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

11 UNITED STATES OF AMERICA,)
 12 Plaintiff,)
 13 v.)
 14 REAL PROPERTY LOCATED IN)
 NEVADA COUNTY, CALIFORNIA,)
 15 APN: 61-070-08, INCLUDING ALL)
 APPURTENANCES AND IMPROVEMENTS)
 16 THERETO,)
)
 17 REAL PROPERTY LOCATED IN)
 NEVADA COUNTY, CALIFORNIA,)
 18 APN: 61-140-37, INCLUDING ALL)
 APPURTENANCE AND IMPROVEMENTS)
 19 THERETO,)
)
 20 REAL PROPERTY LOCATED IN)
 NEVADA COUNTY, CALIFORNIA,)
 21 ORIGINAL APN: 61-070-09, CURRENTLY)
 KNOWN AS APN: 61-070-25, INCLUDING)
 22 ALL APPURTENANCES AND IMPROVEMENTS)
 THERETO,)
 23)
 24 REAL PROPERTY LOCATED IN)
 NEVADA COUNTY, CALIFORNIA,)
 ORIGINAL APN: 61-150-08,)
 25 CURRENTLY KNOWN AS APN: 61-151-08,)
 INCLUDING ALL APPURTENANCES AND)
 26 IMPROVEMENTS THERETO, and)
)
 27 REAL PROPERTY LOCATED IN)
 NEVADA COUNTY, CALIFORNIA,)
 28 ORIGINAL APN: 61-140-43,)

2:09-cv-03542 FCD/EFB
 JOINT STATUS REPORT AND
 STIPULATION FOR STAY OF
 FURTHER PROCEEDINGS
 AND **ORDER** THEREON

1 CURRENTLY KNOWN AS AND INCLUDING)
APN: 61-140-52, APN: 61-140-58,)
2 APN: 61-140-63, APN: 61-140-69,)
APN: 61-140-70, APN: 61-140-72,)
3 APN: 61-140-74, APN: 61-140-76,)
APN: 61-140-77, APN: 61-140-78,)
4 and APN: 61-140-79, INCLUDING ALL)
APPURTENANCE AND IMPROVEMENTS)
5 THERETO,)
6 Defendants.)
_____)
7

8 Pursuant to this Court's Order Requiring Joint Status Report
9 the plaintiff United States of America and claimants Charles M.
10 Hilkey, Kenneth W. Hermiston, Doug G. Giffin, and Carol Cator as
11 Trustee of the Nathan Hilkey Trust ("Claimants"), submit the
12 following report.

13 (a) **Brief summary of the claims and legal theories under**
14 **which recovery is sought or liability denied:**

15 Plaintiff has filed a total of four civil in rem forfeiture
16 complaints against real property owned by Charles M. Hilkey.
17 This status report applies only to the fourth case filed: U.S. v.
18 Real Property in Nevada County, 61-070-08, et al., hereafter
19 referred to as "Hilkey #1-Cherokee/Callahan." ¹ All known
20 potential claimants in this case have been served, or reasonable
21 attempts to serve them have been made, and the time for these
22 potential claimants to file a claim, and the time for filing
23

24 ¹ On January 12, 2010, plaintiff and the claimants in the
25 three other cases [U.S. v. Real Property in Nevada County, APN:
26 61-160-02, et al., 2:09-cv-03062 FCD-GGH ("Hilkey #2-
27 Sparky/Cherokee"); U.S. v. Real Property in Nevada County, APN:
28 61-160-05, 2:09-cv-03063 FCD-GGH, "Hilkey #3-Roth"); and U.S. v.
Real Property Located at 24271 Hoyt Crossing Road, in Nevada
County, APN: 60-360-15, 2:09-cv-03085 FCD-GGH ("Hilkey #4-Lewis)]
filed a Joint Status Report and Stipulation for Stay of Further
Proceedings. On January 15, 2010, this Court stayed further
proceedings in those cases until the criminal case against
Charles Hilkey has concluded.

1 answers, in these cases, has expired.

2 In addition, publication of the forfeiture on the
3 government's website is not yet complete. Under Rule G
4 (5)(a)(ii)(B) a person who did not receive direct notice of the
5 forfeiture (e.g. by certified mail or personal service), but who
6 sees the notice of forfeiture on the website, can file a claim as
7 late as 60 days after the first day of publication on the
8 government website. The first day of publication will be March
9 2, 2010; accordingly, other potential claimants have until May 3,
10 2010, to file claims in this action.

11 The facts are complicated, but the legal theories in this
12 case are straightforward: Plaintiff United States of America
13 contends the Charles M. Hilkey structured the proceeds of drug
14 trafficking (marijuana) into various bank accounts and then used
15 those funds to purchase the defendant property; and/or used the
16 funds to reduce the principal balance due on a mortgage
17 encumbering the defendant property. The property is therefore
18 forfeitable to the United States under one or more forfeiture
19 statutes: 18 U.S.C. § 981(a)(1)(A) which provides for the
20 forfeiture of property involved in a money laundering transaction
21 in violation of 18 U.S.C. § 1956(a)(1)(B)(i); under 18 U.S.C. §
22 981(a)(1)(A) which provides for the forfeiture of property
23 involved in another kind of money laundering transaction in
24 violation of 18 U.S.C. § 1957; 31 U.S.C. § 5317(c)(2) which
25 provides for the forfeiture of property involved in structuring
26 transactions in violation of 31 U.S.C. § 5324 (a)(3); and 21
27 U.S.C. § 881(a)(6) which provides for the forfeiture of property
28 derived from the proceeds of drug trafficking.

1 Claimants deny the allegations. Claimant Hermiston claims
2 to be the owner of the parcel identified by Nevada County APN 61-
3 140-77. Claimant Giffin claims to be the owner of a parcel
4 identified by Nevada County APN 61-070-26 but no parcel with this
5 number is listed in the government's forfeiture complaint. The
6 parties are investigating this discrepancy. If the government
7 listed an incorrect parcel number, the government will file an
8 amended complaint to reflect that it intends to forfeit APN 61-
9 070-26 rather than parcel 61-070-25 as is currently listed in the
10 complaint. In the alternative, if the government correctly
11 listed parcel 61-070-25, Giffin will determine whether he has a
12 claim to that parcel and will file an amended claim if necessary.
13 Carol Cator, as Trustee of the Nathan Hilkey Trust, claims to be
14 the owner of the parcel identified as Nevada County APN 61-140-
15 52. Claimant Hilkey claims to be the owner of the remaining
16 parcels.

17 **(b) Status of service upon all defendants and cross-**
18 **defendants and claimants:**

19 All potential claimants to the real property have been
20 served, and the time for filing claims has expired.

21 **(c) Possible joinder of additional parties:**

22 Plaintiff does not anticipate that there will be any
23 additional parties, but it is possible that a person who sees the
24 notice of forfeiture on the government website will file a claim
25 and answer and will therefore become a party.

26 **(d) Contemplated amendments to the pleadings:**

27 The parties do not contemplate amending the pleadings. In
28 light of the requested stay (see below) plaintiff does not object

1 if the parties to this stipulation file their Answers after the
2 stay is lifted.

3 **(e) Statutory basis for jurisdiction and venue:**

4 Jurisdiction is based on 28 U.S.C. §§ 1345 and 1355(a).
5 Venue is based on 28 U.S.C. §§ 1355(b) and 1395, and 21 U.S.C. §
6 881(j).

7
8 **(f) Anticipated discovery and the scheduling of
discovery, including:**

- 9 **(1) what changes, if any, should be made in the
10 timing, form, or requirement for disclosure
11 under Rule 26(a), including a statement as to
when disclosures under Rule 26(a)(1) were
made or will be made;**

12 As of the December 1, 2006, amendments to Rule 26 of the
13 Federal Rules of Civil Procedure, civil forfeiture actions are
14 now exempt from the initial disclosure requirements applicable to
15 most other civil actions. See Fed.R.Civ.P. 26(a)(1)(B)(ii).

16 In addition, the parties request that a stay of further
17 proceedings be entered at this time pending the outcome
18 of the related criminal case now pending against claimant Hilkey.
19 Hilkey is a defendant in U.S. v. Charles M. Hilkey, Jr., Rachele
20 Sari Garnitz, and Bram Gabriel Lewis, 2:09-cr-00412 FCD now
21 pending in this court.

22 The stay is requested pursuant to 18 U.S.C. §§ 981(g)(1) and
23 981(g)(2). As explained above in (a) above, the plaintiff
24 contends that the claimant Hilkey was involved in drug
25 trafficking; structured currency into multiple bank accounts; and
26 used the proceeds to purchase the defendant property and/or used
27 drug proceeds to reduce the principal balance due on a mortgage
28 encumbering many of the parcels.

1 If discovery proceeds at this time, claimant Hilkey will be
2 placed in the difficult position of either invoking his Fifth
3 Amendment right against self-incrimination and losing the ability
4 to pursue his claims to the defendant property, or waiving his
5 Fifth Amendment right and submitting to a deposition and
6 potentially incriminating himself. If he invokes his Fifth
7 Amendment right, the plaintiff will be deprived of the ability to
8 explore the factual basis for the claims they filed with this
9 court.

10 In addition, claimants intend to depose, among others, the
11 agents involved in this investigation, including but not limited
12 to the agents with the Internal Revenue Service. Allowing
13 depositions of the law enforcement officers at this time would
14 adversely affect the ability of federal authorities to
15 investigate the underlying criminal conduct.

16 The parties recognize that proceeding with this action at
17 this time has potential adverse affects on the prosecution of the
18 pending criminal case, and/or upon claimants' ability to prove
19 their claim to the property and assert any defenses to
20 forfeiture. For these reasons, the parties jointly request that
21 this matter be stayed until the related criminal case is over.
22 At that time the parties will advise the court whether a further
23 stay is necessary.

24 **(2) the subjects on which discovery may be needed;**
25 **when discovery should be completed; and whether**
26 **discovery should be conducted in phases;**

27 As explained above the parties request a stay of further
28 proceedings.

28 //

1 **(3) what changes, if any, should be made in the**
2 **limitations on discovery imposed under the**
3 **Civil Rules and what other limitations, if**
4 **any, should be imposed;**

4 The parties do not request any changes in the discovery
5 limitations imposed by Fed.R.Civ.P. 26(b)(2), 30, or 33.

6 **(4) the timing of the disclosure of expert**
7 **witnesses and information required by Rule**
8 **26(a)(2);**

9 As explained above the parties request a stay of further
10 proceedings, including expert disclosure.

11 **(5) Proposed dates for discovery cut-off:**

12 Not applicable in light of requested stay of further
13 proceedings.

14 **(g) Contemplated dispositive motions and proposed date by**
15 **which all non-discovery motions shall be heard:**

16 Not applicable in light of the requested stay of further
17 proceedings.

18 **(h) Proposed date for final pretrial conference:**

19 Not applicable in light of the requested stay.

20 **(i) Proposed date for trial, estimate of days of trial, and**
21 **whether any party has demanded a jury:**

22 Not applicable in light of the requested stay.

23 **(j) Appropriateness of special procedures such as reference**
24 **to a special master or agreement to try the matter**
25 **before a magistrate judge pursuant to 28 U.S.C. §**
26 **636(c):**

26 None.

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1 (k) Proposed modification of standard pretrial procedures
2 because of the simplicity or complexity of the case:

3 None.

4 (l) Whether the case is related to any other case pending
5 in this district, including the bankruptcy courts of
6 this district:

7 This case is related to U.S. v. Real Property in Nevada
8 County, APN: 61-160-02, et al., 2:09-cv-03062 FCD-GGH ("Hilkey
9 #2-Sparky/Cherokee"); U.S. v. Real Property in Nevada County,
10 APN: 61-160-05, 2:09-cv-03063 FCD-GGH, "Hilkey #3-Roth"); and
11 U.S. v. Real Property Located at 24271 Hoyt Crossing Road, in
12 Nevada County, APN: 60-360-15, 2:09-cv-03085 FCD-GGH ("Hilkey #4-
13 Lewis) and to U.S. v. Charles Miller Hilkey, Jr. et al., 2:09-cr-
14 412 FCD. A Notice of Related Cases has been filed in each of the
15 four civil cases and in the criminal case.

16 (m) Prospects for settlement, including whether a
17 settlement conference should be scheduled and whether,
18 in the case of a jury trial, the parties will stipulate
19 to the trial judge acting as settlement judge:

20 Prospects for settlement are unknown at this time.

21 (n) Any other matter that may be conducive to the just and
22 expeditious disposition of the case.

23 None.

24 Date: March 1, 2010

BENJAMIN B. WAGNER
United States Attorney

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

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1 Dated: March 1, 2010

BLACKMON & ASSOCIATES

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3 By /s/ Clyde M. Blackmon
4 CLYDE M. BLACKMON
Attorney for claimant
Charles M. Hilkey, Jr.

5

6 Dated: March 1, 2010

/s/ Stephen A. Munkelt
STEPHEN A. MUNKELT
Attorney for claimants
Kenneth W. Hermiston,
Doug G. Giffin, and Carol Cator
As Trustee of the Nathan Hilkey
Trust

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11 Original signatures retained by
AUSA Door)

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ORDER

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14 For the reasons set forth above, this matter is stayed
15 pursuant to 18 U.S.C. §§ 981(g)(1) and 981(g)(2) until the
16 related criminal case is over. Within 30 days after all
17 proceedings in U.S. District Court in U.S. v. Hilkey et al., have
18 concluded, the parties will advise the court whether a further
stay is necessary.

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19 IT IS SO ORDERED.

20 Dated: March 2, 2010

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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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