IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:17cv1410
	)	
U.S. Currency in the amount of $13,845.15 And All Funds in Bank Accounts in Attachment A,	)	
	)	
Defendant.	)	

UNITED STATES' RESPONSE TO AUGUST 16, 2018, ORDER

The United States submits this brief in response to this Court's Order of August 16, 2018, requesting an explanation of how the defendant property constitutes proceeds traceable to the crime of counterfeiting passports. Dkt. #13.

The Verified Complaint for Forfeiture In Rem alleges that the defendant property is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C). Dkt. #1 at 1. That statute provides for forfeiture of "any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense." Counterfeiting of passports is prohibited by 18 U.S.C. § 1543, as alleged in the Verified Complaint. *Id.* at 2. Violations of 18 U.S.C. § 1543 constitute "specified unlawful activity" under 18 U.S.C. § 1956(c)(7)(A) which includes any act constituting an offense listed in 18 U.S. C. § 1961(1), which includes 18 U.S.C. § 1543.

The term "proceeds" means property of any kind obtained, directly or indirectly, as the result of the commission of the offense, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense. In other words, "proceeds" means money or other property that would not have been obtained or retained but for the commission of the crime, and it includes other property that is traceable to the proceeds. *United States v. Cekosky*, 171 Fed. Appx. 785,787 (11th Cir. 2006) (because defendant would not have been able to open his bank account but for having committed an identity theft offense, the interest he earned on the deposits in that bank account represented the proceeds of the offense, even though the deposits themselves were made with legitimate funds); *United States v. DeFries*, 129 F.3d 1293, 1313 (D.C. Cir. 1997) ("because the but-for test usefully articulates the requirement of a nexus between the targeted property and the racketeering activity, we adopt it"); *United States v. Benyo*, 384 F. Supp. 2d 909, 914 (E.D. Va. 2005) (approving "but for" test); *United States v. Ivanchukov*, 405 F. Supp.2d 708, 712 (E.D. Va. 2005) (applying "but for" test); *United States v. Nicolo*, 597 F. Supp. 2d 342, 350 (W.D.N.Y. 2009) (applying "but for" test: all property defendant received as a consequence of a fraud scheme is forfeitable).

In this case, the connection between the property and the offense is described in the affidavit of Special Agent (SA) Matthew Frohlich of the Diplomatic Security Service, United States Department of State, filed in support of the civil forfeiture complaint. Dkt. #2. There, SA Frohlich explains that the defendant assets were all seized pursuant to seizure warrants issued by this Court. *Id.* at ¶1. In addition, an arrest warrant charging an individual referred to as "Cooperating Source 1" or "CS-1" with violating 18 U.S.C. 1543 (forgery or false use of passport) was signed on July 20, 2012. *Id.* at ¶4. After CS-1 was arrested, he agreed to cooperate with law enforcement and explained his role in the scheme was to receive forged

foreign passports and forged foreign driver's licenses sent from Eastern Europe to Virginia with a true photo of CS-1, but with fictitious names and dates of birth. *Id.* at ¶7. CS-1 then used these documents to open United States bank accounts in fictitious names. *Id.* at ¶7(b). CS-1's confederates then listed non-existent vehicles for sale on various online sites causing unwitting victims to wire money to the bank accounts in an attempt to purchase a vehicle. *Id.* at ¶7(c). The defendant funds in Attachment A are in the names of some of the same fictitious names delineated in the agent's affidavit. Compare Dkt. #1-1 with Dkt. #2 at ¶14. After the financial institution received the victim funds, the agent or another officer would prepare a seizure warrant to seize the funds. Dkt. #2 at ¶13.

This information is sufficient to establish a reasonable belief that the United States would be able to prove its case at trial, which is all that is required to a file a civil forfeiture complaint. *See* Supplemental Rule G(2)(f) of the Federal Rules of Civil Procedure which provides that the complaint must allege sufficient facts to support a reasonable belief that the Government will be able to meet its burden of proof at trial. This standard was adopted from the Fourth Circuit's case of *United States v. Mondragon*, 313 F.3d 862 (4th Cir. 2002). *See also United States v. Aguilar*, 782 F.3d 1101, 1108-09 (9th Cir. 2015) (the standard for filing a complaint is set forth in Rule G(2)(f) and is not onerous; reviewing the Committee Note and *Mondragon* and holding the complaint need only meet the reasonable belief standard and allow the claimant to make a response); *United States v. $79,650 Seized from ... Afework*, 2009 WL 331294, *2 (E.D. Va. Feb. 9, 2009) (to withstand a motion to dismiss, the complaint need only satisfy Rule G(2)(f), which carries forward the "reasonable belief" standard from *Mondragon*).

Because the United States complied with Rule G's notice requirements and no one filed a claim, default judgment is proper. *United States v. Approximately $88,029.00 in U.S Currency*,

2017 WL 1273768, *7 (E.D. Cal. Mar. 17, 2017) (granting default judgment after finding notice was proper and Government's case appeared to have merit; "although it is always preferable to decide a case on its merits, it is not practicable here where no claimant has appeared to oppose the Government's motion for entry of default judgment"; the Government should not have to expend resources litigating an action in which all potential claimants have declined to appear); *United States v. Real Property … 929 Clay Street,* 2015 WL 3547256, *3 (N.D. Cal. June 5, 2015) (failure to enter default judgment would prejudice the Government by forcing it to expend time and resources litigating a case in which it had no opponent); *United States v. Bersa, Model: Thunder,* 2015 WL 1503652 (E.D. Tex. Mar. 31, 2015) (granting default judgment based on finding that Government complied with Rule G(4), and no one filed a claim); *United States v. $18,592.00 of $35,037.00 in U.S. Currency,* 2013 WL 3095519 (N.D. Tex. June 20, 2013) (the court's refusal to enter a default judgment when no one files an answer to the complaint would prejudice the Government by requiring it to expend further time and effort in a case with no opposing party, and may leave it altogether without recourse; moreover, failure to answer means that all allegations in the complaint – including the allegation that the money is drug proceeds – are admitted; but court nevertheless reviews facts and finds them sufficient to establish forfeitability); *United States v. One 2007 Toyota Camry,* 2013 WL 5074147 (N.D. Cal. Sept. 13, 2013) (under the Local Rules, Government is entitled to a default judgment upon showing that it provided notice in accordance with Rule G(4), and that no one has filed a claim); *United States v. 2 North Adams St.*, 2011 WL 6714756, *1 (D.D.C. Mar. 30, 2011) (to obtain default judgment, Government showed that it complied with Rule G); *United States v. 47 W. Oakview Road,* 2011 WL 304972, *1 (W.D.N.C. Jan. 28, 2011) (after determining that the Government gave proper notice, court enters default judgment against "all persons and entities in the world").

Therefore, the Government urges the Court to enter a default judgment and order of forfeiture for the defendant property.

Respectfully submitted,

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By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

/s/

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