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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. APPROXIMATELY $57,378 IN UNITED STATES CURRENCY, Defendant. KAP S. SIMS, Claimant.	No. 08-5023 MMC STIPULATION AND ORDER STAYING THE INSTANT CASE PENDING RESOLUTION OF THE CRIMINAL CASE

The parties agree, subject to the Court's approval, that the instant case be stayed pursuant to 18 U.S.C. § 981(g), pending resolution of *United States v. Sims,* No. 08-CR-0443 MMC. *See* Notice of Related Cases, filed February 11, 2009. Although the Honorable William S. Alsup had scheduled a case management conference for March 5, 2009 at 3:00 p.m., this Court's related case order took that CMC of calendar. *See* Related Case Order, entered February 18, 2009. The parties agree, subject to the Court's approval, that should the Court enter a stay of this civil forfeiture case that there is no need to reschedule a CMC until the criminal case is resolved.

Section 981(g) authorizes the Court to stay an action if it determines that civil discovery would adversely affect the ability of the Government to conduct a prosecution of a related criminal case. It also authorizes a claimant who is a defendant in a related criminal action to request a stay of the civil forfeiture action if it would "burden the right of the claimant against self-incrimination in the related investigation or case." 21 U.S.C. § 981(g)(1), (2).

Based on the following, the parties agree that both prongs of Section 981(b) are satisfied and a stay is warranted. On July 8, 2008, the grand jury indicted Earl Harrell, Sims, II (SIMS) for events occurring to and including June 19, 2008 when SIMS arrived at San Francisco International Airport with $57,378 in United States Currency. Subsequently, on November 4, 2008, the United States filed a civil action against the same $57,378.

Both cases arise out of the same events and transactions. More specifically, the grand jury charged SIMS – based on events occurring up to and including June 19, 2008 when SIMS flew into San Francisco International Airport carrying $57,378 in United States currency – with violations of 21 U.S.C. § 846 (conspiracy to commit narcotics offense); 18 U.S.C. § 1028(a)(3) (unlawful possession of false identification documents); 18 U.S.C. § 1028A(a)(1) (aggravated identity theft) for events which occurred on . In addition, the grand jury included forfeiture allegations in the indictment which gives SIMS notice that the United States intended to request forfeiture of the $57,378 as part of his sentence. As to the civil case, on November 4, 2008, the United States filed a civil forfeiture action against the same $57,378. As stated, the United States filed a civil forfeiture action against the civil defendant $57,378 – seized from SIMS at the San Francisco International Airport – based on the totality of the circumstances set forth in the civil Complaint for Forfeiture which allegations make the $57,378 subject to forfeiture under 21 U.S.C. § 881(a)(6). The United States submits that basis for the stay is apparent based on the face of the Indictment in the criminal case and the face of the civil Complaint for Forfeiture, and thus no *in camera* declarations are necessary. 21 U.S.C. § 981(g)(5).

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Accordingly, the parties request the Court to stay the instant case and, following the resolution of the criminal case, to re-schedule a case mangement conference, if necessary.

IT IS SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney

Dated: February 18, 2009

PATRICIA J. KENNEY
Assistant United States Attorney
Attorney for the United States

LAW OFFICES OF ALEX KESSEL

Dated: February 20, 2009

ALEX KESSEL
Attorney for Claimant Kap S. Sims

UPON CONSIDERATION OF THE FOREGOING STIPULATION, IT IS BY THE COURT ON THIS 24th DAY OF February, 2009:

ORDERED THAT THE INSTANT CASE BE, AND HEREBY IS, STAYED UNTIL FURTHER ORDER OF THE COURT.

HONORABLE MAXINE M. CHESNEY
United States District Judge