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12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,)	No. 09-CV-3963-EMC
)	
17 Plaintiff,)	
)	
18 v.)	
)	
19 APPROXIMATELY \$183,820 IN UNITED)	JOINT CASE MANAGEMENT
20 STATES CURRENCY AND \$34,000 IN)	CONFERENCE STATEMENT
21 UNITED STATES CURRENCY,)	AND
)	[PROPOSED] ORDER TO
22 Defendant.)	RESCHEDULE CMC

23 **I. Jurisdiction**

24 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and
25 1355; and Title 21, United States Code, Section 881.

26 **II. Brief Case Description**

27 This is a civil forfeiture action. The government contends there is sufficient evidence to
28 show the defendant currency was seized as money furnished or intended to be furnished by a

1 person in exchange for a controlled substance, or money traceable to such an exchange, or money
2 used or intended to be used to facilitate a violation of Title 21, United States Code, Chapter 13,
3 Subchapter I, and is thus subject to forfeiture.

4 Claimant, Gary Ciciriello, denies the claims made by the United States and asserts that
5 the government has failed to state a claim upon which relief can be granted and that the property
6 was seized in violation of Mr. Ciciriello'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 Peter Flax, Carl Grimm, Gary Ciciriello and Mr. Ciciriello's attorney, Joseph Elford.
10 Mr. Elford filed a verified claim and answer on behalf of Mr. Ciciriello on September 25, 2009,
11 and October 15, 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 Gary Ciciriello
14 can prove that the government failed to state a claim upon which relief can be granted or that the
15 defendant property was seized in violation of claimant's right to be free from unlawful searches
16 and seizures; and (2) whether the government can establish by a preponderance of the evidence
17 that the defendant currency is money furnished or intended to be furnished by a person in
18 exchange for a controlled substance, or money traceable to such an exchange, or money used or
19 intended to be used to facilitate a drug violation of Title 21, United States Code, Chapter 13,
20 Subchapter I.

21 **V. Anticipated Motions**

22 The related criminal investigation of Mr. Ciciriello is on-going and being reviewed by
23 local law enforcement and the local prosecutors's office; therefore, the parties recommend a
24 30-day continuance of the Case Management Conference. If the local authorities pursue
25 prosecution of Mr. Ciciriello, the United States will file a 18 U.S.C. §981(g)(1) motion to stay
26 federal civil forfeiture proceedings. Additionally, the government may file a motion to dismiss
27 the claimant's §1983 counter-claim as improperly brought in this in rem forfeiture action.

1 **VI. Relief/Damages**

2 The government seeks a judgment of forfeiture of the defendant currency. Claimant
3 seeks return of the defendant currency, interest, attorney’s fees, damages and attorney’s fees for
4 42 U.S.C. §1983 violations, and other such relief that is just and equitable.

5 **VII. Settlement**

6 The parties have briefly discussed settlement but no settlement has been reached at this
7 time.

8 **VIII. Discovery**

9 Both parties anticipate to propound discovery in this case (interrogatories, document
10 requests and depositions); however, the discovery time line will be determined by the Court and
11 the possible request for a stay pending the results of the open criminal investigation of claimant
12 Ciciriello.

13 **IX. Alternative Means of Disposition**

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

16 **X. Pretrial/Trial Issues**

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

18 **XI. Class Action**

19 This is not a class action.

20 **XII. Related Cases**

21 At this time no related cases have been filed.

22

23 DATED: February 24, 2010

_____/S/_____
NATALIE K. WIGHT
Special Assistant United States Attorney

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25 DATED: February 24, 2010

_____/S/_____
JOSEPH D. ELFORD
Attorney for Claimant Gary Ciciriello

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[PROPOSED] ORDER

Pursuant to the stipulation of the parties in the Joint CMC Statement and for good cause shown, the Case Management Conference currently scheduled for Wednesday, March 3, 2010, at 2:30 p.m., is hereby vacated, and is continued until 4/21/10 at 2:30 p.m. A joint cmc statement shall be filed by 4/14/10.

IT IS SO ORDERED.

Dated: 3/1/2010

