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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,  
  
                    Plaintiff,  
  
          v.  
  
BIC REAL ESTATE DEVELOPMENT  
CORP., et al.,  
  
                    Defendants.

Case No. 1:16-cv-00344-LJO-JLT  
  
**STIPULATION RE: VALLEY  
MORTGAGE INVESTMENTS,  
INC.'S CLAIM FOR ATTORNEYS'  
FEES AND COSTS; [PROPOSED]  
ORDER THEREON**

**STIPULATION**

The following Stipulation re: Valley Mortgage Investments, Inc.'s Claim for Attorneys' Fees and Costs (the "Stipulation") is made by and between (1) David P. Stapleton (the "Receiver"), the Court-appointed receiver for Defendants BIC Real Estate Development Corporation and its subsidiaries and affiliates, including but not limited to, WM Petroleum; Target Oil & Gas Drilling, Inc.; Tier 1 Solar Power Company; Tier 1 Solar Power Company, LLC; and Home Sweet Holdings (collectively, the "Receivership Entities"); (2) Plaintiff Securities and Exchange Commission (the "SEC"); and (3) proposed intervenor Valley Mortgage Investments, Inc. ("VMI") (collectively, with the Receiver and the SEC, the

1 "Parties") by and through their respective counsel of record, and in reliance on and  
2 with respect to the following facts:

3       A. Pursuant to this Court's April 8, 2016 Stipulated Preliminary Injunction  
4 and Orders (1) Freezing Assets, and (2) Appointing a Permanent Receiver (Dkt. No.  
5 42), the Receiver is vested with exclusive authority and control over the property of  
6 the Receivership Entities, including more than sixty (60) residential real properties  
7 (the "Properties") which comprise a substantial portion of the receivership estate  
8 (the "Estate") in the above-entitled action.

9       B. The Court has authorized the Receiver to restore complete record  
10 ownership of the Properties to the Receivership Entities, and thereafter to market  
11 and sell the Properties for the benefit of the Receivership Entities, their Estate, and  
12 their investors and creditors, in accordance with specific procedures (the "Sales  
13 Procedures") established by the Court (Dkt. Nos. 76, 93).

14       C. VMI maintains that, at the time of the Receiver's appointment, thirty-  
15 six (36) of the Properties were subject to senior security interests in its favor, arising  
16 in connection with pre-receivership loans (the "Loans") made by VMI and secured  
17 by certain Properties. On September 14, 2016, and ostensibly in connection with its  
18 claimed interests in certain Properties, VMI filed a Motion for Leave to Intervene  
19 (the "Motion to Intervene") in the above-entitled action (Dkt. No. 91), which  
20 remains pending as of the date of this Stipulation.

21       D. In December 2016, the Receiver and VMI conferred extensively  
22 regarding the issues raised by VMI in its Motion to Intervene, and the Receiver has  
23 agreed to, and has commenced, providing VMI with regular updates regarding his  
24 Property administration and disposition efforts, as well as making monthly  
25 payments on certain Loans, as directed by VMI, along with property tax payments  
26 on all Properties subject to a VMI security interest.

27       E. While the bulk of the substantive issues in VMI's Motion to Intervene  
28 have been or are in the process of being addressed, VMI has maintained a right to

1 recover attorneys' fees and costs associated with its Motion to Intervene, and  
2 otherwise, citing language in the deeds of trust memorializing the security interests  
3 arising in connection with its Loans to the effect that "if any action or proceeding is  
4 commenced which affects Lender's interest in the Property ... then Lender may ...  
5 disburse sums, including reasonable attorney's fees ... to protect Lender's interest."  
6 The SEC and the Receiver have disputed VMI's claim for attorneys' fees and costs.

7 F. On January 10, 2017, VMI filed an Ex Parte Application for Order  
8 Shortening Time to be Heard on Motion for Order Requiring that Sales of Real  
9 Property by Receiver Include VMI's Beneficiary Demands Having an Attorney's Fee  
10 Component Which Fees Shall Be Held In Trust (collectively, the "VMI Ex Parte")  
11 (Dkt. No. 146). In the VMI Ex Parte, VMI requested the implementation of a  
12 mechanism for the reimbursement of its accrued attorneys' fees and costs from the  
13 proceeds of the Receiver's sales of any Properties against which it claims a security  
14 interest, and proposed that it be paid up to \$3,000, per Property, on a Property-by-  
15 Property basis and dependent upon the available equity in any given Property, as the  
16 Receiver's Court-approved sales of the Properties are concluded. The SEC and the  
17 Receiver opposed the VMI Ex Parte (Dkt. Nos. 147, 148) and have disputed VMI's  
18 right to fees and costs, maintaining, among other things, that VMI is not entitled to  
19 any claimed attorneys' fees and costs not directly attributable to any specific  
20 Property, Loan, or deed of trust.

21 G. The Court held a hearing on the VMI Ex Parte on January 11, 2017. At  
22 the hearing, the Parties agreed to stipulate to a resolution of the remaining issues  
23 relating to the VMI Ex Parte, and have agreed as follows:

24 **STIPULATION AND AGREEMENT**

25 Accordingly, and in consideration of the foregoing, the Parties hereby  
26 STIPULATE and AGREE as follows:

27 1. VMI shall transmit a payoff and beneficiary demand (a "Beneficiary  
28 Demand") to the Receiver's escrow agent in connection with the Court-approved

1 sale of each Property in which it claims a secured interest and right to repayment of  
2 attorneys' fees, which Beneficiary Demand may include an attorneys' fees and costs  
3 component payable to VMI, not to exceed \$3,000;

4         2.       At the closing of any Court-approved sale of any Property in which  
5 VMI claims an interest, and absent further order of this Court, the net proceeds from  
6 the sale, after the payment of all outstanding, principal, interest, fees, taxes, and  
7 other liabilities, shall be apportioned, through escrow, as follows:

8               a.       In accordance with the content of VMI's Beneficiary Demand, up  
9 to \$3,000 of the net proceeds from the sale shall be directed by VMI to be  
10 transferred, through escrow, to an account maintained by the Receiver, separate and  
11 apart from any other Receivership Entity accounts (the "Separate Account"), which  
12 account may not be drawn upon absent a further order of this Court, except as  
13 provided in Paragraph 6, below; and

14              b.       All remaining net proceeds from the sale shall be released to any  
15 other account identified by the Receiver and maintained for the benefit and  
16 administration of the Receivership Entities and their Estate;

17         3.       Concurrently with the closing of any Court-approved sale of any  
18 Property in which VMI claims an interest, and the delivery of the associated  
19 Demand, VMI shall provide the Receiver, or his designated agent, with an  
20 appropriate reconveyance or other instrument necessary to release VMI's security  
21 interest and confer title to such Property clear of VMI's security interest to the  
22 Receiver's buyer;

23         4.       VMI shall be entitled to submit a claim to the Receiver pursuant to its  
24 rights in the notes and deeds of trust underlying its Loans, against the funds in the  
25 Separate Account, for the attorneys' fees and costs it has incurred in connection with  
26 its Motion to Intervene, or otherwise, in the above-entitled action (the "VMI Fee  
27 Claim");

28

1           5.       The Receiver and the SEC shall retain the right to object to the VMI  
2 Fee Claim, on any basis, except that the Receiver and the SEC may not object to the  
3 VMI Fee Claim on the grounds that VMI is not a secured creditor with respect to the  
4 Properties on which VMI had a secured Loan, nor shall any objection be made  
5 based on the cancellation of VMI's notes or reconveyance of its deeds of trust;

6           6.       In the event that, in adjudicating the VMI Fee Claim, the Court  
7 determines that VMI is not entitled to any attorneys' fees and costs, or is entitled to  
8 attorneys' fees and costs in an amount less than requested in the VMI Fee Claim,  
9 any funds remaining in the Separate Account after the payment of the VMI Fee  
10 Claim, if at all, shall be immediately released to the Receiver, without further order  
11 of this Court; and

12          7.       The Receiver's agreement to hold up to \$3,000, per Property, in sales  
13 proceeds in the Separate Account as described in Paragraph 2.a, above, shall not be  
14 evidence for or reflect any admission on the part of the Receiver or the SEC as to  
15 VMI's right to attorneys' fees and costs from the proceeds of any closed sales. Each  
16 of the Parties shall also retain and reserve any and all other of their respective rights  
17 arising in connection with the above-entitled action.

18

19           **SO STIPULATED.**

20 Dated: January 18, 2017

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
PETER A. GRIFFIN

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By:           /s/          Joshua A. del Castillo            
JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
DAVID P. STAPLETON

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1 Dated: January 18, 2017

U.S. SECURITIES AND EXCHANGE  
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By:           /s/          John B. Bulgozdy            
JOHN B. BULGOZDY  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION

Dated: January 18, 2017

KLEIN, DeNATALE, GOLDNER,  
COOPER, ROSENLIEB & KIMBALL,  
LLP

By:           /s/          Barry Goldner            
BARRY GOLDNER  
Attorneys for Proposed  
Plaintiff-in-Intervention  
VALLEY MORTGAGE  
INVESTMENTS, INC.

IT IS SO ORDERED.

Dated:           January 23, 2017          

          /s/ Lawrence J. O'Neill            
UNITED STATES CHIEF DISTRICT JUDGE