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DISTRICT OF ARIZONA
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,
Plaintiff,
v.
1985 Gulfstream Commander 1000
aircraft, model 695A, serial number
96080, United States registration number
N960AC; and Aircraft engine, model
number TPE 331-10-511K, part number
3102190-2, serial number P-38337,
Defendants.

CV-01-763-PHX-JAT
ORDER

Pending before the Court are the following three motions: (1) the Motion for Partial Summary Judgment on FAA Counts Against Engine (Doc. #103) filed by Claimants Asia Cargo & Trading Co., S.A. ("Asia Cargo Panama") and Asia Cargo & Trading of U.S.A., Inc. ("Asia Cargo Florida"); (2) Claimants' Motion to Strike October 24, 2002 Affidavit of Patrick E. Dawson (Doc. #117); and (3) Plaintiff United States of America's Motion to Supplement Affidavit of Patrick E. Dawson (Doc. #122). For the reasons set forth below, the Court will grant the Motion for Partial Summary Judgment and deny the Motion to Strike and the Motion to Supplement as moot.

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1 **Background**

2 **I. THE SEIZURE OF DEFENDANT PROPERTIES**

3 This *in rem* forfeiture action arises out of Plaintiff's seizure of (1) Defendant 1985
4 Gulfstream Commander 1000 aircraft, model 695A, serial number 96080, United States
5 registration number N960AC ("Airplane"), which was seized in Oklahoma pursuant to a
6 federal warrant on February 22, 2001, and (2) Defendant turboprop aircraft engine, model
7 number TPE 331-10-511 K, part number 3102190-2, serial number P-38337 ("Engine"),
8 which allegedly is the original port or left engine on the Airplane and which was seized apart
9 from the Airplane in Arizona pursuant to a federal warrant on March 5, 2001 (collectively,
10 "Defendant Properties"). (*See* First Am. Verified Compl. (Doc. #42)).

11 **II. PLAINTIFF'S FORFEITURE CLAIMS**

12 Plaintiff alleges that the true owner of Defendant Properties is Luis Guillermo Angel
13 Restrepo, a Columbian resident. (*Id.*). In the operative Complaint, Plaintiff alleges a
14 complex money laundering operation and conspiracy to distribute illegal drugs directed by
15 Restrepo. (*Id.*). More specifically, the Complaint asserts seven claims for the forfeiture of
16 Defendant Properties, including the Fifth and Sixth Claims: (1) pursuant to
17 49 U.S.C. §§ 46306(d)(1) and (2)(B), the Drug Enforcement Agency ("DEA") may seize and
18 forfeit an aircraft whose use is related to a violation of 49 U.S.C. § 46306(b)(3), which
19 prohibits a person from knowingly and willfully displaying or causing to be displayed on an
20 aircraft a mark that is false or misleading about the aircraft's nationality or registration; and
21 (2) pursuant to 49 U.S.C. §§ 46306(d)(1) and (2)(C)(i) and (ii), the DEA may seize and
22 forfeit an aircraft whose use is related to a violation of 49 U.S.C. § 46306(b)(4), which
23 prohibits a person from knowingly and willfully falsifying or concealing a material fact,
24 making a false, fictitious, or fraudulent statement, or making or using a false document
25 knowing it contains a false, fictitious, or fraudulent statement when obtaining a certificate
26 issued under 49 U.S.C. §§ 44102 and 44103 *et seq.* (*Id.* ¶¶ 257-58). Plaintiff claims that
27 Defendant Engine is subject to forfeiture for registration violations under Section 46306(d)
28 because it is "original equipment" and a "component part" of Defendant Airplane. (*Id.*).

1 **III. THE CLAIM NOTICES FILED BY ASIA CARGO FLORIDA AND PANAMA**

2 On June 21, 2001, Asia Cargo Florida filed a Verified Notice of Claim (Doc. #8) to
3 Defendant Properties that provides, in pertinent part: "Claimant is the sole title owner of the
4 aircraft and engine which have been named as the Defendants in the above-styled action[.]
5 (Notice ¶¶ 1-2). Asia Cargo Panama also filed a Verified Notice of Claim (Doc. #9) to
6 Defendant Properties that provides, in pertinent part: "Claimant is the beneficial owner of
7 the Defendant properties with the right to receive and distribute the proceeds from Asia
8 Cargo [Florida's] sale thereof." (Notice ¶¶ 1-2).

9 **IV. PARTIAL DEFAULT JUDGMENT AS TO DEFENDANT PROPERTIES**

10 Based on Plaintiff's Application filed on August 3, 2001 (Doc. #22), the Clerk of
11 Court entered default against the interest of all persons in Defendant Properties except for
12 the interest of Claimants Asia Cargo Panama and Florida, "but specifically including . . . the
13 interest, if any, of . . . Restrepo." (Entry of Partial Default at 1). Based on Plaintiff's Motion
14 (Doc. #24), the Court entered partial default judgment (Doc. #30) such that the interests
15 of all persons in Defendant Properties except for the interest of Claimants Asia Cargo
16 Panama and Florida, but specifically including the interest of Restrepo, were
17 forfeited to Plaintiff on September 19, 2001 pursuant to 21 U.S.C. § 881(a)(6) and
18 18 U.S.C. § 981(a)(1)(A).

19 **V. PENDING MOTIONS**

20 On October 1, 2002, Claimants filed the pending Motion for Partial Summary
21 Judgment. Plaintiff filed a Response on October 28, 2002 (Doc. #115), and Claimants filed
22 a Reply on November 12, 2002 (Doc. #118).

23 On November 12, 2002, Claimants also filed the pending Motion to Strike. Plaintiff
24 filed a Response on December 2, 2002 (Doc. #121), and Claimants filed a Reply on
25 December 12, 2002 (Doc. #123).

26 On December 11, 2002, Plaintiff filed the pending Motion to Supplement. Claimants
27 filed a Response on December 23, 2002 (Doc. #125), and Plaintiff filed a Reply on
28 January 10, 2003 (Doc. #135).

1 On May 9, 2003, the Court heard oral argument on Claimants' Motion for Partial
2 Summary Judgment.

3 Discussion

4 I. LEGAL STANDARDS

5 A. Motion for Partial Summary Judgment Legal Standard

6 A court must grant summary judgment if the pleadings and supporting documents,
7 viewed in the light most favorable to the nonmoving party, "show that there is no genuine
8 issue as to any material fact and that the moving party is entitled to judgment as a matter of
9 law." Fed. R. Civ. P. 56(c); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986);
10 *Jesinger v. Nev. Fed. Credit Union*, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law
11 determines which facts are material, and "[o]nly disputes over facts that might affect the
12 outcome of the suit under the governing law will properly preclude the entry of summary
13 judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In addition, the
14 dispute must be genuine, that is, "the evidence is such that a reasonable jury could return a
15 verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

16 A principal purpose of summary judgment is "to isolate and dispose of factually
17 unsupported claims." *Celotex*, 477 U.S. at 323-24. Summary judgment is appropriate
18 against a party who "fails to make a showing sufficient to establish the existence of an
19 element essential to that party's case, and on which that party will bear the burden of proof
20 at trial." *Id.* at 322; see *Citadel Holding Corp. v. Roven*, 26 F.3d 960, 964 (9th Cir. 1994).
21 The moving party need not disprove matters on which the opponent has the burden of proof
22 at trial. *Celotex*, 477 U.S. at 323.

23 Furthermore, the party opposing summary judgment "may not rest upon the mere
24 allegations or denials of [the party's] pleadings, but . . . must set forth specific facts showing
25 that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see *Matsushita Elec. Indus. Co.*,
26 *v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986); *Brinson v. Linda Rose Joint Venture*,
27 53 F.3d 1044, 1049 (9th Cir. 1995); see also Rule 1.10(l)(1), Rules of Practice of the United
28 States District Court for the District of Arizona. There is no issue for trial unless there is

1 sufficient evidence favoring the non-moving party; if the evidence is merely colorable or is
2 not significantly probative, summary judgment may be granted. *Anderson*, 477 U.S.
3 at 249-50. However, because “[c]redibility determinations, the weighing of evidence, and
4 the drawing of inferences from the facts are jury functions, not those of a judge, . . .
5 [t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be
6 drawn in his favor” at the summary judgment stage. *Id.* at 255.

7 Finally, “[s]ummary judgment procedures must necessarily be construed in light of
8 the statutory law of forfeitures, and particularly the procedural requirements set forth
9 therein.” *United States v. Currency, U.S. \$42,500.00*, 283 F.3d 977, 979 (9th Cir. 2002).

10 **B. Civil Forfeiture Legal Standards**

11 **1. Plaintiff’s burden of proof regarding forfeiture under CAFRA**

12 Under the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”), “the burden of
13 proof is on the Government to establish, by a preponderance of the evidence, that the
14 property is subject to forfeiture[.]” 18 U.S.C. § 983(c)(1); see *United States v. \$80,180.00*
15 *in U.S. Currency*, 303 F.3d 1182, 1184 (9th Cir. 2002) (“CAFRA transferred the burden of
16 proof from the claimant to the government and required the government to establish
17 forfeiture by a preponderance of the evidence rather than by the lower probable cause
18 standard[.]”).¹ “[I]f the Government’s theory of forfeiture is that the property was used to
19 commit or facilitate the commission of a criminal offense, or was involved in the commission
20 of a criminal offense, the Government shall establish that there was a substantial connection
21 between the property and the offense.” 18 U.S.C. § 983(c)(3); see *United States v. One 1986*
22 *Ford Pickup*, 56 F.3d 1181, 1187 (9th Cir. 1995) (applying substantial connection test under
23 pre-CAFRA probable cause standard).

24
25 ¹ Before the enactment of CAFRA, “the government bore the minimal burden
26 of demonstrating probable cause for instituting the forfeiture proceeding.” *\$80,180.00 in*
27 *U.S. Currency*, 303 F.3d at 1184; see *Currency, U.S. \$42,500.00*, 283 F.3d at 984 n.1.
28 If probable cause was established, “the burden of proof shifted to the . . . the claimant[], who
could avoid a forfeiture only by establishing by a preponderance of the evidence that the
property was not subject to forfeiture.” *\$80,180.00 in U.S. Currency*, 303 F.3d at 1184.

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2. The statutes regarding Plaintiff's Fifth and Sixth Claims

a. 49 U.S.C. § 46306: aircraft registration violations

Plaintiff alleges in its Fifth Claim that Defendant Properties are subject to forfeiture pursuant to 49 U.S.C. § 46306(d)(1) and (2)(B). (First Am. Verified Compl. ¶257). Plaintiff alleges in its Sixth Claim that Defendant Properties are subject to forfeiture pursuant to 49 U.S.C. § 46306(d)(1) and (2)(C)(i) and (ii). (*Id.* ¶ 258). These statutes provide, in pertinent part (emphasis added):

[Section 46306](d) Seizure and forfeiture.--(1) The Administrator of Drug Enforcement or the Commissioner of Customs may seize and forfeit under the customs laws an aircraft whose use is related to a violation of subsection (b) of this section, or to aid or facilitate a violation, regardless of whether a person is charged with the violation.

(2) An aircraft's use is presumed to have been related to a violation of, or to aid or facilitate a violation of-- . . .

(B) subsection (b)(3) of this section if there is an external display of false or misleading registration numbers or country of registration;

(C) subsection (b)(4) of this section if--(i) the aircraft is registered to a false or fictitious person; or (ii) the application form used to obtain the aircraft certificate of registration contains a material false statement[.]

Subsections (b)(3) and (4) provide (emphasis added):

[Section 46306](b) General criminal penalty.--Except as provided by subsection (c) of this section, a person shall be fined under title 18, imprisoned for not more than 3 years, or both, if the person-- . . .

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft;

(4) obtains a certificate authorized to be issued under this part by knowingly and willfully falsifying or concealing a material fact, making a false, fictitious, or fraudulent statement, or making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry[.]

Despite the numerous references to "aircraft" and the lack of any reference to an "aircraft engine," Plaintiff claims that Defendant Engine is subject to forfeiture under Section 46306(d) because it is "original equipment" and a "component part" of Defendant Airplane. (First Am. Verified Compl. ¶¶ 257-58).

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b. 49 U.S.C. § 40102: definitions

Pursuant to Section 40102: (1) “‘aircraft’ means any contrivances invented, used, or designed to navigate, or fly in, the air”; (2) “‘aircraft engine’ means an engine used, or intended to be used, to propel aircraft, including a part, appurtenance, and accessory of the engine, except propeller”; and (3) “‘spare part’ means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.” 49 U.S.C. § 40102(6)-(7), (38) (emphasis added).

II. ANALYSIS

In their Motion for Partial Summary Judgment, Claimants assert that the following facts are undisputed: (1) Defendant Engine was removed from Defendant Airplane before the alleged registration violations occurred; (2) the Engine was not on the Airplane at the time the alleged registration violations occurred; (3) the Engine was not on the Airplane when the Engine was seized; (4) the Engine was not on the Airplane when the Airplane was seized; (5) a replacement engine was on the Airplane when the alleged registration violations occurred; (6) the replacement engine was on the Airplane when the Airplane was seized; and (7) the replacement was seized as part of the Airplane. (Cls.’ SOF ¶¶ 1-6) (citing Pl.’s Resp. to First Req. Admis. No. 23).

Claimants argue that because “there is no dispute that the Engine was not on the Airplane at the time of any FAA [registration] violation, there is no basis to conclude that the Engine was related to or aided or facilitated a Section 46306(b)(3) violation, by displaying a false or misleading registration number or country of registration (Claim Five) or . . . a Section 46306(b)(4) violation by proscribing materially false FAA registration applications (Claim Six).” (Mot. at 5). Claimants also argue that Section 46306(d) “provide[s] only for the forfeiture of ‘aircraft,’” and the “Engine—which had been replaced by another engine that was seized along with the Airplane—is not an ‘aircraft.’” (*Id.*) (citing 49 U.S.C. § 46306(d)(1) & (2)(B), (C)(i)-(ii)). Noting that the definitions in Section 40102(a) define “aircraft” separate and apart from “aircraft engine,” Claimants argue

1 that the latter is “something entirely different” from the former. (*Id.* at 6) (citing
2 49 U.S.C. § 40102(a)(6)-(7)). Finally, Claimants argue that “[o]nce the Engine was removed
3 from the Airplane and replaced prior to [the alleged registration violations], it ceased to be
4 a ‘component part’ of the Airplane, and became an ‘aircraft engine’ as that term is defined
5 in the statute.” (*Id.* at 7).

6 In its Response, Plaintiff does not dispute the facts set forth above. (*See* Pl.’s
7 SOF ¶¶ 4-6) (citing Dawson Aff.). Although Section 46306(d)(1) allows for the forfeiture
8 of “aircraft” without ever mentioning “aircraft engines,” Plaintiff contends that the
9 Engine—which was not on the Airplane when the seizures and the alleged registration
10 violations occurred—is subject to forfeiture under Section 46306(d) because it is “original
11 equipment” and a “component part” of the Airplane. (*Resp.* at 2, 4-7).

12 Plaintiff does not deny that Section 40102(a) defines “aircraft” separate and apart
13 from “aircraft engine.” *See* 49 U.S.C. § 40102(a)(6)-(7). Instead, Plaintiff claims that the
14 Engine is a “spare part” of the Airplane based on the definition of the phrase set forth in
15 Section 40102(a)(38). (*Resp.* at 4-5).² As discussed above, “‘spare part’ means an
16 accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft
17 engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an
18 aircraft, aircraft engine, propeller, or appliance.” 49 U.S.C. § 40102(38) (emphasis added).
19 Based solely on the explicit exception in the definition, it is clear that an “aircraft engine”
20 is not defined as a “spare part” of an “aircraft.” Furthermore, reading the definition without
21 the exceptions, the Court finds that an aircraft engine is not defined as a spare part: “‘spare
22 part’ means an accessory, appurtenance, or part of an aircraft, aircraft engine, propeller, or
23 appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or
24 appliance.” (*Id.*).

25 The only case Plaintiff cites for its novel “component part” argument is a Fifth Circuit
26

27 ²Plaintiff, however, fails to explain why unattached “spare parts” of aircraft that are
28 seized separate and apart from an aircraft are subject to forfeiture under Section 46306(d).

1 case, *United States v. One 1978 Mercedes Benz*, 711 F.2d 1297, 1304-05 (5th Cir. 1983), in
2 which the court “resorted to a comparison of the federal forfeiture laws to the law of fixtures
3 related to real property in evaluating whether a telephone mounted in an automobile used to
4 transport cocaine should be forfeited pursuant to 21 U.S.C. § 881(a)(4).” (Resp. at 6).
5 Plaintiff acknowledges that an analogy to the case is imperfect, but argues that the case is
6 instructive because “applying this analysis, the original equipment temporarily removed for
7 repair and intended to be permanently reattached is clearly subject to forfeiture.” (*Id.* at 6-7).

8 As Claimants correctly point out in their Reply, however, the Fifth Circuit held that
9 the telephone—which was seized along with the vehicle, unlike the Engine—was not subject
10 to forfeiture as a “component part” of the vehicle. (Reply at 4). In so holding, the court
11 stated the following:

12 The court should also give great weight to a final consideration which has no
13 roots in fixture law. If there is any evidence before the court that the item was
14 used in furtherance of the underlying crime[,] . . . that fact should weigh
heavily in the court’s decision to forfeit the item as a part of the contra-band
condemned vehicle.

15 711 F.2d at 1305. Here, it is undisputed that the Engine was not actually used in furtherance
16 of the alleged registration violations. Having considered the analysis in *One 1978 Mercedes*
17 *Benz*, which interpreted 21 U.S.C. § 881(a), the Court finds that it does not provide sufficient
18 legal support for the forfeiture of the Engine under 49 U.S.C. § 46306(d).

19 While Plaintiff does not dispute that the Engine was not actively involved in the
20 alleged registration violations, it claims that the Engine is nonetheless subject to forfeiture
21 under Section 46306(d) because it was “passively involved” in such violations. (Resp. at 8,
22 nn.1-2) (citing *United States v. One Lot Emerald Cut Stones and One Ring*, 461 F.2d 1189
23 (5th Cir. 1972); *United States v. One 18th Century Colombian Monstrance*, 797 F.2d 1370
24 (5th Cir. 1986); and *United States v. One 1954 Rolls Royce Silver Dawn*, 777 F.2d 1358
25 (9th Cir. 1985)). As Claimants correctly note in their Reply, however, “[b]ecause specific
26 statutory authority existed for each of these forfeitures, no ‘passive involvement’ analysis is
27 necessary nor was any such analysis indulged in by the courts in the cases cited” by Plaintiff.
28 (Reply at 7). Accordingly, the Court finds Plaintiff’s “passive involvement” argument

1 unpersuasive and legally insufficient to permit the forfeiture of the Engine under Section
2 46306(d).³

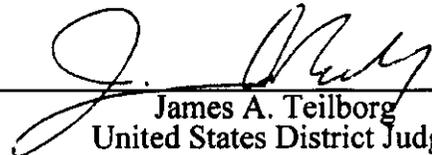
3 **Conclusion**

4 **IT IS THEREFORE ORDERED** that the Motion for Partial Summary Judgment on
5 FAA Counts Against Engine (Doc. #103) filed by Claimants Asia Cargo & Trading Co., S.A.
6 (“Asia Cargo Panama”) and Asia Cargo & Trading of U.S.A., Inc. (“Asia Cargo Florida”)
7 is **GRANTED**.

8 **IT IS FURTHER ORDERED** that Claimants’ Motion to Strike October 24, 2002
9 Affidavit of Patrick E. Dawson (Doc. #117) is **DENIED** as moot.

10 **IT IS FURTHER ORDERED** that Plaintiff United States of America’s Motion to
11 Supplement Affidavit of Patrick E. Dawson (Doc. #122) is **DENIED** as moot.

12 DATED this 12 day of May, 2003.

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16 _____
17 James A. Teilborg
18 United States District Judge
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24 _____
25 ³To the extent Plaintiff argues that the Engine should be subject to forfeiture because
26 otherwise Plaintiff “would receive a twin engine aircraft with but one engine” and “there
27 would be a substantial reduction in the value of aircraft[,]” the Court finds the argument
28 unpersuasive. (Resp. at 6). As Claimants correctly note in their Reply, “nothing in the
forfeiture statutes entitles the government to a certain value in the property it forfeits.”
(Reply at 6). Moreover, Plaintiff is correct in stating that “[t]he status of the [E]ngine cannot
depend upon the forfeitability of the replacement or spare engine.” (Resp. at 6).