**Michigan district court denies motion to set aside administrative forfeiture even though government agency did not respond to owner's request for extension to file claim.** Plaintiff and his mother, who were at the Detroit Metropolitan Airport scheduled to depart on an international flight, were selected for a routine examination, and the CBP officer noticed they were carrying large sums of cash. Plaintiff indicated he and his mother were carrying $8,000 each. Upon further inspection, the CBP officer discovered all of the money belonged to Plaintiff, which totaled $15,675. Plaintiff, in violation 31 U.S.C. §5316(a)1 for failing to report cash that exceeded $10,000 for international travel, told the CBP officer he gave his mother some of his money because he did not want to be over $10,000. CBP seized the unreported funds pursuant to 31 U.S.C. §5317(c)(2). Plaintiff's attorney sent CBP a letter requesting a 60-day extension to gather documents to support his claim, many of which were from Lebanon. A month later his attorney sent CBP a second letter requesting that CBP halt the forfeiture proceedings and stated, "we have been attempting to gather the required bank statements, tax returns, medical documentation, affidavits, and other evidence to make your determination as easy as possible. There has also been delay due to the Muslim holiday and getting documents from overseas." Plaintiff eventually submitted his petition to CBP with supporting documents about six weeks later. Four months after that, CBP sent Plaintiff a formal letter advising Plaintiff that his petition was untimely and would not be considered and that administrative forfeiture proceedings had been initiated. After Plaintiff moved to set aside the forfeiture, the court held that a party is only entitled to relief under CAFRA when they did not receive notice of the forfeiture. Here, Plaintiff conceded he received the notice. Moreover, he was present when his property was seized and was aware that CBP was in possession of his property. Although Plaintiff received the notice, when he first responded he did not file his claim, but requested an extension of time that did not appear to have been either granted or received. Plaintiff did not submit his formal claim until 10 weeks after the deadline set out in the notice. Therefore, the Court held he was not entitled to seek relief pursuant to 18 U.S.C. §983(e) because he had notice of the seizure and potential forfeiture. As to Plaintiff's due process arguments, he was provided both notice and an opportunity to be heard in the first notice. Plaintiff contended CBP was required to give Plaintiff notice of the status of his request for an extension. However, section 983 does not include any reference to extensions of time. Also, CBP was not required to respond to Plaintiff's request for an extension, and requiring it to have done so would effectively enhance the due process requirements of §983(e). Finally, although the court recognized Plaintiff's efforts to secure his property, it held it did not have jurisdiction to consider the merits of the civil forfeiture, including the timeliness of Plaintiff's petition. The relief provided in §983(e) is limited to those persons who were entitled to notice but did not receive notice of a potential forfeiture. *Nasserddine v. United States Custom & Border Prot.*, No. CV 16-12138, 2018 WL 465967 (E.D. Mich. Jan. 18, 2018).

**Florida district court denies motion to dismiss complaint to set aside administrative forfeiture because allegations were sufficient to draw inference that DEA failed to take reasonable steps to provide notice.** A forfeiture complaint alleged the DEA seized $212,430 in U.S. currency from Plaintiff Walteros in the parking area of the Parisian/Geneva Hotel & Suites in Miami Beach, Florida. Walteros alleged he told the agents he and his family would be staying at the Parisian for several days, but the agents did not provide him with business cards or a receipt for the seizure. After Walteros returned to Colombia, he hired a private investigator in Florida to find out who had taken his money, and the investigator eventually discovered that the

money had been seized by the DEA. Sometime thereafter, Walteros' counsel sent the DEA a verified claim requesting return of the money and judicial review. A month later, the DEA responded, stating that the time to file a verified claim requesting judicial review had expired. After Walteros's counsel submitted a verified claim and requested judicial review on two more occasions and sent a Freedom of Information Act request to the DEA, the DEA notified Walteros's counsel that it had administratively forfeited the property on just one month earlier. Walteros moved to set aside the administrative forfeiture. The DEA moved for dismiss first based on insufficient process of service. Pursuant to Federal Rule of Civil Procedure 4(i)(A), the Plaintiff must serve the DEA by: i) Delivering a copy of the summons and the complaint to the United States attorney for the district where the action is brought, or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk, or (ii) Sending a copy of the summons and complaint by registered or certified mail to the civil-process clerk at the United States attorney's office and sending a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C. In addition, pursuant to Rule 4(i)(2), the Plaintiff must send a copy of the summons and complaint by registered or certified mail to the agency. The DEA acknowledged that the civil process clerk at the U.S. Attorney's Office for the Southern District of Florida received a copy of the summons and complaint by certified mail, but that it did not appear the DEA and the Attorney General were served. Somewhat inconsistently, the DEA also asserted that it was possible that such service was made, no proof of service was made to the Court. Interestingly, the DEA filed its motion on December 9, 2017, and the Plaintiff had until January 2, 2018 to effect service. On December 13, 2017, the Plaintiff filed proof of service. Therefore, the court found that the Plaintiff properly served the government. The DEA also argued Plaintiff could not establish that he did not know of the seizure because the Complaint alleged he was present at the time of the seizure. However, it also acknowledged Walteros had to hire a private investigator to determine who took his money and why. Moreover, the letters from Walteros's counsel to the DEA attached to the Complaint allege that the money was seized "by unidentified individuals in civilian clothing," and that "civilian dressed individuals approached Claimant Walteros ... did not identify themselves ... and thereafter took his property without providing any receipts, business cards, or identification." Thus, the allegations in the Complaint were sufficient to draw a reasonable inference that Plaintiff did not know it was law enforcement officers who took his money. The Court thus accepted the allegations as true for purposes of a motion to dismiss. Next, the DEA argued it took reasonable steps to provide the Plaintiff with notice of the seizure, The Complaint alleged the DEA sent a written notice of the seizure to the Deauville Hotel, despite the fact that its agents knew that Plaintiff was no longer staying there and had moved to the Parisian. Thus, the allegations in the Complaint were sufficient to draw an inference that the DEA failed to take reasonable steps to provide Walteros with notice. *Walteros v. United States of Am. Drug Enf't Admin.*, No. CV 17-23641-CIV, 2018 WL 555515 (S.D. Fla. Jan. 23, 2018).

**Eleventh Circuit finds no plain error or gross disproportionality under Eighth Amendment violation for 431% increase over statutory maximum fine.** The defendant argued that allowing dual forfeitures, in this instance a forfeiture money judgment and the forfeiture of his home, violated the Eighth Amendment's Excessive Fines Clause and constituted impermissible double-counting. A forfeiture order imposed at end of a criminal proceeding due to a conviction constitutes a fine subject to the Excessive Fines Clause, but a forfeiture order constitutes an

excessive fine only if it is grossly disproportional to the gravity of defendant's offense. Also, double-counting alone does not render a fine excessive, and it is permissible for a district court to order forfeiture of specific property even when there was a separate money judgment. Although Defendant's total fine exceeded the statutory maximum for his offense by 431%, such an increase did not on its own render a fine "grossly disproportionate" in violation of the Excessive Fines Clause. Because no binding precedent made it clear that an increase of 431% over the statutory maximum renders a fine excessive, the appeals court held that the district court did not plainly err. *United States v. Holland*, No. 15-14081, 2018 WL 416459 (11th Cir. Jan. 16, 2018).

**California district court strikes claim for failure to adequately respond to special interrogatory.** The government moved to strike a claim based on the claimant's incomplete and evasive response to a special interrogatory, which asked the claimant to state the extent and describe with particularity the nature of his interest in the defendant assets he claimed, and describe in detail how he acquired that interest, including the dates, time, place and manner of acquisition, a detailed description of the circumstances of each transaction, the reasons the defendant assets were obtained, witnesses to every transaction, and a description of every document evidencing these transactions. After claimant provided a response with limited detail, the government twice sent claimant letters requesting a more adequate answer, but he did not respond to either letter, prompting the government's motion to strike. The court held that the interrogatory was relevant to the issue of standing because it sought information concerning claimant's interest in the seized assets and documentation supporting his potential interest, the identification of sources from which he claimed the assets were derived and of all persons having knowledge of the interest, and the identification of any facts establishing his ownership or any other person's interest in the assets. The court agreed claimant did not provide a complete and full answer when he merely stated he was the owner of the defendant assets, which was not a description of the full circumstances under which his claim to the assets arose. Claimant provided no information regarding how he came into possession of these assets and his generic identification of "witnesses" evaded his obligation to identify who or what were the source of his funds. His responses to added nothing new or different to what is already set forth in his claim. Rule G(6)(a) broadly allows the government to collect information regarding the claimant's relationship to the defendant property. Also, claimant waived his Fifth Amendment privilege when he failed to invoke the privilege when he provided his initial responses to the interrogatories. The court thus issued a conditional order that the claim be stricken unless the claimant served full and complete narrative answers within 30 days. *United States v. $295,726.42 in Account Funds Seized*, No. SACV1700954CJCJCGX, 2018 WL 295500 (C.D. Cal. Jan. 4, 2018).

**Eighth Circuit strike claim because it did not identify interest in currency with sufficient specificity.** An Arkansas State Police officer initiated a traffic stop of a tractor trailer in Faulkner County, Arkansas. After the driver consented to a search of the truck, the officer found and seized two boxes containing a total of $579,475.00 in U.S. currency. The truck's drivers both disclaimed any knowledge of or interest in the currency. Believing the currency to be "drug money," the government filed a complaint seeking forfeiture of the currency under 21 U.S.C. § 881(a)(6). LNG filed a timely verified claim, and then an amended claim, which the government moved to strike because it did not identify LNG's interest in the currency with sufficient

specificity. The district court granted the government's motion over LNG's opposition, and struck LNG's verified claim, finding it insufficient to meet Supplemental Rule G(5)'s threshold pleading requirement. On appeal, LNG contended its verified claim satisfied the requirements of Rule G(5) because it included a claim by LNG only to "all the right, title, and interest in" the seized currency "as the owner thereof." Although other circuits have declined to impose the same requirement of specificity that the Eighth Circuit requires of verified forfeiture claims (e.g., the Seventh Circuit held that a "bald assertion" of ownership would strictly comply with Supplemental Rule G(5)'s requirement, and the Sixth Circuit recently held that at the pleading stage, a verified claim of ownership is sufficient to satisfy Article III and the procedural requirements of Rule G), the court held that however persuasive these cases may be, it was bound by its panel opinion in a prior case. Since LNG's claim to an ownership interest in the seized currency was materially indistinguishable from a claim the circuit previously deemed inadequate, it was bound by circuit precedent, which only the en banc court can overrule. *United States v. $579,475.00 in U.S. Currency*, 879 F.3d 855 (8th Cir. 2018).

**Florida district court confirms government's voluntary dismissal of complaint to be issued without prejudice**, **as adequate alternate resolution in the interests of justice and to limit waste of both judicial and party resources, in light of state court judgment in favor of victim assigning claimant's interest in defendant assets.** The government filed a complaint alleging over $200,000 in cash and cashier's checks were the proceeds of or traceable to drug trafficking, transportation of stolen goods in interstate commerce, and money laundering. The assets were found and seized when law enforcement officers conducted a search of the home claimants shared. Meanwhile, a company that employed an associate of one claimant filed an action in the Florida state court alleging that one claimant had aided a scheme to steal clothing from the company. The stolen goods counts alleged in the federal forfeiture action were related to the company's claims, i.e., it was the victim of some of the alleged crimes forming the basis of the federal forfeiture action. The state court later entered judgment in favor of the company against two of the claimants and authorized it to levy on their property, including its claims in this federal forfeiture action, and assigned their rights in the to the company. Claimants moved for summary judgment and four days later, the government also moved for summary judgment or to dismiss without prejudice, arguing that in light of the state court action, there were no genuine issues of triable fact as to the forfeiture counts relating to stolen property, or the court should allow the government to voluntarily dismiss so that ownership of the could be resolved by the state court. The court permitted the government to voluntarily dismiss the action without prejudice in light of the parallel state court action. The court added that only after it granted the government's motion did claimants object that the dismissal should be with prejudice so that they could seek statutory attorney's fees. Claimants moved to alter or amend the judgment under Rule 60 to dismiss with prejudice, arguing that the duration of the litigation and their pending dispositive motion at the time the government requested dismissal weighed against voluntary dismissal without prejudice. They further argue that loss of a basis for statutory attorney's fees constituted plain legal prejudice. The court noted that although the government's request for voluntary dismissal came after 18 months of litigation, it came after the alleged victim of the fraud underlying one of the bases for forfeiture prevailed in a private civil suit in state court, and the government then also sought summary judgment. Moreover, nothing suggested to the court that the government acted in bad faith or that it did not believe it had a meritorious case for forfeiture. Rather, it determined that in light of the state court judgment and the victim's claim to

the assets, voluntary dismissal without prejudice would be an adequate alternate resolution. In the interests of justice and to limit waste of both judicial resources and the resources of the parties, the court found voluntary dismissal without prejudice to be the appropriate resolution. The court's order of dismissal mandated that if the government re-filed the case, Claimants would then be entitled to costs expended in defending this dismissed action, and under the unique circumstances here, this condition was all that was necessary to do justice among the parties. Claimants also argued a dismissal without prejudice plainly prejudiced them because it prevented them from obtaining statutory attorney's fees pursuant to 28 U.S.C. §2465(b)(1). The court first said this argument was untimely and thus waived, since they did not raise the issue of attorney's fees in response to the government's motion and only after the court granted the motion for voluntary dismissal without prejudice. But even absent waiver, the Eleventh Circuit had not addressed whether loss of an argument for attorney's fees pursuant to CAFRA constitutes legal prejudice that should preclude voluntary dismissal without prejudice, and the Court did not believe that the facts of this case warranted that determination. Thus, dismissal without prejudice pursuant to Rule 41(a)(2) was appropriate. Having determined that a voluntary dismissal without prejudice was appropriate, the court found no basis on which to award statutory attorney's fees. *United States v. $f70,670 in U.S. Currency*, No. 15-CV-23616, 2018 WL 278890 (S.D. Fla. Jan. 3, 2018).