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

11 UNITED STATES OF AMERICA,	) 2:08-cv-02326 LKK/GGH
	)
12 Plaintiff,	) JOINT STATUS REPORT AND
	) STIPULATION TO STAY FURTHER
13 v.	) PROCEEDINGS AND ORDER THEREON
	)
14 REAL PROPERTY LOCATED AT 22	)
NELSIER PLACE, OROVILLE,	)
15 CALIFORNIA, BUTTE COUNTY,	)
APN: 078-040-022, (FORMERLY	)
16 APN: 036-291-074) INCLUDING	)
ALL APPURTENANCES AND	)
17 IMPROVEMENTS THERETO,	)
	) DATE: January 20, 2009
18 Defendant.	) TIME: 10:00 a.m.
	) COURTROOM: 4/Chambers

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 20 Plaintiff United States of America, claimant Rebecca Gayle  
 21 Powell, and claimants/lienholder John and Yvonne Stanton, and  
 22 claimant/judgment creditor Ford Motor Company, submit the  
 23 following Status Report pursuant to the Court's October 2, 2008,  
 24 order.

25 (a) **Parties:** The plaintiff is the United States of  
 26 America. Claimant Rebecca Gayle Powell alleges she is the owner  
 27 of the defendant property although only Dean E. Teskey is listed  
 28 as the owner in the title report for the defendant property. At

1 this point in the litigation plaintiff is not prepared to concede  
2 that Rebecca Powell has any interest in the defendant property.  
3 Plaintiff is informed and believes that Powell is the daughter of  
4 Jess V. Brasier, one of the defendants in United States v. Jess  
5 V. Brasier and Dean Teskey, 2:08-cr-0453 LKK. The plaintiff  
6 believes that claimant Powell was involved in a scheme with her  
7 father to conceal the true ownership of the defendant property.  
8 Claimant Powell denies this contention.

9 Claimants John and Yvonne Stanton are the beneficiaries of a  
10 promissory note secured by a deed of trust recorded against the  
11 defendant property.

12 Claimant Ford Motor Credit Company is a judgment creditor of  
13 Jess V. Brasier and recorded an Abstract of Judgment against the  
14 defendant property on January 12, 2005.

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

16 The United States alleges this property is subject to  
17 forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(7)  
18 because it was used to facilitate a felony violation of 21 U.S.C.  
19 § 841. Specifically, on September 16, 2008, agents with the Drug  
20 Enforcement Administration and deputies from the Butte County  
21 Sheriff's Department executed a federal search warrant at the  
22 defendant property. During the search officers found  
23 approximately 90 large marijuana plants.

24 Claimant Powell denies the allegations. The Stantons allege  
25 they had no knowledge that marijuana was being grown on the  
26 property. Ford Motor Credit Company has not filed an answer to  
27 the complaint but will do so not later than January 20, 2009.

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

1           The plaintiff has served, or made reasonable attempts to  
2 serve, everyone known to have an interest in the defendant  
3 property with the Complaint for Forfeiture In Rem, Notice of  
4 Complaint, Application and Order for Publication, Lis Pendens,  
5 and Court Notices.

6           The plaintiff attempted to serve the owner of record, Dean  
7 Teskey, with the Complaint and related documents by certified  
8 mail, but the documents were returned by the Postal Service  
9 marked "unclaimed." Thereafter, plaintiff mailed the documents  
10 by certified mail to Shari Rusk, Teskey's attorney of record in  
11 United States v. Jess V. Brasier and Dean Teskey, 2:08-cr-0453  
12 LKK. The PS Form 3811 (the "green card") shows that Rusk's  
13 office received the documents on November 10, 2008. To date  
14 Teskey has not filed a claim to the property or an answer to the  
15 complaint, and the time for doing so has expired.

16           Claimant Powell filed a claim to the property and an answer  
17 to the complaint on December 16, 2008. The Stantons  
18 (lienholders) filed a Claim to the property and an answer to the  
19 complaint on November 3, 2008.

20           Ford Motor Company filed a claim in this action on November  
21 11, 2008, but has not yet filed an Answer to the Complaint.  
22 Because of the confusion over whether Jess V. Brasier and Jess R.  
23 Brasier are the same person, and over the true ownership of the  
24 defendant property, plaintiff is not prepared at this point to  
25 concede that Ford has a legitimate claim against the defendant  
26 property.

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

1           Accordingly, service is complete.

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

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

9           None contemplated.

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

11          None.

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

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

17          (g)   **Anticipated Motions with Suggested Law and Motion**  
18               **Dates:**

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

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

23          Pursuant to 18 U.S.C. §§ 981(g) (1) and 981(g) (2) the parties  
24 suggest that a stay of further proceedings in this case is  
25 necessary. The United States contends that the defendant real  
26 property was used to facilitate a violation of federal drug laws  
27 (cultivation of marijuana) and is therefore forfeitable to the  
28 United States. The United States intends to depose Jess R.

1 Brasier (who has filed a claim in the related case, U.S. v. 57  
2 Nelsier Place, 2:08-cv-0236 LKK-GGH), about the claim he filed in  
3 that case and the facts surrounding the cultivation of marijuana  
4 plants at 22 and 57 Nelsier Place. Plaintiff also intends to  
5 depose Jess V. Brasier, the defendant in the pending criminal  
6 action.<sup>1</sup>

7 If discovery proceeds, Jess V. Brasier would be placed in  
8 the difficult position of either invoking his Fifth Amendment  
9 right against self-incrimination and losing the ability to  
10 protect provide information that might support claimant Rebecca  
11 Powell's claim of ownership and/or her claim to be an innocent  
12 owner, or waiving his Fifth Amendment rights and submitting to  
13 depositions and potentially incriminating himself in the pending  
14 criminal matter. If Brasier invokes his Fifth Amendment rights,  
15 the United States will be deprived of the ability to explore the  
16 factual basis for the claim Rebecca Powell filed in this action  
17 and any defenses raised in the Answer.

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

23 Accordingly, the parties contend that proceeding with this  
24 action at this time has potential adverse affects on the  
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26 <sup>1</sup> As explained in more detail in the status report filed in  
27 the 57 Nelsier Place action, at this point plaintiff does not  
28 know if "Jess R. Brasier" (a claimant in the 57 Nelsier Place  
action) is the same person as "Jess V. Brasier," the defendant in  
the pending criminal case, or is defendant Brasier's son.

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 57 Nelsier  
22 Place, Oroville, CA, 2:08-cv-02309 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 Dean  
6 Teskey, the obligor on the promissory note secured by a deed of  
7 trust recorded against the defendant property, has stopped making  
8 payments on the promissory note. Unless claimant Rebecca Powell  
9 brings all the payments current, the United States intends to  
10 seek a stipulation permitting the interlocutory sale of the  
11 property. It is not the parties' intention that a stay would  
12 prevent the parties jointly or the United States separately from  
13 seeking an order permitting an interlocutory sale. If the  
14 parties will not stipulate, the United States will seek an order  
15 from this court permitting a sale. Upon the sale of the property  
16 the net proceeds will be substituted as the res in this action.  
17 If the United States determines that the Stantons and Ford Motor  
18 Credit Company are innocent owners within the meaning of 18  
19 U.S.C. § 983(d), their claims would be paid out of escrow. If  
20 the United States determines that the Stantons are not innocent  
21 owners, those funds would also be substituted as the res in this  
22 action. Their entitlement to the funds would thereafter be  
23 determined by at trial.

24

25 DATED : January 6, 2009

LAWRENCE G. BROWN  
Acting United States Attorney

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27 By: /s/ Kristin S. Door

KRISTIN S. DOOR  
Assistant U.S. Attorney

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DATED : January 6, 2009

/s/ John H. Feiner  
JOHN H. FEINER  
Attorney for claimant  
Rebecca Gayle Powell

DATED : January 6, 2009

/s/ Frederick H. Schill  
FREDERICK H. SCHILL  
Attorney for claimants  
John and Yvonne Stanton

DATED: January 6, 2009

NELSON & KENNARD

By: /s/ Robert S. Kennard  
ROBERT S. KENNARD  
Attorneys for claimant  
Ford Motor Credit Company

ORDER

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

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

IT IS SO ORDERED.

Dated: January 9, 2009.

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT