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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C-10-3054 JSW (EMC)

Plaintiff,

v.

COUNTERFEIT MERCHANDISE AND
PROCEEDS FROM SALES OF
COUNTERFEIT MERCHANDISE, *et al.*,

Defendants.

**ORDER GRANTING CLAIMANT HUI
JIN CHEN'S REQUEST FOR
APPOINTMENT OF COUNSEL,
MOTION TO SET ASIDE ENTRY OF
DEFAULT, AND MOTION FOR LEAVE
TO FILE VERIFIED CLAIM AND
ANSWER; AND REPORT AND
RECOMMENDATION RE PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

(Docket Nos. 29, 38)

Currently pending before the Court is Claimant Hui Jin Chen's (1) motion to set aside entry of default (2) motion for appointment of counsel, and (3) motion for leave to file a verified claim and answer.¹ Also before the Court is the Government's motion for default judgment (Docket No. 29). Having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel and all other record evidence, the Court hereby **GRANTS** Ms. Chen's motions and **RECOMMENDS** the Government's motion be **GRANTED IN PART**.

I. FACTUAL & PROCEDURAL BACKGROUND

The Government avers that on or about February 10 2010, its agents seized the defendant *in rem* counterfeit merchandise and cash from multiple locations. The defendant property is described in 11 groups. Forfeiture Complaint ("Compl.") ¶¶ 6, 7. The Government also arrested and indicted ten defendants in a related action, including Hui Jin Chen. Compl. ¶ 9. On December 3, 2010, the

¹ As a preliminary matter, the Court grants Ms. Chen's motion for leave to file each of these motions (Docket No. 38).

1 Government provided notice of this civil forfeiture action to those known to have an interest. *See*
2 Cert. of Service, filed 12/3/10. The Government also provided public notice of the forfeiture
3 proceeding via a website posting beginning November 16, 2010. *See* Docket No. 19. Five people
4 filed timely claims with respect to Group (3) and Group (8) of the captioned defendant property. On
5 February 8, 2011, Judge White stayed this action to prevent interference with the related criminal
6 case. *See* Docket No. 22 (Order). On the same day, the Government moved for entry of default with
7 respect to the remaining defendant properties, and on February 15, 2011 the Clerk entered default
8 with respect to those defendants. *See* Docket No. 28 (Feb. 23, 2011 Clerk’s Notice).

9 Ms. Chen appeared in court on August 2, 2010 and was released on \$200,000 bond. *See*
10 Order, No. 10-cr-0565 (Aug. 3, 2010) (Docket No. 29). Ronald Tyler of the Federal Public
11 Defender’s Office was appointed as counsel for Hui Jin Chen in the criminal case. *See* Docket No.
12 3, No. 10-cr-0565 (Aug. 2, 2010 Min. Entry). In her papers, Ms. Chen avers that she speaks only
13 Mandarin and requires an interpreter. A pretrial hearing is scheduled for June 9, 2011. Ms. Chen’s
14 motion concerns a portion of the defendant property (\$3,987 in cash) identified in Group (6) of the
15 defendants herein.

16 **II. DISCUSSION**

17 A. Motion to Set Aside Entry of Default

18 1. Legal Standard

19 Federal Rule of Civil Procedure 55(c) provides that a “court may set aside an entry of default
20 for good cause.” Fed. R. Civ. P. 55(c). “‘Good cause’ has no precise definition, and its meaning
21 depends on the circumstances of the case.” 55 Moore’s Fed. Prac. – Civ. § 55.70[1]. The Court
22 considers three factors in determining whether “good cause” exists: (1) whether the defaulting party
23 engaged in culpable conduct that led to default; (2) whether the defaulting party had a meritorious
24 defense; or (3) whether reopening the default would prejudice the nondefaulting party. *See*
25 *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925-926 (9th Cir. 2004).
26 The Court may set aside a default if *any* of the three factors are true. *See id.* at 926 (emphasizing
27 that the factors are disjunctive). The defendant bears the burden of showing that any factor weighs
28 in favor setting aside the default. *See id.* However, there is a strong public policy in favor of

1 resolving a case on its merits. *See Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.
2 1985) (noting that default judgments are generally disfavored so that, “[w]henver it is reasonably
3 possible, cases should be decided upon their merits”); *United States v. Signed Personal Check No.*
4 *730 of Yubran S. Mesle*, 615 F.3d 1085 (9th Cir. 2010) (“[J]udgment by default is a drastic step
5 appropriate only in extreme circumstances; a case should, wherever possible, be decided on the
6 merits.”).

7 2. Analysis

8 Ms. Chen filed a Verified Claim and Statement of Interest in the property stating that the
9 money at issue belongs to her juvenile child. Docket No. 36. Although she does not describe her
10 defense in factual detail, the Court finds this claim sufficient to raise a plausible defense. Thus, the
11 Court finds this factor to weigh in Ms. Chen’s favor.

12 The other two factors also weigh in Ms. Chen’s favor. As Ms. Chen points, out, her failure
13 to file a claim does not bar relief unless she acted (or neglected to act) in bad faith. *Id.* at 1093
14 “[S]imple carelessness is not sufficient to treat a negligent failure to reply as inexcusable, at least
15 without a demonstration that other equitable factors, such as prejudice, weigh heavily in favor of
16 denial of the motion to set aside a default.” *Id.* There is no evidence of bad faith here.

17 Ms. Chen also argues that the delay would not prejudice the Government since it has
18 “already agreed to a stay of this action as to several other claimants and co-defendants.” Reply at 5.
19 Judge White’s February 8, 2011 Order stays the case is not limited to certain parties: the Order
20 simply states that the case is stayed in light of the pending criminal case because “(1) civil discovery
21 could adversely affect the prosecution of the related criminal case; and (2) proceeding with this civil
22 forfeiture action could adversely burden the right of claimants against self-incrimination.
23 Accordingly, the parties agree, subject to the Court’s approval, to stay this case and to take the
24 currently scheduled case management conference for February 18, 2011 at 1:30 p.m. off calendar
25 until further order of this Court.” Docket No. 22. Even if the stay applied only to the other groups
26 of property for which timely claims were filed (and not Ms. Chen and the Group (6) property she
27 now claims), Plaintiff has not shown it would suffer any prejudice were Ms. Chen allowed to reopen
28 and assert her claim along with the others.

1 The Court finds that the equities weigh in favor of granting Ms. Chen’s motion to set aside
2 default. The Court accordingly grants Ms. Chen’s motion to set aside the default as to the cash
3 portion of defendant Group (6), and grants her request for additional time to file a response to the
4 complaint.

5 B. Appointment of Counsel

6 A third party asserting an interest in a forfeiture proceeding is “expressly barred by 21
7 U.S.C. § 853(k)(2) from ‘commencing an action at law or equity against the United States
8 concerning the validity of [its] alleged interest in the property.’ “ *United States v. Douglas*, 55 F.3d
9 584, 586 (11th Cir. 1995) (quoting 21 U.S.C. § 853(k)(2)); *accord United States v. Gilbert*, 244 F.3d
10 888, 907 (11th Cir. 2001). “A third party’s only avenue for protecting his interest is the procedure
11 set forth in 18 U.S.C. § 853(n), which provides that ‘any person, other than the defendant, asserting
12 a legal interest in property which has been ordered forfeited to the United States pursuant to this
13 section’ may ‘petition the court for a hearing to adjudicate the validity of his alleged interest in the
14 property.’” *United States v. Wade*, 255 F.3d 833, 837 (D.C. Cir. 2001). In establishing this
15 forfeiture procedure, “Congress intended that third-party petitions ancillary to a criminal forfeiture
16 take the place of civil cases, and that such a procedure would enable innocent parties to adjudicate
17 their property interests swiftly instead of having to file separate civil suits.” *Gilbert*, 244 F.3d at 907
18 (describing conclusion of Douglas court). *See also* H.R. Rep. No. 98-1030, at 206-07 (1984),
19 reprinted in 1984 U.S.C.C.A.N. 3182, 3389-90 (“Once the indictment or information is filed, a third
20 party is not to commence a civil suit against the United States; instead the third party should avail
21 himself of the ancillary hearing procedure.... This provision assures a more orderly disposition of
22 both the criminal case and third party claims. Indeed, it is anticipated that the new hearing procedure
23 should provide for more expedited consideration of third party claims than would the filing of
24 separate civil suits.”).

25 Counsel was appointed for Ms. Chen in her criminal case. Ms. Chen argues that the Court
26 should appoint as counsel in this forfeiture case as well because it constitutes an ancillary
27 proceeding under the Criminal Justice Act. Title 18 U.S.C. 3006A(c) provides, “A person for whom
28 counsel is appointed shall be represented at every stage of the proceedings from his initial

1 appearance before the United States magistrate judge or the court through appeal, *including*
2 *ancillary matters appropriate to the proceedings.*” (Emphasis added.) Likewise, the Guide to
3 Judiciary Policy and Procedures § 2.01(F)(5-6) provides, “In determining whether representation in
4 an ancillary matter is appropriate to the proceedings, the court should consider whether such
5 representation is reasonably necessary to accomplish, *inter alia* . . . to preserve the claim of the CJA
6 client to an interest in real or personal property subject to a civil forfeiture proceeding pursuant to 21
7 U.S.C. § 881, 19 U.S.C. § 1602 or similar statutes (6) Under 18 U.S.C. § 983(b)(1), if a person
8 with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a
9 civil forfeiture statute is financially unable to obtain representation by counsel, and the person is
10 represented by counsel appointed under 3006(a) of title 18, United States Code, in connection with a
11 related criminal case, the court may authorize counsel to represent the person with respect to the
12 claim.” The Government concedes that the Court has discretion to appoint counsel for a financially
13 eligible person in a forfeiture action in connection with a related criminal case. *See* 18 U.S.C. §
14 983(b)(1)(A).

15 The Government argues that Ms. Chen has not made a satisfactory demonstration of her
16 financial eligibility, nor has she shown that she made efforts to obtain counsel. Opp’n at 7.
17 However, the Government provides no authority that one seeking counsel in these circumstances
18 must first demonstrate efforts to retain counsel. No such requirement is found in the statute or case
19 law. Instead, the Government points to 28 U.S.C. § 1915(e) which governs the court’s limited
20 authority to appoint counsel for a party proceeding *in forma pauperis* in a civil case. But that
21 general statute, even if it were otherwise applicable, does not govern where a more specific statute
22 (*i.e.*, the Criminal Justice Act) expressly applies to this proceeding. As to her financial eligibility,
23 the Court finds Ms. Chen eligible based on the fact that she already qualified for appointment of
24 counsel in the criminal case. The Court therefore grants Ms. Chen’s motion for appointment of
25 counsel and appoints Mr. Tyler for said purpose.

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1 decision to grant a motion for default judgment is within the court’s discretion. *See Aldabe v.*
2 *Aldabe*, 616 F. 2d 1089, 1092 (9th Cir. 1980). Upon entry of default, the factual allegations of the
3 Government’s complaint are assumed to be true, except those relating to damages. *See Geddes v.*
4 *United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977); *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d
5 915, 917 (9th Cir. 1987). *See also* Fed. R. Civ. P. 8(d) (“Averments in a pleading to which a
6 responsive pleading is required, other than those as to the amount of damage, are admitted when not
7 denied in the responsive pleading.”).

8 In the present matter, default was entered as to the remaining defendants (all defendants
9 named in complaint except defendant Group (3) and Group (8) as timely claims have been filed) on
10 February 15 and February 23, 2011.² *See* Docket Nos. 26, 28. Consequently, the factual allegations
11 of the Government’s complaint are deemed to be true and the Court is vested with the authority to
12 enter default judgment. The Court’s decision whether to exercise its discretion to do so is guided by
13 two overlapping inquiries. First, the Court considers the Government’s claims in light of the factors
14 set forth by the Ninth Circuit in *Eitel v. McCool*, 782 F. 2d 1470, 1471-72 (9th Cir. 1986). Second,
15 the Court determines whether the Government has met the specific procedural requirements
16 governing forfeiture actions.

17 C. Application of the *Eitel* Factors

18 In *Eitel*, the Ninth Circuit set forth the following factors to be considered in determining
19 whether entry of default judgment is appropriate:

- 20 (1) the possibility of prejudice to the plaintiff; (2) the merits of
21 plaintiff’s substantive claims(s); (3) the sufficiency of the complaint;
22 (4) the sum of money at stake in the action; (5) the possibility of a
23 dispute concerning material facts; (6) whether the default was due to
excusable neglect; and (7) the strong policy underlying the Federal
Rules of Civil Procedure favoring decisions on the merits.

24 *See Eitel v. McCool*, 782 F. 2d 1470, 1471-72 (9th Cir. 1986). In the present matter, a denial of
25 default judgment would likely prejudice the government as further proceedings would require the
26 Government to expend further time and effort for no reason, as no additional claims have been filed

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28 ² The Court assumes Judge White, in granting a stay in the case (*see* Docket No. 22), did not
intend to forestall entry of default against the defendant property for which no claims were filed.

1 with respect to the defendant property. There is no evidence that default was due to excusable
2 neglect given that, as discussed below, the Government provided adequate service and notice to the
3 parties known to have an interest in the property. The sum of money at stake in the action, though
4 not insubstantial, is not so large as to warrant a denial of the motion. *See United States v. Approx.*
5 *\$57, 890 in U.S. Currency*, No. C-10-01829 WHA, 2010 WL 3987397, at *4 (N.D. Cal., Oct 12th,
6 2010). Likewise, claimants have had ample time to submit a claim consistent with the Supplemental
7 Rules in order to challenge the Government’s forfeiture, but failed to do so. Finally, although it is
8 preferable to decide a case on its merits, when no party appears to oppose the action despite having
9 notice (as is the case here, with the exception of Ms. Chen, discussed *supra*), there is likely no
10 dispute on the merits.

11 Before entering default judgment, however, the Court must ensure that the allegations of
12 Plaintiff’s complaint, which are assumed to be true, are sufficient to warrant forfeiture of the
13 Defendant property under the relevant statutes. The Court addresses the sufficiency of the
14 Government’s claim below.

15 1. The Government’s § 2323 Claim

16 The Government seeks forfeiture of items and currency pursuant to 18 U.S.C. § 2323(a).
17 Section 2323 of Title 18 of the United States Code, provides for the forfeiture to the United States
18 Government of the following property:

19 (A) Any article, the making or trafficking of which is prohibited under
20 section [18 U.S.C. §] 2320

21 (B) Any property used, or intended to be used, in any manner or part
22 to commit or facilitate the commission of an offense referred to in
subparagraph (A).

23 (C) Any property constituting or derived from any proceeds obtained
24 directly or indirectly as a result of the commission of an offense
referred to in subparagraph (A).

25 18 U.S.C. § 2323. Section 2320 makes it a crime to traffic in counterfeit goods. *See* 18 U.S.C. §
26 2320. More specifically, § 2320(a)(1) states,

27 Whoever intentionally traffics or attempts to traffic in goods or
28 services and knowingly uses a counterfeit mark on or in connection
with such goods or services, or intentionally traffics or attempts to

1 traffic in labels, patches, stickers, wrappers, badges, emblems,
2 medallions, charms, boxes, containers, cans, cases, hangtags,
3 documentation, or packaging of any type or nature, knowing that a
4 counterfeit mark has been applied thereto, the use of which is likely to
5 cause confusion, to cause mistake, or to deceive, shall, if an
individual, be fined not more than \$2,000,000 or imprisoned not more
than 10 years, or both, and, if a person other than an individual, be
fined not more than \$5,000,000.

6 18 U.S.C. § 2320(a)(1). Property subject to forfeiture under § 2320 is specifically governed by 18
7 U.S.C. § 2323. *See* 18 U.S.C. 2320(b) (“Forfeiture, destruction, and restitution relating to this
8 section shall be subject to section 2323, to the extent provided in that section, in addition to any
9 other similar remedies provided by law.”).

10 Property subject to forfeiture under 18 U.S.C. § 981 is to be seized “pursuant to a warrant
11 obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal
12 Procedure” *See* 18 U.S.C. § 981(b)(2). In the present matter, the Defendant property was
13 seized pursuant to the execution of federal search warrants at multiple locations on February 10,
14 2010. *See* Compl. ¶¶ 1,7. Absent cause to believe these warrants were obtained or executed
15 improperly, the Court must assume the warrants and the items seized in their execution are all valid
16 and in compliance with the Federal Rules of Criminal Procedure and other governing statutes. The
17 Government brought the forfeiture action on July 12, 2010. *See* Pls.’ Mot. at 3. After the Court
18 entered an order unsealing this civil forfeiture action (Docket No. 7), the Government proceeded to
19 give notice to those known to have an interest on December 3, 2010. *See* Mot. at 3. Accordingly,
20 the Court finds that the forfeiture claim as to the various items and currency is sufficient under 18
21 U.S.C. § 2323(a).

22 D. Procedural Requirements for Forfeiture

23 1. The Supplemental Rules

24 The Supplemental Rules for Certain Admiralty and Maritime Claims (“Supplemental Rules”)
25 govern judicial forfeitures of property. *See United States v. 5145 N. Golden State Blvd.*, 135 F.3d
26 1312, 1315 (9th Cir. 1998). Pursuant to the Supplemental Rules, the United States initiates
27 forfeiture proceedings by filing a complaint. Supp. R. C(2); Supp. R. G(2). Under both Rules C(2)
28 and G(2), the complaint must be verified and describe the property at issue with reasonable

1 particularity. Rule G(2) also requires that the complaint include sufficient factual allegations to
2 support a “reasonable belief” the United States will be able to meet its burden at trial. Supp. R.
3 G(2)(f).

4 If the property is located in the United States, the Government must then publish notice of
5 the forfeiture action either in a newspaper of general circulation in the district (Supp. R. C(4); Supp.
6 R. G(4)(a)(iv)(A)) or by posting a notice on a government forfeiture website for thirty consecutive
7 days. Supp. R. G(4)(a) (iv)(C). This notice must include the time for filing a claim. Supp. R.
8 G(4)(b)(ii)(B).

9 In addition to published notice, the United States must also provide direct notice of the
10 forfeiture action to potential claimants under Supplemental Rule G. The notice must be sent by a
11 means that may be reasonably calculated to reach the defendant. Supp. R. G(4)(b)(iii)(A). “Notice to
12 a person from whom the property was seized who is not incarcerated when notice is sent may be sent
13 to the last address that person gave to the agency that seized the property.” Supp. R. G(4)(b)(iii)(E).

14 2. The Local Admiralty Rules

15 In addition to the Supplemental Rules discussed above, the Government must also comply
16 with the local rules governing forfeiture proceedings, in particular, Admiralty Local Rules 6-1 and
17 6-2. The Admiralty and Maritime Local Rules “apply ... to proceedings that are governed by the
18 Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil
19 Procedure ... [including] statutory ... forfeiture proceedings analogous to maritime actions *in rem*.”
20 Admir. L.R. 1-2. Admiralty Local Rule 6-2 addresses entry of default judgment in *in rem* actions,
21 providing that default judgment may be entered in an *in rem* action if:

- 22 (a) Notice has been given as required by Admiralty Local Rule 6-1;
23 (b) The time to answer has expired, and
24 (c) No one has filed a verified statement of right or interest in the
property.

25 *See* Admir. L.R. 6-2; *see also* *U.S. v. \$7,250 United States Currency*, 2004 WL 1465716, 1 (N.D.
26 Cal. March 31, 2004) (applying Admir. L.R. 6-2 to determine whether plaintiff was entitled to entry
27 of default judgment in forfeiture action brought under 28 U.S.C. § 881(a)(6)); *U.S. v. 1999 Lexus*
28 *GS400*, 2007 WL 1056791, 3 (N.D. Cal. April 6, 2007) (applying Admir. L.R. 6-2 to determine

1 whether plaintiff was entitled to entry of default judgment in forfeiture action brought under 28
2 U.S.C. §§ 881(a)(6) & (11)).

3 Admiralty Local Rule 6-1(a) requires that the following notice be given in an *in rem* action:

- 4 (1) By publication as required in Fed. R. Civ. P. Supp. C(4);
5 (2) By service upon the master or other person having custody of the
6 property; and
7 (3) By service under Fed. R. Civ. P. 5(b) upon every other person who
has not appeared in the action and is known to have an interest in the
property.

8 Admir. L.R. 6-1(a). Failure to meet the notice requirements of Rule 6-1 is grounds for setting a
9 default aside. Admir. L.R. 6-1(c).

10 3. Adequacy of the Complaint

11 The Government filed a verified complaint that describes the property subject to forfeiture,
12 the specific forfeiture statute at issue and the facts supporting forfeiture. In addition, the Court has
13 already determined that the United States' claim under section 2323 is sufficient. The Court
14 therefore concludes that The Government has met the requirements set forth in the Supplemental
15 Rules, discussed above, for complaints in civil forfeiture actions.

16 4. Adequacy of Notice

17 The Court considers the pending motion for default judgment under Admiralty Local R. 6-1.
18 *See United States v. 1999 Lexus GS400*, No. C-05-1139-PJH (Docket Nos. 41, 42) (applying similar
19 pre-Supp. G rules and granting default judgment provided the Government demonstrates compliance
20 with notice requirements). Rule 6-1 requires the government to satisfy notice requirements set forth
21 in Supplemental Rules G(3) and G(4) to the FRCP. *See* Admiralty Local R. 6-1(a), 12-1 (Supp. R.
22 G governs civil forfeiture actions in rem arising from a federal statute). Supplemental Rule G(4)
23 requires that a published notice "(A) describe the property with reasonable particularity; (B) state the
24 times under Rule G(5) to file a claim and to answer; and (C) name the government attorney to be
25 served with the claim and answer." Fed. R. Civ. P. G(4)(a)(ii). The published notice requirement
26 may be satisfied by "posting a notice on an official internet government forfeiture site for at least 30
27 consecutive days." *Id.* at G(4)(a)(iv)(C).

1 To demonstrate satisfaction of the published public notice requirement, the Government has
2 filed a “Declaration of Publication” (Docket No. 19) by paralegal Carolyn Jusay, who states that the
3 attached notice was posted at www.forfeiture.gov for at least 30 days beginning on November 17,
4 2010. This notice complies with Supplemental Rule G(4).

5 Supplemental Rule G(4)(b) also requires notice to known potential claimants. Such notice
6 must state “(A) the date when the notice is sent; (B) a deadline for filing a claim, at least 35 days
7 after the notice is sent; (C) that an answer or a motion under Rule 12 must be filed no later than 21
8 days after filing the claim; and (D) the name of the government attorney to be served with the claim
9 and answer.” *Id.* at G(4)(b)(ii). It may be provided by any means reasonably calculated to reach the
10 potential claimant, and actual notice is sufficient.³ *Id.* at G(4)(b)(iii). The Government provides a
11 Certificate of Service (Docket No. 9), stating that the attorney for each of the criminal defendants
12 were served with, *inter alia*, a notice of forfeiture action, via certified mail on November 19, 2010.
13 The government does not provide a citation to the record for the notice, but it appears to be Docket
14 No. 8 (filed December 3, 2010) in this case.

15 The notice is dated November 17, 2010. That date, however, appears to be a signature date,
16 not necessarily the date notice is *sent*. Additionally the notice copies, in part, the text of Supp. R.
17 G(4)(b)(ii)(B): “All persons . . . who have received direct notice of the forfeiture action must file a
18 verified claim . . . thirty-five (35) days after the notice is sent . . .” Notice at 3:4-7. But it does not
19 actually state a date certain for the deadline. Although this notice does not strictly comply with the
20 Supplemental Rule G, these notices were sent to the attorneys for the criminal defendants consistent
21 with Supp. R. G(4)(b)(iii)(B). Even Ms. Chen’s attorney has noted that he had actual notice as of
22 December 3, 2010. There is nothing to suggest the criminal defendants – the persons most likely to
23 file claims – did not receive notice. Here, the Court finds the technical deficiencies of the notice
24 were harmless. Finally, the notice names an Assistant U.S. Attorney to be served, satisfying the

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27 ³ Actual notice, however, only precludes an argument for relief due to the failure to *send* a
28 notice, and does not necessarily obviate the requirement that the notice contains the required
content. See Supp. R. G(4)(b)(v).

1 final requirement. The Court accordingly finds that the Government provided sufficient notice to
2 known potential claimants.

3 5. Expiration of Time to Answer

4 Supplemental Rule G(5)(a)(ii)(A) governs the time for filing a claim. The rule requires that a
5 person who asserts an interest in or right against the property file a verified statement identifying the
6 interest or right within the time stated in the direct notice sent to the claimant under Rule G(4)(b).

7 An answer or a Rule 12 motion must be filed within twenty days of filing the claim. Supp. R.
8 G(5)(b). Here, notice of the civil forfeiture action was posted on an official government internet site
9 (www.forfeiture.gov) for at least 30 consecutive days, beginning on November 17, 2010, as is
10 required by Rule G(4)(a)(iv)(c) of the Supplemental Rules for Admiralty or Maritime Claims and
11 Asset Forfeiture Actions. No claim or other motion has been filed by any potential claimants in this
12 case other than those who filed as to Group (3) and Group (8) and Ms. Chen, and the time for a
13 responsive filing has expired. Thus, there is no reason to think any potential claimant will be
14 unfairly prejudiced by a default judgment as to the unclaimed defendant property herein.

15 **IV. CONCLUSION AND RECOMMENDATION**

16 For the foregoing reasons, the Court hereby **GRANTS** Ms. Chen's motions to (1) set aside
17 the entry of default as to the \$3,987 identified in defendant Group (6), and (2) appoint counsel for
18 Ms. Chen in this forfeiture case, and (3) be given leave to file an answer. She shall do so within 30
19 days of the date of this Order.

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1 The Court **RECOMMENDS** that the Government’s motion for entry of default judgment be
2 **GRANTED IN PART** and default judgment be entered against the defendant property other than
3 Group (3), Group (8), and the \$3,987 cash identified in Group (6).

4 Any party may file objections to the Report and Recommendation herein with the district
5 judge within ten days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P.
6 72(b); Civil L.R. 72-3.

7 This order disposes of Docket No. 38.

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9 IT IS SO ORDERED.

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11 Dated: May 3, 2011



EDWARD M. CHEN
United States Magistrate Judge