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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA)

Nos. C-08-0826 MMC

13 Plaintiff,)

14 v.)

**JOINT CASE MANAGEMENT
STATEMENT, ORDER CONTINUING
CASE MANAGEMENT CONFERENCE**

15 APPROXIMATELY \$61,383.00 IN)
16 UNITED STATES CURRENCY,)

CMC Date: ~~October 10, 2008~~

17 Defendant.)

Time: 10:30 a.m.

Courtroom 7, 19th Floor

18 TOAN HOANG, QUE NGO, JULIE LUU,)

19 Claimants.)
20

21 Plaintiff, United States of America and claimants, Toan Hoang, Que Ngo, Julie Luu,
22 respectfully submit this Joint Case Management Statement.

23 **1. Jurisdiction and Service**

24 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and
25 1355 and Title 21, United States Code, Section 881(a)(6). There are no counterclaims. Plaintiff
26 contends that it has served notice of this action on all persons who may have an interest in the
27 property. Toan Hoang, Que Ngo and Julie Luu, (“claimants”), represented by Erik Babcock,
28 have filed verified claims and an answer. To date, no other claims have been filed in this action.

1 **2. Facts**

2 On March 22, 2007, Special Agent Rick Zemlok of the Southern Alameda County
3 Narcotics Enforcement Team (hereinafter "SACNET") received information from a citizen
4 informant about a possible indoor marijuana grow located at 3451 Isherwood Place ("Isherwood
5 Place") in Fremont, California. The citizen noted the odd behavior of the residents and related
6 that during a conversation with a PG&E employee who was out checking meters, the PG&E
7 employee had noticed how fast the meter was spinning on this house.

8 The citizen informant provided Special Agent Zemlok with three different license plate
9 numbers which had been seen at this address. Special Agent Zemlok checked law enforcement
10 data bases and discovered the following: California Licence Number 4HTA936 was traced to a
11 silver colored BMW which is registered to a Jim or Ngau Tran on Sundance Drive in Fremont,
12 California.

13 The second license plate, 5JKB651, was traced to a silver colored Nissan registered to a
14 Patricia Salas Bevilacqua ("Bevilacqua") on Highway 20, P0 Box 1437 Willits, California. A
15 DMV check on Bevilacqua's license status showed an address on Glithero Court in San Jose,
16 California as of February 27, 2007 and another address of P0 Box 1437 Willits, California. as of
17 January 19, 2007. Bevilacqua does not appear to have any criminal history.

18 The third license plate, 5XYG362, was traced to a Toyota SUV, registered to Enterprise
19 Rent-a-Car in San Leandro, California. This vehicle was rented by Kwang Pak ("Pak") from
20 Lexus of Stevens Creek on March 26, 2007 and returned on March 27, 2007.

21 According to DMV records, Pak's home address was 2452 Cameron Drive in Union City,
22 California, as of May 15, 2006. Pak was cited on July 11, 2006, in a vehicle with California
23 Licence #6L39611, registered to a A Vien Ngoc, DBA Just Futon SF, Toan Hang, on Geary
24 Boulevard in San Francisco. Toan Hang was subsequently identified as Pak's brother

25 During the latter part of March and early April 2007, Special Agent Zemlok, and other law
26 enforcement officers conducted surveillance on Isherwood Place. During the course of their
27 surveillance they noted the frequent presence of Tran, Pak and Bevilacqua. During the course
28 of the surveillance Officer Zemlock followed Bevilacqua to another residence located at 38079

1 Guava Drive, Newark, California (“Guava Drive”) and a residence located at 2452 Cameron
2 Drive in Union City, California (“Cameron Drive”).

3 On April 4, 2007, Special Agent Zemlok noticed the distinct sound of fans coming from the
4 vents on the bottom of the houses at Isherwood Place and Guava Drive. Based upon his training
5 and experience Special Agent Zemlok knew that those operating an indoor marijuana grow will
6 routinely use a sophisticated filtering system to mask the odor of marijuana. Such a system must
7 eventually be ventilated outside, and a common way to do this is to run the ducting down under
8 the house.

9 On April 5, 2007, at approximately Officer Snelson of the Fremont Police Department
10 brought his narcotic detection canine to the Isherwood house and Guava houses. The dog gave a
11 positive indication for controlled substances at both houses.

12 On April 5, 2007, Special Agent Zemlok obtained a duly authorized state search warrant
13 for the PG&E subscriber and account information for both Isherwood Place and Guava Drive.

14 On April 6, 2007 he served this warrant with PG&E and learned the following:

15 The listed subscriber for PG&E at Isherwood Place in Fremont, California, was Patrica Salas
16 with social security number of xxx-xx-9 189. The last four digits of this social security number
17 match the last four digits of Patricia Salas Bevilacqua's true social security number. There was
18 an outstanding bill of \$8,436.21. PG&E lists the customer set up date as October 2, 2006.

19 Special Agent Zemlok reviewed the records and discovered that the recorded kilowatt hours
20 jumped by almost 4,000 kilowatt hours within the first month of Bevilaqua’s account. The
21 kilowatt hours continued to be in the thousands for the next five months until a state search
22 warrant was served on this address on April 17,2007. Based on his training and experience,
23 Special Agent Zemlok knew that these usage levels at this type of residence are exceptionally
24 high and common with indoor marijuana cultivations, as marijuana plants require a great deal of
25 lighting from high wattage lights.

26 The listed subscriber for PG&E at Guava Drive in Newark, California is Kwang Pak with
27 social security number of xxx-xx-7765. The last four digits of this social security number match
28 the last four digits of Pak's true social security number. PG&E lists his cell phone number as

1 (408) 891-9009 and account ID number as 12114753069. Service for Pak began on October 25,
2 2005.

3 From February 2006 until October 2006, the electrical usage at this address was
4 very high, in the thousands of kilowatt hours. From October of 2006 to April of 2007, the usage
5 levels dropped significantly. However, the lower usage levels at this address coincided with the
6 start of the high usage level at the Isherwood address.

7 A routine computer check on Guava Drive revealed that Toan Hang has a 2000 Nissan
8 registered to him at Guava Drive. Hang is the owner of Cameron Drive along with Julie Luu.

9 On April 16, 2007 SACNET agents executed duly authorized state search warrants for the
10 residences at Isherwood Place in Fremont and Guava Drive in Newark. In both residences they
11 discovered clandestine marijuana cultivation operations.

12 At Guava Drive in Newark, the agents discovered 5 separate indoor marijuana cultivation
13 rooms located with a total of 144 marijuana plants. All the rooms had tarps spread across the
14 floors, and there was blackout sheeting and reflectorized materials stapled to the walls. Each
15 marijuana plant was contained in a large black bucket with potting soil. A great deal of wiring
16 and breaker boxes were located throughout the house and were being used to power the large
17 1000 watt power ballasts that in turn powered the 1000 watt lights contained in suspended
18 reflectors. There were sophisticated venting systems and filters located through out the rooms
19 which appeared to be sucking air into the house from under the sub floor and filtering air out into
20 the attic. Officers also found a waste management bill for 38079 Guava Drive in the name of
21 Patricia Salas, a PG&E bill for 38079 Guava in the name of Kwang Pak, a rental agreement for
22 38079 Guava in the names of Kwang Pak, Kim Nguyen, Henry Luu, and Tony Trait and a large
23 zip lock type bag containing approximately 181.6 grams of marijuana buds.

24 On April 16, 2007, SACNET agents served the search warrant at Isherwood Place in
25 Fremont. There was a large and recently harvested indoor marijuana cultivation set up inside the
26 residence, which closely resembled the one at Guava Drive. There were four different grow
27 rooms set up with a total of 132 black plastic pots all containing freshly cut stems with root balls
28 from marijuana plants. The agents also discovered one large bag containing marijuana clippings.

1 Located throughout the rest of the house were several bags of soil, bottles of grow nutrients,
2 hoses, clippers and associated cultivation supplies. Located in the front room and kitchen area
3 were numerous articles of women's clothing in addition to photographs and indicia for
4 Bevilacqua.

5 Bevilacqua, Tran and Pak were all arrested that day and provided statements. Bevilacqua said
6 she had been asked to put the rental agreement for the Isherwood address under her name in
7 addition to the PG&E bill. She was also asked to put the garbage bill for the Guava address in her
8 name. She routinely pays for these bills; however, someone else puts money for the bills into her
9 account. She refused to provide the names of anyone who had asked her to do these activities, but
10 she admitted that she had received payment in the past for assisting in the grow operations. She
11 received a \$1,000 payment after the last cultivation was harvested sometime around January of
12 2007. She said that there have been two harvest cycles that had been completed at the Isherwood
13 address, the last about one to two weeks before her arrest. Her boyfriend is Kwang Pak and she
14 routinely lives at his house on Cameron Drive in Union City.

15 Tran told Special Agent Zemlock that he gets paid to help take care of the marijuana
16 cultivations at both the Guava and Isherwood addresses. Tran said that he does not sell marijuana
17 himself, but he assists in the cultivation. Tran said that he was paid \$3,000 for his services after
18 the last marijuana crop was harvested. Tran said that he is not currently employed and that the
19 Lexus he had been driving was his and that he had just traded his silver BMW to his friend for it.

20 Pak said that the Guava address is in his name and has been for about one and one half years.
21 Pak said he was fully aware of the marijuana cultivation located inside and said that it was his.
22 Pak said that there were approximately 15 marijuana plants inside the house. Pak said that Jim
23 Tran helps him care for the marijuana plants and that he paid Tran \$2,000 for his services after
24 the last grow cycle. Pak also said that he paid Bevilacqua \$1,000 for her services after the last
25 grow cycle.

26 Upon the conclusion of the interviews, SACNET agents served a search warrant on Cameron
27 Drive in Union City. During the service of this search warrant the defendant \$61,386 in United
28 States Currency was located and seized. Most of the currency was found inside of the bedroom of

1 Pak's mother, Que Ngo. Ngo had a floor safe inside of her closet and she provided a key to
2 Special Agent Zemlok to open it. A total of \$48,460 was found inside of this safe. Another
3 \$1,400 was found inside of a black purse in the bedroom. \$125 was found in Ngo's closet, and
4 \$11,000 was found inside of a silver two drawer filing cabinet inside of Ngo's bedroom. \$401 was
5 found inside of Pak's bedroom. The currency was in the following denominations: \$48,460=390 x
6 \$100, 11 x \$50, 388 x \$20, 83 x \$10, 64 x \$5; \$1,400=14 x \$100; \$125= 25 x \$5; \$11,000=81 x
7 \$100, 143 x \$20, 4 x \$10; \$401=2 x \$100, 1 x \$50, 6 x \$20, 3 x \$10, 1 x \$1.

8 Also located inside this bedroom was a rental agreement in the name of Kwang Pak and
9 Patricia Bevilacqua for 34395 Dobson Way in Fremont, California. This rental agreement was
10 dated September 27, 2006. When questioned about this residence, Pak admitted that there was
11 another marijuana cultivation operation located at this residence. Pak stated that he put the rental
12 agreement in his name as a favor to someone. Agents also found miscellaneous paperwork,
13 indicia and photos for Kwang Pak in this bedroom.

14 On April 19, 2007, SACNET agents served a duly authorized state search warrant for 34395
15 Dobson Way, Fremont, California. They discovered another large indoor marijuana cultivation
16 which closely resembled the cultivation operations at both Guava Drive and Isherwood Place.
17 There were 215 marijuana plants located inside this residence.

18 Following the arrest of Bevilacqua, Pak, and Tran, Special Agent Zemlok placed them inside
19 a SACNET vehicle by themselves and let a digital recorder record their conversation. During this
20 conversation, Pak told Bevilacqua to say that she does not know anything. Then Patricia made a
21 statement to Pak that her name needs "to get the f--k off of Ms. Lee's house". She then said "you
22 forgot about that one". Bevilacqua's checkbook, found inside her vehicle, had several carbon
23 copy receipts of recent checks, one of which was made out to Ms. Lee for "rent" in the amount of
24 \$1,850 dated March 1, 2007. Lillian W. Lee is listed on a rental agreement for Dobson Way
25 which was found during the search at the Cameron house. During the conversation, Pak
26 repeatedly directs Tran and Bevilacqua to tell the officers that they do not know anyone or
27 anything and he says that his brother will say he knows nothing. Pak repeatedly asks if the
28 officers can search beyond his room. He told Tran that he gave his money to his "old lady to

1 hold". When Bevilacqua mentions the papers and chemicals in Pak's room, Pak replied, " Of
2 course, cuz I had to pay for everything." Bevilacqua also told both Pak and Tran that the weed
3 they gave to "Charles" was "horrible", there were seeds in it and it was not completely dry.

4 In May 2007, members of SACNET contacted the California Employment Development
5 Department and requested any known work history for Pak, Hang, Ngo and Bevilacqua for the
6 first work quarter of 2005 to June of 2007. They learned there were no reported wages for any of
7 these individuals, except Pak, who showed wages for only the first quarter of 2006.

8 On February 6, 2008, the United States filed a complaint seeking forfeiture of the defendant
9 funds seized from Pak's residence in Union City. Claimants are Pak's mother, brother and sister-
10 in-law who also reside at 2452 Cameron Drive, Union City, California.

11 3. Principal Factual and Legal Issues

12 The principal factual and legal issues in dispute are:

13 1) whether plaintiff can establish by a preponderance of the evidence that the defendant
14 currency is drug proceeds and thus forfeitable under Title 21, United States Code, Section
15 881(a)(6) and,

16 2) whether any of the claimants can establish that they are innocent owners of the
17 defendant funds.

18 5. Anticipated Motions

19 All parties may move for summary judgment at the close of discovery.

20 6. Relief/Damages

21 Plaintiff seeks a judgment of forfeiture of the defendant currency. This is not a damages
22 case. Claimants seek the return of the defendant currency.

23 7. Settlement

24 Settlement discussions are underway.

25 8. Discovery

26 This is an *in rem* forfeiture case and is exempt from initial disclosures pursuant to Federal
27 Rule of Civil Procedure 26 (a)(1)(B)(ii).
28

1 **9. Alternative Means of Disposition**

2 Plaintiff does not request reference to arbitration.

3 **10. Pretrial/Trial Issues**

4 The parties have not yet discussed any trial issues.

5 **11. Class Action**

6 This is not a class action.

7 **12. Related Case**

8 There are no related cases.

9 **13. Other Matters –**

10 As settlement discussions are underway, the parties suggest that the current case
11 management conference should be continued and another case management conference would be
12 appropriate in approximately 60 days. The parties suggest a date in early December 2008, or
13 anytime thereafter that is convenient for the Court.

14 Respectfully submitted,

15 JOSEPH P. RUSSONIELLO
16 United States Attorney

17 Dated: October 2, 2008


18 /S/
19 SUSAN B. GRAY
20 Assistant United States Attorney

19 Dated: October 2, 2008

20 /S/
21 ERIK BABCOCK
22 Attorney for Claimants Toan Hoang, Que Ngo and
23 Julie Luu .

24 GOOD CAUSE APPEARING, the case management conference scheduled for October 10, 2008,
25 January 9, 2009, at 10:30 a.m.
26 is hereby continued until ~~December~~, 2008, at _____ . A Joint Case Management
27 Conference Statement shall be filed no later than January 2, 2009.

28 IT IS SO ORDERED.


MAXINE M. CHESNEY
United States District Judge

Dated: October 6, 2008