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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
REAL PROPERTY LOCATED AT 1 MILE UP)
HENNESSEY ROAD, BURNT RANCH,)
CALIFORNIA, TRINITY COUNTY,)
APN: 008-430-02, INCLUDING ALL)
APPURTENANCES AND IMPROVEMENTS)
THERE TO,)
)
Defendant.)
_____)

2:09-cv-1940-GEB-KJM

ORDER GRANTING THE UNITED STATES' MOTION TO STRIKE CLAIM AND ANSWER OF THOMAS PICKLE

Plaintiff, the United States of America, filed a motion on January 7, 2010 under Rule G(8)(c) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules"), in which it seeks an order striking the claim and answer filed by Thomas Pickle. The United States argues Pickle has not filed a verified claim as required under the Supplemental Rules, and therefore, he lacks standing as a claimant in this matter. Pickle has not filed an opposition. For the reasons stated below, the motion to strike Pickle's claim and answer is GRANTED.

1 **I. BACKGROUND**

2 This case is an in rem forfeiture action brought by the
3 United States against the real property located at 1 mile up Hennessey
4 Road in Burnt Ranch, California (the "defendant real property"). The
5 United States filed a verified complaint on July 16, 2009, in which it
6 seeks to forfeit the defendant real property based on its allegations
7 that the defendant real property was used or intended to be used to
8 facilitate the distribution of marijuana in violation of 21 U.S.C. §
9 841 *et seq.* (Verified Compl. ¶¶ 4-9.) Thomas Pickle is the record
10 owner of the defendant real property. (Id. ¶ 3.)

11 The United States gave Pickle direct notice of this action
12 three ways. First, on July 16, 2009, the United States mailed a copy
13 of the complaint and related documents to Pickle by certified mail.
14 (Teglia Decl. ¶ 5.) A certified mail receipt for these documents was
15 signed on July 20, 2009 by Selma Pickle. (Id.) Then, on July 30,
16 2009, the United States Marshal personally served Pickle with the
17 complaint and related documents, including a notice of complaint,
18 application and order for publication, *lis pendens*, and an order
19 requiring joint status report. (Id.) Also on July 30, 2009, the
20 United States Marshal posted a copy of the complaint and notice of
21 complaint on Pickle's residence. (Id.) In addition, beginning on
22 August 19, 2009, and continuing for at least thirty consecutive days,
23 the United States published notice of the forfeiture action on the
24 official federal government website, www.forfeiture.com. (Id. ¶ 6.)
25 A declaration of publication was filed on September 21, 2009. (Id.)

26 On August 17, 2009, Pickle's attorney, Editte Lerman, filed
27 a "Claim Against Real Property Subject to Forfeiture Action" on
28 Pickle's behalf. Lerman verified the claim for Pickle, stating:

1 This claim is verified by the attorney for the reason that
2 the party is absent from the county where he or she has his
3 or her office, while the attorney has read the claim and
4 that he or she is informed and believes the matter therein
to be true and on that ground alleges that the matters
stated therein are true.

5 (Claim Against Real Property ¶ 2:20-24.) Lerman also verified the
6 answer filed on September 9, 2009.

7 Assistant United States Attorney Kristin Door telephoned
8 Lerman on or about August 19, 2009, and left a message with her
9 receptionist, relaying that the claim filed was defective since it was
10 not signed by Pickle. (Door Decl. ¶ 4.) Door then wrote a letter to
11 Lerman, advising her of the claim's defect, and giving her until
12 August 28, 2009 to file a properly verified claim. (Id. ¶ 5, Ex. 1.)
13 On September 11, 2009, Door again telephoned Lerman's office and left
14 another message with the receptionist concerning the defective claim.
15 In addition, on September 30, 2009, Door sent Lerman an e-mail
16 advising her that she would file a motion to strike the defective
17 claim and answer if Lerman did not file a claim signed by Pickle.
18 (Id. ¶ 7.)

19 On October 2, 2009, Lerman responded to Door's e-mail,
20 relating that "Mr. Pickle is in somewhat of a 'pickle'" as "[p]rior to
21 the filing of the complaint in the . . . forfeiture matter, Mr. Pickle
22 went hiking in the mountains" and "has been missing since." (Id. ¶ 8,
23 Ex. 3.) Lerman wrote that the Forest Service had found Pickle's
24 vehicle in Del Norte County and that he might have been the victim of
25 foul play. (Id.) Lerman concluded that Pickle was either "missing"
26 or "on vacation in the mountain wilderness." (Id.)

27 Door responded by e-mail that same day, telling Lerman to
28 keep her informed of Pickle's whereabouts and that she would not file

1 a motion to strike Pickle's claim for thirty days. (Id. ¶ 9.) As of
2 January 6, 2010, Door had not heard further from Lerman. (Id. ¶ 10.)

3 II. DISCUSSION

4 The United States argues that Pickle's claim is defective
5 since he has not verified the claim as required by Supplemental Rule
6 G(5) (a) (i). The United States contends that as a result of this
7 defect, Pickle lacks standing as a claimant in this action and his
8 claim and answer should be stricken.

9 The Supplemental Rules as well as the Federal Rules of Civil
10 Procedure govern this action.¹ Supp. R. G(1). Supplemental Rule G(5)
11 prescribes the requirements for filing a claim to contest a forfeiture
12 action, providing: "The claim must: (A) identify the specific property
13 claimed; (B) identify the claimant and state the claimant's interest
14 in the property; (C) *be signed by the claimant under penalty of*
15 *perjury*; and (D) be served on the government attorney" Supp.
16 R. G(5) (a) (i) (emphasis added). Supplemental Rule G(8) (c) (i) allows
17 the government to "move to strike a claim or answer" "at any time
18 before trial" "for failure to comply with Rule G(5) . . . [or] because
19 the claimant lacks standing."

20 A claimant seeking to contest a civil forfeiture must
21 demonstrate both Article III and statutory standing. United States v.
22 One 1985 Cadillac Seville, 866 F.2d 1142, 1148 (9th Cir. 1989). To
23 establish statutory standing, the claimant must comply with the
24 procedural requirements provided for in the Supplemental Rules. See
25 United States v. Real Property Located In Fresno County, 135 F.3d

26
27 ¹ Supplemental Rule G was adopted on December 1, 2006 to govern
28 civil in rem forfeiture actions. Prior to the adoption of Supplemental
Rule G, Supplemental Rule C(6) governed pleading requirements in civil
in rem forfeiture actions.

1 1312, 1316-17 (9th Cir. 1998) (holding that failure to comply with
2 Supplemental Rules precluded claimant from establishing standing in
3 forfeiture action); see also United States v. \$487,825.00 in U.S.
4 Currency, 484 F.3d 662, 664 (3d Cir. 2007) ("To establish statutory
5 standing in a forfeiture case, the claimant must comply with the
6 procedural requirements set forth in [Supplemental Rule G].") "The
7 most significant requirement is that the claimant . . . timely file a
8 verified statement of interest, as required by [Rule G(5)(a)(i)]."
9 \$487,825.000 in U.S. Currency, 484 F.3d at 664. "The requirement that
10 the claimant file a timely verified statement serves two purposes.
11 First, it forces claimants to come forward as quickly as possible
12 after the initiation of forfeiture proceedings, so that the court may
13 hear all interested parties and resolve the dispute without delay.
14 Second, it minimizes the danger of false claims by requiring claims to
15 be verified or solemnly affirmed. For these reasons, the requirement
16 is no mere procedural technicality." Id. at 664-65 (quotations and
17 citations omitted); see also United States v. Commodity Account no.
18 549 54930, 219 F.3d 595, 597 (7th Cir. 2000) ("[V]erification is an
19 essential element of any claim because of the substantial danger of
20 false claims." (quotations and citations omitted)). Therefore, "[i]f
21 the claimant fails to file a verified claim, he will not have standing
22 as a party to the action." United States v. 2001 Volkswagon Beetle,
23 No. 1:07-CV-00300-OWW-GSA, 2008 WL 5120737 (E.D. Cal. Dec. 5,
24 2008) (citing United States v. One Dairy Farm, 918 F.2d 310, 311 (1st
25 Cir. 1990)); United States v. Real Property Located in Merced County,
26 No. 1:03-cv-6613-AWI-SMS, 2008 WL 706599, at *3 (E.D. Cal. Mar. 14,
27 2008) (stating that "[o]ne who does not file a verified claim pursuant
28 to the Supplemental Rules lacks standing in the forfeiture action").

1 Further, when a claimant lacks standing due to his failure to file a
2 verified claim, any answer filed may also be stricken. 2001
3 Volkswagon Beetle, 2008 WL 5120737, at *4 (striking answer where
4 claimant failed to file a verified claim); Real Property Located in
5 Merced County, 2008 WL 706599, at *3 (same); United States v.
6 \$11,918.00, No. 1:03-cv-05679, 2007 WL 3037307, at *6 (E.D. Cal. Oct.
7 17, 2007) ("Granting a motion to strike an answer is appropriate for
8 one who does not file a claim in compliance with the pertinent
9 rules."); see also United States v. \$38,570 in U.S. Currency, 950 F.2d
10 1108, 1112-15 (5th Cir. 1992) (answer was properly stricken where
11 claimant filed an untimely claim).

12 Pickle received direct notice of the forfeiture action on
13 July 30, 2009, at the latest, when the United States Marshal
14 personally served him and posted a copy of the complaint at his
15 residence. (Teglia Decl. ¶ 5.) Thereafter, on August 17, 2009,
16 Pickle filed a claim through his attorney contesting the forfeiture of
17 the defendant real property. However, Pickle did not sign the claim
18 under penalty of perjury; rather, his attorney verified the claim on
19 his behalf. Although Supplemental Rule C(6), which governed pleading
20 requirements in civil forfeiture actions prior to December 1, 2006,
21 provided that verification of a claim could be accomplished by a
22 claimant's attorney under certain circumstances, Rule G(5)(a)(i)(C)
23 does not allow for such verification. *Cf. United States v.*
24 \$100,348.00 in U.S. Currency, 354 F.3d 1110, 1118 (9th Cir.
25 2004) (noting that Supplemental Rule C(6) provides that "[i]f [a] claim
26 is made on behalf of the person entitled to possession by an attorney,
27 it shall state that the attorney is duly authorized to make the
28 claim"); see also United States v. One Men's Rolex Masterpiece Watch,

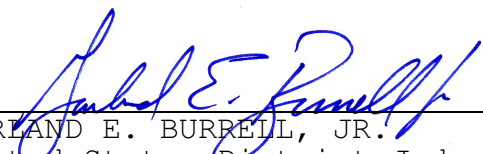
1 No. 07-2508-STA-dkv, 2008 WL 2769368, at *1 n.2 (W.D. Tenn. July 11,
2 2008) (noting change in pleading requirements in Supplemental Rule
3 G(a) (5) (i) (C) and striking claim and answer signed only by claimant's
4 attorney). Since Pickle did not sign his claim under penalty of
5 perjury, it does not comply with Supplemental Rule G(a) (5) (i) (C).

6 In her e-mail, Lerman suggests Pickle did not receive notice
7 of this in rem forfeiture action before he "went hiking," but Pickle
8 was personally served and received notice of this action on July 30,
9 2009. Lerman's e-mail did not state when she first became aware of
10 Pickle's disappearance, and she failed to file an opposition to the
11 motion or provide other information on the status or whereabouts of
12 Pickle. Therefore, it is unknown when Pickle "went missing" or "on
13 vacation," or whether he is still missing. Since Pickle has not filed
14 a timely, verified claim in compliance with Supplemental Rule G(5) (i),
15 and no good cause appears to excuse this failure, Pickle lacks
16 standing to contest the forfeiture of the defendant real property.
17 Accordingly, his claim and answer are stricken under Supplemental Rule
18 G(8) (c) (i).

19 **III. CONCLUSION**

20 For the stated reasons, the United States' motion to strike
21 Pickle's claim and answer is GRANTED.

22 Dated: February 2, 2010

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GARLAND E. BURRELL, JR.
United States District Judge