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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, ) 2:08-cv-02309 LKK/GGH  
12 Plaintiff, )  
13 v. ) JOINT STATUS REPORT AND  
14 REAL PROPERTY LOCATED AT 57 ) STIPULATION TO STAY FURTHER  
15 NELSIER PLACE, OROVILLE, ) PROCEEDINGS AND ORDER  
16 CALIFORNIA, BUTTE COUNTY, ) THEREON  
17 APN: 078-040-036, (FORMERLY )  
18 APN: 036-291-079) INCLUDING )  
ALL APPURTENANCES AND )  
IMPROVEMENTS THERETO, )  
Defendant. ) DATE: January 20, 2009  
19 ) TIME: 10:00 a.m.  
COURTROOM: #4/Chambers

20 Plaintiff United States of America, claimant Jess R.  
21 Brasier, and claimants Albert and Georgene Brookman, submit the  
22 following Status Report pursuant to the Court's September 30,  
23 2008, order.

24 (a) **Parties:** The plaintiff is the United States of

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1 America. Claimant Jess R. Brasier alleges he is the owner of the  
2 defendant property.<sup>1</sup> Claimants Albert and Georgene Brookman are  
3 the beneficiaries of a promissory note secured by a deed of trust  
4 recorded against the defendant property.

5 (b) **Summary of Facts and Legal Theories:**

6 The United States alleges this property is subject to  
7 forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(7)  
8 because it was used to facilitate a felony violation of 21 U.S.C.  
9 § 841. Specifically, on September 16, 2008, agents with the Drug  
10 Enforcement Administration and deputies from the Butte County  
11 Sheriff's Department executed a federal search warrant at the  
12 defendant property. During the search officers found evidence of  
13 an active indoor marijuana growing operation with approximately  
14 150 plants under cultivation in a barn, and another 80 plants  
15 under cultivation in a greenhouse. Claimant Brasier denies the  
16 allegations. The Brookmans allege they had no knowledge that  
17 marijuana was being grown on the property.

18 (c) **Service of Process:**

19 Everyone known to have an interest in the defendant  
20 property has been served with the Complaint for Forfeiture In  
21 Rem, Notice of Complaint, Application and Order for Publication,

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22

23 <sup>1</sup> At this point in the litigation plaintiff is not  
24 prepared to concede that the person who filed the claim is in  
25 fact the owner. Plaintiff has been advised that Jess V. Brasier,  
26 who is a defendant in U.S. v. Jess V. Brasier, et al., 2:08-cr-  
27 0453 LKK, also uses "R." as a middle initial on occasion. A  
28 Choice Point report obtained by DEA shows that "Jess V. Brasier"  
and "Jess R. Brasier" use the same Social Security number. To  
complicate the matter further, Jess Brasier has a son, also named  
Jess. Without conducting discovery, plaintiff does not know if  
the person who filed the claim is the father/defendant, or the  
son.

1 Lis Pendens, and Court Notices. Claimant Brasier filed a claim  
2 to the property and an answer to the complaint on December 16,  
3 2008. The Brookmans (lienholders) filed a Claim to the property  
4 and an answer to the complaint on October 30, 2008.

5 On October 17, 2008, the U.S. Marshal posted the Notice of  
6 Complaint and the Complaint on the real property.

7 Accordingly, service is complete.

8 In addition, notice of the forfeiture was posted on the  
9 official government internet site ([www.forfeiture.gov](http://www.forfeiture.gov)) for at  
10 least 30 consecutive days, beginning on November 19, 2008, as  
11 required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for  
12 Admiralty or Maritime Claims and Asset Forfeiture Actions. A  
13 Declaration of Publication was filed on December 31, 2008.

14 (d) **Possible Joinder of Additional Parties:**

15 None contemplated.

16 (e) **Any Expected or Desired Amendment of Pleadings:**

17 None.

18 (f) **Jurisdiction and Venue:**

19 The Court has jurisdiction in this matter pursuant to 28  
20 U.S.C. §§ 1345, 1355. Venue is proper in this district pursuant  
21 to 28 U.S.C. § 1395(b) because the real property that is subject  
22 to forfeiture is located in this district.

23 (g) **Anticipated Motions with Suggested Law and Motion  
24 Dates:**

25 The parties request that this case not be scheduled at this  
26 time because they are requesting a stay of further proceedings  
27 for six months as explained in the following paragraph.

28 (h) **Anticipated Discovery And The Scheduling Thereof:**

1 Pursuant to 18 U.S.C. §§ 981(g)(1) and 981(g)(2) the parties  
2 suggest that a stay of further proceedings in this case is  
3 necessary. The United States contends that the defendant real  
4 property was used to facilitate a violation of federal drug laws  
5 (cultivation of marijuana) and is therefore forfeitable to the  
6 United States. The United States intends to depose claimant Jess  
7 R. Brasier about the claim he filed in this case and the facts  
8 surrounding the cultivation of marijuana plants on this property.  
9 If claimant Jess R. Brasier is not the same person as defendant  
10 Jess V. Brasier, plaintiff will also need to depose defendant  
11 Jess V. Brasier. If discovery proceeds, claimant and/or  
12 defendant Jess V. Brasier would be placed in the difficult  
13 position of either invoking their Fifth Amendment rights against  
14 self-incrimination and losing the ability to protect their  
15 claimed interest in the defendant property, or waiving their  
16 Fifth Amendment rights and submitting to depositions and  
17 potentially incriminating themselves in the pending criminal  
18 matter. If claimant invokes his Fifth Amendment rights, the  
19 United States will be deprived of the ability to explore the  
20 factual basis for the claims they filed in this action and any  
21 defense raised in the Answer.

22 In addition, all claimants intend to depose law enforcement  
23 officers who were involved in the investigation that led to the  
24 search at the defendant property. Allowing depositions of these  
25 officers would adversely affect the ability of the United States  
26 to conduct its related criminal investigation.

27 Accordingly, the parties contend that proceeding with this  
28 action at this time has potential adverse affects on the

1 investigation and possible prosecution of the related-criminal  
2 case and/or upon claimants' ability to prove their claim to the  
3 property and to contest the government's allegations that the  
4 property is forfeitable. For these reasons, the parties request  
5 that this matter be stayed for a period of six months. At that  
6 time the parties will advise the Court whether a further stay is  
7 necessary.

8       (i) **Further Proceedings, Suggested Case Schedule:**

9       The parties request that the case not be scheduled at this  
10 time. \_\_\_\_\_

11      (j) **Special Proceedings:**

12      None.

13      (k) **Demand For Jury Trial:**

14      No claimant made a timely demand for a jury trial.

15      (l) **Estimate of Trial Time:**

16      No more than 4 court days.

17      (m) **Modification of Standard Pretrial Procedures:**

18      None.

19      (n) **Related Matters:**

20      The following cases are related:

21      1. United States v. Real Property Located at 22 Nelsier  
22 Place, Oroville, CA, 2:08-cv-02326 LKK-EFB.

23      2. United States v. Jess Vernon Brasier and Dean Teskey,  
24 2:08-cr-0453 LKK.

25      A Notice of Related Cases was filed on October 28, 2008,  
26 and all cases are assigned to this Court.

27      (o) **Settlement Judge:**

28      The government requests that another judge be assigned as

1 the settlement judge.

2 (p) **Use of the Voluntary Dispute Resolution Program:**

3 The parties do not believe VDRP is appropriate in this case.

4 (q) **Other matters:**

5 Counsel for the government has been advised that claimant  
6 Jess R. Brasier has stopped making payments on the promissory  
7 note. Under these circumstances, the United States intends to  
8 seek a stipulation from all parties permitting the interlocutory  
9 sale of the property. It is not the parties' intention that a  
10 stay would prevent the parties jointly or the United States  
11 separately from seeking an order permitting an interlocutory  
12 sale. Upon the sale of the property the net proceeds will be  
13 substituted as the res in this action. If the United States  
14 determines that the Brookmans are innocent owners within the  
15 meaning of 18 U.S.C. § 983(d), their claim would be paid out of  
16 escrow. If the United States determines that the Brookmans are  
17 not innocent owners, those funds would also be substituted as the  
18 res in this action. Their entitlement to the funds would  
19 thereafter be determined by at trial.

20

21 DATED: January 6, 2009

LAWRENCE G. BROWN  
Acting United States Attorney

22

23 By: /s/ Kristin S. Door  
KRISTIN S. DOOR  
24 Assistant U.S. Attorney

25

26 DATED: January 6, 2009

/s/ John H. Feiner  
JOHN H. FEINER  
27 Attorney for claimant  
Jess R. Brasier

1 DATED: January 6, 2009

/s/ Frederick H. Schill

2 FREDERICK H. SCHILL

3 Attorney for claimants

4 Albert and Georgene Brookman

5 **ORDER**

6 For the reasons set forth above, this matter is stayed  
7 pursuant to 18 U.S.C. §§ 981(g)(1) and 981(g)(2) until July 5,  
8 2009. The parties will advise the court at least 10 days prior  
9 to July 5, 2009, whether a further stay is necessary.

10 The scheduling conference scheduled for January 20, 2009 is  
11 hereby vacated.

12 IT IS SO ORDERED.

13 Dated: January 9, 2009.

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15   
16 LAWRENCE K. KARLTON  
17 SENIOR JUDGE  
18 UNITED STATES DISTRICT COURT