

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of American
Plaintiff,
v.
\$37,000.00 in U.S. Currency
Defendant.

Aaron Orr and Jessica Deyo,
Claimants.

No. CV-12-00359-PHX-JAT

ORDER

Pending before the Court are (1) Claimants’ Motion to Dismiss Case and Motion to Strike (Doc. 19); (2) Claimants’ Motion to Stay (Doc. 24); (3) Plaintiff’s First Motion for Extension of Time to Complete Discovery as to Claimant Aaron Orr (Doc. 26); and (4) Plaintiff’s Motion to Compel Discovery (Doc. 28). The Court now rules on the Motions.

I. Claimants’ Motion to Dismiss Case and Motion to Strike (Doc. 19)

Claimants request that the Court strike each of Plaintiff’s propounded discovery requests and Notices of Deposition and dismiss this case. Claimants argue that Plaintiff has failed to complete discovery in a timely manner as set forth in this Court’s Scheduling Order (Doc. 3), and, thus, striking the discovery requests and dismissing this case is warranted.

1 In its February 22, 2012 Scheduling Order, the Court set forth the deadline for
2 completing discovery as follows: “The deadline for completing discovery is six (6)
3 months from the date the case is at issue.” (Doc. 3 at 1).

4 Claimants argue that this language means that all discovery was to be completed
5 six months from the day this action was commenced (filed), which was February 21,
6 2012. Accordingly, Claimants argue that all discovery should have been completed no
7 later than August 21, 2012. Claimants argue that they did not receive discovery requests
8 until August 21, 2012 or notices of deposition until August 22, 2012 and, thus, the case
9 should be dismissed because Plaintiff did not engage in timely discovery.

10 In Response, Plaintiff argues that the date the case is “at issue,” as set forth in this
11 Court’s Scheduling Order, is not the date the case was commenced. Rather, Plaintiff
12 argues, the date the case is “at issue” is the date of the filing of the verified Claim and
13 Answer. To support its argument, Plaintiff points to the definition of “at issue” in
14 Black’s Law Dictionary, which defines “at issue” as “[t]aking opposite sides; under
15 dispute; in question.” BLACK’S LAW DICTIONARY (9th ed. 2009). Plaintiff argues that, in
16 a forfeiture case, such as this one, the matter is not in dispute or in question until a
17 verified Claim and Answer challenges the allegations in Plaintiff’s Complaint. Further,
18 Plaintiff points to this Court’s website, where, under “Self-Help Tools” and “Glossary of
19 Terms,” the Court relevantly defines the term “Issue” as “When the plaintiff and
20 defendant have arrived at some point which one affirms and the other denies, they are
21 said to be ‘at issue.’” See U.S. District Court, District of Arizona, *Glossary of Terms*,
22 [http://www.azd.uscourts.gov/azd/courtinfo.nsf/court/files/\\$file/glossary+of+terms.pdf](http://www.azd.uscourts.gov/azd/courtinfo.nsf/court/files/$file/glossary+of+terms.pdf)
23 (last visited October 3, 2012). Accordingly, Plaintiff claims that the date this case was at
24 issue was April 18, 2012, the date the Claimants filed their Answer and thus, the deadline
25 for completion of discovery is October 18, 2012.

26 In Reply, Claimants argue that the case became “at issue” when Plaintiff filed its
27 Complaint because, prior to the filing of the case with this Court, on November 23, 2011,
28 the U.S. Department of Justice mailed Claimants a Notice of Seizure letter and on that

1 same day, Claimants' "filed¹" their Statement of Interest and Petition to Contest
2 Forfeiture. Accordingly, Claimants argue the case became at issue when Plaintiff filed its
3 Complaint.

4 The Court agrees with Plaintiffs that the date *the case* became *at issue* was the
5 date that Claimants filed their Answer. In its Scheduling Order, which sets forth
6 deadlines relating to the case currently before the Court, the Court set the deadline for
7 discovery as six months from the date the case is at issue. The Court did not indicate that
8 this deadline would begin to run from the date the dispute arose between the parties, as
9 Claimants contend. Indeed, the Court would have no way of establishing such a deadline
10 without further information from the parties. Claimants filed their admissions and
11 denials of Plaintiff's allegations in their Answer, and thus, the date the Answer was filed
12 was the date the case became at issue for the purposes of this Court's Scheduling Order.
13 Indeed, without the admissions and denials contained in the answer, it would be difficult
14 for the parties to ascertain exactly what discovery would need to be conducted in the
15 case. Accordingly, the discovery deadline in this case began to run on April 18, 2012.

16 Based on the foregoing, Claimants' Motion to Dismiss Case and Motion to Strike
17 (Doc. 19) is denied. In their Motion to Stay Discovery, Claimants requests that the Court
18 stay discovery pending the Court's ruling on Claimants' Motion to Dismiss and Motion
19 to Strike. In light of the foregoing, the Motion to Stay is denied as moot.

20 **II. Plaintiff's First Motion for Extension of Time to Complete Discovery**
21 **as to Claimant Aaron Orr (Doc. 26).**

22 Plaintiff moves for an extension of time to complete discovery as to Claimant
23 Aaron Orr because Claimant Orr failed to appear for his first noticed deposition and
24 Claimant Orr's counsel claims that he is incarcerated in Florida for an unknown period of
25 time. Plaintiff requests that the Court extend the discovery period for 60 days to allow
26 time for Claimant Orr to be located, to confirm his incarceration and to notice his

27
28 ¹ Claimants do not specify and it is not clear to the Court where or with whom
this Statement of Interest and Petition to Contest Forfeiture was "filed."

1 deposition or arrange for his deposition in the penal facility in which he is held. As a
2 result, Plaintiff also request that the period for filing dispositive motions be extended 30
3 days. Good cause appearing, Plaintiff's Motion for Extension of Time to Complete
4 Discovery as to Claimant Aaron Orr is granted.

5 **III. Plaintiff's Motion to Compel Discovery (Doc. 28)**

6 Plaintiff requests that the Court order Claimant Deyo to respond to discovery
7 requests propounded on August 21, 2012. Although responses to such requests were due
8 on September 25, 2012, Plaintiff has received no response. Further, Plaintiff requests
9 that the Court order Claimant Deyo to appear for her deposition. Plaintiff noticed Ms.
10 Deyo's deposition for September 28, 2012. After Ms. Deyo's counsel represented that
11 Ms. Deyo would not appear on that date, her deposition was cancelled. Ms. Deyo's
12 deposition was rescheduled for October 9, 2012. After Ms. Deyo's counsel represented
13 that Ms. Deyo would not appear on that date, her deposition was again cancelled.
14 Plaintiff then noticed Ms. Deyo's deposition for October 16, 2012, two days before the
15 discovery deadline set by the Court. Plaintiff requests that the Court order Ms. Deyo to
16 appear for her deposition on October 16, 2012. Good cause appearing, Plaintiff's Motion
17 to Compel Discovery is granted.

18 Based on the foregoing,

19 **IT IS ORDERED** that Claimants' Motion to Dismiss Case and Motion to Strike
20 (Doc. 19) is denied.

21 **IT IS FURTHER ORDERED** that Claimants' Motion to Stay (Doc. 24) is denied
22 as moot.

23 **IT IS FURTHER ORDERED** that Plaintiff's First Motion for Extension of
24 Time to Complete Discovery as to Claimant Aaron Orr (Doc. 26) is granted. **IT IS**
25 **ORDERED** that the deadline for completing discovery as to Claimant Aaron Orr is
26 extended from October 18, 2012 to December 18, 2012. **IT IS FURTHER ORDERED**
27 extending the deadline for filing dispositive motions from December 18, 2012 to January
28 18, 2013.

