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

UNITED STATES OF AMERICA,  
Plaintiff,

**CASE NO. 1:13-cv-00145-LJO-SKO**

v.

**FINDINGS & RECOMMENDATIONS  
THAT PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT AND FINAL  
JUDGMENT OF FORFEITURE BE  
GRANTED**

APPROXIMATELY \$9,815.00 IN U.S.  
CURRENCY,  
Defendant.

**(Doc. 10)**

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**I. INTRODUCTION**

On May 22, 2013, Plaintiff United States of America (the "Government" or "Plaintiff") filed a motion for default judgment and for final judgment of forfeiture in this *in rem* forfeiture action. (Doc. 10.) No opposition to the Government's application has been filed, and the time to file an opposition has expired. The Court has reviewed the motion and supporting documentation and finds this matter suitable for decision without oral argument pursuant to Local Rule 230(g); thus, the June 19, 2013, hearing is VACATED. For the reasons set forth below, the Court RECOMMENDS that Plaintiff's application for default judgment and for final judgment of forfeiture be GRANTED.

1 **II. FACTUAL BACKGROUND**

2 Plaintiff's complaint, filed on January 30, 2013, alleges that on August 20, 2012, a  
3 Sherriff's Deputy (the "Deputy") activated the overhead lights on the patrol car to initiate a  
4 traffic stop of a silver Jaguar sedan traveling east on Ashlan Avenue in Fresno, California, after  
5 observing the vehicle was occupied by David Medina ("Medina"), who had active warrants for  
6 his arrest. (Doc. 1, ¶ 6.) Medina turned onto Sunnyside Avenue and the Deputy noticed Medina  
7 reach towards the passenger side floor board. (Doc. 1, ¶ 7.) Medina then turned west and pulled  
8 over the car. (Doc. 1, ¶ 7.) The Deputy approached the driver's side and ordered Medina out of  
9 the car, explaining he needed to check on Medina's outstanding warrants. (Doc. 1, ¶ 8.) At that  
10 time, the Deputy noticed a strong scent of marijuana coming from inside the vehicle, and  
11 observed two different license plates on the vehicle. (Doc. 1, ¶ 8.) Through a records check, the  
12 Deputy confirmed that Medina had three active warrants for his arrest and arrested him without  
13 incident. (Doc. 1, ¶ 8.)

14 Once Medina was placed under arrest, the Deputy asked him why he had been moving  
15 so much at the time of the traffic stop; Medina replied angrily that he did not know what the  
16 Deputy was talking about. (Doc. 1, ¶ 9.) The Deputy then asked Medina if he had any drugs or  
17 weapons in his possession. (Doc. 1, ¶ 9.) Medina responded, "You're going to find out  
18 anyway." (Doc. 1, ¶ 9.) The Deputy began to search Medina and found a zip lock bag  
19 containing a substance later identified as marijuana. (Doc. 1, ¶ 10.) In the same pocket, the  
20 Deputy found approximately \$9,815.00 ("defendant currency") which was folded and wrapped  
21 with a rubber band. (Doc. 1, ¶ 10.) The Deputy asked Medina how much money was in the  
22 bundle; Medina estimated it contained \$10,000 to \$11,000. (Doc. 1, ¶ 10.) The Deputy then  
23 asked Medina the source of the money and about Medina's employment; Medina told the  
24 Deputy he had the money "because he was Indian" and that he was unemployed. (Doc. 1, ¶  
25 10.)<sup>1</sup>

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<sup>1</sup> The Employment Development Department has no history of employment for David Medina. (Doc. 1, ¶ 15.)



1 known address, 1428 N. 8<sup>th</sup> Street in Fresno, California, 93703-4209. (Doc. 7-1, Magee Decl., ¶  
2 6.) On the same day, copies of the case documents were sent via first class mail and certified  
3 mail to Daniel K. Martin, Esq., who had filed a claim on behalf of David Medina in the  
4 administrative forfeiture action. (Doc. 7-1, Magee Decl., ¶ 6.)

5 On February 27, 2013, Notice of Civil Forfeiture was posted via the official internet  
6 government forfeiture site ([www.forfeiture.gov](http://www.forfeiture.gov)) for 30 consecutive days. (Doc. 5.)

7 On March 19, 2013, the United States Attorney's Office received the returned certified  
8 mail that was sent to Medina's last known address; it was marked unsigned and "Unclaimed."  
9 (Doc. 7-1, Magee Decl., ¶ 6.)

10 Medina failed to file a claim, answer, plead, or otherwise defend the action within the  
11 time allowed by law. Accordingly, on April 19, 2013, the Government filed a motion for  
12 default judgment against Medina, seeking the entry of a Final Judgment of Forfeiture vesting all  
13 right, title, and interest in the defendant currency to the United States. (Doc. 7.)

#### 14 IV. DISCUSSION

##### 15 A. Legal Standard

16 Federal Rule of Civil Procedure 55 provides that a court has discretion to enter default  
17 judgment against a party after the clerk has entered the party's default. In considering whether  
18 to enter default judgment, courts consider the following factors: (1) the possibility of prejudice  
19 to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the  
20 complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute  
21 concerning material facts; (6) whether the default was due to excusable neglect; and (7) the  
22 strong policy of favoring decision on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
23 Cir. 1986).

24 In the context of an *in rem* forfeiture action, a court considering default judgment should  
25 also consider the procedural requirements set forth by the Civil Asset Forfeiture Reform Act of  
26 2000, 18 U.S.C. § 983; the Federal Rules of Civil Procedure, Supplemental Rules of Certain  
27 Admiralty and Maritime Claims ("Supplemental Rules"); and the court's Local Rules for  
28 Admiralty and *in rem* actions. *See United States v. \$191,910.00*, 16 F.3d 1051, 1069 (9th Cir.

1 1994) (explaining that, because civil forfeiture is a "harsh and oppressive procedure which is not  
2 favored by the courts," the government carries the burden of demonstrating its strict adherence  
3 to procedural rules), *superseded by statute on other grounds*.

4 **B. Procedural Requirements**

5 **1. Sufficiency of the Complaint**

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

19 The Government contends that the verified complaint establishes circumstantial  
20 evidence that the defendant currency was furnished or intended to be furnished in exchange for  
21 a controlled substance or listed chemical and is subject to forfeiture pursuant to 21 U.S.C.  
22 Section 881(a)(6). Pursuant to Section 881, the following is subject to forfeiture to the United  
23 States:

- 24  
25 (6) All moneys, negotiable instruments, securities, or other things of value  
26 furnished or intended to be furnished by any person in exchange for a  
27 controlled substance or listed chemical in violation of this subchapter, all  
28 proceeds traceable to such an exchange, and all moneys, negotiable  
instruments, and securities used or intended to be used to facilitate any  
violation of this subchapter.

1 21 U.S.C. § 881(a)(6).

2 Here, the allegations of the verified complaint indicate that the Deputy recognized  
3 Medina, who had multiple warrants for his arrest. (Doc. 1, ¶ 6.) The Deputy activated his lights  
4 and initiated a stop of Medina. (Doc. 1, ¶ 6.) When standing next to the driver's door, the  
5 Deputy noticed a strong marijuana odor coming from inside the vehicle and two different  
6 license plates affixed to the vehicle. (Doc. 1, ¶ 8.) The Deputy conducted a records check  
7 which indicated there were in fact three arrest warrants issued for Medina. (Doc. 1, ¶ 8.) The  
8 Deputy arrested Medina, and searched Medina's pockets, and located a ziplock bag of marijuana  
9 and folder, rubber band cash, which Medina indicated amounted to \$10,000 to \$11,000. (Doc.  
10 1, ¶¶ 8-10.) The Deputy had the vehicle towed to a secure location and during the subsequent  
11 search of the vehicle, the Deputy discovered a half burned marijuana cigarette between the  
12 driver's seat and center console, an ice pick near the driver's floorboard, and under the hood of  
13 the vehicle, the deputy found a small black coin purse that was found to contain nineteen grams  
14 of methamphetamine. (Doc. 1, ¶¶ 12, 14.) Based on these allegations in the verified complaint,  
15 there is sufficient circumstantial evidence to reasonably believe that the defendant currency  
16 constitutes "moneys" furnished or intended to be furnished in exchange for a controlled  
17 substance or was used or intended to be used to facilitate one or more violations of 21 U.S.C. §  
18 841, *et seq.*

19 **2. Notice by Publication**

20 Subject to certain exceptions not present here, the Supplemental Rules require the  
21 Government to publish notice of the forfeiture in a manner that is reasonably calculated to notify  
22 potential claimants of the action. Fed. R. Civ. P. Supp. R. G(4)(a)(iv). The content of the notice  
23 must describe the property with reasonable particularity, state the times to file a claim and to  
24 answer the complaint, and identify the name of the government attorney to be served with the  
25 claim and answer. Fed. R. Civ. P. Supp. R. G(4)(a)(ii)(A)-(C). This notice requirement may be  
26 satisfied by posting a notice on an official internet government forfeiture site for at least 30  
27 consecutive days. Fed. R. Civ. P. Supp. R. G(4)(a)(iv)(C).

1 Here, publication occurred on the official internet government forfeiture site  
2 ([www.forfeiture.gov](http://www.forfeiture.gov)) for 30 consecutive days. (Doc. 5.) The Government filed a Declaration  
3 of Publication stating that notice had been created and published on the forfeiture website for 30  
4 days, beginning on February 27, 2013. (Doc. 5.) A copy of the notice was attached to the  
5 Declaration of Publication, and it described the property with reasonable particularity by the  
6 amount of the defendant currency. (Doc. 5, p. 3.) The notice clearly stated the time  
7 requirements to file a claim and an answer. (Doc. 5, p. 3.) Further, the notice provided the  
8 name of the attorney to be served with any claim and answer. (Doc. 5, p. 3.) Thus, the  
9 Supplemental Rule's notice-content requirements have been satisfied. Fed. R. Civ. P. Supp. R.  
10 G(4)(ii)(A)-(C). Additionally, the notice was published for 30 consecutive days from February  
11 27, 2013, through March 28, 2013, on the forfeiture website, which satisfies the Supplemental  
12 Rule's notice requirements with regard to frequency and means. (Doc. 5, p. 4.)

### 13 **3. Personal Notice**

14 When the Government knows the identity of the property owner, the Due Process Clause  
15 of the Fifth Amendment requires "the Government to make a greater effort to give him notice  
16 than otherwise would be mandated." *United States v. Real Property*, 135 F.3d 1312, 1315 (9th  
17 Cir. 1998). In such cases, the Government must attempt to provide actual notice by means  
18 reasonably calculated under all circumstances to apprise the owner of the pendency of the  
19 forfeiture action. *Dusenbery v. United States*, 534 U.S. 161, 168 (2002); *see also* Fed. R. Civ. P.  
20 Supp. R. G(4)(b). "Reasonable notice, however, requires only that the [G]overnment attempt to  
21 provide actual notice; it does not require that the [G]overnment demonstrate that it was  
22 successful in providing actual notice." *Mesa Valderrama v. United States* 417 F.3d 1189, 1197  
23 (11th Cir. 2005); *Real Property*, 135 F.3d at 1316.

24 The Supplemental Rules indicate that the Government must send notice of the forfeiture  
25 action "to any person who reasonably appears to be a potential claimant on the facts known to  
26 the government." Fed. R. Civ. P. Supp. R. G(4)(b)(i). The notice must include the following  
27 information: the date when the notice is sent; a deadline for filing a claim that is at least 35 days  
28 after the notice is sent; that an answer or a motion under Rule 12 must be filed no later than 21

1 days after filing the claim; and the name of the government attorney to be served with the claim  
2 and answer. *Id.*

3 Here, the Government provided notice of the forfeiture action to Medina through first  
4 class mail and certified mail.<sup>2</sup> As required by the Supplemental Rules, the notice informed  
5 Medina of the date on which the notice was sent, the deadline for filing a claim; that if he  
6 intended to contest forfeitability, a claim must be filed with the Court within 35 days; and an  
7 answer or a motion under Rule 12 was to be filed no later than 21 days after filing a claim; and  
8 that any document filed with the Court "must be served on this office," directing service to the  
9 office of Benjamin B. Wagner, United States Attorney for the Eastern District of California  
10 located at 2500 Tulare Street, Fresno, California.<sup>3</sup> (Docs. 7-1, Magee Decl., Exhs. A-B.)

#### 11 **4. The Time to File a Claim or an Answer**

12 Pursuant to the Supplemental Rules, any person who asserts an interest in or a right in a  
13 forfeiture action must file a claim with the Court within the time specified by the direct notice.  
14 Fed. R. Civ. P. Supp. G(4)(b)(ii)(B), (5)(a)(ii)(A). Failure to comply with the procedural  
15 requirements for opposing the forfeiture precludes a person from establishing standing in the  
16 forfeiture proceeding. *Real Property*, 135 F.3d at 1317. In this case, no claim or answer was  
17 filed by Medina, and his default was properly entered on April 23, 2013. (Doc. 8.)

#### 18 **5. Conclusion**

19 The Government has met the procedural requirements applicable to civil *in rem*  
20 forfeiture actions as set forth in 18 U.S.C. § 983, the Supplemental Rules, and the Local Rules  
21 for the U.S. District Court for the Eastern District of California. This favors the entry of default  
22 judgment and the issuance of a final judgment in forfeiture to vest in the United States all right,  
23 title, and interest in the defendant currency.

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25 <sup>2</sup> Notice was also sent to Medina's attorney an administrative forfeiture action, Daniel K. Martin, at 2979 E.  
26 Washington Avenue, Fresno, California, 93701.

27 <sup>3</sup> The notice provides the name of the United States Attorney, Benjamin B. Wagner, indicating that service of any  
28 claim or answer must be served on the office of the United States Attorney for the Eastern District of California, at  
2500 Tulare Street, Suite 4401, Fresno, California. This satisfies the notice to known potential claimants pursuant  
to Rule G(4)(b)(ii)(D).



1 **C. Discretionary Factors**

2 Beyond satisfaction of the procedural requirements, the discretionary *Eitel* factors  
3 outlined by the Ninth Circuit also favor granting the Government's motion for default judgment.  
4 First, the Government would be prejudiced by the denial of its motion, spending additional time  
5 and effort litigating an action in which no claimants have appeared. Second, the Government's  
6 claims appear to have merit. Third, as set forth above, the Government has adhered to the  
7 procedural requirements of a forfeiture action *in rem*, including the filing of a sufficient  
8 complaint. Fourth, the item that was seized and subject to forfeiture is not of such substantial  
9 value as to warrant denial of the Government's motion. Fifth, there are no genuine disputed  
10 issues of material fact. Sixth, there is no evidence that the failure of any claimant to answer is  
11 due to excusable neglect. Finally, although merits-based decisions are always preferred, it is not  
12 practical, as here, where no claimant has appeared, and this factor is outweighed by the  
13 remainder of the *Eitel* factors.

14 **V. CONCLUSION AND RECOMMENDATION**

15 Accordingly, IT IS HEREBY RECOMMENDED that:

- 16 1. Plaintiff United States of America's application for default judgment and final  
17 judgment of forfeiture be GRANTED;  
18 2. Default judgment be ENTERED against the interest of Medina;

19 These findings and recommendations are submitted to the district judge assigned to this  
20 action pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within twenty-  
21 eight (28) days of service of this recommendation, any party may file written objections to this  
22 order with the Court and serve a copy on all parties. Such a document should be captioned  
23 "Objections to Magistrate Judge's Order." The district judge will review the magistrate judge's  
24 findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised  
25 that failure to file objections within the specified time may waive the right to appeal the district

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1 judge's order. Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: June 18, 2013

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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