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United States District Court,  
S.D. Ohio,  
Western Division.

UNITED STATES of America, Plaintiff,  
v.  
Glen GALEMMO, Defendant.

No. 1:13–CR–141. | Signed Dec. 23, 2014.

#### Attorneys and Law Firms

Emily N. Glatfelter, Timothy S. Mangan, United States Attorney's Office, Cincinnati, OH, for Plaintiff.

Benjamin G. Dusing, Angela Hayden, The Law Offices of Benjamin G. Dusing, PLLC, Covington, KY, for Defendant.

#### ORDER

SANDRA S. BECKWITH, Senior District Judge.

\*1 This matter is before the Court on motions filed by the United States to dismiss the forfeiture petitions of Joseph A. Glemmo, Sr. and the Lead Plaintiffs. Doc. Nos. 82 & 84. Also before the Court is a motion filed by the Lead Plaintiffs to re-allocate forfeited funds. Doc. No. 79. For the reasons that follow, the government's motions to dismiss are well-taken and are **GRANTED**; the Lead Plaintiffs' motion to re-allocate forfeited funds is not well-taken and is **DENIED**. Petitioners' forfeiture petitions (Doc. Nos. 35 & 79) are **DISMISSED WITH PREJUDICE**.

#### I. Background

Defendant Glen Glemmo ran a Ponzi scheme which defrauded some 141 victims of over of \$34,000,000. The details of Glemmo's Ponzi scheme are set out at length

in the statement of facts accompanying his plea agreement (Doc. No. 2, at 10–13) and need not be repeated here. The basics of the scheme are familiar—Glemmo solicited money from individuals for fictitious investment opportunities, created fictitious account statements to give the appearance that the investments were generating positive returns, and paid “returns” to older investors with the funds of newer investors. In the meantime, Glemmo diverted the investors' money for his personal use.

In January 2014, Glemmo pleaded guilty to a two-count criminal information charging him with wire fraud, in violation of 18 U.S.C. § 1343, and money laundering, in violation of 18 U.S.C. § 1956(a) (1)(B)(i). Glemmo's plea agreement also required him to forfeit certain property the government. Glemmo came before the Court for sentencing on September 2, 2014. The Court (Weber, J.) sentenced Glemmo to 188 months of imprisonment on each count, to be served concurrently, and 3 years of supervised release on each count, to be served concurrently. The Court also ordered Glemmo to pay restitution of \$34,599,085.46 to his victims.

Finally, the Court ordered Glemmo to forfeit the following property to the United States:

- a. Real property known and numbered as 2230 Park Avenue, Cincinnati, Hamilton County, Ohio 45206;
- b. The Contents of U.S. Bank Account x5618 in the name of Queen City Investment Fund II (“US Bank x5618”) in the amount of Four Hundred Thirteen Dollars and Ninety–Eight Cents (\$413.98);
- c. The Contents of U.S. Bank Account x8448, in the name of Queen City Holdings, LLC, (“US Bank x8448”), in the amount of Three Hundred Fifty–Two Dollars and Sixty–Four Cents (\$352.64);
- d. The Contents of U.S. Bank Account x4670, in the name of QFC, LLC, (“US Bank x4670”) in the amount of Four Hundred Twenty-four Thousand Two Hundred Thirty-eight Dollars and Three Cents (\$424,238.03);
- e. The Contents of Keybank Account x5922, in the name of Glen and Kristine Glemmo, (“Keybank x5922”) in the amount of Thirty–Six Thousand Fifty–Nine Dollars and Twenty Cents (\$36,059.20);
- f. The Contents of Dorman Trading Account x633, in

the name of QFC, LLC, ("Dorman x633") in the amount of Ten Thousand Seven Hundred Seventy-Two Dollars and Thirty-Six Cents (\$10,772.36);

\*2 g. The Contents of Dorman Trading Account x695, in the name of QFC, LLC, ("Dorman x695") in the amount of Five Thousand Dollars (\$5,000.00);

h. The Contents of Dorman Trading Account x696, in the name of QFC, LLC, ("Dorman x696") in the amount of One Hundred Ninety-Two Thousand Four Hundred Fifty Dollars and Twenty-Five Cents (\$192,450.25);

i. The Contents of Interactive Brokers, LLC Account x016, in the name of QFC, LLC, ("Interactive x016") in the amount of Five Hundred Fourteen Thousand One Hundred Seventy-Six Dollars and Sixty-Five Cents (\$514,176.65);

j. The Contents of Interactive Brokers, LLC Account x438, in the name of QFC, LLC, ("Interactive x438") in the amount of One Thousand Seven Hundred Sixty Six Dollars and Thirty-Five Cents (\$1,766.35);

k. Real property known and numbered as 1849 Madison Road, Cincinnati, Hamilton County, Ohio 45206;

l. Real property known and numbered as 6000 Royal Marco Way, Unit 454, Marco Island, Florida 34145;

m. The Contents of Key Bank Account X5628 in the name of QC Power Strategies Fund, LLC ("Key Bank X5628") in the amount of Four Hundred Forty Thousand Three Hundred Seventy Dollars and Seventy-Eight Cents (\$440,370.78);

n. A 2007 GMC Yukon XL, VIN 1GKFK66897J236949, titled to Kristine Galemmo;

o. A 2007 GMC Acadia, VIN 1GKER23787J159616, titled to Kristine Galemmo;

p. A 2004 Nissan 350Z, VIN JN1AZ36A04M251517, titled to Jones-Morris Group, LLC;

q. A 2012 Audi A8, VIN WAURVAFD1CN017564, titled to QFC, LLC;

r. A 2013 Toyota Highlander, VIN 5TDDK3EH2DS194089, titled to Kristine Galemmo;

s. The Contents of First Citizens Bank Account X1609 in the name of Kristine Galemmo in the amount of One Hundred Two Thousand Twenty-Six Dollars and Ninety-Two Cents (\$102,026.92);

t. The Contents of First Citizens Bank Account X3209 in the name of Kristine Galemmo in the amount of Twelve Thousand Three Dollars and Two Cents (\$12,003.02);

u. \$2,000 in funds held by Pensco Trust, resulting from check no. 2830 issued by QFC, LLC to Pensco Trust on June 13, 2013 (hereafter "PENSCO funds");

v. Remaining account balances in various Key Bank Accounts, as set forth below (hereafter "Key Bank Funds");

1. Key Bank Cashier's Check No. 400199478 in the amount of \$947.60 made payable to "QC Power Strategies Fund Sweep;"

2. Key Bank Cashier's Check No. 400199482 in the amount of \$921.57 made payable to "Jones Morris Group LLC;"

3. Key Bank Cashier's Check No. 400199479 in the amount of \$6,354.64 made payable to "Sentinel Blackbox LLC;"

4. Key Bank Cashier's Check No. 400199481 in the amount of \$386.11 made payable to "Sentinel Strategy Fund, LTD;" and

5. Key Bank Cashier's Check No. 400199480 in the amount of \$231.57 made payable to "Sentinel Property Holdings LLC."

w. 45 units or shares of Rugged Power Investments, LLC ("RPI") currently issued to Kristine Galemmo;

x. all funds payable to Kristine Galemmo as distributions/profits related to shares held in Rugged Power Investments, LLC including \$3,105,000 held in Rugged Power Investments, LLC's Fifth Third Bank Account X9306 and \$416,250 held by the registry of United States District Court for the Southern District of Ohio Western Division (receipt nos. 100CIN022056 and 100CIN022057);

\*3 y. \$250,000 that is currently held in the Rugged Power Investments, LLC's Fifth Third Bank Account X9306 that was QC Power Strategies Fund, LLC's (QC Power) initial collateral to PJM and that was returned to RPI in September 2013; and

z. All remaining funds held at PJM Settlement, Inc. or PJM Interconnection, LLC on behalf of QC Power (\$50,158.02 plus any additional interest).

Doc. No. 67, at 5–8. The Court entered preliminary orders of forfeiture of this property in February and August 2014. Doc. Nos. 12, 62, 63. In conformity with the preliminary orders of forfeiture, the government published notice of its intent to dispose of the forfeited property and directing persons claiming an interest in the property to file verified claims with the Clerk of Court. Doc. Nos. 23, 81. The government also provided direct notice of the preliminary orders of forfeiture to certain other persons, including the claimants now before the Court. Doc. No. 80.

## II. The Claimants

### A. Joseph A. Galemmo, Sr.

Joseph A. Galemmo, Sr. is the Defendant's father. Mr. Galemmo claims an interest in \$50,625.00 in property to be forfeited to the government. According to his petition, in October 2013, Mr. Galemmo loaned \$45,000 to the Locust Street Irrevocable Trust. The trust was established by the Defendant's wife, Kristine Galemmo. Mr. Galemmo states that the loan had several purposes-to provide an investment opportunity for him, to provide support for his grand children in the event the Defendant was convicted by the government, and to segregate these funds from funds involved in the Defendant's criminal activities. The loan was evidenced by a promissory note executed by the Trust. The annual interest rate on the loan was 15% and the principal was due on June 30, 2014. The note was secured by "current and future Trust distributions of income, accumulated or earned in the future, to which the Borrower may be entitled." Doc. No. 35–1, at 3. Mrs. Galemmo and/or the Trust used the loan proceeds to purchase 15 shares of Rugged Power Investments ("RPI").

According to the government's papers, RPI was a

electricity wholesaler/trader in which the Defendant was a partner. The government alleges that the Defendant funded his partnership in RPI with proceeds derived from his criminal activities. The government also alleges that the Defendant transferred his own interest in RPI (30 shares) to Mrs. Galemmo and that she received approximately \$3,500,000 in distributions or profits from RPI. Mrs. Galemmo's distributions from RPI are the subject to the Court's third preliminary order of forfeiture. *See supra* at 4, pt. x. Of these distributions, Mr. Galemmo claims an interest in \$50,625.00, representing the principal of his loan to the Trust and interest of \$5,625.00.

### B. The Lead Plaintiffs

The Lead Plaintiffs, as they have identified themselves in their moving papers, John Capannari, John A. Anderson, and Kevin Eickmann, claim that they are direct victims of Galemmo's Ponzi scheme. These individuals are the lead plaintiffs in a separate civil class action lawsuit they filed against Galemmo that is now pending in this Court before Judge Barrett.

\*4 Interestingly, the Lead Plaintiffs concede that all of the funds identified in the preliminary orders of forfeiture-in particular funds related to RPI-are properly forfeitable to the government. Once the funds are forfeited to the government, however, the Lead Plaintiffs move the Court to order the forfeited funds to be re-allocated to their class action lawsuit where they can be distributed to the class members. The Lead Plaintiffs contend that the government's and the Court's list of Galemmo's victims is incomplete and the restitution amount ordered by the Court is inaccurate. The Lead Plaintiffs contend that their class action lawsuit is the best and fairest mechanism to determine the complete roster of victims and the amount of restitution each victim is owed. The Lead Plaintiffs also contend that the Court's restitution order should be amended to include the attorney's fees they incurred allegedly assisting the government in uncovering and investigating Galemmo's fraud.

## III. The Government's Motions to Dismiss

The government now moves to dismiss the forfeiture petitions of Joseph A. Galemmo, Sr. and the Lead

Plaintiffs for failure to state claims for relief.<sup>1</sup> The government argues that Mr. Galemmo's petition should be dismissed because he has failed to identify an interest in any property that is actually being forfeited to the United States.

The government asserts that there are a number of problems with the petition of the Lead Plaintiffs. First, the government argues the Lead Plaintiffs lack standing in this case because they do not in fact contest the forfeiture of any property to the United States. Second, the government argues that the Court does not have authority to re-allocate funds to the Lead Plaintiffs' class action once it is forfeited to the United States. Third, the government argues that the Court lacks authority to modify the restitution order to either amend the list of victims and the amount due them and/or to add payment of the attorney's fees the victims allegedly incurred allegedly assisting the government in investigating and uncovering these funds.

#### IV. Standard of Review

Although this is a criminal forfeiture proceeding under 21 U.S.C. § 853, the district court may, on motion, dismiss a petition claiming an interest in property subject to forfeiture "for lack of standing, for failure to state a claim, or for any other lawful reason." Fed.R.Crim.P. 32.2(c)(1)(A). "For purposes of the motion, the facts set forth in the petition are assumed to be true." *Id.* Additionally, the Federal Rules of Civil Procedure generally apply when considering a motion to dismiss a criminal forfeiture petition. *United States v. Salti*, 579 F.3d 656, 662 (6th Cir.2009). In other words, Civil Rule 12(b)(6) standards apply when assessing a motion to dismiss a criminal forfeiture petition.

Pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (internal quotation marks omitted). Mere conclusions, however, are not entitled to the assumption of truth. *Id.* at 678–89. A claim is facially plausible if it contains content which allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 678. Plausibility is not the same as probability, but the complaint must plead more than a possibility that the defendant has acted unlawfully. *Id.* If

the complaint pleads conduct which is only consistent with the defendant's liability, it fails to state a plausible claim for relief. *Id.* In determining whether a complaint states a claim for relief, the court must construe the complaint in the light most favorable to plaintiff, and accept as true all well-pleaded factual allegations. See *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Roth Steel Products v. Sharon Steel Corp.*, 705 F.2d 134, 155 (6th Cir.1983). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. *Lewis v. ACB Business Servs., Inc.*, 135 F.3d 389, 405 (6th Cir.1998).

\*5 The forfeiture statute provides that title to "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly as the result of," *inter alia*, wire fraud and money laundering, "vests in the United States upon the commission of the act giving rise to forfeiture[.]" 21 U.S.C. §§ 853(a)(1) & (c). In other words, the United States' title to property subject to forfeiture relates back to the date of the commission of the crime. *United States v. Huntington Nat'l Bank*, 682 F.3d 429, 433 (6th Cir.2012). "[T]hrough the relation-back doctrine, the government steps into the shoes of the defendant acquiring only the rights of the defendant at the time of the criminal acts, and nothing more." *Id.* (internal quotation marks omitted). An innocent third-party may avoid forfeiture of the property if his interest in the property is superior to the defendant's, and hence the government's, interest or if he was a bona fide purchaser for value of the property. *Id.*; 21 U.S.C. § 853(n)(6).

Accordingly, in order to withstand the government's motion to dismiss, Petitioners must state a plausible claim that their interest in property subject to forfeiture is superior to the government's interest in that property or that he was a bona fide purchaser for value of property subject to forfeiture.

#### IV. Analysis

##### A. Joseph A. Galemmo, Sr.

Mr. Galemmo has failed to allege facts demonstrating a superior interest in property subject to forfeiture to the government or that he is a bona fide purchaser for value of property subject to forfeiture to the government. Mr.



Galemmo claims an interest in \$50,625 in distributions or dividends payable by RPI to Kristine Galemmo and/or to the Trust.<sup>2</sup> As recounted in his affidavit, Mr. Galemmo lent money to the Locust Street Irrevocable Trust, which then purchased 15 shares of RPI stock with the loan proceeds. While the promissory note gave Mr. Galemmo a security interest in income distributions *from the trust*, nothing in the note established a security interest in the *assets of the trust* or in *income payable to the trust*. See *supra* at 5 (“The note was secured by ‘current and future *Trust distributions of income*, accumulated or earned in the future, to which the Borrower may be entitled.’”) (emphasis added); *JPMorgan Chase Bank v. Murdock*, No. No. L-06-1153, 2007 WL 549561, at \* 4 (Ohio Ct.App. Feb. 23, 2007) (reviewing court will give the terms of a promissory note their plain and ordinary meaning unless some other meaning is evidenced within the document). While Mr. Galemmo had an understanding that the loan proceeds were to be used to purchase RPI shares, nothing in the promissory note mandated that particular use for the loan nor limited the manner in which the proceeds could be invested. The plain terms of the promissory note did not give Mr. Galemmo a security interest in the 15 shares of RPI stock nor did it give him a security interest in the distribution of profits or dividends of the RPI stock.

\*6 In reality, Mr. Galemmo is a creditor, albeit a secured one, of the Locust Street Irrevocable Trust. But he is not even an unsecured creditor of the Defendant. Indeed, vis-à-vis this promissory note, there is no lender-borrower relationship between Mr. Galemmo and the Defendant at all. Thus, this case is different from a case like *Huntington Bank*, where the Court held that the lender-bank could be a bona fide purchaser for value in the proceeds of a deposit account subject to forfeiture to the government because the defendant had given a security interest in the account to obtain a loan from the bank. See, 682 F.3d at 432–36. In this case, however, Mr. Galemmo lent money to the Trust, not to the Defendant. His security interest was given by the Trust, not by the Defendant. Therefore, he is not a bona fide purchaser for value of property subject to forfeiture to the government.

The Court concludes, therefore, that Mr. Galemmo has failed to allege facts that demonstrate that he has a superior title in property subject to forfeiture to the government or that he is a bona fide purchaser for value of property subject to forfeiture to the government. Accordingly, the government’s motion to dismiss Mr. Galemmo’s petition is well-taken and is **GRANTED**.

### B. The Lead Plaintiffs

The government correctly argues that the Lead Plaintiffs lack standing in this case. As indicated above, the Lead Plaintiffs concede that all of the funds listed in the preliminary orders of forfeiture are properly forfeited to the government. This concession thus marks the beginning and end of their participation in the forfeiture phase of this case. See *United States v. Fabian*, 764 F.3d 636, 638 (6th Cir.2014) (affirming dismissal of petitioner’s claim where he failed to set forth in his petition facts demonstrating the nature and extent of his right, title, or interest in the property as required by § 853(n)). Instead of claiming a right, title or interest in property subject to forfeiture, the Lead Plaintiffs move the Court to take actions plainly prohibited by law.

The Lead Plaintiffs ask the Court to re-allocate forfeited funds to their class action suit against Galemmo to be distributed among the class members in that case. The Lead Plaintiffs overlook, however, or perhaps ignore, that once property is forfeited to the government, its title to the property is free and clear. 21 U.S.C. § 853(n)(7). The Attorney General-not the Court-has complete discretion as to the appropriate disposition of forfeited property. 18 U.S.C. §§ 981(d) & (e); *United States v. Joseph*, 743 F.3d 1350, 1355 (11th Cir.2014) (“The plain language of 18 U.S.C. § 981(d) and (e) also makes clear that the Attorney General alone has discretion to determine whether to retain forfeited property or apply it toward the restitution owed to the victims of a defendant’s offense.”). The Court simply has no authority to tell the government what it must do with forfeited property.

\*7 The Lead Plaintiffs contend that the Court has “inherent authority” to re-allocate the forfeited money to their class action suit. The Lead Plaintiffs, however, cite no authority to support this proposition because there is none. The federal courts’ inherent powers are limited to those “necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). The Lead Plaintiffs’ request to transfer forfeitable funds from this case to their civil suit against Galemmo has no relation to the Court’s need to efficiently manage its affairs. This request, therefore, does not fall within the scope of the Court’s inherent authority. More importantly, the Court does not have inherent authority to disregard the plain

language of § 981. See, e.g. *Carlisle v. United States*, 517 U.S. 416, 428, 116 S.Ct. 1460, 134 L.Ed.2d 613 (1996) (courts do not have inherent authority to act in contravention of the applicable rules of procedure); *United States v. Evers*, 669 F.3d 645, 656 (6th Cir.2012) (“When the statutory language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.”) (internal brackets and quotation marks omitted).

Barring a re-allocation of the forfeited funds to their civil suit, the Lead Plaintiffs move the Court to modify the restitution order so that they are reimbursed for attorney’s fees they incurred allegedly assisting the government in investigating Galemmo’s illegal activities. The Lead Plaintiffs contend that but for the work they did in their civil action, the government would not have discovered the funds related to the RPI distributions. In this regard, the Lead Plaintiffs note that under the Mandatory Victims Restitution Act, restitution may be ordered to reimburse victims for “expenses incurred during participation in the investigation or prosecution of the offense[.]” 18 U.S.C. § 3663A(b)(4). Thus, the Lead Plaintiffs contend, they may recover their attorney’s fees as part of Galemmo’s restitution order. The Lead Plaintiffs also cite *United States v. Elson*, 577 F.3d 713, 726 (6th Cir.2009), for this proposition. This request or motion is untenable for several reasons.

First, as the government accurately points out, the Lead Plaintiffs are conflating restitution and forfeiture, which are two different concepts. Restitution is concerned with reimbursing the victims of the crime whereas forfeiture is concerned with punishing the criminal and divesting him of the proceeds of his crime. *United States v. Newman*, 659 F.3d 1235, 1241 (9th Cir.2011); *United States v. Browne*, 505 F.3d 1229, 1281 (11th Cir.2007). In other words, whether a victim is entitled to restitution has nothing to do with whether property is forfeitable to the government. It is not appropriate, therefore, for the Lead Plaintiffs to attempt to contest the Court’s restitution order in the context of this forfeiture proceeding. See, e.g., *United States v. Lavin*, 942 F.2d 177, 185 (3rd Cir.1991) (“Congress did not intend section 853(n) to serve as a vehicle by which *all* innocent third parties who are aggrieved by an order of criminal forfeiture can petition for judicial relief.”) (emphasis in original).

\*8 Second, the Lead Plaintiffs actually lack standing to challenge the Court’s restitution order because they are not parties to the criminal case. *United States v. Stoerr*, 695 F.3d 271, 277–78 (3rd Cir.2012) (collecting cases).<sup>3</sup>

Crime victims do have a right to petition for a writ of mandamus in the event the sentencing court denies them restitution. 18 U.S.C. § 3771(d)(5). Victims, however, must exercise this right within fourteen days of the date their claim for restitution was denied, which in this case would be no later than the date the Court imposed Galemmo’s sentence. The Lead Plaintiffs, however, did not petition for a writ of mandamus within fourteen days of sentencing. Therefore, this avenue to modify the restitution order is foreclosed. See *United States v. Aguirre–Gonzalez*, 597 F.3d 46, 55–56 (1st Cir.2010).

Third, restitution is a part of Galemmo’s criminal sentence. *United States v. Bearden*, 274 F.3d 1031, 1041 (6th Cir.2001). Once a sentence is imposed, the court can modify the defendant’s sentence only as authorized by statute. *United States v. Howard*, 644 F.3d 455, 457 (6th Cir.2011). After a restitution order is entered, a victim may petition the court to amend the restitution order “if the victim *subsequently discovers further losses*” and the victim shows “good cause for the failure to include such losses in the initial claim for restitutionary relief.” 18 U.S.C. § 3664(d)(5) (emphasis added). In this case, however, the attorney’s fees for which the Lead Plaintiffs now claim restitution are not losses they discovered subsequent to Galemmo’s sentencing. The Lead Plaintiffs were certainly aware of these alleged losses no later than August 26, 2014, i.e., a week *before* sentencing, when they filed objections to the Court’s third preliminary order of forfeiture concerning the RPI funds. See Doc. No. 59 (describing their efforts in their class action suit to investigate Galemmo’s fraud). Moreover, the Lead Plaintiffs have not demonstrated good cause for failing to include their attorney’s fees in a claim for restitutionary relief prior to or during the sentencing hearing. Accordingly, the Lead Plaintiffs have not satisfied either requisite for amending the original restitution order.

Fourth, and finally, *Elson* does not advance the Lead Plaintiffs’ request to modify the restitution order. It is true, as they argue, that in certain circumstances, a victim may be awarded restitution for attorney’s fees incurred during participation in the investigation or prosecution of the offense. *Elson* indicates, however, that it is the government’s burden to prove that the victim’s attorney’s fees were reasonable and actually incurred in aid of the investigation—a task by all appearances the government appears disinclined to undertake in this case. See 577 F.3d at 726; Doc. No. 84, at 3 (government’s motion to dismiss denying that the Lead Plaintiffs assisted in uncovering the RPI funds). In any event, as already discussed, it is now too late for the Lead Plaintiffs to request modification of

the restitution order.

well-taken and is **DENIED**.

\*9 Accordingly, for all of the above reasons, the government's motion to dismiss the Lead Plaintiffs' forfeiture petition and/or motion to re-allocate forfeiture funds is well-taken and is **GRANTED**. The Lead Plaintiffs' motion to re-allocate forfeiture funds is not

**IT IS SO ORDERED.**

Footnotes

- <sup>1</sup> Kristine Galemmo has a forfeiture claim pending which is not presently the subject of a motion. Doc. No. 78. Rugged Power Investments and several individuals filed a forfeiture claim but then consented to its dismissal upon motion by the government. Doc. Nos. 73, 83, 88.
- <sup>2</sup> The government disputes that the Trust purchased RPI shares in its name or that distributions of income from RPI are owed to the Trust. For purposes of the motion to dismiss, however, the Court will assume that both of these contentions are true because those assumptions do not change the result reached by the Court.
- <sup>3</sup> There is language in the Court's opinion in *United States v. Perry*, 360 F.3d 519 (6th Cir.2004), which could be read to indicate that victims do have standing to appeal the sentencing court's restitution order. *Perry*, however, concerned the victim's standing to appeal the district court's order vacating a judgment lien she obtained on the defendant's property pursuant 18 U.S.C. § 3664(m)(1)(B) to enforce the restitution order entered by the court at sentencing. The Court held that the victim had standing to appeal the district court's order vacating her lien because it divested her of a property right. *Id.* at 531. *Perry* is distinguishable from this case, however, because the victim in that case was not appealing the original restitution order, as the Lead Plaintiffs appear to be doing here. The *Perry* Court, however, did not hold that crime victims have standing to appeal the restitution order itself. The Court's opinion indicates rather that its holding does not sweep that broadly. *See id.* ("[W]hether or not standing would exist for someone to appeal a restitution order under the MVRA, it definitely exists for Intervenor to appeal an order destroying a protected property interest.").