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 7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
 11 UNITED STATES OF AMERICA,) 2:11-CV-02738-GEB-DAD
)
 12 Plaintiff,)
)
 13 v.) STIPULATION AND ORDER FOR
) INTERLOCUTORY SALE OF
) DEFENDANT PROPERTIES
 14 REAL PROPERTY LOCATED AT 105)
 THREE HILLS ROAD, HAYFORK,)
 15 CALIFORNIA, TRINITY COUNTY,)
 APN: 019-530-23-00 INCLUDING)
 16 ALL APPURTENANCES AND)
 IMPROVEMENTS THERETO,)
 17)
 REAL PROPERTY LOCATED AT 1150)
 18 CHROME MINE ROAD, HAYFORK,)
 CALIFORNIA, TRINITY COUNTY,)
 19 APN: 019-530-24-00 INCLUDING)
 ALL APPURTENANCES AND)
 20 IMPROVEMENTS THERETO,)
)
 21 REAL PROPERTY LOCATED AT 241)
 THREE HILLS ROAD, HAYFORK,)
 22 CALIFORNIA, TRINITY COUNTY,)
 APN: 019-530-26-00 INCLUDING)
 23 ALL APPURTENANCES AND)
 IMPROVEMENTS THERETO,)
 24)
 REAL PROPERTY LOCATED AT 1180)
 25 CHROME MINE ROAD, HAYFORK,)
 CALIFORNIA, TRINITY COUNTY,)
 26 APN: 019-530-27-00 INCLUDING)
 ALL APPURTENANCES AND)
 27 IMPROVEMENTS THERETO, and)
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)

1 REAL PROPERTY LOCATED AT 1210)
2 CHROME MINE ROAD, HAYFORK,)
3 CALIFORNIA, TRINITY COUNTY,)
4 APN: 019-530-28-00 INCLUDING)
5 ALL APPURTENANCES AND)
6 IMPROVEMENTS THERETO,)
7)
8 Defendants.)
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12)

13 The United States and claimants Lapoe Smith and Katherine
14 Renee Smith hereby agree and stipulate to the following
15 interlocutory sale pursuant to Rule G(7) of the Supplemental
16 Rules for Admiralty or Maritime Claims and Asset Forfeiture
17 Actions:

18 1. The defendants in this action are described as real
19 property located 105 Three Hills Road, Hayfork, California,
20 Trinity County, APN: 019-530-23-00 (Parcel No. 1); 1150 Chrome
21 Mine Road, Hayfork, California, Trinity County, APN: 019-530-24-
22 00 (Parcel No. 2); 241 Three Hills Road, Hayfork, California,
23 Trinity County, APN: 019-530-26-00 (Parcel No. 3); 1180 Chrome
24 Mine Road, Hayfork, California, Trinity County, APN: 019-530-27-
25 00 (Parcel No. 4); and 1210 Chrome Mine Road, Hayfork,
26 California, Trinity County, APN: 019-530-28-00 (Parcel No. 5)
27 including all appurtenances and improvements thereto and more
28 fully described in Exhibit A attached hereto and incorporated
herein by reference.

29 2. On October 14, 2011, the United States filed a
30 Verified Complaint for Forfeiture *In Rem* alleging that the
31 defendant properties were subject to forfeiture on the grounds
32 that the properties were involved in or traceable to a violation

1 of 31 U.S.C. § 5324(a)(3), or any conspiracy to commit such
2 violation, and are therefore subject to forfeiture to the United
3 States pursuant to 31 U.S.C. § 5317(c)(2); and the real
4 properties were used or intended to be used, in any manner or
5 part, to commit, or to facilitate the commission of, a violation
6 of 21 U.S.C. §§ 841 *et seq.*, an offense punishable by more than
7 one year's imprisonment, and are therefore subject to forfeiture
8 to the United States pursuant to 21 U.S.C. § 881(a)(7).

9 3. The record owner of the defendant properties is Lapoe
10 Smith, a married man as his sole and separate property.

11 4. Beginning on November 9, 2011, for at least 30
12 consecutive days, the United States published Notice of the
13 Forfeiture Action on the official internet government forfeiture
14 site www.forfeiture.gov. A Declaration of Publication was filed
15 on December 23, 2011.

16 5. On November 11, 2011, Lapoe Smith filed a Verified Claim
17 in this action. Furthermore, on November 11, 2011, Katherine
18 Renee Smith filed a Verified Claim in this action. On December
19 9, 2011, Lapoe Smith and Katherine Renee Smith filed a joint
20 Answer. There are no liens against the defendant properties.

21 6. In late 2011, the claimants placed the defendant
22 properties on the market to be sold with Sharon Eggleston Real
23 Estate. On or about January 3, 2012, claimants accepted a sales
24 offer in the amount of \$160,000.00 on the defendant properties.
25 Escrow is estimated to close in the middle of March 2012. The
26 buyer of the defendant properties are Toua Cheng and Roger Vue.

27 7. No other parties have filed claims or answers in this
28 action, and the time in which any person or entity may file a

1 claim and answer has expired.

2 8. The parties herein agree that the proposed sale of
3 defendant properties should proceed pursuant to Paragraphs 9
4 through 20 below.

5 9. Claimants shall instruct the title/escrow officer, Sandy
6 Pope of First American Title in Redding, California, to wire the
7 net proceeds from the sale of the defendant properties to the
8 U.S. Department of the Treasury and to contact the U.S.
9 Attorney's Office, Asset Forfeiture Unit, to obtain specific
10 wiring instructions.

11 10. The net proceeds from the sale of the defendant
12 properties will include all money realized from the sale of the
13 defendant properties, except for the following: real estate
14 commissions, amounts due to the holder of any valid lien which
15 was recorded prior to the time the United States' *Lis Pendens*
16 were recorded, real estate property taxes which are due and
17 owing, insurance costs, and any other miscellaneous costs/fees
18 incurred at closing through escrow.

19 11. The net proceeds from the sale of the defendant
20 properties shall be wired to the U.S. Department of the Treasury,
21 at the close of escrow, to be deposited in the U.S. Department of
22 the Treasury Suspense Account. Said proceeds will be substituted
23 as the res in this action and held pending further order of the
24 Court.

25 12. Claimants will retain custody, control, and
26 responsibility of the defendant properties until the
27 interlocutory sale that is the subject of this Stipulation has
28 been completed.

1 13. Each party to this Stipulation shall execute all
2 documents and provide signatures necessary to close escrow, as
3 required by the title company.

4 14. All parties to this Stipulation hereby release the
5 United States and its servants, agents, and employees from any
6 and all liability arising out of or in any way connected with the
7 posting or sale of the defendant properties. This is a full and
8 final release applying to all unknown and unanticipated injuries,
9 and/or damages arising out of said posting or sale, as well as to
10 those now known or disclosed. The parties to this Stipulation
11 waive the provisions of California Civil Code § 1542.

12 15. Claimants shall maintain the defendant properties in
13 the same condition and repair as existed as of the date of the
14 posting, normal wear and tear excepted, until their custody,
15 control and responsibility have ceased. The term "maintain"
16 shall include, but is not limited to, keeping the properties free
17 of hazard and structural defects; keeping all heating, air
18 conditioning, plumbing, electrical, gas, oil, or other power
19 facilities in good working condition and repair; keeping the
20 properties clean and performing such necessary sanitation and
21 waste removal; keeping the properties in good condition by
22 providing for lawn and yard maintenance; and other ordinary and
23 necessary items of routine maintenance.

24 16. Claimants shall maintain all insurance policies
25 currently in effect with respect to the defendant properties,
26 including hazard insurance to cover all buildings and other
27 improvements that are now located on the properties until the
28 interlocutory sale is completed. The insurance must cover loss

1 or damage caused by fire, hazards normally covered by "extended
2 coverage" hazard insurance policies, and liability to persons
3 injured on said properties and for property damage to the
4 defendant properties.

5 17. Except as specifically provided herein, claimants shall
6 not convey, transfer, encumber, lien, or otherwise pledge the
7 defendant properties without the prior, written approval of the
8 United States.

9 18. All parties are to bear their own costs and attorneys'
10 fees.

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1 19. Pending the sale of the property, and the disposition
2 of the proceeds, the parties hereby stipulate that the U.S.
3 District Court for the Eastern District of California, Hon.
4 Garland E. Burrell, Jr., District Judge, shall retain
5 jurisdiction to enforce the terms of this compromise settlement.

6 Dated: 2/27/12

BENJAMIN B. WAGNER
United States Attorney

8 By: /s/ Kevin C. Khasigian
9 KEVIN C. KHASIGIAN
Assistant U.S. Attorney

11 DATED: 2/21/12

/s/ LaPoe Smith
12 LAPOE SMITH
Claimant

14 ACKNOWLEDGMENT

15 State of Texas)
16 County of Bexar)

17 On 2/21/12, before me, David Zamarripa, Notary
18 Public, personally appeared LaPoe Smith, who proved
19 to me on the basis of satisfactory evidence to be the person(s)
20 whose name(s) is/are subscribed to the within instrument and
21 acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

22 I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

23 WITNESS my hand and official seal.

25 Signature /s/ David H. Zamarripa

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DAVID H. ZAMARRIPA Notary Public, State of Texas My Commission Expires
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ORDER

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2 1. The defendant properties shall be sold pursuant to the
3 terms set forth above in the Stipulation for Interlocutory Sale.

4 2. The net proceeds from the sale of the defendant
5 properties shall be deposited into the U.S. Department of the
6 Treasury Suspense Account, substituted as the *res* herein, and
7 held pending further order of the Court.

8 3. The forfeiture action pending shall proceed against the
9 substitute *res* in lieu of the defendant properties sold pursuant
10 to this Stipulation.

11 IT IS SO ORDERED.

12 Dated: February 29, 2012

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GARLAND E. BURRELL, JR.
United States District Judge

1 Exhibit A

2 The real property situated in the County of Trinity, State of
3 California, Described as follows:

4 Parcel No. 1:

5 Lot 1, Block 23 of Trinity Pines Subdivision, Unit 2, according
6 to the Official Plat thereof recorded on August 28, 1968 in book
7 4 of Maps and Surveys pages 109-122 inclusive, in the Office of
8 the County Recorder of Trinity County.

9 EXCEPTING THEREFROM one-half (1/2) of all oil, gas and minerals
10 lying more than 500 feet below the surface thereof, but without
11 the right of surface entry thereto, as reserved in the Deed
12 recorded December 29, 1980 in book 214 of Official Records page
13 328.

14 Parcel No. 2:

15 Lot 2, Block 23 of Trinity Pines Subdivision, Unit 2, according
16 to the Official Plat thereof recorded on August 28, 1968 in book
17 4 of Maps and Surveys pages 109-122 inclusive, in the Office of
18 the County Recorder of Trinity County.

19 EXCEPTING THEREFROM one-half (1/2) of all oil, gas and minerals
20 lying more than 500 feet below the surface thereof, but without
21 the right of surface entry thereto, as reserved in the Deed
22 recorded November 15, 1979 in book 205 of Official Records page
23 65.

24 Parcel No. 3:

25 Lot 4, Block 23 of Trinity Pines Subdivision, Unit 2, according
26 to the Official Plat thereof recorded on August 28, 1968 in book
27 4 of Maps and Surveys pages 109-122 inclusive, in the Office of
28 the County Recorder of Trinity County.

EXCEPTING THEREFROM one-half (1/2) of all oil, gas and minerals
lying more than 500 feet below the surface thereof, but without
the right of surface entry thereto, as reserved in the Deed
recorded September 23, 1974 in book 166 of Official Records page
777.

Parcel No. 4:

Lot 5, Block 23 of Trinity Pines Subdivision, Unit 2, according
to the Official Plat thereof recorded on August 28, 1968 in book
4 of Maps and Surveys pages 109-122 inclusive, in the Office of
the County Recorder of Trinity County.

EXCEPTING THEREFROM one-half (1/2) of all oil, gas and minerals
lying more than 500 feet below the surface thereof, but without
the right of surface entry thereto, as reserved in the Deed
recorded January 22, 1979 in book 197 of Official Records page

1 371.

2 Parcel No. 5:

3 Lot 6, Block 23 of Trinity Pines Subdivision, Unit 2, according
4 to the Official Plat thereof recorded on August 28, 1968 in book
5 4 of Maps and Surveys pages 109-122 inclusive, in the Office of
6 the County Recorder of Trinity County.

7 EXCEPTING THEREFROM one-half (1/2) of all oil, gas and minerals
8 lying more than 500 feet below the surface thereof, but without
9 the right of surface entry thereto, as reserved in the Deed
10 recorded July 24, 1978 in book 193 of Official Records page 57.

11 TOGETHER WITH a non-exclusive easement for ingress, egress and
12 public utilities over those portions of all units of the Trinity
13 Pines Subdivision that are designated as private streets on the
14 Maps thereof on file in the office of the County Recorder of
15 Trinity County, as described in the deed to Michael T. Sheehy, et
16 ux, recorded December 29, 1980 in book 214 of Official Records
17 page 328.

18 Affects: Parcel No. 1

19 TOGETHER WITH a non-exclusive easement for ingress, egress and
20 public utilities over those portions of all units of the Trinity
21 Pines Subdivision that are designated as private streets on the
22 Maps thereof on file in the office of the County Recorder of
23 Trinity County, as described in the deed to C. Max Dougherty, et
24 ux, recorded November 15, 1979 in book 205 of Official Records
25 page 65.

26 Affects: Parcel No. 2

27 TOGETHER WITH a non-exclusive easement for ingress, egress and
28 public utilities over those portions of all units of the Trinity
Pines Subdivision that are designated as private streets on the
Maps thereof on file in the office of the County Recorder of
Trinity County, as described in the deed to Felix V. Bastas, et
al, recorded September 23, 1974 in book 166 of Official Records
page 777.

Affects: Parcel No. 3

TOGETHER WITH a non-exclusive easement for ingress, egress and
public utilities over those portions of all units of the Trinity
Pines Subdivision that are designated as private streets on the
Maps thereof on file in the office of the County Recorder of
Trinity County, as described in the deed to C. Max Dougherty, et
ux, recorded January 22, 1979 in book 197 of Official Records
page 371.

Affects: Parcel No. 4

TOGETHER WITH a non-exclusive easement for ingress, egress and

1 public utilities over those portions of all units of the Trinity
2 Pines Subdivision that are designated as private streets on the
3 Maps thereof on file in the office of the County Recorder of
4 Trinity County, as described in the deed to Dan F. Wallace, et
5 ux, recorded July 24, 1978 in book 193 of Official Records page
6 57.

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Affects: Parcel No. 5

APN Nos: 019-530-23-00; 019-530-24-00; 019-530-26-00; 019-530-27-
00 and 019-530-28-00