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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

No. C 11-0249 MMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION TO EXTEND STAY; VACATING  
HEARING**

v.

APPROXIMATELY \$104,770 IN UNITED STATES CURRENCY,

Defendant.

Before the Court is plaintiff United States of America's (the "Government") motion, filed October 12, 2011, to extend for 90 days the stay in the above-titled forfeiture action.<sup>1</sup> Claimant Frank Joseph Alioto ("Alioto") has filed opposition, to which the Government has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision thereon, VACATES the hearing scheduled for December 16, 2011, and rules as follows.

Pursuant to 18 U.S.C. § 981, "[u]pon the motion of the United States, the court shall stay [a] civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the

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<sup>1</sup> In accordance with the Court's prior order, the Government, on November 30, 2011, filed ex parte and under seal two declarations in support of its motion.

1 prosecution of a related criminal case.”<sup>2</sup> See 18 U.S.C. § 981(g)(1). Although the court  
2 “may determine that a stay is unnecessary if a protective order limiting discovery would  
3 protect the interest of one party without unfairly limiting the ability of the opposing party to  
4 pursue the civil case,” see 18 U.S.C. § 981(g)(3), under no circumstances may the court  
5 “impose a protective order as an alternative to a stay if the effect of such protective order  
6 would be to allow one party to pursue discovery while the other party is substantially unable  
7 to do so,” see id.

8 By order filed June 22, 2011, the Court granted a stay of 90 days, denied Alioto’s  
9 request for a protective order allowing him partial discovery, and required the Government  
10 “to meet the burden placed on it by 18 U.S.C. § 981(g)” in any motion seeking to extend the  
11 stay. (See Amended Order Granting Plaintiff’s Motion to Stay at 3:23-24.) By the instant  
12 motion, the Government seeks such an extension. In opposition thereto, Alioto again seeks  
13 a protective order allowing for the production of “all records and documents relevant to the  
14 drug detector dog team’s reliability and performance.” (See Claimant’s Proposed Order Re  
15 Motion to Stay, filed October 26, 2011, at 1:18-19.)

16 The Court, having reviewed the parties’ respective submissions, including the ex  
17 parte declarations submitted under seal by the Government, finds that lifting the stay “will  
18 adversely affect the ability of the Government to conduct a related criminal investigation.”  
19 See 18 U.S.C. § 981(g)(1). The Court further finds Alioto’s requested protective order would  
20 not “protect the interests of one party without unfairly limiting the ability of the opposing party  
21 to pursue the civil case.” See 18 U.S.C. § 981(g)(3).

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25 <sup>2</sup> “In [subsection (g)], the terms ‘related criminal case’ and ‘related criminal  
26 investigation’ mean an actual prosecution or investigation in progress at the time at which  
27 the request for the stay, or any subsequent motion to lift the stay is made. In determining  
28 whether a criminal case or investigation is ‘related’ to a civil forfeiture proceeding, the court  
shall consider the degree of similarity between the parties, witnesses, facts, and  
circumstances involved in the two proceedings, without requiring an identity with respect to  
any one or more factors.” See 18 U.S.C. § 981(g)(4).

1           Accordingly, the Government's motion to extend the stay is hereby GRANTED and  
2 the instant action is hereby STAYED for 90 days, said stay beginning November 30, 2011.

3           **IT IS SO ORDERED.**

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5 Dated: December 12, 2011

  
MAXINE M. CHESNEY  
United States District Judge

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