

U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE  
CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL DOCKET NO. 05-130**  
  
v. \* **SECTION: "L"**  
  
**CHERLYN R. ARMSTRONG, ET AL.** \*

\* \* \*

**DEFENDANTS' JOINT MOTION AND INCORPORATED  
MEMORANDUM FOR AN ADVERSARY HEARING OR, ALTERNATIVELY,  
FOR RELEASE AND EXEMPTION OF ASSETS FROM FORFEITURE  
TO PAY ATTORNEYS' FEES, DEFENSE COSTS AND LIVING EXPENSES**

**NOW INTO COURT** come defendants, Cherlyn Armstrong Scherer Prejean (Prejean) and the Scherer Corporate Defendants,<sup>1</sup> by and through counsel, and move this Honorable Court for an Adversary Hearing or, Alternatively, for Release and Exemption of Assets from Forfeiture to Pay Attorneys' Fees, Defense Costs and Living Expenses. In support of this motion, defendants state as follows:

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<sup>1</sup> As used herein "the Scherer Corporate Defendants" is a term used to refer to the following defendant entities: Scherer Physicians Weight Loss Center, Inc.; Scherer's Medical Center, Inc.; Scherer's Slidell Medical Center, LLC; Scherer's Gretna Medical Center, LLC; Mia's Pharmacy, L.L.C.; Mia's Pharmacy Slidell, LLC; Bella Mia Holdings, L.L.C.; C.C. Armstrong Co., L.L.C.; J. Ballard Hall, LLC; L. Amedee on Esplanade, LLC and The Ballard Co., L.L.C.

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
☒ Dktd \_\_\_\_\_  
☒ CtRmDep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

## 1. Factual and Procedural Background

On April 11, 2005, virtually all the defendants' assets were seized or restrained by agents of the Drug Enforcement Administration pursuant to several seizure warrants. Indeed, as a result of these actions by the government, defendants have been left unable to pay their bills; in substantial debt due to NSF checks and outstanding payroll which was refused by the bank after the funds were seized; and without funds to pay for utilities, tuition or the basic needs of Ms. Prejean's family. Naturally, defendants also are unable to pay the attorneys' fee necessary to the defense of this action. The assets seized included funds on deposit in banks totaling approximately \$4 million and cash on hand totaling approximately \$1.6 million. Additionally, defendants' automobiles were seized and defendants' real property was restrained.<sup>2</sup>

On April 15, 2005, a federal grand jury returned a one-count indictment charging defendants with conspiring to illegally dispense and distribute a mixture and substance containing a detectable amount of Hydrocodone, a Schedule III controlled substance, and Alprazolam, a Schedule IV

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<sup>2</sup> In particular, the government is seeking the forfeiture of the following assets: (1) Approximately \$1,600,000 seized from 6250 Eastover Drive, New Orleans, Louisiana; (2) Any and all funds in the amount of \$3,895,397.56 seized from JP Morgan Chase Bank formerly Bank One; (3) Any and all funds in the amount of \$269,694.15 seized from Regions Bank; (4) Property recorded in the name of C.C. Armstrong Co., L.L.C. being Lots 16 and 17 of Oak Harbor Commercial, Phase II, St. Tammany Parish, Louisiana; (5) Property recorded in the name of C.C. Armstrong Co., L.L.C. being Lot 18 of Oak Harbor Commercial, Phase II, St. Tammany Parish, Louisiana; (6) Property recorded in the name of C.C. Armstrong Co., L.L.C. bearing municipal number: 1631 Esplanade Avenue, New Orleans, Louisiana; (7) Property recorded in the name of Bella Mia Holdings, L.L.C. bearing municipal number: 2622-32 Metairie Lawn Drive, Metairie, Louisiana; (8) Property recorded in the names of Cherlyn Armstrong wife of/ and Steven L. Prejean bearing municipal number: 5440 South Eastover Drive, New Orleans, Louisiana; (9) Property recorded in the name of Cherlyn Armstrong bearing municipal number: 5460 South Eastover Drive, New Orleans, Louisiana; (10) Property recorded in the name of Cherlyn Armstrong bearing municipal number: 6250 Eastover Drive, New Orleans, Louisiana; (11) Property recorded in the name of The Ballard Co., L.L.C. bearing municipal number: 72 Westbank Expressway, Gretna, Louisiana; (12) Property recorded in the names of Cookie Armstrong wife of/ and Steven L. Prejean bearing municipal number: 7340 Briarheath Drive, New Orleans, Louisiana; (13) Property recorded in the name of Louise Jackson Amedee bearing municipal number: 7506 Briarheath Drive, New Orleans, Louisiana; and (14) Several vehicles which have been seized and which are the currently the subject of administrative forfeiture actions by the Drug Enforcement Administration.

controlled substance, outside the scope of professional practice and not for a legitimate medical purpose in violation of 21 U.S.C. §841 (b)(1)(d) and §846. The indictment alleged that the conspiracy began in 1998 and continued until April 11, 2005. The indictment also included a notice of forfeiture seeking forfeiture of the defendants' interest in the seized and restrained property listed above pursuant to 21 U.S.C. §853.

Currently, defendants are represented by counsel retained to represent them through the resolution of the forfeiture issues and, should the funds become available, through the trial of this matter.<sup>3</sup> Defendants desire to have current counsel continue to represent them, but while there is an agreement on potential fees, defendants do not have the present ability to pay those fees as a result of the forfeiture action. Because the asset seizures have rendered defendants unable to pay counsel, a failure to successfully challenge the forfeiture and to obtain the release of funds from forfeiture to pay attorneys' fees and defense costs will force defendants to seek appointment of counsel under the Criminal Justice Act. The immediate impact of the restraint of their property for forfeiture is the deprivation of defendants qualified right to counsel of choice in the pending criminal case. *See* Affidavit of Cherlyn Armstrong Scherer Prejean, (Attached as Exhibit "A").

The indictment alleges an overarching conspiracy, allegedly continuing over a period of seven years, to dispense and distribute prescription medications outside the scope of proper medical practice. While the indictment is brief, the affidavit supporting the search, seizure and arrest warrants covers 99 pages and sets forth a detailed statement of the government's evidence. During the relevant period clinics were operated at several locations, served thousands of patients, and

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<sup>3</sup> Although defendants are currently represented by counsel of choice, at the time of defendants' arraignments counsel specifically noted the limited nature of their appearances subject to the need to contest the continued restraint of assets needed to pay attorneys' fees and defense costs.

employed various physicians. This complex case will require substantial efforts and financial resources to defend. *See* Affidavit of Michael S. Fawer (Forwarded to Court along with Motion for filing *Ex Parte* and Under Seal).

Defendants now seek to have assets released from restraint in order to fund their criminal defense and to pay Prejean's living expenses pending trial. In doing so, defendants are seeking an adversary hearing before this Court at which the government must establish that the assets restrained are the proceeds of the alleged criminal offenses. Failing such a showing by the government, the Sixth Amendment requires the release of funds to pay the costs of defending this criminal prosecution and due process requires that defendant be permitted to use funds to pay the living expenses of her family pending trial.

## **2. Applicable Law and Argument**

### **a. Legal Basis for the Requested Post-Restraint Hearing**

More than sixty years ago the Supreme Court stated that "[i]t is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." *Powell v. Alabama*, 287 U.S. 45, 53, 53 S. Ct. 55, 58 (1932). There can be no dispute "that a criminal defendant has a *qualified* right to retain counsel of his own choosing to conduct his defense in a criminal case." *United States v. Moya-Gomez*, 860 F.2d 706, 723 (7th Cir.1988), *cert. denied*, 492 U.S. 908, 109 S. Ct. 3221 (1989). The right is, however, qualified, not absolute. For example, the right to counsel of choice does not entitle a defendant to the services of a lawyer he cannot afford. "But where, as here, the criminal defendant seeks to retain legal representation with his own assets, his choice of counsel clearly warrants constitutional protection." *United States v. Noriega*, 746 F. Supp. 1541, 1543 (S.D. Fla. 1990).

The Supreme Court has upheld the forfeiture statutes despite challenges to their failure to exempt attorneys' fees from forfeiture. In *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 109 S. Ct. 2646 (1989), the Supreme Court held that forfeitable assets cannot be used to pay attorneys' fees and rejected the "notion of a constitutional right to use the proceeds of crime to finance an expensive defense." 109 S. Ct. at 2655. In the companion case of *United States v. Monsanto*, 491 U.S. 600, 109 S. Ct. 2657 (1989), the Court left undecided the question of whether due process requires a hearing before a defendant is deprived of his assets based on an *ex parte* governmental claim that they are subject to forfeiture. See 109 S. Ct. at 2666 n. 10.

Since the decisions in *Caplin & Drysdale* and *Monsanto*, however, several circuits have held that a post-restraint hearing is required by the Due Process Clause prior to depriving a defendant of assets needed to hire counsel of choice in a criminal proceeding.<sup>4</sup> Most recently the Fifth Circuit considered a related issue in a civil forfeiture case in which a claimant sought funds to pay counsel in a parallel criminal prosecution. In *United States v. Melrose East Subdivision*, 357 F.3d 493 (5<sup>th</sup> Cir. 2004), the Fifth Circuit reviewed a district court's determination that a defendant was not

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<sup>4</sup> For example, in *Moya-Gomez*, the Seventh Circuit held "that the pretrial, postindictment restraint of a defendant's assets without affording the defendant an immediate, postrestraint, adversary hearing at which the government is required to prove the likelihood that the restrained assets are subject to forfeiture violates the due process clause to the extent that it actually impinges on the defendant's qualified sixth amendment right to counsel of choice." 860 F.2d at 731. The Seventh Circuit went on to state that where "the government seeks to restrain a defendant's assets without subjecting itself to a due process hearing of the type described above, and if the district court finds that the defendant has no other assets with which to hire his attorney of choice, then the government must consent to the exemption of reasonable attorneys' fees, as determined by the district court in its supervisory role, from the property otherwise subject to forfeiture." *Id.*

Likewise, in *Monsanto*, on remand from the Supreme Court, the *en banc* Second Circuit held that "the fifth and sixth amendments, considered in combination, require an adversary, post-restraint, pretrial hearing as to probable cause that (a) the defendant committed crimes that provide a basis for forfeiture, and (b) the properties specified as forfeitable in the indictment are properly forfeitable, to continue a restraint of assets (i) needed to retain counsel of choice and (ii) ordered *ex parte* . . . [and that] grand jury determinations of probable cause may be reconsidered in such a hearing." 924 F. 2d at 12063.

entitled to have assets released from a civil forfeiture restraining order for the purpose of funding his criminal defense. The district court in *Melrose* held a post-restraint adversary hearing and required the government to demonstrate probable cause that the restrained assets were subject to forfeiture.

In discussing the hearing requirement, the *Melrose* Court noted that:

The government recognizes, however, that considerations of due process can require the court to hold a post-restraint pretrial hearing in certain circumstances. Although there does not seem to be a reported holding to this effect regarding the still fairly new provision at issue here, 18 U.S.C. § 983(j), authorities interpreting its criminal analogue, 21 U.S.C. § 853(e), are in broad agreement that due process requires the district court to hold a prompt hearing at which the property owner can contest the restraining order-- without waiting until trial to do so--at least when the restrained assets are needed to pay for an attorney to defend him on associated criminal charges.

357 F.3d at 499.

More recently, in *United States v. Causey*, 309 F. Supp. 2d 917 (S.D. Tx. 2004), the district court, post-*Melrose*, followed the Tenth Circuit's ruling in *United States v. Jones*, 160 F.3d 641 (10<sup>th</sup> Cir. 1998) and determined that in order to "to receive a hearing 'a defendant must demonstrate to the court's satisfaction that [he] has no assets, other than those restrained, with which to retain private counsel and provide for [himself] and [his] family,' and that '[a] defendant must also make a prima facie showing of a bona fide reason to believe the grand jury erred in determining that the restrained assets' are proceeds, or traceable proceeds, of the charged offenses.'" 309 F. Supp. 2d at 926. (citations omitted).

In establishing this two part test, the *Jones* Court made the following statement:

We think the proper balance of private and government interests requires a post-restraint, pretrial hearing but only upon a properly supported motion by a defendant. Due process does not automatically require a hearing and a defendant may not simply ask for one. As a

preliminary matter, a defendant must demonstrate to the court's satisfaction that she has no assets, other than those restrained, with which to retain private counsel and provide for herself and her family. *See Nichols*, 841 F.2d at 1506 n. 11. The need for this requirement is obvious. If a defendant fails to persuade the court on this point, then the private interest of the *Mathews* calculus drops out of the picture, tipping the balance of interests against a post-restraint hearing. *Harvey*, 814 F.2d at 927. A defendant must also make a prima facie showing of a bona fide reason to believe the grand jury erred in determining that the restrained assets "constitute[ ] or [are] derived, directly or indirectly, from gross proceeds traceable to the commission of the [health care] offense." 18 U.S.C. §982(a)(6). By requiring as much from a defendant we protect the government and its resources from frivolous challenges. We stress that although an accused bears the burden of persuasion on the first requirement, the second entails only a burden of production. Once a defendant satisfies these initial burdens, due process requires a district court to conduct an adversarial hearing at which the government must establish probable cause to believe that the restrained assets are traceable to the underlying offense.

*Jones*, 160 F.3d at 647-48.

As is detailed below, defendants suggest that they have met the two part test set out in *Jones* and, accordingly, are entitled to a post-restraint hearing in this matter.

**b. Demonstrated Need for Funds**

The first part of the *Jones* test requires defendants to establish that they are without funds to pay criminal counsel or the individual defendant's living expenses pending trial. *See Jones*, 160 F.3d at 647. The attached Prejean affidavit establishes her lack of assets or sources of income with which to meet these financial obligations. *See Prejean Affidavit* (Attached as Exhibit "A"). The affidavit also establishes the lack of additional assets from which the corporations are able to pay counsel or the defense costs necessary to properly defend this action.



**c. Bona Fide Reason to Believe the Grand Jury Erred**

The second part of the *Jones* test requires defendants to produce a bona fide reason to believe the grand jury erred in determining that the restrained assets (1) constitute or are derived from proceeds the defendants obtained directly or indirectly as a result of charged drug offense or (2) were used or intended to be used to commit or facilitate the charged drug offense. *See Jones*, 160 F.3d at 647. Defendants suggest that their burden of production on this issue is met by a careful analysis of the affidavit of the government agent used to support the seizures. Unlike in the typical drug conspiracy, which involves an illegal drug such as crack or heroin, this case involves substances which when prescribed by individuals with DEA authorization are presumptively legal. Significantly, at all times relevant to the indictment, the individual physicians prescribing the controlled substances at the clinics were authorized by DEA to do so. Thus, the government, in order to meet its burden, must show that each time a prescription was written the physician did so outside proper medical practice and without a legitimate medical purpose. Clearly, the government cannot and, defendants suggest, will not make a claim that every prescription written at the clinics during the multi-year period alleged in the indictment was illegal, *i.e.*, without a legitimate medical purpose.

Even assuming for the purposes of argument that the government could establish that improper prescriptions were issued on several occasions, this evidence does not taint the vast majority of the business conducted at the clinics. It is incumbent upon the government in establishing probable cause to connect the restrained assets to the allegedly unlawful activity and not simply to extrapolate from a few instances into a forfeiture effort which is aimed at virtually all the property owned by the defendants.



The following observations regarding the affidavit suggest that the grand jury has not been presented with evidence establishing probable cause to believe all the funds seized constitutes or is derived from the alleged drug conspiracy:<sup>5</sup>

1. While the affidavit contains various historical background facts, the only specific factual allegations relate to the three-month period prior to September 8, 2000, when Ms. Prejean was arrested in St. Tammany Parish. (¶¶ 48-50). On November 16, 2000, all charges against Ms. Prejean were refused by the St. Tammany Parish District Attorney's Office.

2. The affidavit contains no specific factual allegations regarding the prescription of controlled substances for non-medical purposes from September 6, 2000 through December 2004.<sup>6</sup>

3. The affidavit's description of specific events, i.e., clinic visits, which might possibly be construed as violations of 21 U.S.C. §841, is limited to its references to allegations based upon the covert activities of two (2) individuals between December 2004 and March 2005:

- (a) A "confidential source" ("Source") (¶¶ 58-59) who suffered injuries in multiple auto accidents in 2001 and 2004 (¶ 59A & D), was a marijuana user (¶59E) and obtained drugs from other clinics as well (¶59F). This Source visited the clinics twenty (20) times between December 15, 2004 and March 25, 2004.
- (b) An "undercover agent" ("Agent") (¶¶60-61B) who feigned pain from a prior accident producing an MRI allegedly indicative of "no medical abnormality" visited the clinics on six (6) occasions between January 27, 2005 and March 25, 2005 (¶61A-G).

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<sup>5</sup> Defendants assume that the facts alleged in the affidavit are largely those relied upon in the government's presentation to the grand jury regarding the issue of forfeiture. The affidavit was signed on April 11, 2005, the searches, seizures and arrest made on April 11, 2005 and the grand jury returned the indictment three days later on April 15, 2005.

<sup>6</sup> The only allegations in the affidavit relating to 2003 concern receipt of cash at the clinics (¶55 A & B) and a report of arrest "near" the Slidell clinic as a result of surveillance of 46 individuals, some of whom were allegedly clinic patients. No dispositions are reported. (¶ 55F).

4. Assuming for the purposes of argument that the government allegations in the affidavit with regard to undercover visits between December 2004 and March 2005 amount to violations of the Controlled Substances Act, the total amount of funds possibly subject to forfeiture is limited to \$4,240.00. *See* List of Currency Serial Numbers Included in Items to Be Seized Section of Search Warrant. (Attached as Exhibit "B").

Based upon this meager evidentiary showing the Government has seized assets totaling in excess of \$10 million amassed by Ms. Prejean over an eight year period from the operation of licensed clinics and pharmacies and completely shut down defendants' businesses, thereby denying her the ability to retain counsel or to pay her ongoing living expenses.

**3. Conclusion**

Based on the foregoing, defendants respectfully request that this Court hold an adversary hearing at which the government must establish its basis for forfeiture and the existence of probable cause to support the forfeiture of all seized and restrained property or, alternatively, that the Court order sufficient funds released and exempted from forfeiture to permit defendants to pay counsel of choice in the related criminal case, all related defense costs and the Prejean's living expenses.

Respectfully submitted,

CHERLYN ARMSTRONG SCHERER PREJEAN  
BY COUNSEL

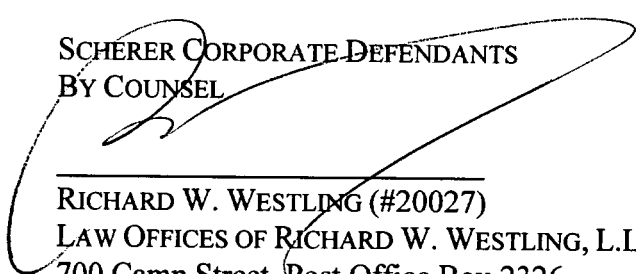


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201 St. Charles Avenue, Suite 2503  
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And

SCHERER CORPORATE DEFENDANTS  
BY COUNSEL



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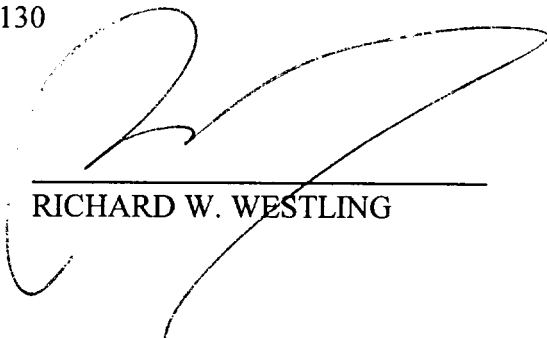
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New Orleans, Louisiana 70176-2326  
Telephone: 504-525-0600

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2005, a copy of the foregoing pleading was served upon  
counsel for the government:

Mr. Tony Gordon Sanders  
Ms. Loan "Mimi" Nguyen  
Assistant United States Attorneys  
Eastern District of Louisiana  
500 Poydras Street, Room B210  
New Orleans, Louisiana 70130

by hand delivery.



RICHARD W. WESTLING

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL DOCKET NO. 05-130**  
  
v. \* **SECTION: "L"**  
  
**CHERLYN R. ARMSTRONG, ET AL.** \*  
  
\* \* \*

**ORDER**

Considering the foregoing Defendants' Motion and Incorporated Memorandum for an Adversary Hearing or, Alternatively, for the Release and Exemption of Assets from Forfeiture to Pay Attorneys' Fees, Defense Costs and Living Expenses and the reasons stated therein;

**IT IS ORDERED** that the motion is **GRANTED** and that a hearing will be held before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

New Orleans, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

**DOCKET NO. 05-130**

**--VERSUS--**

**JUDGE FALLON**

**CHERLYN R. ARMSTRONG, et al.**

**MAGISTRATE CHASEZ**

\*\*\*\*\*

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**AFFIDAVIT OF CHERLYN ARMSTRONG PREJEAN  
SUBMITTED IN SUPPORT OF THE RELEASE  
OF SEIZED FUNDS TO PAY COSTS OF DEFENSE  
AND ONGOING LIVING EXPENSES**

BEFORE ME, the undersigned duly commissioned and qualified Notary Public personally  
came and appeared:

**CHERLYN "COOKIE" ARMSTRONG PREJEAN**

who, after being duly sworn, made the following declaration under penalty of perjury, and declared:

1. I am the defendant in the above-captioned case and have a controlling interest in all of the indicted corporate entities.
2. For the past eight (8) years, I have been operating three licensed clinics in Metairie, Slidell and Gretna, Louisiana, primarily devoted to the management and treatment of chronic pain.

In addition, for the past two (2) years, I have operated licensed pharmacies in Slidell and

**EXHIBIT  
"A"**

Metairie, Louisiana.

3. On April 11, 2005, pursuant to a Search Warrant for my residence at 6250 Eastover Drive, law enforcement personnel seized currency in excess of \$1.6 million. Simultaneously, the Federal Government filed restraining orders on bank accounts, both personal and corporate, controlled by me, containing funds totaling \$4,165,091, seized several vehicles and filed liens on all real property owned in whole or in part by me. Since the simultaneous execution of search warrants on the clinics and the pharmacies and the removal of all patient medical records, the clinics and the pharmacies have ceased operating.
4. On April 15, 2005, I, along with three physicians employed by the clinics and a variety of related corporate entities were charged in a single count indictment with conspiring to violate 21 U.S.C. §841 and 846 by distributing and dispensing certain Schedule III and IV controlled substances, namely, Hydrocodone and Alprazolam, “outside the scope of professional practice and not for a legitimate medical purpose” from 1998 to April 2005. The indictment contained a “Notice of Drug Forfeiture,” with respect to all of the assets referred to in paragraph 3, above, and effectively mooted the earlier described restraining orders.
5. The assets seized or otherwise restrained by the Government constitute all of my assets, the value of which exceeds \$10 million, thus depriving me of the ability to retain counsel of choice to defend against the charges lodged against me and the corporations. Moreover, as a result of the seizure, I have been deprived of the ability to pay my ongoing living expenses.
6. Attached as Schedule A is a current summary of the sources of my available income, my monthly expenses, my outstanding debt and my few assets not subject to the Notice of Forfeiture. As can be seen, my current monthly income (\$1,978.00) is far less than my

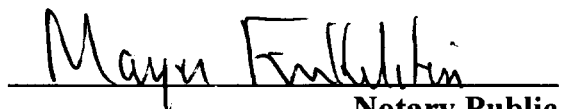


monthly expenses (\$15,885.34). The monthly shortfall is approximately \$13,907.34, plus the amount needed to pay off current payables. The latter, totaling \$38,982.46 is, for the most part, the result of checks issued by me to Clinic employees, vendors and other merchants having been returned unpaid when the Government froze my operating bank accounts. Additionally, I have current bills due in the amount of \$73,687.72, not including my personal income tax obligation to the Internal Revenue for 2004 taxes in the amount of \$692,479.00.

7. As can be seen from the Affidavit of Michael S. Fawer, dated June 13, 2005, I was able to borrow funds to secure private representation by Mr. Fawer through the instant motions but I have paid nothing to Mr. Westling, counsel for the corporate entities or to Michael Hill, associate counsel, for their extensive work on the preliminary proceedings. My obligation to them for the latter will be approximately \$25,000.
8. Absent some relief from the Court in response to the instant motion, I will be unable to pay for private counsel of choice for myself or the corporate entities and will have no source of funds to pay for my ongoing living expenses.

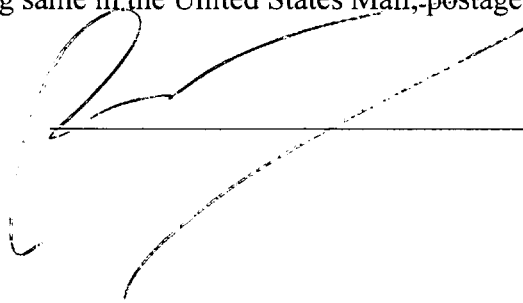
  
CHERYLYN "COOKIE" ARMSTRONG PREJEAN

**SWORN TO AND SUBSCRIBED BEFORE ME**  
**this 13<sup>th</sup> day of June 2005**

  
\_\_\_\_\_  
Notary Public  
La. Notary No. 5570  
My commission expires at death

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served on all counsel of record by hand delivery or by placing same in the United States Mail, postage pre-paid this 13th day of June 2005.

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a long, sweeping flourish that extends to the right.

SCHEDULE "A"

CHERLYN ARMSTRONG PREJEAN

SUMMARY OF INCOME AND EXPENSES,  
NSF CHECKS AND PAYABLES AND ASSETS AS OF JUNE 13, 2005

Personal Monthly Income		\$ <u>1,978.00</u>
Personal Monthly Expenses	\$ ( 5,975.55)	
Net Monthly Business Expenses	<u>(9,909.79)</u>	
Total Monthly Personal and Business Expenses		\$ <u>(15,885.34)</u>
Total Monthly Funds Needed		\$ <u><u>(13,907.34)</u></u>

MISCELLANEOUS:

Personal Income Taxes Due for 2004	\$ (692,479.00)
NSF Checks	(38,982.46)
Accounts Payable	<u>(73,687.72)</u>
TOTAL	\$ <u><u>(793,299.18)</u></u>

Available Assets	\$ 48,167.72
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CHERLYN ARMSTRONG PREJEAN

PERSONAL MONTHLY INCOME:

Rental	
7650 Avalon Way	650.00
7506 Briarheath	425.00
Mortgages	
7340 Briarheath Drive	<u>903.00</u>
TOTAL INCOME	<u>\$ 1,978.00</u>

PERSONAL MONTHLY EXPENSES

Electricity	\$ 350.00
Telephone	143.91
Sewerage and Water Board	43.96
Maintenance (home and grounds)	350.00
Alarm monitoring	37.00
Cable and High Speed Connection	118.76
Homeowner's insurance	375.00
Homeowner's Association dues	120.00
Telephone services (cell)	310.00
Kentwood Water	20.00
Groceries, cleaning supplies and personal items	600.00
Clothing	120.00
Automobile expenses (gasoline, maintenance)	175.00
Automobile note - Mazda	295.00
Insurance - automobile (Geico)	232.00
Insurance - motorcycle (Progressive Ins.)	34.83
Humana One Health Insurance	575.00
Student loan (Sallie Mae)	465.09
School tuition, books, and meals	1250.00
Subscription for newspaper	10.00
Charitable contributions (including church)	<u>350.00</u>

TOTAL PERSONAL MONTHLY EXPENSES \$ 5,975.55

NET PROFIT/(LOSS) \$ (3,997.55)

PERSONAL PAYABLES:

Internal Revenue - Income taxes (2004) \$ 692,479.00

CHERLYN ARMSTRONG PREJEAN

SCHERER MEDICAL CENTER & MIA'S PHARMACY- medical offices,  
laboratory, pharmacy, and accounting offices

METAIRIE LAWN DRIVE

MONTHLY INCOME:

None \$ .00

TOTAL INCOME \$ .00

MONTHLY EXPENSES:

River Parish Disposal (dumpster)	\$ 136.00
Electricity	679.72
Telephone - rollover of all lines which have been disconnected	375.25
Property taxes (2622-32 Metairie Lawn, Metairie, LA)	1,094.31
Liability and property insurance (estimate)	750.00
Telephone - Steve Prejean's office and fax lines	667.06
Water service	210.00
Alarm monitoring service	50.00
Building and lawn maintenance	<u>250.00</u>

TOTAL EXPENSES \$ 4,212.34

NET PROFIT/ (LOSS) \$ (4,212.34)

CHERLYN ARMSTRONG PREJEAN

GRETNNA:

SCHERER MEDICAL CENTER

MONTHLY INCOME:

\$           .00

TOTAL

\$           .00

MONTHLY EXPENSES:

Electricity	\$ 800.00
City of Gretna Water Dept.	90.00
Atmos Energy (gas) (estimate)	30.00
Maintenance - yard and building	250.00
Coastal Environmental Services	100.00
Alarm monitoring service	50.00
Property taxes	535.95
Liability and property insurance (estimate)	250.00
J. Ballard Hall	
Telephone (504) 368-2551, (504) 368-7520, (504) 368-530	<u>600.00</u>

TOTAL

\$ 2,705.95

NET PROFIT/ (LOSS)

\$ (2,705.95)



CHERLYN ARMSTRONG PREJEAN

SLIDELL:

SCHERER MEDICAL CENTER and MIA'S PHARMACY

MONTHLY INCOME:

None \$ .00

TOTAL \$ .00

MONTHLY EXPENSES:

Scherer Medical Center telephone (504) 646-1001	\$ 800.00
Mia's Slidell Pharmacy (504) 645-8741	400.00
Alarm monitoring	55.00
Coastal Environmental Services	100.00
Maintenance - yard and building	500.00
Liability and property insurance (estimate)	250.00
Property taxes	<u>1247.50</u>

TOTAL \$ 3,352.50

NET PROFIT/ (LOSS) \$ (3,352.50)

CHERLYN ARMSTRONG PREJEAN

1631 ESPLANADE AVENUE APARTMENTS:

MONTHLY INCOME:

Unit F	\$ 110.00
Unit C	491.00
Unit E	200.00
Unit G	<u>750.00</u>
TOTAL	\$ <u>1,551.00</u>

MONTHLY EXPENSES:

Telephone	\$ 160.00
Sewerage and Water Board	55.00
Land care	150.00
Liability and property insurance (estimate)	250.00
Electricity	425.00
Building maintenance	<u>150.00</u>
TOTAL EXPENSES	\$ <u>1,190.00</u>

NET PROFIT/ (LOSS)	\$ <u><u>361.00</u></u>
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CHERLYN ARMSTRONG PREJEAN

NSF CHECKS (due to Government seizure of bank accounts)

Winn Dixie	\$ 322.90
HMO Louisiana, Inc. Insurance	3,735.50
Tax Collection Parish of St. Tammany	4,666.15
Capital One Acct. # 4115 0715 9091 8681	1,037.68
American Express	538.00
Office Depot Bill # 601/568510071228	1,856.27
Times Picayune - Scher50483731130	4,303.46
Cox Communication # 001 7410 027875003	168.76
Kentwood Spring Water # 17824182812346	24.70
Bank One	3,600.00
Employee NSF payroll checks	15,000.00
Bank One	183.41
Bank One	46.39
Bank One	25.00
Bank One	50.99
Bank One	2596.87
America's Cash Express	<u>826.38</u>
 TOTAL NSF CHECKS	 <u>\$ 38,982.46</u>

CHERLYN ARMSTRONG PREJEAN

ACCOUNTS PAYABLE

Wages due to employees	\$ 15,000.00
Ferdie Printing	557.07
Sewerage & Water Board	56.70
Entergy - 2624 Metairie Lawn - Acct. # 38410171	51.62
Entergy - 1631 Esplanade Apt. D - Acct. # 38379886	29.56
Entergy - 1631 Esplanade Apt B - Acct. # 38379913	65.17
Morris & Dickson Co., LLC - Mia's Pharmacy	36,196.97
Morris & Dickson Co., LLC. - Mia's Pharmacy	502.74
Coastal Waste Services - 560 Oak Harbor, Slidell	221.50
Atmos Energy - Ballard Co., Gretna	57.47
Eastover Property Owner's Association	480.00
Sewerage & Water Board - 6250 Eastover	50.99
Abbott Laboratories - Scherer Medical Clinic	1,030.07
Humana Health Insurance	594.92
Bell South - Ballard Co., Gretna	314.87
Bell South - (504) 948 1964	88.48
Bell South - (504) 838-1288	548.14
Bell South - (504) 368-2551	177.45
Cleco - Metairie Medical Center	3,116.82
Janitorial - Mia Pharmacy	250.00
Inner Parish Security - Mia's Pharmacy	1,000.00
City of Gretna - Ballard Co.	37.32
State of Louisiana Health & Hospitals	99.86
Louisiana Protective Services - Scherer Medical Center	75.00
Louisiana Protective Services	75.00
Louisiana Protective Services	60.00
Jess J. Waguespack, CPA	12,150.00
LeBlanc Air Conditioning Service	<u>800.00</u>
TOTAL ACCOUNTS PAYABLE	<u>\$ 73,687.72</u>

## CHERLYN ARMSTRONG PREJEAN

## ASSETS:

Automobile - 2005 Mazda "6"	14,500.00
1982 Kawasaki	750.00
Personal Jewelry	20,000.00
Funds in bank accounts	
Hibernia # 2041445877 (Steve & Mike Prejean)	527.28
Hibernia # 2080575427	195.00
Whitney # 42049839 (Steven Prejean)	70.25
Whitney # 2100420627 (Steven Prejean)	777.34
Whitney # 712913165 (S.L. Prejean, Attorney at Law, LLC)	198.32
Bank One # 5101307999 (Steven Prejean)	469.16
Investments	
CNL Retirement Properties, Inc.	4,461.69
REIT Shares	2,790.62
AMEX VUL Annuity # 0909 0740 3891 2 004	<u>3,428.06</u>
TOTAL ASSETS	<u>\$ 48,167.72</u>

**ATTACHMENT "B"****ITEMS TO BE SEIZED**

1. All individual or business records and related correspondence, documents and materials, including Medicaid and patient records or charts, prescription orders, controlled substance sales, dispensing records, telephone or other message books, appointment books, patient office visit forms or receipts, appointment cards, patient violation forms, pain assessment forms, in whatever form (current, back-up, and/or archived) and whether handwritten, printed, computer generated or stored, in any fashion, pertaining to the illegal purchase, possession, dispensing or distribution of controlled substances and prescription drugs for patients seen at Scherer's Clinics, or prescriptions written by Mia's Pharmacies, or The Medicine Shoppe Pharmacy from the time period January 1, 1997 through the present date.
2. All controlled substances and drugs including, Hydrocodone, Alprazolam and Carisoprodol and all controlled substance records including but not limited to U.S. Official DEA-222 - Order Forms, sales invoices, purchase invoices, inventories, daily logs, prescriptions, theft and loss forms, drug destruction records and any other records reflecting controlled substances obtained and/or dispensed, disbursed, held at, distributed, lost or stolen from any medical clinic or pharmacy.
3. Articles of incorporation, corporate resolutions, minute books, stock books, state charter, and records of corporate taxes paid. General ledgers and subsidiary ledgers including note receivables, account receivables, account payables, note payables, and ledgers containing amounts billed to Medicaid, Medicare, insurers.
4. Bank statements, deposit slips, withdrawal slips, and cancelled checks, passbooks for U.S. and foreign bank accounts, bank identification cards, safe deposit box records, keys for safe deposit boxes, including all funds on deposit such as certificates of deposit and money market accounts in any format, electronic or otherwise.

**EXHIBIT  
"B"**

5. United States and foreign currency, precious metals, jewelry and financial instruments, including but not limited to stocks and bonds.
6. Papers, tickets, notes, receipts, passports and other items relating to domestic and international travel.
7. Any surveillance equipment and media used to record the interior or exterior of said location.
8. Books, records, receipts, notes, journals, ledgers, receipts relating to the receipt, disbursement or accounting of funds or property or the purchase of financial instruments and or the transfer of funds, records of real estate transactions, bank statements and related records, passbooks, money drafts, letters of credit, money orders, bank drafts, cashier's checks, bank checks, safe deposit keys and money wrappers.
9. Said records may be stored on electronic media including hard drives, diskettes, tapes, or any other media capable of storing information in a form readable by a computer;
10. Computer hard drives, address books, and electronic organizers that can be used to maintain storage of records created, modified or stored in electronic or magnetic form and any data, image, or information that is capable of being read or intercepted by a computer. These records include media maintained as archive or backup copies. In order to search for any items to be seized that were prepared, modified, or stored in electronic or magnetic form, searching agents may seize and search the following:
  - A. Any computer hardware or computer-related equipment capable of creating or storing information in electronic or magnetic form;
  - B. Any computer peripheral used to facilitate the transmission, creation, display, encoding or storage of information, images and data including word processing equipment, modems, monitors, printers, plotters, encryption circuit boards, optical scanners;



- Document hosted at JDSUPRA™  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=73e1165c-e139-4437-a0d2-b535e04a0270>
- C. Any magnetic or electronic storage device such as floppy diskettes, hard disks, backup tapes, CD-ROMs, optical discs, printer buffers, smart cards, memory calculators, electronic dialers, Bernoulli drives, or electronic notebooks;
  - D. Computer software, documentation, operating logs and instruction manuals relating to the operation of the computer hardware and software to be searched;
  - E. Application software, utility programs, compilers, interpreters, and other programs or software used to facilitate direct or indirect communication with the computer hardware and software to be searched;
  - F. Any physical keys, encryption devices and similar physical items that are necessary to gain access to the computers to be searched or are necessary to gain access to the programs, data, and information contained on the computer to be searched;
  - G. Any passwords, password files, test keys, encryption codes or other computer codes necessary to access the computers to be searched or to convert data, file or information on the computers into a readable form;
  - H. Electronically stored communications or messages, including any of the items to be seized that may be found in electronic mail ("e-mail");
11. The agents are authorized to seize the aforementioned items and remove to a laboratory setting for a sufficient period of time to obtain access to and make image copies and ensure that the image copies can be properly restored and verified.
12. All monies used in the controlled buys, including but not limited to:
- |         |             |
|---------|-------------|
| \$20.00 | CJ00132991B |
| \$20.00 | EC44917708A |
| \$20.00 | CI36214370A |
| \$20.00 | BI01997319A |
| \$20.00 | CF41298065D |
| \$20.00 | BF84704757D |

\$20.00	EA72457021B
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\$20.00	EA56769671D
\$20.00	G88121464B

\$100.00	AB47919587F
\$100.00	AB70763832M
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\$20.00	EK09385653B

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL DOCKET NO. 05-130**  
  
v. \* **SECTION: "L"**  
  
**CHERLYN R. ARMSTRONG, ET AL.** \*  
  
\* \* \*

**NOTICE OF HEARING**

**TO: Tony Gordon Sanders and Loan "Mimi" Nguyen, Assistant United States Attorneys  
Hale Boggs Bldg - 2<sup>nd</sup> Floor, 500 Poydras Street, New Orleans, Louisiana 70130**

**PLEASE TAKE NOTICE** that the undersigned will bring this Motion for an Adversary Hearing or, Alternatively, for Release and Exemption of Assets from Forfeiture to Pay Attorneys' Fees, Defense Costs and Living Expenses before the Honorable Eldon Fallon, United States District Judge, at 9:00 a.m. o'clock on June 30, 2005 or as soon thereafter as counsel may be heard.

Respectfully submitted,

CHERLYN ARMSTRONG SCHERER PREJEAN  
BY COUNSEL



MICHAEL S. FAWER (#4022)

SMITH & FAWER, L.L.P.

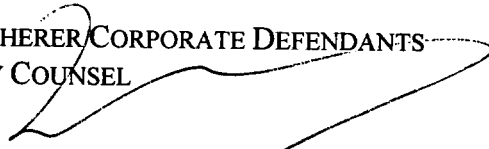
301 N. Columbia Street

Covington, Louisiana 70130

Telephone: 985-871-7200

And

SCHERER CORPORATE DEFENDANTS  
BY COUNSEL

  
\_\_\_\_\_  
RICHARD W. WESTLING (#20027)  
LAW OFFICES OF RICHARD W. WESTLING, L.L.C.  
700 Camp Street, Post Office Box 2326  
New Orleans, Louisiana 70176-2326  
Telephone: 504-525-0600

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2005, a copy of the foregoing pleading was served upon  
counsel for the government:

Mr. Tony Gordon Sanders  
Ms. Loan "Mimi" Nguyen  
Assistant United States Attorneys  
Eastern District of Louisiana  
500 Poydras Street, Room B210  
New Orleans, Louisiana 70130

by hand delivery.

  
\_\_\_\_\_  
RICHARD W. WESTLING