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

UNITED STATES OF AMERICA,  
Plaintiff,

**CASE NO. 1:14-cv-01642-LJO-SKO**

v.

APPROXIMATELY \$3,104,661.00 IN U.S.  
CURRENCY,

Defendant.

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

**OBJECTIONS DUE: 21 DAYS  
(Doc. 13)**

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**I. INTRODUCTION**

On February 13, 2015, 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. 13.) No opposition to the Government's application has been filed, and the time to file an opposition has expired. The Court reviewed the motion and supporting document and found the matter suitable for decision without argument pursuant to Local Rule 230(g); thus the March 18, 2015, hearing was vacated. For the reasons set forth below, the Court **RECOMMENDS** that the Government's application for default judgment and for final judgment of forfeiture be **GRANTED**.

1  
2 **II. FACTUAL BACKGROUND**

3 The Government's complaint, filed on October 20, 2014, alleges that approximately  
4 \$3,104,661.00 in U.S. Currency ("Defendant currency") was seized from the property of Marco  
5 Antonio Saucedo and Brenda Saucedo during the execution of a state search warrant at  
6 Coronado Street W., in Bakersfield, California, on August 21, 2014. (Doc. 1, ¶¶ 1, 2.)

7 The Government alleges<sup>1</sup> that on August 19, 2014, Luis Ricardo Eslava-Corral  
8 ("Eslava"), a Mexican National attempted to enter the United States from Mexico at the Otay  
9 Mesa Port of Entry in San Diego County. Eslava was driving a tractor-trailer bearing California  
10 license plate 9E98066, and the trailer bearing California license plate 4NC2644. A U.S.  
11 customs officer referred Eslava to a secondary inspection, where a narcotics detector dog alerted  
12 to the underside of the tractor-trailer. A law enforcement search of the tractor-trailer revealed a  
13 hidden compartment containing multiple packages of cocaine.

14 Following the discovery of the cocaine at the United States-Mexico Border, federal law  
15 enforcement agents began following Eslava's tractor-trailer vehicle, which made stops in San  
16 Diego and San Clemente on August 19, 2014. The next day, August 20, 2014, Eslava continued  
17 driving north toward Bakersfield, with federal agents following his route. During the drive,  
18 Eslava was observed using his cell phone, and the frequency of cell phone usage increased as  
19 Eslava approached Bakersfield.

20 At approximately 5:40 p.m. on August 20, 2014, Eslava and the tractor-trailer arrived at  
21 a truck stop in north Bakersfield. An individual named Jimmy Gil ("Gil"), driving a Nissan  
22 Maxima registered to him at 164 Katterhorn, Shafter, California, met Eslava and took  
23 possession of the tractor-trailer and cocaine. Eslava left the meeting in Gil's Nissan Maxima  
24 and drove the tractor trailer to a trucking business located at 300 Buena Vista Blvd., in  
25 Bakersfield, California. There, he was joined by Jose Luis Montoya-Salazar ("Salazar").  
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28 \_\_\_\_\_  
<sup>1</sup> The factual background section is set forth as alleged in Plaintiff's verified complaint. (Doc. 1.)

1           Gil and Salazar began to unload the packaged cocaine from the tractor-trailer's hidden  
2 compartment in the floor of the trailer and placed the packages in Montoya's vehicle. After  
3 offloading 18 one-kilogram packages of cocaine, federal agents interceded and arrested Gil and  
4 Salazar. A subsequent search of the tractor-trailer's hidden compartment revealed an additional  
5 20 one-kilogram packages of cocaine. In total, 38 kilograms of cocaine were seized from Gil,  
6 Montoya, and the tractor-trailer that crossed into the United States from Mexico on August 19,  
7 2014.

8           Once in custody, federal agents connected Gil to an ongoing investigation into the  
9 concealment of large amounts of drug proceeds in heavy machinery and equipment. When  
10 asked about the ongoing investigation and whether he knew of monies concealed in heavy  
11 equipment, Gil confirmed that a large amount of cash was hidden inside of construction  
12 equipment location on Coronado Street West in Bakersfield, California.

13           On August 21, 2014, federal agents executed a federal search warrant at a particular  
14 property on Coronado Street, finding numbered stacks of cash concealed in two non-factor  
15 hidden compartments in an asphalt roller. Federal agents utilized drug detection canine to  
16 determine if the odor of narcotics was present. The drug-detecting canine positively alerted to  
17 the presence of the odor of narcotics in the specific area where the cash was concealed and  
18 ultimately discovered.

19           A later bank count of the cash seized from inside the asphalt roller totaled approximately  
20 \$3,104,661.00 in cash – Defendant currency. Defendant currency was broken down into the  
21 following denominations: \$360,000 in \$100 bills; \$330,000 in \$50 bills; \$2.264 million in \$20  
22 bills; \$102,000 in \$10 bills; \$27,500 in \$5 bills; and \$21,161 in miscellaneous unknown tender.<sup>2</sup>

23           On September 4, 2014 Gil, Eslava, and Salazar were indicted in the U.S. District Court  
24 for the Eastern District of California for Conspiracy to Import, to Distribute, and to Possess with  
25 Intent to Distribute at least 5 kilograms of cocaine in violation of 21 U.S.C. §§ 841(a)(1),  
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28 <sup>2</sup> Unknown tender is a term for currency that cannot be counted and processed by a bill-counting machine used by  
banks and must instead be hand-counted because the currency is warped, wrinkled, damaged, or is counterfeit.

1 841(b)(1)(A), 846, 952, and 960, *United States v. Jimmy Gil et al.*, No. 1:14-cr-00196-LJO-  
2 SKO.

3 On September 18, 2014, Gil filed a notice of appeal of the revocation of pretrial release;  
4 that appeal in the U.S. Court of Appeals for the Ninth Circuit case number 14-10440 is currently  
5 pending.

6 On September 22, 2014, Eslava entered a guilty plea to violations of 21 U.S.C.  
7 §§ 841(a)(1)(A), 846, 952, and 960 – Conspiracy to Import, to Distribute, and Possess with  
8 Intent to Distribute at least 5 kilogram of cocaine; his sentencing is set for January 12, 2015.

9 The Government claims that Defendant currency is subject to forfeiture to the United  
10 States pursuant to 21 U.S.C. § 881(a)(6) because it was money furnished and intended to be  
11 furnished in exchange for a controlled substance or listed chemical, constituted proceeds  
12 traceable to such an exchange, and was used intended to be used to commit or facilitate a  
13 violation of 21 U.S.C. §§ 841 *et seq.*, an offense punishable by more than one year's  
14 imprisonment. Further, the Government alleges Defendant currency is subject to forfeiture to  
15 the United States pursuant to 18 U.S.C. § 981(a)(1)(C) because it is property which constitutes  
16 or is derived from proceeds traceable to a violation of 21 U.S.C. §§ 841 *et seq.*, 952, or a  
17 conspiracy to commit such an offense.

### 18 III. PROCEDURAL BACKGROUND

19 On October 20, 2014, the Government filed a civil action for forfeiture *in rem* pursuant  
20 to 21 U.S.C. § 881(a)(6) of the Defendant currency. (Doc. 1). On December 2, 2014, the Court  
21 issued a Warrant for Arrest of Articles *In Rem* for the Defendant currency. (Doc. 8.) The  
22 Warrant for Arrest of Defendant currency was executed on December 9, 2014. (Doc. 9.)

23 Public notice of the action and the arrest of Defendant currency was published via the  
24 official internet government forfeiture site [www.forfeiture.gov](http://www.forfeiture.gov) for at least 30 consecutive days.  
25 (Doc. 6.) Publication began on November 2, 2014, and proof of such publication was filed with  
26 the Court on December 3, 2014. (Doc. 6.)

27 On December 4, 2014, copies of the Complaint, Application and Order For Publication,  
28 Order Re Issuance of Clerk's Arrest Warrant, Warrant for Arrest of Articles *In Rem*, Order

1 Setting Mandatory Scheduling Conference, Standing Order, Notice of Availability of Magistrate  
2 Judge, Notice of Availability of Voluntary Dispute Resolution, and notice-of-forfeiture letter  
3 dated December 4, 2014, ("the case documents") were sent via first class mail and certified mail  
4 to Brenda Sauceda at her last known address. (Doc. 10-1, Rodriquez Decl., ¶ 5.) A Domestic  
5 Return Receipt (PS Form 3811) was signed by Brenda Sauceda on January 2, 2015. (Doc. 10-1,  
6 Rodriquez Decl., ¶ 10.)

7 On December 4, 2014, Gil was served with the case documents at his place of  
8 incarceration by first class mail and certified mail, which was returned to the Government  
9 marked "Not in Custody." (Doc. 10-1, Rodriquez Decl., ¶ 6.) The case documents were also  
10 mailed to his last known address; the package was not returned to the Government as  
11 undelivered and post records show that the certified mail parcel was delivered on December 6,  
12 2014. (Doc. 10-1, Rodriquez Decl., ¶ 7.) Finally, the case documents were also mailed on  
13 December 4, 2014, to Gil's defense attorney in the criminal action, and a certified mail receipt  
14 for the delivery was obtained. (Doc. 10-1, Rodriquez Decl., ¶ 8; *see also* Doc. 10-1, Exhibit D.)

15 On December 4, 2014, Marco Antonio Sauceda was served with the case documents at  
16 his last known address by first class mail. (Doc. 10-1, Rodriquez Decl., ¶ 9.)

17 To date, no claim or answer has been filed by or on behalf of Brenda Sauceda, Jimmy  
18 Gil, or Marco Antonio Sauceda. Accordingly, on January 26, 2015, the Government filed a  
19 motion for default judgment against Brenda Sauceda, Gil, and Marco Antonio Sauceda, seeking  
20 the entry of default. (Doc. 10.) The Clerk entered default against these individuals that same  
21 day. (Doc. 11.) On February 13, 2015, the Government filed a motion for Default Judgment a  
22 Final Judgment of Forfeiture vesting all right, title, and interest in the Defendant currency to the  
23 United States. (Doc. 13.)

#### 24 IV. DISCUSSION

##### 25 A. Legal Standard

26 Federal Rule of Civil Procedure 55 provides that a court has discretion to enter default  
27 judgment against a party after the clerk has entered the party's default. In considering whether  
28 to enter default judgment, courts consider the following factors: (1) the possibility of prejudice

1 to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the  
2 compliant; (4) the sum of money at stake in the action; (5) the possibility of a dispute  
3 concerning material facts; (6) whether the default was due to excusable neglect; and (7) the  
4 strong policy of favoring decision on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
5 Cit. 1986).

6 In the context of an *in rem* forfeiture action, a court considering default judgment should  
7 also consider the procedural requirements set forth by the Civil Asset Forfeiture Reform Act of  
8 2000, 18 U.S.C. § 983; the Federal Rules of Civil Procedure, Supplemental Rules of Certain  
9 Admiralty and Maritime Claims ("Supplemental Rules"); and the court's Local Rules for  
10 Admiralty and *in rem* actions. See *United States v. \$191,910.00*, 16 F.3d 1051, 1069 (9th Cir.  
11 1994) (explaining that, because civil forfeiture is a "harsh and oppressive procedure which is not  
12 favored by the courts," the government carries the burden of demonstrating its strict adherence  
13 to procedural rules), *superseded by statute on other grounds*.

## 14 **B. Procedural Requirements**

### 15 **1. Sufficiency of the Complaint**

16 Pursuant to the Supplemental Rules, the Government must file a verified complaint that  
17 states the grounds for jurisdiction and venue, describes the property being forfeited, identifies  
18 the statute under which the forfeiture action is brought, and includes sufficient factual detail to  
19 support a reasonable belief that the Government will be able to meet its burden of proof at trial.  
20 Fed. R. Civ. P. Supp. R. G(2). With regard to the sufficiency of the factual detail of the verified  
21 complaint, the Government is not required to show a relationship between the proceeds of a  
22 drug crime and a specific drug transaction. Rather, circumstantial evidence may support the  
23 forfeiture of the proceeds of a drug crime. See *United States v. \$30,670.00*, 403 F.3d 448, 467-  
24 70 (7th Cir. 2005) (concluding that the totality of the circumstances demonstrated that an airline  
25 passenger's cash hoard was connected to drug trafficking and subject to forfeiture); *United*  
26 *States v. \$242,484.00*, 389 F.3d 1149, 1160 (11th Cir. 2004) (applying totality of the  
27 circumstances to determine that cash carried by airline passenger was the proceeds of, or  
28 traceable to, an illegal drug transaction).

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

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

12 21 U.S.C. § 881(a)(6).

13           Here, the allegations of the verified complaint provide sufficient circumstantial evidence  
14 to reasonably believe that the Defendant currency constitutes "moneys" furnished or intended to  
15 be furnished in exchange for a controlled substance or was used or intended to be used to  
16 facilitate one or more violations of 21 U.S.C. § 841, *et seq.* The Defendant currency was  
17 discovered during an investigation following seizure of 38 kilograms of cocaine that had crossed  
18 into the United States from Mexico on August 19, 2014. (Doc. 1.) Further, a drug-detecting  
19 canine alerted to the presence of the odor of narcotics in the specific area where the Defendant  
20 currency was concealed and ultimately discovered. (Doc. 1.)

## 21           **2. Notice by Publication**

22           Subject to certain exceptions not present here, the Supplemental Rules require the  
23 Government to publish notice of the forfeiture in a manner that is reasonably calculated to notify  
24 potential claimants of the action. Fed. R. Civ. P. Supp. R. G(4)(a)(iv). The content of the notice  
25 must describe the property with reasonable particularity, state the times to file a claim and to  
26 answer the complaint, and identify the name of the government attorney to be served with the  
27 claim and answer. Fed. R. Civ. P. Supp. R. G(4)(a)(ii)(A)-(C). This notice requirement may be  
28 satisfied by posting a notice on an official internet government forfeiture site for at least 30  
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. 6.) 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 November 2, 2014. (Doc. 6.) 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. 6 p. 3.) The notice clearly stated the time  
7 requirements to file a claim and an answer. (Doc. 6, p. 3.) Further, the notice provided the  
8 name of the attorney to be served with any claim and answer. (Doc. 6, 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  
11 November 2, 2014, through December 1, 2014, on the forfeiture website, which satisfies the  
12 Supplemental Rule's notice requirements with regard to frequency and means. (Doc. 6, 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 Brenda Saucedo, Gil,  
4 and Marco Antonia Saucedo through first class mail and certified mail. As required by the  
5 Supplemental Rules, the notice informed each of them of the date on which the notice was sent,  
6 the deadline for filing a claim; that if he or she intended to contest forfeitability, a claim must be  
7 filed with the Court within 35 days; an answer or a motion under Rule 12 was to be filed no  
8 later than 21 days after filing a claim; and that any document filed with the Court "must be  
9 served on this office," directing service to the office of Benjamin B. Wagner, United States  
10 Attorney for the Eastern District of California located at 2500 Tulare Street, Fresno, California.<sup>3</sup>  
11 (Docs. 10-1, Rodriguez Decl., Exhs. A-C.)

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

13 Pursuant to the Supplemental Rules, any person who asserts an interest in or a right in a  
14 forfeiture action must file a claim with the Court within the time specified by the direct notice.  
15 Fed. R. Civ. P. Supp. G(4)(b)(ii)(B), (5)(a)(ii)(A). Failure to comply with the procedural  
16 requirements for opposing the forfeiture precludes a person from establishing standing in the  
17 forfeiture proceeding. *Real Property*, 135 F.3d at 1317. In this case, no claim or answer was  
18 filed by Brenda Saucedo, Gil, or Marco Antonio Saucedo, and their defaults were properly  
19 entered on January 26, 2015. (Doc. 8.)

#### 20 **5. Conclusion**

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

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26  
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. The Government's application for default judgment and final judgment of  
17 forfeiture be GRANTED; and  
18 2. Default judgment be ENTERED against the interest of Brenda Saucedo, Jimmy  
19 Gil, and Marco Antonio Saucedo.

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

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1 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*,  
2 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: March 23, 2015

/s/ Sheila K. Oberto  
7 UNITED STATES MAGISTRATE JUDGE  
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