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7
8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,

Case No. 1:15-cv-00237---SKO

12 Plaintiff,

**STIPULATION AND ORDER TO STAY
PROCEEDINGS**

13 v.

(Doc. 19)

14
15 APPROXIMATELY \$40,600.00 IN U.S.
16 CURRENCY,

17 Defendant.
18 _____/

19
20 Claimant, Josue Grajeda (hereto after "Claimant"), by and through his attorney, Harvey A.
21 Steinberg, of the law firm of Springer & Steinberg, P.C., and the United States of America by and
22 through Assistant United States Attorney Jeffrey A. Spivak respectfully submit this stipulation and
23 move this Court to now order same.

24 **AS GROUNDS THEREFOR**, the parties state as follows:

25 1. The Government is seeking forfeiture of currency. The Claimant has filed his verified
26 statement of claim of that currency and persists in his claim.
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1 2. The Claimant currently faces criminal charges in Fresno County California in case number
2 F14906072. The allegations in that case are similar or identical to the allegations made by the
3 Government in this case in support of this forfeiture.

4 3. 18 U.S.C. § 981 (g) (2) states:

5 Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding
6 with respect to that claimant if the court determines that—

7 (A) the claimant is the subject of a related criminal investigation or case;

8 (B) the claimant has standing to assert a claim in the civil forfeiture
9 proceeding; and

10 (C) continuation of the forfeiture proceeding will burden the right of the
11 claimant against self-incrimination in the related investigation or case.

12 4. The Claimant submits that these proceedings should be stayed for the following reasons:

13 a. The Claimant is the subject of a related criminal case directly implicating the facts
14 in this civil forfeiture proceeding;

15 b. The Claimant has standing to assert a claim in this civil forfeiture proceeding; and,

16 c. Continuation of this forfeiture proceeding will burden the right of the Claimant
17 against self-incrimination as guaranteed to him by the Fifth Amendment to the United
18 States Constitution in the related case.

19 5. Under these circumstances the Claimant cannot file a meaningful answer. The averions in
20 the Complaint touch on allegations that are the subject of the related criminal case. *See e.g.*
21 *United States v. Parcels of Land*, 903 F.2d 36, 43 (1st Cir. 1990) (upholding the striking of the
22 affidavit of a claimant after he invoked the fifth amendment in response to government questions).

23 6. Courts should endeavor to accommodate the Claimant's Fifth Amendment rights in
24 forfeiture proceedings. *United States v. A Certain Parcel of Land*, 781 F. Supp. 830, 834 (D.N.H.
25 1992) citing *United States v. Parcels of Land*, 903 F.2d 36, 44 (1st Cir. 1990). Staying the civil
26 case prevents the government from using civil discovery as a means to obtain information to flesh
27 out the criminal case against the claimants. *United States v. Certain Real Prop.*, 579 F.3d 1315,
28 1321 (11th Cir. 2009).

1 7. Even in the general civil context where there is not specific statutory language
2 commanding the stay of a civil proceeding it is recognized that the Fifth Amendment can and
3 should be invoked when it can be implicated. The privilege against self-incrimination, one of our
4 most cherished fundamental rights, is jealously guarded by the courts. It protects an individual not
5 only from involuntarily becoming a witness against himself in a criminal proceeding but also from
6 answering specific allegations in a complaint or filing responses to interrogatories in a civil action
7 where the answers might incriminate him in future criminal actions. *North River Ins. Co. v.*
8 *Stefanou*, 831 F.2d 484, 486-487 (4th Cir. 1987).

9 8. For the above stated reasons the parties have agreed that this matter should be stayed and
10 respectfully requests that this Court stay the proceedings in this matter pending the outcome of the
11 related criminal case.

12 9. Should the Court stay this matter, the Claimant will file notice with the Court of
13 completion of the above-referenced criminal case, within 60 days of that completion.

14

15 **WHEREFORE**, the parties pray for the relief requested, and for such other and further
16 relief as to the Court seems just and proper in the premises.

17

18 Dated this 18th day of June, 2015.

19 Respectfully submitted,

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26 IT IS SO ORDERED.

27 Dated: June 18, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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