North Carolina district court holds that action taken by the state court prior to the federal adoption was in personam in nature, so district court could properly exercise in rem jurisdiction over seized currency. Sanders' rental vehicle was searched after law enforcement smelled marijuana and a dog positively detected the odor of narcotics on the vehicle, and officers found marijuana and $16,761 in the vehicle. Sanders filed a "Motion for Personal Property to be Released to Defendant" in his state court criminal case. A state law enforcement officer signed out the currency, converted it to a certified check to U.S. Customs and Border Protection. Following the relinquishment of the currency to federal authorities, the state court ordered the return of the currency to Sanders, but it did not hold or assert that it was exercising in rem jurisdiction over the currency. Subsequently, Sanders' counsel emailed the state asking how the funds would be returned. She was told to contact the United States Attorney's Office because the Department of Homeland Security had adopted the currency. Sanders filed a motion asserting that the state was out of compliance with the court's order. Following a hearing, the court issued an order holding that the court acquired in rem jurisdiction over the cash on the date Defense Counsel filed the motion for return of property. The United States filed a civil complaint for forfeiture of the currency and the Claimant moved to dismiss for lack of subject matter jurisdiction, arguing the state court had exclusive in rem jurisdiction. The court denied the motion. While the currency was initially seized by state police, the United States could seize drug proceeds as a transfer from a state law enforcement agency, called an "adoption." If the state court was exercising in personam jurisdiction, and not in rem jurisdiction, then the federal court may properly exercise jurisdiction. Claimant argued his filing of a motion to return in his criminal proceeding, which took place before the adoption, vested the state court with in rem jurisdiction. The court said there was no statutory basis for the North Carolina State Court to exercise in rem jurisdiction over the currency during a criminal proceeding. The Claimant also did not cite any North Carolina authority that holds in rem jurisdiction is conferred on a state court through a motion to return in a criminal proceeding. Because the only action taken by the state court prior to the federal adoption was in personam in nature, the district court could properly exercise in rem jurisdiction over the currency. *U.S. v. $16,761 in U.S. Currency, 521CV00053KDBDCK*, 2021 WL 4314460 (W.D.N.C. Sept. 22, 2021).

New York district court finds that attorney with lien from related SEC case and petitioner holding interim arbitration award did not have standing to assert legal interest in substitute assets, but victim investors did based on potential constructive trust. Criminal defendants Vilar and Tanaka carried out a fraudulent investment scheme in which they solicited millions of dollars, failed to invest the money as promised, and misappropriated the investment funds for their own benefit. The court entered joint-and-several money judgments ordering the defendants to pay restitution in the amount of $26,637,502.69 and forfeiture in the amount of $20,578,855.28, and a Preliminary Forfeiture Order as to Substitute Assets valued at $12.9 million held in various JP Morgan Chase brokerage accounts, which already were part of a Receivership in a related civil action filed by the SEC. The court granted the government's motion to move the Substitute Assets to the criminal case, then received third-party petitions from several claimants. While most of the petitioners asserted claims based on the fraudulent investment scheme, Shevitz (Vilar's and Tanaka's former counsel in the SEC action) asserted an interest based on an attorney's charging lien, and Christov claimed a right to the Substitute Assets on the ground that her husband won an "interim" arbitration award in connection with finder's fees owed on business unrelated to the conduct charged in the indictment. The government moved to dismiss, arguing the petitioners failed to allege a specific interest in the Substitute Assets and thus lacked standing. The court said neither Shevitz nor Christov asserted a legal interest in the specific assets subject to the forfeiture orders, as is necessary for standing purposes. Because Shevitz only defended her clients' interests, without her services creating some fund or proceeds to which a lien can attach, there could be no lien here. Christov's "interim" arbitration award could not take effect until the SEC issued a "no action letter," which Christov acknowledged had not issued. Without an enforceable judgment and having alleged no ties to the specific assets at issue here, Christov was at most a general creditor who lacked standing to contest forfeiture. The investors' theory was that their investments should be treated as part of a constructive trust. The government argued the related SEC action provided an adequate legal remedy for the investors, since all investors recovered one hundred percent of their principal investment, as well as an adjustment for inflation. The court nevertheless found that the investors plausibly alleged an ownership interest in the Substitute and Additional Assets. For similar reasons, the investors had a plausible basis for tracing the assets to their investments, although they ultimately would need to establish what portion, if any, of the property was actually traceable to their investments. *United States of America v. Vilar, et al.,* 05-CR-621 (RJS), 2021 WL 4504699 (S.D.N.Y. Sept. 30, 2021).

California district court denies class certification of class of anonymous potential forfeiture claimants and grants government's motion to dismiss all but two claims, deferring ruling to see if the government files civil forfeiture complaints against Plaintiffs' property. Since 2011, US Private Vaults ("USPV") operated a facility renting between 600 and 1,000 private safe deposit boxes to hundreds of customers. Plaintiffs and the putative class members each leased and maintained one or more boxes at USPV in which they kept non-contraband property, including U.S. currency, gold, and jewelry. USPV did not keep a key to any rented boxes, which meant the only person with the ability to open the box was the renter or the renter's designee. In addition, boxholders were identified by encrypted biometric information. A grand jury indicted USPV for conspiring with its customers to launder money, distribute drugs, and structure financial transactions to avoid currency reporting requirements. Federal law enforcement agents searched USPV and seized every safe deposit box in the facility. Plaintiffs maintained that their boxes did not contain any contraband – only currency, gold, and jewelry. Yet the Government refused to return Plaintiffs' property unless they identified themselves. Though Plaintiffs received notice of the FBI's administrative forfeiture proceedings, they asserted the notice was inadequate because it did not provide the factual and legal bases for the forfeiture. Plaintiffs each filed pseudonymous administrative forfeiture claims to the currency in their USPV safe deposit boxes, and the FBI accepted these claims. Plaintiffs sought to certify three classes, asserting that putative class members wished to remain anonymous to the government while contesting judicial forfeiture to protect their Fifth Amendment right against self-incrimination. The court said that though the putative class members may have shared this common wish, it was not one it could grant on a class-wide basis. A party may proceed anonymously in a law suit only when special circumstances justify secrecy. Determining whether such "special circumstances" are present in a given case requires a fact-specific inquiry. What Plaintiffs ultimately sought via a class certification motion was declaratory relief in the form of an order allowing the putative class members – at least 100 of them – to proceed anonymously in judicial forfeiture proceedings that may or may not be filed in the future. If such forfeiture actions were filed, and the putative class members wished to proceed anonymously in those actions, it would be for the presiding judge in those actions to determine the precise prejudice at each stage of the proceedings to the opposing party, and whether proceedings may be structured so as to mitigate that prejudice. The court said it could not predict and determine whether putative class members would be entitled to proceed anonymously in hypothetical future civil forfeiture actions. Thus, the commonality upon which Plaintiffs' relied – the putative class members' shared wish to proceed anonymously in future forfeiture actions – did not support class certification. Also, a class action does not provide a superior means to determine whether 100 or more individuals may proceed anonymously in 100 or more potential judicial forfeiture actions that have yet to be filed. The court declined to prejudge the balance between the need for anonymity and prejudice in cases that are not before the Court. The government argued that Plaintiffs' Rule 41(g) claim should be dismissed because they had an adequate remedy at law – namely, they could move for return of property in judicial forfeiture proceedings. But the government failed to point to any pending judicial forfeiture proceeding against Plaintiffs' property. It was therefore unclear whether Plaintiffs would actually have an adequate remedy at law via filing a claim in a judicial forfeiture proceeding, or whether the government would opt not to file judicial forfeiture proceedings against the property. Since there no longer were administrative forfeiture proceedings pending against Plaintiffs' property, and the government did not point to any judicial forfeiture proceedings against the property, the court deferred ruling on the government's Motion to Dismiss. Plaintiffs also argued that, pursuant to 18 U.S.C. § 983(a)(1)(F), they were entitled to the return of their property pending any further proceedings because the notices of administrative forfeiture they received did not comport with the forfeiture statute or due process. Though Plaintiffs asserted they had an ownership interest in the items seized from various boxes at USPV, the contents of those boxes were in possession of USPV at the time of seizure. Thus, Plaintiffs were not "the person[s] from whom the property was seized" – that "person" was USPV. Therefore, even if the notices the government sent to Plaintiffs did not comply with the forfeiture statute, Plaintiffs would not be entitled to the return of their property under Section 983(a)(1)(F). Accordingly, the court denied Plaintiffs' motion for a preliminary injunction ordering return of their property pending further proceedings. *Does 1 et al v. U.S. of Am. et al.*, 221CV03254RGKMAR, 2021 WL 4459662 (C.D. Cal. Sept. 15, 2021).

North Carolina district court strikes claim because of Claimant's failure to respond to discovery. Officers in a home search recovered digital scales, drugs, and $11,040 in U.S. currency. William Moore was ultimately convicted on state drug trafficking charges, and the Drug Enforcement Agency began administrative forfeiture proceedings as to the currency. Notosha Moore filed a claim alleging ownership of $6,800 of the seized currency, and the government filed a Complaint of Forfeiture. Ms. Moore filed a Claim and the government served her with discovery requests seeking a range of financial information. She provided paystubs showing her earnings from late March 2019 to early June 2019, along with copies of various identification documents, but otherwise failed to substantively respond. The government sent Claimant a letter requesting full responses and, after not receiving a response, left a voice message. After she failed to respond, the government filed a motion to compel responses to its discovery requests, which was granted after Claimant failed to respond. The court noted that the discovery requests sought relevant information, directed Claimant to provide complete responses if she wanted to pursue her claim, and specifically cautioned her that failure to respond timely would result in the imposition of sanctions, including dismissal of the Claim and entry of default judgment in favor of the United States. The deadline to respond passed, and Claimant provided no further responses, so the government filed a Motion to Strike the Claim, which the court granted. Considered in conjunction with her prior failure to respond to the government's efforts to contact her without court intervention, and her complete lack of participation in the discovery process since her initial, insufficient disclosure, the court found that Claimant's failure to comply with the Order granting Plaintiff's Motion to Compel warranted a finding of bad faith. Also, Claimant's failure to respond to discovery requests prevented this case from moving forward for months, severely prejudicing the Government, and the court found that the need to deter such flagrant violations of its orders was significant, and warranted the drastic sanction of striking her Claim. Finally, the court held that no less drastic sanction than striking the Claim would be effective. *United States of America, v. $6,800 in U.S. Currency*, 1:20CV88, 2021 WL 4444856 (M.D.N.C. Sept. 8, 2021).