

1 BENJAMIN B. WAGNER
 United States Attorney
 2 KEVIN C. KHASIGIAN
 Assistant U.S. Attorney
 3 501 I Street, Suite 10-100
 Sacramento, CA 95814
 4 Telephone: (916) 554-2700
 5 Attorneys for the United States

6
 7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA
 10

11 UNITED STATES OF AMERICA,)	2:11-CV-02738-GEB-DAD
)	
12 Plaintiff,)	
)	STIPULATION TO STAY
13 v.)	FURTHER PROCEEDINGS AND
)	ORDER
14 REAL PROPERTY LOCATED AT 105)	
THREE HILLS ROAD, HAYFORK,)	
15 CALIFORNIA, TRINITY COUNTY,)	
APN: 019-530-23-00 INCLUDING)	
16 ALL APPURTENANCES AND)	
IMPROVEMENTS THERETO,)	
17)	
)	
18 Defendants.)	
)	
19)	

20 The United States and claimants Lapoe Smith and Katherine
 21 Renee Smith, by and through their respective counsel, hereby
 22 stipulate that a stay is appropriate in the above-entitled
 23 action, and request that the Court enter an order staying further
 24 proceedings for six months until October 4, 2013. The basis for
 25 the proposed stay is the federal criminal action against claimant
 26 Lapoe Smith, filed April 3, 2013 in the Western District of
 27 Texas, United States v. Lapoe Smith, Case No. 13-CR-0280. In the
 28 federal indictment, Lapoe Smith is charged with one count of

1 evading taxes in violation of 26 U.S.C. § 7201, from August 10,
2 2005 continuing to May 11, 2011; and four counts of subscribing a
3 false tax return in violation of 26 U.S.C. § 7206(1), from April
4 2007 to October 2010.

5 1. Each of the claimants have filed claims and answers to
6 the defendant properties, (ECF Nos. 5-6, 12), which were sold
7 pursuant to an interlocutory sale in March 2013, (ECF No. 23).
8 The net sale proceeds were deposited into a U.S. Treasury bank
9 account and constitute the substitute res. ECF No. 23.

10 2. The stay is requested pursuant to 18 U.S.C. §§
11 981(g)(1), 981(g)(2), and 21 U.S.C. § 881(i).

12 3. Claimant Lapoe Smith has been charged with violations
13 of federal tax laws, United States v. Lapoe Smith, Case No. 13-
14 CR-0280, substantially based on the joint tax return filed on
15 behalf of himself and co-claimant Katherine Smith. Claimant
16 Katherine Smith has not been charged with any federal crimes and
17 it is the parties' understanding that the statute of limitations
18 has not expired on potential criminal charges relating to filing
19 of the tax returns for the relevant years and/or the alleged tax
20 evasion scheme. The United States intends to depose and request
21 written discovery from claimants regarding their income and tax
22 return information, as well as information regarding their
23 financial ability to purchase the defendant properties in May
24 2010. If discovery proceeds at this time, these individuals, or
25 some of them, will be placed in the difficult position of either
26 invoking their Fifth Amendment rights against self-incrimination
27 or waiving their Fifth Amendment rights and submitting to a
28 deposition and potentially incriminating themselves regarding

1 their income and ability to purchase the property forming the
2 basis of this civil *in rem* case. If they invoke their Fifth
3 Amendment rights, the United States will be deprived of the
4 ability to explore the factual basis for the claims they filed
5 with this court.

6 4. Further, claimants intend to depose, among others, the
7 agents involved with this investigation, including but not
8 limited to the agents with the Internal Revenue Service.
9 Allowing depositions of the law enforcement officers at this time
10 would adversely affect the ability of the federal authorities to
11 prepare for the criminal trial and/or further investigate the
12 alleged underlying criminal conduct.

13 5. The parties recognize that proceeding with these
14 actions at this time could have potential adverse effects on the
15 investigation of the underlying criminal conduct and/or upon the
16 claimants' ability to prove their claims to the defendant
17 properties and to assert any defenses to forfeiture. For these
18 reasons, the parties jointly request that these matters be stayed
19 until October 4, 2013, in accordance with the terms of this
20 stipulation. At that time the parties will advise the court of
21 the status of the criminal case and will advise the court whether
22 a further stay is appropriate.

23 6. Prior to the federal indictment against claimant Lapoe
24 Smith, the United States planned to amend the complaint to
25 reflect information learned during depositions taken on March 1,
26 2013. The parties agree that any potential amendment to the
27 complaint, based on the above information or otherwise, will be
28 addressed by the Court when the stay expires.

1 7. The United States does not waive a potential challenge
2 to each claim based on lack of statutory and/or Article III
3 standing. That issue of standing is preserved until the stay is
4 lifted under 18 U.S.C. §§ 981(g)(7).

5 8. For good cause shown, any party to this stipulation may
6 seek relief from this stay prior to October 4, 2013.

8 Dated: 4/5/13

BENJAMIN B. WAGNER
United States Attorney

10 By: /s/ Kevin C. Khasigian
11 KEVIN C. KHASIGIAN
Assistant U.S. Attorney

12 Dated: 4/5/13

/s/ David M. Michael
13 DAVID M. MICHAEL
14 Attorney for claimants
Lapoe Smith and Katherine
15 Renee Smith
(Authorized by email)

17 **ORDER**

18 For the reasons set forth above, this matter is stayed until
19 October 4, 2013. The pretrial conference and trial dates are
20 vacated. A status conference is scheduled for October 28, 2013,
21 at 9:00 a.m. A joint status report shall be filed fourteen days
22 prior to the hearing.

23 IT IS SO ORDERED.

24 Dated: April 8, 2013

25 
26 GARLAND E. BURRELL, JR.
27 Senior United States District Judge
28