

**Illinois district court strikes late claim because answer had been filed first, claimant's attorney should have checked the record, and he filed late claim instead of requesting an extension or contesting motion to strike.** Claimant was among the passengers in a stopped vehicle, which an officer stopped, searched and discovered bundles of vacuum-sealed currency hidden underneath the rear passenger bench seat. Claimant said the cash represented proceeds from his afterparty business, and he intended using it to purchase vehicles. A K9 sniff confirmed the odor of narcotics on the seized currency. The government filed a forfeiture complaint alleging the currency constituted drug money and served Claimant and his then-attorney with mailed notice to file a claim within 45 days – 10 days more than what is required by the federal rule. Claimant retained new counsel and answered the complaint, but the court struck the answer because the federal rule requires that a claim for assets be filed before an answer. Claimant then filed a Claim, however the government moved to strike the claim because it was untimely filed. Claimant requested the court to excuse the tardiness and grant him leave to file a renewed answer, The court said Claimant was present during the seizure and was made immediately aware that it was in the government's custody. The government also sent him and his then-attorney the Notice via regular and certified mail, providing instructions regarding how to contest the forfeiture and the deadlines for doing so. Also, the reasons proffered for the delay were insufficient. Claimant contended the confusion was because his prior attorney filed a claim for assets in the administrative proceeding but not in the judicial proceeding, and his new attorney assumed that a claim was filed here. The court said Claimant could not use his prior attorney as a scapegoat, since he failed to examine the record, a reasonable expectation when an attorney takes on an ongoing case. The mistakes of Claimant's attorney thus were imputed to him and deprived him of standing. Although the stricken answer provided adequate notice to the court and the government of Claimant's interest in the currency, and the government was not significantly prejudiced by the delay (although there were legitimate concerns regarding evidence becoming stale and the government's ability to obtain testimony from relevant witnesses). Finally, the stricken answer failed to meet the basic requirements for a claim for assets, and Claimant failed to request additional time to file a tardy claim. After the government moved to strike, and rather than contesting the motion, Claimant filed a claim nearly three months past the deadline without requesting an extension or providing the Court with an explanation for the delay until it asked the Court to excuse the procedural defects. Claimant failed to provide the court with an adequate explanation for his failings, and the one proffered did not constitute excusable neglect, so the court struck the claim. *United States v. \$54,580.00 in United States Currency*, No. 19-CV-00723-JPG, 2020 WL 707428 (S.D. Ill. Feb. 12, 2020).

**Illinois district court denies motion to dismiss complaint since it included the date, time, and location of the seizure, a description of the items seized, and the reasons for the seizure, which satisfied the particularity requirements.** After the Food and Drug Administration noted several regulatory violations during an inspection of Claimant Life Rising Corporation, the FDA seized thousands of dietary supplements. Many of the alleged violations were similar or identical to violations contained in a warning letter the FDA previously issued to Life Rising in 2017. The FDA inventoried Life Rising's dietary supplements and placed them under administrative detention. The government filed a complaint for forfeiture of the supplements, and the claimant moved to dismiss for failure to state a claim. The government first contended the court lacked jurisdiction to review the FDA's determination to initiate an enforcement action. The court,

however, held that due process allows the court to review the sufficiency of the complaint in such cases. Life Rising argued the government failed to plead sufficient facts to support a reasonable belief that there was probable cause to forfeit the seized objects, i.e., why all of the seized items were adulterated or how Life Rising's practices violated FDA regulations. Life Rising pointed, as an example, to the government's allegation that Life Rising failed to establish specifications for the identity, purity, strength, and composition of components used to manufacture the dietary supplements. It argued this was not enough to identify the specific articles that were noncompliant or the reason they were noncompliant, such as "whether the specifications were nonexistent or just incomplete." At this stage, however, the court said the government need not show that all of the items were subject to forfeiture under Fed. R. Civ. P. Supp. R. G(8)(b)(ii). The government need only plead sufficient facts to support "a reasonable belief" that the government can prove its case. Even so, the government established sufficient facts to infer that all of the seized items were adulterated. Life Rising moved, in the alternative, for a more definitive statement to allow it to properly prepare a responsive pleading pursuant to Fed. R. Civ. P. 12(e) and the Supplemental Rules. To the extent Rule E requires more, it must give the claimant "a point from which to begin" their investigation and responsive pleading. Courts have mostly examined Rule E's particularity requirement in the context of criminal cases and found that allegations regarding "the date and time of the seizure, a description of the property seized, and detailed information regarding the circumstances and investigation leading up to the seizure" to be sufficient. Here, the complaint included the date, time, and location of the seizure, a description of the items seized, and the reasons for the seizure. This satisfied the particularity requirements, and thus the complaint pleaded enough facts to state a claim. *United States v. 286,161 bottles, 209 dietary supplement cookie packs, & 45,521 packs, boxes, or granules, more or less, of an article of food, specifically various herbal supplement capsules, tablets, cookies, & teas*, No. 19 C 3876, 2020 WL 550598 (N.D. Ill. Feb. 3, 2020).

**Illinois district court sets aside clerk's entry of default since attorney assured claimants he would get them an extension to file a claim, Claimants immediately moved to have the entry of default set aside, and they asserted the existence of a possibly meritorious defense to the complaint.** Officers seized \$182,620 in United States currency at issue in this civil forfeiture case during a traffic stop. The government sent a Direct Notice of Civil Judicial Forfeiture to the driver and his attorney by regular and certified mail and published a Notice of Civil Forfeiture on the official government website. No claims were filed, so the Clerk of Court entered default against driver and all interested parties on December 9, 2019. On January 8, 2020, the government moved for entry of a judgment and decree of forfeiture and mailed a copy of the entry of default, the motion for entry of judgment and decree of forfeiture, and the proposed judgment and decree to the driver and his new attorney. The following day, Claimants filed a motion for relief from entry of default, stating that their previous attorney, who had practiced for more than 50 years, assured them that "everything would be okay," however the attorney was in ill health due to cardiology-related issues and effectively abandoned the case without filing a timely claim. The government responded that it had multiple discussions with the attorney prior to the entry of default, and agreed to multiple extensions of the claim period, with the final period expiring on November 27, 2019. Here, the driver attested that he and his wife were in frequent contact with their first attorney, who told them not to worry about the case and that he was making progress with the Assistant United States Attorney. On the last day for filing a claim, the

attorney said “don't worry we will get extensions.” Thus, the court found that since Claimants were willing to litigate the case properly, but were inhibited by an ill attorney who abandoned his duties, they showed good cause for vacating the entry of default. Moreover, within one day of the government moving for default judgment, Claimants moved to have the entry of default set aside. Thus, they took quick action to correct the default. Finally, Claimants asserted the existence of a possibly meritorious defense to the complaint,, since the driver attested that there was a legitimate source for the money, i.e., that it was withdrawn from Claimants’ bank account for the purpose of bidding at a real estate auction. Because Claimants met the requirements under Rule 55(c), and because the sanction of default judgment would have been prejudicial to Claimants, who demonstrated a desire and intent to actively litigate this action with a competent attorney, the court set aside the Clerk’s entry of default. *United States v. \$182,620 in United States Currency*, No. 3:19-CV-823-NJR, 2020 WL 774389 (S.D. Ill. Feb. 18, 2020).

**Sixth Circuit affirms striking of claim and answer and summary judgment because Claimant refused to respond to discovery requests through blanket assertion of Fifth Amendment.** A routine Transportation Security Administration screening indicated the presence of an organic bulk mass in Wells' carry-on luggage. Upon examination of the luggage, TSA officials discovered several rubber-banded bundles of mixed-denomination U.S. currency totaling \$39,000. The government filed this forfeiture action, and Wells filed a verified claim asserting ownership and possession, and an answer denying the government's allegations on the grounds that the answer could violate Claimant's Fifth Amendment rights. The government served special interrogatories on Wells seeking information testing his assertion of ownership over the defendant currency. In response to each interrogatory, Wells stated, “Claimant refuses to answer this interrogatory as he is asserting his Fifth Amendment right against self-incrimination.” The government then moved for summary judgment on the issue of standing, asking the district court to strike Wells' verified claim and answer due to his failure to respond to discovery requests aimed at determining the legitimacy of his alleged ownership interests. The district court granted the motion. The appeals court affirmed. A blanket assertion of the Fifth Amendment privilege does not excuse a claimant's burden of establishing standing at the summary judgment stage, nor can a claimant use this invocation of the privilege as a sword to make one's assertions of ownership impervious to attack. Otherwise, Wells' claim of privilege could allow him to proceed with what may be false evidence while depriving the government of any means of detecting the falsity. Thus, the district court properly struck Wells' verified claim and answer and properly found the government was entitled to summary judgment due to Wells' lack of standing. *United States v. \$39,000.00 in U.S. Currency*, No. 19-3747, 2020 WL 962080 (6th Cir. Feb. 28, 2020).

**Ninth Circuit affirms striking of claim and entry of default judgment because Claimant’s supplemental response to special interrogatory was incomplete and evasive, and an additional opportunity to cure would be futile.** Jalloh appealed *pro se* from the district court’s default judgment and order striking his claim in the government’s civil forfeiture action. The court held that the district court did not abuse its discretion because Jalloh’s supplemental response to the government’s special interrogatory was incomplete and evasive, the court gave Jalloh the opportunity to cure his response, and giving him an additional opportunity to cure would be futile. The district court did not abuse its discretion in entering default judgment

against Jalloh because the merits of the plaintiff's substantive claims and the possibility of prejudice to the plaintiff weighed in favor of entering default judgment. *United States v. Jalloh*, No. 18-55901, 2020 WL 618563, at \*1 (9th Cir. Feb. 10, 2020).