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

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 APPROXIMATELY \$10,923.00 IN
15 U.S. CURRENCY,
Defendant.

Case No.: 1:10-cv-00787 AWI/JLT

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING THE GRANTING OF
PLAINTIFF'S EX PARTE MOTION FOR
DEFAULT JUDGMENT**

(Doc. 25)

17 This matter is before the Court on Plaintiff United States of America's ("the Government's") ex
18 parte motion for default judgment, wherein the Government requests the Court (1) enter default
19 judgment against the interests of Jose Luis Palominos, Laura Chavez-Mendoza, and Sonia Mendoza in
20 approximately \$10,923.00 in United States currency ("the defendant currency") and (2) enter final
21 judgment of forfeiture vesting in the Government all right, title and interest in the defendant currency.
22 The Court has reviewed the submitted papers, along with the record, and has determined that this matter
23 is suitable for decision without oral argument pursuant to Local Rule 230(h). For the reasons set forth
24 below, the undersigned recommends that the Government's ex parte motion for default judgment be
25 **GRANTED**

26 J. FACTUAL BACKGROUND

27 On November 21, 2009, a Drug Enforcement Administration agent, the United States Marshals,
28 and officers of the Stockton Police Department established surveillance of, and observed, vehicles

1 associated with Jose Luis Palominos at 2148 Northridge Drive, Modesto, California. (Compl., Doc. 1,
2 at ¶ 6.) At the time, Palominos was a federal fugitive from a 2006 Grand Jury indictment in the Western
3 District of Washington for violations of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846 (conspiracy to
4 distribute methamphetamine) and violations of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 841(b)(1)(B)
5 (distribution of methamphetamine). (*Id.* at ¶ 5.)

6 At about 4:30 p.m., Palominos and a female, later identified as Laura Chavez-Mendoza, were
7 observed entering the Northridge Drive residence. (Compl. at ¶ 7.) The officers approached the front
8 door to make contact with the individuals. (*Id.*) However, as Laura Chavez-Mendoza opened the front
9 door, Palominos attempted to escape out the back door. (*Id.*) Palominos was subsequently captured and
10 arrested in the backyard of the residence. (*Id.*)

11 The officers obtained written consent to search from Laura Chavez-Mendoza. (Compl. at ¶ 8.)
12 During the search, the officers found, (1) eight kilo-sized wrappers and packaging material; (2) a digital
13 scale; (3) a cell phone; (4) a Washington State ID in the name of Alejandro Saavedra Mora which
14 displayed Palominos' photograph; and (5) several billing statements. (*Id.*) In addition, after a certified
15 narcotic canine drew alerted on a night stand next to the bed in the master bedroom, the officers
16 discovered \$10,000 in United States currency on the bedroom floor and \$923 in United States currency
17 in the pocket of a pair of men's pants. (*Id.* at ¶ 9.)

18 **II. PROCEDURAL BACKGROUND**

19 On May 4, 2010, the Government filed its complaint for forfeiture in rem, alleging therein that
20 the defendant currency was subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6). (Doc. 1.) On May
21 6, 2010, the Clerk of the Court issued a Warrant for Arrest of Articles In Rem for the defendant currency.
22 (Doc. 6.) The same day, the Government served Jose Luis Palominos, Laura Chavez-Mendoza, and
23 Sonia Mendoza with copies of the verified complaint, application order for publication, order regarding
24 the Clerk of Court's issuance of warrant for arrest, warrant for arrest, order setting mandatory scheduling
25 conference, notice of availability of a magistrate judge and voluntary dispute resolution, and notice of
26 forfeiture action by first class and certified mail. (Doc. 16, Rodriguez Decl. at ¶ 5; Doc. 21, Rodriguez
27 Decl. at ¶ 5.) This Court also authorized publication of the forfeiture action via the internet forfeiture
28 website (www.forfeiture.gov) for thirty consecutive days. (Doc. 4.)

1 On May 18, 2010, Jose Luis Palominos was personally served with notice of this action by the
2 U.S. Marshals Service. (Doc. 10.) Personal service was also attempted by the U.S. Marshals Service
3 on Laura Chavez-Mendoza and Sonia Mendoza on May 11, 2010 and May 13, 2010. (Docs. 11 & 12.)
4 Service was eventually executed as to these individuals on May 19, 2010 by leaving notice of the
5 forfeiture action at the last known addresses for Laura Chavez-Mendoza and Sonia Mendoza. (*Id.*) To
6 date, no claim or answer has been filed on behalf of Jose Luis Palominos, Laura Chavez-Mendoza, or
7 Sonia Mendoza.

8 On August 24, 2010, the Government moved for default judgment against Laura Chavez-
9 Mendoza and Sonia Mendoza. (Doc. 16.) The Government also moved for default judgment against
10 Jose Luis Palominos on September 23, 2010. (Doc. 21.) Entry of default was subsequently entered as
11 to Laura Chavez-Mendoza and Sonia Mendoza on August 30, 2010, (Docs. 17 & 18,) and entered as to
12 Jose Luis Palominos on September 24, 2010. (Doc. 22.) On November 5, 2010, the Government filed
13 the pending motion for default judgment. (Doc. 25.)

14 **III. LEGAL STANDARD**

15 A court has discretion to enter default judgment against a party after the clerk has entered the
16 party's default. Fed. R. Civ. P. 55; see Aldabe v. Aldabe, 616 F.2d 1089, 1093 (9th Cir. 1980). In
17 exercising this discretion, a court may consider the following factors: (1) the possibility of prejudice to
18 the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the
19 sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6)
20 whether the default was due to excusable neglect; and (7) the strong policy of the Federal Rules of Civil
21 Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).
22 In the context of an in rem forfeiture action, a court should also pay particular attention to the procedural
23 requirements set forth by the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), 18 U.S.C. § 983,
24 the Supplemental Rules for Certain Admiralty and Maritime Claims ("Supplemental Rules"), and the
25 court's Local Rules for Admiralty and In Rem Actions. See United States v. \$191,910.00, 16 F.3d 1051,
26 1069 (9th Cir. 1994) (explaining that because civil forfeiture is a "harsh and oppressive procedure which
27 is not favored by the courts," the government carries the burden of demonstrating its strict adherence to
28 procedural rules).

1 **IV. ANALYSIS**

2 **A. Procedural Requirements**

3 **1. Sufficiency of the Complaint**

4 Under the Supplemental Rules, the Government must file a verified complaint that states the
5 grounds for jurisdiction and venue, that describes the property being forfeited, that identifies the statute
6 under which the forfeiture action is brought, and that includes sufficient factual detail to support a
7 reasonable belief that the Government will be able to meet its burden of proof at trial. Suppl. R.
8 G(2)(a)(f). In this regard, the Government need not show a relationship between the proceeds of a drug
9 crime and a specific drug transaction; circumstantial evidence may support the forfeiture of the proceeds
10 of a drug crime. See United States v. \$30,670.00, 403 F.3d 448, 467-70 (7th Cir. 2005) (concluding that
11 the totality of the circumstances demonstrated that an airline passenger's cash hoard was connected to
12 drug trafficking and subject to forfeiture); United States v. \$242,484.00, 389 F.3d 1149, 1160 (11th Cir.
13 2004) (applying totality of the circumstances to determine that cash carried by airline passenger was the
14 proceeds of, or traceable to, an illegal drug transaction).

15 The Government satisfies these requirements in this case. On May 4, 2010, the Government filed
16 a verified complaint, asserting therein the proper grounds for subject matter jurisdiction and venue.
17 (Doc. 1 at 1.) The verified complaint goes on to allege sufficiently detailed facts that, under the totality
18 of the circumstances, support a reasonable belief that the Government will be able to meet its burden of
19 proof of trial. Specifically, the verified complaint alleges that Jose Luis Palominos was being observed
20 by officers as a federal fugitive from a 2006 grand jury indictment involving methamphetamine charges;
21 the officers arrested Jose Luis Palominos despite his attempt to escape; the officers obtained written
22 consent to search from Laura Chavez-Mendoza; and upon executing the search, the officers discovered
23 the defendant currency, along with other materials relating to illegal drug activity. (Id. at 2-3.) Finally,
24 the verified complaint concludes that the Government proceeds pursuant to 21 U.S.C. § 881(a)(6) against
25 the defendant currency as "money or other things of value furnished or intended to be furnished by any
26 person in exchange for a controlled substance or listed chemical, all proceeds traceable to such an
27 exchange and/or was used or intended to be used to facilitate one or more violations of 21 U.S.C. §§ 841,
28 *et seq.*" (Id. at 3.)

1 2. Notice by Publication

2 The Supplemental Rules require the Government to publish notice of the forfeiture action in a
3 newspaper of general circulation in the district. Suppl. R. C(4); United States v. Real Property, 135 F.
4 3d 1312, 1315 (9th Cir. 1998). In lieu of newspaper publication, the Government may post notice on
5 an official government forfeiture site for at least 30 consecutive days. Suppl. R. G(4). The Local Rules
6 for Admiralty and In Rem Actions also provide that the Court shall designate by order the appropriate
7 vehicle for publication. Local Rules A-530 & 83-171. On May 6, 2010, the Court authorized
8 publication of the forfeiture action via the internet forfeiture site www.forfeiture.gov for at least thirty
9 consecutive days. (Doc. 4.) On June 8, 2010, the Government filed a Declaration of Publication
10 wherein Tammy Teglia declares that the Notice of Civil Forfeiture was posted on www.forfeiture.gov
11 for thirty consecutive days beginning May 8, 2010. (Doc. 13.) Accordingly, the Government satisfies
12 the notice by publication requirement.

13 3. Personal Notice

14 When the Government knows the identity of the property owner, the Due Process Clause of the
15 Fifth Amendment requires “the Government to make a great effort to give him notice than otherwise
16 would be mandated by publication.” Real Property, 135 F.3d at 1315. In such cases, the Government
17 must attempt to provide actual notice by means reasonably calculated under all circumstances to apprise
18 the owner of the pendency of the forfeiture action. Dusenberry v. United States, 534 U.S. 161, 168
19 (2002). “Reasonable notice, however, requires only that the [G]overnment attempt to provide actual
20 notice; it does not require that the [G]overnment demonstrate that it was successful in providing actual
21 notice.” Mesa Valderrama v. United States, 417 F.3d 1189, 1197 (11th Cir. 2005).

22 The Supplemental Rules mirror this requirement, providing for notice to be sent by means
23 reasonably calculated to reach the potential claimant. Suppl. R. G(4)(b). In addition, the Local Rules
24 for Admiralty and In Rem Actions require that a party seeking default judgment in an action in rem
25 demonstrate to the Court’s satisfaction that due notice of the arrest of the property has been given both
26 by publication and by personal service on the person who had custody of the property before its
27 possession by a law enforcement agency or officer. Local Rule A-540. Notice must also be provided
28 by personal service or certified mail, return receipt requested, on every other person who has appeared

1 in the action and is known to have an interest in the property, provided that failure to give actual notice
2 to such other person may be excused upon a satisfactory showing of diligent efforts to provide notice
3 without success. Local Rule A-540(a).

4 Here, the Government attempted to serve Jose Luis Palominos, Laura Chavez-Mendoza, and
5 Sonia Mendoza with notice of the forfeiture action by first class and certified mail on May 6, 2010.
6 (Doc. 16, Rodriguez Decl. at ¶ 5; Doc. 21, Rodriguez Decl. at ¶ 5.) When the certified mailing to all
7 individuals were subsequently returned to the United States Attorney's Office as "Unclaimed," the
8 Government attempted personal service on the individuals. (Doc. 16, Rodriguez Decl. at ¶¶ 6-7; Doc.
9 21, Rodriguez Decl. at ¶¶ 6-7.) The U.S. Marshals Service executed personal service on Jose Luis
10 Palominos on May 18, 2010 and attempted personal service on Laura Chavez-Mendoza and Sonia
11 Mendoza on May 11, 2010 and May 13, 2010. (Docs. 10-12.) On May 19, 2010, the U.S. Marshals
12 Service left notice of the forfeiture action at the last known addresses for Laura Chavez-Mendoza and
13 Sonia Mendoza. (Docs. 11 & 12.) Based on this information, it appears that the Government has
14 diligently attempted to provide notice by means reasonably calculated to reach claimants. Accordingly,
15 the Government satisfies the personal notice requirement.

16 4. Time to File Claim or Answer

17 The Supplemental Rules require any person who asserts an interest in or right against the
18 defendant currency to file a claim with the Court within 35 days after service of the Government's
19 complaint or 30 days after the final publication of notice. Suppl. R. G(4)(b) & (5). Failure to comply
20 with the procedural requirements for opposing the forfeiture precludes a person from establishing
21 standing as a party to the forfeiture action. Real Property, 135 F.3d at 1317. In this case, the Clerk of
22 the Court properly entered defaults against Jose Luis Palominos, Laura Chavez-Mendoza, and Sonia
23 Mendoza for failing to timely respond to the Government's claims. (Docs. 17, 18 & 22.)

24 5. Default Judgment

25 The Supplemental Rules do not set forth a procedure to seek default judgment in rem. However,
26 to the extent that they are consistent with the Supplement Rules, the Federal Rules of Civil Procedure
27 apply. Accordingly, a court may grant default judgment after the Clerk of the Court has entered a party's
28 default. Fed. R. Civ. P. 55. In this case, and as mentioned above, the Government properly obtained

1 default entries against the interests of Jose Luis Palominos, Laura Chavez-Mendoza, and Sonia
2 Mendoza. (Docs. 17, 18 & 22.) The Government is therefore entitled to default judgment against the
3 interests of these individuals and a final forfeiture judgment to vest in the Government all right, title and
4 interest in the defendant currency.

5 **B. Discretionary Factors**

6 The discretionary factors set forth by the Ninth Circuit in Eitel also favor the granting of the
7 Government's ex parte motion for default judgment. First, the Government would be prejudiced by the
8 denial of its motion because the Government would otherwise have to expend additional time and effort
9 litigating an action in which no claimants have appeared. Second, the Government's claims appear to
10 have merit. Third, as discussed above, the Government has adhered to the procedural requirements of
11 a forfeiture action, including the filing of a sufficient complaint. Fourth, the sum of money in dispute
12 here is not substantial enough to warrant the denial of the Government's motion. Fifth, there are no
13 genuine disputes as to any material fact. Sixth, it does not appear that there is any risk of mistake or
14 excusable neglect on the part of any party. And seventh, although it is always preferable to decide a case
15 on its merits, such is not practicable in this case where no claimant has appeared to oppose the
16 Government's claims.

17 **V. CONCLUSION**

18 Accordingly, for the reasons set forth above, it is HEREBY RECOMMENDED that:

- 19 1. The District Court grant Plaintiff United States of America default judgment against the
20 interests of Jose Luis Palominos, Laura Chavez-Mendoza, and Sonia Mendoza;
- 21 2. The Clerk of the Court enter final forfeiture to vest in Plaintiff United States of America
22 all right, title and interest in the defendant currency; and
- 23 3. The District Court order Plaintiff United States of America, within ten (10) days of
24 service of any order adopting these findings and recommendations, to submit a proposed
25 default and final forfeiture judgment consistent with the findings and recommendations
26 and the order adopting them.

27 These findings and recommendations are submitted to the United States District Judge assigned
28 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of

1 Practice for the United States District Court, Eastern District of California. Within twenty-one days after
2 being served with these findings and recommendations, any party may file written objections with the
3 Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate
4 Judge’s Findings and Recommendations.” The district judge will review these findings and
5 recommendations pursuant to 28 U.S.C. § 636(b)(1)(c). The parties are advised that failure to file
6 objections within the specified time may waive the right to appeal the district judge’s order. Martinez
7 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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9 IT IS SO ORDERED.

10 Dated: December 14, 2010

11 /s/ Jennifer L. Thurston
12 UNITED STATES MAGISTRATE JUDGE
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