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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 United States of America

No. CV-12-00105-PHX-DGC

10 Plaintiff,

ORDER

11 v.

12 \$2,164,341.00 in US Currency

13 Defendant.

14 Claimant Leonardo Cornejo-Reynoso has filed an emergency motion for a
15 protective order regarding his deposition scheduled for October 23, 2012. Doc. 26.
16 Plaintiff United States of America has filed a response. Doc. 27. The Court held a
17 telephone hearing with the parties on October 19, 2012, and later that day informed them
18 that it would deny the motion. Doc. 29. This order will set forth the Court's reasons.

19 Claimant claims an interest in \$2,164,341 in United States currency seized from
20 him on April 21, 2011. The currency was found in a rental truck driven by claimant and
21 was packaged in bundles, bound by rubber bands, and wrapped in plastic wrap containing
22 axle grease. Plaintiff's detailed complaint seeking forfeiture of the money was filed on
23 January 17, 2012. Doc. 1. Plaintiff's answer claiming an interest in the money was filed
24 on February 8, 2012. Doc. 7.

25 Plaintiff served a notice of claimant's deposition on February 14, 2012. Doc. 9.
26 The attorneys initially agreed that the deposition would occur on March 15, 2012. When
27 claimant had difficulty obtaining a visa to enter the United States, the deposition was
28 rescheduled to April 4, 2012. Doc. 18. Although Plaintiff arranged for claimant, who

1 lives in Mexico is not a U.S. citizen, to be paroled into the United States for purposes of
2 the deposition, claimant asserted that the parole documentation was received too late and
3 he could not appear for the deposition. The parties agreed to reschedule the deposition
4 for May 4, 2012. *Id.*

5 Subsequent efforts to secure parole documents on a schedule that would work for
6 the parties were largely unsuccessful, and the parties ultimately agreed to seek an
7 extension of the discovery schedule in this case, which the Court approved. Doc. 16.
8 Counsel for Plaintiff was able to obtain parole documents for the month of August, 2012,
9 and the parties agreed the deposition would occur on August 30, 2012. When claimant
10 took the position that he needed assurances that he would not be arrested upon entering
11 the United States (presumably for criminal charges related to seizure of the currency) and
12 Plaintiff stated that no such assurances could be given, the parties were unable to agree
13 that the deposition would go forward. Plaintiff filed an emergency motion to compel the
14 deposition and claimant filed an emergency motion for a protective order. Docs. 18, 19.

15 The Court held a telephone conference with the parties on August 27, 2012. As a
16 result of that conference, the Court declined to require Plaintiff to depose claimant by
17 videoconference in Mexico as requested by claimant's counsel. The Court also held that
18 claimant, having invoked the jurisdiction of the Court to assert his claim, could not refuse
19 to appear in this District for his deposition. Because the date of the deposition was
20 imminent and claimant's counsel sought additional time for claimant to consider
21 carefully whether he would enter this country to give the deposition, the Court put in
22 place a schedule for the parties to complete the deposition. Doc. 22. The Court's order
23 required claimant, by September 19, 2012, to advise Plaintiff whether claimant was able
24 to obtain a visa to enter the United States and, if so, how soon he could enter the country
25 for purposes of a deposition. Doc. 22 at 2. If claimant was not able to obtain a visa, the
26 Court's order stated that Plaintiff should make arrangements for claimant to be paroled
27 into the country to complete his deposition no later than November 30, 2012. *Id.* The
28 Court required Plaintiff to give claimant at least ten days' notice concerning the

1 deposition and the travel arrangements made in connection with the parole and
2 deposition. The Court ordered that claimant “shall appear for his deposition in this
3 District on or before November 30, 2012.” *Id.*

4 Claimant did not comply with the Court’s order. He did not notify Plaintiff by
5 September 19, 2012 whether he could obtain a visa to enter the country. Plaintiff’s
6 counsel nonetheless took steps to obtain parole documents and schedule the deposition.
7 On September 11, 2012, Plaintiff’s counsel wrote to claimant’s counsel and proposed that
8 the deposition occur on September 17-21, October 9-12, October 15-17, October 22-26,
9 or October 29-November 2. Doc. 27-1 at 2. Claimant’s counsel did not respond.
10 Plaintiff’s counsel wrote again on October 1, 2012, asking for a response to the proposed
11 days. Doc. 27-1 at 5. Counsel for claimant responded in an email accusing counsel for
12 Plaintiff of sending a “threatening” letter “without meeting and conferring with me.”
13 Doc. 27-1 at 7. This email was sent despite the fact that claimant’s counsel had not
14 responded for more than 20 days to Plaintiff’s proposed deposition dates. Finally, on
15 October 5, 2012, claimant’s counsel wrote a letter stating that claimant recently had
16 discovered that a criminal case was pending against him in Coconino County Superior
17 Court, apparently arising out of the events that lead to seizure of the currency at issue in
18 this case. Doc. 26-1 at 1. Claimant’s counsel requested that the deposition occur in the
19 second half of November. *Id.*

20 Plaintiff’s counsel is not available in the second half of November for personal
21 reasons, and the Court will not require that Plaintiff conduct the deposition at that time.
22 Plaintiff has been seeking to schedule the deposition of claimant since February. Doc. 9.
23 On three different occasions Plaintiff has undergone the difficult process of obtaining
24 parole documents for claimant to enter the United States for his deposition. Claimant has
25 not been equally accommodating. Claimant declined to come to the United States earlier
26 this year on the grounds that he did not receive the parole documents in time to make
27 arrangements. He declined to appear for his deposition in August without an assurance
28 that he would not be arrested on criminal charges if he entered the country. Claimant did

1 not comply with the Court's order to provide needed information by September 19, 2012,
2 and claimant now contends that he should not be required to enter the country before late
3 November because of the criminal case pending against him.

4 The Court concludes that Plaintiff has engaged in an extended, good faith, and
5 difficult process to schedule and complete claimant's deposition. The Court will not
6 require that the deposition be postponed further. To accommodate claimant's counsel's
7 arbitration scheduled for October 23, 2012, Plaintiff offered during the telephone
8 conference on October 19, 2012 to conduct the deposition on October 24, 2012. The
9 Court will require that claimant appear for his deposition on that date.

10 **IT IS ORDERED:**

11 1. Claimant's emergency motion for protective order regarding deposition
12 scheduled for October 23, 2012 (Doc. 26) is **denied**.

13 2. Claimant shall appear for his deposition on **October 24, 2012**.

14 Dated this 23rd day of October, 2012.

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19 David G. Campbell
20 United States District Judge
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