

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
CR08-302 PAM/FLN**

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United States of America,  
  
                    Plaintiff,  
  
                    vs.

**Memorandum in Support of  
Defendant’s Motion to Appeal  
Order of Detention and Reinstate  
Defendant’s Order of Release**

Michael Catain,  
  
                    Defendant.

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**INTRODUCTION**

On January 28, 2009, the United States Magistrate Judge Franklin L. Noel after hearing argument from counsel for the Defendant, Michael Catain, and the United States Attorney in the Government’s Motion for Revocation of Order of Release, revoked Mr. Catain’s release placing him in Federal Custody. On January 30, 2009, United States Magistrate Franklin L. Noel signed the Order for Detention. (See January 23, 2009 Government’s Motion for Revocation of Order of Release, attached hereto as Exhibit A.)

The Government’s Motion was based on Mr. Catain retaining approximately \$14,000 in cash from the Bay Car Wash in violation of the United States Federal Judge Ann D. Montgomery’s Order of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief, in United States v. Thomas Joseph Petters, et al., 08-CV-5348 (ADM/JSM), (October 14, 2008). In that Order, the Court ordered that all the Defendants’ assets, including those of Mr. Catain, be deemed property of the Receivership established in this case. This Order precluded Mr. Catain from transferring, dispensing, or otherwise disposing of funds and assets.

Pursuant to Title 18 U.S.C. §§ 3143 and 3148, United States Magistrate Franklin L. Noel found:

1. Probable Cause exists to believe that Mr. Catain has committed the state crime of theft in violation of Minnesota Statute § 609.52 by intentionally and without claim of right taking, using, transferring and retaining possession of moveable property of another – approximately \$14,000 in cash – without the other’s consent and with the intent

to deprive the owner permanently of possession of the property. The crime is a felony within the meaning of 18 U.S.C. § 3148.

2. Because there is probable cause to believe that, while on release, Mr. Catain committed a state felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not flee or pose a danger to the safety of any other person or the community. The Court finds that Mr. Catain has not rebutted this presumption.

3. The Court further finds that Mr. Catain is unlikely to abide by any condition or combination of conditions of release. (See January 30, 2009 Order of Detention, attached hereto as Exhibit B).

Defendant, Michael Catain, through his attorney, Michael J. Colich, comes before this Court with a Motion to Appeal the United States Magistrate Franklin L. Noel's Order of Detention and alleges that there is no serious risk of flight, no serious risk of danger to others and no serious risk in the future of obstruction of justice and that there are conditions of release which will assure Mr. Catain can and will abide by those conditions. This memorandum is submitted in support of that Motion.

### **ARGUMENT**

On January 28, 2009, before the Honorable United States Magistrate Franklin L. Noel, the Defendant, Michael Catain, by and through his attorney, Michael J. Colich, admitted he failed to deposit approximately \$13,860.20 in cash receipts that should have been deposited in the daily deposits of the Bay Car Wash between the periods of November 18, 2008 to January 2, 2009.

Prior to the hearing, Mr. Catain's attorney, Michael J. Colich, provided to the Receiver \$4,667 in cash that had been kept at the Bay Car Wash. These were funds remaining from the \$13,860.20. At the time of the hearing before the Honorable United States Magistrate Franklin L. Noel, counsel for Mr. Catain produced copies of two (2) invoices totaling \$4,800 that were paid in cash (this constitutes the amount of funds incurred by the defendant in moving expenses). The \$4,800 was part of the cash retained by Mr. Catain in violation of the Honorable Judge Ann Montgomery's Order of Preliminary Injunction. Additionally, at the time of the hearing, Mr. Catain's attorney, Michael J. Colich, on behalf of Mr. Catain, provided the Court with an itemized listing of other expenditures (\$1,459.99) that part of the \$13,860.20 was used for.

Pursuant to 18 U.S.C. § 3148, there is a rebuttable presumption that if there is probable cause to believe that, while on release, the person committed a federal, state or local felony, that no conditions or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community or flee. In Mr. Catain's case there are conditions or a combination of conditions that will assure that he will not flee, pose any danger to the safety of any other person or the community, or obstruct justice and that he will abide with such conditions.

Mr. Catain acknowledged to the United States Attorney and the Honorable United States Magistrate Franklin L. Noel that he had retained certain cash funds that were properly assets of the Receivership. He further advised the United States Attorney, through his counsel, that these funds at all times were kept at the Bay Car Wash and used for prior bills, current bills, expenses of the Car Wash and expenses incurred as part of the Order of Preliminary Injunction, Appointment of Receiver and Other Equitable Relief signed on October 14, 2008 by the Honorable United States Federal Judge Ann D. Montgomery.

On October 14, 2008 all of Mr. Catain's assets were seized by the Federal Government. The first payment for living expenses was not mailed to Mr. Catain until December 28, 2008. Prior to this time, Mr. Catain had no funds other than a weekly hourly salary from his employment to pay for previous bills, current bills and new expenses. At the same time, Mr. Catain agreed to move with his family from his home to an apartment. It was the Receiver's belief that Mr. Catain's high-end home would sell faster if unoccupied and would save additional expenses.

**THE DEFENDANT'S ACT OF USING OR RETAINING APPROXIMATELY FOURTEEN THOUSAND DOLLARS DOES NOT DEMONSTRATE A SERIOUS RISK OF FLIGHT, A SERIOUS RISK TO THE COMMUNITY OR A SERIOUS RISK OF OBSTRUCTION OF JUSTICE.**

**RISK OF FLIGHT/RISK OF DANGER TO THE COMMUNITY**

On October 8, 2008, Mr. Catain pled guilty to one count of Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h). The Defendant knew and understood at the time of guilty plea that he would eventually be sentenced to a lengthy prison term (guideline range of 210-240 months). Mr. Catain has cooperated with and continues to cooperate with the United States Government. Mr. Catain has met with the

Receiver over a dozen times to assist them in the sale of his business and properties and continues to assist them. Mr. Catain has reported regularly to United States Pretrial Services and complied with all rules imposed. Mr. Catain is awaiting sentencing.

Mr. Catain was made aware of the Government's Motion for Revocation of Order of Detention two and half weeks prior to the hearing. He continued, with the Receiver's approval and United States Attorney's knowledge, to work at the Bay Car Wash. The Government, not immediately moving to detain the Defendant pending a hearing, evidenced their belief that Mr. Catain is not a serious risk of flight, serious risk of danger to others or a serious risk of obstructing justice.

There is no evidence to support the contention that Mr. Catain presents a serious risk of flight or serious risk to the community.

### **OBSTRUCTION OF JUSTICE**

While Mr. Catain erred in violating a condition of release, the violation was not made with the intent to commit a crime. Nor was it an intentional dissipation of assets by Mr. Catain to avoid the financial consequences of his crime and to avoid the satisfaction of a fine, forfeiture or restitution. In other words, his actions were not an attempt to obstruct justice

Unlike some or all of the defendants in this case, Mr. Catain had no liquid assets readily available to the Receiver for payment of his previous and existing bills and obligations. All of Mr. Catain's assets are tied up in his homes and businesses, which are currently for sale.

In using these funds in the manner used, Mr. Catain violated a condition of the Order setting conditions of Pretrial Release. However, his actions were not done with malice or intent to commit a crime. The funds retained by Mr. Catain at all times were used to pay bills previously owed, new bills, expenses related to the seizure of all his properties and the miscellaneous day-to-day expenses of the Bay Car Wash. It is important to note that all records and daily receipts of the Bay Car Wash were kept by Mr. Catain and no effort was made to destroy those receipts representing cash payments. All records were provided to the Receiver upon request.

The question of whether Mr. Catain's retention of approximately \$14,000 from the Bay Car Wash constitutes a serious risk in the future of obstructing justice is a threshold question. Mr. Catain alleges his action does not constitute a serious risk of

obstruction of justice. Even after the Receiver and United States Attorney learned of his conduct, Mr. Catain was allowed to continue his day-to-day work at the Bay Car Wash. All monetary responsibility was placed under the control of the Receiver and his representatives. Additionally, the Bay Car Wash has in fact been sold, with a closing scheduled for February 6, 2009. All remaining assets of Mr. Catain are in possession of the Receiver.

### **CONDITIONS OF RELEASE**

In addition to the restrictions set forth in the Order setting conditions or Pretrial Release, Attorney Michael J. Colich on behalf of his client, Defendant Michael Catain proposes the following conditions which will assure that Mr. Catain will not flee, pose a danger to the safety of any other person in the community or create a serious risk of obstruction of justice.

1. Mr. Catain shall end all involvement in the operation and management of the Bay Car Wash, unless authorized by the United States Attorney and/or Receiver.

2. If Mr. Catain is authorized to work at the Bay Car Wash, pursuant to the new owner's request, he will have no contact or involvement with the daily receipts, invoices, cash, credit cards or any other matter involving monetary issues.

3. Mr. Catain shall compile an inventory of other liquid assets, if any, still in his possession and provide that inventory to the Receiver.

4. Mr. Catain is subject to home arrest if deemed necessary by Pretrial services.

### **CONCLUSION**

Based on the foregoing argument of counsel and accompanying documentation, the Defendant, Michael Catain respectfully requests this Court reinstate Defendant's Order of Release.

Dated: February 4, 2009

Respectfully submitted,

COLICH & ASSOCIATES

/s/ Michael J. Colich

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