

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KRYSTLE BROWN)	
)	Civil Action No. 13-CV-686 (ESH)
On behalf of all others similarly situated)	
)	
Plaintiff,)	
v.)	
)	
THE DISTRICT OF COLUMBIA)	
)	
CATHY LANIER, CHIEF OF POLICE)	
)	
VINCENT GRAY, MAYOR)	
)	
Defendants.)	

CONSENT MOTION TO STAY

Pursuant to Federal Rule of Civil Procedure 6(b) and Local Civil Rule 7, Defendants District of Columbia, Cathy Lanier, and Vincent Gray (collectively, “Defendants”), by and through counsel the Office of the Attorney General of the District of Columbia, respectfully move to stay the above-captioned litigation pending legislative action by the Council of the District of Columbia to amend existing civil forfeiture laws.

Plaintiff’s Class Action Complaint alleges that Plaintiff’s car was improperly seized by the District of Columbia Metropolitan Police Department and that District of Columbia law does not provide her with a prompt, post-deprivation opportunity to challenge that seizure and the continued retention of the car pending possible civil forfeiture proceedings. Class Action Compl., ¶¶ 3-6. Plaintiff further alleges that the Metropolitan Police Department’s financial interest in forfeitures and the waivable bond requirement for challenging forfeiture violate the Due Process Clause. *Id.* at ¶¶ 61-64. Plaintiff’s car has since been released back to her.

There are currently two bills before the D.C. Council that would address the gravamen of Plaintiff's Complaint. Councilmember Tommy Wells, the chairman of the committee considering the bills, has convened a working group to reconcile the two and generate a compromise bill. Counsel for both parties are included in the group.

In light of these legislative developments and the programmatic changes instituted by the District, the parties have reached an agreement to stay the pending litigation until the anticipated compromise bill passes (or fails to pass). The terms of this agreement are set forth in the Memorandum of Understanding ("MOU") attached to this Motion as Exhibit A. The parties believe that implementing the terms of the MOU will address the issues raised in this lawsuit to the extent feasible under existing law.

In accordance with Local Civil Rule 7(m), Defendants conferred with Plaintiffs, and Plaintiffs have consented to this motion.

The grounds and reasons for granting this motion are set forth more fully in the accompanying Memorandum of Points and Authorities and proposed Order.

Respectfully submitted this 16th day of August, 2013.

Respectfully submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN A. EFROS
Assistant Deputy Attorney General
Public Interest Litigation Division

/s/ Grace Graham
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Chief, Equity Section
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONSENT
MOTION TO STAY**

In support of its Consent Motion to Enlarge Time, the District of Columbia, Cathy Lanier, and Vincent Gray rely upon the following points and authorities:

1. Fed. R. Civ. P. 6(b)(1)(B);
2. Fed. R. Civ. P. 6(d);
3. LCvR 7(m);
4. Plaintiff will not be prejudiced by the relief sought in Defendants’ Motion, as their counsel has consented to the relief; and
5. This Court’s inherent power to control its docket.

Dated: August 16, 2013

Respectfully submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN A. EFROS
Deputy Attorney General
Public Interest Litigation Division

/s/ Grace Graham
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Defendants.)	

[PROPOSED] ORDER

Upon consideration of Defendants’ consent motion to stay proceedings, and upon lack of opposition thereto, it is by the Court, this ____ day of _____, 2013,

ORDERED that Defendants’ motion be GRANTED;

ORDERED that all deadlines in this case, including Defendants’ deadline to respond to Plaintiff’s Class Action Complaint, Motion for Class Certification, and Motion for Preliminary Injunction shall be stayed at least until the Council of the District of Columbia has voted on a bill to amend the District of Columbia’s civil forfeiture laws;

ORDERED that the terms of the Memorandum of Understanding entered into by the parties shall be incorporated by reference into this Order but that the enforcement provisions contained in the Memorandum shall be the exclusive means of enforcing the terms of the Memorandum; and it is

FURTHER ORDERED that, when the stay put in place by this Order expires, Defendants shall, within five (5) business days, move the Court either to establish a new schedule for the stayed deadlines or to dismiss the litigation with Plaintiff's consent.

HON. ELLEN HUVELLE
UNITED STATES DISTRICT COURT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KRYSTLE BROWN,)	
)	
Individually And On)	
Behalf Of A Class of)	
Similarly Situated)	
Plaintiffs,)	
)	
v.)	Case No. 1:13-cv-00686-ESH
THE DISTRICT OF COLUMBIA,)	
)	
CATHY LANIER, CHIEF OF POLICE,)	
)	
VINCENT GRAY, MAYOR)	
)	
Defendants.)	
)	

MEMORANDUM OF UNDERSTANDING

Plaintiff, Krystle Brown, and Defendants, the District of Columbia, Cathy Lanier and Vincent Gray, hereby agree and stipulate to the Memorandum of Understanding in the above-captioned case:

Current Status of Litigation. Plaintiff filed a Class Action Complaint, Motion for Preliminary Injunction, and Motion for Class Certification (collectively, “Plaintiff’s Filings”) on May 15, 2013, seeking relief for alleged constitutional violations involving some of the same issues as in Judge Sullivan’s decision in *Simms v. District of Columbia*, 872 F.Supp.2d 90 (D.D.C. 2012). Since the time of filing, Plaintiff’s counsel and counsel for Defendants have been working to implement changes to the District of Columbia’s forfeiture process. Given those efforts, Plaintiff has consented to several motions to extend the District’s responses to the Plaintiff’s Filings. In light of the progress that is being made on obtaining relief for putative

class members and on improving the District's forfeiture procedures generally, and in light of pending legislation providing reforms that would address the constitutional infirmities alleged in Plaintiff's Class Action Complaint, Plaintiff and Defendants have agreed to jointly move for a stay of proceedings until new legislation addressing the District's forfeiture laws becomes effective, at which time the parties shall advise the Court as to how they wish to proceed. The parties are currently working together, along with other interested entities, on these legislative efforts. Either party may move to terminate the stay in the event that the other party fails to comply with the terms of this Memorandum of Understanding ("MOU"). This stay will allow the parties to devote energy to addressing the constitutional violations alleged by Plaintiff instead of litigating.¹

1. Release of Seized Vehicles. The parties agree that they will continue to work together through informal channels to return seized vehicles to owners as quickly as practicable in the manner in which they have been working together since the filing of the *Powell*, *Chung*, and *Moreira* cases in this Court. This informal process involves only a small percentage of the vehicles being held as it applies only to seized vehicles specifically brought to the District's attention after the Public Defender Service learns about the seizure of a particular vehicle. It is the intent of the parties to continue this process. To date, the parties have arranged the return of over forty vehicles in this manner. Further, the District has chosen not to pursue forfeiture against the over 200 vehicles seized before January 1, 2013.

¹ It is not the intention of either party that the interim measures agreed upon in this MOU are coextensive with the process required by the Constitution or constitute waivers of any rights, claims, or defenses in subsequent litigation. The interim measures are also not intended to reflect the parties' beliefs about what would be an optimal outcome for the current legislative process.

2. Release of Evidentiary Holds. The parties agree that they will continue to facilitate the speedy release of evidentiary holds placed on vehicles. Current policy requires forms to be submitted to police by prosecutors at the United States Attorney's Office ("USAO") or the District's Office of Attorney General ("OAG") before a vehicle can be released. Both parties will attempt to continue working in good faith with the USAO and OAG prosecutors to ensure that the USAO and OAG continue to develop and implement practices and procedures to promptly release evidentiary holds on vehicles.

3. Reviewing Status of Impounded Vehicles. The District agrees to continue reviewing the cases of vehicles that are held (including those that are seized in the future) by the Metropolitan Police Department and to release those vehicles to the owners as quickly as practicable, either with or without conditions, depending on the District's decision about whether it will seek forfeiture of the vehicle. The District also agrees to provide bi-weekly reports to Plaintiff's counsel to ensure that the process of review is moving as quickly as practicable. These reports will include information in the following categories:

- a) The number of total vehicles currently held;
- b) The number of vehicles that have been released from evidentiary holds;
- c) The number of vehicles approved for return with no conditions;
- d) The number of vehicles approved for return with conditions;
- e) The number of vehicles actually returned to their owners; and
- f) List of vehicles and identifying information for vehicles which can be released but for which the District is having difficulty notifying the owner.

In addition to the bi-weekly reports described above, in order to allow Plaintiff's counsel to monitor the efficacy of the MOU in meeting the constitutional violations alleged, on request the District shall provide information identifying individual vehicles and their owners that are being

held, including any contact information for the owners that is available to the District.

Plaintiff's counsel shall only make such a request to "spot check" compliance with the terms of the MOU and shall not do so for more than five vehicle owners in any one-month period. These checks will be selected by Plaintiff's counsel at random based on a list of property control numbers of seized vehicles provided by the District.

4. Moratorium on Vehicle Auctions. The District agrees to continue its current moratorium on the sale of vehicles seized for forfeiture.

5. Notice to Vehicle Owners and Lienholders Whose Vehicles Are Seized For Forfeiture. The District will provide registered owners and registered lienholders of property seized by the District following execution of this MOU with information on, and forms for: (a) submitting claims; (b) obtaining prompt preliminary release; and (c) submitting bonds, applications for waiver or reduction of bonds, and petitions for mitigation or remission of forfeiture. Such information will be given to owners along with any notice of the District's intent to forfeit the owner's property. The parties have agreed to certain interim notice forms to implement this process pending the consideration of the D.C. Council of proposed forfeiture legislation. The parties agree to continue to work together to disseminate the interim notice forms to property owners as quickly as possible and to revise those forms if necessary.

6. Information and Notice of Currently Impounded Vehicles. The District agrees to inform all registered owners and registered lienholders of vehicles currently within the District's custody about how to apply for preliminary or permanent release of those vehicles. For such owners and lienholders the District additionally agrees to provide the same interim notice forms as those provided to the owners of property seized by the District following execution of this MOU.

7. Standards for Determining Indigence in Bond Waiver Applications. The District agrees that it will implement as soon as practicable standards for review of applications for waiver of the bond requirement that are consistent with the eligibility standards for Criminal Justice Act services set forth in Standard 4 of the Memorandum from Chief Judge H. Carl Moultrie I to All Members of the District of Columbia Bar, dated March 17, 1983, as amended. Additionally, the District agrees to waive the bond requirement for any individual who has been found indigent by the D.C. Superior Court or U.S. District Court for the District of Columbia in the case resulting in the seizure or has been found indigent by one of those courts in the six months preceding the filing of a claim. The application for waiver or reduction of bond will be formatted to allow all necessary information for the District to implement this standard and need not be notarized. The District agrees not to require any notarized documents or tax filings in a waiver application other than the affidavit sworn under penalty of perjury attesting to the truth of information contained in the application form. Should the applicant materially and intentionally misrepresent information in the application for waiver or reduction of bond, the District may seize and retain the property pending forfeiture proceedings and shall require the applicant to pay the full bond amount without accepting any further waiver applications. The District additionally agrees that this process for determining eligibility for waiver or reduction of bond will apply to all property seized for forfeiture.

8. Notice to Owners and Lienholders Currently in Forfeiture Settlement Negotiations. The District agrees to notify all property owners and lienholders of the new procedures for obtaining preliminary release of the property and for waiver of the bond requirement before entering into any settlement of a forfeiture claim and provide any relevant forms for seeking preliminary release or waiver of bond. This requirement may be met by providing the owner or

lienholder with the interim notice forms and informational material once those documents have been agreed upon by the parties. This provision shall not be interpreted to require any bond that has already been paid to be returned to the owner or lienholder, although the District will in its discretion evaluate a subsequent Application for Waiver or Reduction of Bond using the same criteria set forth above and will return a bond payment if the person otherwise meets indigency requirements.

Enforceability. Breach of this MOU by the District entitles Plaintiff to withdraw consent to the stay of litigation and to re-commence legal proceedings to obtain the relief sought in Plaintiff's Complaint, Motion for Preliminary Injunction, and Motion for Class Certification. Plaintiff agrees to provide the District an opportunity to cure any alleged breach, and may withdraw consent and re-commence litigation, including the preliminary injunction motion, only after good faith efforts to resolve any dispute arising from this MOU have failed.

Status Reports to the Court. The parties agree to provide bi-monthly reports to the Court informing the Court of the status of the parties' efforts to resolve the litigation.

Executed this 16th day of August, 2013.

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