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12 Attorneys for United States of America

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, )  
16 Plaintiff, )  
17 v. )  
18 APPROXIMATELY \$8,800 IN )  
19 AMERICAN EXPRESS TRAVELERS' )  
20 CHECKS; AND ONE PENTAX 35mm )  
21 CAMERA, SERIAL NUMBER 1318242, )  
22 Defendant. )

No. CV 09-02308 WHA

CASE MANAGEMENT CONFERENCE  
STATEMENT AND ~~PROPOSED~~ ORDER TO  
STAY

23 Plaintiff, United States of America, and claimant Gary Hardeman respectfully submit this  
24 Joint Case Management Statement.

25 **1. Jurisdiction and Service**

26 This Court has jurisdiction under Title 28, United States Code, Sections 1345 and  
27 1355(a); Title 18, United States Code, Section 981(a)(1)(A); Title 18, United States Code,  
28 Sections 2254; Title 18, United States Code, Section 2428. There are no counterclaims. Plaintiff  
has served notice of this action on all persons who may have an interest in the property, including  
the following: Claimant Gary Hardeman

1           **2. Facts**

2           On November 30, 2008, Gary Hardeman was arrested at the San Francisco International  
3 Airport after boarding a flight to Mexico. Among his belongings, agents found and seized the  
4 defendant property. Hardeman was arrested and indicted for Engaging in Illicit Sexual Conduct  
5 in Foreign Places (Count One), and committing that offense against a minor while required to  
6 register as a sex offender (Count Two). United States v. Gary Hardeman, 10-CR-00859-RS,  
7 Docket No. 1. On August 30, 2011, Hardeman filed a motion to dismiss Count Two. On October  
8 7, 2011, the district court granted the motion and dismissed Count Two. On January 31, 2012,  
9 the United States filed a pretrial appeal of that dismissal. United States v. Gary Hardeman,  
10 11-CA-10540, Docket No. 9. The appeal is currently pending.

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

12           The principal factual and legal issues in dispute are: 1) whether plaintiff can establish by  
13 a preponderance of the evidence that the defendant property is property intended to be used to  
14 commit or promote the sexual exploitation of children, illegal sexual activity, or child  
15 pornography; 2) whether plaintiff can establish by a preponderance of the evidence that the  
16 defendant property is property involved money laundering relating to illegal sexual activity or the  
17 sexual exploitation of children; 3) whether claimant Gary Hardeman can establish by a  
18 preponderance of the evidence that he is an innocent owner of the defendant property.

19           **4. Anticipated Motions**

20           On December 9, 2011, Court stayed the instant civil forfeiture case until April 12, 2012,  
21 due to claimant's pending criminal prosecution: United States v. Hardeman, 10-cr-00859 RS. As  
22 Mr. Hardeman's criminal case is still ongoing, the parties respectfully request an additional stay  
23 of this case, so as not to raise the risk of self-incrimination or adversely affect the ability of the  
24 government to prosecute the related criminal case.

25           **5. Relief/Damages**

26           Plaintiff seeks a judgment of forfeiture of the defendant property. This is not a damages  
27 case. Claimant Gary Hardeman seeks the return of the defendant property.

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**6. Settlement**

Given the stay of this action necessitated by the pending criminal cases, it is too early to anticipate settlement with any accuracy.

**7. Discovery**

This is an in rem forfeiture case and is exempt from initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(ii). Given the stay of this action necessitated by the pending criminal cases, no discovery has occurred.

**8. Alternative Means of Disposition**

The parties would be amenable to the assignment of a settlement magistrate, after the resolution of the pending criminal cases.

**9. Related Cases**

This case is related to claimant’s pending criminal prosecution.

Dated: 4/05/12

/s/ Daniel P. Blank  
DANIEL PAUL BLANK  
Attorney for Claimant

Dated: 4/05/12

/s/ David B. Countryman  
DAVID B. COUNTRYMAN  
Assistant United States Attorney

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~~PROPOSED~~ ORDER TO STAY

Based upon claimant Gary Hardeman's request to continue the stay of the current forfeiture proceedings, the United States' non-opposition, and for good cause appearing, it is HEREBY ORDERED that the instant case be, and hereby is, STAYED, pursuant to 18 U.S.C. § 981(g) until a status conference can be held on September 20, 2012, at 11:00 AM.

Please file a joint case management statement at least seven days prior.

SO ORDERED.

Dated: April 2, 2012.

~~WILLIAM J. ALSUP~~  
United States

