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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
\$150,000.00 *RES IN LIEU* REAL  
PROPERTY AND IMPROVEMENTS  
LOCATED AT 2441 MISSION STREET,  
SAN FRANCISCO, CALIFORNIA,  
Defendant.

Case No. [13-cv-02062-SI](#)

**ORDER RE: SHAMBHALA HEALING  
CENTER, INC.’S 12(B)(1) MOTION TO  
DISMISS; PLAINTIFF’S MOTION TO  
ENFORCE SETTLEMENT; STATUS OF  
LIS PENDENS**

Re: Dkt. Nos. 95, 99, 101, 104, 107, 121

On October 31, 2014, the Court heard argument on (1) claimant Shambhala Healing Center, Inc.’s (“SHC”) motion to dismiss plaintiff’s complaint, (2) plaintiff’s motion to enforce settlement, (3) plaintiff’s motion for summary judgment, (4) SHC’s motion to deny or defer summary judgment, and (5) plaintiff’s motion to strike customer claimants. On November 5, 2014, plaintiff filed a motion for leave to file an amended complaint, which has been fully briefed and is set for hearing on December 12, 2014. The Pouras have also renewed their request that the *lis pendens* be withdrawn by plaintiff pursuant to the Amended Order of Judgment entered by this Court.

Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter scheduled for hearing on December 12, 2014 is appropriate for resolution without oral argument and therefore VACATES the hearing. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the Court hereby **GRANTS** SHC’s motion to dismiss, **ORDERS** the Pouras to comply with plaintiff’s subpoena, **ORDERS** plaintiff to withdraw the *lis pendens*, and **DENIES** all other motions as moot.

## BACKGROUND

1  
2 On May 6, 2013, plaintiff the United States of America (“plaintiff”) filed this *in rem* civil  
3 forfeiture action against defendant Real Property and Improvements Located at 2441 Mission  
4 Street, San Francisco, California (“Real Property”). Docket No. 1, Compl. at 1. In its complaint,  
5 plaintiff alleges that SHC operates a marijuana dispensary out of defendant Real Property. *Id.* at  
6 2. Plaintiff alleges that SHC’s use of defendant Real Property is in violation of 21 U.S.C.  
7 §§ 841(a) and 856, which plaintiff alleges prohibit the operation of marijuana dispensaries. *Id.* at  
8 4. Plaintiff alleges that defendant Real Property is “subject to forfeiture” pursuant to 21 U.S.C.  
9 § 881(a)(7), which permits government seizure of any real property, including any right, title, and  
10 interest, when such property is used in violation of, *inter alia*, 21 U.S.C. §§ 841(a) and 856. *Id.*  
11 However, plaintiff has not physically seized defendant Real Property. *Id.* Instead, pursuant to 18  
12 U.S.C. §§ 985(b)(1) and (c)(1), plaintiff notified the owners of defendant Real Property, Ebrahim  
13 and Valentin Poura (“the Pouras”), of this forfeiture action. *Id.* Plaintiff also recorded “a *lis*  
14 *pendens* in the county records to demonstrate the status of the defendant real property in this *in*  
15 *rem* action.” *Id.*

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18 On June 6, 2013, SHC filed a claim in this action asserting “an ownership interest” in  
19 defendant Real Property based on its leasehold interest in said property, and requesting that: (1)  
20 defendant Real Property not be forfeited to plaintiff; (2) SHC remain in possession of defendant  
21 Real Property; and (3) “the Court deny the relief requested in the complaint in its entirety.”  
22 Docket No. 14, SHC’s Claim at 1-2. On June 10, 2013, the Pouras filed a claim asserting their  
23 ownership of defendant Real Property. Docket No. 15, Pouras’ Claim at 1-3. On June 24, 2013,  
24 the Pouras filed an answer to plaintiff’s complaint requesting that defendant Real Property not be  
25 forfeited to plaintiff. Docket No. 17, Pouras’ Answer at 9.

26  
27 On March 27, 2014, plaintiff, the Pouras, SHC, and certain customer claimants attended a  
28 settlement conference. Docket No. 82, Amended Order of Judgment at 2. As a result of the

1 settlement conference, plaintiff reached a settlement agreement with the Pouras whereby the  
2 Pouras agreed to pay plaintiff \$150,000 by “no later than January 27, 2015.” *Id.* Upon payment  
3 of the \$150,000, plaintiff agreed that the \$150,000 would “be substituted as the defendant real  
4 property . . . [and] forfeited to the United States pursuant to 21 U.S.C. § 881(a)(7), to be disposed  
5 of according to law.” *Id.* On April 6, 2014, the terms of the settlement agreement became part of  
6 the Court’s Amended Order of Judgment. *Id.* On or about September 15, 2014, the Pouras paid  
7 the \$150,000 to plaintiff pursuant to the terms of the settlement agreement. Docket No. 104, Exh.  
8 7, Email from A. Perteet to E. Safire dated 9/16/14. SHC has brought this instant motion to  
9 dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure  
10 12(b)(1). Docket No. 107, SHC’s Motion to Dismiss. SHC alleges that as a result of the Pouras’  
11 payment of the \$150,000 to plaintiff, the defendant Real Property is no longer the defendant in this  
12 case. *Id.* at 4. SHC alleges that the defendant is now the \$150,000 sum the Pouras paid to  
13 plaintiff “as substitute *res in lieu* of the defendant real property,” pursuant to the terms of the  
14 settlement agreement. *Id.* Accordingly, SHC contends that this case should be dismissed for  
15 mootness because “no claimant to the action asserts a ‘right, title or interest’” to the \$150,000.  
16 Docket No. 107, SHC’s Motion to Dismiss at 2. Thus, according to plaintiff, the Court no longer  
17 has subject matter jurisdiction because there is no longer an “actual case or controversy.” *Id.*  
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### 21 **LEGAL STANDARD**

22 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s  
23 jurisdiction over the subject matter of the complaint. *See* Fed. R. Civ. Pro. 12(b)(1). The party  
24 invoking the jurisdiction of the federal court bears the burden of establishing that the court has the  
25 requisite subject matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life*  
26 *Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citation omitted). “In resolving a Rule 12(b)(1)  
27 *factual* attack on jurisdiction, the district court may review evidence beyond the complaint without  
28

1 converting the motion to dismiss into a motion for summary judgment.” *In re Digimarc Corp.*  
2 *Derivative Litigation*, 549 F.3d 1223, 1236 (9th Cir.2008) (citation and internal brackets omitted).  
3 A complaint will be dismissed if, looking at the complaint as a whole, it appears to lack federal  
4 jurisdiction either “facially” or “factually.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039  
5 (9th Cir. 2004). When the complaint is challenged for lack of subject matter jurisdiction on its  
6 face, all material allegations in the complaint will be taken as true and construed in the light most  
7 favorable to the plaintiff. *NL Indus. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). In deciding a  
8 Rule 12(b)(1) motion, which mounts a factual attack on jurisdiction, “no presumption of  
9 truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not  
10 preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the  
11 plaintiff will have the burden of proof that jurisdiction does in fact exist.” *Thornhill Pub. Co. v.*  
12 *Gen. Tel. & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (quoting *Mortensen v. First Fed.*  
13 *Savings & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977)).

14  
15 The jurisdiction of federal courts depends on the existence of a “case or controversy” under  
16 Article III of the Constitution. *Pub. Utils. Comm’n v. Fed. Energy Regulatory Comm’n*, 100 F.3d  
17 1451, 1458 (9th Cir.1996). Article III § 2 of the Constitution requires the existence of a “case” or  
18 “controversy” through all stages of federal judicial proceedings. *Lewis v. Continental Bank Corp.*,  
19 494 U.S. 472, 477 (1990). Thus, a claim is moot if it has lost its character as a present, live  
20 controversy, and if no effective relief can be granted: “Where the question sought to be  
21 adjudicated has been mooted by developments subsequent to filing of the complaint, no justiciable  
22 controversy is presented.” *See Flast v. Cohen*, 392 U.S. 83, 95 (1968). Similarly, “a dispute  
23 solely about the meaning of a law, abstracted from any concrete actual or threatened harm, falls  
24 outside the scope of the constitutional words ‘Cases’ and ‘Controversies’.” *Alvarez v. Smith*, 558  
25 U.S. 87, 93 (2009) (citations omitted).  
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**DISCUSSION**

**I. The Court’s Jurisdiction Exists Only as to the \$150,000 Substitute Res**

“A civil forfeiture proceeding under § 881 is an action *in rem*.” *Republic Nat. Bank of Miami v. United States*, 506 U.S. 80, 84 (1992) (citation omitted). In an *in rem* proceeding, the defendant is the property. *United States v. \$814,254.76 In U.S. Currency*, 51 F.3d 207, 211 (9th Cir. 1995) (citation omitted). The defendant property is also referred to as the “*res*.” *See, e.g., United States v. All Funds in Account Nos. 747.034/278, 747.009/278, & 747.714/278 in Banco Espanol de Credito, Spain*, 295 F.3d 23, 25 (D.C. Cir. 2002). “In exercising *in rem* jurisdiction, the court has authority over the property (the *res*) and may adjudicate claims of ownership.” *Id.* In civil forfeiture proceedings, it is well established that the defendant real property may be substituted for a sum of money. *See, e.g., Republic National Bank of Miami*, 506 U.S. at 82-83; *United States v. Real Property Located at 22 Santa Barbara Drive*, 264 F.3d 860, 866-67 (9th Cir. 2001); *Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 424 F.3d 852, 855 (9th Cir. 2005). When a sum of money is substituted for the defendant property, the sum of money becomes the new defendant, also called the “substitute *res*,” and the court maintains jurisdiction only over the “substitute *res*.” *See United States v. Sum of \$70,990,605*, 991 F. Supp. 2d 144, 149 (D.D.C. 2013), *citing All Funds in Account Nos. 747.034/278, 747.009/278, & 747.714/278 in Banco Espanol de Credito, Spain*, 295 F.3d at 25 (“The Court’s jurisdiction in an *in rem* action is over the seized funds themselves. While exercising that jurisdiction, the court ‘may adjudicate claims of ownership,’ but the court’s jurisdiction does not extend beyond those funds.”).

In civil forfeiture proceedings, parties with “ownership or other [possessory] interests” in the *res* may intervene as “claimants” in order to “defend [their] right to the property against the government’s claim.” *See United States v. One Parcel of Land*, 902 F.2d 1443, 1444 (9th Cir. 1990); *see also United States v. One 1985 Mercedes*, 917 F.2d 415, 419 (9th Cir. 1990) (citation omitted). Thus, in civil forfeiture actions, claimants are essentially intervenors who voluntarily

1 become parties to the action. *See United States v. Contents of Accounts Numbers 3034504504 &*  
2 *144-07143 at Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 971 F.2d 974, 978 (3d Cir. 1992). In  
3 order to intervene and assert a claim to the *res*, claimants must demonstrate an ownership or other  
4 possessory interest in the *res*. *See One Parcel of Land*, 902 F.2d at 1444.

5 SHC, as the possessor of a leasehold interest in the defendant Real Property, voluntarily  
6 joined this action in order to assert its claim to said Real Property. Docket No. 14, SHC's Claim.  
7 Thus, SHC's claim to the Real Property created a live "case or controversy" and conferred this  
8 Court with subject matter jurisdiction. *See Lewis*, 494 U.S. at 477 (federal jurisdiction requires a  
9 live "case" or "controversy" throughout entire litigation); *see also One Parcel of Land*, 902 F.2d at  
10 1444 (claimant must have possessory interest in *res* in order to assert claim to *res*). However, now  
11 that the defendant Real Property has been substituted out of this action and replaced by the  
12 \$150,000 sum the Pouras paid to plaintiff pursuant to the settlement agreement, neither SHC nor  
13 any of the other claimants asserts any interest in the *res*. Docket No. 107, SHC's Motion to  
14 Dismiss at 4.  
15

16 SHC argues that the Court no longer has jurisdiction over the defendant Real Property  
17 because in an *in rem* action the court loses jurisdiction over the original *res* when it is substituted  
18 out for a sum of money. *Id.* at 7. SHC is correct that a court maintains jurisdiction only as to the  
19 *res* that is before it. *See Sum of \$70,990,605*, 991 F. Supp. 2d at 149. Thus, if under the terms of  
20 the settlement agreement, the \$150,000 became the new *res* in this action upon the Pouras'  
21 payment of the \$150,000 to plaintiff, then this Court only has jurisdiction over claims to  
22 ownership of the \$150,000 -- of which there are none. *Id.*  
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25 SHC contends that the terms of the settlement agreement unequivocally establish that the  
26 Pouras' timely payment of the \$150,000 sum to plaintiff was all that was required to effectuate the  
27 change of *res* in this case from the Real Property to the \$150,000 sum. Docket No. 107, SHC's  
28 Motion to Dismiss at 7, n.2. However, plaintiff contends that the settlement agreement required

1 that the Pouras do more than just pay plaintiff \$150,000 in order for the *res* to become the  
2 \$150,000 sum. Docket No. 113, Plaintiff’s Opposition at 3. In its opposition to SHC’s motion to  
3 dismiss, plaintiff implies that the *res* would continue to be the Real Property until the Pouras  
4 successfully satisfy the “remaining terms” of the settlement agreement. Docket No. 113,  
5 Plaintiff’s Opposition at 3. Despite plaintiff’s failure to specify what remaining terms the Pouras  
6 need to satisfy, the Court presumes that plaintiff was referring to the settlement agreement’s  
7 paragraph five, which states that the Pouras shall “assist the United States in good faith, as needed  
8 against the remaining claimants involved” in this action. Docket No. 82, Amended Order for  
9 Final Judgment at 3. However, the Court finds that under the terms of the settlement agreement  
10 the original *res* was substituted out for the \$150,000 sum as “substitute *res in lieu* of defendant  
11 real property” upon the Pouras’ timely payment of the \$150,000 to plaintiff – nothing more was  
12 required to effectuate the change of *res* in this action.  
13

14           There are a number of passages from the settlement agreement which establish that the  
15 \$150,000 sum became the *res* upon the Pouras’ timely payment. First, there is paragraph three,  
16 which is cited by SHC in its motion to dismiss and by plaintiff in its opposition. *See* Docket No.  
17 107, SHC’s Motion to Dismiss at 3; Docket No. 113, Plaintiff’s Opposition at 3. Paragraph three  
18 reads, in pertinent part, as follows:  
19

20           Claimants Ebrahim Poura and Valintin Poura agree to pay the United States  
21 the sum of \$150,000 as substitute *res in lieu* of the defendant real property  
22 not later than January 27, 2015 . . . . Said \$150,000 shall be substituted as  
23 the defendant real property herein, and shall be forfeited to the United  
24 States pursuant to 21 U.S.C. § 881(a)(7), to be disposed of according to law  
25 . . . . The United States agrees to tender to escrow a Withdrawal of *Lis*  
26 *Pendens*, to be recorded concurrently with payment to the United States of  
27 the full amount of the substitute *res*. Upon payment of the substitute *res*  
28 and satisfaction of the remaining terms of this agreement, the United States  
agrees to forego any further action against the Claimants’ ownership  
interest in the defendant real property based on the facts alleged in the  
Verified Complaint.

Docket No. 82, Amended Order for Judgment at 2.

1 Paragraph three clearly shows that plaintiff agreed to withdraw the *lis pendens*  
2 “concurrently” with the Pouras’ “payment of the full amount of the substitute *res.*” *Id.* This is  
3 significant because plaintiff has never physically seized the defendant Real Property. Docket No.  
4 1, Compl. at 4. Therefore, the *lis pendens* was essentially the only effective means by which  
5 plaintiff controlled the defendant Real Property.<sup>1</sup> *Id.* Thus, the withdrawal of the *lis pendens*  
6 shows that the plaintiff intended to release the Real Property from this action upon the Pouras’  
7 payment of the substitute *res.*  
8

9 Additionally, the Court finds further indication of plaintiff’s intent to release the defendant  
10 Real Property, upon the Pouras’ timely payment, in the settlement agreement’s paragraphs eight,  
11 nine, and ten. Docket No. 82, Amended Order of Judgment at 4-5. For example, paragraph eight  
12 provides that: “Claimants shall maintain the defendant real property in the same condition and  
13 repair as existed as of the date of the posting, normal wear and tear excepted, until the  
14 \$150,000.00 substitute *res* payment.” *Id.* at 4 (emphasis added). Additionally, paragraph nine  
15 provides that: “[until the \$150,000.00 payment is made, Claimants shall maintain any and all  
16 loan payments and insurance policies currently in effect with respect to the properties, including  
17 policies covering liability to persons injured on said property and for property damage to the  
18 defendant real property.” *Id.* at 5 (emphasis added). And paragraph ten provides that: “[until  
19 Claimants have paid the \$150,000.00 in full, Claimants shall not convey, transfer, encumber, lien,  
20 or otherwise pledge the defendant real property without the prior, written approval of the United  
21 States.” *Id.* (emphasis added). Thus, it is clear from the terms of the settlement agreement that not  
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25 <sup>1</sup> “While the *lis pendens* . . . was designed to give notice to third parties and not to aid  
26 plaintiffs in pursuing claims, the practical effect of a recorded *lis pendens* is to render a  
27 defendant’s property unmarketable and unsuitable as security for a loan. A *lis pendens* notice acts  
28 as a cloud against the property, effectively preventing sale or encumbrance until the litigation is  
resolved or the *lis pendens* is expunged.” *Castro v. Saxon Mortgage Servs., Inc.*, No. C 09-0030  
PJH, 2009 WL 837589, at \*2 (N.D. Cal. Mar. 27, 2009) (internal citations and quotation marks  
omitted).



1 only were plaintiffs to withdraw the *lis pendens* upon the Pouras' payment of the \$150,000, but  
2 the Pouras were to regain complete control of the property, including the right to sell. *Id.* As  
3 such, the Court finds that the Pouras' timely payment of the \$150,000 to plaintiff resulted in the  
4 release of the defendant Real Property and the substitution of the \$150,000 sum as the new *res* in  
5 this case.

6 Plaintiff points to the last sentence in paragraph three of the settlement agreement as  
7 "language which clearly contradicts" SHC's assertion that the Real Property is no longer the *res* in  
8 this case. Docket No. 113, Opposition to Motion to Dismiss at 3. For purposes of clarity, that  
9 sentence is as follows:

11 Upon payment of the substitute *res* and satisfaction of the remaining terms  
12 of this agreement, the United States agrees to forego any further action  
13 against the Claimants' ownership interest in the defendant real property  
14 based on the facts alleged in the Verified Complaint.

15 Docket No. 82, Amended Order of Judgment at 2.

16 Plaintiff suggests that this sentence be read expansively, and in isolation, to mean that  
17 plaintiff was to maintain control over the Real Property until the Pouras satisfied the conditions of  
18 the settlement agreement's paragraph five, which required the Pouras to continue to help plaintiff  
19 litigate against SHC. Docket No. 82, Amended Order of Judgment at 3. However, the Court will  
20 not read this sentence in isolation as plaintiff suggests. Instead, the Court reads this sentence in  
21 the context of the entire settlement agreement.<sup>2</sup>

22 As noted earlier, the terms of the settlement agreement clearly establish that the Real  
23 Property was released upon the Pouras' timely payment of the \$150,000. Thus, the Court finds

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25 <sup>2</sup> Plaintiff also contends that the Court maintains jurisdiction over SHC's leasehold interest  
26 in the Real Property because plaintiff and the Pouras agreed only to release the Pouras' ownership  
27 interest. Docket No. 113, Plaintiff's Opposition at 3-4. It is true that a leasehold interest may be  
28 the independent *res* in a civil forfeiture action. *See, e.g., United States v. All Right, Title & Interest in Real Prop. & Appurtenances Thereto Known as 35 Fulling Ave., Tuckahoe, N.Y.*, 772 F. Supp. 1433, 1437 (S.D.N.Y. 1991). However, in this case the leasehold interest was only made part of this action by way of the Real Property. If plaintiff wanted to maintain an action against SHC's leasehold, they should not have substituted the Real Property out of this case.

1 that the last sentence of the settlement agreement’s paragraph three merely establishes that  
2 plaintiff agreed to forego bringing *another* forfeiture action against the Pouras “based on the facts  
3 alleged in the Verified Complaint,” only if the Pouras satisfied all the terms of the settlement  
4 agreement. *Id.* at 2. Accordingly, the Court finds that the Real Property was replaced as  
5 defendant (*res*) in this action by the \$150,000 sum when the Pouras made their timely payment of  
6 the \$150,000 to plaintiff.

7  
8 Citing *Republic Nat. Bank of Miami v. United States*, 506 U.S. 80, 87 (1992), plaintiff  
9 argues that this Court maintains jurisdiction over the Real Property because, according to plaintiff,  
10 *in rem* jurisdiction remains throughout the course of a civil forfeiture action “so long as  
11 jurisdiction was properly obtained at the initiation of the action.” Docket No. 113, Opposition to  
12 Motion to Dismiss at 4. Plaintiff’s reliance on *Republic* is misplaced. In *Republic*, unlike in this  
13 case, the claimant continued to assert a claim to the substitute *res*. See *Republic Nat. Bank of*  
14 *Miami*, 506 U.S. at 89. Furthermore, unlike in this case, the government in *Republic* argued that  
15 the Court no longer had jurisdiction over the substitute *res* because the government transferred the  
16 substitute *res* out of the judicial district. *Id.* Ultimately, the *Republic* court held that an appellate  
17 court continues to have jurisdiction over the *res* even when the prevailing party has transferred the  
18 *res* out of the judicial district. See *Republic Nat. Bank of Miami*, 506 U.S. at 89. However, the  
19 *Republic* court did not hold, as plaintiff suggests, that jurisdiction can never be destroyed in an *in*  
20 *rem* action once it has been “properly obtained.” *Id.* More specifically, the *Republic* court did not  
21 hold that jurisdiction remains even when no party asserts a claim to the *res* before the court. *Id.*

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23  
24 The only *res* in this action is the \$150,000 sum. Here, unlike in *Republic*, neither SHC nor  
25 any other party asserts a claim to the substitute *res*. See, e.g., Docket No. 108, Decl. of Jesse Stout  
26 at 3; Docket No. 109, Decl. of Al Shawa at 3. Therefore, the Court maintains jurisdiction only  
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1 over the \$150,000 sum and can only adjudicate claims of ownership to said sum.<sup>3</sup> *See Sum of*  
2 *\$70,990,605*, 991 F. Supp. 2d at 149. Thus, because no party to this action asserts a claim over the  
3 *res*, there is no “actual case or controversy” and this action must be dismissed for lack of subject  
4 matter jurisdiction on grounds of mootness. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968).

5 Finally, the Court notes that the Department of Justice *Asset Forfeiture Policy Manual*  
6 (“DOJ Forfeiture Manual”) establishes that the government is well aware that releasing a  
7 defendant real property from a civil forfeiture action and replacing it with a substitute *res* in the  
8 form of a sum of money “effectively moots any unsettled forfeiture claims against the released  
9 property.” Department of Justice, *Asset Forfeiture Policy Manual*, Chap. 3: Settlements, Sec.  
10 VII.A. (2012). The DOJ Forfeiture Manual states in pertinent part:  
11

12 [T]he Government may accept and forfeit an agreed amount of money in  
13 lieu of seized forfeitable property. In a judicial forfeiture case, with court  
14 approval, the Government may also accept and forfeit an agreed amount of  
15 money in lieu of forfeitable property, including real estate, that has not been  
16 seized.

17 Accepting and forfeiting a sum of money in place of directly forfeitable  
18 property and releasing the forfeitable latter property **effectively moots any  
19 unsettled forfeiture claims against the released property**. It is  
20 imperative, therefore, that all interests in the property be resolved before the  
21 property is released.

22 *Id.* (emphasis added).<sup>4</sup>

23 As such, SHC's motion to dismiss for lack of subject matter jurisdiction is **GRANTED**.  
24 Furthermore, as discussed above, the Pouras' payment of the \$150,000 sum imposed a duty on  
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26 <sup>3</sup> During the hearing on October 31, 2014, plaintiff appeared to argue that the court could  
27 concurrently maintain *in rem* jurisdiction over a substitute *res* and an original *res*, even where no  
28 party asserts a claim to the original or the substitute *res*. The Court invited plaintiff to provide the  
Court with case law supporting this argument, but plaintiff has not done so, and the Court has  
found no such authority in its own research.

<sup>4</sup> In its opposition to SHC's motion to dismiss, plaintiff appears to concede this point by  
acknowledging that SHC lacks standing in this action because it does not have a valid interest in  
the substitute *res*. Docket No. 113, Opposition to Motion to Dismiss at 5. (“Additionally,  
Shambhala states that it does not have an interest in the substitute *res* . . . . Therefore, Shambhala  
has no standing.”).

1 plaintiff, under the terms of the settlement agreement, to withdraw the *lis pendens* currently  
2 encumbering the Real Property. The Court therefore **ORDERS** plaintiff to withdraw the *lis*  
3 *pendens* **no later than December 19, 2014.**

4  
5 **II. Motion to Enforce Settlement**

6 The settlement agreement requires the Pouras to “assist the United States in good faith, as  
7 needed against the remaining claimants involved in [this] action or any related civil forfeiture  
8 action involving the tenants (Shambhala Healing Center, Inc.) of the defendant real property.”  
9 Docket No. 82, Amended Order of Judgment at 3. In the event that the Pouras fail to assist the  
10 United States as required, the Pouras must forfeit their ownership interest in the Real Property to  
11 plaintiff on January 28, 2015.<sup>5</sup> *Id.* Plaintiff contends in its motion that the Pouras have failed to  
12 “assist the United States” as required by the settlement agreement, and ask the Court to enforce the  
13 agreement, requiring the Pouras to forfeit their ownership interest in the Real Property.<sup>6</sup>

14  
15 In April of 2014, Plaintiff contacted the Pouras to request that they produce  
16 “documentation of the payments for Rent made by Shambhala to the Pouras since March 2011.”  
17 Docket No. 104, Plaintiff’s Motion to Enforce Exh. 4 at 2. Since then, the parties have exchanged  
18 extensive correspondence on the matter. On September 8, 2014 plaintiff served a subpoena to  
19 produce documents on Mr. Poura. Mr. Poura responded on September 15, 2014, objecting to the  
20 production of documents, claiming that they “constitute records that are private and protected by  
21 Pouras’ constitutional rights.” *Id.* at Exh 1. As an alternative, the Pouras agreed to “stipulate to  
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25 <sup>5</sup> In response to the Pouras' argument that the motion is premature, plaintiff concedes that  
26 the it “is willing to have the Court enter an order forfeiting the ownership of the defendant real  
27 property to the United States on January 28, 2015.” Plaintiff’s Reply, Docket No. 114.

28 <sup>6</sup> While the Court no longer has *in rem* jurisdiction over the Real Property, the Court does  
have jurisdiction to enforce the terms of the settlement. *See TNT Mktg., Inc. v. Agresti*, 796 F.2d  
276, 278 (9th Cir. 1986); Amended Order of Judgment at 6.

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the total amount of rent received during any relevant time period.” *Id.* Mr. Poura also made himself available to be deposed on October 21 or 22, 2014. Docket. No. 112, Pouras Opposition at 2. While it appears that plaintiff is indeed interested in deposing Mr. Poura, it takes the position that failing to produce business records relating to SHC's rental payments violates the term of the settlement agreement requiring the Pouras to assist the United States. Docket No. 104, Plaintiff's Motion at 4.

The Court agrees with plaintiff that the terms of the settlement agreement require the Pouras to produce the requested documents. However, the Pouras' position – that offering to be deposed in lieu of producing documents constitutes “assistance in good faith” under the settlement agreement—was not an unreasonable interpretation of the terms of the settlement. The Court therefore declines to enter an order of forfeiture at this time. However, the Court ORDERS the Pouras to produce the requested documents to plaintiff **no later than December 19, 2015.**

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**CONCLUSION**

For the foregoing reasons and on the basis of the record before it, the Court hereby **GRANTS** SHC’s motion to dismiss plaintiffs’ Complaint for lack of subject matter jurisdiction and finds that the \$150,000 sum has been substituted as the defendant in this matter in lieu of the former defendant Real Property pursuant to the settlement agreement. The Court **ORDERS** plaintiff to release the *lis pendens* currently recorded on the former defendant Real Property **no later than December 19, 2014**. The Court **ORDERS** the Pouras’ to produce the records related to rental payments that plaintiff has requested no later than **December 19, 2014**. The Court’s lack of jurisdiction over the former defendant Real Property moots the pending motions for summary judgment, to deny or defer summary judgment, to strike the customer claimants, and for leave to amend the Complaint. These motions are **DENIED** as moot. This order resolves Docket Nos. 95, 99, 101, 104, 107, and 121.

**IT IS SO ORDERED.**

Dated: December 8, 2014

  
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SUSAN ILLSTON  
United States District Judge

United States District Court  
Northern District of California