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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff,  
vs.  
\$50,800.00 in United States Currency,  
Defendant.  
\_\_\_\_\_  
Rodney Burnett-Johnson,  
Claimant.  
\_\_\_\_\_

No. CV-10-2004-PHX-LOA

**ORDER**

This matter arises on the parties' Notice of Extension of Discovery Deadline which the Court deems to be a joint motion to extend the Rule 16 discovery deadlines. (Doc. 35) The basis for the request is that "counsel for Claimant has represented that the press of business, has prevented him from completing the discovery responses which are due immediately." (*Id.* at 1) Because diligence attempts to complete discovery and good cause have not been demonstrated to modify the firm Rule 16 deadlines, the parties' motion will be denied. If the parties simply seek an extension that Claimant may have until July 15, 2011 to answer and respond to Plaintiff's current discovery requests, counsel may submit a written stipulation and separate order in that regard. All Rule 16 deadlines, however, remain firm.

1 **I. Background**

2 The docket reflects this action commenced on September 20, 2010. (Doc. 1)  
3 The Complaint alleges an action to forfeit property to the United States pursuant to 21 U.S.C.  
4 § 881(a)(6) and 18 U.S.C. § 981(a)(1)(C). The *res* is \$50,800.00 in United States currency  
5 purportedly seized on February 23, 2010 from Claimant Rodney Burnette-Johnson.

6 At the March 29, 2011 scheduling conference, the Court stressed to counsel  
7 that the “deadlines in the scheduling order were **real, firm**, and, consistent with the  
8 undersigned’s responsibilities mandated by Congress in the Civil Justice Reform Act of  
9 1990, 28 U.S.C. §471 *et seq.*, **will not be altered** except upon a showing of good cause and  
10 by leave of the assigned trial judge.” (Doc. 33 at 3) (emphasis in original; footnote omitted).  
11 The scheduling order makes clear that the Rule 16 deadlines are “to be taken seriously,”  
12 citing *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994). (*Id.*) Further,  
13 counsel were informed that “[t]he Court intends to enforce the deadlines in this Order.  
14 Counsel should plan their litigation activities accordingly.” (*Id.*) With this in mind and the  
15 active involvement of counsel, the Court fashioned mutually agreed-upon deadlines for the  
16 fair and reasonably expeditious resolution of this case. The scheduling order mandates  
17 supplementation of all discovery pursuant to Rule 26(e), Fed.R.Civ.P., by Friday, September  
18 2, 2011 and the completion of all discovery by Friday, October 7, 2011. (*Id.* at 5)

19 **II. The Procedures Governing Civil Forfeiture Actions**

20 The procedures governing civil forfeiture actions are set forth in various  
21 forfeiture statutes, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), 18 U.S.C. § 983,  
22 the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions  
23 (“Supplemental Rules”) and this District Court’s Local Rules, if any.

24 Federal civil in *rem* forfeitures are governed by the Federal Rules of Civil  
25 Procedure.<sup>1</sup> *United States v. \$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1117 (9<sup>th</sup> Cir.

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27 <sup>1</sup> The 2010 edition of the Federal Rules of Civil Procedure refer to the Supplemental  
28 Rules as the “Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture

1 2004) (citing *United States v. 2659 Roundhill Drive*, 283 F.3d 1146, 1149 n. 2 (9th Cir.  
2 2002)). “Prior to the adoption of Supplemental Rule G, the rules governing maritime  
3 forfeiture actions, Supplemental Rules C and E, also governed civil forfeiture actions.”  
4 *United States v. Approximately \$72,000 in U.S. Currency*, 2009 WL 506866, \* 5 (N.D.Cal.,  
5 Feb. 27, 2009) (citation omitted). “On December 1, 2006, Supplemental Rule G was adopted  
6 to govern civil forfeiture actions in rem.” *Id.* “At the same time, Rules C and E were revised  
7 to take into account the enactment of Rule G. Supplemental Rule G provides that, to the  
8 extent it does not address an issue, Supplemental Rules C and E, as revised, [and the Federal  
9 Rules of Civil Procedure] continue to apply.” *Id.*

10           The Federal Rules of Civil Procedure also apply in federal civil forfeiture  
11 actions to the extent they are not inconsistent with the Supplemental Rules. *United States v.*  
12 *Contents of Accounts*, 629 F.3d 601, 606 (6<sup>th</sup> Cir. 2011) (preliminary injunctive relief under  
13 Rule 65, Fed.R.Civ.P., was inconsistent with procedure set out in Civil Asset Forfeiture  
14 Reform Act) (“Supplemental Rule A(2) makes clear that the Federal Rules of Civil Procedure  
15 also apply to such actions, “except to the extent that they are inconsistent” with the  
16 Supplemental Rules.”); *United States v. One 1978 Piper Cherokee Aircraft*, 91 F.3d 1204,  
17 1208 (9<sup>th</sup> Cir. 1996); Supplemental Rule G(1) (“Scope. This rule governs a forfeiture action  
18 in rem arising from a federal statute. To the extent that this rule does not address an issue,  
19 Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.”).

20           Federal Rule of Civil Procedure 16(b) is not inconsistent with Supplemental  
21 Rule G and provides guidance in managing this case and addressing the pending motion. In  
22 *United States v. \$8,221,877.16 in U.S. Currency*, 330 F.3d 141, 149-150 (3d Cir. 2003), the  
23 Third Circuit stated:

24                           Parties to civil forfeiture proceedings are the servants of two procedural

25 \_\_\_\_\_  
26 Actions.” *United States v. Approximately \$28,000 in U.S. Currency*, 2010 WL 1340110, \*  
27 2 n. 1 (N.D.Cal., April 5, 2010). “A forfeiture action in rem arising from a federal statute is  
28 governed by Rule G of the Supplemental Rules. See FRCivP Supp G(1).” *Id.* at 2.

1 masters: the Supplemental Rules specially devised for admiralty and *in rem*  
2 proceedings, and the generally applicable Federal Rules of Civil Procedure  
3 (“Civil Rules”). The balance between the two is struck in favor of the  
4 Supplemental Rules, which always apply to civil forfeiture proceedings. See  
5 18 U.S.C. § 983(a)(3). However, the Supplemental Rules, like the former  
6 admiralty rules from which they are derived, “are not comprehensive codes  
7 regulating every detail of practice,” *Miner v. Atlass*, 363 U.S. 641, 648, 80  
8 S.Ct. 1300, 4 L.Ed.2d 1462 (1960) (construing the former admiralty rules);  
rather, they are special provisions that overlay the Civil Rules, adding unique  
requirements necessary only in forfeiture and admiralty proceedings that have  
no place in general civil litigation. The Civil Rules therefore also apply to *in*  
*rem* proceedings, but only to the extent that they are not “inconsistent with”  
the Supplemental Rules. Supp. R.A. This scheme seems simple enough. The  
difficulty arises in determining when precisely a Civil Rule is “inconsistent  
with” a Supplemental Rule.

9  
10 330 F.3d at 149-150 (footnotes omitted); *United States v. Approximately \$72,000 in U.S.*  
11 *Currency*, 2009 WL 506866, at \* 4 (N.D.Cal., Feb. 27, 2009) (Rule 55(b)(2) of the Federal  
12 Rules of Civil Procedure applies to a 21 U.S.C. §§ 881(a)(6) civil forfeiture action); *United*  
13 *States v. Vehicle 2007 Mack 600 Dump Truck*, 680 F.Supp.2d 816, 827 (E.D.Mich. 2010)  
14 (“Rule 8 of the Federal Rules of Civil Procedure unambiguously applies in civil forfeiture  
15 proceedings, pursuant to Supplemental Rule G(1)[,]” citing *United States v. \$41,580.00*, 253  
16 Fed.Appx. 880, 881-82 (11th Cir. 2007) (imposing Rule 8 pleading requirements on claimant  
17 in civil forfeiture action)).

18 Judicial efforts to curb the twin evils of unnecessary delay and the  
19 unreasonable cost of litigation apply with equal force to forfeiture actions as any other civil  
20 action. See, Rule 1, Fed.R.Civ.P., (“These rules . . . shall be construed and administered to  
21 secure the just, speedy, and inexpensive determination of every action.”); the Civil Justice  
22 Reform Act of 1990, 28 U.S.C. § 471 *et seq.* While forfeiture actions may be exempted from  
23 initial disclosures by Rule 26(a)(1)(B), Fed.R.Civ.P., Rule 16(a) contains no such limitation.  
24 Rule 16(a), Fed.R.Civ.P. (“*In any action*, the court may order the attorneys and any  
25 unrepresented parties to appear for one or more pretrial conferences . . . .”) (emphasis added).  
26 The Court has exercised its wide discretion to apply Rule 16 to this forfeiture action to  
27 reduce unnecessary delay and litigation costs and doing so is not inconsistent with  
28 Supplemental Rule G.

1 **III. Good Cause and Rule 16**

2 Federal Rule of Civil Procedure 16(b)'s "good cause" standard primarily  
3 considers the diligence of the party seeking the amendment. *Johnson v. Mammoth*  
4 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). If a party has not been diligent, the  
5 inquiry should end. *Id.* A district court may modify the pretrial schedule "if it cannot  
6 reasonably be met despite diligence of the party seeking the extension." *Id.* at 608;  
7 Fed.R.Civ.P. 16 advisory committee's notes (1983 amendment). "Good cause" means the  
8 Rule 16 scheduling deadlines cannot be met despite the party's diligence, citing Miller &  
9 Kane, *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990). *Johnson*, 975 F.2d at  
10 608. The decision to modify a scheduling order is within the broad discretion of the district  
11 court. *Id.* at 607 (quoting *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 369 (9th Cir. 1985).

12 **IV. Discussion**

13 The requisite good cause standard for extending the discovery deadline has not  
14 been shown by the parties. The docket reflects that the only discovery initiated after the  
15 scheduling order was filed is Plaintiff's First Set of Non-Uniform Interrogatories, First  
16 Request for Production of Documents and Request for Admissions which were served upon  
17 Claimant on May 9, 2011. Claimant has engaged in no formal discovery since the Court  
18 granted Claimant's Motion for Leave to File Claim on November 19, 2010.

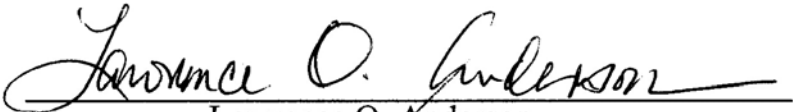
19 The generous length of time provided to counsel in the scheduling order to  
20 complete discovery, i.e. October 7, 2011, is more than reasonably adequate to complete  
21 discovery if diligence is exercised with the slightest amount of planning. The parties are in  
22 the early stages of discovery and have adequate time to complete discovery over next three  
23 months. The parties have not demonstrated that the Rule 16 pretrial schedule "cannot  
24 reasonably be met despite diligence of the party seeking the extension." *Johnson*, 975 F.2d  
25 at 608. Like the 120-day deadline to serve process pursuant to Rule 4(m), to hold that good  
26 cause has been shown here to extend the scheduling order's deadlines "would allow the good  
27 cause exception to swallow the rule." *Townsel v. County of Contra Costa*, 820 F.2d 319, 320  
28 (9<sup>th</sup> Cir. 1987).

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Accordingly,

**IT IS ORDERED** that the parties' motion to extend the Rule 16 discovery deadline, doc. 35, is **DENIED**.

DATED this 16<sup>th</sup> day of June, 2011.

  
Lawrence O. Anderson  
United States Magistrate Judge