

1 Michael J. Lampe #82199  
Michael P. Smith #206927  
2 Matthew D. Owdom #258779  
Law Offices of Michael J. Lampe  
3 108 West Center Avenue  
Visalia, California 93291  
4 Telephone (559) 738-5975  
Facsimile (559) 738-5644

5 Attorneys for Plaintiff  
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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 HSBC BANK USA, N.A., as Trustee for  
12 OMAC-3, a Mortgage Backed Security,

13 Plaintiff,

14 vs.

15 DENNIS J. SCHMIDT, THE INTERNAL  
REVENUE SERVICE, U.S. BANK, N.A., as  
16 Trustee for Terwin Mortgage Trust  
2005-5SL, Asset-Backed Certificates, Series  
17 2005-5SL, and DOES 1-25, inclusive,

18 Defendants.  
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Case No. 1:10-cv-00385-OWW-DLB  
STIPULATION AND ORDER

23 Plaintiff HSBC BANK USA, a National Association, as Trustee for OMAC-3, (*HSBC*) and  
24 Defendants DENNIS J. SCHMIDT (*Schmidt*), THE UNITED STATES OF AMERICA, Internal  
25 Revenue Service (*United States*), U.S. BANK, N.A., as Trustee for Terwin Mortgage Trust  
26 2005-5SL, Asset-Backed Certificates, Series 2005-5SL (*U.S. Bank*), hereby stipulate as follows  
27 and request an order resolving the above-captioned matter.  
28

STIPULATION AND ORDER

1 **THIS STIPULATION IS ENTERED INTO WITH RESPECT TO THE FOLLOWING FACTS:**

2 1. On or about February 11, 2010, HSBC commenced an action against Defendants  
3 Schmidt, the United States, and U.S. Bank by filing a complaint (*the Complaint*) in the Superior  
4 Court of the State of California in and for the County of Stanislaus, Case No. 650489 (*the*  
5 *action*).

6 2. On March 4, 2010, the United States removed the action to the United States  
7 District Court for the Eastern District of California, where the action was docketed as Case No.  
8 1:10-cv-00385-OWW-SMS. In the action, HSBC seeks to enforce a deed executed in 2005 by  
9 Schmidt but lost prior to recordation, equitable subrogation, an equitable lien, and declaratory  
10 relief with respect to certain real property that is the subject of the action, commonly known as  
11 2220 Boston Way, Modesto, California, 95355, in Stanislaus County (*the Modesto Property*),  
12 and more particularly described as follows:

13 LOT 6 IN BLOCK 11150 OF BEACON HILL NO. 2, PHASE 2, AS PER  
14 MAP THEREOF RECORDED FEBRUARY 22, 1989 IN BOOK 33 OF  
MAPS, AT PAGE 73, STANISLAUS COUNTY RECORDS.

15 APN: 077-36-45-101

16 3. The parties wish to resolve any outstanding disputes relating to the causes of  
17 action set forth in the Complaint.

18  
19 **IT IS THEREFORE AGREED BETWEEN THE PARTIES AND REQUESTED THAT THE**  
20 **FOLLOWING IS ORDERED BY THE COURT:**

21 4. Schmidt shall execute and notarize a valid, recordable, interspousal transfer deed  
22 transferring his interest in the Modesto Property to his wife, Amelia M. Schmidt, in order to  
23 replace the instrument which was lost prior to recordation during a 2005 refinance transaction  
24 concerning the Modesto Property. HSBC shall provide the deed to be executed to Schmidt's  
25 counsel forthwith. Dennis J. Schmidt shall execute the deed within 14 days of receipt, and shall  
26 forward the executed and notarized deed to HSBC's counsel for recordation in the Official  
27 Records of Stanislaus County.

1           5.     The United States agrees to treat the re-executed interspousal transfer deed  
2 referenced in paragraph 4, above, as if it were recorded on March 17, 2005, for purposes of  
3 determining the priority of the parties' respective interests in the Modesto Property. Thus, the  
4 United States agrees that the secured interest in the Modesto Property held by HSBC and  
5 evidenced by the Deed of Trust recorded on March 28, 2005, as Document No. 2005-0050436  
6 of the of the Official Records of Stanislaus County, is senior to and has priority over its federal  
7 tax lien evidenced by the Notice of Federal Tax Lien recorded on May 20, 2009, as Document  
8 No. 2009-0050148 of the Official Records of Stanislaus County.

9           6.     U.S. Bank, the holder of a second Deed of Trust on the Modesto Property, hereby  
10 relinquishes and disclaims any interest in the Modesto Property adverse to HSBC, however, U.S.  
11 Bank reserves and retains all applicable rights and remedies under the laws of the United States  
12 and the State of California as a junior encumbrancer.

13           7.     HSBC, Schmidt, the United States, and U.S. Bank request that this case be  
14 dismissed on the grounds that a stipulated settlement has been reached between the parties,  
15 the terms of which are contained and agreed to herein, to be ordered by the Court, with a waiver  
16 of costs such that all parties will bear their own costs and attorney's fees, if any there be.

17           8.     The parties stipulate to the Court's retention of jurisdiction for purposes of  
18 enforcing the terms of this agreement.

19  
20           7/2/10  
21 Dated: \_\_\_\_\_

/S/

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CRABTREE & SCHMIDT  
Attorneys for Dennis J. Schmidt  
By:Walter Schmidt

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23  
24           6/29/10  
25 Dated: \_\_\_\_\_

/S/

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LAW OFFICES OF MICHAEL J. LAMPE  
Attorneys for HSBC Bank USA, N.A.  
By: Matthew D. Owdom

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Dated: \_\_\_\_\_

SPECIALIZED LOAN SERVICING LLC  
Authorized Agent for U.S. BANK, N.A.  
By: \_\_\_\_\_

BENJAMIN B. WAGNER  
United States Attorney

6/30/10

/S/

Dated: \_\_\_\_\_

\_\_\_\_\_  
Adair Boroughs  
Trial Attorney, Tax Division  
U.S. Department of Justice

IT IS SO ORDERED.

Dated: July 9, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE