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8 Attorneys for Plaintiff

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

12 UNITED STATES OF AMERICA)
13 Plaintiff,)
14 v.)

15 1. REAL PROPERTY AND)
IMPROVEMENTS LOCATED AT 15000)
16 BRICELAND THORN ROAD,)
WHITETHORN, CALIFORNIA, et.al.,)
17 Defendants.)
18

No. C 08-3080 JSW
JOINT CASE MANAGEMENT
STATEMENT : ORDER
CONTINUING CASE
MANAGEMENT CONFERENCE
CMC Date: February 13, 2009
Time: 1:30 p.m.
Courtroom 2, 17th Floor

19 Wendy Anne Fetzer, Gary R. Button, Fowler)
Family Trust, Syd and Barbara Green,)
20 Mendocino Clearwater Corporation, John)
W. Brown, Judith B. Brown, Robert Butler,)
21 Donovan and Lynn Henry, and Alishia)
Stone,)
22 Claimants.)
23

24 Plaintiff, United States of America and claimants, Wendy Anne Fetzer, Gary R. Button,
25 Fowler Family Trust, Syd and Barbara Green, Mendocino Clearwater Corporation, John W.
26 Brown, Judith B. Brown, Robert Butler, Alishia Stone, and Donovan and Lynn Henry, by and
27 through their respective attorneys, respectfully submit this Joint Case Management Statement.

28 **1. Jurisdiction and Service**

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1 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and
2 1355 and Title 21, United States Code, Section 881(a)(7). There are no counterclaims. Plaintiff
3 contends that it has served notice of this action on all persons who may have a legal interest in
4 the property including the following: Alishia Stone, Wendy Anne Fetzer, Gary R. Button, Syd
5 and Barbara Green, Mendocino Clearwater Corporation, John W. Brown, Judith B. Brown,
6 Robert Butler, Redwood Trust Deed Services, Donovan and Lynn Henry, Robert Juan, D.G and
7 Sydell Fowler, the Fowler Family Trust, Kenneth Barton and Gladys Swinnock.

8 To date the following individuals or entities have filed claims: Alishia Stone, represented by
9 Ismail J. Ramsey, Wendy Anne Fetzer and Gray Button, represented by Stephen Johnson, the
10 Fowler Family Trust, Syd and Barbara Green, and Robert Butler, represented by Eugene Denson,
11 Mendocino Clearwater Corporation and John and Judith Brown, represented by Barry Meyer, and
12 Donovan and Lynn Henry, represented by David Michael and James Bustamonte.

13 2. Facts

14 This is an in rem forfeiture actions brought by the United States under Title 28 United
15 States Code, Sections 1345 and 1355(a), and Title 21 United States Code, Section 881(a)(7). The
16 United States alleges that defendant real properties represent property which facilitated a
17 violation of Title 21, United States Code, Section 841(a)(1)-marijuana cultivation, and are thus
18 subject to forfeiture to the United States pursuant to Title 21 United States Code, Section
19 881(a)(7).

20 Parties: Plaintiff is the United States of America. Defendants are real properties located in
21 Humboldt County.

22 Claimants are owners or lien holders of the defendant properties.

23 Transaction or event: The complaint alleges that on June 24, 2008, federal law enforcement
24 agents, acting pursuant to federal warrants, executed searches at the defendant properties and,
25 during the course of their search of the defendant properties agents found extensive evidence of
26 marijuana cultivation operations.

27 The affidavit in support of the search warrants is currently under seal. The execution of the
28 search warrants was part of an ongoing criminal investigation. No charges have been filed in the

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investigation.

2 **3. Principal Factual and Legal Issues**

3 The principal factual and legal issues in dispute are: 1) whether plaintiff can establish by
4 a preponderance of the evidence that the defendant properties were used to facilitate marijuana
5 cultivation and are thus forfeitable under Title 21, United States Code, Section 881(a)(7), and 2)
6 whether claimants can establish by a preponderance of the evidence that they are innocent owners
7 of the defendant properties.

8 **4. Anticipated Motions**

9 All parties may move for summary judgment at the close of discovery. Some of the
10 claimants may allege that the forfeiture of their whole interest in the property will constitute an
11 excessive fine under the Eighth Amendment. Some claimants may also seek to challenge the
12 search warrant and subsequent search and seizure on Fourth Amendment grounds.

13 In addition, given the ongoing criminal investigation, the United States and/or several
14 claimants may seek to stay the civil action pursuant to 18 U.S.C. 981 (g)(1) and (2).

15 **5. Relief/Damages**

16 Plaintiff seeks a judgment of forfeiture of the defendant properties. This is not a damages
17 case.

18 Claimants Alishia Stone, Robert Butler, Wendy Anne Fetzer, Gary R. Button, Syd and
19 Barbara Green, Mendocino Clearwater Corporation, John W. Brown, Judith B. Brown, may seek
20 an order from this Court declaring that their interest in certain of the parcels named as defendants
21 in this action, which are secured by a note and deed of trust, are not subject to forfeiture and that
22 their interest in the property is that of an innocent owner. In addition, several claimants¹ and the
23 United States are in discussion regarding an order permitting the interlocutory sale of the
24 property in order to preserve the value of the property. As a part of the interlocutory sale process
25 and/or to aid in settlement negotiations, the owners of the defendant properties, Claimants
26 Donovan Henry, Alisha Stone, Robert Butler and The Fowler Family Trust, have agreed to allow
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¹Robert Butler excepted.

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1 a new updated appraisal of their properties.² The parties recognize the changing nature of the
2 real estate market and believe it is the best interest of all parties to have a “on-the-ground”
3 appraisal of the properties before engaging in costly discovery. In addition, the initial appraisals
4 were conducted prior to the execution of the search warrants, thus, no on-site evaluation of the
5 properties was made for water damage to the houses, or any environmental issues that may affect
6 the value of the properties. All of these issues will affect how the United States and/or Claimants
7 may wish to proceed. The United States Marshals Service has already contracted with the
8 appraisers for these properties and the parties are awaiting the results.

9 **6. Settlement**

10 At this juncture, matters are far too undeveloped to ascertain the possibility of settlement.
11 However, settlement discussions and informal discovery has commenced with several parties. In
12 addition, as noted in Section 5 above, the parties are engaged in evaluating the properties in light
13 of the changing real estate market and the ever increasing liens on some of the properties.

14 **7. Discovery**

15 This is an *in rem* forfeiture case and is exempt from initial disclosures pursuant to Federal
16 Rule of Civil Procedure 26 (a)(1)(B)(ii). As noted above, the owners and claimants are engaged
17 in settlement discussions and informal discovery. The parties suggest another case management
18 conference would be appropriate in four months.

19 **8. Alternative Means of Disposition**

20 Plaintiff does not request reference to arbitration.

21 **9. Pretrial/Trial Issues**

22 The parties have not yet discussed any trial issues.

23 **10. Class Action**

24 This is not a class action.

25 **11. Related Case**

26 In compliance with the local rules, the United States filed an Administrative Motion to
27

28 ²A Writ of Entry, pursuant to 18 U.S.C. §985§§ (b)(2) and 983(j) is not necessary because
the owners have given consent for the appraiser to enter the property to conduct the appraisal.

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1 Relate Case #08-3093 WHA to the case currently pending before this Court. The Motion was
2 denied by this Court on September 23, 2008.

3 **12. Other Matters –**

4 Attorneys Stephen Johnson, Eugene Denson and Ismail Ramsey request to appear
5 telephonically.

6 As stated in Sections 5 and 6 above, the owners of the properties have agreed to have an
7 updated market analysis and appraisal conducted for all four of the defendant properties. Rather
8 than engage in costly discovery over an asset that may have diminished in value, the parties
9 request that they be allowed to continue with their updated market appraisal and their discussions
10 of an interlockatory sale or settlement. The parties suggest that the Case Management Conference
11 currently scheduled for February 13, 2009, at 1:30 be continued for approximately four months.
12 This will allow time for the appraisals to be completed and, if appropriate, the properties to be
13 listed for sale.

14 DATED: February 6, 2009

15 _____/S/
16 SUSAN B. GRAY
Assistant United States Attorney

17 DATED: February 6, 2009

18 _____/S/
19 STEPHEN F. JOHNSON
Attorney for Claimants Wendy Fetzler and Gary
20 Button

21 DATED: February 6, 2009

22 _____/S/
EUGENE DENSON
Attorney for Claimants Fowler Family Trust,
23 and Syd and Barbara Green

24 DATED: February 6, 2009

25 _____/S/
BARRY MEYER
Attorney for Claimants John and Judith Brown
26 and Mendocino Clearwater Corporation

27 DATED: February 6, 2009

28 _____/S/
DAVID MICHAEL
JAMES BUSTAMONTE
Attorney for Claimants Donovan and Lynn Henry

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DATED: February 6, 2009

_____/S/_____
ISMAIL RAMSEY
Attorney for Claimant Alishia Stone

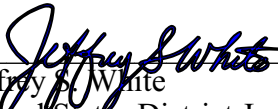
3 DATED: February 6, 2009

_____/S/_____
MARK EIBERT
Attorney for Robert Butler

6 GOOD CAUSE APPEARING, the case management conference in the above entitled case is
7 continued to June 19, 2009, at 1:30 p.m.

8 IT IS SO ORDERED

9 Dated: February 9, 2009



Jeffrey S. White
United States District Judge

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