

JS-6

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13 UNITED STATES DISTRICT COURT  
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 15 EASTERN DIVISION

16 UNITED STATES OF AMERICA, ) ED CV 11-01606 VAP(SPx)  
 )  
 17 Plaintiff, )  
 )  
 18 vs. ) **CONSENT JUDGMENT OF FORFEITURE**  
 )  
 19 REAL PROPERTY LOCATED IN )  
 WILDOMAR, CALIFORNIA, (YAP), )  
 20 Defendant. )  
 21 )  
 22 \_\_\_\_\_ )  
 WELLS FARGO BANK, NATIONAL )  
 ASSOCIATION, )  
 23 Claimant. )  
 24 )  
 25 )  
 26 )  
 27 )  
 28 )

1 This action was filed on October 6, 2011. Notice was given  
2 and published in accordance with law. Claimant and lienholder  
3 Wells Fargo Bank, National Association ("Wells Fargo") filed a  
4 claim and answer on December 8, 2012 and January 25, 2012,  
5 respectively. Wells Fargo provided a loan in the original  
6 principal amount of \$337,500.00("Loan"), which Loan is secured  
7 by, among other documents, a Deed of Trust (the "Deed of Trust")  
8 executed by Stephen Yap and dated August 17, 2006, and recorded  
9 against the defendant property on August 25, 2006 with the  
10 Riverside County Recorder, as instrument no. 2006-0628774. (The  
11 Deed of Trust and all other documents executed in connection  
12 with the Loan, or perfecting a security interest granted in  
13 connection with the Loan, shall hereinafter be referred to as  
14 the "Loan Documents.") No other claims or answers have been  
15 filed, and the time for filing claims and answers has expired.  
16 Plaintiff United States of America ("the government") and Wells  
17 Fargo have reached an agreement that, without further litigation  
18 and without an admission of any wrongdoing, is dispositive of  
19 the government's claims against the defendant property, and  
20 hereby request that the Court enter this Consent Judgment of  
21 Forfeiture.

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

23 1. As used throughout, the following terms shall have the  
24 following meaning: (a) "defendant property" shall mean the  
25 defendant real property located at 33030 Mission Trail,  
26 Wildomar, California; and (b) "illegal purpose" shall mean any  
27 purpose that furthers or facilitates the distribution or sale of  
28 marijuana in violation of federal law, including, but not

1 limited to, renting space to a person or entity that sells or  
2 distributes marijuana; or the renting of space to or permitting  
3 the continued tenancy of any person or entity that sells,  
4 distributes or facilitates the sale or distribution of  
5 marijuana.

6 2. This Court has jurisdiction over the parties to this  
7 judgment and the subject matter of this action.

8 3. On or about October 6, 2012, the government filed a  
9 Complaint for Forfeiture pursuant to 21 U.S.C. § 881(a)(7)  
10 against the defendant real property.

11 4. Wells Fargo filed a timely claim and answer. No other  
12 claimant has appeared in this action.

13 5. Notice of this action has been given in accordance  
14 with law. The court entered the default of Stephen M. Yap and  
15 Louree Burriss Yap, the titleholders of the defendant property,  
16 on May 17, 2012. No appearances having been made in this action  
17 by any person other than Wells Fargo, the Court deems that all  
18 other potential claimants admit the allegations of the Complaint  
19 to be true. The Complaint states a valid claim for relief  
20 pursuant to 21 U.S.C. § 881(a)(7).

21 6. Upon execution of this Agreement, Wells Fargo shall  
22 forthwith seek relief from the automatic stay resulting from the  
23 filing of the bankruptcy petition by Stephen Michael Yap and  
24 Louree Burriss-Yap in the United States Bankruptcy Court for the  
25 Central District of California (Riverside), Bankruptcy Petition  
26 #:6:12-bk-17367-MJ. Upon the granting of such relief from the  
27 stay, Wells Fargo shall, as provided for in the Loan Documents,  
28 forthwith exercise its rights of foreclosure against the

1 defendant property, subject to the following: Wells Fargo, at  
2 its cost and expense, shall have the right to perform an  
3 environmental inspection and audit of the defendant property.  
4 If, following a Phase I Environmental Site Assessment and/or any  
5 further environmental subsurface or other investigation of the  
6 defendant property (the "Environmental Investigation"), Wells  
7 Fargo determines that hazardous substances or other adverse  
8 environmental conditions exist at or beneath the defendant  
9 property, or are emanating from the defendant property, Wells  
10 Fargo has the right to refuse to foreclose upon the defendant  
11 property. Wells Fargo shall notify the government within 30 days  
12 of completion of the Environmental Investigation that it has  
13 decided not to exercise its rights to foreclose. In that event,  
14 the government will have the right to exercise its rights to  
15 take possession of and sell the defendant property pursuant to  
16 paragraph 14 below. In the event that Wells Fargo becomes the  
17 owner of the defendant property, whether as a result of  
18 foreclosure of the Deed of Trust or otherwise, Wells Fargo shall  
19 lawfully use and occupy the defendant property in accordance  
20 with the restrictions imposed by paragraph 7 below. If Wells  
21 Fargo fails to comply with any of the terms of paragraph 7, the  
22 interest of Wells Fargo in the defendant property shall be  
23 forfeited to the government pursuant to paragraph 8 below.

24       7. In the event Wells Fargo becomes the owner of the  
25 property, during the time it owns the property, Wells Fargo:  
26           a. shall not use or occupy the defendant property  
27           for any illegal purpose (as defined above), nor shall  
28

1           it allow the defendant property to be used or occupied  
2           for, or involved in, any illegal purpose.

3           b.     shall take reasonable precautions to prevent any  
4           destruction to or diminution in value of the defendant  
5           property and any fixtures thereto resulting from any  
6           illegal purpose.

7           c.     shall not knowingly rent, lease or otherwise  
8           allow the use or occupancy of the defendant property to  
9           (i) any former tenant who used or occupied the  
10          defendant property for any illegal purpose; or (ii) any  
11          person Wells Fargo has reason to believe may use or  
12          occupy the defendant property for any illegal purpose.

13          d.     shall take reasonable steps to prevent the  
14          defendant property from being listed in any  
15          advertisement, publication, directory or internet site  
16          which advertises or indicates that marijuana is  
17          available at the location of the defendant property.

18           8.     In the event that Wells Fargo fails to comply with any  
19     of the terms of paragraph 7 of this Consent Judgment during the  
20     four (4) year period following the entry of this judgment, the  
21     entirety of Wells Fargo's interest in the defendant property  
22     shall be ordered condemned and forfeited to the United States,  
23     subject to the "notice" and "cure" provisions set forth below.  
24     In the event of forfeiture, the Riverside County Recorder shall  
25     index this Judgment in the grantor index under the name of Wells  
26     Fargo Bank, N.A. and in the grantee index in the name of the  
27     United States of America. If the government believes that Wells  
28     Fargo has failed to comply with any provision of paragraph 7, it

1 shall provide written notice of such failure to Wells Fargo (as  
2 well as its respective undersigned counsel), describing the  
3 provision believed to have been violated. Wells Fargo shall  
4 have fifteen (15) days from its receipt of such notice to cure  
5 the violation, or in the event of a failure to comply that  
6 cannot be cured within the fifteen day period, initiate within  
7 that period steps sufficient to cure the failure in a reasonable  
8 period(e.g., initiation of an unlawful detainer action or a  
9 default of a loan), and thereafter continue and complete all  
10 reasonable and necessary steps to produce compliance as soon as  
11 reasonably practicable. If such actions to cure the violation  
12 are not taken, as required above, the government shall file a  
13 Notice of Non-Compliance and Forfeiture with the Court, setting  
14 out the violation and the failure of Wells Fargo to timely cure  
15 the violation. The government shall provide Wells Fargo with  
16 information supporting its allegation that there has been non-  
17 compliance. Wells Fargo shall have fourteen (14) court days  
18 from the filing of the Notice to file a motion to seek relief  
19 from forfeiture, wherein the moving party may argue that, among  
20 other things, it is an "innocent owner" pursuant to 18 U.S.C.  
21 §983(d). If such a motion is filed, the government shall take  
22 no further action until the motion has been determined. If no  
23 such motion is timely filed, the defendant property shall be  
24 forfeited to the United States on the fifteenth (15<sup>th</sup>) day after  
25 the filing of the Notice of Non-Compliance and Forfeiture,  
26 unless the Court orders otherwise. Upon forfeiture under the  
27 terms of this paragraph, the government shall have the right to  
28 take possession of the defendant property without further order

1 of the Court, and the United States Marshals Service, or its  
2 representatives, shall, without further order of the Court,  
3 proceed to take physical possession of the defendant property  
4 and its fixtures, and may evict any and all persons, pets,  
5 livestock, and personal property from the defendant property as  
6 it deems necessary or appropriate. A "filed"-stamped copy of  
7 this Consent Judgment accompanied by a "filed"-stamped copy of a  
8 Notice of Noncompliance and Forfeiture and/or order of the  
9 Court, shall be sufficient to establish the forfeiture of the  
10 defendant property. In the event that the defendant property is  
11 forfeited to the government, Wells Fargo agrees that the United  
12 States Marshals Service may proceed to sell the defendant  
13 property. Thereafter, the United States Marshals Service, or  
14 its representatives, shall promptly proceed to dispose of the  
15 defendant property and to distribute any proceeds from the sale  
16 in accordance with the law.

17 9. In the event Wells Fargo becomes the owner of the  
18 defendant property,, or with the consent of the current owner of  
19 the defendant property, or upon court order despite a lack of  
20 such consent from the current owner, the United States Marshals  
21 Service, or its representatives, shall be allowed to enter the  
22 defendant property for purposes of inspection and inventory.  
23 Such entry shall be permitted by Wells Fargo at a reasonable  
24 time to be agreed upon by the parties. Absent such agreement,  
25 the government may apply to the Court for a writ of entry for  
26 purposes of protecting the government's interests in the  
27 defendant property, in connection with which Wells Fargo may  
28 request a hearing.

1           10. This consent judgment shall only be recorded in  
2 accordance with the provisions of paragraph 8 above.

3           11. In consideration of the government's agreement not to  
4 pursue Wells Fargo's interest in the defendant property, Wells  
5 Fargo shall pay the sum of \$8,000.00 to the government not later  
6 than fifteen days following entry of this consent judgment by  
7 the Court. Such payment shall be made in the form of a  
8 cashier's check made payable to the United States Marshals  
9 Service, and shall be delivered to Assistant United States  
10 Attorney P. Greg Parham, 312 N. Spring Street, 14<sup>th</sup> Floor, Los  
11 Angeles, California 90012. Said sum is hereby ordered forfeited  
12 to the United States of America and no other right, title or  
13 interest shall exist therein. The United States Marshals  
14 Service is ordered to dispose of the funds in accordance with  
15 law.

16           12. In consideration of Wells Fargo's agreement to forfeit  
17 the above-described funds, the government agrees to forego its  
18 attempts to forfeit Wells Fargo's interest in the defendant  
19 property in connection with any conduct committed up to and  
20 including the date of the filing of this proposed consent  
21 judgment. The government agrees that if payment is made as  
22 provided in paragraph 11, it shall execute and record a  
23 Withdrawal of *Lis Pendens* with the County Recorder of Riverside  
24 County within ten days of such payment.

25           13. Should Wells Fargo fail to make the payment required  
26 herein within fifteen days following entry of this consent  
27 judgment, the government shall acquire a lien against the  
28 defendant real property in the sum of \$8,000.00. The



1 government's lien shall include a right of sale, allowing the  
2 government to take possession of and sell the defendant property  
3 at any time after fifteen days after entry of this consent  
4 judgment, unless the parties agree otherwise in writing. The  
5 government shall give written notice to Wells Fargo by letter  
6 directed to Roger D. Reynolds, Senior Counsel, 21680 Gateway  
7 Center Dr., Suite 280, Diamond Bar, California 91765, thirty  
8 (30) days before the government intends to enforce its right of  
9 sale of the property. At the conclusion of that thirty day  
10 period, any occupants or personal property shall be removed from  
11 the property. The United States Marshals Service is hereby  
12 authorized to remove any occupants and/or personal property  
13 remaining on the defendant property thirty days after the giving  
14 of written notice without further order of this Court. The  
15 United States Marshal Service shall thereafter sell the  
16 property. The proceeds of sale shall be applied as follows, to  
17 the extent proceeds are available:

- 18 a. First, to the costs incurred by the United States  
19 Marshals Service in taking possession of and  
20 selling the defendant property;
- 21 b. Second, to the payment due under the terms of  
22 this judgment; and
- 23 c. Third, to Wells Fargo.

24 14. The obligations of Wells Fargo pursuant to this  
25 consent judgment, other than the payment by Wells Fargo set  
26 forth in paragraph 11, shall terminate and be of no further  
27 effect upon the sale or other transfer of ownership of the  
28 defendant property to a third party (including the United States

1 Marshals Service), or of the surrender by Wells Fargo of any  
2 interest in the property. Additionally, these obligations shall  
3 terminate and be of no further effect in the event that the  
4 defendant property is forfeited to the government.

5 15. Except as otherwise set forth in this Consent Judgment  
6 and in particular paragraph 8 above, Wells Fargo has released  
7 the United States of America, its agencies, agents, and  
8 officers, including, without limitation, employees and other  
9 representatives of the Drug Enforcement Administration, from any  
10 and all claims, defenses, actions, or liabilities arising out of  
11 or related to this action against the defendant real property,  
12 including, without limitation, any and all claims for attorneys'  
13 fees, costs or interest which may be asserted by them or on  
14 their behalf.

15 16. The parties shall each bear their own costs and  
16 attorneys' fees in this action.

17 17. The Court shall retain jurisdiction over this matter  
18 to enforce the provisions of this Consent Judgment.

19 18. All notices and other communications provided for in  
20 this Consent Judgment shall be in writing and shall be effective  
21 when given on the earliest of the following dates: (i) the  
22 date when actually delivered if delivered in person to the  
23 recipient; (ii) on the first (1<sup>st</sup>) business day after depositing  
24 such notice with a reputable independent nationally-recognized  
25 overnight courier service addressed to the recipient as set  
26 forth below; or (iii) on the third (3<sup>rd</sup>) day after depositing  
27 such notice in a sealed envelope in the United States mail,  
28 postage prepaid, by registered or certified mail, return receipt

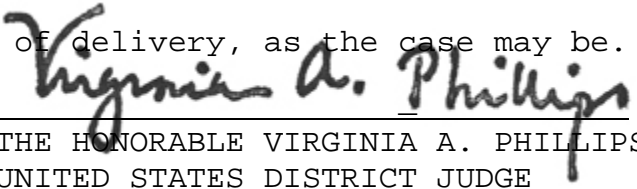
1 requested, addressed to, except as otherwise provided in this  
2 Consent Judgment, the recipient at the address set forth below:

3 To the Government: P. Greg Parham, Assistant U.S. Attorney,  
4 Asset Forfeiture Section, 312 N. Spring Street, 14<sup>th</sup> Floor, Los  
5 Angeles, CA 90012.

6 To Wells Fargo: Roger D. Reynolds, Senior Counsel, 21680 Gateway  
7 Center Dr., Suite 280, Diamond Bar, California 91765,  
8 with a copy to Aaron S. Dyer, Pillsbury Winthrop Shaw Pittman  
9 LLP, 725 S. Figueroa St., Suite 2800, Los Angeles, CA 90017.

10 Any notice so given by mail shall be deemed to have been given  
11 as of the date of delivery (whether accepted or refused)  
12 established by the U.S. Post Office return receipt or the  
13 overnight courier's proof of delivery, as the case may be.

14 Dated: June 18, 2012

  
THE HONORABLE VIRGINIA A. PHILLIPS  
UNITED STATES DISTRICT JUDGE

16 Approved as to Content:

17 DATED: June 14, 2012

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

22 /s/ P. Greg Parham  
23 P. GREG PARHAM  
24 Assistant United States Attorney

25 Attorneys for Plaintiff  
United States of America

26 DATED: June 13, 2012

WELLS FARGO BANK, NATIONAL ASSOCIATION

27 By: /s/ Kimberly Hasen  
28

Name: Kimberly Hasen

Title: Vice President

**Approved as to form:**

DATED: June 14, 2012

/s/ Roger D. Reynolds  
ROGER D. REYNOLDS  
Attorney for Claimant  
WELLS FARGO BANK, NATIONAL ASSOCIATION

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