California district court grants motion to dismiss forfeiture complaint, holding that the allegations supporting each forfeiture theory lacked basic, necessary information, which were fundamental omissions. The government filed a complaint for civil forfeiture of two Miami condominiums alleging they were involved in a money laundering transaction and constituted the proceeds of health care fraud, securities fraud, and wire fraud. Claimants moved to dismiss the complaint. The Supplemental Rules require that a complaint state the circumstances from which the claim arises with such particularity that the claimant is able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading. The court held the allegations supporting each forfeiture theory lacked basic, necessary information, fundamental (although technical) omissions. First the complaint did not adequately plead that claimants used the proceeds of the health care fraud to eventually purchase the Miami condominiums. The issue was timing. The government's complaint explains that Claimants' company uBiome received over $3 million through hundreds of transactions "in 2017" and over $26 million through thousands of transactions "in 2018," and claimants "began funneling funds" from uBiome to their personal accounts "[n]ear the end of 2016." They bought property in September 2017, sold the property in January 2020, and bought the Miami condominiums in February 2020. The problem was not that these allegations were insufficiently detailed, but that they failed to establish even the basic contours of a chain linking the condominiums to the health care fraud. Claimants' purchase of the first property may have occurred before uBiome financially benefitted from the fraud. Without more basic information, there was no way to tell. The same was true of the securities fraud and wire fraud allegations. Thus, the government's non-conclusory allegations, if true, would not entitle the government to relief. *United States v. Two Condominiums Located at 465 Ocean Drive, Units 315 and 316, Miami Beach, Florida 33139*, 21-CV-04060-CRB, 2021 WL 3810273 (N.D. Cal. Aug. 26, 2021).

New York district court denies summary judgment because government failed to show claimant had actual knowledge of currency reporting requirement, let alone the intent to evade it, and general issues remained regarding Eighth Amendment violation. Claimant attempted to board a flight to Istanbul, Turkey, from JFK, with two carry-on bags he packed with clothes, shoes, and $400,108 in cash. CBP officers said that before boarding his flight, claimant was advised of the requirement to report any currency he was transporting that exceeded $10,000, but on the CMIR Form, which he read, completed, and signed, he declared he was transporting only $210 in U.S. currency. Claimant asserted the agents did not verbally advise him of the currency reporting requirement on the jet bridge and that he otherwise was unaware of it. Rather, claimant said the agents asked him if he was carrying any cash and he answered yes, an officer pointed to one of the two carry-on bags and asked how much money he had in there, and claimant responded that he had "two hundred ten thousand" in the bag. Then the officer "pushed a printed paper at [him] and told [him] to write 'two ten' ... and sign [his] name." Claimant disputed that he read and understood the CMIR Form before he signed it, and that he told the agent, more than once, that he had another one hundred ninety thousand dollars in the other bag. The government voluntarily dismissed a criminal complaint against claimant without prejudice, filed an action for civil forfeiture, and then moved for summary judgment. Claimant did not dispute, for purposes of this summary judgment motion only, that there was no issue of material fact that he had violated the currency reporting requirements of 31 U.S.C. §5316, which

relieved the government of its burden to prove forfeitability under §5317. Nevertheless, claimant argued the government failed to show forfeitability by a preponderance of the evidence because it had not established he had knowledge, either actual or constructive, of §5316's reporting requirements. He court said claimant could not undermine the government's showing of forfeitability under § 5317(c) because it sufficiently proved constructive knowledge. The disputed facts were immaterial. Even if claimant did not read and understand the CMIR Form, he could not deny he was given the form (which he signed) or that the form clearly advised him of the currency reporting requirement. Therefore, the government has met its burden to show forfeitability under §5317(c), and claimant failed to rebut that showing. However, the government failed to prove there were no genuine disputes of material fact as to claimant's intent to evade the currency reporting requirement. While claimant had constructive knowledge of §5316's currency reporting requirement, he disputed he had actual knowledge of that requirement, let alone the intent to evade it. If claimant's assertions proved true at trial, a reasonable trier of fact could conclude that claimant did not have the specific intent to evade the reporting requirement. Thus, construing the disputed facts in the light most favorable to claimant, the government did not meet its burden of proving forfeitability under §5332(c)(1). The court also found that the government failed to show claimant could not meet his burden at trial to establish that full forfeiture under §5317(c) would be grossly disproportionate to his §5316 violation. It was permissible for him to transport the currency out of the country so long as he reported it. While claimant admitted to conduct that would have violated §5316's reporting requirement on two additional occasions, those offenses also were merely reporting violations and both occurred within a few weeks of the violation that triggered this forfeiture action. Moreover, the government did not show that the money was connected to other illegal activities, and fell far short of labeling claimant a money launderer, drug trafficker, or tax evader. Moreover, claimant raised genuine issues of material fact that he lawfully earned the cash he carried and intended to use it for lawful business purposes. Also, forfeiting all $400,108 for a violation only of §5316 would exceed the statutory maximum by $158,108, a fairly significant difference. Finally, claimant's failure to report the money affected only the government, and there were genuine issues of material fact as to whether claimant intentionally sought to defraud the U.S. government. Thus,, the court denied summary judgment. *U.S. v. $400,108.00*, 19CV5863ARRSJB, 2021 WL 3741542 (E.D.N.Y. Aug. 24, 2021).

New York district court holds that claimant's bald claim that he had a possessory and ownership interest in the defendant currency, without any explanation, was insufficient under the Supplemental Rules. After obtaining a search warrant for Easley's 2007 Chrysler 300, Buffalo Police officers discovered and seized the $153,115 defendant currency. Of the $153,115 seized, $117,616 was discovered in a cooler, and $35,499 was discovered in a small portable safe. Officers also found one pound and 10 ounces of marijuana in 10 medium sized clear plastic bags in the cooler. The government filed a civil forfeiture complaint and sent Easley's lawyer copies, and published notice. Because Easley received direct notice of the forfeiture action, his deadline for filing a claim was April 23, 2021, with his answer due 21 days after the filing date of any claim. Easley did not file a claim or answer by the deadline. But six days after the deadline, on April 29, 2021, Attorney Pratcher filed both a claim and answer on Easley's behalf. In its entirety, the claim stated: "MICHAEL EASLEY is the owner of the property known as one hundred fifty-three thousand one hundred and fifteen [sic]. As such I have

the right to make a claim for the currency as owner. Therefore, MICHAEL EASLEY hereby claims that he has a possessory and ownership interest in the above-described currency." The government moved to strike Easley's claim as untimely and insufficiently explained his claim of ownership. In response, Pratcher attested that he failed to timely file Easley's claim because his office "was adversely impacted due to COVID-19 and other health related reasons of counsel and staff." No further explanation of these circumstances was provided. Attorney Pratcher further attested, also without elaboration or explanation, that "Claimant has documentary proof of his legal interest in the property." The court found that Easley demonstrated excusable neglect concerning the filing of his claim. First, he would be severely prejudiced if his claim were stricken as he would forfeit his interest in a significant amount of money. Second, the delay was only six days, and there was no indication that it prejudiced the government or meaningfully impacted the proceedings. Third, Easley himself was not responsible for the delay, which was attributable to his lawyer. While Attorney Pratcher failed to adequately explain specifically how the pandemic or his health concerns prevented him from timely filing Easley's claim, the court accepted his representations as an officer of the court in the interests of moving the litigation along. Finally, there was no indication, nor did the government argue, that there was any bad faith in Easley's failure to meet his deadline. Accordingly, the court did not strike Easley's claim on timeliness grounds. As for the substance, however, the court found that the claim failed to adequately state Easley's interest in the property, as required by Rule G (5)(a)(i)(B). Easley baldly claimed he "has a possessory and ownership interest" in the defendant currency without any explanation, which is insufficient under the Supplemental Rules. Based on the representation that Easley had documentary proof of his legitimate interest in the currency, however, the court gave Easley 14 days to file an amended claim. *U.S. v. $153,115.00 U.S. Currency*, 21-CV-380S, 2021 WL 3507894 (W.D.N.Y. Aug. 10, 2021).

New York district court denies forfeiture of wife's interest in family home as substitute asset because the survivorship right tied to defendant's life belonged to her rather than him, and thus government could not take, and the husband could not forfeit, an interest that did not belong to him. The defendant was convicted of money laundering, and a preliminary order of forfeiture and money judgment was entered in the amount of $1,899,700.00. The government was unable to locate the proceeds of the offenses and thus sought to forfeit the defendant's interest in his marital home as substitute property. The defendant's wife brought a third-party petition seeking to clarify her property rights in the marital home, which they owned as tenants by the entirety. The government moved for judgment on the pleadings dismissing the petition. The government indicated it was not seeking the sale of the property or the wife's eviction, but reserved its right to seek those remedies in the future and sought only forfeiture of the defendant's interest in the property and a finding that the government and the wife each owned an undivided half of the property as tenants in common without the right of survivorship. The wife argued that, notwithstanding the forfeiture, she retained her right to survivorship tied to her husband's life, and that her tenancy in the entirety in the Subject Property continued. There was no dispute that the defendant's interest in the property had been forfeited or that the defendant and his wife each held a tenancy by the entirety, in which the surviving spouse has the right to the entire property when the deceased spouse dies. The government argued the forfeiture of the wife's interest should be treated like a divorce and therefore the tenancy by the entirety was terminated and she and the government should be treated as tenants in common with no right

of survivorship. In this case, upon the entry of the Substitute Asset Order, the defendant's right in the property was forfeited, meaning the government stepped into the shoes of the defendant. The wife's property interest is vested in her rather than the defendant. While the defendant also had a right to survivorship tied to his wife's life, the survivorship right tied to his life belonged to her rather than him. The government could not take, and the husband could not forfeit, an interest that did not belong to him. Thus, she raised a plausible claim pursuant to Section 853(n)(6) that the government's requested relief would cause her to forfeit a right that vested in her rather than the defendant and judgment on the pleadings was denied. *U.S. v. Stern*, 16-CR-525 (JGK), 2021 WL 3474040 (S.D.N.Y. Aug. 5, 2021).

New York district court reduces forfeiture judgment based on Eighth Amendment from $17,183,114.57 to $103,750. Akhavan was convicted of conspiring to defraud U.S. banks and others through a fraudulent payment processing scheme. Akhavan and his co-conspirators tricked banks and credit card issuers into processing more than $150 million of cardholder transactions for marijuana, purchased through the marijuana delivery company Eaze, when the banks and others had a firm policy of not allowing such transactions. While the Court, after hearing argument on the government's previous claim for forfeiture in the amount of $156,228,211.61, somewhat summarily adopted the Government's "fallback" position of forfeiture in the amount of $17,183,114.57 at the sentencing proceeding, it held off entering the final written judgment because of remaining doubts about the forfeiture question. Following an evidentiary hearing on forfeiture, the court agreed Akhavan "obtained" $17,183,114.57 for purposes of forfeiture but concluded the forfeiture would constitute an excessive fine in violation of the Eighth Amendment. The government conceded at the evidentiary hearing that the criminal forfeiture here was inherently punitive. Also, although it was a serious fraud that potentially placed the banks at risk, from the economic standpoint no one lost money. As the one who designed a scheme specifically intended to defraud federal banks, Akhavan clearly fits into the class of persons for whom the bank fraud statute was designed, however a $17 million forfeiture order would be 17 times the maximum fine possible under 18 U.S.C. §1344 and would be 170 times the amount of the fine actually imposed in this case. In either case, it is wholly out of proportion to the maximum and actual fine (which, of course, is the principal and historic means of punishing a defendant financially). Moreover, neither the banks nor the government suffered any financial loss as a result of the defendant's conduct. The banks, in fact, made money as a result of this scheme. Finally, a $17 million forfeiture order would effectively deprive Akhavan of his livelihood. While the Court found the $17 million forfeiture amount unconstitutionally excessive, it found that $103,750 – the value of a stock option given to Akhavan – was proportional to the gravity of his offense, a reasonable estimate, and roughly equivalent to the amount of the fine the Court imposed. *United States v. Akhavan*, 20-CR-188 (JSR), 2021 WL 3862123 (S.D.N.Y. Aug. 30, 2021).

Colorado district court affirms Clerk's reduced award of costs to claimant based on partial success in preventing forfeiture. The Government sought forfeiture of cash as the proceeds of marijuana sales. Schwabe opposed the forfeiture, and the case proceeded to a jury trial. The jury found that only $21,000 of the $144,700 seized were the proceeds of marijuana sales. The Court therefore ordered the remaining $93,700 be returned to Schwabe, who filed a Proposed Bill of Costs seeking reimbursement of $18,625.66 in litigation expenses. After a hearing, the Clerk of

Court found that only $7,901.48 of the costs requested were reimbursable under 28 U.S.C. §1920 and §1821. The Clerk also concluded that, because Schwabe had failed to recover 18.3% of the total amount seized, his cost award should be reduced by 18.3% and that because the government won forfeiture of 18.3% of the total amount seized, it was entitled to recover 18.3% of its costs. Taking these deductions into account, the Clerk ultimately awarded Schwabe $5,558.58 in costs. Schwabe challenged the award. Schwabe first argued the Clerk erred by failing to award him all of the costs he requested. The Court disagreed. Schwabe did not identify any additional costs in his Proposed Bill of Costs that should have been categorized as awardable costs under Sections 1920 or 1821. In fact, he did not point the court to a single expense that fell within one of the categories of awardable costs but was not awarded. Therefore, the court had no basis to overturn the Clerk's cost award. Schwabe argued, however, that 28 U.S.C. §2465 allowed him to recover 100% of the costs claimed, and supersedes Section 1920 and Section 1821 to recover costs that do not fall within the categories of awardable costs listed in those statutes. Contrary to Schwabe's contention, it does not "specifically provide" for an award of costs beyond those enumerated in Section 1920 and Section 1821. In fact, the statute says nothing about Section 1920 or Section 1821, and it provides no guidance as to what costs or awardable or how to determine whether a claimant's costs were "reasonably incurred." Furthermore, he has not demonstrated that his cost request was reasonable. Instead, he simply argues that it was unfair that the Clerk didn't give him everything he asked for. This argument did not establish a right to relief. It was not the court's job to scour the record in search of awardable costs that the Clerk might have missed. Rather, the party seeking costs bears the burden of showing what costs should be awarded. Also, the court agreed with the Clerk that it was appropriate to reduce Schwabe's cost award by 18.3% to reflect that Schwabe was only partially successful in avoiding forfeiture. Finally, the government was a prevailing party in this case: the "prevailing party," for purposes of Rule 54(d)(1), is "usually the litigant in whose favor judgment is rendered," regardless of the amount awarded. Because the court entered judgment in favor of the government in the amount of $21,000, the government was a prevailing party in this case, and entitled to an award of costs under Rule 54(d)(1). Thus, the award was affirmed. *U.S. v. $114,700.00 in U.S. Currency*, 17-CV-00452-CMA-GPG, 2021 WL 3675168 (D. Colo. Aug. 19, 2021).

California district court denies attorney's motion to withdraw because he failed to provide good cause for withdrawal. Jacek W. Lentz sought to withdraw as the claimant's counsel of record. In response to the government's forfeiture action, claimant Smith moved for a mandatory stay pursuant to 18 U.S.C. § 981(g)(2). The court denied Smith's motion because she failed to establish that she was the subject of any criminal investigation. Smith moved for reconsideration, which the Court denied. Lentz's Motion failed for at least two reasons. First, Lentz failed to support his motion with good cause. Lentz said he and his client had irreconcilable differences with regard to case tactics and strategy and experienced a complete breakdown in communication, which made further representation impossible. Beyond that vague representation, Lentz failed to provide any information detailing the extent of the "breakdown in communication" with his client or why further representation would be "impossible." This is insufficient to demonstrate good cause to permit Lentz's withdrawal. Second, Smith would be prejudiced by Lentz's withdrawal. Smith opposed Lentz's Motion and claimed Lentz "took this matter on a contingency ... with a large, up-front payment" and had not agreed to return that

payment. Smith also contended that the fact discovery cutoff in this case was soon and Lentz was still in possession of her client file. Smith argued Lentz's withdrawal would make it unreasonably difficult to find a new attorney and conduct discovery before the upcoming deadline. The court agreed with Smith and found that Lentz's withdrawal would be prejudicial and denied Lentz's Motion to Withdraw. *United States v. $208,420.00 in U.S. Currency*, 220CV01156ODWRAO, 2021 WL 3473925 (C.D. Cal. Aug. 6, 2021).