

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

2 BRIAN J. STRETCH (CSBN 163973)
3 Chief, Criminal Division

4 STEPHANIE M. HINDS (CSBN 154284)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-6816
8 Facsimile: (415) 436-6748
Email: stephanie.hinds@usdoj.gov

E-FILED - 3/5/09

Attorneys for Plaintiff

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

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)

Case No. C 07-3120 RMW

15 v.)

- 16 1. 1997 LAMBORGHINI DIABLO, VIN)
- 17 ZA9RU37P6VLA12636,)
- 18 2. 2006 PORSCHE CAYENNE TURBO,)
- 19 VIN WP1AC29P96LA91296,)
- 20 3. \$8,692.42 IN FUNDS SEIZED FROM)
- 21 COMMERCE BANK ACCOUNT)
- 22 HELD IN THE NAME OF PSA, LLC.,)
- 23 4. \$6,314.76 IN FUNDS SEIZED FROM)
- 24 COMMERCE BANK ACCOUNT)
- 25 HELD IN THE NAME OF)
- 26 PHARMACY USA, LLC, AND)
- 27 5. \$1,076,636.89 IN FUNDS SEIZED)
- 28 FROM TD AMERITRADE ACCOUNT)
- HELD IN NAME OF CHRISTOPHER)
- NAPOLI,)

STIPULATION AND ~~PROPOSED~~ ORDER RE STAY OF ACTION

Defendants.)

1 IT IS HEREBY STIPULATED by and between plaintiff United States of America and
2 claimants Christopher Napoli, Christine Napoli, Pharmacy USA LLC and PSA LLC, through
3 undersigned counsel, that this action be stayed pursuant to 21 U.S.C. § 881(j). The parties
4 contend that a stay of this action is warranted under § 881(j) because the government is presently
5 conducting an criminal investigation concerning claimant Christopher Napoli and others in
6 regards to the distribution of controlled substances via the internet. Some of the other targets of
7 the investigation have been indicted in this district in a case captioned *United States v. Andrew*
8 *Russo, et al*, CR 06-00748 RMW. The investigation is continuing with respect to Christopher
9 Napoli. Since the criminal activity at issue in the investigation and related criminal indictment
10 forms, in large part, the basis for the forfeiture allegations in the government's complaint for
11 forfeiture in this action, the parties agree that a stay in the forfeiture proceeding is appropriate at
12 this time in order to preserve the confidentiality of the government's criminal investigation
13 and Christopher Napoli's right against self-incrimination in the related criminal matter. The
14 parties thus request that matter be stayed pending resolution of the criminal investigation
15 concerning Mr. Napoli and that any pending deadlines or assigned dates also be stayed and
16 vacated.

17 The parties have further agreed that during the period of the Stay, claimants may pursue
18 discovery from DJ Johnson and NTS Services Corp., 205 Enterprise Drive, Pekin, IL 61554, and
19 any related person or entity, consistent with what is required under the applicable Federal Rules
20 of Civil Procedure. Further discovery may be undertaken on different subjects or of unrelated
21 persons or entities during the period of the stay by agreement of the parties or upon Motion and
22 further Order.

23 Upon the resolution of the criminal investigation, the parties will notify the Court so that the
24 forfeiture matter may be set for further status. Alternatively, should the Court wish to set the
25

26
27 //

28 //

1 matter for status at this time, the parties request that the matter be set for status in approximately
2 6 months.

3 DATED: _____ /s/
4 STEPHANIE M. HINDS
5 Assistant United States Attorney
6
7

8 DATED: _____ /s/
9 CHRISTOPHER J. CANNON
10 Attorney for Christopher Napoli,
11 Christine Napoli, Pharmacy USA, LLC
12 and PSA, LLC
13

14 **[PROPOSED] ORDER RE STAY**

15 Upon the stipulation of counsel, and good cause appearing, IT IS HEREBY ORDERED that
16 the above-entitled civil forfeiture action is stayed in light of the pending related criminal
17 investigation of claimant Christopher Napoli.

18 IT IS FURTHER ORDERED that during the period of the stay, the parties may pursue
19 discovery against the third parties identified above in a manner consistent with the terms of this
20 stipulation.

8/14/09 @ 10:30 A.M.

21 IT IS FURTHER ORDERED that this matter is continued until _____ for status.
22

23
24 DATED: 3/5/09


25 RONALD M. WHYTE
26 United States District Judge
27
28