7 definitions of "money transmitting" set forth in both 18 U.S.C. §
8 1960 and 31 U.S.C. § 5330. First, his conduct falls within the
9 definition set forth in Section 1960 because Scotese caused Ochle to
10 transmit currency to him in exchange for Scotese's transmission of
11 bitcoin to Ochle. Such conduct constitutes "transferring funds"
12 within the meaning of Section 1960(b)(2).

13 11. Scotese's conduct also falls within the definition of
14 "money transmitting" set forth in 31 U.S.C. § 5330. Specifically,

15 – Scotese provided a "currency exchange" service within the
16 meaning of Section 5330(d)(1). For example, as discussed
17 above, he posted bitcoin exchange rates on one of his
18 websites. Kortum Decl. ¶ 8 & Exh. "G". He also stated that
19 "I sell a lot of bitcoin in return for cash Id. ¶
20 10 & Exh. "I". Scotese also "engaged as a business in the
21 transmission of funds" within the meaning of Section
22 5330(d)(1)(A). Under Section 5330's implementing
23 regulations the element of "transmission" is satisfied by a
24 transfer to "another location or person by any means." 31
25 C.F.R. § 1010.100(ff)(5)(i) (emphasis added). FinCEN's
26 Virtual Currency Guidance makes clear that when an exchanger
27 or administrator of virtual currency accepts real currency
28 from an individual and in exchange sends "value that

substitutes for currency" (i.e., bitcoin) to the electronic account of that individual, "transmission [has occurred] to another location." Virtual Currency Guidance at 4. Furthermore, "[a]n administrator or exchanger [of virtual currency] that . . . transmits . . . or . . . buys and sells convertible virtual currency for any reason is a money transmitter under FinCEN's regulations" Id. at p. 3 (emphasis added).

- Scotese was "required to file reports under Section 5313" within the meaning of Section 5330(d)(1)(B) because the transaction at issue here involved more than \$10,000. Specifically, Scotese admitted that he received \$15,000 from Ochle, and in exchange sent bitcoin of comparable value to Ochle. Exh. "A" at p. 5. Scotese's transmission of bitcoin to Ochle thus constituted a "money transmission" to another location that Scotese was required to report pursuant to 31 U.S.C. § 5313 (which requires the reporting of transactions in excess of \$10,000 pursuant to the implementing regulations cited above). See 31 U.S.C. § 5330(d)(1)(B); 31 C.F.R. 1010.311.

- Scotese is not a "depository institution" within the meaning of 31 U.S.C. § 5330(d)(1)(C).

12. All three elements of Section 5330(d)(1) are satisfied here, Scotese was required under 18 U.S.C. § 1960 to register with FinCEN. His failure to do so subjects the defendant currency to forfeiture as proceeds of a transaction in violation of 18 U.S.C. § 1960. 18 U.S.C. § 981(a)(1)(C); 50.44 Bitcoins, supra, 2016 WL 3049166 at *2. 18 U.S.C. § 1960 is a "general intent crime for which

a defendant is liable if he knowingly operates a money transmitting business." United States v. Dimitrov, 546 F.3d 409, 413 (7th Cir. 2008). The government therefore need not prove that Scotese "knew about the federal registration requirements" See id.; accord United States v. Talebnejad, 460 F.3d 563, 568 (4th Cir. 2006). This Court accordingly grants the government's motion for summary judgment.

13. To the extent that any conclusions of law contained herein can be considered to be or are deemed to be Statements of Uncontroverted Fact, they are incorporated by reference into the Statements of Uncontroverted Fact.

IT IS SO ORDERED.

Dated: , 2017

UNITED STATES DISTRICT JUDGE

Presented by:

EILEEN M. DECKER
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PROOF OF SERVICE

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 312 North Spring Street, 14th Floor, Los Angeles, California 90012.

On January 12, 2017, I served a copy of **NOTICE OF RENEWED MOTION FOR SUMMARY JUDGMENT; and [proposed] STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW** on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices.

TO: David Scotese
[REDACTED]
Murrieta, CA [REDACTED]

X I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: January 12, 2017 at Los Angeles, California.

/s/ Ann M. Eberhardy
ANN M. EBERHARDY