1	MELINDA HAAG (CSBN 132612) United States Attorney			
2 3	MIRANDA KANE (CSBN 150630) Chief, Criminal Division			
4 5 7 8 9 10 11 12 13 14 15	 PATRICIA J. KENNEY (CSBN 130238) Assistant United States Attorney 450 Golden Gate Avenue San Francisco, CA 94102 Telephone: 415.436.6857 Facsimile: 415.436.7234 Email: patricia.kenney@usdoj.gov Attorneys for United States of America UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION UNITED STATES OF AMERICA,) No. 08-CR-0443 MMC Plaintiff,) Plaintiff,) EARL HARREL SIMS, II,) 	ĒR		
16 17 18	7 KAP SUK SIMS,			
19 20 21 22 23 24 25 26 27 28	0 UNITED STATES OF AMERICA, No. 08-CV-5023 MMC 1 V. STIPULATION AND ORDE 2 APPROXIMATELY \$57,378 IN UNITED STATES CURRENCY, 3 Defendant. Defendant. 4 Claimant. Defendant.	ER		

The parties agree, subject to the Court's approval, that:

1. The parties have discussed proceeding with one of two options to resolve the factual disputes in this case. One option the parties discussed is to have a hearing/trial before the Court at which time the parties would each be able to call witnesses and submit evidence including documentary evidence. The second option is for the parties to agree to submit this case based on the factual record developed and filed in connection with the summary judgment motion. Although the Federal Rules of Evidence apply, the parties agree that the Court can make credibility determinations and weigh the evidence in the factual record. The parties agree to proceed with the second option.

2. On or before September 16, 2011, the parties will submit any additional evidence in
 support of their positions in the civil case and the criminal ancillary proceeding which has
 previously not been submitted, and the United States will be permitted to file the corrected copy of
 the tax return at that time.

3. On or before September 23, 2011, the parties may file brief objections based on the 14 Federal Rules of Evidence the factual record developed and filed. Also, the parties may choose to 15 file a trial brief on or before September 23, 2011. Claimant Kap Sims has requested that the parties 16 17 also be given one week to file a reply brief, but the undersigned Assistant United States Attorney will be out of town from September 28 until October 5. Accordingly the parties request that they 18 be permitted to file an optional reply brief on or before October 11. Thereafter, the Court will take 19 Kap Suk Sims's claims in the civil case and in the criminal ancillary proceeding under consideration 20 21 without any additional hearing.

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Stip & Order No. 08-CR-0443 MMC No. 08-CV-5023 MMC

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1	4. Based on the foregoing, the case management conference previously scheduled for			
2	September 16, 2011 is taken off calendar.			
3 4	IT IS SO STIPULATED:	MELINDA HAAG United States Attorney		
5 6 7	Dated: <u>September 9</u> , 2011	/s/ PATRICIA J. KENNEY Assistant United States Attorney Attorneys for the United States		
8 9	Dated: <u>September 8</u> , 2011	/s/ KAP SUK SIMS Petitioner/Claimant <i>pro se</i>		
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11	PURSUANT TO THE FOREGOING STIPULATION IT IS SO ORDERED, with the			
12	following exception and modification:			
13	1. At plaintiff's request, set forth in plaintiff's Case Management Statement filed			
14	September 9, 2011, the Case Management Conference was held as initially scheduled.			
15	2. Pursuant to the parties' further stipulation, entered orally at the Case Management			
16	Conference on September 16, 2011, IT IS FURTHER ORDERED that the deadline for			
17	objections and trial briefs is EXTENDED to September 30, 2011, and the deadline for reply			
18	B briefs is EXTENDED to October 18, 2011.	briefs is EXTENDED to October 18, 2011.		
19				
20	Dated: <u>September 16</u> , 2011	Dated: <u>September 16</u> , 2011		
21				
22	Mafine M. Cherry			
23	3 HONG	HONORABLE MAXINE M. CHESNEY United States District Judge		
24	Office States District stage			
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	Stip & Order No. 08-CR-0443 MMC No. 08-CV-5023 MMC 3			