

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:09cv325

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 \$10,820.00 in UNITED STATES)
 CURRENCY,)
)
 Defendant.)
 _____)

ORDER

THIS MATTER is before the Court on the Government’s Response to Order of November 25, 2009 [Doc. 8].

In that Order, the Court requested that government counsel advise whether notice of the judicial forfeiture proceeding was provided to Susan Mitchell, the owner of the vehicle in which was found the currency which is sought to be forfeited. [Doc. 7, at 2-3, *citing* Rule G(4)(b)(i) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims (“The government must send notice of the action and a copy of the

complaint to any person who reasonably appears to be a potential claimant on the facts known to the government[.]”). The Court also requested that government counsel explain why notice was not provided, if in fact notice was not given to her. [Id., at 3 (“In the event that the Plaintiff has determined that notice was not necessary, facts in support of that determination should be placed in the record.”)]].

In response to the motion, counsel advises that separate notice was not provided to Susan Mitchell although she signed for the certified mail package addressed to her son, Carter Mitchell. [Doc. 8, at 1]. Obviously, her signature on a certified mail return receipt does not show that she opened and read the package addressed to her son.

In the response to the second directive to provide facts supporting the determination not to provide notice to Ms. Mitchell, counsel responded:

The factual allegations in Complaint and the attached Affidavit of Henderson County Detective Chris Denny support the conclusion that only Carter Mitchell was a person “who reasonably appears to be a potential claimant on the facts known to the government.”

[Id., at 1-2].

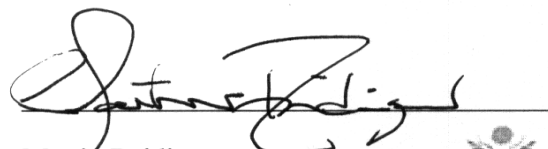
Prior to entering the November 25, 2009 Order, the undersigned read the Complaint which was verified by Detective Denny. Attached to the Government’s response is an affidavit from Detective Denny in which he

reiterates the allegations of the Complaint. [Doc. 8-1]. He further states that Mr. Mitchell did not claim the money belonged to anyone else and did not disclaim ownership of the money. [Id.].

Ms. Mitchell, however, is the owner of the automobile in which the currency was found. The Plaintiff has not refuted the logical inference that something found in a motor vehicle may potentially belong to the owner of the vehicle. The Court, therefore, finds that under these circumstances that notice should be provided to Ms. Mitchell.

IT IS, THEREFORE, ORDERED that on or before fifteen (15) days from entry of this Order, the United States shall provide notice to Susan Mitchell pursuant to the applicable statutes and rules and shall file proof of such notification.

Signed: January 11, 2010


Martin Reidinger
United States District Judge

