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E-FILED: 9/29/10

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

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ANDREW THOMAS RUSSO, et al.,
Defendants.

Case No. CR-06-00748-RMW
ORDER RE RELATED CASE NOTICES

UNITED STATES OF AMERICA,
Plaintiff,
vs.
1997 LAMBORGHINI DIABLO,
VIN: ZA9RU37P6VLA12636,
Defendant.

Case No. C-07-03120-RMW
ORDER RE RELATED CASE NOTICES

ORDER RE RELATED CASE NOTICES
Case No. CR-06-00748-RMW

1 UNITED STATES OF AMERICA,

2 Plaintiff,

3 vs.

4 NAPOLI, et al.,

5 Defendants.

Case No. CR-10-00642-RS

ORDER RE RELATED CASE NOTICES

7 The question before the court is whether the cases listed below, or some of them, should
8 be related.
9

10 Case	Subject Matter	Status
11 <i>United States v. Russo, et al.</i> CR-06-0748 RMW	Conspiracy to distribute controlled substances over internet involving defendants Andrew Russo, Dennis Leborgne, David John and Jon Tuite	Judgments entered following plea agreements against Russo, Leborgne and John in 2008; Tuite case transferred to South Carolina in 2007 Pursuant to Rule 20 plea and sentence
14 <i>United States v. 1997 Lamborghini</i> C-07-3120 RMW	Forfeiture of assets related to CR-06-0748 per ¶ 7 of complaint	Dismissed on 9/13/2010 without prejudice per request of government now stating forfeiture relates to CR-10-0642 RS
17 <i>United States v. Real Property 205 SE Spanish Trail</i> C-07-3874 RMW	Forfeiture of assets apparently related to CR-06-0748 with Michael Arnold as claimant	Dismissed on 12/24/2008 without prejudice on stipulation of parties
19 <i>United States v. 2008 Infiniti</i> C-09-1728 RMW	Forfeiture of assets related to CR-06-0748 per ¶ 2 of complaint	Dismissed on 9/15/2010 without prejudice on stipulation of parties that case related to CR-10-0620 WHA
21 <i>United States v. Smoley</i> CR-10-0619 JSW	Conspiracy to distribute controlled substances over internet involving Robert Smoley	Pending before Judge White
24 <i>United States v. Perkins</i> CR-10-0620 WHA	Conspiracy to distribute controlled substances over internet involving Melisa Perkins	Pending before Judge Alsup

<p>1 <i>United States v. Napoli, et al.</i> 2 CR-10-0642 RS</p>	<p>3 Conspiracy to distribute 4 controlled substances over 5 internet involving Christopher 6 Napoli, Daniel Johnson, 7 Salvatore, Steven Paul, 8 Jeffrey Entel, Joseph Carozza, 9 Jeffrey Herholz, Darrell 10 Creque, Michael Arnold, 11 Diego Podolsky Paes, Dino 12 Antonioni</p>	<p>13 Pending before Judge Seeborg</p>
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14 The government has filed Notices of Related Cases in some of the cases and seems to have
15 taken a somewhat different position on the forfeiture cases now than it did in the past. It does
16 appear that each of the criminal cases arises out of an on-going investigation of internet pharmacies.
17 However, it also appears *Russo* involves different parties than the other cases and that none of the
18 pending cases are related to *Russo*. In any event, even if the later cases which are pending in the San
19 Francisco Division are “related” to the *Russo* case, assignment of those cases to me, the judge who
20 handled the *Russo* case, is not likely to conserve judicial resources and promote the efficient
21 determination of the actions. The *Russo* case was disposed of by plea agreements and a Rule 20
22 transfer. I did not become involved in the substance of the case except to the extent necessary for
23 sentencing and, in particular, did not become concerned with the conduct of other than that of
24 defendants Russo, Leborgne, and John. I also did not have to resolve any significant legal issues. In
25 other words, my involvement with *Russo* would not enable me to handle the pending cases with any
26 more efficiency than the judges currently assigned. I had essentially no substantive involvement
27 with the forfeiture cases.

28 The cases now pending in the San Francisco Division may be related. However, the fact that
they all involve internet pharmacies that may have been investigated in the same on-going
investigation does not mean that they concern the same alleged events, occurrences, transactions or
property. *See* Crim. L.R.8-1(b)(1). In any event, the question of whether the cases other than *Russo*,
i.e. those now pending in the San Francisco, should be related is properly left to the discretion of
Judge White, who has the pending case with the lowest case number.

For the above reasons, the court orders:

1 1. *United States v. Smoley*, CR-10-0619 JSW; *United States v. Perkins*, CR-10-0619 WHA;
2 and *United States v. Napoli, et al.*, 10 CR-0620 RS, are not related to *United States v. Russo*, CR-06-
3 1748 RMW, and

4 2. The question of whether *United States v. Smoley*, CR-10-0619; *United States v. Perkins*,
5 CR-10-0619; and *United States v. Napoli, et al.*, 10 CR-0620, are related is left to the discretion of
6 Judge White as *Smoley* has the lowest case number of the pending cases.

7 DATED: 9/29/10

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10 RONALD M. WHYTE
11 United States District Judge

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