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

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 BIC REAL ESTATE DEVELOPMENT
22 CORP., et al.,

23 Defendants.

Case No. 1:16-cv-00344-LJO-JLT

STIPULATION RE: (1) RELEASE OF
VALLEY MORTGAGE
INVESTMENTS, INC.'S CLAIM FOR
ATTORNEYS' FEES AND COSTS;
AND (2) WITHDRAWAL OF
RECEIVER'S SURCHARGE DEMAND;
[PROPOSED] ORDER THEREON

Date: NO HEARING REQUIRED
Ctrm: 4
Judge Hon. Lawrence J. O'Neill

24 **STIPULATION**

25 The following Stipulation re: (1) Release of Valley Mortgage Investments,
26 Inc.'s Claim for Attorneys' Fees and Costs; and (2) Withdrawal of Receiver's
27 Surcharge Demand (the "Stipulation") is made by and between (1) David P.
28 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

1 Commission (the "SEC"); and (3) Valley Mortgage Investments, Inc. ("VMI")
2 (collectively, with the Receiver and the SEC, the "Parties") by and through their
3 respective counsel of record, and in reliance on and with respect to the following
4 facts:

5 A. Pursuant to this Court's April 8, 2016 Stipulated Preliminary Injunction
6 and Orders (1) Freezing Assets, and (2) Appointing a Permanent Receiver (Dkt. No.
7 42), the Receiver was vested with exclusive authority and control over the property
8 of the Receivership Entities, including more than sixty (60) residential real
9 properties (the "Properties") which comprised a substantial portion of the
10 receivership estate (the "Estate") in the above-entitled action. VMI maintained a
11 security interest in thirty-six (36) of these Properties.

12 B. Pursuant to a January 18, 2017 stipulation between the Parties (ECF
13 No. 153) and this Court's January 23, 2017 order thereon (ECF No. 154), the
14 Receiver has set aside a total of \$87,000 from the net proceeds of the Court
15 approved sales of those Properties against which VMI has claimed a secured
16 interest, other than those Properties abandoned by the Receiver pursuant to Court
17 orders or that were subject to other disposition.

18 C. Having completed his disposition of the Properties, including the
19 Properties in which VMI and the beneficiaries under VMI's associated deeds of trust
20 (the "VMI Lenders") have claimed a secured interest, on November 2, 2018, the
21 Receiver filed an Omnibus Motion for Order: (1) Approving Receiver's
22 Recommended Treatment of Claims; and (2) Authorizing Recommended
23 Distribution on Allowed Claims (ECF No. 393) (the "Claims Allowance and
24 Distribution Motion"), in connection with which the Receiver made
25 recommendations to the Court regarding his proposed treatment of all timely claims
26 against the Receivership Entities, including VMI's claim (the "VMI Claim") against
27 the Receivership Entities, which included a claim for reimbursement of attorneys'
28 fees and costs.

1 D. On November 2, 2018, the Receiver also filed a Motion for Order
2 Instructing Valley Mortgage Investments, Inc. to Make Payment to the Receiver
3 (ECF Nos. 394, 395) (the "Surcharge Motion") in which the Receiver requested the
4 Court to direct VMI to make payment to the Receiver in the amount of \$467,087.00
5 as reimbursement for administrative expenses incurred in connection with the
6 management and disposition of the Properties in which VMI claimed a secured
7 interest.

8 E. On November 29, 2018, VMI filed a Counter-Motion for Allowance
9 and Payment of Attorney's Fees (ECF No. 398) (the "VMI Counter-Motion") in
10 which VMI requested the Court allow VMI's attorneys' fees and costs in an amount
11 not less than \$116,753.14, with the acknowledgment that the unreimbursed portion
12 of its attorneys' fees was \$110,753.14. In the VMI Counter-Motion, VMI also
13 requested the Court direct the Receiver to pay the \$87,000, previously set aside by
14 the Receiver, to VMI.

15 F. On May 17, 2019, this Court entered its Memorandum Decision (ECF
16 No. 423) addressing the Receiver's Claims Allowance and Distribution Motion and
17 Surcharge Motion, including with respect to the VMI Claim, including the VMI
18 Counter-Motion for attorneys' fees and costs, and the Receiver's request for payment
19 from VMI. Specifically, in pertinent part, the Court:

20 (i) denied the Receiver's Surcharge Motion, without prejudice to the
21 Receiver's submitting a renewed surcharge demand against VMI;

22 (ii) without prejudice to a renewed request for attorneys' fees and
23 expenses by VMI, denied the attorneys' fee and expense component of the VMI
24 Claim and the VMI Counter-Motion, the remainder of which the Parties agree and
25 acknowledge has been satisfied by the payment to VMI of proceeds from the
26 Receiver's Court-approved sales of the Properties in which VMI claimed a secured
27 interest, or by VMI's actual or pending foreclosures of Properties abandoned by the
28 Receiver pursuant to prior to this Court orders; and

1 (iii) approved the Receiver's recommended treatment of claims, with
2 the exception of the attorneys' fee and expense component of the VMI Claim, but
3 denied the Receiver's proposed distribution on allowed claims, pending the
4 resolution of, among other things, the Receiver's surcharge demand against VMI and
5 the attorneys' fee and expense component of the VMI Claim and the VMI Counter-
6 Motion.

7
8 **STIPULATION AND AGREEMENT**

9 Accordingly, and in consideration of the foregoing, the Parties hereby
10 STIPULATE and AGREE as follows:

11 1. VMI, on behalf of itself and the VMI Lenders, withdraws the attorneys'
12 fee and expense component of the VMI Claim and acknowledges and agrees that the
13 VMI Claim has been satisfied, in full. VMI, on behalf of itself and the VMI
14 Lenders, further forever releases the Receiver and the Receivership Entities from
15 any claims or demands for payment arising from or in connection with the
16 Properties, the VMI Claim, or any attorneys' fees and expenses incurred by VMI in
17 connection with any of the Properties;

18 2. The Receiver withdraws and forever releases VMI and the VMI
19 Lenders from any surcharge demand for payment or reimbursement of
20 administrative fees and expenses incurred in connection with the management and
21 disposition of the Properties in which VMI and the VMI Lenders claimed a secured
22 interest; and

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1 3. The \$87,000.00 in sales proceeds from the Properties previously set
2 aside by the Receiver pursuant to a stipulation between the Parties and order of this
3 Court thereon is immediately released to the Receivership Entities, free and clear of
4 any claim by VMI or the VMI Lenders.

5
6 **SO STIPULATED.**

8 Dated: June 11, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

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10
11 By: /s/ Joshua A. del Castillo
12 JOSHUA A. DEL CASTILLO
13 Attorneys for Receiver
DAVID P. STAPLETON

14 Dated: June 11, 2019

U.S. SECURITIES AND EXCHANGE
COMMISSION

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16 By: /s/ John B. Bulgozdy
17 JOHN B. BULGOZDY
18 Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION

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1 Dated: June 11, 2019

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

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3 By: /s/ Barry Goldner

4 BARRY GOLDNER
5 Attorneys for Proposed
6 Plaintiff-in-Intervention
7 VALLEY MORTGAGE
8 INVESTMENTS, INC.

9 **ORDER**

10 The above stipulation is APPROVED.

11 IT IS SO ORDERED.

12 Dated: June 12, 2019

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

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