

EXHIBIT A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,

NO. CIV. 06-1383 WBS DAD

v.

MEMORANDUM AND ORDER RE:
MOTION FOR SUMMARY JUDGMENT

REAL PROPERTY LOCATED AT 3846
NISENAN LANE, WHEATLAND,
CALIFORNIA, YUBA COUNTY, APN:
15-120-071, INCLUDING ALL
APPURTENANCES AND IMPROVEMENTS
THERE TO,

Defendant.

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Pursuant 21 U.S.C. § 881, plaintiff United States of
America ("Government") initiated this action for forfeiture of
real property located at 3846 Nisenan Lane in Wheatland,
California ("defendant property"). Claimant Minerva Campos filed
a verified claim of interest, alleging that she owns defendant
property in fee simple. (Docket No. 18.) The Government now
moves for summary judgment and final judgment of forfeiture.

I. Factual and Procedural Background

On March 24, 2006, law enforcement officers from

1 several federal and state agencies conducted a search of the
2 defendant property pursuant to a state search warrant ("March
3 2006 search").¹ (Pl.'s App'x Ex. D ("Nelson Decl.") ¶ 4.)
4 During that search, law enforcement officers found and seized 465
5 marijuana plants of various sizes, 524 pounds of processed
6 marijuana in heat-sealed food bags, and sixteen pounds of
7 marijuana seeds. (Id. ¶ 5.) In one of the bedrooms of the house
8 on the defendant property, officers also discovered "a marijuana
9 growing and processing room," in which the windows had been
10 covered in black plastic and fluorescent grow lights and a fan
11 had been installed. (Id. ¶ 6.) The search produced other
12 evidence of drug sales, including pay/owe sheets, a triple beam
13 scale, a Food Saver heat sealer, heat-sealable plastic bags, and
14 over \$1000 in U.S. currency. (Id.) A loaded .12 gauge shotgun
15 and .9mm handgun, an unloaded .22 rifle, and various rounds of
16 ammunition were also found during the search. (Id. ¶ 5.)

17 The evidence seized during the March 2006 search formed
18 the basis of an indictment filed against claimant and Onofre Soto
19 Zuniga--who both resided at the defendant property with their six
20 children (id.)--on April 20, 2006. (See Pl.'s App'x Ex. B.)² In
21

22 ¹ The search was conducted by members of the Twin Cities
23 Special Weapons and Tactics unit, agents of the Drug Enforcement
24 Administration, and agents from the Yuba-Sutter Narcotic
Enforcement Team. (Nelson Decl. ¶ 4.)

25 ² The court takes judicial notice of the filings and
26 proceedings in the criminal action filed in this court against
27 claimant and Zuniga, including parts of the record over which the
28 parties have not specifically requested the court take judicial
notice. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d
741, 746 n.6 (9th Cir. 2006) (taking judicial notice of briefs
and a hearing transcript from a related case in another court);
Fed. R. Evid. 201(c) ("A court may take judicial notice, whether

1 the criminal action captioned United States v. Onofre Soto Zuniga
2 and Minerva Campos, No. CR. 06-170 WBS, over which the
3 undersigned judge presided, claimant and Zuniga were indicted for
4 manufacturing marijuana plants, 21 U.S.C. § 841(a)(1); possessing
5 a mixture containing a detectable amount of marijuana, 21 U.S.C.
6 § 841(a)(1); and carrying and possessing a shotgun and semi-
7 automatic pistol in furtherance of a drug trafficking offense, 18
8 U.S.C. § 924(c)(1). (Id.) Zuniga pled guilty to possession with
9 the intent to distribute at least 100 kilograms of a mixture or
10 substance containing a detectable amount of marijuana and
11 possessing a firearm in furtherance of a drug trafficking
12 offense. (See Pl.'s App'x Ex. E.) On April 28, 2008, claimant
13 pled guilty to one count of misprison of a felony, 18 U.S.C. § 4,
14 for having knowledge of and concealing the commission of a
15 felony--namely, the possession of at least 100 kilograms of
16 marijuana with the intent to distribute. (Id. Ex. F at 2:19-20;
17 Information (Docket No. 91), United States v. Onofre Soto Zuniga
18 & Minerva Campos, No. CR. 06-170 WBS, at 1:23-25.)

19 While claimant's criminal case was pending, the
20 Government filed the instant action for civil forfeiture on June
21 22, 2006. Claimant filed a verified claim of interest on
22 September 18, 2006, asserting that she owns the defendant
23 property, a fact not disputed. (See Docket No. 18; Pl.'s Br.
24 Supp. Summ. J. 2:19-20.) This action was then stayed pursuant to
25 18 U.S.C. § 981(g)(1)-(2) for the duration of claimant's criminal
26 case. (Docket No. 16.)

27 _____
28 requested or not.").

1 Following claimant's conviction in that case, the
2 Government filed the instant motion for summary judgment on June
3 26, 2009, pursuant to Federal Rule of Civil Procedure 56.
4 Claimant did not file an opposition or a statement of non-
5 opposition to the Government's motion, as required by this
6 court's Local Rules. See E.D. Cal. L.R. 78-230(c). Accordingly,
7 at the hearing held on the instant motion on August 17, 2009,
8 even if claimant's attorney had made an appearance, which he did
9 not, he would not have been entitled to be heard in opposition to
10 the motion.³ See id.

11 II. Discussion

12 Summary judgment is proper "if the pleadings, the
13 discovery and disclosure materials on file, and any affidavits
14 show that there is no genuine issue as to any material fact and
15 that the movant is entitled to judgment as a matter of law."
16 Fed. R. Civ. P. 56(c). A material fact is one that could affect
17 the outcome of the suit, and a genuine issue is one that could
18 permit a reasonable jury to enter a verdict in the non-moving
19 party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
20 248 (1986). The party moving for summary judgment bears the
21 initial burden of demonstrating the absence of a genuine issue of
22 material fact. Id. at 256. When the moving party bears the

23
24 ³ Claimant's attorney, Brendan Hallinan, filed a motion
25 to withdraw as counsel nearly three weeks after the Government
26 moved for summary judgment. (See Docket No. 21.) Despite the
27 motion to withdraw, Hallinan continued to serve as claimant's
28 counsel of record and had an ongoing obligation to perform his
duties until the court ruled on his motion. E.D. Cal. Local Rule
83-182(d) ("The authority and duty of the attorney of record
shall continue until relieved by order of the Court").
In that capacity, counsel neither responded the Government's
motion for summary judgment nor requested a continuance.

1 burden of proof at trial, "it must come forward with evidence
2 which would entitle it to a directed verdict if the evidence went
3 uncontroverted at trial.'" Miller v. Glenn Miller Prods., Inc.,
4 454 F.3d 975, 987 (9th Cir. 2006) (quoting C.A.R. Transp.
5 Brokerage Co., Inc. v. Darden Rests., Inc., 213 F.3d 474, 480
6 (9th Cir. 2000)).

7 Once the moving party carries its initial burden, the
8 nonmoving party "may not rely merely on allegations or denials in
9 its own pleading," but must go beyond the pleadings and, "by
10 affidavits or as otherwise provided in [Rule 56,] set out
11 specific facts showing a genuine issue for trial." Fed. R. Civ.
12 P. 56(e); accord Celotex Corp. v. Catrett, 477 U.S. 317, 324
13 (1986); Valandingham v. Bojorquez, 866 F.2d 1135, 1137 (9th Cir.
14 1989). On those issues for which it will bear the ultimate
15 burden of persuasion at trial, the nonmoving party "must produce
16 evidence to support its claim or defense." Nissan Fire & Marine
17 Ins. Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1103 (9th
18 Cir. 2000).

19 In its inquiry, the court must view any inferences
20 drawn from the underlying facts in the light most favorable to
21 the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith
22 Radio Corp., 475 U.S. 574, 587 (1986). The court also may not
23 engage in credibility determinations or weigh the evidence, for
24 these are jury functions. Anderson, 477 U.S. at 255.

25 A. Forfeiture

26 Under the Civil Asset Forfeiture Reform Act of 2000
27 ("CAFRA"), in a forfeiture proceeding brought under any civil
28 forfeiture statute, the government must prove by a preponderance

1 of the evidence that the property in question is subject to
2 forfeiture. 18 U.S.C. § 983(c)(1); accord United States v. 5208
3 Los Franciscos Way, 385 F.3d 1187, 1193 (9th Cir. 2004).

4 Further, "if the Government's theory of forfeiture is that the
5 property was used to commit or facilitate the commission of a
6 criminal offense, or was involved in the commission of a criminal
7 offense, the Government shall establish that there was a
8 substantial connection between the property and the offense." 18
9 U.S.C. § 983(c)(3).

10 Here, the Government contends that the defendant
11 property is subject to forfeiture pursuant to 21 U.S.C. §
12 881(a)(7), which subjects to forfeiture "[a]ll real property . .
13 . which is used, or intended to be used, in any manner or part,
14 to commit, or to facilitate the commission of, a violation of
15 this subchapter punishable by more than one year's imprisonment."
16 Based on the marijuana stored on the defendant property, Zuniga
17 was convicted under § 841(a)(1) for possession with the intent to
18 distribute at least 100 kilograms of marijuana--a crime
19 punishable by more than a year of imprisonment. See 21 U.S.C. §
20 841(b)(1)(B). The evidence therefore shows that the defendant
21 property was subject to forfeiture under the broad terms of §
22 881(a)(7). See, e.g., United States v. Real Property Located in
23 Merced County, No. 03-6613, 2008 WL 706599, at *5 (E.D. Cal. Mar.
24 14, 2008) (Snyder, M.J.) (finding that § 881(a)(7) was satisfied
25 based on the use of the property to store and distribute three
26 pounds of methamphetamine and marijuana). See generally United
27 States v. 6250 Ledge Road, 943 F.2d 721, 725 (7th Cir. 1991)
28 (noting that, under § 881(a)(7), the government need "only

1 demonstrate that the nexus [between the property and the drug
2 offense] is more than incidental or fortuitous"), cited with
3 approval in United States v. 6380 Little Canyon Road, 59 F.3d
4 974, 985 n.11 (9th Cir. 1995), abrogation on other grounds
5 recognized by United States v. \$273,969.04 U.S. Currency, 164
6 F.3d 462, 466 n.3.

7 With regard to the required connection between the
8 defendant property and the underlying offense, the evidence shows
9 that a considerable amount of live marijuana plants (465) and
10 processed marijuana (524 pounds), in addition to other indicia of
11 drug sales, was seized from the defendant property. Further,
12 claimant stated during the plea colloquy in her criminal trial
13 that the marijuana had been stored and grown on the premises for
14 approximately three months before the March 2006 search. (Plea
15 Hearing Tr. (Docket No. 102), United States v. Onofre Soto Zuniga
16 & Minerva Campos, No. CR. 06-170 WBS, at 45:1-8.) This
17 undisputed evidence establishes a substantial connection between
18 the property and the underlying drug offense. See United States
19 v. 6 Fox Street, 480 F.3d 38, 43 (1st Cir. 2007) (holding that
20 the seizure of twenty seven-pound bricks of marijuana from a
21 parcel of real property "offers ample proof that the connection
22 between the property and drug trafficking was indeed
23 substantial"); United States v. 4338 Snyder Lane, No. 03-2245,
24 2004 WL 1811152, at *2 (N.D. Cal. Aug. 12, 2004) (finding that
25 evidence of active marijuana cultivation and marijuana packaged
26 for sale established a substantial connection between real
27 property and a drug offense); cf. United States v. 3234
28 Washington Ave., 480 F.3d 841, 846 (8th Cir. 2007) (holding that

1 the seizure of "a small quantity" (0.75 grams) of methamphetamine
2 was insufficient to establish a substantial connection).

3 Because the uncontroverted evidence demonstrates that
4 the defendant property is subject to forfeiture and was
5 substantially connected to the underlying drug offense, the
6 Government is entitled to judgment as a matter of law.

7 B. Innocent Owner Defense

8 CAFRA provides that "[a]n innocent owner's interest in
9 property shall not be forfeited under any civil forfeiture
10 statute." 18 U.S.C. § 983(d)(1). An "innocent owner" is one who
11 either "did not know of the conduct giving rise to forfeiture,"
12 or, upon learning of the conduct, "did all that reasonably could
13 be expected under the circumstances to terminate such use of the
14 property." Id. § 983(d)(2)(A); see United States v. Section 18,
15 976 F.2d 515, 520 (9th Cir. 1992) (providing, in a pre-CAFRA
16 context, that "no property is forfeited [under § 881(a)(7)] if
17 the owner was without knowledge of the criminal activity or did
18 not consent"). Evidence of an owner's reasonable steps to
19 terminate the illegal use may include notifying law enforcement
20 authorities, revoking permission to use the property for those
21 engaging in the illegal conduct, or other reasonable actions to
22 prevent or discourage the illegal use. 18 U.S.C.
23 §983(d)(2)(B)(i). A claimant bears the burden of proof on the
24 "innocent owner" defense. Id. § 983(d)(1).

25 Here, claimant alleges in her verified Answer that she
26 "leased a portion of the subject premises" to others, and that
27 "[a]ny improper activity on the premises was beyond [her]
28 knowledge or control." (Docket No. 15 at 1:24-27.) The record,

1 however, provides no support for the contention that claimant
2 lacked knowledge of any drug offenses on the defendant property.
3 Indeed, given the quantity of both live and processed marijuana
4 seized from claimant's residence--in addition to the existence of
5 an entire room devoted to marijuana growing and processing--it is
6 difficult to imagine how claimant could have been unaware of the
7 presence of marijuana on the premises.

8 More importantly, during the plea colloquy in her
9 criminal case, claimant expressly admitted that she knew that
10 marijuana was being grown and stored on the defendant property.
11 Specifically, in describing her knowledge of Zuniga's possession
12 with the intent to distribute at least 100 kilograms of
13 marijuana, she stated that she saw "many" live marijuana plants
14 in the house taking up a space measuring six-feet-by-six-feet-by-
15 two-feet and that an entire bedroom of the house was occupied by
16 processed marijuana. (See Plea Hearing Tr. 41:18-42:23, 43:17-
17 25.) Claimant further admitted that she knew that Zuniga
18 intended to distribute the marijuana stored in the house to
19 others. (Id. at 42:24-43:7.)

20 In light of claimant's express admissions during her
21 plea colloquy, the mere assertion in her Answer that she lacked
22 knowledge of any illegal activities on the defendant property,
23 without more, is insufficient to create a genuine issue of
24 material fact. See United States v. 1980 Red Ferrari, 827 F.2d
25 477, 480 (9th Cir. 1987) (finding that the claimant was not
26 entitled to a trial on his "innocent owner" defense based on an
27 unsupported claim of lack of knowledge when circumstantial
28 evidence showed that he must have at least been on notice of the

1 connection between the property and illegal activity); see also
2 Cal. Pro-Life Council, Inc. v. Randolph, 507 F.3d 1172, 1176 (9th
3 Cir. 2007) (holding that a verified pleading that was
4 "impermissibly heavy on legal conclusions and light on facts
5 relevant to the summary judgment motion" did not qualify as an
6 affidavit for summary judgment purposes and was insufficient to
7 raise a genuine issue of fact); United States v. Davis, 428 F.3d
8 802, 811 (9th Cir. 2005) ("A [criminal] defendant's 'solemn
9 declarations in open court [during a plea colloquy] carry a
10 strong presumption of verity.'" (quoting United States v.
11 Rubalcaba, 811 F.2d 491, 494 (9th Cir. 1987))).

12 Claimant's statements during her plea colloquy further
13 demonstrate that she did not take reasonable steps to terminate
14 the illegal use of the defendant property despite her knowledge.
15 She stated that the marijuana had been on the property for
16 approximately three months before the March 2006 and that she
17 lived on the premises during that period. (Plea Hearing Tr.
18 45:1-8.) Nevertheless, she admitted that she did nothing during
19 that time to report the presence of substantial quantities of
20 marijuana to law enforcement. (Id. at 45:4-6.) Nor does the
21 record suggest that she took any steps to deny Zuniga access to
22 the defendant property or otherwise attempt to prevent the
23 illegal use of the property.

24 Accordingly, in the absence of genuine issues of fact
25 regarding claimant's knowledge that the defendant property was
26 used to commit a drug offense and her failure to take reasonable
27 steps to terminate that use, the Government is entitled to
28 summary judgment in its favor on the "innocent owner" defense.

1 IT IS THEREFORE ORDERED that the motion for summary
2 judgment be, and the same hereby is, GRANTED.

3 DATED: August 27, 2009

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5 WILLIAM B. SHUBB
6 UNITED STATES DISTRICT JUDGE
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Teglia, Tammy (USACAE)

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WARNING: CASE CLOSED on 08/28/2009

Document Number: 28

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ORDER signed by Judge William B. Shubb on 08/27/09 ORDERING that dft's [19] Motion for Summary Judgment is GRANTED. CASE CLOSED (Benson, A.)

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