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Attorneys for United States of America

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

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15 UNITED STATES OF AMERICA,)
16)
17 Plaintiff,)
18 v.)
19 APPROXIMATELY \$144,001 IN)
UNITED STATES CURRENCY,)
20 Defendant.)
21 _____)
JAMES ANTHONY POMPEY,)
22 Claimant.)
23 _____)

No. CV 09-4182 JSW

JOINT CASE MANAGEMENT
STATEMENT AND REQUEST
TO RESCHEDULE THE CMC
FOR AT LEAST 45 DAYS
FROM MAY 10, 2013
AND ORDER THEREON, AS MODIFIED

Date: May 10, 2013
Time: 1:30 p.m.
Place: Courtroom 11, 19th Floor
450 Golden Gate Ave.
San Francisco, CA

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1 This is a civil judicial forfeiture action. The Court has jurisdiction over defendant \$144,001
2 under 21 U.S.C. § 881(a)(6). The claimant in this action is James Anthony Pompey who was also
3 a defendant in two criminal actions. Following the filing of this action, it was stayed pending
4 resolution of a federal criminal drug trafficking case in the Middle District of Georgia against
5 Pompey ¹ and a separate state criminal drug trafficking case in Superior Court for Santa Clara
6 County against Pompey.² After those cases were resolved, this Court lifted the stay in this civil
7 action. Due to unforeseen circumstances, the parties previously requested the rescheduling of the
8 CMC, and are requesting another rescheduling for a minimum of 45 days from May 10, 2013.

9 An issue has arisen as to defendant Pompey's sentence in the state criminal case. The state
10 court judge sentenced Pompey to 16 years to run concurrently with his federal sentence. Pompey's
11 attorney in this case, David Cohen, is also counsel for defendant Pompey in the criminal cases. Mr.
12 Cohen reports that claimant is being required to complete his state sentence in state prison before
13 starting to serve his federal sentence. As a result, on March 22, 2013, claimant's counsel filed a writ
14 of habeas corpus to withdraw Pompey's plea so that Pompey could be returned to San Jose where
15 the Deputy District Attorney (DDA) Patrick Vanier, Mr. Cohen and Pompey can work out, if
16 possible, the custody and credit issues which have arisen. If the state court were to allow Pompey

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18 ¹ In 2009, a grand jury in the Middle District of Georgia indicted James Anthony Pompey
19 with conspiracy to distribute cocaine and cocaine base in violation of 21 U.S.C. § 846, 21 U.S.C.
20 § 841(a)(1), 21 U.S.C. § 841(b)(1)(A)(ii) and 18 U.S.C. § 2. *United States v. Pompey*, No.
21 7:09-CR-15(HL) (M.D. Ga.), Indictment, filed September 16, 2009. On October 6, 2011, Pompey
22 plead guilty to a conspiracy to distribute cocaine between 50 and 150 kilograms of cocaine between
early in 2005 to on or about November 2006. *See* Opposition of the United States to Claimant
Pompey's Motion to Release Funds for Legal Fees, filed October 28, 2011, and Exhibit A. In the
federal case, Pompey admitted that law enforcement seized \$828,970 in November 2006 intended
as payment to him for cocaine he had sold. *Id.*

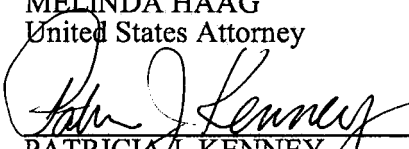
23 ² On August 3, 2012, claimant Pompey plead guilty to Count 9 of an Indictment in
24 Superior Court for Santa Clara County charging him with conspiracy to violate California Health and
25 Safety Code 11352, and admitted a number of overt acts in furtherance of that conspiracy. *United*
26 *States v. Pompey*, No. 211412 (Sup. Ct., Santa Clara County), Indictment, filed June 25, 2009;
27 August 3, 2012 Transcript; Certified Docket Sheet. One of the six overt acts which defendant
28 Pompey admitted was that he "on or about March 18, 2009, possessed \$144,001 in illegal drug
proceeds at 36676 Port Fogwood, Newark, California." Defendant \$144,001 in this civil forfeiture
action is the same \$144,001 which defendant Pompey admitted were drug proceeds. *See* Complaint
for Forfeiture, at 3, paragraph 17.

1 to withdraw his plea, then Mr. Cohen contends that Pompey's admission during the change of plea
2 in state court that the \$144,001 is drug trafficking proceeds could not be used in this forfeiture
3 action. Pompey is scheduled to appear in Superior Court before the judge in his criminal case on
4 May 17, 2013. As a result, Mr. Cohen asks the Court to reschedule the case management conference
5 for at least 45 days from the current CMC scheduled for May 10, 2013 to allow the DDA, Mr. Cohen
6 and Pompey an opportunity to resolve the issues in connection with the state criminal matter.

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8 IT IS SO STIPULATED:


MELINDA HAAG
United States Attorney

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10 Dated: May 1, 2013


PATRICIA J. KENNEY
Assistant United States Attorney
Attorneys for the United States

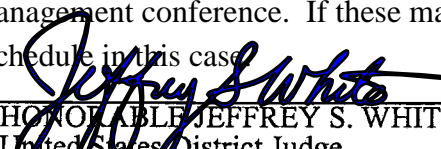
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13 Bay Area Criminal Lawyers, PC

14 Dated: May 2, 2013


DAVID COHEN
Attorney for Claimant
James Anthony Pompey

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18 PURSUANT TO THE FOREGOING STIPULATION IT IS SO ORDERED ON THIS 6th
19 DAY OF MAY, 2013, AND THE CASE MANAGEMENT CONFERENCE IS RESCHEDULED
20 FOR June 28, 2013 AT 9:00 A.M. AND THE PARTIES ARE TO FILE
21 A JOINT CASE MANAGEMENT STATEMENT SEVEN DAYS BEFORE THE CMC.

22 This shall be the final continuance of the case management conference. If these matters are not resolved, the
23 parties shall appear so that the Court may set a schedule in this case.


HONORABLE JEFFREY S. WHITE
United States District Judge