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

UNITED STATES OF AMERICA,

Plaintiff,

No. CIV 2:11-cv-0879-GEB-JFM

vs.

APPROX. \$156,000.00 IN U.S. CURRENCY,
et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Before the court is plaintiff United States of America’s July 15, 2011 motion for default judgment, requesting (1) entry of default judgment against the interests of Lily Leticia Garcia (“L. Garcia”), Carlos Garcia (“C. Garcia”), Juan Manuel Hernandez (“Hernandez”), Antenogenes Gonzalez (“Gonzalez”), Yesenia Placencia (“Placencia”) and Samuel Zepeda Rodriguez (“Rodriguez”) in approximately \$156,00.00 and \$2,839.00 in U.S. currency (“the defendant currency”) and (2) entry of final judgment of forfeiture vesting plaintiff all right, title and interest in the defendant currency.

FACTUAL BACKGROUND

On October 1, 2010, agents of the Butte Interagency Narcotics Task Force (“BINTF”) and Bureau of Narcotics Enforcement (“BNF”) used a confidential informant (“CI”)

1 to conduct an undercover drug purchase from L. Garcia at 3156 Esplanada #265, Chico,
2 California. Compl. at 2. The attempt was unsuccessful. Id.

3 On October 5, 2010, the CI contacted L. Garcia and requested Oxycontin.
4 Compl. at 2. L. Garcia said she did not have any for sale, but would be able to get some. Id.
5 The CI reported purchasing two Oxycontin 80-mg prescription pills and approximately 2.4
6 grams of marijuana. Id. The CI also reported that L. Garcia showed him/her a large marijuana
7 grow in the backyard. Id.

8 On October 11, 2010, the CI again successfully contacted L. Garcia at her
9 residence. Compl. at 2. The CI was equipped with an electronic recording device, a wireless
10 transmitter, a video camera and cash. Id. The CI reported that he/she was able to successfully
11 purchase one prescription 80-mg Oxycontin pill, two prescription 30-mg Oxycontin /
12 Hydrochloride pills and approximately 2.6 grams of marijuana. Id. at 2-3. The CI reported that
13 L. Garcia agreed to sell marijuana from the marijuana plants growing in the backyard. Id.

14 On October 28, 2010, agents from the BNE and BINTF served a search warrant at
15 L. Garcia's residence at 3156 Esplanade # 265, Chico, California. Compl. at 3. L. Garcia,
16 Gonzalez, Hernandez and two minors were present during the search. Id. L. Garcia told the
17 agents that her husband, C. Garcia, also lives there but was not present during the search. Id.

18 During the search of the residence, the agents found, inter alia, three large plastic
19 bags containing approximately 6.5 pounds of marijuana, 19 plastic bags containing
20 approximately 10 pounds of marijuana, nine small bags containing approximately 106 grams of
21 marijuana, and loose marijuana bud on the bathroom counter. Compl. at 3-4. Additionally, the
22 agents found 6 quart-sized jars containing approximately 253 grams of marijuana and digital
23 scales on a bedroom closet shelf. Id. In the bedroom, the agents found 15 plastic bags
24 containing approximately \$150,100.00 in currency in a dresser drawer, and \$5,900.00 in
25 currency was found in a second dresser drawer, for a total of \$156,00.00 in currency. Id. The
26 agents also found \$2,839.00 in currency inside of L. Garcia's purse, 39 grams of hashish, loose

1 marijuana on the kitchen counter, and 21 foil packages of marijuana in the cupboard. Id. At the
2 exterior of the residence, the agents found two marijuana smoking devices, one of which was
3 within reach of L. Garcia's two young children. Id. at 4.

4 A BNE agent spoke with L. Garcia during the search and asked if drugs were
5 being sold out of the house. Compl. at 4-5. L. Garcia denied drug trafficking. Id. She asserted
6 that the family lived on \$1,200.00 of government-support money a month, which she deposits in
7 the bank. Id. When asked about the large sums of money found at the residence, L. Garcia
8 responded that she "just keeps the money there." Id.

9 L. Garcia's daughter, Placencia and her boyfriend, Rodriguez, approached the
10 residence during the search. Compl. at 5. Placencia represented that she was unaware of drug
11 trafficking at her mother's residence. Id. Placencia told a BINTF agent that she, L. Garcia, her
12 brother and her uncle have marijuana recommendations and that the marijuana plants in L.
13 Garcia's backyard belong to them. Id.

14 The Butte County District Attorney charged L. Garcia with violations of
15 California Health and Safety Code¹ section 11352(a) (transportation of a controlled substance);
16 section 11360(a) (transportation of marijuana); section 11351 (possession of a controlled
17 substance for sale); section 11358 (cultivation of marijuana); section 11359 (possession of
18 marijuana for sale); and section 273a(a) (child endangerment). Compl. at 6. C. Garcia was
19 charged with the same violations as Garcia with the exception of section 11359. Id. The
20 criminal case is still pending in the Butte County Superior Court. Id.

21 PROCEDURAL BACKGROUND

22 On March 31, 2011, plaintiff filed the present complaint for forfeiture in rem
23 against the defendant currency. On April 4, 2011, a warrant for arrest of articles in rem was
24 issued. On April 6, 2011, the warrant was executed.

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26 ¹ All future statutory references will be to the California Health and Safety Code unless
noted otherwise.

1 Service was accomplished in the following manner:

2 A. *L. Garcia and C. Garcia*

3 On April 5, 2011, plaintiff mailed copies of the complaint, application and order
4 for publication, order regarding clerk's issuance of warrant for arrest, warrant for arrest, order
5 setting status conference, notice of availability of a magistrate judge and notice of forfeiture
6 action ("the service documents") to L. Garcia and C. Garcia at the Butte County Jail, 35 County
7 Center Drive, Oroville, California 95965 by first class mail and certified mail number 7008 1140
8 0001 8038 6951. See Butler Decl. at ¶¶ 3-6, Exs. A-D. The certified mail form was signed by T.
9 Hoffman. Id., Ex. B. Plaintiff also mailed the service documents to John Kucera, the attorney
10 for L. Garcia and C. Garcia.² Id., Ex. C. The certified mail form was signed on April 6, 2011.
11 Id. Finally, on April 13, 2011, the United States Marshal Service personally served copies of the
12 service documents on L. Garcia and C. Garcia through correctional technician T. Hoffman at
13 Butte County Jail. Id., Ex. D.

14 B. *Juan Manual Hernandez*

15 On April 5, 2011, plaintiff mailed copies of the service documents to Hernandez
16 at 3156 Esplanade # 265 Chico, California 95973 by first class mail and certified mail number
17 7008 1140 0001 8038 6968. See Butler Decl. at ¶¶ 7-8, Ex. E. The mail was returned to
18 plaintiff's office marked "unclaimed, return to sender." See id. On April 13, 2011, the United
19 States Marshal Service personally served copies of the service documents on Hernandez at 3156
20 Esplanade # 265, Chico, California 95973. Id., Ex. F.

21 C. *Gonzalez*

22 On April 5, 2011, plaintiff mailed copies of the service documents to Gonzalez at
23 3156 Esplanade # 265, Chico, California 95973 by first class mail and certified mail number
24 7008 1140 0001 8038 6845. See Butler Decl. at ¶¶ 9-10, Ex. G. The mail was returned to

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26 ² At least as of June 14, 2011, Mr. Kucera is no longer representing L. Garcia and C.
Garcia. See Khasigian Decl. ¶ 4, Ex. B.

1 plaintiff's office marked "unclaimed, return to sender." See id. On April 13, 2011, the United
2 States Marshal Service attempted to personally serve copies of the service documents on
3 Gonzalez at 3156 Esplanade # 265, Chico, California 95973. Id. ¶ 10, Ex. F. The address was
4 vacated, but service was accepted by Placencia at 3156 Esplanade # 275, Chico, California
5 95973. Id., Ex. H.

6 D. *Placencia*

7 On April 5, 2011, plaintiff mailed copies of the service documents to Placencia at
8 3156 Esplanade # 275, Chico, California 95973 by first class mail and certified mail number
9 7008 1140 0001 8038 6975. See Butler Decl. at ¶¶ 11-12, Ex. I. The certified mail form was
10 signed by Vidal Hernandez on April 6, 2011. Id. On April 13, 2011, the United States Marshal
11 Service personally served copies of the service documents on Placencia at 3156 Esplanade #
12 275, Chico, California 95973. Id., Ex. J.

13 E. *Rodriguez*

14 On April 5, 2011, plaintiff mailed copies of the service documents to Rodriguez at
15 3156 Esplanade # 275, Chico, California 95973 by first class mail and certified mail number
16 7008 1140 0001 8038 6982. See Butler Decl. at ¶¶ 13-14, Ex. K. The certified mail form was
17 signed by Vidal Hernandez on April 6, 2011. Id. On April 13, 2011, the United States Marshal
18 Service attempted to personally serve copies of the service documents on Rodriguez at 3156
19 Esplanade # 275, Chico, California 95973. Id. ¶ 14, Ex. L. The attempt was unsuccessful. Id.
20 On April 30, 2011, the Butte County Sheriff's Office personally served copies of the service
21 documents on Rodriguez at 64 Artesia Drive, Chico, California. Id. ¶ 15, Ex. M.

22 On May 3, 2011, the undersigned authorized publication of the forfeiture action
23 via the internet forfeiture website (www.forfeiture.gov) for at least thirty days. According to
24 plaintiff's Declaration of Publication (Doc. No. 14), a Notice of Civil Forfeiture was published
25 on the official government internet site (www.forfeiture.gov) for thirty days beginning on May 5,
26 2011. To date, no claim or answer has been filed on behalf of the potential claimants.

1 On May 20, 2011, plaintiff moved for default as to Placencia and Rodriguez. On
2 May 23, 2011, entry of default was entered against Placencia and Rodriguez. On June 7, 2011,
3 plaintiff moved for default as to Gonzalez and Hernandez. Also on June 7, 2011, entry of default
4 was entered as to Gonzalez and Hernandez. Finally, on June 16, 2011, plaintiff moved for
5 default as to L. Garcia and C. Garcia. On June 17, 2011, entry of default was entered as to L.
6 Garcia and C. Garcia.

7 On July 15, 2011, plaintiff filed the instant motion for default judgment against
8 L. Garcia, C. Garcia, Hernandez, Gonzalez, Placencia and Rodriguez. No opposition has been
9 filed by or on behalf of any of these individuals.

10 LEGAL STANDARD

11 A court has the discretion to enter a default judgment against one who is not an
12 infant, incompetent, or member of the armed services where the claim is for an amount that is
13 not certain on the face of the claim and where (1) the defendant has been served with the claim;
14 (2) the defendant's default has been entered for failure to appear; (3) if the defendant has
15 appeared in the action, the defendant has been served with written notice of the application for
16 judgment at least three days before the hearing on the application; and, (4) the court has
17 undertaken any necessary and proper investigation or hearing in order to enter judgment or carry
18 it into effect. Fed. R. Civ. P. 55(b); Alan Neuman Productions, Inc. v. Albright, 862 F.2d 1388,
19 1392 (9th Cir. 1988). Factors that may be considered by courts in exercising discretion as to the
20 entry of a default judgment and as to setting aside a default include the nature and extent of the
21 delay, Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986); the possibility of prejudice to
22 the plaintiff, Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986); the merits of plaintiff's
23 substantive claim, id.; the sufficiency of the allegations in the complaint to support judgment,
24 Alan Neuman Productions, Inc., 862 F.2d at 1392; the amount in controversy, Eitel v. McCool,

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1 782 F.2d at 1471-72; the possibility of a dispute concerning material facts, id.; whether the
2 default was due to excusable neglect, id.; and, the strong policy underlying the Federal Rules of
3 Civil Procedure that favors decisions on the merits, id.

4 With respect to default judgments in proceedings that are in rem actions for
5 forfeiture, both the general Federal Rules of Civil Procedure and the Supplemental Rules for
6 Certain Admiralty and Maritime Claims (“Supp. R.”) apply, but the latter rules prevail if there is
7 an inconsistency. Supp. R. A(1). Supp. R. G(1) provides that the rule governs a forfeiture action
8 in rem arising from a federal statute; to the extent that Rule G does not address an issue, Supp.
9 Rules C and E also apply. Supplemental Rule G, which took effect on December 1, 2006,
10 incorporates a common-sense approach to notice grounded in defined and recognized principles
11 of due process of law. Supp. Rule G, Adv. Comm. Note on 2006 Adoption. The Advisory
12 Committee Note indicates that the rule was added to bring together the central procedures
13 governing civil forfeiture actions; it also states that the rule generally applies to actions governed
14 by the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) as well as those excluded from it;
15 thus, the intended scope of application is very broad. The rule permits flexibility as to the time
16 of service of any warrant and supplemental process. Id. The provisions for notice incorporate
17 the traditional means of publication and adopt the general principle that notice should be
18 effectuated by means reasonably calculated to reach potential claimants at a cost reasonable in
19 the circumstances, and actual notice precludes a challenge to the government's failure to comply
20 with the specific requirements of the rule set forth in Rule G(4)(b). Id.

21 ANALYSIS

22 1. Judgment Sought

23 The court concludes that the notice given of the judgment sought satisfied Fed. R.
24 Civ. P. 55(d) and 54(c), which require that a judgment by default shall not be different in kind
25 from the relief sought, or exceed in amount that prayed for, in the demand for judgment.
26 Plaintiff expressly sought in the complaint the types of relief sought by the instant application for

1 default judgment, including a judgment of forfeiture of the defendant currency to the plaintiff
2 United States.

3 2. Default and Entry of Default

4 The declarations and the court's docket demonstrate that no person or entity made
5 a claim or answered the complaint within the requisite thirty-day period for filing a claim of 18
6 U.S.C. § 983(a)(4)(A) and Supp. R. G(5), and/or within the twenty-day period set forth in Supp.
7 R. G(5) for filing an answer thereafter. Therefore, the Clerk appropriately entered the default of
8 potential claimants Placencia and Rodriguez on May 23, 2011; Gonzalez and Hernandez on June
9 7, 2011; and L. Garcia and C. Garcia on June 17, 2011.

10 3. Notice

11 The Declaration of Publication by plaintiff filed on June 6, 2011 establishes that a
12 notice with the contents required by Supp. R. G(4)(a) was published on the official government
13 internet site for thirty consecutive days as required by Supp. R. G(4)(a)(iv)©.

14 As to the potential claimants, the declaration of Betty Butler and the Marshal's
15 returns of service establishes that individuals were served with the pertinent documents as set
16 forth supra. Thus, the notice complied with the requirements of Supp. R. G(4)(b).

17 The undersigned concludes that plaintiff has demonstrated that it has given notice
18 by publication and the notice required to be given to potential claimants by Rule G(4).

19 4. Legal Sufficiency of the Complaint

20 a. Legal Standard

21 A default judgment generally bars the defaulting party from disputing the facts
22 alleged in the complaint, but the defaulting party may argue that the facts as alleged do not state
23 a claim. Alan Neuman Productions, Inc., 862 F.2d at 1392. Thus, well pleaded factual
24 allegations, except as to damages, are taken as true; however, necessary facts not contained in
25 the pleadings, and claims which are legally insufficient, are not established by default. Cripps v.

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1 Life Ins. Co. of North America, 980 F.2d 1261, 1267 (9th Cir. 1992); TeleVideo Systems, Inc. v.
2 Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

3 Under the CAFRA, which applies to this case, the government must prove by a
4 preponderance of evidence that the property is subject to forfeiture. 18 U.S.C. § 983(c)(1).
5 Further, if the government's theory of forfeiture is that the property was used to commit or
6 facilitate the commission of a criminal offense, or was involved in the commission of a criminal
7 offense, the government shall establish that there was a substantial connection between the
8 property and the offense. § 983(c)(3).

9 Supp. Rule G(2) requires that the complaint in a forfeiture action in rem arising
10 from a federal statute be verified; state the grounds for subject-matter jurisdiction, in rem
11 jurisdiction over the defendant property, and venue; describe the property with reasonable
12 particularity; identify the statute under which the forfeiture action is brought; and state
13 sufficiently detailed facts to support a reasonable belief that the government will be able to meet
14 its burden of proof at trial.

15 b. The Complaint

16 The complaint filed in this action was verified. Compl. at 8.

17 The bases for jurisdiction are identified as 28 U.S.C. §§ 1345 and 1355
18 (jurisdiction of civil proceedings commenced by the United States or an agency or officer
19 thereof, and of actions to recover or enforce penalties or forfeitures under acts of Congress,
20 respectively) and 21 U.S.C. § 881(a)(6) (subjecting to forfeiture, among other things, all things
21 of value furnished or intended to be furnished by any person in exchange for a controlled
22 substance or listed chemical, and all proceeds traceable to such an exchange). Compl. at 1, 6.

23 The bases of venue are identified as 28 U.S.C. §§ 1355(b) (placing venue for a
24 civil forfeiture action where the acts giving rise to the forfeiture occurred) and 1395 (placing
25 venue for a civil forfeiture proceeding where the property is found). Compl. at 1.

26 The property is described with reasonable particularity.

1 It is stated that plaintiff proceeds pursuant to 21 U.S.C. § 881(a)(6), and that the
2 defendant property, seized in October 2010 in Chico, California, constitutes money or things of
3 value furnished or intended to be furnished in exchange for a controlled substance of listed
4 chemical, proceeds traceable to such an exchange, and/or all moneys used or intended to be used
5 to facilitate one or more violations of 21 U.S.C. § 841 *et seq.* Compl. at 6-7.

6 In the complaint there are alleged sufficiently detailed facts to support a
7 reasonable belief that the government would be able to meet its burden of proof at trial. The
8 complaint detailed an ongoing investigation into the purchase of marijuana L. Garcia by a CI.
9 Following a final purchase on October 11, 2010, a search warrant was executed at L. Garcia's
10 residence. There, agents located the defendant currency, in addition to, inter alia, drug
11 paraphernalia and multiple pounds of marijuana.

12 These facts support a reasonable inference that the defendant currency was
13 subject to forfeiture as proceeds/property traceable to proceeds or as property intended to be
14 used to facilitate other violations. The totality of the circumstances reflects that a substantial
15 connection between the property and the related drug offenses was demonstrated.

16 5. Status of Potential Claimants and Discretionary Factors

17 Here, no one has claimed an interest in the defendant currency or otherwise
18 responded to the complaint despite adequate notice. It does not appear that there is any risk of
19 mistake or excusable neglect on the part of anyone with a potential interest in the property or of a
20 dispute as to a material fact essential to the government's case. No just cause for delay appears.
21 There does not appear to be any reason why the general policy in favor of a decision on the
22 merits would warrant refusing to enter the requested default judgment.

23 Based thereon, the court finds that plaintiff has shown its entitlement to a default
24 judgment of forfeiture.

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1 CONCLUSION

2 Accordingly, IT IS HEREBY RECOMMENDED that

3 1. Plaintiff’s July 15, 2011 motion for default judgment be granted; and

4 2. Plaintiff is entitled to, and the Clerk be directed to enter, a judgment that:

5 A. The interest/s of L. Garcia, C. Garcia, Hernandez, Gonzalez, Placencia
6 and Rodriguez in the defendant property are condemned and forfeited to the United States of
7 America; and

8 B. The right, title, and interest of all potential claimants in the defendant
9 property, including but not limited to L. Garcia, C. Garcia, Hernandez, Gonzalez, Placencia and
10 Rodriguez, are forfeited to the United States of America pursuant to 21 U.S.C. § 881(a)(6), and
11 are vested in the United States; and,

12 C. All persons claiming any right, title, or interest in or to the defendant
13 property have defaulted and no longer have any right, title, or interest in the defendant property
14 whatsoever; and,

15 3. The Clerk of Court enter final judgment of forfeiture for plaintiff.

16 These findings and recommendation are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule
18 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
19 California. Within twenty-one (21) days after being served with a copy, any party may file
20 written objections with the court and serve a copy on all parties. Such a document should be
21 captioned “Objections to Magistrate Judge's Findings and Recommendation.” Replies to the
22 objections shall be served and filed within fourteen (14) court days after service of the
23 objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §
24 636(b)(1)(c).

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1 The parties are advised that failure to file objections within the specified time may waive the
2 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: September 8, 2011.

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6 UNITED STATES MAGISTRATE JUDGE

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