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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. 09-02308 WHA

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

23 Plaintiff, United States of America, and claimant Claimant Gary Hardeman respectfully
24 submit this 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

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2. Facts

On November 30, 2008, Gary Hardeman was arrested at the San Francisco International Airport after boarding a flight to Mexico. Among his belongings, agents found and seized the defendant property. Hardeman was arrested on an outstanding warrant for failing to register as a sex offender, and charges are currently pending in San Francisco County Superior Court. Hardeman was also arrested for Engaging in Illicit Sexual Conduct in Foreign Places, and charges are currently pending in the federal District Court for the Northern District of California.

3. Principal Factual and Legal Issues

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

4. Anticipated Motions

On January 5, 2011, Court stayed the instant civil forfeiture case until April 7, 2011, due to claimant’s pending criminal prosecution: United States v. Hardeman, 10-cr-00859 RS. On October 20, 2011, the United States filed Notice of Appeal of the District Court’s dismissal of Court Two of the Indictment (Docket No. 79), and on October 21, 2011 the Court vacated the trial and pre-trial dates. Docket No. 82. Oral argument before the Ninth Circuit is set for September 14, 2012. As Mr. Hardeman’s criminal cases are still ongoing, the parties respectfully request an additional stay of this case, so as not to raise the risk of self-incrimination or adversely affect the ability of the government to prosecute the related criminal cases.

5. Relief/Damages

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

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2 **6. Settlement**

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

5 **7. Discovery**

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

9 **8. Alternative Means of Disposition**

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

12 **9. Related Cases**

13 This case is related to claimant's pending criminal prosecution.

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15 Dated: 9/07/12

16 /S/
DANIEL PAUL BLANK
17 Attorney for Claimant

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Dated:9/07/12

19 /S/
DAVID B. COUNTRYMAN
20 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 **OCTOBER 25, 2012**.

SO ORDERED.

Dated: September 17, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE