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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 REAL PROPERTY AND
17 IMPROVEMENTS LOCATED AT 7586
18 REDWOOD BLVD., SUITE C, NOVATO,
CALIFORNIA,
19 Defendant.

No. CV 12-1996 EMC

**STIPULATION AND [PROPOSED] ORDER
REGARDING DISMISSAL**

21
22 In full settlement of all claims and disputes arising from and related to the captioned
23 forfeiture action, plaintiff United States of America, Claimant Martin O'Brien and Kerry
24 O'Brien, (collectively "the parties") hereby stipulate and agree to dismiss the instant action on
25 the following terms and conditions:

26 1. On April 23, 2012, plaintiff filed a Complaint For Forfeiture *in rem* against the
27 real property and improvements located at 7586 Redwood Blvd., Suite C, Novato, California
28 (hereinafter "defendant real property"), pursuant to 21 U.S.C. § 881(a)(7).

1 2. Claimant David Cesena (Cesena) is the owner of record for the defendant real
2 property. Cesena has filed his claim via this stipulated agreement, asserting his ownership
3 interest in the defendant real property.

4 3. The government provided notice of this action in accordance with the law. No
5 other claims have been filed in this action asserting an interest in the defendant real property to
6 date. However, the time to do so has not yet expired.

7 4. In light of Cesena's action in terminating the unlawful distribution of marijuana at
8 the defendant real property, plaintiff agrees to dismiss the instant action provide that:

9 a. Cesena shall not knowingly use, rent, lease and/or otherwise make available
10 the defendant property, or any other real property owned and controlled by him, in whole or in
11 part, to anyone for any illegal purpose; and

12 b. Cesena shall not knowingly allow the defendant real property, or any other real
13 property owned and controlled by him, to be listed in any advertisement, publication, directory or
14 internet site which advertises or indicates that marijuana is available at the location of the
15 defendant real property; and

16 c. To the extent that Cesena decides to rent, lease and/or make the defendant real
17 property, or any other real property owned and controlled by them, available to others, with or
18 without compensation, Cesena has an affirmative duty to inquire, in good faith, as to the
19 anticipated use of the defendant real property; and

20 d. In lieu of forfeiting the defendant real property, the United States and
21 claimant, Cesena, agrees to forfeit and pay to the United States \$5,000.00 in the form of a
22 cashier's check; and

23 e. Provided Cesena adheres to these conditions, the government may not seek to
24 re-instate the instant forfeiture action.

25 5. Upon execution of this stipulation and approval by the Court, and upon payment
26 of the \$5,000.00 as set forth in paragraph 5(d) above, the United States shall file a release of lis

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1 pendens related to the defendant real property within 30 days of receipt of the payment.

2 6. Cesena, his heirs, representatives and assignees, shall hold harmless the United
3 States, any and all agents, officers, representatives and employees of same, including all federal,
4 state and local enforcement officers, for any and all claims, defenses, actions, or liabilities arising
5 out of or related to this action against the defendant real property, including, without limitation,
6 any and all claims for attorneys' fees and costs.

7 7. Each party to this agreement shall each bear its own costs and attorneys' fees in
8 this action.

9 Respectfully submitted,

10 MELINDA HAAG
11 United States Attorney

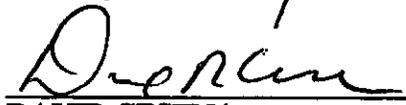
12
13 Dated: 7-9-2012

14 
15 ARVON J. PERLEET
16 Assistant United States Attorney

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18 Dated: 7-9-2012

19 
20 RUSSELL MARNE
21 Attorney for David Cesena

22
23 Dated: 7-9-2012

24 
25 DAVID CESENA
26 Claimant

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1 [PROPOSED] ORDER

2 Based upon the above-stipulation, and good cause appearing, it is hereby ORDERED,
3 ADJUDGED AND DECREED:

4 1. The Court has jurisdiction of this in rem forfeiture action regarding the defendant
5 property located at 7586 Redwood Blvd., Suite C, Novato, California (hereinafter “the defendant
6 real property”, pursuant to 21 U.S.C. § 881(a)(7) and 28 U.S.C. §§ 1355 and 1395.

7 2. Plaintiff United States of America served notice in accordance with the law to all
8 parties that were known to have an interest in the defendant real property.

9 3. David Cesena, the owner of the defendant real property, filed a timely claim via
10 this stipulation and agreement.

11 4. The time for claims asserting interest in the defendant real property has not
12 expired. No other claims have been filed to date.

13 5. In light of Cesena’s actions to terminate the unlawful distribution of marijuana at
14 the defendant real property, this action shall be dismissed without prejudice provided that:

15 a. Cesena shall not knowingly use, rent, lease and/or otherwise make available
16 the defendant property, or any other real property owned and controlled by them, in whole or in
17 part, to anyone for any illegal purpose; and

18 b. Cesena shall not knowingly allow the defendant real property, or any other real
19 property owned and controlled by him, to be listed in any advertisement, publication, directory or
20 internet site which advertises or indicates that marijuana is available at the location of the
21 defendant real property; and

22 c. To the extent that Cesena decides to rent, lease and/or make the defendant real
23 property, or any other real property owned and controlled by them, available to others, with or
24 without compensation, Cesena has an affirmative duty to inquire, in good faith, as to the
25 anticipated use of the defendant real property; and

26 d. In lieu of forfeiting the defendant real property, the United States and

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1 claimant, Cesena, agrees to forfeit and pay to the United States \$5,000.00 in the form of a
2 cashier's check; and

3 e. Provided Cesena adheres to these conditions, the government may not seek to
4 re-instate the instant forfeiture action.

5 6. Upon execution of this stipulation and approval by the Court, and upon payment
6 of the \$5,000.00 as set forth in paragraph 5(d) above, the United States shall file a release of lis
7 pendens related to the defendant real property within 30 days of receipt of the payment.

8 7. Cesena, his heirs, representatives and assignees, shall hold harmless the United
9 States, any and all agents, officers, representatives and employees of same, including all federal,
10 state and local enforcement officers, for any and all claims, defenses, actions, or liabilities arising
11 out of or related to this action against the defendant real property, including, without limitation,
12 any and all claims for attorneys' fees and costs.

13 8. Each party to this agreement shall each bear its own costs and attorneys' fees in
14 this action.

15 9. The action is dismissed.

16
17
18 IT IS SO ORDERED.

19
20 Dated: July 11, 2012



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