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

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11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 REAL PROPERTY LOCATED AT 149 G
STREET, LINCOLN, CALIFORNIA,
15 PLACER COUNTY, APN: 008-266-015-000,
16 INCLUDING ALL APPURTENANCES AND
IMPROVEMENTS THERETO, et al.,

17 Defendants.

Case No. 2:12-CV-00705-MCE-DAD

STIPULATION AND ORDER FOR APPROVAL
OF STATE COURT RECEIVER SALE OF
REAL PROPERTY LOCATED AT 8928
VOLUNTEER LANE, SACRAMENTO,
CALIFORNIA

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20 The United States of America and claimants Mechanics Bank ("Bank") and Volen Properties
21 10, LLC, (collectively, "Parties") submit this Stipulation and Order for Approval of State Court
22 Receiver Sale of Real Property located at 8928 Volunteer Lane Sacramento, California, APN: 078-
23 0450-026-0000 ("defendant property" or "Volunteer Lane Property").

24 **RECITALS**

25 A. On March 20, 2012, the United States filed a Verified Complaint for Forfeiture
26 *In Rem* seeking to forfeit a number of real properties allegedly purchased with proceeds traceable to a
27 fraud against the United Auburn Indian Community ("UAIC") and/or funds involved in a money

1 laundering scheme. The defendant property is one of the real properties allegedly purchased with
2 tainted funds and/or involved in illegal money laundering activity.

3 B. Volen Properties 10, LLC is the record owner of the defendant property.

4 C. Beginning on April 21, 2012, for at least thirty consecutive days, the United
5 States published Notice of the Forfeiture Action on the official internet government forfeiture site
6 www.forfeiture.gov. A Declaration of Publication was filed on June 21, 2012.

7 D. On April 12, 2012, Mechanics Bank filed a claim and answer as the lien holder
8 of the defendant property. The Deed of Trust, dated July 10, 2009, was given to secure a Promissory
9 Note in the original amount of \$1,950,000.00.

10 E. On May 23, 2012, Volen Properties 10, LLC, through its manager Bart Volen,
11 filed a claim in this action.

12 F. The Bank previously filed a Complaint for Specific Performance and
13 Appointment of Receiver ("Complaint") in the Sacramento Superior Court, Case No. 34-2012-
14 00128930, against Volen Properties 10, LLC seeking to have a Receiver appointed over the Volunteer
15 Lane Property. Volen Properties 10, LLC is the record owner of the defendant property.

16 G. On September 6, 2012, the Sacramento Superior Court issued its Order
17 Appointing a Receiver Ex Parte; Temporary Restraining Order in Aid of Receiver; Order to Show
18 Cause Re Confirmation of Appointment of Receiver and Preliminary Injunction in Aid of Receiver
19 ("Order to Show Cause") pursuant to which a Receiver was appointed over the Volunteer Lane
20 Property. Thereafter, on October 2, 2012, the Sacramento Superior Court issued its Order Confirming
21 Appointment of Receiver Ex Parte and Preliminary Injunction in Aid of Receiver pursuant to which the
22 appointment of the Receiver was confirmed over the Volunteer Lane Property. The order appointed
23 John Connolly IV as the State Court Receiver over the Volunteer Lane Property.

24 H. Since September 6, 2012, the State Court Receiver has managed and operated the
25 Volunteer Lane Property.

26 I. The Volunteer Lane Property was set to be sold at a nonjudicial foreclosure sale
27 in December 2012, under the Bank's Deed of Trust, dated July 10, 2009, that was given to secure a
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1 promissory note in the amount of \$1,950,000.00 because the note was in default. As of November 30,
2 2012, the amount of unpaid principal and accrued interest on the note was approximately
3 \$1,919,857.39.

4 J. Because the Parties to this Stipulation believed that everyone's best interests
5 would be served by having the Receiver sell the Volunteer Lane Property in a commercially reasonable
6 manner because the Receiver is in the best position to quickly and expeditiously sell the property for
7 the benefit of all Parties, the Parties entered into a Stipulation for Sale of Real Property Commonly
8 Known as 8928 Volunteer Lane, Sacramento, California by Receiver; and Order Thereon (the "State
9 Court Stipulation") in the State Court proceedings. In consideration thereof, the foreclosure sale was
10 cancelled.

11 K. On January 15, 2013, the Sacramento Superior Court entered its order approving
12 the State Court Stipulation. A true and correct copy of the State Court Stipulation is attached hereto as
13 Exhibit 1.

14 L. The State Court Stipulation provides that the net proceeds remaining from the
15 sale of the Volunteer Lane Property after payments of certain routine amounts shall be held by the
16 Receiver in a segregated interest-bearing account until further order of the State Court. Within 30 days
17 of completion of any sale, the Receiver is tasked with filing a motion before the State Court for
18 authority to transfer the funds to the United States of America to be maintained by the United States of
19 America pending the conclusion of the forfeiture action in conformity with Rule G of the Supplemental
20 Rules. Upon transfer, the funds shall be deemed to be a substitute *res* in the forfeiture action, and no
21 disposition of those funds shall be made absent an order from the United States District Court.

22 M. No other party has filed a claim or answer asserting an interest in the Volunteer
23 Lane Property, and the time in which any person or entity may file a claim and/or answer has expired.

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25 **STIPULATION**

26 **IT IS HEREBY STIPULATED AND AGREED** by and between the United States of
27 America, the Bank, and Volen 10 Properties, LLC as follows:
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1 1. The United States District Court should approve this Stipulation and Order for
2 Approval of State Court Receiver Sale of Real Property known as 8928 Volunteer Lane Sacramento,
3 California, thereby approving the Parties and the State Court Receiver to proceed with the listing for
4 sale and sale of the Volunteer Lane Property in accordance with the terms of the State Court Stipulation
5 and Order thereon.

6 2. The defendant Volunteer Lane Property shall be sold pursuant to the terms of the
7 State Court Stipulation and Order thereon.

8 3. When the State Court Receiver turns over the net proceeds of sale to the United
9 States of America, the net proceeds from the sale shall be transferred to the Internal Revenue Service –
10 Criminal Investigation and deposited into the U.S. Department of the Treasury Suspense Account,
11 substituted as the *res* herein, and held pending further order of the Court.

12 4. The forfeiture action pending shall proceed against the substitute *res* in lieu of
13 the defendant Property sold pursuant to this Stipulation.

14 5. The interlocutory sale of the defendant Volunteer Lane Property and the
15 substitution of the net sales proceeds in the civil forfeiture case shall not affect any rights the Parties
16 may have to litigate their claims to the Volunteer Lane Property.

17 6. All Parties to this Stipulation hereby release the United States of America and its
18 servants, agents, and employees from any and all liability arising out of or in any way connected with
19 the posting or sale of the Volunteer Lane Property. This is a full and final release applying to all
20 unknown and unanticipated injuries and/or damages arising out of said posting or sale, as well as to
21 those now known or disclosed. The parties to this Stipulation waive the provisions of California Civil
22 Code § 1542, which provides:

23 A general release does not extend to claims which the creditor does not
24 know or suspect to exist in his or her favor at the time of executing the
25 release, which if known by him or her must have materially affected his
26 or her settlement with the debtor.
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Dated: January 18, 2013

BENJAMIN B. WAGNER
United States Attorney

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

Dated: January 17, 2013

JEFFER MANGELS BUTLER & MITCHELL LLP
JOHN A. GRAHAM
ROBERT B. KAPLAN

By: /s/ Robert B. Kaplan
ROBERT B. KAPLAN, ESQ.
Attorneys for Claimant MECHANICS
BANK

Dated: January 17, 2013

ORRICK, HERRINGTON & SUTCLIFF, LLP


/s/ Courtney J. Linn
COURTNEY J. LINN
Attorneys for Claimant VOLEN 10
PROPERTIES, LLC

(Authorized by email)

ORDER

IT IS SO ORDERED.

Dated: January 22, 2013


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT