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Attorneys for Plaintiff

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

13 UNITED STATES OF AMERICA)

No. C 08-3080 JSW

14 Plaintiff,)

15 v.)

JOINT CASE MANAGEMENT
STATEMENT AND REQUEST TO
CONTINUE CASE MANAGEMENT
CONFERENCE

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

and
~~PROPOSED~~ ORDER

18 Defendants.)

CMC Date: February 19, 2010
Time: 1:30 p.m.
Courtroom: 11, 19th Floor

19 Fowler Family Trust, Syd and Barbara)
20 Green, Robert Butler, and Donovan and)
Lynn Henry,)

21 Claimants.)
22

23 Plaintiff, United States of America and claimants, Fowler Family Trust, Syd and Barbara
24 Green, Robert Butler, and Donovan and Lynn Henry, by and through their respective attorneys,
25 respectfully submit this Joint Case Management Statement and request to continue the Case
26 Management Conference.

27 **1. Jurisdiction and Service**

28 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and 1355 and

1 Title 21, United States Code, Section 881(a)(7). There are no counterclaims. Plaintiff contends that
2 it has served notice of this action on all persons who may have a legal interest in the properties
3 remaining in this case, including the following: Syd and Barbara Green, Robert Butler, Donovan and
4 Lynn Henry, D.G and Sydell Fowler, and the Fowler Family Trust.¹

5 The following individuals or entities have filed claims: the Fowler Family Trust and Syd and
6 Barbara Green, represented by Eugene Denson, Robert Butler, represented by Mark Eibert, and
7 Donovan and Lynn Henry, represented by David Michael and James Bustamonte.

8 **2. Facts**

9 This is an in rem forfeiture actions brought by the United States under Title 28, United States
10 Code, Sections 1345 and 1355(a), and Title 21, United States Code, Section 881(a)(7). The United
11 States alleges that defendant real properties represent property which facilitated a violation of Title
12 21, United States Code, Section 841(a)(1)-marijuana cultivation, and are thus subject to forfeiture
13 to the United States pursuant to Title 21, United States Code, Section 881(a)(7).

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

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

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

21 Briceland/Donavan Henry Property: 8 pounds of processed marijuana located in the master
22 bedroom, 72 marijuana plants in the attic, and 172 plants in greenhouses on the property;

23 Par Avenue/Fowler Family Trust Property: 15 pounds of processed marijuana in three garbage
24 bags in a bedroom, 148 marijuana plants, four indoor grow lights and bags of fertilizer in a second
25

26 ¹The following individuals were also served and appeared: Alishia Stone, represented by
27 Ismail J. Ramsey, Wendy Anne Fetzer and Gary Button, represented by Stephen Johnson,
Mendocino Clearwater Corporation and John and Judith Brown, represented by Barry Meyer.
28 With the dismissal of the complaint against 3602 Thomas Road, these claimants are no longer a
party to this action.

1 bedroom, and an additional indoor grow room in the attic with 144 marijuana plants, four indoor
2 grow lights and water supplied from the house shower;

3 Eel River/Robert Butler Property: 400 marijuana plants in a green house on the property. The
4 twelve motorized grow lights hanging over the plants drew electricity from the house on the
5 property.

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

7 The principal factual and legal issues in dispute are: 1) whether plaintiff can establish by a
8 preponderance of the evidence that the defendant properties were used to facilitate marijuana
9 cultivation and are thus forfeitable under Title 21, United States Code, Section 881(a)(7), and 2)
10 whether claimants can establish by a preponderance of the evidence that they are innocent owners
11 of the defendant properties, or 3) the other affirmative defenses alleged in some of the Answers.

12 **4. Anticipated Motions**

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

17 **5. Relief/Damages**

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

19 Claimants Syd and Barbara Green, seek an order from this Court declaring that their interest in
20 one the parcels named in this action, which is secured by a note and deed of trust, is not subject to
21 forfeiture and that their interest in the property is that of an innocent owner.

22 **6. Settlement**

23 At this juncture, matters are far too undeveloped to ascertain the possibility of settlement.
24 However, *see*, Section 12, *infra*.

25 **7. Discovery**

26 This is an *in rem* forfeiture case and is exempt from initial disclosures pursuant to Federal Rule
27 of Civil Procedure 26 (a)(1)(B)(ii). The parties suggest another case management conference would
28 be appropriate in four months for the reasons set forth in Section 11 and 12, *infra*.

1 **8. Alternative Means of Disposition**

2 Plaintiff does not request reference to arbitration.

3 **9. Pretrial/Trial Issues**

4 The parties have not yet discussed any trial issues.

5 **10. Class Action**

6 This is not a class action.

7 **11. Related Case**

8 The government alleges the following regarding the issue of related cases:

9 In 2004, Robert Juan formed the Lost Paradise Land Corporation and designated himself as
10 CEO. On March 30, 2004, Lost Paradise Land Corporation bought 945 acres of land in Humboldt
11 and Mendocino Counties from Diane and Eddie Mendes. According to the plan Juan set up, each
12 member of the Lost Paradise Land Corporation owned “shares” of the Land Corporation, including
13 Donavan Henry, one of the claimants in the case before this court.

14 In 2005 the Colburn Creek Land Corporation was formed, with Robert Juan’s involvement.
15 Each member of the Colburn Creek Land Corporation owned “shares” of the Land Corporation,
16 including Robert Butler, and Jonathan and Sydell Fowler², claimants in the case before this court.
17 In 2005 Robert Juan also purchased approximately 960 acres of land in Mendocino County from
18 Barnum Timber Company. However, Robert Juan never transferred title of the 960 acres purchased
19 from Barnum Timber to Colburn Creek Land Corporation.

20 On June 24 and 25, 2008, law enforcement officers executed 30 search warrants at the homes
21 of the shareholders of Colburn Creek Land Corporation, Lost Paradise Land Corporation and on the
22 rural property described above, and recovered from various locations marijuana with an estimated
23 value of between 25 and 60 million dollars, weapons and cash.

24 On June 25, 2008, the United States filed a civil forfeiture complaint against the rural
25 properties described above. C 08-3093 WHA. Also, on June 25, 2008, the United States filed a civil
26 forfeiture complaint against four residential properties owned by shareholders of the Colburn Creek

27 _____

28 ² The Fowler residence, one of the defendant properties in this case, is owned by the
Fowler Family Trust, which is the actual claimant in the civil forfeiture action. Sydell Fowler is
one of the trustees.

1 Land Corporation and the Lost Paradise Land Corporation. C 08-3080 JSW. Shortly thereafter, the
2 United States filed an Administrative Motion to Relate the two cases. The motion was denied by
3 this Court on September 23, 2008. Since that time Judge Alsup has stayed the case before him,
4 pending the criminal investigation. The next case management conference before Judge Alsup is
5 set for February 25, 2010. The parties to that action continue to request a stay, given the pending
6 criminal indictments against two of the claimants, Paul Sayers and Graeson Prescott.

7 On November 24, 2009, the grand jury returned numerous indictments against several
8 shareholders of the Lost Paradise Land Corporation and other associates of Robert Juan. Donavan
9 Henry, the claimant to Briceland Thorn Road, was among those indicted. Each of the criminal
10 indictments involve similar violations of law, and they all arose out of the same investigation and
11 involve the same underlying affidavit in support of the search warrants executed on June 24 and 25,
12 2008, and described above. On January 22, 2010, the United States filed a Notice of Related Case
13 notifying this Court of the related nature of the civil forfeiture and pending criminal cases. On
14 February 4, 2010, this Court notified the Assistant United States Attorney handling the criminal
15 cases that the cases would not be related.

16 **12. Other Matters**

17 Given the recent indictment, the United States and claimant Butler have discussed requesting
18 a stay of the civil forfeiture proceedings. However, rather than make such a formal motion, the
19 parties suggest that the court continue the case management conference for an additional 120 days.
20 As noted in prior case management statements, the parties have engaged in settlement discussions
21 and have had the properties reappraised to aid those discussions. Those discussions continue. The
22 parties suggest that the current case management conference should be continued for approximately
23 120 days to allow for settlement discussions to continue and/or stay motions to be filed. In the
24 alternative, if the Court is not inclined to continue the case management conference, several of the
25 parties intend to move for a stay so that they will not be forced to choose between complying with
26 discovery in this case and with exercising their privilege against self-incrimination in a criminal
27 investigation.

28 Finally, the Assistant United States Attorney assigned this case will be out of the state the week

1 of February 15-19 and respectfully requests that if the court does not decide to continue the currently
2 scheduled case management conference for 120 days, that it be continued for several weeks. The
3 parties have conferred regarding their respective schedules and suggest April 2, 2010, as an
4 alternative date. Mr. Denson is unavailable on any prior dates.

5
6 DATED: February 9, 2010

7 _____/s/_____
8 SUSAN B. GRAY
Assistant United States Attorney

9 DATED: February 9, 2010

10 _____/s/_____
11 EUGENE DENSON
Attorney for Claimants Fowler Family Trust,
and Syd and Barbara Green

12 DATED: February 9, 2010

13 _____/s/_____
14 DAVID MICHAEL
JAMES BUSTAMONTE
Attorney for Claimants Donovan and Lynn Henry

15 DATED: February 9, 2010

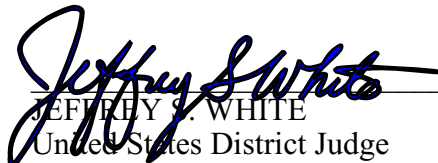
16 _____/s/_____
17 MARK EIBERT
Attorney for Claimant Robert Butler

18
19 ~~PROPOSED~~ ORDER

20 GOOD CAUSE APPEARING THE CASE MANAGEMENT CONFERENCE
21 SCHEDULED FOR FEBRUARY 19, 2010, IS CONTINUED TO August 13, 2010, at 1:30 p.m.

22
23 IT IS SO ORDERED.

24
25 Dated: February 10, 2010

26 
27 JEFFREY S. WHITE
United States District Judge