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

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 REAL PROPERTY LOCATED AT 105 THREE
HILLS ROAD, HAYFORK, CALIFORNIA,
15 TRINITY COUNTY, APN: 019-530-23-00
INCLUDING ALL APPURTENANCES AND
16 IMPROVEMENTS THERETO, et al.,

17 Defendants.

2:11-CV-02738-GEB-DAD

STIPULATION TO STAY FURTHER
PROCEEDINGS AND ORDER

[5th request]

18
19 The United States and claimants Lapoe Smith and Katherine Renee Smith, by and through their
20 respective counsel, hereby stipulate that a stay is appropriate in the above entitled action, and request that
21 the Court enter an order staying further proceedings for three months until April 6, 2015.

22 1. This matter was previously stayed for three months on October 6, 2014, based on the
23 federal criminal action against claimant Lapoe Smith, filed April 3, 2013 in the Western District of
24 Texas, United States v. Lapoe Smith, Case No. 13-CR-0280. In that federal indictment, Lapoe Smith
25 was charged with one count of evading taxes in violation of 26 U.S.C. § 7201, from August 10, 2005
26 continuing to May 11, 2011; and four counts of subscribing a false tax return in violation of 26 U.S.C. §
27 7206(1), from April 2007 to October 2010. That matter is currently pending before Chief Judge Fred
28 Biery in the Western District of Texas.

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

5 3. The stay is requested pursuant to 18 U.S.C. §§ 981(g)(1), 981(g)(2), and 21 U.S.C. §
6 881(i).

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

20 5. Further, claimants intend to depose, among others, the agents involved with this
21 investigation, including but not limited to the agents with the Internal Revenue Service. Allowing
22 depositions of the law enforcement officers at this time would adversely affect the ability of the federal
23 authorities to prepare for the criminal trial and/or further investigate the alleged underlying criminal
24 conduct.

25 6. The parties recognize that proceeding with these actions at this time could have potential
26 adverse effects on the investigation of the underlying criminal conduct and/or upon the claimants' ability
27 to prove their claims to the defendant properties and to assert any defenses to forfeiture. For these
28 reasons, the parties jointly request that these matters be stayed until April 6, 2015, in accordance with the

1 terms of this stipulation. At that time the parties will advise the court of the status of the criminal case
2 and will advise the court whether a further stay is appropriate.

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

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

10 9. For good cause shown, any party to this stipulation may seek relief from this stay prior to
11 April 6, 2015.

12 Dated: 1/2/15

BENJAMIN B. WAGNER
United States Attorney

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

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16 Dated: 1/2/15

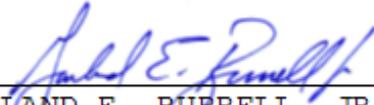
/s/ David M. Michael
DAVID M. MICHAEL
Attorney for claimants Lapoe Smith
and Katherine Renee Smith
(Authorized by email)

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20 **ORDER**

21 For the reasons set forth above, this matter is stayed until April 6, 2015. For good cause shown,
22 any party to the above stipulation may seek relief from this stay prior to April 6, 2015. On or before that
23 date, the parties will advise the Court whether a further stay is necessary.

24 **IT IS SO ORDERED.**

25 Dated: January 5, 2015

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GARLAND E. BURRELL, JR.
Senior United States District Judge

Stipulation to Stay Further
Proceedings and Order