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 United States of America
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 7

8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA
 10

| | | |
|--------------------------------------|---|---------------------------------------|
| 11 UNITED STATES OF AMERICA, |) | 2:07-cv-02114 WBS/KJM |
| |) | |
| 12 Plaintiff, |) | STIPULATION TO EXTEND STAY AND |
| |) | ORDER THEREON [PROPOSED] |
| 13 v. |) | |
| |) | |
| 14 REAL PROPERTY LOCATED AT 24545 N. |) | DATE: September 21, 2009 |
| 15 SUTTENFIELD ROAD, ACAMPO, |) | TIME: 2:00 p.m. |
| 16 CALIFORNIA, SAN JOAQUIN COUNTY, |) | COURTROOM: 5 |
| 17 APN: 021-042-16, |) | |
| |) | |
| 18 Defendant. |) | |

| | | |
|--------------------------------------|---|-----------------------|
| 18 UNITED STATES OF AMERICA, |) | 2:08-cv-00577 WBS/KJM |
| |) | |
| 19 Plaintiff, |) | |
| |) | |
| 20 v. |) | |
| |) | |
| 21 APPROXIMATELY \$26,395.00 IN U.S. |) | |
| 22 CURRENCY, |) | |
| |) | |
| 23 APPROXIMATELY \$10,880.00 IN U.S. |) | |
| 24 CURRENCY, |) | |
| |) | |
| 25 APPROXIMATELY \$5,000.00 IN U.S. |) | |
| 26 CURRENCY, |) | |
| |) | |
| 27 APPROXIMATELY \$9,932.73 IN U.S. |) | |
| 28 CURRENCY SEIZED FROM WASHINGTON |) | |
| MUTUAL BANK, CD, ACCOUNT NUMBER |) | |
| 09414284883, |) | |

1 APPROXIMATELY \$9,966.82 IN U.S.)
 CURRENCY SEIZED FROM WASHINGTON)
 2 MUTUAL BANK ACCOUNT NUMBER)
 093400000117054,)
 3)
 APPROXIMATELY \$26,712.81 IN U.S.)
 4 CURRENCY SEIZED FROM WASHINGTON)
 MUTUAL BANK ACCOUNT NUMBER)
 5 093400000117020,)
)
 6 APPROXIMATELY \$2,976.06 IN U.S.)
 CURRENCY SEIZED FROM WASHINGTON)
 7 MUTUAL BANK ACCOUNT NUMBER)
 009300008192250,)
 8)
 APPROXIMATELY \$413.67 IN U.S.)
 9 CURRENCY SEIZED FROM WELLS FARGO)
 ACCOUNT NUMBER 056-4346773, and)
 10 MISCELLANEOUS GROW EQUIPMENT,)
 11)
 Defendants.)
 12)

13 Plaintiff United States of America, and Claimants William Pearce
 14 (a claimant in both cases) and Kristin Burckard (a claimant only in the
 15 N. Suttentfield Road case), and JP Morgan Chase Bank, N.A.,¹ (a
 16 claimant/lienholder in the N. Suttentfield Road case) by and through
 17 their respective counsel, hereby stipulate that a stay is necessary in
 18 the above-entitled actions, and request that the Court enter an order
 19 staying all further proceedings for an additional six months pending
 20 the outcome of a related criminal investigation against Claimants.

21 1. On October 5, 2007, plaintiff filed a complaint for forfeiture
 22 *in rem* against the N. Suttentfield Road property² owned by William H.
 23 Pearce and Kristin Burckard. On March 13, 2008, plaintiff filed a
 24 complaint for forfeiture *in rem* against the defendant currency and

25 ¹ JP Morgan Chase Bank, N.A., acquired certain assets and
 26 liabilities of claimant Washington Mutual Bank from the FDIC acting as
 27 a receiver.

28 ² The plaintiff also filed a complaint against property on
 Blizzard Mine Road owned by claimant Pearce but that case was dismissed
 earlier due to a decline in equity in the property.

1 equipment. Claimant Pearce has filed claims in both actions, and has
2 filed answers to the plaintiff's complaints. Claimant Kristin Burckard
3 has filed a claim to the N. Suttentfield Road property and has filed an
4 answer to the complaint.

5 2. The stay is requested pursuant to 18 U.S.C. §§ 981(g)(1) and
6 981(g)(2). With respect to the N. Suttentfield property, the plaintiff
7 contends that proceeds from marijuana trafficking were used to pay down
8 a line of credit against the property, and that the defendant property
9 is therefore forfeitable to the United States pursuant to 21 U.S.C.
10 § 881(a)(6). As an alternate theory the plaintiff alleges that the
11 property was involved in a money laundering transaction (the use of the
12 proceeds of a "specified unlawful activity" (drug trafficking) to pay
13 off part of a lien against the property) and is therefore forfeitable
14 pursuant to 18 U.S.C. § 981(a)(1)(A) for violations of the money
15 laundering statute, 18 U.S.C. § 1957. With respect to the second
16 case, the plaintiff alleges that the currency is forfeitable because it
17 is the proceeds of drug trafficking. The property described as
18 "miscellaneous grow equipment" is forfeitable pursuant to 21 U.S.C.
19 § 881(a)(9) because it was used to grow marijuana.

20 3. The criminal investigation that led to these civil forfeiture
21 actions has been slowed considerably by factors outside the
22 government's control. During the searches in the fall of 2007, federal
23 agents seized seven computers owned by claimant Pearce. Due to the
24 complex passwords on the computers, it took forensic computer experts
25 months to break the passwords and gain access to the data on the hard
26 drives. During a search of the hard drive agents encountered documents
27 that were potentially privileged as attorney-client communications.
28 Accordingly, an IRS agent unconnected with the investigations reviewed

1 all the documents on the computers and made a preliminary determination
2 as to which documents were potentially privileged. Those documents
3 were reviewed by an Assistant U.S. Attorney unconnected with the
4 criminal investigation and only the non-privileged documents were
5 provided to the law enforcement agents for their review. This review
6 has been very time-consuming since seven computers are involved.

7 4. Because of the delays in gaining access to the data on the
8 computers, to date claimants have not been charged with any criminal
9 offense by state, local, or federal authorities, and the statute of
10 limitations has not expired on potential criminal charges relating to
11 the drug trafficking offenses underlying the forfeiture cases.
12 Nevertheless, the plaintiff intends to depose claimants regarding their
13 involvement in marijuana trafficking; their use of drug proceeds to pay
14 off lines of credit against the property; and the cultivation of
15 marijuana at the Blizzard Mine Road property. (The forfeiture action
16 against the Blizzard Mine property was dismissed for the reasons set
17 forth in footnote 2.) If discovery proceeds at this time, claimants
18 will be placed in the difficult position of either invoking their Fifth
19 Amendment right against self-incrimination and losing the ability to
20 pursue their claims to the defendant real property, or waiving their
21 Fifth Amendment right and submitting to a deposition and potentially
22 incriminating themselves. If they invoke their Fifth Amendment rights,
23 the plaintiff will be deprived of the ability to explore the factual
24 basis for the claims each filed with this court.

25 5. In addition, claimants intend to depose the law enforcement
26 officers involved in this investigation. Allowing depositions of the
27 law enforcement officers at this time would adversely affect the
28 ability of federal authorities to investigate the underlying criminal

1 conduct.

2 6. The parties recognize that proceeding with this action at
3 this time has potential adverse affects on the investigation of the
4 underlying criminal conduct and/or upon claimant's ability to prove his
5 claim to the property and assert any defenses to forfeiture. For these
6 reasons, the parties jointly request that this matter be stayed an
7 additional six months. At that time the parties will advise the court
8 of the status of the criminal investigation, if any, and will advise
9 the court whether a further stay is necessary.

10 7. The parties request that the status conference currently
11 scheduled for September 21, 2009, be vacated and rescheduled to
12 sometime in March, 2010.

13 Dated: September 8, 2009 LAWRENCE G. BROWN
14 United States Attorney

15 By /s/ Kristin S. Door
16 KRISTIN S. DOOR
17 Assistant U.S. Attorney
Attorneys for Plaintiff
United States of America

18 Dated: September 8, 2009 DANIEL J. BRODERICK
19 Federal Defender

20 By /s/ Timothy Zindel
21 TIMOTHY ZINDEL
22 Assistant Federal Defender
Attorney for claimant
William Pearce

23 Dated: September 8, 2009 /s/ Krista Hart
24 KRISTA HART
25 Attorney for claimant
Kristin Burckard

26 (Original signatures and/or written
27 consent to sign attorney's electronic
signature retained by AUSA Door)

28

1 Dated: September 8, 2009


/s/ Scott J. Stilman
SCOTT J. STILMAN
Attorney for claimant
JP Morgan Chase Bank, N.A.,
an acquirer of certain assets and
liabilities of Washington Mutual
Bank from the FDIC acting
as receiver

7 O R D E R

8 For the reasons set forth above, this matter is stayed pursuant to
9 18 U.S.C. §§ 981(g) (1) and 981(g) (2) for a period of six months. The
10 status conference scheduled for September 21, 2009 is vacated and will
11 be rescheduled to March 22, 2010 at 2:00 p.m. The parties shall file a
12 joint status report by March 8, 2010 advising the court whether a
13 further stay is necessary or addressing the matters in the March 14,
14 2008, Order Requiring Joint Status Report. The parties should not
15 assume that the court will automatically continue to stay this action
16 until the criminal investigation and any prosecutions resulting
17 therefrom are completed. Such a continuance could result in postponing
18 this action beyond the acceptable three year period, and even after the
19 criminal investigation the government cannot be assured that potential
20 defendants will not assert the privilege against self incrimination.

21 IT IS SO ORDERED.

23 Dated: September 8, 2009

24 
25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE