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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

\$9,016,830.76 Seized from First Internet Bank  
Account Ending in 4629;

\$465,936.99 Seized from Meridian Bank  
Account Ending in 8439;

\$33,932.39 Seized from Meridian Bank  
Account Ending in 2022;

\$22,018.81 Seized from Meridian Bank  
Account Ending 4101; and

\$150,000.00;

Defendants *in Rem*.

MEMORANDUM DECISION AND  
ORDER DENYING MOTION TO DISMISS

Case No. 2:22-cv-00070-TS

District Judge Ted Stewart

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This matter is before the Court on Claimant's Motion to Return Property<sup>1</sup> seized by the Federal Bureau of Investigation ("FBI") pursuant to an *in rem* action for forfeiture. For the reasons discussed below, the Court will deny the Motion.

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<sup>1</sup> Docket No. 10.

## I. BACKGROUND<sup>2</sup>

Allison Baver Entertainment (“ABE”) is a limited liability company formed in October 2019 by Allison Baver, who is the sole member and owner.<sup>3</sup> On April 25, 2020, Ms. Baver submitted a Paycheck Protection Program (“PPP”) loan application to Meridian Bank (“Meridian”), seeking up to \$10 million.<sup>4</sup> On or around May 11, 2020, Meridian accepted the PPP loan application and deposited \$10 million into a Meridian bank account owned by ABE.<sup>5</sup> On October 9, 2020, pursuant to a seizure warrant, the FBI seized \$9,014,832.76 from a First Internet Bank (“FIB”) account and \$521,888.19 from three Meridian Bank accounts.<sup>6</sup> The Government alleges the property was seized for its unlawful use in wire fraud,<sup>7</sup> loan application fraud,<sup>8</sup> and money laundering.<sup>9</sup>

## II. DISCUSSION

### A. MOTION TO DISMISS STANDARD

Claimant ABE moves to dismiss claims and return property under Fed. R. Civ. P. 12(b)(6). When evaluating a complaint under Rule 12(b)(6), the court accepts all well-pleaded factual allegations, as distinguished from conclusory allegations, as true and views them in the

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<sup>2</sup> Unless otherwise noted, the facts in this Order are taken from the Government’s Complaint and are presumed true for the purposes of this Order.

<sup>3</sup> Docket No. 2 ¶ 20.

<sup>4</sup> Docket No. 2 ¶ 23; Docket No. 10 at 3, 5.

<sup>5</sup> Docket No. 2 ¶ 23.

<sup>6</sup> *Id.* ¶¶ 40–41.

<sup>7</sup> 18 U.S.C. § 1343.

<sup>8</sup> *Id.* § 1014.

<sup>9</sup> *Id.* § 1957.

light most favorable to the non-moving party.<sup>10</sup> Plaintiffs must provide “enough facts to state a claim to relief that is plausible on its face,” which requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”<sup>11</sup> “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’”<sup>12</sup>

In considering a motion to dismiss, a district court considers the complaint, any attached exhibits, the “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”<sup>13</sup> The Court may also consider other documents “referred to in the complaint if the documents are central to the plaintiff’s claim and the parties do not dispute the documents’ authenticity.”<sup>14</sup>

The Claimant asks the Court to interpret documents and pleadings in a light favorable to ABE to find that the Government has not met its burden of proof regarding ABE’s alleged intent to defraud.<sup>15</sup> Such a request is not appropriate at this stage. At this juncture, when a disagreement in interpretation exists, the Court must view the arguments in the light most favorable to the non-moving party. The Government alleges that “Baver made or caused to be made . . . false statements on the Meridian Application,” including alleged misrepresentations of ABE’s monthly

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<sup>10</sup> *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997).

<sup>11</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>12</sup> *Id.* (quoting *Twombly*, 550 U.S. at 555, 557).

<sup>13</sup> *Commonwealth Prop. Advocs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 680 F.3d 1194, 1201 (10th Cir. 2011); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

<sup>14</sup> *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002).

<sup>15</sup> Docket No. 10 at 10.

payroll and number of employees.<sup>16</sup> At this stage, the Court finds that these allegations provide enough facts to avoid dismissal.

#### B. HEIGHTENED PLEADING STANDARD

The Claimant also asks the Court to dismiss the Government’s Complaint for failure to satisfy the heightened pleading standard required by Supplemental Rule G(2).<sup>17</sup> “In a civil *in rem* forfeiture action, the Government is required to file a verified complaint and satisfy standards and follow procedures contained in, among other sources, ‘Supplemental Rule G’ of the Federal Rules of Civil Procedure and 18 U.S.C. § 983(a)(4).”<sup>18</sup> Supplemental Rule G(2) lists what a forfeiture complaint must contain, including *inter alia* a description of the property to be forfeited, the location of the property, the statute under which forfeiture is brought, and “sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.”<sup>19</sup> Notably, the Government does not have the burden at this stage of proving each element of the underlying fraud.<sup>20</sup> At trial, the United States’ burden is “to establish, by a preponderance of the evidence, that the property is subject to forfeiture.”<sup>21</sup>

The Court finds that the Government has satisfied the heightened pleading standard contained in Supplemental Rule G(2). The Government has “describe[d] the property with

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<sup>16</sup> Docket No. 2 ¶ 25.

<sup>17</sup> Docket No. 10 at 7–10.

<sup>18</sup> *United States v. \$11,708.00 in U.S. Currency*, No. 2:18-cv-439-TC, 2018 WL 3862754, \*1 (D. Utah Aug. 14, 2018).

<sup>19</sup> Fed. R. Civ. P. Supp. G(2)(a)–(f).

<sup>20</sup> *See id.* G(8)(b)(ii) (“[T]he complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.”).

<sup>21</sup> 18 U.S.C. § 983(c)(1).

reasonable particularity,”<sup>22</sup> providing the exact amounts deposited to ABE by Meridian and detailing the transfers made by ABE into various accounts between May 11, 2020 and July 31, 2020.<sup>23</sup> The Complaint sets forth the legal grounds supporting forfeiture and provides the circumstances surrounding the seizure of the property.<sup>24</sup> Thus, the Government’s Complaint “suppl[ies] a factual basis for a reasonable inference that the property is subject to forfeiture.”<sup>25</sup> This is enough to discharge the Government’s burden under Supplemental Rule G(2).<sup>26</sup>


### III. ORDER

It is therefore

ORDERED that Claimant’s Motion (Docket No. 10) is DENIED.

DATED November 8, 2022.

BY THE COURT

  
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Ted Stewart  
United States District Judge

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<sup>22</sup> Fed. R. Civ. P. Supp. G(2)(c).

<sup>23</sup> Docket No. 2 ¶¶ 26–34.

<sup>24</sup> *Id.* ¶¶ 40–42.

<sup>25</sup> *United States v. \$39,000 In Canadian Currency*, 801 F.2d 1210, 1222 (10th Cir. 1986).

<sup>26</sup> *See, e.g., United States v. \$829,422.42 in U.S. Currency*, No. 3:08-cv-914, 2009 WL 1743753, at \*6 (D. Conn. June 18, 2009) (forfeiture complaint sufficient where it described money-laundering schemes and “state[d] that the bank account in the Claimant’s name was involved in these schemes”); *United States v. Contents of Nationwide Life Ins. Annuity Acct. No. 0961 in the Name of Steve E. Warshak*, No. 1:05-cv-196, 2008 WL 1733130, at \*3 (S.D. Ohio Apr. 10, 2008) (denying motion to dismiss forfeiture complaint that described the amount and source of funds sought and scheme to defraud); *United States v. 2121 Kirby Drive*, No. H-06-3335, 2007 WL 3378353, at \*4 (S.D. Tex. Nov. 13, 2007) (finding the complaint adequate where it “elucidate[d] the underlying offenses, the proceeds therefrom, and the substantial connection to the Defendant Properties”).