

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
United States Attorney

2 BRIAN J. STRETCH (CSBN 163973)  
3 Chief, Criminal Division

4 PATRICIA J. KENNEY (CSBN 130238)  
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055  
6 San Francisco, California 94102-3495  
7 Telephone: 415.436.6857  
Facsimile: 415.436.6748

8 Attorneys for the United States of America

9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12

13 UNITED STATES OF AMERICA, )  
14 Plaintiff, )  
15 v. )  
16 \$40,000 IN UNITED STATES )  
CURRENCY, )  
17 Defendant. )  
18

No. C 09-4918 SI

REQUEST TO THE CLERK  
TO ENTER A DEFAULT  
AND  
REQUEST TO TAKE THE JANUARY 29,  
2010 CMC OFF CALENDAR

19

20 The United States of America, through its undersigned counsel, respectfully requests the  
21 Clerk to enter a default in this case pursuant to Rule 55(a), Federal Rules of Civil Procedure, and  
22 Rules 6-1 and 6-2, Admiralty Local Rules, on the basis that proper notice has been given, and  
23 that the no claim has been filed by any party claiming any right, title or interest in the above  
24 captioned defendant. Once the Clerk enters a default, the United States plans to move for a  
25 default judgment.

26 Further, because no one has appeared to defend, a case management conference would  
27 not assist the Court at this juncture in moving the case forward. Thus, the United States also  
28 requests the Clerk to take the case management conference off calendar.

1 **I. Background**

2 On October 15, 2009, the United States filed this action to obtain the forfeiture of the  
3 above captioned defendants pursuant to 21 U.S.C. § 881(a)(6). *See* Complaint for Forfeiture,  
4 filed October 15, 2009. On October 21, 2009, the United States gave notice to parties who might  
5 have an interest by serving a copy of the Complaint for Forfeiture plus related documents on Erik  
6 Freeman and his attorney, Mark A. Pecora, at their last known addresses. *See* Certificate of  
7 Service, filed October 21, 2009. Prior to the commencement of this action, Erik Freeman  
8 through his attorney, Mark A. Pecora, filed an administrative claim with the DEA in which Erik  
9 Freeman claimed to own defendant \$40,000.

10 The United States also published notice of this action on an official government internet  
11 site for at least 30 consecutive days, beginning on October 21, 2009, as required by Rule  
12 G(4)(a)(iv)(C), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture  
13 Actions (“Supp. Rule for Asset Forfeiture \_\_\_\_\_”). *See* Declaration of Publication, filed on  
14 January 22, 2010. To date, no one has filed a claim to the above captioned defendants or an  
15 answer to the Complaint for Forfeiture. *See* docket sheet.

16 **II. Request for Entry of A Default**

17 The United States gave direct notice by service of the Complaint for Forfeiture and  
18 related documents to persons known to have an interest as required by Rule G(4)(b). *See* Supp.  
19 Rule for Asset Forfeiture G(4)(b). The United States also provided notice through an official  
20 government internet site as required by Rule G(4)(a)(iv)(C). *See* Supp. Rule for Asset Forfeiture  
21 G(4)(a)(iv)(C).

22 In order to appear and defend property named as defendant in a civil forfeiture action, an  
23 individual receiving direct notice must file a claim within 35 days after receiving that notice  
24 unless the Court extends time. *See* Supp. Rule for Asset Forfeiture G(5)(a)(i) and G(5)(a)(ii)(A).  
25 Otherwise, an individual asserting an interest in defendant property who did not receive direct  
26 notice must file a claim not later than 30 days after final publication in a newspaper or not later  
27 than 60 days after the first date of publication on an official internet government forfeiture site.  
28 *See* Supp. Rule for Asset Forfeiture G(5)(a)(ii)(B). After filing a timely claim, an individual

