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5 Refer to File Number: 4158-20093272

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8 **IN THE UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

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11 PNC BANK, N.A., a National Association, as)	CASE NO.: 10-CV-1916-JAM-EFB
12 successor in interest to National City Bank,)	IN ADMIRALTY
13)	ORDER APPOINTING SUBSTITUTE
14 v. Plaintiff(s),)	CUSTODIAN AND AUTHORIZING
15)	MOVEMENT AND INSPECTION OF
16 BELINDA L. SMITH, In Personam; , In)	DEFENDANT VESSEL
17 Personam; B & B DREAMIN', Hull No.)	
GMKD283C505 (the "Vessel"), its engines,)	
18 machinery, appurtenances, etc In Rem,)	
19)	
20 Defendants)	

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19 **Plaintiff PNC BANK, N.A., a National Association ("PNC" or "Plaintiff") , as successor in**
 20 **interest to NATIONAL CITY BANK ("NATIONAL CITY") , by and through its counsel of record**
 21 Hemar, Roussou & Heald, LLP, having appeared and made the following recitals:

22 1. On or about July 20, 2010, the Complaint herein was filed praying that Defendant
 23 Vessel B & B DREAMIN', Hull No. RGMKD283C505, her engines, tackle, accessories, equipment,
 24 furnishings and appurtenances (collectively "the Vessel") and all other necessities thereunder
 25 appertaining and belonging, be condemned and sold to pay Plaintiff's demands and claims and for
 26 other proper relief.

27 2. On or about September 10, 2010, the Clerk of this Court issued a Warrant for Arrest of
 28 the Vessel commanding the United States Marshal for this District to arrest and take into custody the

1 Defendant Vessel and to detain the same in his custody until further order of this Court respecting
2 same.

3 3. It is contemplated that the United States Marshal will seize the Defendant Vessel
4 forthwith. Custody by the United States Marshal requires the services of one or more keepers and does
5 not include charges for wharfage and the other services usually associated with safekeeping vessels
6 similar to the Defendant Vessel.

7 4. The Defendant Vessel is currently located at the Willow Berm Marina located at 140
8 Brannan Island Road, Isleton, California 95641 . National Maritime Services, Inc. has agreed to
9 assume the responsibility for safekeeping the said Vessel and has consented to act as her substitute
10 custodian until further order of this Court. Plaintiff is agreeable to allow National Maritime Services,
11 Inc. to assume the responsibility of safekeeping the Vessel, and National Maritime Services, Inc. has
12 consented to act as its custodian until further order of this Court. National Maritime Services, Inc. has
13 also consented to move the Vessel from its current location to a suitable marine facility, if necessary.

14 5. National Maritime Services, Inc. by certification of Robert McKee, Jr., its Operations
15 Manager, has averred that it will provide insurance and provide the normal and customary custodial
16 services for the Vessel, including attending mooring lines, bilge pumping as necessary, and providing
17 locks and security during their custodianship at a charge of \$300.00 per month plus expenses for
18 materials and services such as locks, welders etc. as needed for properly maintaining the security of the
19 Vessel and its appurtenances. The above monthly custodianship charge does not include moorage for
20 the Vessel. If not paid directly by Plaintiff, the substitute custodian will additionally charge moorage
21 at the rate of \$56.25 per day.

22 6. The substitute custodian National Maritime Services, Inc. is a beneficiary of a
23 Certificate of Liability Policy issued by St. Paul Insurance Co., Policy No. OLO68000483, with limits
24 of \$5,000,000 for damage sustained by third parties due to negligence committed during said custody.
25 National Maritime Services, Inc. has obtained insurance with limits of at least \$5,000,000.00 naming
26 PNC Bank, N.A. and the United States Marshal Service as additional insureds.

27 7. In his Certification, the substitute custodian accepts, in accordance with the terms of
28 this Order, possession of the Vessel, its engines, tackle, accessories, equipment, furnishings and

1 appurtenances, which are the subject of the action herein.

2 8. In consideration of the United States Marshal's consent to the appointment National
3 Maritime Services, Inc. as substitute custodian, Plaintiff agrees to release the United States and the
4 United States Marshal from any and all liability and responsibility arising out of care and custody of
5 the Vessel from the time the United States Marshal transfers possession of the Vessel over to said
6 substitute custodian, and Plaintiff further agrees to hold harmless and indemnify the United States and
7 the United States Marshal from any and all claims whatsoever arising out of the substitute custodian's
8 possession and safekeeping.

9 **THEREFORE, IT IS ORDERED** that the United States Marshal for the Eastern District of
10 California is authorized, upon seizure of the Vessel, pursuant to the Warrant for Arrest, to surrender
11 the possession thereof to National Maritime Services, Inc. as substitute custodian named herein, and
12 that upon such surrender the United States Marshal shall be discharged from the duties and
13 responsibilities for the safekeeping of the Vessel and held harmless from any and all claims arising
14 whatsoever out of said custodial services.

15 **IT IS FURTHER ORDERED** that National Maritime Services, Inc. is appointed custodian of
16 the Vessel and shall retain the Vessel in its custody for possession and safekeeping until further order
17 of this Court and that National Liquidators. may move the Vessel from its current location to a secure
18 facility within the district, if necessary. All costs for such movement shall be paid by Plaintiff and
19 may, upon further order of this Court, be deemed to be administrative costs herein. All persons
20 entering on board the Vessel shall execute a waiver and release in the form attached hereto.

21 **IT IS FURTHER ORDERED** that Plaintiff's attorney serve a copy of this order on the owner
22 of the Vessel.

23 **IT IS FURTHER ORDERED** that the Clerk of this Court deliver three (3) certified copies of
24 this order to the United States Marshal forthwith.

25 DATED this 6th day of October, 2010.

26
27 /s/ John A. Mendez
28 UNITED STATES DISTRICT JUDGE

1 Presented by:

2 HEMAR, ROUSSO & HEALD, LLP

3 By /s/ STEPHEN E. JENKINS

4 STEPHEN JENKINS

5 PAMELA L. COX

6 Attorneys for Plaintiff

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HEMAR, ROUSSO & HEALD, LLP

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