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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA, )  
 18 )  
 Plaintiff, )  
 19 )  
 v. )  
 20 )  
 ONE DELL INSPIRON COMPUTER )  
 21 (SERIAL NO. 6VHBGD1) AND VISUAL )  
 22 DEPICTIONS ON THE HARD DRIVE, )  
 Defendants. )  
 23 \_\_\_\_\_ )

No. 09-CV-3174-MMC  
  
 JOINT CMC STATEMENT  
 AND [PROPOSED] ORDER  
 TO POSTPONE CMC  
  
 AND ORDER CONTINUING CASE  
 MANAGEMENT CONFERENCE

24 **I. Jurisdiction**

25 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and  
 26 1355; and Title 18, United States Code, Sections 2253 and 2254.

27 **II. Case Description**

28 This is a civil forfeiture action. The government contends there is sufficient evidence to  
 show the defendant laptop and visual depictions were used or intended to be used to promote, or

1 are traceable to, the commission of an offense involving a visual depiction described in  
2 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2252B or 2260, found in Chapter 110, Sexual  
3 Exploitation and Other Abuse of Children, and are thus subject to forfeiture.

4 Claimant, Todd Growney, denies the claim made by the United States and asserts that the  
5 government has failed to state a claim upon which relief can be granted and that the property was  
6 seized in violation of Mr. Growney's right to be free from unlawful searches and seizures.

### 7 **III. Service/Parties to the Action**

8 All persons known to have an interest in the defendant property have been served,  
9 including Todd William Growney and his attorney Robert J. Beles. Mr. Beles filed a verified  
10 claim and answer for the defendant laptop on behalf of Mr. Growney on August 14, 2009, and  
11 September 2, 2009, respectively. To date, no other claims have been filed.

### 12 **IV. Principal Factual and Legal Issues**

13 The principal factual and legal issues in dispute are: (1) whether claimant Todd William  
14 Growney can prove that the government failed to state a claim upon which relief can be granted  
15 or that the defendant property was seized in violation of claimant's right to be free from unlawful  
16 searches and seizures; and (2) whether the government can establish by a preponderance of the  
17 evidence that the defendant laptop and visual depictions were used or intended to be used to  
18 promote, or are traceable to, the commission of an offense involving a visual depiction described  
19 in 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2252B or 2260, found in Chapter 110, Sexual  
20 Exploitation and Other Abuse of Children.

### 21 **V. Anticipated Motions**

22 There is currently an open criminal investigation related to the seizure of Mr. Growney's  
23 laptop computer; therefore, whether the government decides to file a criminal indictment against  
24 Mr. Growney, will determine if he files a motion to stay the civil forfeiture proceedings. The  
25 government would have no opposition to a motion to stay.

### 26 **VI. Relief/Damages**

27 The government seeks a judgment of forfeiture of the defendant laptop and visual  
28 depictions. Claimant seeks return of the defendant laptop. This is not a damages case.

1 **VII. Settlement**

2 The parties are unable to fully engage in settlement discussions until the issues  
3 concerning the potential criminal action and civil motion to stay are resolved.

4 **VIII. Discovery**

5 Both parties anticipate to propound some discovery in this case (interrogatories,  
6 document requests and possible depositions); however, the discovery time line will be  
7 determined by the Court and the possible request for a stay pending the results of the open  
8 criminal investigation related to the seizure of the defendant laptop. The parties suggest  
9 postponing the case management conference, and setting up a status report due in 90 days to set  
10 any dates related to motions, trial and the completion of discovery.

11 **IX. Alternative Means of Disposition**

12 At this time the parties do not request reference to arbitration or to a United States  
13 Magistrate Judge for trial.

14 **X. Pretrial/Trial Issues**

15 At this time the parties have not yet discussed any trial issues.

16 **XI. Class Action**

17 This is not a class action.

18 **XII. Related Cases**

19 At this time no related cases have been filed.

20

21 IT IS SO STIPULATED.

22

23 Dated: November 5, 2009

/s/  
\_\_\_\_\_  
NATALIE K. WIGHT  
Special Assistant United States Attorney

24

25 Dated: November 5, 2009

/s/  
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ROBERT J. BELES  
Attorney for Claimant Todd Growney

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1 ~~PROPOSED~~ ORDER

2  
3 Upon stipulation of counsel, and for good cause shown, the case management conference  
4 scheduled for November 13, 2009, at 10:30 a.m. is vacated, and

5  
6 Is hereby rescheduled for February 12, 2010, with an updated case  
7 management conference status report due to the court no later than February 5, 2010.

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9 IT IS HEREBY ORDERED.

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11 DATED: November 6, 2009

  
12 HONORABLE MAXINE M. CHESNEY  
13 United States District Judge  
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