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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES,  
  
                                    Plaintiff,  
  
                                    v.  
  
APPROXIMATELY \$77,000.00 IN U.S.  
CURRENCY,  
  
                                    Defendant.

No. 1:11-cv-01251 GSA

**ORDER REGARDING CLAIMANT’S  
MOTION TO STRIKE COMPLAINT  
AND/OR DISMISS ACTION AND  
PLAINTIFF’S MOTION TO AMEND THE  
COMPLAINT**

**(Docs. 44 and 47)**

**I. INTRODUCTION**

On July 28, 2011, the United States (“the government”) filed a complaint for forfeiture *in rem* against approximately \$77,000.00 in U.S. Currency (“defendant currency”), alleging that the defendant currency was subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6). Doc. 1. On August 15, 2011, Felix Velasco (the “Claimant”) filed a claim to possession and ownership of the defendant currency. Doc. 7. On August 29, 2011 the defendant currency was arrested pursuant to a warrant for arrest of articles *in rem* issued by the Clerk of this Court. Docs. 6 and 10. On September 6, 2011, the United States filed a notice of publication stating that notice of this civil forfeiture action was posted on the official government forfeiture website, [www.forfeiture.gov](http://www.forfeiture.gov), for 30 consecutive days between August 3 and September 1, 2011. Doc. 12. On the same date, the United States also filed certificates of service showing that notice

1 of this action had been given to Felix Velasco and Jorge Luis Tostado Delgado on August 17,  
2 2011. Doc. 13. The Clerk of this Court entered default against Jorge Luis Tostado Delgado on  
3 April 19, 2013. Doc. 65.

4 Pending before the Court is the Claimant's motion to strike the complaint and/or dismiss  
5 this action and the United States' related motion for leave to amend the complaint. Docs. 44 and  
6 47. After these motions were filed on January 18, 2013 and January 25, 2013, respectively, a  
7 settlement conference was held in the case, and on April 23, 2013, the parties filed a notice of  
8 settlement in this matter. Doc. 66. On June 4, 2013, during a telephonic status conference, the  
9 parties advised the Court that in light of the settlement, they would submit a stipulation resolving  
10 both motions. Docs. 70, 71. During a subsequent telephonic status conference on August 7,  
11 2013, the parties advised the Court that the Claimant had rejected the settlement previously  
12 agreed upon and was no longer amenable to resolving the pending motions by stipulation. Doc.  
13 73. Instead, the Claimant requested the Court to rule on the motions, which implicate the  
14 question of whether the Court has *in rem* jurisdiction to adjudicate the *res*, i.e., the defendant  
15 currency, in this matter. Doc. 73.

## 18 **II. THE ISSUES RAISED IN THE MOTIONS**

19 The Claimant's motion to strike the complaint and/or dismiss this action is premised on  
20 the fact that while the complaint in this action is entitled "Verified Complaint for Forfeiture *In*  
21 *Rem*," the complaint actually is unverified. *See* Doc. 1. Rule G of the Supplemental Rules for  
22 Admiralty or Maritime Claims and Asset Forfeiture Actions (the "Supplemental Rules"), which  
23 "governs a forfeiture action in rem arising from a federal statute," requires the complaint in such  
24 actions to "be verified." Rule G, Supp. Rules. Here, the complaint filed by the United States to  
25 initiate this case does not contain any verification or affidavit made under penalty of perjury  
26 attesting to the veracity of the allegations in the complaint. Under a Ninth Circuit case, *United*  
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1 *States v. \$84,740.00 U.S. Currency*, 900 F.2d 1402 (9<sup>th</sup> Cir. 1990), rev'd. on other grounds by  
2 *Republic Nat'l Bank v. United States*, 506 U.S. 80, 89 (1992) , the effect of this omission is  
3 jurisdictional. In *\$84,740.00 U.S. Currency*, the Ninth Circuit held that “the government’s failure  
4 to properly verify the complaint deprived the district court of [*in rem*] jurisdiction over the  
5 money.” *\$84,740.00 U.S. Currency*, 900 F.2d at 1405-1406. The Claimant argues that in light of  
6 *\$84,740.00 U.S. Currency*, this Court lacks subject matter jurisdiction to adjudicate the *res* and  
7 therefore “[t]he present case must be dismissed” and the defendant currency returned to him.<sup>1</sup>  
8 Doc. 44-1 at 4, 5-6.

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10 The United States has explained that the “standard practice” in all civil forfeiture cases  
11 filed by the government “is to include a separate verification page at the back of the complaint.”  
12 Doc. 47, Govt. Mtn. to Amend Cmplt. at 3. In the instant case, the requisite verification was  
13 prepared along with the original complaint and was part of “the native computer file in which the  
14 complaint was created,” but when the complaint was converted to an Adobe PDF document in  
15 the process of filing it electronically with the Court, the verification page was excluded from the  
16 converted document actually filed. Doc. 51, Govt. Opp. to Clmt.’s Mtn. to Dismiss, at 3; *see also*  
17 Doc. 53, Govt.’s Reply to Clmt.’s Opp. to Govt.’s Mtn. to Amend, at 1-2. In the government’s  
18 words:  
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21 It remains a mystery why the verification was not filed with this  
22 particular complaint, as the original signed verification dated July  
28, 2011, is in the paper file of the United States and the native

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<sup>1</sup> The Ninth Circuit in *\$84,740.00 U.S. Currency* held that a lack of verification in the complaint deprived the district court of *in rem* jurisdiction over the money. *\$84,740.00 U.S. Currency*, 900 F.2d at 1405-1406. In the asset forfeiture context, that means that the district court lost subject matter jurisdiction over the money to the extent that, in an *in rem* action, “the subject matter is the defendant *res*.” *United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 771 (9th Cir. 2004) (emphasis in original); *see also Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 703 F.2d 381, 384 (9th Cir. 1983) (“In an *in rem* admiralty action ... a vessel or other property against which the lien is asserted becomes the *res* or subject matter of the action.... Jurisdiction over the *res* is obtained by arrest under process of the court.”). Specifically, the lack of verification deprives the district court of jurisdiction over the money, such that the district court lacks the power to arrest or transfer the money. *See \$84,740.00 U.S. Currency*, 900 F.2d at 1406.

1 computer file in which the document was created shows a  
2 verification with the electronic signature of the verifying federal  
3 agent. However, it appears that when the conversion of the native  
4 computer file to Adobe PDF was accomplished, the verification  
5 was inexplicably not included with the conversion.

6 Doc. 51, Govt. Opp. to Clmt.'s Mtn. to Dismiss, at 3. The United States argues that "this defect  
7 can easily be cured by filing an amended complaint with the appropriate verification," and points  
8 out that "in very similar circumstances, in *United States v. \$84,740.00 U.S. Currency*, the Ninth  
9 Circuit remanded the case to the district court to allow the government to file an amended  
10 complaint." *Id.* at 4 (citation omitted).

11 After the Claimant filed his motion to strike the complaint and/or dismiss this action, the  
12 government filed a motion seeking the Court's leave to amend its complaint to add the missing  
13 verification. Doc. 47; *see* Fed. R. Civ. P. Rules 15(a)(1)(B) and 15(a)(2). The Claimant opposed  
14 the government's motion on grounds that the proposed amendment would be futile. Doc. 52.  
15 Specifically, the Claimant argues that the amended complaint would not relate back to the filing  
16 date of the original complaint, and hence would be untimely in light of the 90-day filing deadline  
17 applicable to forfeiture actions arising from an administrative forfeiture. *See* 18 U.S.C. §  
18 983(a)(3)(A). The government counters in its reply that pursuant to the applicable standard set  
19 forth in Rule 15(c)(1)(B), the proposed amendment would relate back to the filing date of the  
20 original pleading.

21 Under Rule 15(c)(1)(B), an amendment relates back if it "assets a claim or defense that  
22 arose out of the conduct, transaction or occurrence set out—or attempted to be set out—in the  
23 original pleading." The government's position is that this standard is met here since the proposed  
24 amended complaint is substantively identical to the original pleading, with only the missing  
25 verification page added. Doc. 53 at 3 (the proposed amended complaint "asserts the exact same  
26 claim arising out of the exact same conduct, transaction, and occurrence as actually set forth in  
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1 the original pleading—because the amendment is the original pleading” plus a verification page  
2 prepared with the original complaint) (emphasis in original).

3 In the discussion below, the Court addresses both motions pending before it: the  
4 Claimant’s motion to strike the complaint and/or dismiss this action and the government’s motion  
5 for leave to amend the complaint.  
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### 7 III. DISCUSSION

#### 8 A. Applicable Legal Standards

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10 In *United States v. \$84,740.00 U.S. Currency*, 900 F.2d 1402, 1405 (9th Cir. 1990), the  
11 Ninth Circuit held that the filing of a properly verified complaint is a prerequisite to obtaining *in*  
12 *rem* jurisdiction over the *res* or subject matter of the action. Specifically, the Court in *\$84,000*  
13 *U.S. Currency* held that on account of the defective verification in the complaint in that action,  
14 and the resultant lack of subject matter jurisdiction, the claimant was excused from filing a claim  
15 or answer in the matter and, in turn, was entitled to move the district court to set aside a default  
16 judgment entered two years earlier.  
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18 In *\$84,740.00 U.S. Currency*, after noting that the improper verification in the complaint  
19 deprived the district court of jurisdiction, the Ninth Circuit remanded the case to the district court  
20 to allow the government “to request that the district court allow amendment of its complaint.” *Id.*  
21 at 1406; *see also Complaint of McLinn*, 744 F.2d 677, 685 (9<sup>th</sup> Cir. 1984) (on remand, plaintiffs  
22 may seek to cure jurisdictional defects); 29 D. Norse & S. Gellert, *Moore's Federal Practice* ¶  
23 704.01 (2008) (complaint without verification may be amended to cure the defect) (citing *Joyce v.*  
24 *United States*, 106 F. Supp. 719, 722 (D.N.J. 1952); *United States v. \$38,000 in United States*  
25 *Currency*, 816 F.2d 1538, 1547-1549 (11<sup>th</sup> Cir. 1987) (forfeiture complaint not meeting probable  
26 cause standard dismissed without prejudice and with leave to amend); *United States v. Currency*  
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1 \$267,961.07, *et al.*, 916 F.2d 1104, 1108 (6<sup>th</sup> Cir. 1990) (absent prejudice to the opposing party,  
2 leave to amend a pleading is appropriate in an asset forfeiture action).

3 Rule 15 of the Federal Rules of Civil Procedure sets forth the applicable procedural  
4 mechanisms for amending a complaint.<sup>2</sup> Rule 15 provides that before trial a complaint may be  
5 amended as a matter of course within 21 days after serving it or 21 days after service of a  
6 responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f).” Fed. R.  
7 Civ. P., Rule 15(a)(1)(A) and (B). Rule 15 further provides that “[i]n all other cases, a party may  
8 amend its pleading only with the opposing party’s written consent or the court’s leave. The Court  
9 should freely give leave when justice so requires.” Fed. R. Civ. P., Rule 15(a)(2). Regarding the  
10 relation back of an amendment, Rule 15 provides in pertinent part: “[a]n amendment to a pleading  
11 relates back to the date of the original pleading when ... the amendment asserts a claim or defense  
12 that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in  
13 the original pleading.” Fed. R. Civ. P., Rule 15(c)(1)(B).

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16 As a general matter, courts apply Rule 15(a) with “extreme liberality.” *Eminence Capital,*  
17 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9<sup>th</sup> Cir. 2003); *also see DCD Programs Ltd. v.*  
18 *Leighton*, 833 F.2d 183, 186 (9<sup>th</sup> Cir. 1987) (“[r]ule 15’s policy of favoring amendments to  
19 pleadings should be applied with extreme liberality”) (parentheses in original, internal quotation  
20 marks omitted). In determining whether to grant leave to amend, courts consider a number of  
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23 <sup>2</sup> Actions *in rem* are governed by the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture  
24 Actions (the “Supplemental Rules”). Supplemental Rule A(2) states: “The Federal Rules of Civil Procedure also  
25 apply to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.” In  
26 deciding a motion to amend in forfeiture actions, courts must apply Rule 15 of the Federal Rules of Civil Procedure.  
27 *See United States v. Currency \$267,961.07*, 916 F.2d 1104, 1108 (6<sup>th</sup> Cir. 1990). The Advisory Committee Notes  
28 (Subdivision (1)) on the adoption of the 2006 amendments to the Supplemental Rules also state as follows:

The Civil Rules continue to provide the procedural framework within which Rule G and the other Supplemental Rules operate. Both Rule G(1) and Rule A state this basic proposition. Rule G, for example, does not address pleadings amendments. Civil Rule 15 applies, in light of the circumstances of a forfeiture action.

1 factors identified by the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962). These factors,  
2 known as the *Foman* factors, include (1) bad faith on the part of the movant; (2) undue delay or  
3 dilatory motive on the part of the movant; (3) repeated failure on the part of the movant to cure  
4 deficiencies by amendments previously allowed; (4) undue prejudice to the opposing party by  
5 virtue of allowance of the amendment; and (5) futility of the amendment. *Eminence Capital*, 316  
6 F.3d at 1052; *also see Griggs v. Pace. Amer. Group, Inc.*, 170 F.3d 877, 880 (9<sup>th</sup> Cir. 1999)  
7 (consideration of a motion to amend based on *Foman* factors “should generally be performed  
8 with all inferences in favor of granting the motion”). Not all of these factors merit equal weight.  
9 Rather, the Ninth Circuit has held that “it is the consideration of prejudice to the opposing party  
10 that carries the greatest weight,” such that “[p]rejudice is the touchstone of the inquiry under rule  
11 15(a).” *Eminence Capital*, 316 F.3d at 1052 (citations and internal quotation marks omitted).  
12 Indeed, “[a]bsent prejudice, or a strong showing of any of the remaining *Foman* factors, there  
13 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Id.* (emphasis in  
14 original); *see also DCD Programs*, 833 F.2d 186-87 (noting that the party opposing amendment  
15 “bears the burden of showing prejudice” and that “delay, by itself, is insufficient to justify denial  
16 of leave to amend”).  
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19 **B. Analysis**

20 Under the holding of *United States v. \$84,740.00 U.S. Currency*, the lack of any  
21 verification at all in the government’s complaint, like the defective verification at issue in  
22 *\$84,000 U.S. Currency*, deprives the Court of jurisdiction over the defendant currency in this  
23 case. However, as the Ninth Circuit clarified in *\$84,000 U.S. Currency*, the government may cure  
24 this jurisdictional defect by seeking leave of court to amend its complaint to add the requisite  
25 verification.<sup>3</sup>  
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28 <sup>3</sup> The Court draws the parties’ attention to Rule G(5)(b) of the Supplemental Rules, which states as follows:

1           The government here seeks to do precisely that. One week after Claimant filed his motion  
2 to dismiss and/or to strike the complaint, the government filed a motion seeking the Court's leave  
3 to amend its complaint. The proposed amendment consists of adding a verification page that was  
4 prepared and executed with the original complaint but which was evidently excluded from the  
5 Adobe PDF version of the complaint that was uploaded into the Court's electronic filing system.  
6 The Court finds that applicable Ninth Circuit case law, the strong policy favoring amendments  
7 encompassed by Rule 15, as well as application of the *Foman* factors to the underlying facts,  
8 dictate allowing the proposed amendment.<sup>4</sup> *See United States v. \$84,740.00 U.S. Currency*, 900  
9 F2d at 1406; Rutter Group Practice Guide: Fed. Civ. Pro. Before Trial, Calif. and 9th Cir., Ch. 8-  
10 D (when jurisdiction over the *res* is lost in a forfeiture action on account of a defective  
11 verification, the appropriate remedy is a dismissal without prejudice, allowing the defective  
12 verification to be corrected by amendment). The Court specifically addresses each of the *Foman*  
13 factors below: bad faith; undue delay and dilatory motive; failure to correct deficiencies by  
14 previous amendments granted; prejudice to the opposing party; and futility of the proposed  
15 amendment.  
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18                           **(1)     *Bad Faith, Undue Delay, Dilatory Motive, and Previous Amendments***

19           The applicable facts do not reveal any bad faith, undue delay or dilatory motive on the  
20 part of the United States; nor does the Claimant allege as much. The United States acknowledges  
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22                           **Answer.** A claimant must serve and file an answer to the complaint or a motion  
23                           under Rule 12 within 21 days after filing the claim. A claimant waives an  
24                           objection to in rem jurisdiction or to venue if the objection is not made by motion  
25                           or stated in the answer.

26           However, the Court does not address the application of this rule to this case because the parties  
27           have not raised it, and, in particular, the government does not argue that the Claimant has waived  
28           any objection to the Court's *in rem* jurisdiction over the defendant currency.

<sup>4</sup> After the government's motion to amend had been fully briefed by both parties, the Claimant filed an additional brief citing cases discussing the standard for amending a complaint once the deadline to amend provided by the operative scheduling order has passed. Doc. 55. The cases cited by the Claimant are inapposite as the Court's scheduling order for this case does not set a deadline or timetable for amending the pleadings. Doc. 42.



1 that the signed verification (provided by Drug Enforcement Agency Special Agent Rosemary  
2 Ramirez at the time of preparation of the original complaint) was excluded from the Adobe PDF  
3 version of the forfeiture complaint that was uploaded into the Court's electronic filing system.  
4 Nonetheless, it is significant that the United States had obtained the requisite verification from  
5 Special Agent Ramirez (signed on the date of filing of the original complaint) and that this  
6 verification is present in the government's paper file. The United States avers that "failing to file  
7 the verification with the complaint was not an attempt nor an intention by the United States to  
8 allege facts that were untrue;" rather, this failure "was mere inadvertence and error," and was  
9 noticed only when Claimant filed the motion to strike and/or dismiss." Doc. 47 at 6-7. These  
10 circumstances do not support any inference of bad faith or dilatory motive. The Court does note  
11 that the case was initially filed on July 28, 2011 and that the motion to amend was brought on  
12 January 25, 2013, a year and a half later, after the Claimant's dispositive motion challenging the  
13 existence of probable cause for instituting this action had been ruled on. However, the United  
14 States filed its motion to amend within one week after the issue was raised by the Claimant in his  
15 motion to dismiss. Furthermore, the United States seeks to add only the missing verification and  
16 has not sought additional amendments to cure any other deficiencies in the complaint. Given the  
17 circumstances under which the proposed amendment is sought, the *Foman* factors of bad faith,  
18 undue delay, and previous amendments to the complaint do not bar the granting of the United  
19 States' request for leave to amend its complaint.

22  
23 **(2) Prejudice**

24 Consideration of the question of prejudice to the Claimant on account of the proposed  
25 amendment also militates in favor of granting leave to amend. Here the Claimant would not be  
26 substantially prejudiced were the Court to grant leave to amend. The addition of a verification  
27 page does not affect the issues and underlying facts that will determine the outcome of this case.  
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1 While any amended complaint would supersede the original complaint, the substantive issues in  
2 the case would remain unchanged. Allowing the requested technical amendment would also not  
3 unduly protract or complicate the litigation. While certain corrective, procedural steps would be  
4 required if leave to amend were granted, adding the verification would not automatically call for  
5 re-litigating issues that have already been litigated in the case.<sup>5</sup> See 2011 WL 2224044 (D. N.J.  
6 June 8, 2011) (in forfeiture action, allowing the claimant to amend his claim will not cause settled  
7 issues in the case to be re-decided); *Public Interest Research Group v. Magnesium Elektron*, 123  
8 F.3d 111, 116 (3d Cir. 1997) (“The law of the case doctrine directs courts to refrain from re-  
9 deciding issues that were resolved earlier in the litigation.”). Both parties have proceeded in this  
10 litigation in a meaningful fashion as if the verification was not missing at all, and the Court does  
11 not anticipate that their efforts, such as in the course of discovery and in litigating dispositive  
12 motions, will be negated by allowing the proposed amendment. Significantly, the proposed  
13 amendment does not change or add to the claims for relief set out in the original complaint and  
14 hence does not obligate the Claimant to investigate and raise additional defenses that were not  
15 already included in the Claimant’s answer to the original complaint. See, e.g., *Crawford v.*  
16 *Gould*, 56 F.3d 1162, 1169 (9th Cir. 1995) (“[a]mendment would not prejudice [the Defendant],  
17 because it would not require [the Defendant] to undertake an entirely new course of defense ... or  
18 to conduct substantial additional discovery”); cf. *Morongo Band of Mission Indians v. Rose*, 893  
19 F.2d 1074, 1079 (9th Cir. 1990) (affirming the district court’s denial of leave to amend because  
20 “[t]he new claims set forth in the amended complaint would have greatly altered the nature of the  
21 litigation and would have required defendants to have undertaken, at a late hour, an entirely new  
22 course of defense). Since the proposed amendment does not modify the actual claims in the  
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27 <sup>5</sup> While the lack of verification in the complaint deprived the Court of jurisdiction to adjudicate the *res* or defendant  
28 currency, such that the Court lacked the power to arrest or transfer the defendant currency, the Court still maintained  
jurisdiction over the case pursuant to 28 U.S.C. §§ 1345 and 1355(a).

1 complaint, notice to the Claimant regarding the subject of this action is not altered in any  
2 substantive way by allowing the amendment.

3           It is fair to say that both parties did not perceive the technical defect in the complaint, and  
4 its jurisdictional consequences, until after the Claimant had filed his claim, his answer, and his  
5 summary judgment motion and started to engage in discovery, including taking depositions. In  
6 the parties' Joint Scheduling Report filed on April 25, 2012, both parties agreed that jurisdiction  
7 was proper in this case. Doc. 40. Similarly, the Claimant did not challenge the complaint on  
8 jurisdictional grounds in his motion for summary judgment. Doc. 18. Indeed, even after the  
9 Claimant filed the instant motion to strike and/or dismiss, he entered into a settlement agreement  
10 with the United States and agreed to stipulate to allow the United States to add the missing  
11 verification. Docs. 66 and 71. It was only several months after the settlement agreement was  
12 reached and final dispositional documents in the case submitted that the Claimant opted not to go  
13 through with the settlement agreement and asked the Court to rule on the instant motions  
14 implicating a jurisdictional challenge. Doc. 73. Taking all the factors discussed above into  
15 consideration, including the procedural trajectory of this case, it appears that the Claimant would  
16 not be appreciably prejudiced were the Court to allow the technical amendment requested by the  
17 government.  
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21           **(3) Futility**

22           As to the final *Foman* factor of futility of the amendment, here the proposed amendment  
23 would be curative not futile. Adding the verification page from the United States' paper file to  
24 the originally filed complaint would cure the jurisdictional defect that currently exists. The  
25 Claimant argues, however, that the amendment would be futile as the amended complaint would  
26 not relate back to the filing date of the original complaint, making it untimely with respect to the  
27 90-day initial complaint filing deadline applicable to forfeiture actions such as the instant one.  
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1 See 18 U.S.C. § 983(a)(3)(A); Doc. 52 at 2. The government points out that 18 U.S.C. §  
2 983(a)(3)(A) does not set forth the applicable statute of limitations and courts routinely have  
3 allowed amendments to asset forfeiture complaints well after the 90-day deadline for filing an  
4 initial complaint has expired. Doc. 53 at 2-4. Since the Court finds that the proposed  
5 amendment would relate back to the filing date of the original complaint, the Court deems it  
6 unnecessary to address the specifics of the Claimant’s argument regarding the purported  
7 untimeliness of any amended complaint.  
8

9 Rule 15(c)(1)(B) states that an amendment to a pleading relates back to the date of the  
10 original pleading for statute of limitations purposes when “the amendment asserts a claim or  
11 defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set  
12 out—in the original pleading.” See also *Percy v. San Francisco Gen. Hosp.*, 841 F.2d 975, 979  
13 (9<sup>th</sup> Cir. 1988) (“The relation back doctrine of Rule 15(c) is a bar to the statute of limitations.”)  
14 citing Fed. R. Civ. P. 15 advisory committee notes to 1966 amendment (“Relation back is  
15 intimately connected with the policy of the statute of limitations.”). The “relation back doctrine  
16 of Rule 15(c) is to be liberally applied.” *Clipper Express v. Rocky Mountain Motor Tariff*  
17 *Bureau, Inc.*, 690 F.2d 1240, 1260 n.29 (9th Cir. 1982). Provided the amended pleading is based  
18 on the same series of transactions and occurrences alleged in the original pleading, the revised  
19 pleading will relate back to the original pleading, even when the revised pleading contains legal  
20 theories not included in the original. *Id.* However, the rationale of the relation-back doctrine is to  
21 ameliorate the effect of the statute of limitations, rather than to promote the joinder of claims and  
22 parties. Therefore, “the standard for determining whether amendments qualify under Rule 15(c)  
23 is not simply an identity of transaction test,” but “courts also inquire into whether the opposing  
24 party has been put on notice regarding the claim or defense raised by the amended pleading.” 6A  
25 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Fed. Prac. & Proc. Civ. § 1497 (3d ed.  
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1 2010) (Database updated December 2012). When the original pleading puts a defendant (or, as in  
2 this case, a claimant) on notice as to the core facts underlying the dispute, the rationale behind the  
3 statute of limitations is satisfied. *Clipper Express*, 690 F.2d at 1260 n. 29. Thus new theories or  
4 claims involving the same occurrence or core of operative facts encompassed by the original  
5 claim should not be time barred in the absence of substantial prejudice to the defendant. *Id.*; see  
6 also *San Francisco Gen. Hosp.*, 841 F.2d at 979 (“amendment of a complaint is proper if the  
7 original pleading put the defendant on notice of ‘the particular transaction or set of facts’ that the  
8 plaintiff believes to have caused the complained of injury”), quoting *Santana v. Holiday Inns,*  
9 *Inc.*, 686 F.2d 736, 738-39 (9<sup>th</sup> Cir. 1982) (“it is apparent from [the plaintiff’s] original complaint  
10 that [the defendant] was not taken by surprise by the addition of the claim for interference with  
11 employment relations”).

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14 In the instant case, both the original complaint and the proposed amended complaint arise  
15 out of the same factual situation. Indeed the proposed amended complaint is substantively  
16 *identical* to the original complaint and “asserts the exact same claim arising out of the exact same  
17 conduct, transaction, and occurrence as actually set forth in the original complaint.” Doc. 53,  
18 Gov’t. Mtn. to Amend, at 3. The only difference between the two complaints is that the amended  
19 complaint includes the verification page that was prepared for filing with the original complaint  
20 but was unintentionally omitted from, or failed to upload with, the electronically filed version of  
21 the original complaint. Given that the Claimant has proceeded in this case with full notice of the  
22 nature of the government’s claims and of the underlying facts, and that the amended complaint  
23 would change only the procedural posture of this case, the requirements for applying Rule 15(c)’s  
24 relation back doctrine are satisfied here. See *F.D.I.C. v. Jackson*, 133 F.3d 694, 702 (9th Cir.  
25 1998) (affirming district court’s denial of defendants’ motion to dismiss challenging the  
26 applicability of the “relation back” doctrine, where the original complaint contained all the  
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1 allegations subsequently restated in the operative amended complaint, as defendants could not  
2 realistically claim lack of notice of the claims against them).

3 Finally, it is clear that amendments that merely correct technical deficiencies “meet the  
4 Rule 15(c)(1)(B) test and will relate back.” Wright et al., *supra* § 1497. More specifically,  
5 “[a]mendments curing a defective statement of subject matter jurisdiction, venue, or personal  
6 jurisdiction will relate back since they do not violate the standard prescribed by [Rule 15].” *Id.*;  
7 also see *Carney v. Resolution Trust Corp.*, 19 F.3d 950 (5<sup>th</sup> Cir. 1994) (amended complaint  
8 relates back to date of original filing, even when the amendment states a new basis for subject-  
9 matter jurisdiction); *Glover v. City of New York*, 446 F. Supp. 110 (E.D.N.Y. 1978) (amended  
10 complaint alleging new jurisdictional basis but not new facts related back to filing date of original  
11 complaint); *Boyce v. Anderson*, 405 F.2d 605 (9<sup>th</sup> Cir. 1968) (allowing amendment to cure  
12 jurisdictional defect in complaint after statute of limitations had expired because the claims were  
13 not modified); *Phillips v. U.S. Army Corps of Engineers*, 629 F. Supp. 967 (S.D. Miss. 1986)  
14 (amendment to modify jurisdictional foundation related back because the opposing party had  
15 notice of the suit through service of the original complaint).  
16  
17

18 Relation back is appropriate here and the amended complaint would therefore be deemed  
19 filed as of the filing date of the original complaint. Consequently, the proposed amendment is not  
20 futile as alleged by the Claimant. The Court does not address the issue of whether the amended  
21 complaint would be timely even without relating back to the filing date of the original complaint.  
22 Here, the relation back permitted by the Court obviates any challenges to timeliness of the  
23 amended complaint whether based on the applicable statute of limitations as set forth in 19 U.S.C.  
24 § 1621,<sup>6</sup> or, as the Claimant suggests here, on the 90-day deadline in 18 U.S.C. § 983(a)(3)(A) for  
25  
26

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27 <sup>6</sup> Pursuant to 19 U.S.C. § 1621, the statute of limitations for civil forfeiture actions is 5-years from the discovery of  
28 the offense, or 2 years from the discovery of an asset involved in the offense, whichever is later. This case arose  
from the discovery of the defendant currency during a traffic stop conducted on January 25, 2011. The original

1 filing an initial complaint in a forfeiture action arising from an administrative forfeiture of  
2 property.

### 3 III. CONCLUSION AND ORDER

4 Amendment of the complaint is appropriate here in light of \$84,740.00 U.S. Currency, the  
5 liberal policies underlying Rule 15(a), and the Court's application of the *Foman* factors.

6 Accordingly, the United States' original complaint is dismissed without prejudice and the arrest  
7 warrant that was issued pursuant to the original complaint is vacated. The Clerk of this Court is  
8 directed to file the amended complaint provided by the government in Doc. 47-3.  
9

10 Within 10 court days of the date of issuance of this order, the government shall obtain a  
11 new warrant for arrest of articles *in rem* based on the verified amended complaint, in order for the  
12 defendant currency to be re-arrested under process of the Court. *See, e.g., United States v.*  
13 *\$84,740.00 U.S. Currency*, 900 F.2d 1402, 1406 (9th Cir. 1990); *United States v. Real Prop.*  
14 *Located at 475 Martin Lane, Beverly Hills, CA*, 545 F.3d 1134, 1144 (9th Cir. 2008) (a civil  
15 forfeiture proceeding is an action *in rem* and *in rem* jurisdiction is obtained by arrest under  
16 process of the court); *Alyeska Pipeline Service Co. v. The Vessel Bay Ridge*, 703 F.2d 381, 384  
17 (9th Cir.1983) ) ("Jurisdiction over the *res* is obtained by arrest under the process of the court. In  
18 the absence of an arrest, no decree *in rem* can be rendered against the *res*."); *United States v.*  
19 *Approximately 2,538.85 Shares of Stock Certificates of the Ponce Leones Baseball Club, Inc.*, 988  
20 F.2d 1281, 1288–89 (1st Cir.1993) ("without an effective seizure of the property, the court may  
21 lack jurisdiction to forfeit the property to the government"). Finally, the government shall take  
22 the necessary steps to give requisite notice thereof in accordance with Rule G of the Supplemental  
23 Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.  
24

25  
26 The Court sets a status conference for January 14, 2014 in Courtroom 10 at 10:30 a.m. to  
27

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28 complaint was filed on July 28, 2011. The government filed its motion for leave to file an amended complaint on  
January 25, 2013.

1 address the procedural posture of this case in light of this order. The parties are directed to meet  
2 and confer in advance of the status conference to discuss how they plan to proceed (including  
3 whether the Claimant must file a new claim and/or answer in light of the amended complaint) as  
4 well as the status of discovery. The parties are encouraged to resolve issues by stipulation where  
5 possible, so that the case may proceed as efficiently as possible. The parties are further directed  
6 to identify a feasible trial date as well as applicable pre-trial deadlines so that the Court may set a  
7 schedule for this case. The parties shall file a joint status report one week prior to the status  
8 conference, outlining the procedural steps to be taken and providing the necessary dates and  
9 deadlines for scheduling this case.  
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16 IT IS SO ORDERED.

17  
18 Dated: December 20, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE