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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

APPROXIMATELY \$460,520.00 IN U.S.
CURRENCY,

 Defendant.

1:15-CV-01878-AWI-MJS

**FINDINGS AND RECOMMENDATIONS
THAT THE COURT GRANT PLAINTIFF’S
EX PARTE MOTION FOR DEFAULT
JUDGMENT AND FINAL JUDGMENT OF
FORFEITURE**

(ECF No. 9)

**OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS**

_____ /

This matter came before the Honorable Judge Michael J. Seng on Plaintiff United States’
ex parte motion for default judgment and final judgment of forfeiture. (ECF No. 9.) There was
no appearance by or on behalf of any other person or entity claiming an interest in the
defendant funds to oppose plaintiff’s motion. Plaintiff’s motion has been referred to the
Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rule 302(c)(19) and is considered in
accordance with Local Rule 540(d).

This matter was taken under submission without oral argument pursuant to Local Rule
230(g) and the hearing set for this matter was vacated. (ECF No. 11.) For the reasons set
forth below, the Court will recommend that Plaintiff’s motion be GRANTED.

1 **I. RELEVANT FACTUAL BACKGROUND**

2 This action arose out of a Verified Complaint for Forfeiture *In Rem* filed December 15,
3 2015. (ECF No. 1). The complaint alleges that the Defendant funds are believed to be
4 proceeds from controlled substance transactions.

5 On September 24, 2015, detectives from the Fresno County Sheriff's Department were
6 traveling southbound on Interstate 5 when they observed a white Lincoln Navigator traveling too
7 closely behind a tractor trailer. The Navigator was traveling at a rate of 60 miles per hour in
8 moderate traffic, which presented a potential traffic hazard if the tractor trailer were to brake too
9 suddenly. The detectives observed no traffic in the adjacent lane that would have prevented the
10 Navigator from passing the tractor trailer. After observing the Navigator travel too closely
11 behind the tractor trailer for nearly a half mile, the detectives initiated a traffic stop. (ECF No. 1,
12 p. 2, ll. 14-26.)

13 Upon approaching the Navigator, the detectives observed two individuals seated inside,
14 Juan Plazola in the driver's seat and Eduardo Maya-Perez in the front passenger seat. Mr.
15 Plazola was advised of the traffic stop in Spanish. His right hand was trembling as he gathered
16 his license, registration, and proof of insurance for the detective. (ECF No. 1, p. 3, ll. 3-4.). The
17 detective observed a key ring with a single key in the ignition of the Navigator and detected a
18 strong odor of air freshener coming from the vehicle. (ECF No. 1, p. 3, ll. 5-6.) Based on the
19 detective's training and experience, he concluded that Mr. Plazola's nervous behavior, the odor
20 of air freshener, and the presence of only one key on the key ring were signs that he was
21 engaged in criminal activity. (ECF No. 1, p. 3, ll. 25-27.) Drug traffickers commonly do not have
22 any of their own keys on the key ring for the vehicle they are driving since the vehicles are used
23 solely for trafficking drugs and the driver will not leave his personal keys on the same key ring.
24 Furthermore, drug traffickers will use air fresheners to mask the scent of drugs from narcotic
25 canines. (ECF No. 1, pp. 3-4, ll. 28, 1-8.) Upon being questioned, Mr. Plazola informed the
26 detectives that the Navigator belonged to his friend Marcia and that he had borrowed the vehicle
27 to drive to Los Angeles from Hayward to pick up his own car in Los Angeles, which was broken
28 down. (ECF No. 1, p. 3, ll. 12-14.) Mr. Plazola said that he planned to spend the night in Los

1 Angeles and then return home to Hayward the next day. (ECF No. 1, p. 3, ll. 14-16.) He told
2 the detectives that there were no drugs, weapons, or large sums of money in the vehicle, and
3 gave the detectives consent to search the Navigator. (ECF No. 1, p. 3, ll. 17-19.) Mr. Maya-
4 Perez, who was questioned separately from Mr. Plazola, also stated that the pair were on their
5 way to Los Angeles to pick up Mr. Plazola's vehicle, and said there was no contraband inside
6 the Navigator. (ECF No. 1, p. 3, ll. 20-24.) Mr. Maya-Perez also gave consent to search the
7 vehicle. (ECF No. 1, p. 3, ll. 23-24.)

8 An initial search of the Navigator turned up three car fresheners hanging from the
9 steering column. (ECF No. 1, p. 4, ll. 5-6.) The detectives did not find any clothes or overnight
10 bags. (ECF No. 1, p. 4, ll. 6-7.) A Narcotic Detection Canine named Kash then proceeded to
11 sniff the exterior of the Navigator and gave a positive alert for narcotics near the rear cargo area
12 of the vehicle. (ECF No. 1, p. 5, ll. 3-4.) A detective conducted a hand search of the vehicle
13 and uncovered a black "Beats" pouch that contained four bundles of \$100 bills in U.S. currency.
14 (ECF No. 1, p. 5, ll. 9-15.) Based on the foregoing, Mr. Plazola, Mr. Maya-Perez, and the
15 Navigator were transported to a different area so that detectives could safely conduct a more
16 extensive search of the vehicle. (ECF No. 1, p. 5, ll. 20-23.)

17 After relocating to a safer location, the detectives spoke with the owner of the Navigator
18 over the phone, a woman named Marcia. She informed the detectives that she had loaned her
19 vehicle to her friend Mr. Plazola and did not know of any weapons, drugs, or money in the car.
20 (ECF No. 1, pp. 5-6, ll. 24-28, 1-5.)

21 The detectives then searched the rear cargo area, pulling apart the upholstery of the
22 back of the seats and uncovering a piece of particle board that detectives observed was
23 secured by screws that did not appear to be manufacturer screws. (ECF No. 1, p. 6, ll. 12-13.)
24 The detectives pried up the particle board and found several green cellophane packages. After
25 pulling off the particle board covers on the backs of the second and third rows of seats, the
26 detectives uncovered twenty bundles of U.S. currency within the empty spaces inside seats.
27 (ECF No. 1, p. 6, ll. 6-20.)

28 Both Mr. Plazola and Mr. Maya-Perez claimed they had no knowledge of the money

1 hidden within the seats. The detectives advised Mr. Plazola and Mr. Maya-Perez that due to the
2 circumstances under which the funds were found, the funds would be seized. A receipt for the
3 currency was issued to Mr. Plazola, who stated that he understood, and signed the receipt.
4 Both Mr. Plazola and Mr. Maya-Perez were provided with a Disclaimer of Currency form, written
5 in Spanish, which both read and signed. Mr. Plazola, Mr. Maya-Perez, and the Navigator were
6 released without further incident. (ECF No. 1, p. 6, ll. 21-28.)

7 As the currency was hidden within the seats of the Navigator, packaged within vacuum-
8 sealed bags, wrapped in carbon paper and cellophane, and drenched in a scented liquid
9 substance, the detectives believed that the currency was the proceeds of controlled substance
10 transactions. (ECF No. 1, p. 7, ll. 1-12.) As such, it is subject to forfeiture pursuant to 21 U.S.C.
11 § 881(a)(6).

12 **II. PROCEDURAL HISTORY**

13 Based on the allegations in the complaint, the Court issued a Warrant for Arrest of
14 Articles *In Rem* on December 30, 2015. (ECF No. 3.) The Warrant for the Arrest was executed
15 on the Defendant funds on January 4, 2016. (ECF No. 4.) Public notice of the action and the
16 arrest of the Defendant funds was published via the official government forfeiture site,
17 www.forfeiture.gov, on December 31, 2015, for 30 consecutive days. This publication is
18 consistent with Local Rule 500(d) via Supplemental Rule G(4)(a), and proof of such publication
19 was filed with the Court on February 2, 2016. (ECF No. 5.)

20 In addition to providing notice by publication, on December 30, 2015, copies of the
21 Complaint, Warrant for Arrest of Articles in Rem, Order Setting Mandatory Scheduling
22 Conference, Notice of Availability of Voluntary Dispute Resolution, Notice of Availability of a
23 Magistrate Judge, and Notice of Forfeiture letter dates December, 2015, were served on Mr.
24 Plazola at his last known address of 25800 Industrial Blvd., Apt. 1210, Hayward, California,
25 94545, by first class mail and certified mail no. 7012-3460-0001-6702-0944. The first class
26 parcel was returned to the United States Attorney's Office on February 25, 2016, marked as
27 "Return to Sender" and "Unable to Forward." The United States Postal Service left notice of the
28 certified mail parcel on February 25 and 29, 2016, for the recipient Juan Plazola before the

1 parcel was returned to the United States Attorney's Office marked as "Return to Sender" and
2 "Unable to Forward." (ECF No. 9.)

3 On December 30, 2015, Mr. Plazola was served with copies of the above-listed
4 documents at an additional known address of 25455 Whitman Street, Apt. 25, Hayward,
5 California, 94544-2454, by first class mail and certified mail no. 7012-3460-0001-0937. The
6 Domestic Return Receipt (PS Form 3811) was signed by Gladys Espindola and received in the
7 U.S. Attorney's Office on January 4, 2016. (ECF No. 9.)

8 On December 30, 2015, Mr. Maya-Perez was served with copies of the above-listed
9 documents at his last known place of residence, 27132 Garden Road, Hayward, California,
10 94544, by first class mail and certified mail no. 7012-3460-0001-6702-0920. The first class
11 parcel was returned to the United States Attorney's Office on February 22, 2016 marked as
12 "Return to Sender" and "Unable to Forward." The certified mail parcel was returned to and
13 received by the United States Attorney's Office on February 22, 2016, marked as "Return to
14 Sender" and "Unable to Forward." (ECF No. 9.)

15 To date, there have been no claims filed by or on behalf of Juan Plazola or Eduardo
16 Maya-Perez to the Defendant funds and the time for any person or entity to file a claim and
17 answer has expired. Fed. R. Civ. P. Supp. R. G(4)(b)(i).

18 **III. LEGAL STANDARD**

19 Under Federal Rule of Civil Procedure 55(b)(2), a party can apply to the district court for
20 an entry of default judgment. Fed. R. Civ. P. 55(b)(2). Whether or not to grant default judgment
21 lies within the discretion of the district court. Lau Ah Yew v. Dulles, 236 F.2d 415, 416 (9th Cir.
22 1956). On a motion for default judgment, the factual allegations of the complaint relating to
23 liability are taken as true. TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-918 (9th
24 Cir. 1987) (citing Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977)).

25 In the context of an *in rem* forfeiture action, a court considering default judgment should
26 also consider the procedural requirements set forth by the Civil Asset Forfeiture Reform Act of
27 2000, 18 U.S.C. § 983; the Supplemental Rules of Certain Admiralty and Maritime Claims
28 ("Supplemental Rules"); and the court's Local Rules for Admiralty and *in rem* actions. United

1 States v. Approximately 335 Counterfeit NFL Jerseys, No. 1:13-cv-341-AWI-GSA, 2014 WL
2 2575446, at *5 (E.D. Cal. June 9, 2014) (referencing United States v. \$191,910.00, 16 F.3d
3 1051, 1069 (9th Cir. 1994) (explaining that, because civil forfeiture is a “harsh and oppressive
4 procedure which is not favored by the courts,” the government carries the burden of
5 demonstrating its strict adherence to procedural rules) (*superseded by statute on other*
6 *grounds*)).

7 The Supplemental Rules do not provide a procedure to seek default judgment in an
8 action *in rem*, however Supplemental Rule A provides: “The Federal Rules of Civil Procedure
9 also apply to the foregoing proceedings except to the extent that they are inconsistent with
10 these Supplemental Rules.” When considering whether to enter default judgment under Federal
11 Rule of Civil Procedure 55, Courts may consider the following factors: (1) the possibility of
12 prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the
13 complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning
14 material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy of
15 favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

16 **III. DISCUSSION**

17 **A. Sufficiency of the Verified Complaint**

18 Pursuant to the Supplemental Rules, the government must file a verified complaint that
19 states the grounds for jurisdiction and venue, describes the property being forfeited, identifies
20 the statute under which the forfeiture action is brought, and includes sufficient factual detail to
21 support a reasonable belief that the government will be able to meet its burden of proof at trial.
22 Fed. R. Civ. P. Supp. R. G(2). With regard to the sufficiency of the factual detail of the verified
23 complaint, the government is not required to show a relationship between the proceeds of a
24 drug crime and a specific drug transaction. Rather, circumstantial evidence may support the
25 forfeiture of the proceeds of a drug crime. United States v. \$11,500.00 in United States
26 Currency, In Rem, et al., 710 F.3d 1006, 1013 (9th Cir. 2013) (The government may meet its
27 burden to show that property is subject to forfeiture with sufficiently strong circumstantial
28 evidence linking the currency to drug trafficking generally); United States v. Currency, U.S.

1 \$42,500.00, 283 F.3d 977, 984 (9th Cir. 2002) (affirming government's motion for summary
2 judgment in light of substantial circumstantial evidence that currency was connected to drug
3 trafficking, and where claimant refused to disclose the source of the currency or provide any
4 other evidence that the source was legitimate).

5 The verified complaint states the grounds for *in rem* subject matter jurisdiction and venue,
6 describes the currency seized and the circumstances surrounding the seizure, and identifies the
7 relevant statutes. The government contends that the verified complaint establishes
8 circumstantial evidence that the Defendant fund were furnished or intended to be furnished in
9 exchange for a controlled substance or listed chemical, and is subject to forfeiture pursuant to
10 21 U.S.C. § 881(a)(6).

11 Here, taking the facts alleged in the Verified Complaint as true, there is more than
12 sufficient circumstantial evidence linking the Defendant funds to drug trafficking in general. The
13 money was found hidden inside of the seats. The money was tightly wrapped in plastic and
14 carbon paper and drenched in scented liquid. A Narcotics Detection Canine made a positive
15 alert as to the presence of narcotics in the vehicle. These facts provide a sufficient enough
16 connection between the Defendant funds and illegal drug activity to support forfeiture.

17 **B. Notice Requirement**

18 Subject to certain exceptions not present here, the Supplemental Rules also require
19 that the government publish notice of the forfeiture in a manner that is reasonably calculated to
20 notify potential claimants of the action. Fed. R. Civ. P. Supp. R. G(4)(a)(iv). The content of the
21 notice must describe the property with reasonable particularity, state the times to file a claim and
22 to answer the complaint, and identify the name of the government attorney to be served with the
23 claim and answer. Fed. R. Civ. P. Supp. R. G(4)(a)(ii)(A)-(C). If the property is in the United
24 States, notice must be published in a newspaper generally circulated in the district where the
25 action is filed, where the property was seized, or where property that was not seized is located.
26 Fed. R. Civ. P. Supp. R. G(4)(a)(iv)(A). In lieu of newspaper publication, the government may
27 publish notice by posting on an official internet government forfeiture site for at least thirty
28 consecutive days. Fed. R. Civ. P. Supp. R.G(4)(a)(iv)(C). Claims must be made within 30 days

1 after the completion of the publication. Fed. R. Civ. P. Supp. R.G(5).

2 Here, publication occurred on the official internet government forfeiture site
3 www.forfeiture.gov on December 31, 2015, for 30 consecutive days. A Declaration of
4 Publication was filed with the Court on February 2, 2016. (ECF No. 5.) Accordingly, the
5 requirements for notice by publication pursuant to Local Rule 500(d) and Supplemental Rule G
6 have been satisfied.

7 When the government knows the identity of the property owner or owners, the Due
8 Process Clause of the Fifth Amendment requires “the Government to make a greater effort to
9 give him notice than otherwise would be mandated.” United States v. Real Property, 135 F.3d
10 1312, 1315 (9th Cir. 1998). In such cases, the government must attempt to provide actual
11 notice by means reasonably calculated under all circumstances to apprise the owner of the
12 pendency of the forfeiture action. Dusenbery v. United States, 534 U.S. 161, 168 (2002).
13 “Reasonable notice, however, requires only that the government attempt to provide actual
14 notice; it does not require that the government demonstrate that it was successful in providing
15 actual notice.” Mesa Valderrama v. United States, 417 F.3d 1189, 1197 (11th Cir. 2005); Real
16 Property, 135 F.3d at 1316.

17 Supplemental Rule G(4)(b) mirrors this requirement, providing for notice to be sent by
18 means reasonably calculated to reach the potential claimant. Fed. R. Civ. P. Supp. R.
19 G(4)(b)(i). The notice must contain the following information: the date when the notice is sent; a
20 deadline for filing a claim that is at least 35 days after the notice is sent; that an answer or a
21 motion under Rule 12 must be filed no later than 21 days after the filing of the claim; and the
22 name of the government attorney to be served with the claim and the answer. Id. Here, the
23 government provided notice of the forfeiture action by mailing copies of the required
24 documentation, via both certified and first class mail, to Mr. Plazola and Mr. Maya-Perez at their
25 last known addresses. Mr. Plazola was sent notice at an alternate address as well. Therefore,
26 a reasonable attempt at serving notice on the potential claimants was made.

27 **C. Failure to Timely Answer Claim**

28 Pursuant to the Supplemental Rules, any person who asserts an interest in or a right in

1 a forfeiture action must file a claim with the Court within the time specified by the direct notice.
2 Fed. R. Civ. P. Supp. G(4)(b)(ii)(B), (5)(a)(ii)(A). Failure to comply with the procedural
3 requirements for opposing the forfeiture precludes a person from establishing standing in the
4 forfeiture proceeding. Real Property, 135 F.3d at 1317. Publication ended on January 29,
5 2016; any potential claimants had until 30 days after that date to respond, but did not. While
6 direct notice was not provided to the known potential claimants, it was not for lack of effort by
7 the government. Accordingly, the time to file a claim has expired, and pursuant to Rule 55(a) of
8 the Federal Rules of Civil Procedure, the Clerk of the Court properly entered defaults against
9 Mr. Plazola and Mr. Maya-Perez.

10 **D. Default Judgment Appropriate Under Rule 55**

11 The discretionary Eitel factors outlined above favor granting the government's motion
12 for default judgment. First, the government would be prejudiced by the denial of its motion. It
13 would have to spend additional time and effort litigating an action in which the claimants have
14 made no claims. Second, the government's claims appear to have merit, as discussed above.
15 Third, the government has adhered to the procedural requirements of a forfeiture action *in rem*.
16 Fourth, the currency that was seized and subject to forfeiture is not of such substantial value as
17 to warrant denial of the government's motion, particularly in light of the fact that no claimant has
18 come forward to challenge the forfeiture. Fifth, there are no genuine disputed issues of material
19 fact. Sixth, there is no evidence that the failure of any other claimants to answer is due to
20 excusable neglect. Finally, although merits-based decisions are always preferred, it is not
21 practical, where, as here, claimants have made no claims. Accordingly, there is no impediment
22 to default judgment sought by the government and the Court will recommend that the motion be
23 granted.

24 **V. CONCLUSION**

25 Plaintiff has shown that a complaint for forfeiture was filed; that potential claimants
26 Plazola and Maya-Perez received notice of the forfeiture action; that any and all other unknown
27 potential claimants have been served by publication; and that grounds exist for entry of a final
28 judgment of forfeiture.

1 Therefore, IT IS RECOMMENDED as follows:

2 1. That Juan Plazola and Eduardo Maya-Perez be held in default;

3 2. That Plaintiff's motion for default judgment and final judgment of forfeiture be
4 granted;

5 3. That a judgment by default be entered against any right, title, or interest of
6 potential claimants Juan Plazola and Eduardo Maya-Perez, and all other unknown potential
7 claimants, in the Defendant funds;

8 4. That a final judgment be entered, forfeiting all right, title, and interest in the
9 Defendant funds to the United States of America, to be disposed of according to law; and

10 5. That the Default Judgment and Final Judgment of Forfeiture lodged herein be
11 signed by the Honorable Anthony W. Ishii and filed by the Clerk of the Court.

12 These findings and recommendations are submitted to District Court Judge Anthony W.
13 Ishii pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen (14) days after
14 being served with these Findings and Recommendation, any party may file written objections
15 with the Court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
17 shall be served and filed within ten (10) days after service of the objections. The District Judge
18 will review these findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The
19 parties are advised that failure to file objections within the specific time may waive the right to
20 appeal the District Judge's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 IT IS SO ORDERED.

22
23 Dated: April 22, 2016

24 /s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
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