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7
 8 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA
 9

10 UNITED STATES OF AMERICA,
 11 Plaintiff,
 12 v.
 13 \$1,106,775.00 IN UNITED STATES
 CURRENCY,
 14 Defendant.

3:20-CV-158-MMD-WGC

**United States of America’s Reply to
 Claimants’ Opposition to Plaintiff’s
 Motion to Compel Responses to Special
 Interrogatories**

15
 16 **Reply and Memorandum of Points and Authorities**

17 **I. Introduction**

18 Plaintiff United States of America submits this Reply to Claimants Oak Porcelli’s and
 19 Gina Pennock’s Opposition to Plaintiff’s Motion to Compel Responses to Special
 20 Interrogatories. Plaintiff makes this reply pursuant to Local Rules LR 7-2(b) and LR 7-3(b).

21 In Plaintiff’s Motion to Compel, it argues that Porcelli has raised disallowed
 22 objections to certain of Plaintiff’s special interrogatories and, therefore, should be compelled
 23 to fully and completely respond to the objected-to special interrogatories. Claimants oppose
 24 Plaintiff’s Motion, principally arguing that Porcelli has conclusively satisfied his burden on
 25 standing and, thus, is not obligated to provide further responses to Plaintiff’s special
 26 interrogatories under Ninth Circuit precedent. *See* Opp. Mot. Compel, ECF No. 31, 2:14-18;
 27 3:21 to 4:2; 5:14-17; 8:6-10; 9:19-22. For the reasons that follow, Claimants’ arguments are
 28 unpersuasive and this Court should grant Plaintiff’s Motion.

1 **II. Argument**

2 A. Special Interrogatories and Standing in the Ninth Circuit

3 Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions
4 (Supp. R.) G(6) permits the government to serve a claimant with special interrogatories. In
5 *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 642-43 (9th Cir. 2012), the Ninth
6 Circuit addressed the scope of Supp. R. G(6) and determined that it “broadly” allows the
7 government to inquire into a claimant’s relationship to the defendant property, including the
8 circumstances surrounding the inception of a claimant’s interest.

9 Here, Claimants argues that the *\$133,420.00* court’s language about the scope of Supp.
10 R. G(6), and the court’s endorsement of the special interrogatory at issue in that case, was
11 premised solely on an ambiguity in the claimant’s judicial claim. *See* ECF No. 31, 4:6 to
12 5:17. Claimants contend that their view is in accord with other decisions in the Ninth Circuit.
13 *See* ECF No. 31, 7:6 to 8:15. Claimants further argue that Porcelli, unlike the *\$133,420.00*
14 claimant, has unquestionably demonstrated his standing, exempting him from providing
15 additional details about his claimed interest. *See* ECF No. 31, 5:18 to 6:1; 8:6-10; 13:10-14;
16 14:16 to 15:2. Plaintiff will address those arguments in turn.

17 *i. The Ninth Circuit’s decision in \$133,000.00 is not limited to situations where a*
18 *claimant fails to demonstrate standing at the pleading or summary-judgment stage.*

19 Claimants’ argument that in the Ninth Circuit special interrogatories are only
20 appropriate where a claimant fails to demonstrate standing under the motion-to-dismiss or
21 summary-judgment standard is unpersuasive. Claimants’ reading of *\$133,420.00* is
22 unsupported by the language of the decision and is inconsistent with precedent.

23 In *\$133,420.00*, the Ninth Circuit found (in Section IV.A) that the claimant’s failure
24 to specify in his claim whether he claimed an ownership versus a possessory interest in the
25 property justified the district court’s striking of his claim. 672 F.3d at 639-40. The reason that
26 the Ninth Circuit considered the special-interrogatory issue (in Section IV.C) was because
27 the claimant argued that his response to that special interrogatory—which, unlike his claim,
28 did assert an unequivocal ownership interest—supported his standing and should not have

1 been stricken by the district court. *See id.* at 636–37; 642–43.

2 After analyzing the scope of Supp. R. G(6), the court pointed to the deficiency in the
3 claim and the substantial ambiguity that it created about ownership status. *Id.* The court was
4 providing one example of why the special interrogatory was appropriate, not setting down a
5 limiting principle for the singular situation when the government could use special
6 interrogatories. *See United States v. Real Property Located at 17 Coon Creek Rd., Hawkins Bar*
7 *California, Trinity Cnty.*, 787 F.3d 968, 974, 977 (9th Cir. 2015) (noting that the government’s
8 special interrogatories were “presumably relevant”—even though the claimant’s standing
9 was not in dispute—because the special interrogatories addressed issues related to the
10 claimant’s affirmative defense); *United States v. \$209,815 in U.S. Currency*, Case No. C 14-0780
11 SC, 2015 WL 537805 (N.D. Cal. Feb. 9, 2015), at *2-3 (explaining that \$133,000.00 had
12 “rejected the theory” that a claimant’s demonstration of standing at the initial or
13 intermediate “stage of the proceedings” renders special interrogatories unnecessary).

14 Claimants’ argument is also inconsistent with the \$133,420.00 court’s reasoning.
15 When interpreting the scope of Supp. R. G(6) and determining that the special interrogatory
16 fell within that scope, the \$133,420.00 court stated: “[The claimant’s] limited interpretation
17 would make [Supp. R.] G(6)(a) superfluous because [Supp. R.] G(5)(a)(i)(B) already requires
18 the verified claim to ‘identify the claimant and state the claimant’s interest in the property.’”
19 672 F.3d at 643. The court viewed special interrogatories as addressed to something distinct
20 from, and in addition to, the information to be contained in a verified claim. *See id.* The court
21 explained that to read Supp. R. G(6) in the manner argued by the claimant would render the
22 rule “entirely redundant.” *Id.* (internal quotation marks omitted).

23 Here, Claimants invite this Court to read Supp. R. G(6) in a way that would
24 compromise the need for the subsection, contrary to canons of statutory interpretation. *See,*
25 *e.g., Boise Cascade Corp. v. U.S. Env’tl. Prot. Agency*, 942 F.2d 1427, 1432 (9th Cir. 1991) (“[W]e
26 must interpret statutes as a whole, giving effect to each word and making every effort not to
27 interpret a provision in a manner that renders other provisions of the same statute
28 inconsistent, meaningless or superfluous.”). If, as Claimants argue, special interrogatories

1 are appropriate only when a claimant files an objectively deficient judicial claim or where a
2 claimant's standing is demonstrably wanting, then Supp. R. G(6)(a) would be unnecessary.
3 The government would have no need to issue special interrogatories, since it could file either
4 a motion to strike under Supp. R. G(8)(c)(i)(A) for the claimant failing to comply with Supp.
5 R. G(5) or a motion to strike under Supp. R. G(8)(c)(i)(B) for lack of standing. Under
6 Claimants' interpretation of when special interrogatories could be used, special
7 interrogatories would seek unnecessary information, since a threshold basis would always
8 exist on which the government could file a motion to strike under Supp. R. G(8)(c).

9 Claimants' appeal to other Ninth Circuit decisions is also unavailing. In *United States*
10 *v. \$295,726.42 in Account Funds Seized*, 279 F. Supp. 3d 1050, 1055 n.5 (C.D. Cal. 2018), and
11 *\$209,815*, 2015 WL 537805 at *2-3, the courts expressly found that *\$133,420.00* rejected the
12 theory that special interrogatories become superfluous if a claimant can demonstrate
13 standing under the pleading or summary-judgment standard. As for Claimants' citations to
14 *17 Coon Creek Rd.* and *United States v. \$999,830.00 in U.S. Currency*, 704 F.3d 1042 (9th Cir.
15 2012), those cases, respectively, concerned the procedures governing a Supp. R. G(8)(c)(i)(A)
16 motion to strike and the standard used to determine standing at the motion-to-dismiss stage.
17 *See* 787 F.3d at 972, 975-76; 704 F.3d at 1042-43. Neither case directly interpreted the scope
18 of Supp. R. G(6). Moreover, the *17 Coon Creek Rd.* court noted that notwithstanding the
19 parties' agreement that the claimant had standing, the government's special interrogatories
20 remained "presumably relevant" because the claimant asserted an innocent owner defense
21 and the special interrogatories were addressed to ownership. *See* 787 F.3d at 974, 977.
22 Turning to Claimants' related argument that "District Courts within the Ninth Circuit . . .
23 have similarly and accordingly refused to bog a case down" pending a claimant's special-
24 interrogatory responses, they support that argument solely by citing a Tenth Circuit district
25 court case. *See* ECF No. 31, 8:16 to 9:2.

26 Finally, on the topic of precedent from Ninth Circuit courts, Claimants attack
27 *\$295,726.42* as "lack[ing] any persuasive value." *See* ECF No. 31, 10:5-9. Claimants primarily
28 argue that the court's decision (1) was noncompliant with *17 Coon Creek Rd.*; and (2)

1 amounted to an indefensible determination that the claimant lacked standing, given the
2 currency's seizure from his bank account. *See* ECF No. 31, 9:24 to 11:2.

3 Regarding (1), the court fully complied with the holding of *17 Coon Creek Rd.* In *17*
4 *Coon Creek Rd.*, the court held that it is reversible error to (a) strike a claim under a lack-of-
5 standing theory if a claimant fails to comply with Supp. R. G(6); or (b) strike a claim under
6 a discovery-sanction theory without granting an opportunity to cure. *See* 787 F.3d at 973,
7 979. In line with the Ninth Circuit's decision, the \$295,726.42 court provided the claimant
8 with a chance to cure his noncompliance with Supp. R. G(6) before formally striking his
9 claim as a discovery sanction under Supp. R. G(8)(c)(i)(A). *See* 279 F. Supp. 3d. at 1054-56.

10 Regarding (2), the government was not seeking forfeiture of a bank account but,
11 instead, money seized from one. The claimant's special-interrogatory response—merely that
12 he was the owner of the account and the money in the account, *see id.* at 1052-53—provided
13 no information allowing the government to test his money-ownership claim. The court's
14 decision was not premised on a lack-of-standing theory. *Id.* at 1054-56. However, the court
15 was right to allow the government to inquire into issues of standing, because the record
16 revealed ambiguity about the claimant's ownership status vis-à-vis the money,
17 notwithstanding that he was the owner and signatory of the bank account. *See id.* at 1052,
18 1054. *See generally United States v. JP Morgan Chase Bank Account Number Ending in 8215, 835*
19 *F.3d 1159, 1165, 1167-68 (9th Cir. 2016)* (finding that two claimants lacked standing as
20 owners over funds seized from accounts in their names, due to record ambiguities about
21 ownership, but had standing as possessors (subject to later reexamination), based on a third-
22 party declaration that they were asked to safe keep the money).

23 *ii. Claimants' standing remains significantly at issue in this case.*

24 Claimants' argument that they have clearly established their standing, such that
25 special interrogatories are unnecessary, is without merit. As discussed in Section II.A.i and
26 Plaintiff's Motion, a claimant's ability to establish standing under the motion-to-dismiss or
27 summary-judgment standard does not vitiate the government's right to inquire into the
28 details of the claimant's asserted interest. *See* Mot. Compel, ECF No. 28, 11:1 to 13:21.

1 However, even were this Court to accept Claimants' contrary argument on that point, its
2 foundation—that Claimants have definitively proven standing—is unsound. Because
3 Claimants focus their arguments on the summary-judgment standard, Plaintiff will
4 concentrate its responses there, except to note here that under Supp. R. G(8)(c)(i)(B) a
5 claimant must satisfy a higher standard if there exists a genuine issue of material fact on
6 standing. *See* Supp. R. G, Advisory Committee Note, Subdivision (8)(c)(ii); ECF No. 28,
7 12:24 to 13:8.

8 In *\$133,420.00*, the Ninth Circuit stated: “The fact that property was seized from the
9 claimant’s possession, for example, may be sufficient evidence, when coupled with a claim
10 of ownership, to establish standing at the summary judgment stage.” 672 F.3d at 639. Later,
11 the court applied that proposition to the facts of the case. *Id.* at 640. The court explained that
12 had the claimant’s assertion of an ownership interest from his special-interrogatory response
13 not been stricken, then his “possession of the currency at the time it was seized” would “be
14 enough to establish [his] standing for purposes of a motion for summary judgment.” *Id.*
15 Citing that language, Claimants conclude that Porcelli’s possession of the currency at the
16 time of seizure coupled with his assertion of ownership in his Judicial Claim renders his
17 standing unassailable. *See* ECF No. 31, 2:16-18; 3:9-20.

18 Neither the *\$133,420.00* decision nor any summary-judgment decision on standing
19 was or is made in a vacuum. In *\$133,420.00*, the currency was seized from the claimant’s car
20 and “when asked whether the money was his” the claimant provided “no clear answer.” 672
21 F.3d at 635-36. Under those facts, the court found that the claimant’s possession of the
22 currency at the time of its seizure constituted some evidence of ownership. *See id.* at 640.
23 There is nothing exceptional about that conclusion. The law routinely infers ownership of
24 personal property from an individual’s possession of it. *See, e.g., Allen v. County of Lake*, 71 F.
25 Supp. 3d 1044, 1055 (N.D. Cal. 2014) (“Absent any evidence otherwise, it is reasonable to
26 infer that medical marijuana patients who cultivate plants on land just outside their homes
27 also own those plants. The plants are therefore presumed to be [their] personal property . . .
28 .”); *In re County of Orange*, 219 B.R. 543, 556 (Bankr. C.D. Cal. 1997) (explaining that the

1 state Uniform Commercial Code’s burden-of-proof section “presumes that the person who
2 possesses [a] security, on presentment, is the proper owner who is entitled to payment” until
3 the validity is properly challenged).

4 It is also true that the general standards applicable to summary-judgment motions—
5 under Fed. R. Civ. P. 56—apply in civil actions for forfeiture in rem. *See \$133,420.00*, 672
6 F.3d at 638; *United State v. Real Property Located at 5294 Bandy Road, Priest River, Bonner Cty.,*
7 *Idaho*, No. 2:12-cv-00296-CWD, 2014 WL 5513748 (D. Idaho Oct. 31, 2014), at *4. Where
8 a movant asserts that there is no genuine issue of material fact, pointing to an absence in the
9 record, the burden shifts to the non-movant. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323
10 (1986). To show the existence of a genuine issue of material fact and defeat the motion, the
11 non-movant must then specify contradictory evidence. *See Lujan v. Nat’l Wildlife Fed’n*, 497
12 U.S. 871, 888 (1990) (“[A] District Court must resolve any factual issues of controversy in
13 favor of the non-moving party only [if] . . . the facts specifically averred by that party
14 contradict facts specifically averred by the movant” (internal quotation marks omitted)).

15 Here, Claimants treat the Ninth Circuit’s identification of a common fact pattern that
16 raises an inference of ownership—an individual’s possession of property at the time of its
17 seizure—as a pronouncement that any incidence of that fact pattern defeats a summary-
18 judgment motion challenging a claimant’s standing as an owner. The facts of this case
19 materially differ from those in *\$133,420.00*. During the traffic stop, Porcelli disclaimed the
20 majority of the currency and identified 401 Productions as its owner. *See Compl.*, ECF No.
21 1, 8:16-21. On that record, were Plaintiff to file a Supp. R. G(8)(c)(i)(B) summary-judgment
22 motion to challenge Porcelli’s standing, the evidence would be that Porcelli was in possession
23 of currency that he stated did not belong to him but did belong to 401 Productions. There
24 would be no presumption—and, by extension, no necessary evidence—of ownership arising
25 from his possession because his own words would foreclose any reasonable inference that he
26 was the owner. *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (explaining
27 that a dispute about a material fact is genuine only if “a reasonable jury could return a verdict
28 for the nonmoving party”). And, his later assertion of an ownership interest in his Judicial

1 Claim would be insufficient evidence, without more, to demonstrate standing as an owner.
2 *See* \$133,420.00, 672 F.3d at 638.

3 Finally, Claimants contend that a summary-judgment decision is unjustified without
4 “substantive discovery.” ECF No. 31, 13:4-14. Plaintiff has made no Supp. R. G(8)(c)(i)(B)
5 motion for summary judgment. Plaintiff has discussed summary judgment in its filings with
6 reference to the standards applicable to a Supp. R. G(8)(c)(i)(B) motion to demonstrate the
7 relevance of Plaintiff’s special interrogatories. In any event, such a motion would be
8 addressed to a narrow procedural (as opposed to merits) issue, and because, on this record,
9 Claimants would be required to produce “facts that generally are within the knowledge of
10 [Claimants], not [Plaintiff],” it is unclear why Claimants would presently be entitled to
11 substantive discovery, *see Stanford v. Home Depot USA, Inc.*, 358 Fed. App’x. 816, 819 (9th
12 Cir. 2009), assuming Plaintiff’s filing of such a motion.

13 B. Decisions from the Seventh and Eighth Circuits

14 In Claimants’ Opposition, they focus on two cases, from the Seventh and Eighth
15 Circuits, to support their argument that once a claimant establishes standing the government
16 is no longer entitled to pose special interrogatories. *See* ECF No. 31, at 5:14 to 7:5. Those
17 cases—*United States v. Funds in the Amount of \$239,400*, 795 F.3d 639 (7th Cir. 2015), and
18 *United States v. \$154,853.00 in U.S. Currency*, 744 F.3d 559 (8th Cir. 2013)—do not advance
19 Claimants’ arguments.

20 For the reasons discussed in Section II.A.i, the proposition of law that Claimants’
21 derive from those cases—that special interrogatories are unnecessary once a claimant
22 establishes standing under the motion-to-dismiss or summary-judgment standard—is not the
23 law in the Ninth Circuit. In the Ninth Circuit, special interrogatories are “broadly” addressed
24 to ownership issues, including those pertaining to ownership-related defenses (which
25 Claimants have raised in this case, *see* Joint Answer, ECF No. 20, 9:9-15). *See 17 Coon Creek*
26 *Rd.*, 787 F.3d at 974, 977; \$133,420.00, 672 F.3d at 642.

27 Two Ninth Circuit district courts have found Claimants’ theory incompatible with
28 Ninth Circuit case law. In \$209,815, the claimant made an identical argument to Claimants’

1 argument here, citing *\$154,853.00*. The *\$209,815* court did “not believe the Ninth Circuit’s
2 logic in *\$133,420* c[ould] be reconciled with . . . *\$154,853*.” 2015 WL 537805 at *2.
3 According to the court, “[c]oncluding, as the Eighth Circuit did, that the obligation to
4 respond to special interrogatories ends as soon as the claimant has responded sufficiently to
5 demonstrate standing would make responses to special interrogatories the Ninth Circuit has
6 specifically endorsed as well within the scope of [Rule G(6)] optional.” *Id.* (second alteration
7 in original) (internal quotation marks omitted). In *\$295,726.42*, the claimant cited *\$154,853.00*
8 “for the proposition that if a claimant has standing to contest the forfeiture, then special
9 interrogatories [are] unnecessary.” *See* 279 F. Supp. 3d at 1055 n.3. According to the court,
10 “the Ninth Circuit rejected this theory.” *Id.*

11 In *\$154,853.00*, it is true that the Eighth Circuit determined that because the claimant
12 had standing as to part of the currency “special interrogatories were unnecessary to
13 determine his standing as to” that property. 744 F.3d at 564. However, Claimants’ quotation
14 from that case omits something vital. In *\$154,853.00*, the government agreed that the claimant
15 “[a]bsolutely” had standing as to the property. *Id.* (internal quotation marks omitted). The
16 Eighth Circuit’s full quotation reads: “If [the claimant] had already established standing as
17 to the [property], as the government concedes, then special interrogatories were unnecessary
18 to determine his standing as to that currency.” *Id.*

19 Last year, the Eighth Circuit revisited the holding of *\$154,853.00* and made the above
20 qualification explicit: “We have previously held that where the Government concedes that a
21 claimant has established standing, no special interrogatories are necessary to test that issue .
22 . . .” *United States v. \$284,950.00 in U.S. Currency*, 933 F.3d 971, 974-75 (8th Cir. 2019). The
23 Eighth Circuit affirmed the district court’s striking of the claimant’s judicial claim for failure
24 to comply with an order to supplement his special interrogatories. *Id.* at 973-75.
25 Notwithstanding the district court’s determination that the claimant had “satisfied
26 Supplemental Rule G(5)’s initial threshold for standing,” the Eighth Circuit found that since
27 “the Government ha[d] not conceded [the claimant’s] standing and actively contest[ed] it”
28 special interrogatories were appropriate. *Id.*

1 Claimants' appeal to Eighth Circuit precedent does not support its arguments. First,
2 Plaintiff has not conceded Claimants' standing, and for that reason the facts of this case
3 materially differ from those in *\$154,853.00*. Second, the current state of the law in the Eighth
4 Circuit is largely in line with the law in the Ninth Circuit, in that even where a claimant
5 makes an initial demonstration of standing, special interrogatories remain relevant to test the
6 claimant's ultimate standing.

7 Turning to the Seventh Circuit, the *\$239,400* court determined that the claimants had
8 established standing under the summary-judgment standard and, as a result, special
9 interrogatories were unnecessary. *See* 795 F.3d at 645 n.3. However, the claimant in that
10 case, at the time of the seizure, both possessed the property and unambiguously asserted that
11 he was the owner. *Id.* at 640-41. The court noted that "[t]his is not a case where a claimant
12 asserts ownership of a painting stolen from the National Gallery in Washington." *Id.* at 645.
13 The court derived that quote from *United States v. Funds in the Amount of \$574,840*, 719 F.3d
14 648, 653 (7th Cir. 2013), where it had similarly noted: "It's not as if the claimants were
15 claiming property obviously not theirs" Yet in *\$574,840*, the court found that special
16 interrogatories were warranted because "the government needed discovery in order to
17 determine whether the claimants had valid claims." 719 F.3d at 653.

18 Plaintiff questions whether the Seventh Circuit would have deemed the claimants in
19 *\$239,400* to have demonstrated standing under the summary-judgment standard had they,
20 like Porcelli, affirmatively disclaimed ownership of the currency, in favor of another, at the
21 time of its seizure. Given the Seventh Circuit's decision in *\$574,840*—that an absence of
22 evidence of a claimed ownership status warrants special interrogatories, *see* 719 F.3d at 653—
23 the persuasive force of *\$239,400* is questionable as applied to the facts of this case. The
24 Seventh Circuit might view this case quite differently than *\$239,400*. It could be argued that,
25 given Porcelli's roadside statements, he would be "claiming property obviously not [his],"
26 calling into question his standing under the summary-judgment standard and, thereby,
27 validating the government's need to issue special interrogatories. *See id.*

1 C. Special Interrogatories Do Not Shift the Government's Burden

2 Claimants argue that Plaintiff's Motion seeks to shift Plaintiff's burden of proof on
3 the merits to Claimants. *See* ECF No. 31, 11:1 to 12:21. In Claimants' view, Plaintiff is
4 "demanding . . . that . . . Porcelli prove his money is not related to drug trafficking before he
5 be deemed to have standing." ECF No. 31, 12:18-19. Claimants' argument is without merit;
6 it is overbroad and has been rejected by federal courts.

7 In *\$209,815*, 2014 WL 2959304 at *3, and *\$295,726.42 in Account Funds Seized*, Case
8 No. SACV 17-00954-CJC(JCGx), 2018 WL 2077955 (C.D. Cal. May 3, 2018), at *3 n.4, the
9 claimants made arguments identical to Claimants' argument here. As the *\$209,815* court
10 explained: "[T]he fact that some of Claimant's interrogatory responses may help or hinder
11 the Plaintiff's cause in carrying [its] burden does not impermissibly shift the burden onto
12 Claimant." 2014 WL 2959304 at *3. Other federal courts have reached the same conclusion.
13 *See United States v. Real Properties Known as 50 Riverside Boulevard, et al.*, Civ. A. No. 18-9293
14 (MCA), 2019 WL 4877490 (D.N.J. Oct. 2, 2019), at *3 ("While Claimants believe the
15 Government is attempting to 'improperly shift the burden' to require them to disprove the
16 allegation in the complaint, the Court finds that these special interrogatories are specifically
17 authorized . . ."); *United States v. Twelve Thousand Six Hundred Sixty-Seven and 00/100 Dollars*
18 *in U.S. Currency*, No. 2:13-cv-01133, 2014 WL 2535229 (S.D. Ohio June 5, 2014), at *1-2
19 (rejecting the claimant's burden-shifting argument and striking the claimant's claim under
20 Supp. R. G(8)(c)(i)(A)).

21 Logically, Claimants' argument is overbroad. As Plaintiff has argued, its special
22 interrogatories, while having the capacity to touch on the merits, refrain from exploring a
23 range of merits-related topics. *See* Mot. Stay Supp. Reply, ECF No 24, 7:3 to 8:20. Claimants'
24 argument assumes too much—that an inquiry into the pedigree of seized property constitutes
25 a complete surrogate for litigation of the merits. Here, it may be that Porcelli can
26 demonstrate, through the special-interrogatory process, that he derived the property from a
27 legitimate source—a traceable inheritance, for instance—and thus establish ownership of the
28 currency. But, that would not resolve the merits; in the merits phase, the government and

1 Claimants would still need to litigate whether Claimants were using legitimately derived
2 property to facilitate an ongoing or future drugs transaction. *See* 21 U.S.C. § 881(a)(6); ECF
3 No. 1, 14:19 to 17:15. The historical bona fides of Porcelli's ownership of the currency is a
4 factor that might have no bearing on the ultimately forfeitability of the property; thus, it is
5 inaccurate for Claimants to argue that compelling them to address ownership is the same
6 thing as requiring them to disprove the merits of Plaintiff's case.

7 To take a different example, imagine a firearm discovered by law enforcement in
8 proximity to drugs-packaging materials during the execution of a search warrant in a home
9 occupied by numerous individuals. Were the government to seek civil forfeiture of the
10 firearm under 21 U.S.C. § 881(a)(11), it might serve special interrogatories on a claimant
11 asking for evidence of ownership of the firearm, such as through a bill of sale or insurance
12 policy. The claimant's inability to demonstrate ownership through a paper trail might render
13 him without standing to contest the forfeiture as an owner, based on factors wholly unrelated
14 to the government's theory of forfeiture (that the firearm was involved in the illegal-drugs
15 trade). Or, it might be that the claimant obtained the firearm via a trade on the underground
16 market, where the claimant exchanged drugs for the weapon, which would be very relevant
17 to the merits of the government's case. However, the efficacy of Supp. R. G(6) would be
18 eviscerated if the mere potential for revelation of the latter set of facts prevented the
19 government from asking questions just as reasonably calculated to lead to the former. Here,
20 to accept Claimants' argument threatens to do just that.

21 **III. Conclusion**

22 For the reasons stated, Plaintiff moves this Court to compel Porcelli to provide full
23 and complete responses to Plaintiff's special interrogatories.

24 Respectfully submitted this 16th day of July 2020.

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27 /s/ James A. Blum
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