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

13	UNITED STATES OF AMERICA,)	No. CV 09-4182 JSW
14	Plaintiff,)	JOINT CASE MANAGEMENT CONFERENCE STATEMENT and [PROPOSED] ORDER
15	v.)	
16	APPROXIMATELY \$144,001 IN UNITED STATES CURRENCY,)	
17	Defendant.)	CMC Date: February 19, 2010
18)	Time: 1:30 p.m.
)	Location: Courtroom 11, 19 th Floor

19
20 Plaintiff, United States of America and Claimant James Anthony Pompey respectfully
21 submit this Joint Case Management Statement.

22 **1. Jurisdiction and Service**

23 This Court has jurisdiction pursuant to Title 28, United States Code, Sections 1345 and
24 1355 and Title 21, United States Code, Section 881(a)(6). There are no counterclaims. Plaintiff
25 has served notice of this action on all persons who may have an interest in the property. James
26 Anthony Pompey has filed a claim and an answer. To date, no other claims have been filed in this
27 action.

28 ///

2. Substance of the Action

This is a forfeiture action. The defendant \$144,001 was seized from the home of James Anthony Pompey during the execution of a state search warrant. Pompey was indicted in Santa Clara County on four counts: (1) criminal conspiracy to traffic in narcotics (Cal. Penal Code § 182(a) for violation of Cal. Health & Safety § 11352); (2) enhancement of punishment upon conviction related to unlawful possession or sale of 40 and 80 kilograms of a controlled substance (Cal. Health & Safety Code § 11370.4(5) and (6)); (3) possession of over \$100,000 in drug proceeds (Cal. Health & Safety Code § 11370.6(a)); and (4) being felon in possession of a firearm (Cal. Penal Code § 12021). The state criminal trial was expected to occur in January of 2010, but for the reasons described in Section 10 below, it has been continued. In addition, Claimant Pompey has been indicted on cocaine trafficking charges in the Middle District of Georgia. The Claimant is currently in federal custody in the Middle District of Georgia. The government contends that there is sufficient evidence to believe that the defendant currency is subject to forfeiture, pursuant to Title 21, United States Code, Section 881(a)(6), as money furnished or intended to be furnished in exchange for a controlled substance, traceable to such an exchange or used or intended to be used to facilitate a violation of Subchapter I, Chapter 13 of Title 21 United States Code. Claimant's position is that the government cannot meet its burden of demonstrating a connection between the seized funds and drug trafficking.

3. Identification of the Issues

The United States submits that the principal factual and legal issues in dispute are: 1) whether plaintiff can establish by a preponderance of the evidence that the defendant \$144,001 is drug proceeds and thus forfeitable under Title 21, United States Code, Section 881(a)(6), and 2) whether Claimant can establish by a preponderance of the evidence that he is the innocent owner of the defendant \$144,001 in U.S. Currency.

Claimant Pompey disagrees that he must prove, by a preponderance of the evidence, that he is the "innocent owner" of the currency.

4. Narrowing of the Issues

None at this time.

1 **5. Motions**

2 The parties contemplate the possibility of filing pre-trial dispositive and non-dispositive
3 motions. Because of the related criminal action currently pending in the Santa Clara Superior
4 Court, and a pending federal indictment against Pompey in the Middle District of Georgia, the
5 United States will request that this case be stayed until the conclusion of both pending criminal
6 cases pursuant to 18 U.S.C. §981(g)(1).

7 Claimant objects to a stay of this matter. Further, claimant does not believe that a stay is
8 authorized under 18 U.S.C. §(g)(1).

9 **6. Relief**

10 Plaintiff seeks a judgment of forfeiture of the defendant currency. This is not a damages
11 case.

12 Claimant Pompey seeks the return of the defendant currency and attorneys fees.

13 **7. Discovery**

14 This is an in rem forfeiture case and is exempt from initial disclosures pursuant to
15 Federal Rule of Civil Procedure 26 (a)(1)(B)(ii). The parties have not engaged in discovery at
16 this time.

17 Given the pending state and federal criminal cases against Claimant, the United States
18 will move for a stay of all proceedings, including discovery, pursuant to 18 U.S.C. §981(g)(1).

19 Claimant would like to immediately proceed with discovery.

20 **8. Alternative Means of Disposition**

21 The United States submits that at this juncture, especially with two related criminal cases
22 still ongoing, matters are far too undeveloped to ascertain the possibility of settlement. However,
23 in light of Claimant's position, the United States will discuss settlement with counsel for
24 Claimant.

25 Claimant would like to immediately explore settlement and alternative means of
26 resolution.

27 **9. Pretrial Conference and Trial Setting**

28 The parties anticipate a trial will take five to seven days.

1 Claimant Pompey has not yet requested a jury trial, but is expected to request one if the
2 matter does not settle.

3 **10. Related Cases**

4 This case is related to People v. James Anthony Pompey, CC938342, which is currently
5 pending in Santa Clara Superior Court. The trial in the state case was originally expected to take
6 place on January 11, 2010. However, prior to the January trial date, Claimant Pompey was taken
7 into federal custody on December 30, 2009, pursuant to an arrest warrant from the Middle
8 District of Georgia. *See*, Docket Sheet in United States v. Leonard Earnest Royster, Joginder
9 Cheema, James Anthony Pompey, # 7:09-CR-15-WLS, attached hereto as Exhibit A. Pompey is
10 currently in federal custody in Georgia, facing charges for cocaine trafficking with an expected
11 trial date in May, 2010.

12 **11. Cut-Off Dates**

13 The United States submits that it is too early to set dates. As noted above, the United
14 States intends to seek a stay under 18 U.S.C. §981(g)(1), given the pendency of the state and
15 federal cases against Claimant Pompey.

16 Claimant objects to any stay and will oppose any motion for a stay. Claimant will
17 request, at the case management conference, that the Court set a discovery schedule, complete
18 with cut-off dates, and the Court set a trial date. Claimant objects to any further continuance of
19 the case management conference.

20 **12. Settlement**

21 The government's position is that at this juncture, especially with the related criminal
22 cases still ongoing, matters are far too undeveloped to ascertain the possibility of settlement.
23 However, in light of Claimant's position, the United States will discuss a possible settlement
24 with counsel for Claimant.

25 Claimant would like to immediately pursue settlement of this matter.

26 **13. Other Matters**

27 The United States submits that: Assistant United States Attorney Susan B. Gray has
28 joined the case as counsel for the United States. Ms. Gray will be out of the state on February

1 19, 2010, the date of the currently scheduled case management conference. She respectfully asks
 2 the Court to continue the case management conference for several weeks, to February 26, March
 3 5 or March 26, 2010, so that she may be present. In the alternative, the United States suggests
 4 that the case management conference could be continued until early June, following the
 5 conclusion of the federal criminal case in Georgia.

6 Claimant Pompey submits that: It is not certain that the federal case in Georgia will be
 7 finished by early June. Wiretap and other motions may be filed in that case. The May, 2010
 8 calling of the case is the first time Mr. Pompey will appear before the district judge assigned to
 9 the case. Therefore, the case management conference should proceed as scheduled, and if the
 10 government wishes to file a motion for a stay of these proceedings, the government is free to file
 11 a motion. Counsel for Claimant Pompey is unavailable on March 5, 2010, and February 26,
 12 2010.

13 Dated: February 12, 2010

14 /S/
 15 DAVID J. COHEN
 16 Attorney for Claimant
 17 JAMES ANTHONY POMPEY

18 Dated: February 12, 2010

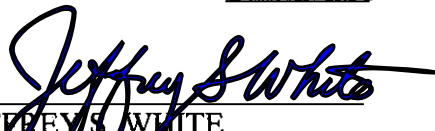
19 /S/
 20 SUSAN B. GRAY
 21 Assistant United States Attorney

22 ~~PROPOSED~~ ORDER

23 GOOD CAUSE APPEARING, THE CASE MANAGEMENT CONFERENCE
 24 SCHEDULED FOR FEBRUARY 19, 2010, IS CONTINUED TO February 26, 2010, at 1:30
 25 p.m.

26 IT IS SO ORDERED.

27 February 16, 2010

28 
 29 JEFFREY S. WHITE
 30 United States District Judge

31 Mr. Pompey requests that the Court set discovery deadlines as well as a trial date. The parties
 32 shall meet and confer in advance of the next case management conference and submit an
 33 updated case management statement setting forth proposed dates, in the event the Court denies
 34 any motion to stay filed by Plaintiff.

35 JOINT CASE MANAGEMENT STATEMENT
 36 CV 09-4182 JSW

37 5 The supplemental case management statement
 38 shall be due by no later than February 22,
 39 2010.

EXHIBIT A

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7:09cr15

United States of America v. Royster et al

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Date Filed: 09/16/2009 Class Code:
Other Docket: None Closed: no

Defendants

Name

Leonard Earnest Royster(1)

Attorneys

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Attorney to be Noticed
Designation: Retained
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Charges

Disposition

Complaints: none

Pending: 21:846 i/c/w 21:841(a)(1), 841(b)(1)(A)(ii) and
18:2: Conspiracy to Distribute Narcotics: Conspiracy
to Distribute Cocaine And Cocaine Base (1)

18:1956(a)(1)(B)(i): Money Laundering Controlled
Substance - Sell/Distr/Disp: Money Laundering
Conspiracy (2)

18:1956(a)(1)(B)(i): Money Laundering Controlled
Substance - Sell/Distr/Disp: Money Laundering (3)
Offense Level (Felony): 4

Terminated: none

Case Assigned: Judge W Louis Sands
Case Referred: US Mag Judge Richard L Hodge

Name

Attorneys

Joginder Cheema(2)

Charges

Disposition

Complaints: none

Pending: 21:846 i/c/w 21:841(a)(1), 841(b)(1)(A)(ii) and
18:2: Conspiracy to Distribute Narcotics: Conspiracy
to Distribute Cocaine And Cocaine Base (1)

18:1956(a)(1)(B)(i): Money Laundering Controlled
Substance - Sell/Distr/Disp: Money Laundering
Conspiracy (2)

18:1956(a)(1)(B)(i): Money Laundering Controlled
Substance - Sell/Distr/Disp: Money Laundering (3)
Offense Level (Felony): 4

Terminated: none

Case Assigned: Judge W Louis Sands
Case Referred: US Mag Judge Richard L Hodge

Name

Attorneys

James Anthony Pompey(3)

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Charges

Disposition

Complaints: none

Pending: 21:846 i/c/w 21:841(a)(1), 841(b)(1)(A)(ii) and 18:2: Conspiracy to Distribute Narcotics: Conspiracy to Distribute Cocaine And Cocaine Base (1)
Offense Level (Felony): 4

Terminated: none

Case Assigned: Judge W Louis Sands
Case Referred: US Mag Judge Richard L Hodge

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Documents

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Availability	No.	Date	Proceeding Text
<input type="checkbox"/>			Filter
<input type="checkbox"/>	Online	1 09/16/2009	INDICTMENT as to Leonard Earnest Royster (1) count(s) 1, 2, 3, Joginder Cheema (2) count(s) 1, 2, 3, James Anthony Pompey (3) count(s) 1. (ans) (Entered: 09/17/2009)
<input type="checkbox"/>	Online	6 09/30/2009	Detainer Lodged as to James Anthony Pompey (ans) (Entered: 09/30/2009)
	Runner	-- 10/07/2009	Arrest of Leonard Earnest Royster (wks) (Entered: 10/07/2009)
<input type="checkbox"/>	Online	7 10/07/2009	Minute Entry for proceedings held before U.S. Mag. Judge Richard L. Hodge: INITIAL APPEARANCE, BOND HEARING as to Leonard Earnest Royster held on 10/7/2009. (Court Reporter: Digitally Recorded.) (wks) (Entered: 10/07/2009)
<input type="checkbox"/>	Online	8 10/07/2009	WAIVER of Counsel for Initial Appearance Hearing by Leonard Earnest Royster (ans) (Entered: 10/08/2009)
<input type="checkbox"/>	Online	9 10/07/2009	ORDER Setting Conditions of Release as to Leonard Earnest Royster (1) \$15,000 Unsecured. Ordered by U.S. Mag. Judge Richard L. Hodge on 10/07/09. (ans) (Entered: 10/08/2009)
<input type="checkbox"/>	Online	10 10/07/2009	Appearance Bond Entered as to Leonard Earnest Royster in amount of \$ 15,000 Unsecured, (ans) (Entered: 10/08/2009)
<input type="checkbox"/>	Online	11 10/09/2009	Arrest Warrant as to Leonard Earnest Royster executed on 09/16/09. (ans) (Entered: 10/09/2009)
<input type="checkbox"/>	Online	12 10/13/2009	NOTICE OF HEARING as to Leonard Earnest Royster: ARRAIGNMENT set for 10/21/2009 at 09:30 AM in Albany before U.S. Mag. Judge Richard L. Hodge. (wks) (Entered: 10/13/2009)
<input type="checkbox"/>	Online	13 10/16/2009	Mail sent to Leonard Earnest Royster returned as undeliverable. (Attachments: # 1 Envelope) (wks) (Entered: 10/16/2009)
	Runner	-- 10/20/2009	NOTICE OF HEARING as to Leonard Earnest Royster Arraignment set for 10/21/2009 02:30 PM in Macon before U.S. Mag Judge Claude W. Hicks, Jr.. (mjw) (Entered: 10/20/2009)
	Runner	-- 10/21/2009	NOTICE OF HEARING as to Leonard Earnest Royster Arraignment RESCHEDULED for Monday, 10/26/2009 02:30 PM in Macon before U.S. Mag Judge Claude W. Hicks, Jr.. (mjw) (Entered: 10/21/2009)
	Runner	-- 10/26/2009	Attorney update in case as to Leonard Earnest Royster. Attorney Bruce Steven Harvey for Leonard Earnest Royster added. (mjw) (Entered: 10/26/2009)

Online	14	10/26/2009	Minute Entry for proceedings held before U.S. Mag Judge Claude W. Hicks, Jr.:Arraignment held on 10/26/2009 as to Leonard Earnest Royster (1) Count 1,2,3. (Court Reporter electronic recording.) (mjw) (Entered: 10/26/2009)
Online	15	10/26/2009	STANDARD PRETRIAL ORDER as to Leonard Earnest Royster. Ordered by U.S. Mag Judge Claude W. Hicks, Jr. on 10/26/09. (CWH) (Entered: 10/26/2009)
Online	16	10/26/2009	NOTICE of Estimated Sentencing Guidelines as to Leonard Earnest Royster Range of between 235 an 293 months. (ans) (Entered: 10/27/2009)
Online	17	10/26/2009	PLEA SHEET as to Leonard Earnest Royster (ans) (Entered: 10/27/2009)
Online	18	10/26/2009	NOTICE of DNA Testing as to Leonard Earnest Royster (ans) (Entered: 10/27/2009)
Online	19	10/27/2009	NOTICE TO RETAINED ATTORNEY Bruce Steven Harvey appearing for Leonard Earnest Royster of Court's policy regarding withdrawal of retained attorneys in criminal cases. (ans) (Entered: 10/27/2009)
Online	20	10/29/2009	MOTION to Continue Trial in the Interest of Justice by United States of America as to Leonard Earnest Royster. (Attachments: # 1 Text of Proposed Order)(Calhoun, Charles) (Entered: 10/29/2009)
Online	21	11/09/2009	ORDER granting 20 Motion to Continue Trial in the Interests of Justice as to Leonard Earnest Royster (1). Ordered by Judge W. Louis Sands on 11/06/09 nun pro tunc 10/29/09. (ans) (Entered: 11/10/2009)
Online	22	11/16/2009	NOTICE OF ATTORNEY APPEARANCE: John Gee Edwards appearing for James Anthony Pompey (Edwards, John) (Entered: 11/16/2009)
Runner	--	11/20/2009	Attorney update in case as to James Anthony Pompey. Attorney Alan Baum for James Anthony Pompey added. (nop) (Entered: 11/20/2009)
Runner	--	11/20/2009	Pro Hac Vice Fee Received from Alan Baum. Filing fee: \$100, receipt number 533263. Attorney admitted pro hac vice as of 11/20/09. (nop) (Entered: 11/20/2009)
Online	23	12/15/2009	MOTION for Writ of Habeas Corpus ad prosequendum by United States of America as to James Anthony Pompey.. Motion(s) referred to Richard L. Hodge.(Calhoun, Charles) (Entered: 12/15/2009)
Online	24	12/16/2009	ORDER granting 23 Motion for Writ of Habeas Corpus ad prosequendum as to James Anthony Pompey (3). Ordered by U.S. Mag Judge Claude W. Hicks, Jr. on 12/16/09. (CWH) (Entered: 12/16/2009)
Online	25	12/31/2009	NOTICE OF HEARING as to Leonard Earnest Royster Pretrial Conference set for 1/13/2010 @ 3:00 PT in Albany before Judge W. Louis Sands. (jbk) (Entered: 12/31/2009)
Online	26	01/04/2010	Arrest Warrant as to James Anthony Pompey executed on 12/30/09. (ans) (Entered: 01/04/2010)
Online	27	01/04/2010	MOTION to Continue Pretrial Conference and Motions Hearing by Leonard Earnest Royster as to Leonard Earnest Royster (Harvey, Bruce) Modified on 1/11/2010 as to Defendant Royster only. (Entered: 01/04/2010)
Online	28	01/06/2010	RESPONSE to Motion by United States of America as to Leonard Earnest Royster, James Anthony Pompey re 27 MOTION to Continue (Attachments: # 1 Text of Proposed Order)(Calhoun, Charles) (Entered: 01/06/2010)
Online	29	01/06/2010	ORDER granting 27 Motion to Continue as to Leonard Earnest Royster (1). Ordered by Judge W. Louis Sands on 01/05/10. (ans) (Entered: 01/08/2010)
Online	30	01/13/2010	ORDER TO CONTINUE - Ends of Justice as to Leonard Earnest Royster, James Anthony Pompey Time excluded from 01/13/10 until 05/03/10.. Ordered by Judge W. Louis Sands on 01/13/10. (ans) (Entered: 01/14/2010)
Runner	--	01/15/2010	NOTICE OF HEARING as to James Anthony Pompey Arraignment set for 1/19/2010 02:30 PM in Macc before U.S. Mag Judge Claude W. Hicks, Jr.. Initial Appearance set for 1/19/2010 02:30 PM in Macon before U.S. Mag Judge Claude W. Hicks, Jr.. (mjw) (Entered: 01/15/2010)
Online	31	01/19/2010	STANDARD PRETRIAL ORDER as to James Anthony Pompey. Ordered by U.S. Mag Judge Claude W. Hicks, Jr. on 1/19/10. (CWH) (Entered: 01/19/2010)
Online	32	01/19/2010	Minute Entry for proceedings held before U.S. Mag Judge Claude W. Hicks, Jr.:Initial Appearance as to James Anthony Pompey held on 1/19/2010, Arraignment held on 1/19/2010 as to James Anthony Pompey (3) Count 1. (Court Reporter Digitally Recorded.) (ans) (Entered: 01/19/2010)
Online	33	01/19/2010	ORDER as to James Anthony Pompey holding in abeyance consideration of pretrial release pending the defendant's release from custody in California. Defendant remanded to the custody of the U. S. Marshal for the Middle District of Georgia. Ordered by U.S. Mag Judge Claude W. Hicks, Jr. on 1/19/10. (CWH) (Entered: 01/19/2010)
Online	34	01/19/2010	NOTICE of Estimated Sentencing Guidelines as to James Anthony Pompey Range of between 188 and 235 months. (ans) (Entered: 01/20/2010)
Runner	--	01/20/2010	Notice of Error in Filing (related document(s): 34 Notice of Estimated Sentencing Guidelines) - wrong document attached. (ans) (Entered: 01/20/2010)
Online	35	01/20/2010	NOTICE of Estimated Sentencing Guidelines as to James Anthony Pompey Range of between 188 and 235 months. (ans) (Entered: 01/20/2010)
Online	36	01/20/2010	PLEA SHEET as to James Anthony Pompey (ans) (Entered: 01/20/2010)

- ☐ [Online](#) 37 01/20/2010 NOTICE of DNA Testing as to James Anthony Pompey (ans) (Entered: 01/20/2010)
- ☐ [Online](#) 38 01/20/2010 NOTICE TO RETAINED ATTORNEY John Gee Edwards appearing for James Anthony Pompey of Court's policy regarding withdrawal of retained attorneys in criminal cases. (ans) (Entered: 01/20/2010)
- ☐ [Online](#) 39 01/22/2010 NOTICE OF ATTORNEY APPEARANCE: John Gee Edwards appearing for James Anthony Pompey Entry of Appearance for Attorney Alan Baum (Edwards, John) (Entered: 01/22/2010)
- ☐ [Online](#) 40 01/22/2010 MOTION for Discovery by James Anthony Pompey.. Motion(s) referred to Richard L. Hodge.(Edwards, John) (Entered: 01/22/2010)
- ☐ [Online](#) 41 02/10/2010 MOTION for Extension of Time to File Particularized Motions by Leonard Earnest Royster.. Motion(s) referred to Richard L. Hodge.(Harvey, Bruce) (Entered: 02/10/2010)
- ☐ [Online](#) 42 02/12/2010 MOTION for Extension of Time to File by James Anthony Pompey. (Attachments: # 1 Text of Propose Order). Motion(s) referred to Richard L. Hodge.(Edwards, John) (Entered: 02/12/2010)

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