

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

11  
 12 UNITED STATES OF AMERICA,

2:12-CV-01046-JAM-KJN

13 Plaintiff,

REQUEST FOR STAY OF FURTHER  
 PROCEEDINGS AND ORDER

14 v.

15 REAL PROPERTY LOCATED AT 6642  
 16 MERCHANDISE WAY, DIAMOND  
 SPRINGS, CALIFORNIA, EL DORADO  
 COUNTY, APN: 329-392-05,  
 17 INCLUDING ALL APPURTENANCES  
 AND IMPROVEMENTS THERETO,

18 Defendant.

19  
 20 The United States, and Claimant Harold Bollenbacher, Trustee of The Family  
 21 Trust Created Under the Bollenbacher Family Trust Dated September 27, 1995  
 22 (hereafter referred to as "claimant"), by and through their respective counsel, hereby  
 23 request that the Court enter an order staying further proceedings until September 1,  
 24 2012, pending the outcome of a related criminal case against defendant James Kirk  
 25 Short, Case No. 2:12-CR-00164-JAM. Harold Bollenbacher, Trustee of The Family  
 26 Trust Created Under the Bollenbacher Family Trust Dated September 27, 1995, is the  
 27 recorded owner of the defendant property, which is a commercial building that was  
 28 leased to James Kirk Short who used it to grow marijuana.

1           1.       On May 15, 2012, Harold Bollenbacher, Trustee of The Family Trust  
2 Created Under the Bollenbacher Family Trust Dated September 27, 1995 filed a claim  
3 in this action alleging an interest in the defendant property. Claimant has not yet filed  
4 an Answer and will not be required to do so until the stay contemplated by this  
5 stipulation expires.

6           2.       The stay is requested pursuant to 18 U.S.C. §§ 981(g)(1), 981(g)(2), and 21  
7 U.S.C. § 881(i). The United States contends that the defendant property is subject to  
8 forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(7) because it was used  
9 and intended to be used to commit or facilitate a violation of 21 U.S.C. §§ 841 *et seq.*,  
10 specifically, the cultivation of marijuana.

11           3.       To date, James Kirk Short has been charged with federal criminal crimes  
12 related to marijuana cultivation at the defendant property, Case No.  
13 2:12-CR-00164-JAM; Harold Bollenbacher has not been charged with any criminal  
14 offense by state, local, or federal authorities. It is the United States' position that the  
15 statute of limitations has not expired on potential criminal charges relating to the  
16 marijuana grow at the defendant property. Nevertheless, the United States intends to  
17 depose claimant Harold Bollenbacher regarding his ownership of the defendant  
18 property, as well as his knowledge and participation in the marijuana grow at the  
19 defendant property. If discovery proceeds at this time, claimant will be placed in the  
20 difficult position of either invoking his Fifth Amendment rights against  
21 self-incrimination and jeopardizing the ability to pursue his claim to the defendant  
22 property, or waiving his Fifth Amendment rights and submitting to a deposition and  
23 potentially incriminating himself. If he invokes his Fifth Amendment rights, the  
24 United States will be deprived of the ability to explore the factual basis for the claim he  
25 filed with this court.

26           4.       In addition, claimant intends to depose, among others, the agents involved  
27 with this investigation, including but not limited to the agents with the Drug  
28 Enforcement Agency. Allowing depositions of the law enforcement officers at this time

1 would adversely affect the ability of the federal authorities to investigate the alleged  
2 underlying criminal conduct.

3         5.         The parties recognize that proceeding with these actions at this time has  
4 potential adverse effects on the investigation of the underlying criminal conduct and/or  
5 upon the claimants' ability to prove their claim to the property and to assert any  
6 defenses to forfeiture. For these reasons, the parties jointly request that these matters  
7 be stayed until September 1, 2012, in accordance with the terms of this stipulation. For  
8 these reasons, the parties jointly request that this matter be stayed until September 1,  
9 2012. At that time the parties will advise the court of the status of the criminal case  
10 and will advise the court whether a further stay is necessary.

11 Dated: 5-22-12

BENJAMIN B. WAGNER  
United States Attorney

12

13

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

14

15

16 Dated: 5-21-2012

/s/ Brenda Grantland  
BRENDA GRANTLAND  
Attorney for claimant  
Harold Bollenbacher, Trustee of The Family  
Trust Created Under the Bollenbacher Family  
Trust Dated September 27, 1995

17

18

19

(Original signatures retained by attorney)

20

21

### ORDER

22         For the reasons set forth above, this matter is stayed pursuant to 18 U.S.C. §§  
23 981(g)(1), 981(g)(2), and 21 U.S.C. § 881(i) until September 1, 2012. On or before  
24 September 1, 2012, the parties will advise the court whether a further stay is necessary.

25         IT IS SO ORDERED.

26 Dated: May 22, 2012

/s/ John A. Mendez  
JOHN A. MENDEZ  
United States District Court Judge

27

28