IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. $209,815 IN UNITED STATES CURRENCY, Defendant. JULIO FIGUEROA, Claimant.	Case No. C 14-0780 SC ORDER DENYING MOTIONS TO SUPPRESS, STRIKE, AND FOR SUMMARY JUDGMENT

I. INTRODUCTION

Now before the Court are several motions in this civil forfeiture case. First, Claimant Julio Figueroa moves to suppress evidence seized during his interaction with Drug Enforcement Agency ("DEA") Agents at the San Francisco International Airport ("SFO"). ECF No. 18 ("Mot. to Suppress"). Second, the Government moves for summary judgment, alleging Figueroa, "will be unable to adduce sufficient evidence to establish any affirmative defense," and, alternatively, lacks standing to contest the forfeiture. ECF No.

56 ("SJ Mot."). Finally, the Government moves to strike Figueroa's claim and for entry of default judgment for Figueroa's failure adequately to respond to special interrogatories. ECF No. 59 ("Mot. to Strike"), as amended ECF No. 62 ("Am. Mot. to Strike). These motions are fully briefed.[1] The Court conducted an evidentiary hearing on the motion to suppress and heard oral argument on the motion. ECF No. 78 ("Hr'g Tr."). The remaining motions are appropriate for resolution without oral argument under Civil Local Rule 7-1(b). As explained below the motions are all DENIED.

II. BACKGROUND

A. Findings of Fact on Motion to Suppress

The Court finds the following facts after the testimony of three witnesses at the evidentiary hearing: DEA Special Agents Leo Bondad and Paul Harris (collectively, "the Agents"), and Figueroa, as well as exhibits received at that hearing and other documents submitted in support of the motion.

This is a civil forfeiture case arising out of $209,815 in United States currency ("the Currency") seized from Claimant's checked luggage at the SFO. The currency was uncovered during the

[1] ECF Nos. 39 ("Suppress Opp'n"), 42 ("Suppress Reply"), 57 ("SJ Opp'n"), 64 ("SJ Reply"), 69 ("Strike Opp'n"), 75 ("Strike Reply"). After the Government filed its motion to strike, Figueroa served supplemental answers to interrogatories and filed notice that he intended to rely on those answers at the hearing on the motion for summary judgment. See ECF No. 68 ("Notice"). Finding no oral argument necessary, the Court vacated the motion hearing under Civil Local Rule 7-1(b). Nevertheless, the Court ordered supplemental briefing to address what impact, if any, Figueroa's supplemental answers would have on the then-fully briefed summary judgment motion. ECF Nos. 76 ("Figueroa Supp. Br."), 80 ("Gov't Supp. Br.").

course of a DEA interdiction involving Figueroa, a DEA Confidential Source, and five DEA Agents: Bondad, Harris, Boston Special Agent David O'Neill, San Francisco Group Supervisor Aaron Jenkins, and Task Force Agent Kevin O'Malley.

The investigation began with a tip by a confidential source that Figueroa had purchased a one-way ticket from New York's John F. Kennedy International Airport ("JFK") to SFO that night, and that Figueroa would arrive in SFO the next day with two checked bags. Further investigation revealed that the phone number used to book the ticket was connected in the DEA's Narcotics and Dangerous Drugs Information System ("NADDIS") to multiple marijuana trafficking investigations and that Figueroa had a prior arrest for narcotics possession. In order to identify Figueroa after leaving his flight, the Agents reviewed the photo associated with his California ID Card.

Before Figueroa's flight arrived, the Agents, dressed in street clothes, began surveillance of the gate. After Figueroa deplaned, the Agents surreptitiously followed him and observed him remove two large suitcases from the baggage carousel and begin walking toward the elevator. The Agents took the escalator to the second floor near where Figueroa would exit the elevator. One agent, Bondad, stood to the side of the elevator doors while the other, Harris, stood approximately 15 feet away from the elevators across an area of high pedestrian traffic. Neither Agent's position blocked Figueroa's most direct path to the terminal exit.

After Figueroa stepped off the elevator, Agent Bondad called out "Julio?" Figueroa turned, but did not respond immediately and continued walking toward the exit. Agent Bondad repeated "Are you

Julio?" and, in the same motion, showed his DEA credentials. Figueroa stopped and responded "No." Agent Bondad asked if Figueroa had identification, and Figueroa gave Agent Bondad his California ID card. Seeing that Figueroa's first name was, in fact, Julio, Bondad said "You are Julio. Why did you lie about your name?" and returned the ID card. Figueroa responded that he said "no" because he did not recognize Agent Bondad. Bondad then explained that he was a DEA agent, and told Figueroa he "wasn't in trouble" and was free to leave. Bondad stated that they were looking for people trafficking "dope" and asked Figueroa if he was carrying any narcotics or contraband with him. After Figueroa said no, Bondad asked, pointing out Agent Harris (who also displayed his DEA credentials), "would you mind if we search your bags?" Figueroa agreed, and Harris moved closer as Figueroa handed him one of the bags. Harris moved the bag to another public area of the terminal roughly 10 feet away with less pedestrian traffic. After kneeling down next to the bags, Harris noticed they were locked and asked Figueroa for the combination to unlock the bags. Figueroa gave the agents the combination, and upon unlocking the bags and searching the contents, the Agents discovered and seized the Currency, which was bundled in two backpacks inside each of Figueroa's bags.

At no time during the encounter was Figueroa advised of his right to decline consent to search. He was, however, told at the beginning of the encounter that he was free to leave. The Agents did not advise Figueroa that they would seek a warrant if he declined consent. It was uncontroverted that Figueroa and the Agents remained calm throughout the encounter, no guns were drawn,

Figueroa was never told he was under arrest, and no Miranda warnings were given.

B. Additional Background

The remaining facts come from the parties' submissions and in some cases remain in dispute.

After seizing the Currency, the Agents questioned Figueroa. Both parties agree Figueroa said "we can cut the chit chat now," and that "I didn't say [the Currency] was mine" but also that "I didn't say that [the Currency] wasn't mine," although they disagree about what Figueroa meant to communicate by these statements. Compare ECF No. 57-1 ("Figueroa Decl.") at ¶ 5, with SJ Mot. at 3, ¶ 9. Similarly, the parties disagree about the Agents' claim that during the search, Figueroa only asserted ownership over a bundle of a few thousand dollars wrapped in a deposit slip. Compare Figueroa Decl. at ¶ 6, with SJ Mot. at 3, ¶ 9.

Following the seizure of the currency, obtaining the Figueroa's contact information, and explaining the civil forfeiture process, the Figueroa left the airport. The Agents determined that the Currency consisted of 13,644 bills, 13,554 of which were in denominations of $20 or less. After placing the Currency in evidence bags and hiding it in an inconspicuous location, a trained narcotics dog, Jackson, altered that the Currency smelled of illegal drugs.

Subsequently, the Government filed a complaint for civil forfeiture under 21 U.S.C. Section 983 arguing that the Currency is forfeitable as "proceeds traceable" to the sale of illegal drugs. 21 U.S.C. § 881(a)(6). Figueroa intervened, filing a verified claim and answer required under the statute and asserting "an

ownership and possessory interest in, and the right to exercise dominion and control over, all the defendant property." ECF Nos. 11 ("Claim"), 14 ("Answer").

Shortly thereafter, the Government served special interrogatories under the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules") "to gather information that bears on the claimant's standing." Advisory Committee Note to Subd. 6 of Supp. R. G; see also Supp. R. G(6). Figueroa objected to the scope of these interrogatories, and the Government filed a motion to compel, which the Court granted. ECF No. 48 ("Mot. to Compel Order"). Relying chiefly on the Ninth Circuit's decision in United States v. $133,420, 672 F.3d 629 (9th Cir. 2012), the Court found that Figueroa's objections were unfounded, and his responses were insufficient, and ordered supplemental answers.

After Figueroa supplemented his answers, the Government moved to strike Figueroa's verified claim for failure to adequately respond to interrogatories. Mot. to Strike at 1; see also Supp. R. G(8)(c)(i)(A) (authorizing motions to strike for failure to answer special interrogatories). Following the Government's motion to strike, Figueroa once again supplemented his answers, although the Government argues they are still insufficient. Figueroa opposes the motion, reiterating his contention that the interrogatories exceed the scope permitted by the Supplemental Rules and arguing that, in any event, they are sufficient.

Finally, the Government has also moved for summary judgment on the forfeitability of the currency, the sufficiency of Figueroa's affirmative defenses, and Figueroa's alleged inability to show

standing to contest the forfeiture. Figueroa opposes.

III. LEGAL STANDARD

A. Motion to Suppress

The Fourth Amendment ordinarily bars the admission of evidence seized as fruit of an illegal search. Nix v. Williams, 467 U.S. 431, 441-42 (1984). This rule also applies in civil forfeiture proceedings. See One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, (1965); United States v. $186,416, 590 F.3d 942, 949 (9th Cir. 2010) ("The Fourth Amendment exclusionary rule applies to civil forfeiture proceedings."). Further, Rule G(8)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules") permits a claimant to move to suppress the use of the property seized as evidence provided that party has "standing to contest the lawfulness of the seizure . . . ."

1. Fourth Amendment Seizure

The Fourth Amendment "protects two types of expectations, one involving 'searches,' and the other 'seizures.'" United States v. Jacobsen, 466 U.S. 109, 121 (1984). A person may be "seized" within the meaning of the Fourth Amendment if an officer uses physical force or a "show of authority" to restrain an individual. Brendlin v. California, 551 U.S. 249, 254 (2007). When the intent of officers to restrain an individual is ambiguous, we look to whether "in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." Id. at 255 (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)); see also California v. Hodari D., 499 U.S. 621, 628

(1991).

The Ninth Circuit has enumerated several factors to guide the analysis of whether an encounter with police constitutes a seizure. Specifically, Courts should look to the number of officers, whether weapons were drawn, the location in which the encounter occurred, the officers' tone or manner, and whether the officers informed the person he could terminate the encounter. United States v. Washington, 490 F.3d 765, 771-72 (9th Cir. 2007).

2. Consent to Search

Similarly, the Fourth Amendment protects individual expectations of privacy from unreasonable searches. Nonetheless, "[a]n individual may waive his Fourth Amendment rights by giving voluntary and intelligent consent to a warrantless search of person, property, or premises." United States v. Torres-Sanchez, 83 F.3d 1123, 1130 (9th Cir. 1996). Voluntariness is determined by the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). In the Ninth Circuit, the Court's voluntariness analysis is driven by five factors, none of which is dispositive. United States v. Brown, 563 F.3d 410, 415 (9th Cir. 2009). These factors are: (1) whether the individual was in custody; (2) whether officers had their guns drawn; (3) if Miranda warnings were given; (4) if officers informed the individual that they had a right to decline consent; and (5) whether officers told the individual that a search warrant could be obtained. Id.; see also United States v. Ortiz-Flores, 462 F. App'x 759, 760 (9th Cir. 2011).

B. Motion for Summary Judgment

Entry of summary judgment is proper "if the movant shows that

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment should be granted if the evidence would require a directed verdict for the moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). The moving party bears the initial burdens of production and persuasion. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).

C. Motion to Strike

The Supplemental Rules permit the Government to file a motion to strike a verified claim "at any time before trial . . . for failing to" answer special interrogatories or for lack of standing. Supp. R. G(8)(c)(i)(A), (B). A motion to strike under the Supplemental Rules is "'something like a motion to dismiss where we can look to matters outside the pleadings, and where appropriate, allow for the possibility of conversion to summary judgment.'" United States v. $671,160.00, 730 F.3d 1051, 1055 (9th Cir. 2013) (quoting United States v. $6,976,934.65 Plus Interest, 478 F. Supp. 2d 30, 38 (D.D.C. 2007)) (internal alterations omitted).

III. DISCUSSION

A. Motion to Suppress

In support of his motion to suppress, Figueroa makes two arguments. First, he contends that his encounter with the Agents constituted an illegal seizure within the meaning of the Fourth Amendment, thus rendering the subsequent search unlawful. Alternatively, Figueroa argues that even if he was not seized, his consent to search was involuntary. Accordingly, Figueroa asks that

the currency be suppressed. Figueroa asserts, and the Government does not contest, that he has standing to bring the motion to suppress.

1. Seizure

Figueroa contends that he was seized within the meaning of the Fourth Amendment because the Agents lacked reasonable suspicion to detain him, and Agent Bondad's actions constituted a "show of official authority" which a reasonable person would not feel free to refuse. Mot. at 8. Specifically, Figueroa states that Bondad repeatedly calling out his name and displaying his badge would make "clear to any reasonable person in Figueroa's shoes[] not only that he was not free to leave, but that he, specifically, was the subject of an investigation." Id. at 9. The Government does not contend that the Agents had reasonable suspicion to detain Figueroa, instead arguing that because the encounter was consensual, Figueroa was never seized within the meaning of the Fourth Amendment.

The Government is right. No unlawful seizure took place in this case. Generally speaking, law enforcement officers are free approach individuals in a public place and ask them questions. See Florida v. Royer, 460 U.S. 491, 497 (1983); United States v. Woods, 720 F.2d 1022, 1026 (9th Cir. 1983). "The fact that the officer identifies himself as a police officer does not convert the encounter into a seizure requiring some level of objective justification." Woods, 720 F.2d at 1026. Instead, the key question is whether, "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554. Weighing the

totality of the circumstances, the Court concludes that a reasonable person would have believed he was free to leave.

Numerous facts weigh in favor of finding that a reasonable person would feel free to leave. First, and most compellingly, Figueroa was specifically told by Agent Bondad that he was not in trouble and was free to leave. The conversation between Figueroa and the agents happened in public and remained calm throughout. The Agents were dressed in plain clothes and, although they were armed, their weapons were never displayed. The Agents never touched Figueroa or otherwise blocked his path to the exit, and they remained a reasonable distance away at all times. Despite the characterization in Figueroa's briefing that he was "ordered" to produce identification, the testimony at the evidentiary hearing supports the Court's finding that Agent Bondad simply asked if Figueroa had identification -- a request to which Figueroa responded by handing over his ID card. After confirming his identity, Bondad immediately returned Figueroa's identification to him.

Figueroa argues that two facts constitute a show of authority sufficient to render this encounter a seizure. First, before displaying his badge, Agent Bondad called out "Julio," to which Figueroa turned, but did not respond and continued walking. Only after repeating his statement and simultaneously displaying his badge did Figueroa stop and respond to Bondad. Second, in calling out to Figueroa, Bondad used Figueroa's first name, indicating prior knowledge of his identity and communicating at least the inference that Figueroa was the target of a criminal investigation. Figueroa argues that as a result, (1) the Agents ignored his

intention to decline the encounter and leave the airport, and (2) by using his name, the Agents communicated that Figueroa, "specifically, was the subject of an investigation." Unfortunately for Figueroa, neither the cases he cites nor the weight of the relevant facts are in his favor.

First, the fact that Figueroa did not respond to Agent Bondad's initial attempt to get his attention does not render this encounter a seizure. Figueroa's response to Bondad's initial "Julio?", turning, but continuing to walk toward the exit, did not constitute an "unequivocal unwillingness to engage in further conversation . . . ." United States v. Hernandez, 27 F.3d 1403, 1406 (9th Cir. 1994) (quoting United States v. Wilson, 953 F.2d 116, 123 (4th Cir. 1991)). Instead, under these circumstances, the Court is persuaded that repeating "[a]re you Julio?" was reasonable. The encounter happened in a public place, no physical force was used, the Agents did not block Figueroa's exit or show their weapons, and remained calm and conversational throughout. Moreover, at the time Figueroa allegedly intended to decline the encounter -- after Agent Bondad initially said "Julio?" -- Bondad had not yet displayed his DEA credentials. As a result, Figueroa could not have known he was speaking to law enforcement, let alone unequivocally declined to speak with them.

Furthermore, the fact that Bondad displayed his identification and used Figueroa's name (rather than some other generic greeting) does not alter this conclusion. First, "[t]he fact that the officer identifies himself as a police officer does not convert the encounter into a seizure requiring some level of objective justification." Woods, 720 F.2d at 1026. Furthermore, as at least

one other court has found, using an individual's name in initiating a consensual encounter does not render that encounter a seizure. See United States v. Sealey, 30 F.3d 7, 10 (1st Cir. 1994) (finding a defendant was not seized when an officer approached him and called out "Hey Stephen, what's up?").

In short the Court is persuaded that under these circumstances a reasonable person would have felt free to leave. Hence, this encounter was not a seizure.

2. Consent

Having found that Figueroa was not seized within the meaning of the Fourth Amendment, the only remaining issue on the motion to suppress is whether Figueroa voluntarily consented to the search of his luggage. As discussed earlier, in the Ninth Circuit, the Court's voluntariness analysis is driven by five factors, none of which is dispositive. United States v. Brown, 563 F.3d 410, 415 (9th Cir. 2009). These factors are: (1) whether the individual was in custody; (2) whether officers had their guns drawn; (3) if Miranda warnings were given; (4) if officers informed the individual that they had a right to decline consent; and (5) whether officers told the individual that a search warrant could be obtained. Id.; see also United States v. Ortiz-Flores, 462 F. App'x 759, 760 (9th Cir. 2011).

Here, these factors favors weigh in favor of voluntariness. Having earlier found that Figueroa was not seized, he cannot be deemed to have been in custody. Because Figueroa was not in custody, "Miranda warnings [are] inapposite." Brown, 563 F.3d at 416 (quoting United States v. Patayan Soriano, 361 F.3d 494, 501 (9th Cir. 2004)). Furthermore, it is undisputed that the officers

were dressed in plain clothes, and their weapons were concealed throughout the encounter. While the Agents did not inform Figueroa of his right to decline consent to search, "this factor is not an absolute requirement for a finding of voluntariness," and in any event he was earlier advised that he was not in trouble and was free to leave. Id. (citing Schneckloth, 412 U.S. 248-49). Finally, while testimony differed on whether the Agents told Figueroa that a search warrant could be obtained if he declined consent, the Court finds Bondad and Harris' testimony on that point more convincing and concludes that the Agents never advised Figueroa that they would obtain a search warrant if he declined consent.

At the hearing on the motion to suppress, Claimant's counsel made much of the fact that the Agents had a consent form that could have been used to obtain a written waiver of Figueroa's Fourth Amendment rights, but nonetheless chose not to use it. He also extensively questioned the Agents regarding various DEA policies and guidelines, insinuating that these guidelines also encourage officers to obtain a signed consent form under circumstances like this. While this may be true, the Court finds it is nonetheless inapposite. The fact that officers could have obtained a more unassailable type of consent to search does not change the Court's conclusion that the consent they actually did obtain was voluntary.

As a result, the Court finds that Figueroa voluntarily consented to the search of his luggage. Having found that Figueroa was also not seized within the meaning of the Fourth Amendment, the motion to suppress is DENIED.

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B. Motion for Summary Judgment and Alternative Motion to Strike

Next, the Government moves for summary judgment on three issues. First, the Government argues that the Court should grant summary judgment on the issue of the forfeitability of the currency at issue. Second, the Government contends that summary judgment on the remaining issues is appropriate because Figueroa will not be able to provide sufficient evidence to establish any of his affirmative defenses. Third, and in the alternative, the Government moves to strike Figueroa's claim on the grounds that he has failed to establish standing to contest the forfeiture. Because standing is a "threshold matter," the Court will address the alternative motion based on standing first. See United States v. 5208 Los Franciscos Way, 385 F.3d 1187, 1191 (9th Cir. 2004).

The Ninth Circuit has yet to identify the burden on the issue of a forfeiture claimant's standing at the summary judgment stage. $133,420, 672 F.3d at 638. Nevertheless, the Ninth Circuit has articulated some applicable general principles. First, the claimant may not rely on mere allegations, but must instead "'set forth' by affidavit or other evidence 'specific facts . . . '" demonstrating his standing. Id. Second, the Court must ask itself whether "'a fair minded jury' could find that the claimant has standing on the evidence presented." Id. (quoting Liberty Lobby, 477 U.S. at 252). In doing so, the existence of minimal evidence is insufficient -- instead there must be sufficient evidence for the jury to find for plaintiff on the issue. Id.

The Government urges the Court to fill in any blanks left by the Ninth Circuit in this area with cases and principles derived

from Federal Rule of Civil Procedure 12(b)(1), which governs motions to dismiss for lack of subject-matter jurisdiction. This appears to be a novel argument, but because the general principles articulated by the Ninth Circuit in $133,420 resolve the issue in Figueroa's favor, there is no need to decide to what extent principles derived from the Rule 12(b)(1) context are applicable here.

First, as the Ninth Circuit has suggested, "[t]he fact that the property was seized from the claimant's possession, for example, may be sufficient evidence, when coupled with a claim of ownership, to establish standing at the summary judgment stage." Id. at 639 (citing United States v. $148,840.00, 521 F.3d 1268, 1277 (10th Cir. 2008)); see also United States v. $167,070, No. 3:13-CV-00324-LRH-VPC, 2014 WL 3697252, at *4 (D. Nev. July 23, 2014). That is precisely the circumstance at issue here. Figueroa's verified claim asserts and ownership interest in the Currency, and the Currency was undisputedly seized directly from his possession. Nevertheless, even if this is not enough to establish standing, Figueroa has responded to the Government's motion with an affidavit explaining that the Currency is his life savings, accumulated partially through legitimate employment as a freelance graphic designer and youth advocate on immigration issues, and partially through a cash inheritance from his grandmother. ECF No. 57-1 ("Figueroa Decl.") ¶¶ 2-3. Additionally, Figueroa explained that he was travelling with the Currency because he planned to invest it in a restaurant during a trip to New York, however, for unexplained reasons the deal did not come about and he returned home to San Francisco with the money.

Id. at ¶ 4.

The Government objects to this declaration, arguing that it is simply a "conclusory, self-serving affidavit, lacking detailed facts and any evidence," and therefore it is insufficient to create a genuine issue of material fact. See $133,420, 672 F.3d at 638 (quoting FTC v. Publ'g Clearing House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1997)). The Court disagrees. This case does not involve the "[u]nexplained naked possession of a cash hoard," United States v. $42,500, 283 F.3d 977, 983 (9th Cir. 2002) (quoting United States v. $321,470, 874 F.2d 298, 304 (5th Cir. 1989)), an equivocal statement that the claimant has an "ownership and/or a possessory interest" in the currency, $133,420, 672 F.3d at 640, or the use of the Fifth Amendment as a sword and shield. Id. at 640-41. On the contrary, the declaration reiterates Figueroa's ownership and possessory interest in the Currency, and explains both the circumstances by which he acquired the Currency and why he possessed it when it was seized. This, coupled with the fact that the Currency was seized directly from Figueroa's possession is enough to persuade the Court that, at this point, the record supports the conclusion that Figueroa has standing to contest the forfeiture.

Nevertheless, the Government contests Figueroa's declaration further, arguing that the Court should disregard it because Figueroa has resisted the Government's discovery requests and because his declaration contradicts statements he allegedly made to the Agents following the search of his luggage. The Government's first point is raised in the parallel motion to strike for failure to adequately respond to special interrogatories, and the Court

will address it there. The second point, that the declaration contradicts the Agent's version of events after the currency was seized, is irrelevant. A forfeiture claimant need not show that the evidence of his standing is undisputed or prove standing by a preponderance of the evidence at the summary judgment stage. Instead, the claimant must, as Figueroa has here, set forth specific facts, "which for the purposes of the summary judgment motion will be taken as true" to show that a reasonable jury could find the claimant has standing. $133,420, 672 F.3d at 638 (emphasis added). Because Figueroa has done that, the Government's motion is DENIED as to standing.

The remainder of the Government's motion seeks summary judgment on the question of whether the Currency is subject to forfeiture and on Figueroa's affirmative defenses. Under 21 U.S.C. Section 881(a)(6), seized currency is subject to forfeiture if (1) it is intended to be furnished in exchange for controlled substances, (2) it is proceeds "traceable" to such exchanges, or (3) it is otherwise used or meant to be used to facilitate violation of the Controlled Substances Act. Here, the Government argues the currency is either the proceeds of illegal drug sales or is traceable to such sales. As a result, the Government must show a connection between the Currency and illegal drug trafficking by a preponderance of the evidence. 18 U.S.C. § 983(c)(1); United States v. $493,850, 518 F.3d 1159, 1170 (9th Cir. 2008).

The problem with this motion is that it is premature. Because the Government filed this and its other motions so early in the case, there has not been a case management conference. As a result, Figueroa is currently barred from taking any discovery.

See Civ. L.R. 16-7. "Generally where a party has had no previous opportunity to develop evidence, and the evidence is crucial to material issues in the case, discovery should be allowed before the trial court rules on a motion for summary judgment." Program Eng'g, Inc. v. Triangle Pubs., Inc., 634 F.2d 1188, 1193 (9th Cir. 1980). Here, part of the basis for forfeitability is the alert of the drug dog, Jackson. As other cases have recognized, the records of a drug-sniffing dog and the testimony of the dog's handler are relevant to the reliability of the dog's alert. See, e.g., Florida v. Harris, 133 S. Ct. 1050, 1057-58 (2013); United States v. $10,700, 258 F.3d 215, 230 & n.10 (3d Cir. 2001). Similarly, Figueroa disputes large portions of the Agents' description of events. At a minimum, he suggests he should be permitted to obtain discovery regarding the Agents and to depose them prior to the Court addressing summary judgment. ECF No. 57-2 ("Burch 56(d) Decl.") at ¶¶ 4-5. The Government notes in its reply that it would not object to the Court allowing discovery into these matters. Reply at 3.

As a result, the Court finds that the Government's summary judgment motion is premature, and that the motion should be DENIED WITHOUT PREJUDICE. Fed. R. Civ. P. 56(d)(1). The Court will instead schedule a case management conference at which the parties and the Court can determine how best to proceed with discovery.

C. Motion to Strike

Finally, the Government has moved to strike Figueroa's claim on the grounds that he has failed to provide adequate answers to the Government's special interrogatories. In the context of civil forfeiture proceedings, Supplemental Rule G(6) permits the

government to serve special interrogatories that "broadly allow the government to collect information regarding the claimant's relationship to the defendant property . . ." United States v. $133,420, 672 F.3d 629, 642 (9th Cir. 2012). The Court may strike a verified claim for failure to respond to special interrogatories. Supp. R. G(8)(c)(i)(A).

The Court previously granted a motion to compel Figueroa to respond to the Government's special interrogatories. ECF No. 49 ("Order"). In that order, the Court rejected Figueroa's argument that because his verified claim and limited responses to the Government's special interrogatories were sufficient to establish his standing to contest forfeiture, no further responses could be compelled. Subsequently Figueroa twice supplemented his answers. ECF No. 82-1 ("Chart").

The Government's chief complaints at this stage are threefold. First, Figueroa continues to assert numerous boilerplate objections despite the Court's order to the contrary. Second, Figueroa's second supplemental answers were untimely and unauthorized. Third, his answers to most of the special interrogatories are insufficient. Figueroa disagrees with these arguments, instead arguing that the Court should reconsider its prior order because the Court misinterpreted the Supplemental Rules and the Ninth Circuit's decision in $133,420 in granting the Government's motion to compel. Figueroa also asserts that his answers are sufficient to satisfy both the requirements of the Supplemental Rules and the Court's prior order, and that striking his claim would be an inappropriately severe sanction at this stage.

As a preliminary matter, the Court declines to reconsider the

order on the motion to compel. Figueroa's chief objection to the order granting the motion to compel is that because Figueroa is asserting an ownership interest in the Currency, his standing to contest the forfeiture is clear. As the Court found above, Figueroa has provided sufficient detail to show his standing at this time. That said the Government may, on the basis of subsequent discovery, seek to rebut that evidence. See United States v. $574,840, 719 F.3d 648, 652-53 (7th Cir. 2013). By the Court's reading of the Supplemental Rules and applicable precedent, that does not relieve Figueroa of the obligation to respond to special interrogatories. See $133,420, 672 F.3d at 642 (rejecting the argument that "because a claimant can establish standing merely by asserting an interest in the property, and because the advisory committee's note to Supplemental Rule G(6) limits the interrogatories to questions 'bearing on a claimant's standing' it follows that Rule G(6) allows only questions regarding the identity of the claimant and the type of legal interest asserted."). Figueroa clearly disagrees, but disagreement with the Court's orders is not a basis for reconsideration. See Civ. L.R. 7-9(b)-(c).

As to the Government's first point, the Court agrees. The Court has little patience for the unjustified (but puzzlingly pervasive) practice of asserting numerous, often frivolous boilerplate objections with any discovery response. See United States v. $333,806.93, No. CV 05-2556 DOC (ANx), 2010 WL 3733932, at *2 (C.D. Cal. Aug. 30, 2010) ("In addition to being substantively incorrect, [Claimant's] stated objections to the . . . special interrogatories constitute cursory

boilerplate."); see also Sec. Nat'l Bank v. Abbott Labs., 299 F.R.D. 595, 596 (N.D. Iowa 2014) ("Today's 'litigators' . . . often object using boilerplate language containing every objection imaginable, despite the fact that courts have resoundingly disapproved of such boilerplate objections.") (footnote omitted). This is further underscored by the fact that the Court already overruled these objections in granting the Government's motion to compel. See $333,806.93, at *2 ("The insufficiency of boilerplate objections seems especially striking . . . given the Court's previous order specifically instructing [Claimant] to respond to the special interrogatories . . . .").

Despite that, Figueroa is correct in arguing that he has fully responded to some of the Government's interrogatories. Specifically, the Court finds that Figueroa has adequately answered interrogatories number 1, 2, and 5-9. This is a close question on some. For example, interrogatory number 2 seeks a description of the circumstances under which Figueroa acquired the Currency, and if acquired at different times, the circumstances under which each interest was acquired. While Figueroa has simply stated he acquired roughly half the Currency from a cash inheritance and the remainder from his employment, the Court finds this satisfactorily explains the "circumstances" by which he acquired the Currency. Explaining the "circumstances" of acquiring the Currency does not require, as it seems the Government believes, Figueroa to go through each specific instance during which he performed some freelance graphic design or consulting work and explain the project and identify the amount of money he received. Instead, the Court reads this request and others like it, for example number 5, as

only requiring a general description of the circumstances.

Similarly, in his response to interrogatory number 6, Figueroa states that he obtained a small amount of the Currency in paychecks from a prior employer, Instituto Familiar de la Raza, and provided two paystubs. ECF No. 68-1 ("Supplemental Answers") at 16. The Government's issue with Figueroa's response is somewhat unclear. The Government states Figueroa's answer is "incomplete" because Figueroa said "he obtained 'most of the defendant property in cash' and 'some small portion' in checks from Instituto Familiar," without offering more detail about the exact problem with this answer. Strike Reply at 7 (quoting ECF No. 68-1 ("Supplemental Answers") at 18). As best as the Court can discern, the Government's issue is that Figueroa responded without "identify[ing] the payor and payee of the check(s), the amount of the check(s), and the approximate date of the check(s)," as requested. Supplemental Answers at 16. However there are several problems with the Government's view. First, Figueroa has identified the payor (Instituto Familiar), the payee (himself), and the approximate dates during which he received the relevant checks (2007-2009). Second, even if Figueroa has not listed every check he received from Instituto Familiar or given the exact amount of those checks, "[o]n motion or on its own," the Court must weigh the burden of proposed discovery against its likely benefit. Fed. R. Civ. P. 26(b)(2)(C)(iii). Figueroa claims that the Currency is his life savings and that any checks form only a small portion of the Currency. Furthermore, Figueroa has already provided information about the payor, payee, and approximate dates of any relevant checks. Given those facts, the Court finds that the burden of

providing additional detail regarding checks that are in some cases as much as seven years old would be unduly burdensome in light of the relatively small probative value of such information. Accordingly the Court finds this response is also sufficient. If the Government can articulate some reason why the benefits of this information outweigh the burden then it may simply seek this information in the ordinary course of discovery.

At the same time, the Government is right that Figueroa's answers to some of the special interrogatories remain deficient in several respects. Specifically the Court finds Figueroa's answers to interrogatories numbers 3, 4, and 10 are insufficient. Figueroa argues interrogatories 3 and 10 need not be answered with anything but objections because they either (1) seek production of documents, and (2) exceed the scope of the Supplemental Rules because they seek information that does not bear on the claimant's standing. Not so. First, request number 3 asks Figueroa to identify any records or documents he has with specificity. Supplemental Answers at 6. While Figueroa argues that "[i]dentifying 'any' documents that you have 'with specificity' is asking for the production of documents." Opp'n at 17. This is obviously mistaken, and the Court has previously rejected any suggestion that the Government's interrogatories are actually requests for production. See Order at 5. Similarly, interrogatory number 10 asks Figueroa to identify people with information relating to his claims of ownership and possession of the Currency. While Figueroa contends this has no bearing on his standing, that is not the test. Instead, the Supplemental Rules permit interrogatories to probe the claimant's "relationship to the

defendant property . . . ." Supp. R. G(6). As the Ninth Circuit found, while endorsing a special interrogatory seeking, among other things, "the names, address and telephone numbers of the persons from whom the currency was obtained," and "witnesses, including the names addresses, and telephone numbers of such witnesses, to any of the transactions by which the defendant currency was obtained," such questions are "well within the scope of the rule." $133,420, 672 F.3d at 636 & n.5. Finally, the Court finds Figueroa's response to interrogatory number 4 is insufficiently detailed. Interrogatory number 4 seeks a list of sources of the Currency, including a list of persons from which the Currency was obtained and dates on which that occurred. While Figueroa has stated that he works as a "freelance consult[ant] and graphic design[er]," with "Art-based organizations," his response to interrogatory number 4 fails to identify those organizations or any other clients he may have had as a freelance graphic designer and how much, if known, he obtained from each source. Supplemental Answers at 12. Without more detail, the Court cannot conclude that Figueroa has adequately answered these interrogatories.

Nevertheless, the Court is not persuaded that the Government's suggested remedy -- striking Figueroa's claim as a sanction for failure to comply with the Supplemental Rules -- is appropriate at this time. As the advisory committee notes to the Supplemental Rules point out, "[n]ot every failure to respond to subdivision (6) interrogatories warrants an order striking the claim." Furthermore, this is not a case in which the claimant has completely failed to respond to special interrogatories, see United States v. $24,700, No. 2:10-cv-03118-GEB-DAD, 2012 WL 458412, at

*2-3 (E.D. Cal. Feb. 10, 2012), missed the deadline to respond by an unreasonable period of time, see United States v. $67,900, No. 2:13-cv-01173 JAM-AC, 2013 WL 6440211, at *2 (E.D. Cal. Dec. 9, 2013), or failed to respond after seemingly abandoning the litigation. See United States v. $10,000, No. 1:11-cv-01845-SKO, 2013 WL 5314890, at *4-5 (E.D. Cal. Sept. 20, 2013). On the contrary, Figueroa's answers, while inadequate in places, evince candor and effort.

Rather than strike Figueroa's claim at this point, the Court DENIES the motion to strike without prejudice and ORDERS Figueroa to serve supplemental answers to special interrogatories numbers 3, 4, and 10 within fourteen (14) days from the signature date of this order. If Figueroa's answers remain insufficient after supplementation, the Government may re-file its motion to strike.

V. CONCLUSION

For the reasons set forth above, the Court ORDERS as follows:

- Figueroa's motion to suppress is DENIED.
- The Government's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE. The Government may re-file a motion for summary judgment after the parties have had an opportunity to conduct more discovery. See Fed. R. Civ. P. 56(d).
- The Government's motion to strike for failure to provide adequate responses to special interrogatories is DENIED WITHOUT PREJUDICE.
- Figueroa is ORDERED to file supplemental answers to special interrogatories number 3, 4, and 10 within

fourteen (14) days. If he does not do so, or his answers remain insufficient after supplementation, the Government may re-file its motion to strike.

IT IS SO ORDERED.

Dated: December 8, 2014

UNITED STATES DISTRICT JUDGE