D.C. Circuit affirms striking of claim after first one was unverified, second one was untimely, and third one was not filed by attorney admitted to the court and no timely answer was filed. Nnaka sought to file claims in this forfeiture proceeding brought by the United States against assets claimed to be traceable to money laundering during the Nigerian military regime of General Sani Abacha. The district court struck the first claim submitted on behalf of the Republic of Nigeria because it was not properly verified. It struck the second claim as untimely. It struck the third claim filed on behalf of Nnaka himself because it was not filed by an attorney admitted to the court and he failed to file a timely answer. Nnaka contended the district court should have exercised its discretion to excuse his non-compliance. Given the repeated violations of Supplemental Rule G, the court found no basis to conclude the district court abused its discretion by striking the claims. *United States v. All Assets Held in the Investment Portfolio of Blue Holding (1) Pte. Ltd*, No. 16-5025, 2018 WL 1052617 (D.C. Cir. Feb. 6, 2018).

Illinois district court denies motion to dismiss forfeiture complaint based on dog alert, inconsistent explanations, suspicious travel, and previous drug history. Claimants moved to dismiss the civil forfeiture complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and Rules G(5)(b) and E(2)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. In its complaint, the government asserts numerous facts the Seventh Circuit previously found to be probative in deciding whether the government's burden of proof in asset forfeiture actions was satisfied at trial. First, a police narcotics detector dog alerted on the unmarked brown paper bag that contained the seized currency. Second, one claimant changed his story in the course of speaking with DEA officers, and his log book contradicted his statements about his route from the very beginning. He initially said he never reached Youngstown, Ohio to pick up a load because his thirty-year-old son had suffered a heart attack, prompting him to turn back toward Arizona. However, he subsequently told the officers he turned around because his twelve-year-old son had suffered an allergic reaction. Third, claimant's travel itinerary was suspicious because it was irregular and inconsistent with that of a normal trucking business. According to his log book, claimant was off duty for fourteen days during the month of October, which would be unusual for a trucking company with only one truck and one driver. Claimant's log book also indicated that he had remained in Youngstown for twenty-five hours before departing without a cargo load. Fourth, claimant asserted ownership of the $115,020.00 in cash found in his truck, but could not explain why he was carrying such a large sum of currency, other than that he had received the money from an insurance claim he had filed following an accident in 2007. Finally, claimant had been previously charged with drug-related offenses in Tucson, Arizona, and a telephone number found in his cell phone contacts list was associated with a trucking company that the DEA previously investigated for smuggling narcotics and drug proceeds. Given that facts similar to those pleaded in the government's complaint have been found to be probative in establishing the forfeitability of property by the Seventh Circuit, the court denied the motion. *United States v. $115,020.00 in United States Currency*, No. 17-CV-307-DRH-DGW, 2018 WL 722556 (S.D. Ill. Feb. 6, 2018).

Fourth Circuit affirms summary judgment for government because claimant's expenses were greater than his income, meaning he could not have saved the defendant currency. The United States claimed $200,000 in cash discovered in a storage unit leased by Byron Phillips was subject to forfeiture as connected to drug trafficking. Damian Phillips, Byron's brother,

sought to intervene, contending the money was his life savings and had nothing to do with drugs. The district court granted the government summary judgment, holding that Damian lacked standing to intervene. Byron submitted a declaration stating he allowed his brother to store Damian's life savings of $200,000 in the storage unit. During discovery, Damian asserted that he had accumulated the $200,000 between 2003 and 2013 by saving his earned income, a workers' compensation settlement, and unemployment benefits. The gross income reported in tax returns, the settlement, and the unemployment benefits add up to $242,613.45. However, Damian admitted two car dealerships repossessed his vehicles, and in November 2012, he and his wife were four months ($8,400) behind in their rent payments. In addition, his wife filed for bankruptcy in 2012. His car payments and monthly expenses incurred from 2003 through March 2014 totaled approximately $250,000. The court first held that the "colorable interest" test for Article III standing applied to determine a claimant's standing to challenge a civil forfeiture. Demanding more than "some evidence" of ownership would be inappropriate in part because of how challenging it can be to document ownership of property seized by law enforcement. This is especially true for cash, as the very qualities that make paper money useful for illicit activity – in particular, its untraceability – often also make it difficult to prove that any cash is legitimate, no matter its source. Moreover, applying the colorable interest test preserves the important distinction between constitutional standing and the merits of a civil forfeiture case. A colorable interest must be supported with some evidence beyond a mere assertion of ownership to survive summary judgment. A claimant alleging an ownership interest in seized property must, at a minimum, present some evidence regarding how the claimant came to possess the property. Although courts must refrain from weighing the evidence on summary judgment, courts may lawfully put aside testimony that is undermined either by other credible evidence or by physical impossibility. Viewed in total, the expenses Damian acknowledged from 2003 through March 2014 – $250,000 – were greater than his income, meaning he could not have saved any money, let alone $200,000. This confirmed Phillips could not have been the owner of the $200,000 found in the storage unit, and the summary judgment was affirmed. *United States v. Phillips*, No. 16-2358, 2018 WL 987795 (4th Cir. Feb. 21, 2018).

Second Circuit dismisses appeal as untimely because it was filed more than 60 days after court stated on the record it was denying Rule 60 motion, even though court did not file its explanation for the denial until four months later. After a three-week jury trial, Ohle was convicted of tax evasion and of conspiracy to commit fraud. In connection with that conviction, Ohle was required to forfeit both real and personal property, including significant sums of cash. Ohle's wife and several entities filed petitions under 21 U.S.C. §853(n) claiming interests in the forfeited property. The district court entered a stipulation and order enforcing a settlement agreement between the petitioners and the government resolving various ownership interests in the property. Two years later, the petitioners returned claimed fraud and misconduct on the part of the government in a motion under FRCP 60 to vacate the settlement agreement, which the district court denied. The court stated in its order that a memorandum explaining the reasons for this ruling would issue "in due course." More than four months later, the court entered a memorandum order explaining its reasoning and reaffirming its order denying the motion to set aside the forfeiture order. On appeal, the court first noted that it was clear that appeals from §853(n) proceedings are to be governed FRAP 4(a), the subsection governing civil appeals, rather than the subsection governing criminal appeals, since they bore few if any hallmarks of a

criminal proceeding. The criminal defendant is not a party to the proceeding, and, unlike the underlying criminal forfeiture, the §853(n) proceeding has no punitive aim, but merely seeks to settle legal interests in property. In contrast, in a §853(n) proceeding the applicable burden of proof (a preponderance of the evidence) and the underlying legal issue (the allocation of property interests) are civil in nature, and greatly resembles a quiet title action. Therefore, appeals from an ancillary proceeding to a criminal forfeiture under §853(n) are governed by the civil timelines articulated in Rule 4(a). In this case, the district court's initial order expressly denied their Rule 60 motion, so the clock to file a notice of appeal began running once that order was entered in the civil docket under FRAP 4(a)(7)(A)(I). The fact that the district court reserved the right to explain its decision until later did nothing to prevent the clock from running. The later explanation would only have reset the clock on filing an appeal if it changed matters of substance, or resolved a genuine ambiguity, in a judgment previously rendered. The order of explanation, however, merely reaffirmed the prior order. Since the appellants concededly did not file their appeal within 60 days of the first order, the court dismissed their appeal for lack of jurisdiction. *United States v. Bradley*, No. 16-601-CR, 2018 WL 911199 (2d Cir. Feb. 16, 2018).

New York district court denies motion to dismiss complaint because money laundering could include the mere acceptance of cash. The government filed a complaint for civil forfeiture against $272,000 in funds seized from claimant Zhu's residence. Zhu moved to dismiss the complaint for lack of particularity. The court first found the claimant had both statutory and Article III standing to contest forfeiture since she asserted in a sworn statement that she possessed $250,000 of the funds for a named bailee who entrusted the funds to her to help him purchase real estate, and that she personally owned $22,000 of the funds. In addition, the government's own complaint alleged it seized the funds from inside the claimant's home. The court, however, denied the claimant's motion to dismiss. She argued the government's money laundering claim did not plead any facts to show that she conducted a financial transaction because all she did was retrieve the money, take it home, and hide it in her nightstand and in the light fixture in her bathroom ceiling; she did not deposit the money in a bank or attempt to launder the funds through a financial institution. The court stated the plain language of 18 U.S.C. §1956(c)(2)-(3) defines the term "conducts" to include participating in initiating, or conducting a transaction, and the term "transaction" to include transfers or deliveries. Thus, the claimant's acceptance of the funds was sufficient. Also, the government's allegations that the claimant told officers she went to meet "a man she had never before met and whose name she did not know" and accepted $272,000 in cash from him, with no questions asked, were enough to establish scienter at the pleading stage. The government further sufficiently pled a substantial connection between the funds and narcotics trafficking. The amount of money, the way in which it was bundled, and the location of at least some of it – a bathroom light fixture – was suggestive of illegality. Moreover, the fact that the claimant apparently moved some of the money to the light fixture after probation officers' initial visit suggested consciousness of guilt. Additional allegations – the presence of narcotics on the money and in the nightstand, federal tax returns and bank records showing both a lack of significant legitimate income and wire transfers of substantial sums of money to and from China, and the claimant's explanation that she got the money from a total stranger at the direction of another person – supported a reasonable belief the government could prove a substantial connection between the funds and the drug trade. *United States v. Two Hundred Seventy-Two Thousand Dollars & No Cents ($272,000)*, No.

1:16-CV-06564 (AMD), 2018 WL 948752 (E.D.N.Y. Feb. 16, 2018).

Fifth Circuit affirms district court's refusal to release untainted funds earmarked for forfeiture and restitution to pay for retained counsel because government's lien against the funds outweighed any Sixth Amendment right defendant had to them. After Scully was convicted of fraud charges, the district court restrained his assets to preserve them for restitution and forfeiture and ordered him to pay more than $1.2 million in restitution. Scully filed a notice of appeal and a motion to partially vacate the restraining order so he could use $65,000 of his house sale proceeds to cover attorney and transcript fees for his appeal. The district court denied Scully's motion. On appeal, Scully argued the proceeds were "untainted" and their continued restraint denied his Sixth Amendment right to counsel of his choice on appeal. The court held Scully could not use the house proceeds to pay for appellate counsel and fees. This case did not involve the pretrial restraint of untainted assets. More than six months passed between the district court's initial restraint of Scully's assets and his motion to vacate the order. Two legally significant events occurred during this time. First, the district court entered judgment against Scully, which included restitution. The district court's entry of judgment triggered the second event, a statutory lien against all of Scully's property. The court said precedent strongly suggested that the government's lien against the untainted funds outweighed any Sixth Amendment right Scully had to them. The court noted Scully had a constitutional right to be represented by counsel for his first appeal of right, and court-appointed counsel were readily available if he qualified as indigent. *United States v. Scully*, No. 17-50223, 2018 WL 851778 (5th Cir. Feb. 14, 2018).

Maryland district court denies motion to dismiss complaint based on amount of currency, packaging, K9 alert, and claimant's refusal to identify person for whom he was carrying money. Claimant Strohl moved to dismiss the government's forfeiture complaint for failure to state a claim, arguing that it did not allege a sufficient connection between the defendant currency and alleged drug trafficking or support a reasonable belief that the government could meet its burden of proof at trial. The court found the complaint's attached affidavit alleged numerous details supporting an inference that the government would be able to meet its burden at trial. First, Strohl was carrying $189,150.00 in currency in a carry-on bag at BWI. Second, the currency was packaged in loose bundles with mixed denominations rubber banded together. Third, a K9 positively alerted to the odor of narcotics both for Strohl's bag carrying the currency and for the currency itself. Finally, Strohl refused to provide the names of the clients for whom he was allegedly carrying the money to broker an agreement. Considering the totality of the circumstances, the alleged facts supported an inference that the currency constituted proceeds from illegal drug distribution, so Strohl's motion was denied. *United States v. $189, 150.00 IN U.S. Currency*, No. CV RDB-17-0735, 2018 WL 740962 (D. Md. Feb. 6, 2018).