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8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,)	2:10-cv-01548 MCE-EFB
)	
12 Plaintiff,)	JOINT STATUS REPORT
)	AND STIPULATION TO STAY
13 v.)	FURTHER PROCEEDINGS;
)	ORDER
14 APPROXIMATELY \$6,267.00 IN U.S.)	
15 CURRENCY,)	DATE: N/A
)	TIME: N/A
16 Defendant.)	COURTROOM:

17 Pursuant to this Court's Order Requiring Joint Status Report
 18 the plaintiff United States of America and claimant Dassany
 19 Keophimanh ("Claimant) submit the following report. Plaintiff
 20 sought input from claimants Mui Nhi Phung, Hieu Nguyen, and Hung
 21 Ly but got no response.

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

24 Plaintiff alleges that the defendant currency is the
 25 proceeds of drug trafficking, or was intended to be used in
 26 exchange for controlled substances, and is therefore forfeitable
 27 pursuant to 21 U.S.C. § 881(a)(6). Claimant Keophimanh denies
 28 these allegations. The remaining claimants have not yet filed

1 answers to the Complaint for Forfeiture In Rem, and the answers
2 are overdue.

3 **(b) Status of service upon all defendants and cross-**
4 **defendants and claimants:**

5 All known potential claimants to the currency have been
6 served, and the time for filing claims by those individuals has
7 expired. Claimant Keophimanh filed a timely claim and answer.
8 Claimants Mui Nhi Phung, Hieu Nguyen, and Hung Ly filed claims on
9 July 21, 2010, but did not file their answers by the August 11,
10 2010, filing deadline. Under Rule G(5)(b) of the Supplemental
11 Rules for Admiralty or Maritime Claims and Asset Forfeiture
12 Actions, these claimants only had 21 days after filing their
13 claims to file answers.

14 In addition, publication of the forfeiture on the
15 government's website was just completed, so it is possible that
16 another person could come forward to claim the defendant
17 currency. Under Rule G (5) (a) (ii) (B) a person who did not
18 receive direct notice of the forfeiture (e.g. by certified mail
19 or personal service), but who sees the notice of forfeiture on
20 the website, can file a claim as late as 60 days after the first
21 day of publication on the government website. The first day of
22 publication was June 23, 2010; accordingly, other potential
23 claimants have until August 23, 2010, to file claims in this
24 action.

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

26 Plaintiff does not anticipate that there will be any
27 additional parties, but it is possible that a person who sees the
28 notice of forfeiture on the government website will file a claim

1 and answer and will therefore become a party.

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

3 The parties do not contemplate amending the pleadings.

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

5 Jurisdiction is based on 28 U.S.C. §§ 1345 and 1355(a).

6 Venue is based on 28 U.S.C. §§ 1355(b) and 1395, and 21 U.S.C. §
7 881(j).

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

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

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

17 In addition, the parties request that a stay of further
18 proceedings be entered at this time pending the outcome
19 of a related criminal case now pending against claimant
20 Keophimanh. Keophimanh is a defendant in U.S. v. David Chong, et
21 al., 2:10-cr-00042-MCE now 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 currency is the proceeds of drug trafficking,
25 or was intended to be used in drug trafficking. If discovery
26 proceeds at this time, claimant Keophimanh will be placed in the
27 difficult position of either invoking his Fifth Amendment right
28 against self-incrimination and losing the ability to pursue his

1 claims to the defendant property, or waiving his Fifth Amendment
2 right and submitting to a deposition and potentially
3 incriminating herself. If she invokes her Fifth Amendment right,
4 the plaintiff will be deprived of the ability to explore the
5 factual basis for the claim she filed with this court.

6 In addition, claimants intend to depose, among others, the
7 agents involved in this investigation, including but not limited
8 to the agents with the Drug Enforcement Administration. Allowing
9 depositions of the law enforcement officers at this time would
10 adversely affect the ability of federal authorities to
11 investigate the underlying criminal conduct.

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

20 Plaintiff intends to move to strike the claims filed by
21 Phung, Nguyen, and Ly if answers are not filed by September 1,
22 2010, and does not intend that the requested stay prevent
23 plaintiff from filing this motion.

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.

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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);**

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

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

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

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

15 As noted above plaintiff intends to move to strike the claims
16 filed by Phung, Nguyen, and Ly if they fail to file answers by
17 September 1, 2010. Plaintiff will file the motion by October 1,
18 2010.

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

20 Not applicable in light of the requested stay of further
21 proceedings.

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

24 Not applicable in light of the requested stay of further
25 proceedings.

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1 (j) Appropriateness of special procedures such as reference
2 to a special master or agreement to try the matter
3 before a magistrate judge pursuant to 28 U.S.C. §
4 636(c):

5 None.

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

8 None.

9 (l) Whether the case is related to any other case pending
10 in this district, including the bankruptcy courts of
11 this district:

12 This case is related to U.S. v. David Chong, et. al. 2:10-
13 cr-00042 MCE. A Notice of Related Case was filed on June 21,
14 2010.

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

19 Prospects for settlement are unknown at this time.

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

22 None.

23 Date: August 20, 2010

BENJAMIN B. WAGNER
United States Attorney

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

25 Dated: August 20, 2010

/s/ Scott N. Cameron
SCOTT N. CAMERON
(As authorized on 8/17/10)
Attorney for claimant
Dassany Keophimanh

1 **ORDER**

2 For the reasons set forth above, this matter is stayed
3 pursuant to 18 U.S.C. §§ 981(g)(1) and 981(g)(2) until the
4 proceedings in U.S. v. Chong, et al., 2:10-cr-00042 MCE have
5 concluded. Within 30 days after all proceedings have concluded,
6 the parties will advise the court whether a further stay is
7 necessary.

8 IT IS SO ORDERED.

9 Dated: August 31, 2010

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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