

**Eleventh Circuit affirms more than one-year delay in entering forfeiture money judgment since defendant was well aware that, upon conviction, there would be a forfeiture money judgment and that the only remaining forfeiture issue was the amount of the judgment.**

Defendant Amor argued on appeal that the district court lacked jurisdiction to enter a forfeiture money judgment and a preliminary order of forfeiture more than a year after sentencing, since forfeiture is a portion of a defendant's sentence. The court concluded the district court did not violate Rule 32.2, since the forfeiture allegations in the indictment expressly notified Amor that he would be subject to a mandatory forfeiture money judgment as part of his sentence for his convictions. The indictment also identified the property subject to forfeiture and various items as potential substitute assets. During trial, Amor and the government discussed forfeiture and agreed that the district court, not the jury, would make the requisite forfeiture determinations. Throughout the entire proceedings, Amor was well aware that, upon conviction, there would be a forfeiture money judgment and that the only forfeiture issue was the amount of the forfeiture money judgment. In fact, soon after his convictions, Amor and the government met to discuss the forfeiture portion of his sentence and even agreed to negotiate an "agreed-upon amount" for the forfeiture money judgment. Ultimately, they were unable to settle on an amount, but still almost two months before Amor was sentenced, the government filed a formal Motion for a forfeiture money judgment of \$4.6 million and a preliminary order of forfeiture. Importantly, while Amor disputed the amount of forfeiture he owed, he never contested that forfeiture would be part of his sentence. Thus, by the time of the sentencing hearing, Amor was well aware that forfeiture would be part of his sentence. Finally, at the sentencing hearing the district court complied with Rule 32.2(b) by ensuring that Amor was aware of the forfeiture, and Amor did not object to the district court's later deciding the forfeiture amount. Therefore, even though the district court did not rule on the forfeiture amount at sentencing, it complied with Rule 32.2(b) by ensuring that Amor was aware of the forfeiture, and that Amor did not object to the court determining the forfeiture amount after sentencing. Also, Amor waived any right to be present when the district court entered its later forfeiture orders, since he waived having a hearing in the first place. *United States v. Mincey*, No. 16-11049, 2020 WL 362938 (11th Cir. Jan. 22, 2020).

**New Jersey district court dismisses civil forfeiture complaint that did not sufficiently allege a nexus between the underlying offenses and the seized property.**

The court stated that weeding out illicit profits from legal proceeds is no easy task. The claimant Taub argued that the civil forfeiture complaint did not plead the alleged fraud scheme with requisite specificity or sufficiently trace the seized assets to specific manipulative trades, and that its money laundering allegations were inadequate. The court held that the scheme itself was adequately pled, since the Superseding Indictment charged Taub with the same scheme set forth in the forfeiture complaint. Where the property involved in a money laundering transaction is commingled in an account with untainted property, the government's burden of showing that money in the account or an item purchased with cash withdrawn therefrom is "traceable to" money laundering activity will be difficult, if not impossible, to satisfy. The real issue, in the court's view, was the degree of connection the complaint must allege between the underlying offenses and the property seized – whether the connection be characterized as tracing, related, a nexus, or some similar term. The government contended that while it sufficiently traced the seized property to the scheme and the money laundering allegations, it is not required to do so at the pleading stage. The court disagreed, however, in light of the plain language of the statutes, the extraordinary nature of

pre-adjudication seizures, and persuasive authority found in other decisions. The plain language of 18 U.S.C. §981(a)(1)(A) requires the seized property to have been “involved in” the stated violations or be “traceable to” such property. Likewise, the plain language of subsection (a)(1)(C) requires the seized property to constitute or be derived from “proceeds traceable” to the stated violations. As a result, the stated nexus – involved in, traceable to, and proceeds – is an element of the civil forfeiture claims. Accordingly, and at a minimum, the government must plausibly plead the requisite connection between the underlying offense and the seized property. Moreover, civil forfeiture is a powerful tool in the government’s battle against crime, its use is circumscribed by important Fourth and Fifth Amendment rights, and thus it must be carried out scrupulously within constitutional bounds. Finally, case authority dictates that in a civil in rem forfeiture complaint, the government must at a minimum allege a plausible connection between the underlying offenses and the relevant property. In light of the foregoing standards, the court held the complaint did not sufficiently allege a nexus between the underlying offenses and the seized property. The court did not find the complaint’s statistical analysis allegation to be plausible because it failed to indicate what information was considered in the analysis, what methodology was used, who performed the analysis, or how the percentage was calculated. The court therefore granted Taub’s motion to dismiss the complaint for failure to adequately state a claim, although it allowed the government to file an amended complaint. *United States v. Any & All Ownership Interest Held in the Name*, No. CV169158JMVJBC, 2020 WL 278762 (D.N.J. Jan. 16, 2020).

**Iowa district court enters order forfeiting Defendant’s nursing licenses even though he previously had agreed to surrender them.** Defendant argued that since he surrendered his nursing licenses, then the issue of forfeiture of the licenses was moot and the court should not enter an order of forfeiture against him. The court said the defendant's argument appeared to violate the plea agreement he reached with the government, which provided that the parties would litigate two specific issues regarding forfeiture: 1) whether defendant's nursing licenses constituted “property” under the statute; and 2) whether forfeiture would violate the Constitution. After entering into the plea agreement, Defendant negotiated a settlement with the Iowa Nursing Board, apparently in secret, which led to the voluntary surrender of his licenses. The court said that if defendant was correct that he had no property interest in his nursing licenses, the implication was not that the court lacked the power to enter a forfeiture order, but, rather, that defendant lacked the standing to challenge the court's entry of a forfeiture order. At the hearing, the defendant argued he had a “future interest” in his nursing licenses because he could reapply to be licensed in the State of Iowa,, which gave him standing to challenge the forfeiture here. If defendant had a future property interest, then he would have standing to challenge the forfeiture, however then the matter would not be moot. Either the licenses no longer existed and defendant had no property interest in them, in which case he did not have standing to challenge forfeiture, or the licenses still existed in some form and defendant had a property interest in them, in which case forfeiture was not moot. In any event, defendant had no property right to surrender at the time he surrendered the licenses to the State of Iowa because that property right was vested in the United States. At the hearing, defendant argued that this would turn the Constitution on its head by depriving him of both due process and the presumption of innocence. To the contrary, defendant was afforded due process by notice of the forfeiture action in the indictment and the ability to be heard at the hearing. That the government's property interest related back to a time

prior to defendant's charge did not mean defendant was deprived of his constitutional rights. Defendant also argued his nursing licenses were not property subject to forfeiture because the explicit language does not include professional licenses in the definition of property. The forfeiture statute (21 U.S.C. §853), however, uses the word “including” before listing “rights, privileges, interests, claims and securities” as examples of tangible and intangible personal property. The word “including” indicated that the words that follow are examples and not an exhaustive list. Thus, the omission of an explicit reference to professional licenses in the list did not mean that a professional license is not property within the broad definition of the statute. In fact, the Supreme Court has held that professional licenses are considered property protected by the Fourteenth Amendment. It follows, then, that a professional license falls within the broad definition of property subject to forfeiture under Section 853. Moreover, two other courts of appeal have specifically held that a professional license constitutes property subject to forfeiture under Section 853. Finally, as to Defendant’s alternative assertion that forfeiture would violate the Eighth Amendment's prohibition against excessive fines. After considering the relevant factors, the court added that the defendant presented no evidence that loss of his professional licenses would prevent him from earning a livelihood upon release from prison. Although it might prevent him from obtaining employment as a licensed nurse, there were other jobs, including jobs in the health care profession, that defendant could work that would not require nursing licenses. Thus, the defendant failed to carry his burden of making a prima facie case that forfeiture of defendant's nursing licenses constituted a grossly disproportionate fine. Even were the court to conclude that forfeiture of his nursing licenses was grossly disproportionate to the crime, the court said it was not so disproportionate to constitute a crime greater than the one defendant perpetrated. Accordingly, the defendant's nursing licenses were subject to forfeiture under Title 21, United States Code, Section 853, and the Court will enter a preliminary order of forfeiture of those licenses. *United States v. West*, No. 19-CR-2013-CJW-MAR, 2020 WL 42886 (N.D. Iowa Jan. 3, 2020).

**Eleventh Circuit affirms denial of trademark owner’s intervention in civil forfeiture action since there was no difference between the objectives the government sought to fulfill and those of the intervener.** Claimant imported and sold replacement automotive grilles, which CBP seized at three different ports. The government filed a civil complaint for the forfeiture of 324 automotive grilles, alleging they bore counterfeit marks, or marks that copied or simulated registered trademarks. Claimant asserted it was the lawful owner of the seized grilles, and moved to dismiss, contending the trademarked designs were functional, the replacement grilles were not counterfeit and there was no likelihood of confusion, and most of the grilles were covered by design patent licenses. Chrysler filed a motion to intervene to “vindicate” both its trademark and contractual rights and, in the alternative, sought leave to appear as *amicus curiae*, but it did not file a formal intervener complaint. Instead, it attached a proposed memorandum in opposition to the motion to dismiss in which it addressed the substantive arguments concerning the legitimacy of the replacement grilles. The district court denied the motion, noting that, because the Supplemental Rules did not refer to or otherwise permit intervention as a plaintiff in a forfeiture proceeding, Federal Rule of Civil Procedure 24(a) applied. The court concluded that, assuming Chrysler’s interest in protecting its intellectual property was sufficient to warrant intervention, its interests were already adequately represented by the government. In the intervener’s appeal, the court first stated that the denial of a motion to intervene generally is not

considered a final appealable order over which the court has jurisdiction. However, under the circuit's "anomalous rule," it had provisional jurisdiction to review the district court's denial of the motion to intervene as a matter of right under Rule 24. If the district court was correct, appellate jurisdiction disappears because the district court's ruling would not be a final decision. If the district court erred, however, the court would maintain jurisdiction and must reverse the ruling. The court then held that assuming intervention as a plaintiff is appropriate in this sort of civil asset forfeiture proceeding, the intervener failed to show its interest was not adequately represented by the government. Where, as here, an applicant for intervention seeks to achieve the same objectives as an existing party in the case, the applicant must overcome a presumption that it is adequately represented, which the intervener failed to do so. There was no difference between the objectives the government sought to fulfill in this case and those of the intervener. Both ultimately sought a finding that the government had cause to seize and forfeit the defendant property, i.e., the automotive grilles unlawfully infringed on the intervener's trademark rights and were imported into the United States without its consent. The fact that the intervener believes itself to be in a better position to make its arguments did not make the government's representation inadequate. *United States v. 60 Auto. Grilles*, No. 19-12023, 2020 WL 233450 (11th Cir. Jan. 15, 2020).