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Attorney for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.

REAL PROPERTY LOCATED AT 24545 N.  
SUTTENFIELD ROAD, ACAMPO,  
CALIFORNIA, SAN JOAQUIN COUNTY,  
APN: 021-042-16,  
  
Defendant.

2:07-cv-02114 WBS/KJM

STIPULATION TO EXTEND STAY AND  
ORDER THEREON [~~PROPOSED~~]

DATE: September 21, 2009  
TIME: 2:00 p.m.  
COURTROOM: 5

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.

APPROXIMATELY \$26,395.00 IN U.S.  
CURRENCY,  
  
APPROXIMATELY \$10,880.00 IN U.S.  
CURRENCY,  
  
APPROXIMATELY \$5,000.00 IN U.S.  
CURRENCY,  
  
APPROXIMATELY \$9,932.73 IN U.S.  
CURRENCY SEIZED FROM WASHINGTON  
MUTUAL BANK, CD, ACCOUNT NUMBER  
09414284883,

2:08-cv-00577 WBS/KJM

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.,<sup>1</sup> (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 property<sup>2</sup> 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

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25 <sup>1</sup> 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 <sup>2</sup> 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  
27  
28