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JS-6
FILED: 8/11/14

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	NO. CV 13-8685 GHK (RZx)
Plaintiff,)	[PROPOSED]
vs.)	CONSENT JUDGMENT OF
\$5,437,986.06 AND \$32,886.36 IN)	FORFEITURE
BANK FUNDS,)	
Defendants.)	

This matter was commenced on November 26, 2013, against the defendants \$5,437,986.06 and \$32,886.36 in Bank Funds, more specifically described as (1) \$5,437,986.06 in bank funds from Australia and New Zealand Banking Group, Ltd. (“ANZ”) account ending in 368¹ held in the name of Morgan Pacific Inter Vivos Settlement Trust (“ANZ 368”); and (2) \$32,886.36 in bank funds from ANZ account

¹ Pursuant to Local Rule 5.2-1, full account numbers have been excluded from this Consent Judgment.

1 ending in 662 held in the name of Morgan Pacific Inter Vivos Settlement Trust (“ANZ
2 662”) (collectively referred to as the “Cook Islands Funds”). The Cook Islands Funds
3 were seized on May 26, 2013 pursuant to an agreement signed by Todd M. Ficeto and
4 his counsel on April 26, 2013, and deposited into an account maintained by the United
5 States Marshals Service.

6 Absolute Activist Value Master Fund Limited, Absolute East West Fund
7 Limited, Absolute East West Master Fund Limited, Absolute European Catalyst Fund
8 Limited, Absolute Germany Fund Limited, Absolute India Fund Limited, Absolute
9 Octane Fund Limited, Absolute Octane Master Fund Limited, and Absolute Return
10 Europe Fund Limited (collectively, “The Absolute Funds”) claim interests in the
11 defendant Cook Islands Funds.

12 No claimants other than The Absolute Funds remain as parties in this case and
13 the time for filing statements of interest has expired.² Plaintiff United States of
14 America (“the United States” or “the government”) and The Absolute Funds have
15 reached an agreement that is dispositive of the action. The parties hereby request that
16 the Court enter this Consent Judgment of Forfeiture (“Consent Judgment”).

17 **WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

18 1. This Court has jurisdiction over the parties and the subject matter of this
19 action.

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23 ² On February 19, 2014, the Court issued an Order Re Stipulation Regarding
24 Partial Dismissal and Withdrawal of Claims between the United States and Todd M.
25 Ficeto; Charles Ficeto, as trustee of Morgan Pacific Inter Vivos Settlement Trust; and
26 Christina Ficeto (Todd Ficeto, Charles Ficeto and Christina Ficeto are referred to
27 collectively as the “Ficeto Claimants”) wherein the United States agreed to dismiss
28 with prejudice the sum of \$550,000.00 of the Cook Islands Funds, to be returned
without interest to Todd Ficeto, and the Ficeto Claimants agreed to withdraw their
claims and not contest forfeiture of the remaining funds in this action. Docket
Number 29.

1 2. Notice of this action has been given in accordance with law. All
2 potential claimants to the defendant Cook Islands Funds, other than The Absolute
3 Funds; Todd M. Ficeto; Charles Ficeto, as trustee of Morgan Pacific Inter Vivos
4 Settlement Trust; and Christina Ficeto, are deemed to have admitted the allegations of
5 the Complaint. The allegations set out in the Complaint are sufficient to establish a
6 basis for forfeiture. The Absolute Funds are relieved of their obligations to file an
7 answer in this litigation.

8 3. The United States of America shall have judgment as to the remaining
9 \$4,920,872.42, plus the interest earned by the United States on the entire amount of
10 Cook Islands Funds since seizure (the “Forfeitable Cook Islands Funds”), and no other
11 person or entity shall have any right, title or interest therein. The United States
12 Marshals Service is ordered to dispose of said funds in accordance with law.³

13 4. The Absolute Funds, on behalf of themselves and their agents and
14 representatives, hereby release and hold harmless the United States, its agencies,
15 agents, officers, employees and representatives, including, without limitation, all
16 agents, officers, employees and representatives of the Federal Bureau of Investigation,
17 as well as all agents, officers, employees and representatives of any state or local
18 government or law enforcement agency involved in the investigation of this matter,
19 from any and all claims, including claims for interest, actions or causes of action,
20 damages, expenses, and costs, known and unknown, which may hereafter be asserted
21 or brought by or on behalf of The Absolute Funds or any of their agents or
22 representatives, arising out of the seizure and/or forfeiture of the defendant Cook
23 Islands Funds and the institution of this matter.

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26 ³ The Absolute Funds submitted a petition for remission to the United States
27 Department of Justice (the “DOJ”) for the defendant assets and other related assets.
28 On or about July 11, 2014, the DOJ issued a preliminary determination to grant the
petition for remission of certain assets, including the Forfeitable Cook Islands Funds,
conditioned on the entry of final order(s) of forfeiture against the asset(s).

1 5. Each of the Parties to this Consent Judgment shall bear its own attorney's
2 fees and other costs in connection with this matter.

3 6. Each of the signatories to this Consent Judgment represents that he or she
4 has the full power and authority (without further approvals or consents) to enter into
5 this Consent Judgment and perform the obligations set forth herein.

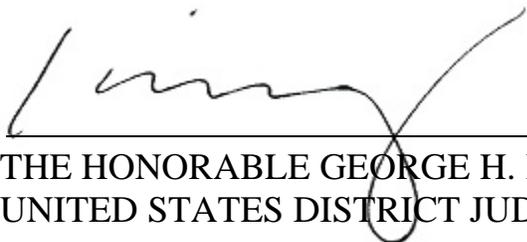
6 7. This Consent Judgment may be signed in counterparts and shall be
7 deemed to have been equally drafted by the parties hereto.

8 8. Based on the DOJ's preliminary determination to grant the petition for
9 remission referenced in footnote 3, *supra*, The Absolute Funds waive all appeal rights
10 with respect to this matter.

11 9. The Court finds that there was reasonable cause for the seizure of the
12 defendant Cook Islands Funds and institution of these proceedings. This judgment
13 shall be construed as a certificate of reasonable cause pursuant to 28 U.S.C. § 2465.

14 IT IS SO ORDERED.

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16 DATED: 8/11, 2014



THE HONORABLE GEORGE H. KING
UNITED STATES DISTRICT JUDGE

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20 **[Signatures of counsel appear on the next page.]**
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1 **Approved as to form and content:**

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3 Dated: August 4, 2014

ANDRÉ BIROTTE JR.
United States Attorney
ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division
STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture Section

8
9 _____
/s/

10 KATHARINE SCHONBACHLER
Assistant United States Attorney
11 Attorneys for Plaintiff
12 United States of America

13
14 DATED: August 4, 2014

LINDA IMES
CHRISTOPHER W. DYSARD
Spears & Imes LLP

17 -and-

18
19 DAVID A. KETTEL
Katten Muchin Rosenman LLP

20
21 Attorneys for The Absolute Funds Claimants:

22 Absolute Activist Value Master Fund Limited,
23 Absolute East West Fund Limited,
24 Absolute East West Master Fund Limited,
25 Absolute European Catalyst Fund Limited,
26 Absolute Germany Fund Limited,
27 Absolute India Fund Limited,
28 Absolute Octane Fund Limited,
Absolute Octane Master Fund Limited, and
Absolute Return Europe Fund Limited