Maine district court abstains and dismisses Rule 41(g) motion without prejudice because of pending motion for return of same currency before state court. Thurlow entered a guilty plea to distribution of fentanyl. Prior to sentencing, he moved for return of $15,335 seized from his home and vehicle, alleging the government failed to provide proper notice of the seizure. Thurlow argued that when the property was seized, he was not at home and he was not arrested for any offense or violation, and that officers provided his wife with a receipt for the seized property, but never provided a receipt to him, despite circumstances which suggested the property belonged to him. The government moved to dismiss, asserting the property was in the custody of the Maine Department of Public Safety, and was in the process of being forfeited through the Attorney General's office by the State of Maine. It added that the DEA took temporary custody of the property before transferring it to the Maine DEA on the day of the seizure, but did not initiate any forfeiture action against the property. Thurlow later moved for a stay because he received a notice from the State of Maine informing him the property was adjudicated as forfeitable pursuant to an plea agreement by Racquel Leavitt and of the steps he must take to adjudicate any legal interest he might have in the property, so he could exhaust the state procedure. The court first noted that Thurlow evidently pursued his claim in federal court because he was prosecuted there and the federal civil asset forfeiture procedure includes a 60-day period in which the government must provide notice of a seizure or to commence a forfeiture proceeding. The government argued that because Maine Department of Public Safety had possession of the property, the court either lacked jurisdiction or should abstain from the exercise of jurisdiction. The court found that because relief in this case conceivably could be an order to reimburse Thurlow, resolution of the claim would not necessarily require the court to order the State to relinquish a claim to specific property in its possession, so it would have jurisdiction to fashion equitable relief on Plaintiff's Rule 41(g) action. Rather than stay the case, the court held abstention and dismissal without prejudice was appropriate. Because of the notice to Thurlow of his ability to adjudicate his interest in state court, he appeared to have an adequate legal remedy available there. *Thurlow v. United States*, No. 2:16-CV-375-DBH, 2017 WL 706174 (D. Me. Feb. 22, 2017).

Oregon district court denies motion to suppress currency seized from U.S. mail package because temporary diversion of a package that does not affect its regularly scheduled delivery does not violate the Fourth Amendment. The government filed a civil forfeiture action against $22,600.00 in U.S. currency as drug proceeds. The United States Postal Inspector noted a U.S. Mail priority express parcel, on which a certified controlled substance detective dog alerted. Inspectors went to the addressee Harrison's residence and saw extremely large (8+ feet) marijuana plants growing in one of two large green houses on the neighbor's property. Harrison gave consent to open the parcel and inside was part of a cardboard box wrapped around a shoe box. Inside the shoe box were some receipts, a plastic bag, and a paper bag which had in it four individually-marked stacks of U.S. currency and a letter-size marked envelope of U.S. currency. The five groupings were marked as $5,000, $5,000, $5,000, $5,600 and $2000, totaling $22,600. The claimant moved to suppress all evidence. The court first noted that an addressee on a mailed package has a possessory interest in its timely delivery, and a privacy interest in its contents but does not have a Fourth Amendment possessory interest in a package that has a guaranteed delivery time *until* the guaranteed delivery time has passed. Thus, the temporary diversion of a

package that does not affect its regularly scheduled delivery does not violate the Fourth Amendment. Moreover, there is no reasonable expectation that the outside of a package given to a mail-carrier will be kept private and the Fourth Amendment is not implicated by the use of a dog sniff by a trained dog to detect contraband in a package. Thus, the court concluded that the claimant's Fourth Amendment rights were not implicated by the visual inspection of the package, its brief placement in a deployment line, and the use of a dog sniff, all of which occurred prior to the express delivery date of the package. Further, once the dog alerted to the package, probable cause existed to seize it. The fact that, when the package was searched, the officers discovered currency rather than drugs was of no consequence to the probable cause established to seize and open the package, since courts do not evaluate probable cause in hindsight, based on what a search does or does not turn up. In addition, the court rejected Claimant's assertion that there was no probable cause to seize the package because it lacked any of the suspicious "cues," and also Claimant's assertion that "spoliation" of the evidence, i.e., depositing the currency into a bank, impacted the probable cause inquiry, so the motion to suppress was denied. *United States v. $22,600.00 U.S. Currency*, No. 1:15-CV-1940-MA, 2017 WL 701385 (D. Or. Feb. 21, 2017).

Sixth Circuit holds defendant's appeal in abeyance pending determination by U.S. Supreme Court of issue as to whether 21 U.S.C. §853(a)(1) mandates joint-and-several liability among co-conspirators for forfeiture of the reasonably foreseeable proceeds of a drug conspiracy. A jury convicted Jose Lara-Chevez of various crimes arising from a drug-trafficking operation that straddled the Kentucky-Ohio border, and the district court sentenced him to 60 months of imprisonment and held him jointly-and-severally liable, along with his co-defendants, for all proceeds derived from the drug-trafficking. Lara timely appealed his conviction and sentence. Lara argued the district court had discretion to hold him accountable solely for the forfeiture proceeds from his personal participation in the drug-trafficking, rather than all the ill-gotten gains of his coconspirators. A $162,211 money judgment represented the money deposited in Lara-Chavez's bank accounts over the course of the drug conspiracy, less cash discovered during a raid of Lara-Chavez's residence. Although the district court expressed concern about holding Lara jointly-and-severally liable for the entire conspiracy's ill-gotten gains, it acknowledged statutory language and precedent afforded it no discretion to reduce Lara's liability. On appeal, Lara argued that because 21 U.S.C. §853 expressly mandates only two forms of forfeiture—direct proceeds or substitute property—the "shall" language of the statute applies only to those two forms of forfeiture and not to case-law-created money-judgment forfeitures. Thus, he argued the district court had discretion to reduce or not order the money judgment. The panel held that Lara's attempt to decouple the "shall" language of §853 from money judgment forfeiture was in conflict with Circuit precedent holding that §853 mandates joint and several liability among coconspirators for the proceeds of a drug conspiracy. In December of 2016, however, the Supreme Court granted certiorari on the Circuit's holding that §853(a)(1) mandates joint-and-several liability among co-conspirators for forfeiture of the reasonably foreseeable proceeds of a drug conspiracy. Thus, the panel held that should the Court reverse its holding, Lara may receive a reduced money-forfeiture judgment, and therefore held in abeyance his challenge to the forfeiture order pending issuance of the Supreme Court's decision. *United States v. Lara*, No. 15-5874, 2017 WL 527912 (6th Cir. Feb. 8, 2017).

Ninth Circuit affirms civil forfeiture judgment finding that although claimant had a perfected security interest in assets of alleged car owner, there were few incidents of ownership of car by debtor. NextGear Capital, Inc. appealed the district court's civil forfeiture judgment, following a bench trial, in favor of the United States. The district court held that NCA International Services, Inc., d/b/a Remate del Monte did not own a 2006 Lamborghini Murcielago that was subject to civil forfeiture under 31 U.S.C. §5317(c)(2) and later seized by federal authorities. Given Remate's lack of ownership, the district court held that NextGear did not have a security interest in the vehicle and, therefore, could not be an "innocent owner" as defined by 18 U.S.C. §983(d)(3). The court of appeals affirmed. First, it was likely NextGear was on notice that the vehicle was subject to forfeiture at the time it received title, but, more importantly, it did not establish the vehicle was an asset of Remate and, therefore, that NextGear was a bona fide purchaser for value, under 18 U.S.C. §983(d)(3)(A)(I). Although NextGear had a perfected security interest – a floating lien – in all of Remate's assets, including later-acquired collateral, pursuant to a written Promissory Note and Security Agreement and filed UCC Financing Statements, that security interest did not attach to the collateral – and make it a bona fide purchaser of the collateral – unless Remate had rights in the vehicle, i.e., ownership of the vehicle as per Cal. Com. Code §9203(b)(2) and Cal. Veh. Code §460. Although Remate eventually acquired the Certificate of Title to the vehicle, it otherwise had very few incidents of ownership: the vehicle was not purchased in the ordinary course of Remate's business, the vehicle was never delivered to Remate, and Remate never held the vehicle on the lot for resale. Instead, the evidence indicated that Escobedo, through Perez, purchased the vehicle using Remate's dealer's license to avoid sales taxes, and that he, not Remate, owned the vehicle. The circuit held the district court properly concluded that Remate never owned the vehicle and, therefore, that NextGear's security interest never attached. Without a security interest in the collateral, NextGear could not be a bona fide purchaser for value under the innocent owner defense. *United States v. One 2006 Lamborghini Murcielago v. NextGear Capital, Inc.*, No. 15-56280, 2017 WL 663488 (9th Cir. Feb. 16, 2017).

Texas district court drastically reduces forfeiture money judgment sought by government against physician because its extrapolation covered less than 2% of the charts identified as Oxycodone patients, and there was no evidence that the conduct found in the other 98% of patient charts was sufficiently identical to that in the files examined. Dr. Richard Evans was charged with distribution of controlled substances, mail fraud, and money laundering. Because Evans was a medical physician and his co-defendant was a pharmacist at the time of the criminal acts alleged, they were both charged in their professional capacities for distributing schedule II controlled substances outside the course of their professional practices and not for a legitimate medical purpose. The jury returned a guilty verdict on all counts of the indictment. The government sought both a money judgment in the amount of approximately $2.5 million and forfeiture of seized cash and money orders in the amount of $17,234.42 as proceeds of the mail fraud scheme. The government argued that all the payments made to Evans by his patients who were prescribed Schedule II controlled substances were forfeitable. Evans argued this was an extrapolation based on less than 2% of the 879 Schedule II patients seen by him during a three-year period, and were pre-selected by the government. He also disputed the government's $2.5 million figure as over-inclusive in that it seeks to have payments forfeited that were made by

patients who received non-oxycodone Schedule II substances. The government in response argued that the law is well-settled that the calculation of forfeiture amounts is not an exact science, and requires estimation. The court found that any extrapolations made must be reasonably established by a preponderance of the evidence, but in this case the government's estimation did little to distinguish prescriptions that were "medically unnecessary" or "carelessly" issued from those that were, indeed, unlawful and issued without a legitimate medical purpose. It was undisputed that Evans treated "real" patients with "real" pain. The court thus determined the proposed extrapolation presented by the government was improper, since it does not enjoy a presumption that every prescription issued to the 879 Schedule II patients was outside the course of professional practice and not for a legitimate medical purpose, unlike in the guilt phase of the case. Since the extrapolation covered less than 2% of the charts/files identified as Oxycodone patients, and there was no evidence that in the remaining 861 patient charts that the conduct was sufficiently identical to that in the files examined. Simply put, the government could not rely on a verdict of "guilty" as direct evidence of Dr. Evans' criminal conduct regarding the 861 patient charts that were not reviewed. The court thus held that a reasonable person could not infer from the review of less than 20 files and a "guilty" verdict that the remaining unreviewed patient charts violated federal law. Evans was not found to be a "drug dealer" as that term may be used in street parlance. Rather, he was a licensed physician, who has been found guilty of "illegally" dispensing a drug. Accordingly, based on the 2% formula, the court ordered forfeiture of a total of $268,336 (2% of the $2.5 million sought, or $50,000, plus $17,234 seized at Dr. Evans' office and $201,102 determined to be laundered funds). *United States v. Evans*, No. 4:15-CR-15-2, 2017 WL 568333 (S.D. Tex. Feb. 13, 2017).