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 12 United States of America

13 UNITED STATES DISTRICT COURT
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 15 SOUTHERN DIVISION
 16

17 UNITED STATES OF AMERICA,) SA CV 12-0079 JST(JPRx)
)
 18 Plaintiff,)
)
 19 vs.) **CONSENT JUDGMENT OF FORFEITURE**
)
 20 REAL PROPERTY LOCATED AT 440)
 FAIR DRIVE, COSTA MESA,)
 21 CALIFORNIA, (D'ALESSIO)
 INVESTMENTS, LLC),)
)
 22 Defendant.)
)
 23)
 24 DENNIS D'ALESSIO, D'ALESSIO)
 INVESTMENTS, LLC, CENTENNIAL)
 BANK,)
 25)
 Claimants.)
 26)

1 This action was filed on January 18, 2012. Notice was
2 given and published in accordance with law. Claimant and
3 titleholder D'Alessio Investments, LLC ("D'Alessio Investments")
4 filed a claim on February 24, 2012. Claimant Dennis D'Alessio
5 ("D'Alessio") filed a claim on February 24, 2012. Claimant
6 Centennial Bank ("Centennial") filed a claim on March 2, 2012,
7 in conjunction with the loan ("Loan") in the original principal
8 amount of \$3,784,300.00, as evidenced by a Promissory Note (the
9 "Note") dated June 19, 2008 and executed by D'Alessio
10 Investments in the original principal amount of \$3,784,300.00,
11 which Note is secured by, among other documents, a Deed of Trust
12 (the "Deed of Trust"), dated June 19, 2008, executed by
13 D'Alessio Investments and recorded with the Official Records for
14 the County of Orange, State of California, as instrument no.
15 2008000306018. (The Note, Deed of Trust and all other documents
16 executed in connection with the Loan, or perfecting a security
17 interest granted in connection with the Loan, shall hereinafter
18 be referred to as the "Loan Documents"). No other claims or
19 answers have been filed, and the time for filing claims and
20 answers has expired. Plaintiff United States of America ("the
21 government"), D'Alessio Investments, D'Alessio and Centennial
22 have reached an agreement that, without further litigation and
23 without an admission of any wrongdoing, is dispositive of the
24 government's claims against this property, and hereby request
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1 that the Court enter this Consent Judgment of Forfeiture
2 ("Consent Judgment").

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

4 1. As used throughout, the following terms shall have the
5 following meaning: (a) "defendant property" shall mean the
6 defendant real property located at 440 Fair Drive, in Costa
7 Mesa, California; (b) "claimants' property" shall mean any real
8 property that D'Alessio Investments and D'Alessio own, maintain,
9 control or manage, including, but not limited to, the defendant
10 property; and (c) "illegal purpose" shall mean any purpose that
11 furthers or facilitates the distribution or sale of marijuana in
12 violation of federal law, including, but not limited to, renting
13 space to a person or entity that sells or distributes marijuana
14 or the renting of space to or permitting the continued tenancy
15 of any person or entity that sells, distributes or facilitates
16 the sale or distribution of marijuana.

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

19 3. On or about January 18, 2012, the government filed a
20 Complaint for Forfeiture pursuant to 21 U.S.C. § 881(a)(7)
21 against the defendant real property.

22 4. D'Alessio Investments, D'Alessio and Centennial filed
23 claims to the defendant property. No other claimant has
24 appeared in this action.

1 5. Notice of this action has been given in accordance
2 with law. No appearances having been made in this action by any
3 person other than D'Alessio Investments, D'Alessio and
4 Centennial, the Court deems that all other potential claimants
5 admit the allegations of the Complaint to be true. The
6 Complaint states a valid claim for relief pursuant to 21 U.S.C.
7 § 881(a)(7).
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9 6. D'Alessio Investments shall retain possession of and
10 title to the defendant property, and in consideration thereof,
11 D'Alessio Investments, D'Alessio and Centennial agree to abide
12 by the terms of this Agreement. D'Alessio Investments and
13 D'Alessio shall lawfully use and occupy the defendant property
14 in accordance with the restrictions imposed by paragraph 7
15 below. If D'Alessio Investments or D'Alessio fail to comply
16 with any of the terms of paragraph 7, or if Centennial fails to
17 comply with Paragraph 8, or if applicable, Paragraph 7, the
18 interest of the non-complying party or parties in the defendant
19 property shall be forfeited to the government pursuant to
20 paragraph 9 below.
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22 7. Neither D'Alessio Investments, nor D'Alessio (nor
23 Centennial, if required under Paragraph 8 below) shall use or
24 occupy the defendant property, nor shall they allow the
25 defendant property to be used or occupied, for any illegal
26 purpose. Each of D'Alessio Investments and D'Alessio (and
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1 Centennial, if required under Paragraph 8 below) shall take all
2 reasonable precautions to prevent any destruction to or
3 diminution in value of the defendant property and any fixtures
4 thereto. D'Alessio Investments and D'Alessio (and Centennial,
5 if required under Paragraph 8 below) shall not knowingly rent,
6 lease or otherwise allow the use or occupancy of any of
7 claimants' property to (a) any former tenant who used or
8 occupied any of claimants' property for any illegal purpose; or
9 (b) any person D'Alessio Investments and D'Alessio (and
10 Centennial, if required under Paragraph 8 below) have reason to
11 believe may use or occupy the claimants' property for any
12 illegal purpose. D'Alessio Investments and D'Alessio (and
13 Centennial, if required under Paragraph 8 below) shall not
14 knowingly allow any of the claimants' property to be listed in
15 any advertisement, publication, directory or internet site which
16 advertises or indicates that marijuana is available at the
17 location of the claimants' property.¹

20 8. In the event that Centennial becomes the owner of the
21 defendant property whether as a result of foreclosure of the
22 Deed of Trust or otherwise, Centennial acknowledges that it will
23 be required to comply with the provisions of Paragraph 7 above.
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26 ¹ The government is currently informed and believes that
27 there is no location of any claimant's property currently listed
28 in any such publications.

1 9. In the event that any of D'Alessio Investments or
2 D'Alessio (or Centennial, if required under Paragraph 8 above)
3 fail to comply with any of the terms of paragraph 7 of this
4 Consent Judgment during the four (4) year period following the
5 entry of this judgment, the entirety of each non-complying
6 claimants' interest in the defendant property shall be ordered
7 condemned and forfeited to the United States, subject to the
8 "notice" and "cure" provisions set forth below. In the event of
9 forfeiture, the Orange County Recorder shall index this Judgment
10 in the grantor index under the name of D'Alessio Investments,
11 LLC and in the grantee index in the name of the United States of
12 America. If the government believes that D'Alessio Investments,
13 D'Alessio or Centennial have failed to comply with any provision
14 of paragraph 7, it shall provide written notice of such failure
15 to D'Alessio Investments, D'Alessio and Centennial (as well as
16 their respective undersigned counsel), describing the provision
17 believed to have been violated. D'Alessio Investments,
18 D'Alessio and/or Centennial shall have fifteen (15) days from
19 its receipt of such notice to cure the violation. In order to
20 cure the violation, D'Alessio Investments, D'Alessio and/or
21 Centennial shall immediately initiate steps which the government
22 deems to be sufficient to cure the violation (e.g., initiation
23 of an unlawful detainer action) and thereafter continue and
24 complete all reasonable and necessary steps to produce
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1 compliance as soon as reasonably practicable. If the violation
2 is not cured within the 15-day period by initiating such steps,
3 the government shall file a Notice of Non-Compliance and
4 Forfeiture with the Court, setting out the violation and the
5 failure of D'Alessio Investments, D'Alessio or Centennial to
6 timely cure the violation. The government shall provide
7 claimants with all necessary proof and information that supports
8 its allegation that there has been non-compliance. D'Alessio
9 Investments, D'Alessio and/or Centennial shall have fifteen (15)
10 court days from the receipt of the Notice to file a motion to
11 seek relief from forfeiture, wherein the moving party may argue
12 that, among other things, it is an "innocent owner" pursuant to
13 18 U.S.C. § 983(d). If such a motion is filed, the government
14 shall take no further action until the motion has been
15 determined. If no such motion is timely filed, the defendant
16 property shall be forfeited to the United States on the
17 sixteenth (16th) day after the filing of the Notice of Non-
18 Compliance and Forfeiture, unless the Court orders otherwise.
19 Upon forfeiture under the terms of this paragraph, the
20 government shall have the right to take possession of the
21 defendant property without further order of the Court, and the
22 United States Marshals Service, or its representatives, shall,
23 without further order of the Court, proceed to take physical
24 possession of the defendant property and its fixtures, and may
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1 evict any and all persons, pets, livestock, and personal
2 property from the defendant property as it deems necessary or
3 appropriate. A "filed"-stamped copy of this Consent Judgment
4 accompanied by a "filed"-stamped copy of a Notice of
5 Noncompliance and Forfeiture and/or order of the Court, shall be
6 sufficient to establish the forfeiture of the defendant
7 property. In the event that the defendant property is forfeited
8 to the government, D'Alessio Investments, D'Alessio and
9 Centennial agree that the United States Marshals Service may
10 proceed to sell the defendant property. Thereafter, the United
11 States Marshals Service, or its representatives, shall promptly
12 proceed to dispose of the defendant property and to distribute
13 any proceeds from the sale in accordance with the law.
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16 10. Upon the filing of this Consent Judgment, the United
17 States Marshals Service, or its representatives, shall be
18 allowed to enter the defendant property for purposes of
19 inspection and inventory. Such entry shall be permitted by
20 D'Alessio Investments, D'Alessio and Centennial at a reasonable
21 time to be agreed upon by the parties. Absent such agreement,
22 the government may apply to the Court for a writ of entry for
23 purposes of protecting the government's interests in the
24 defendant property, in connection with which D'Alessio
25 Investments, D'Alessio or Centennial may request a hearing.
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1 11. This Consent Judgment shall only be recorded in
2 accordance with the provisions of paragraph 9 above.

3 12. The government shall withdraw its recorded lis pendens
4 upon entry of this Consent Judgment.

5 13. D'Alessio Investments and D'Alessio have agreed to
6 forfeit all right, title and interest in the bank account funds
7 in the amount of \$7,518.40, seized from Commerce West Bank
8 account number xxxxx91, held in the name of D'Alessio
9 Investments, on or about January 27, 2012 (AFTRAK # 95120022-01)
10 ("bank funds"). D'Alessio Investments and D'Alessio shall not
11 challenge, or assist any other person or entity in falsely
12 challenging, the administrative forfeiture of the seized bank
13 funds, and shall withdraw any filed claim to such funds
14 immediately. D'Alessio Investments and D'Alessio have waived
15 all constitutional and statutory challenges to forfeiture of the
16 bank funds on any ground, including that the forfeiture
17 constitutes an excessive fine or punishment.

18 14. Except as otherwise set forth in this Consent Judgment
19 and in particular in Paragraph 9 above, D'Alessio Investments,
20 D'Alessio and Centennial have released the United States of
21 America, its agencies, agents, and officers, including, without
22 limitation, employees and other representatives of the Drug
23 Enforcement Administration and the Internal Revenue Service,
24 from any and all claims, defenses, actions, or liabilities
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1 arising out of or related to this action against the defendant
2 real property, including, without limitation, any and all claims
3 for attorneys' fees, costs or interest which may be asserted by
4 them or on their behalf.

5 15. By executing this Consent Judgment, D'Alessio
6 Investments and D'Alessio, and each of them, acknowledge and
7 agree that in the event of any violation of this Consent
8 Judgment by either D'Alessio Investments or D'Alessio that is
9 uncured as determined pursuant to the terms and procedures set
10 forth in Paragraph 9 above, Centennial shall be entitled to
11 immediately declare the Loan in default and immediately proceed
12 with enforcing all of Centennial's rights and remedies under the
13 Loan Documents, including, without limitation, foreclosure of
14 the Deed of Trust, without any further notice except as may be
15 required under the Loan Documents or in accordance with
16 applicable law. The government acknowledges that Centennial
17 shall not be required to declare the Loan in default and/or to
18 proceed to enforce any of Centennial's rights and remedies under
19 the Loan Documents, including, without limitation, foreclosure
20 of the Deed of Trust, prior to the expiration of any applicable
21 cure period under this Consent Judgment in order for Centennial
22 to establish that Centennial is an "innocent owner" pursuant to
23 18 U.S.C. § 983(d). Centennial agrees and the government
24 acknowledges that Centennial will not seek to enforce its rights
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1 and remedies under the Loan Documents until such time as the
2 expiration of the cure provisions set forth in Paragraph 9
3 above.

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

6 17. The Court shall retain jurisdiction over this matter
7 to enforce the provisions of this Consent Judgment.
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9 18. This Consent Judgment may be executed in any number of
10 counterparts so long as each signatory hereto executes at least
11 one such counterpart. Each such counterpart shall constitute
12 one original, but all such counterparts taken together shall
13 constitute one and the same Consent Judgment.

14 19. All notices and other communications provided for in
15 this Consent Judgment shall be in writing and shall be effective
16 when given on the earliest of the following dates: (i) the
17 date when actually delivered if delivered in person to the
18 recipient; (ii) on the first (1st) business day after depositing
19 such notice with a reputable independent nationally-recognized
20 overnight courier service addressed to the recipient as set
21 forth below; or (iii) on the third (3rd) day after depositing
22 such notice in a sealed envelope in the United States mail,
23 postage prepaid, by registered or certified mail, return receipt
24 requested, addressed to, except as otherwise provided in this
25 Consent Judgment, the recipient at the address set forth below:
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1 To the Government: P. Greg Parham, Assistant U.S. Attorney,
2 Asset Forfeiture Section, 312 N. Spring Street, 14th Floor, Los
3 Angeles, CA 90012.

4 To D'Alessio: 233 19th St., Apt. A, Newport Beach, CA 92663,
5 with a copy to Janet Sherman, 2115 Main Street, Santa Monica, CA
6 90405.

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8 To D'Alessio Investments: 440 Fair Drive, Costa Mesa, CA 92626
9 with a copy to Janet Sherman, 2115 Main Street, Santa Monica, CA
10 90405.

11 To Centennial: Centennial Bank, 18837 Brookhurst Street, Suite
12 100, Fountain Valley, CA 92708, Attn: Jim Lasher; E-Mail:
13 JLasher@centennialbank.com; with a copy to: Ervin Cohen &
14 Jessup LLP, 9401 Wilshire Blvd., 9th Floor, Beverly Hills, CA
15 90212, Attn: Kenneth Miller, Esq.; E-Mail: kmiller@ecjlaw.com.

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

21 20. Execution by Parties. This Consent Judgment shall
22 only be effective and shall only be binding on the parties if it
23 is executed by the government, D'Alessio, D'Alessio Investments
24 and Centennial and approved by the Court. This Consent Judgment
25 may be executed by transmitting an executed signature page by e-
26 mail in PDF format to the other parties, and by promptly sending
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1 to all other parties an originally executed signature page;
2 provided, however, that if a party fails to subsequently send an
3 originally executed signature page to all other parties, the
4 Consent Judgment shall remain validly executed by PDF format
5 signature.



6 Dated: May 03, 2012

7 THE HONORABLE JOSEPHINE STATON TUCKER
8 UNITED STATES DISTRICT JUDGE

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