

United States District Court
For the Northern District of California

1 UNITED STATES OF AMERICA,)
 2)
 3)
 4 v.) C-04-3055 DLJ
 5 THOMAS GROSSI, LAURETTA WEIMER) CR-04-40127-DLJ (related case)
 6 and ALBERT B. DEL MASSO)
 7) Final Order of Forfeiture and
 8 In the matter of \$608,916.58) Judgment
 9 IN U.S. CURRENCY, AS SUBSTITUTE)
 10 RES FOR REAL PROPERTY LOCATED AT)
 11 2638 MARKET STREET, OAKLAND,)
 12 CALIFORNIA)
 13 _____)

11 The United States filed a civil forfeiture action against 2638
 12 Market Street, Oakland California, which had been used in a large
 13 scale marijuana cultivation operation. See CV 04-3055 DLJ,
 14 Complaint for Forfeiture, filed July 24, 2004. After the
 15 interlocutory sale of 2638 Market Street pursuant to a stipulated
 16 order, the net proceeds of that sale, \$608,916.58, were substituted
 17 as defendant. See Notice to Clerk of Change in Defendant to
 18 \$608,916.58, filed November 24, 2004. Subsequently, the civil
 19 forfeiture case was stayed pending resolution of the related
 20 criminal case.
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22 In the related criminal case, the jury convicted defendant
 23 Thomas Grossi of maintaining for the manufacture of marijuana his
 24 property at 2638 Market Street, and found a basis for forfeiting
 25 that property. On January 20, 2006, this Court entered a
 26 preliminary order of forfeiture, ordering that Grossi forfeit his
 27 interest in the \$608,916.58 in net proceeds from the sale of 2638
 28

1 Market Street. Id.

2 Grossi moved to modify the preliminary order of forfeiture on
3 the ground that the forfeiture violated the Eighth Amendment's
4 prohibition on excessive fines. In response to the preliminary
5 order of forfeiture, Laretta Weimer petitioned this Court for an
6 ancillary proceeding, claiming an ownership interest in the
7 proceeds from the sale of 2638 Market Street.
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9 After the Government settled with another claimant, only
10 \$358,916.58 in net proceeds plus accrued interest remained. In the
11 criminal judgment filed on May 26, 2007 this Court ordered
12 forfeiture "tentatively [of] \$245,000 - the exact amount yet to be
13 determined," and stated that it would issue a separate order
14 regarding the Market Street Property amount.
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16 After a hearing on June 8, 2007 on Weimer's petition,
17 this Court issued an order which held that:

18 the amount forfeited by Grossi on the Market Street
19 property should be reduced by \$87,666.80, which amount
20 represents the government's obligation to Weimer as
21 repaid by Grossi. This amount should be paid to him
22 from the forfeiture proceeds now held by the Court
23 along with the interest at the statutory rate.

24 See Order, filed August 10, 2007.

25 Grossi appealed the forfeiture of the remaining net proceeds
26 from the sale of the Market Street property as an excessive fine in
27 violation of the Eighth Amendment, and the Government cross
28 appealed the reduction of that forfeiture by \$87,666.80.

1 On appeal, the Ninth Circuit held that: the forfeiture did
2 not amount to an excessive fine; found that equitable subrogation
3 was not applicable to this case; and reversed the reduction by
4 \$87,666.80 of the amount forfeited by Grossi.

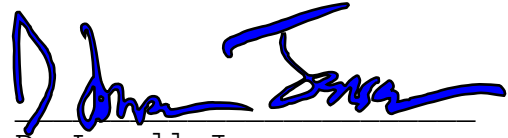
5 Grossi has requested that this Court revisit the amount of
6 the forfeiture. The parties briefed whether in light of the Order
7 by the Ninth Circuit, this Court had any jurisdiction over the
8 issue of the amount of the forfeiture. The government argues, and
9 this Court finds that it does not have any jurisdiction to address
10 the forfeiture order at this juncture. The language of the Ninth
11 Circuit Order does not remand any question to this Court. The Ninth
12 Circuit simply ordered that its judgment entered December 18, 2009
13 take effect. See Order of December 18, 2009 ("On Grossi's appeal,
14 AFFIRMED; on the government's cross-appeal, REVERSED") and Mandate
15 dated 3/18/10 ("The judgment of [the Ninth Circuit] Court, entered
16 December 18, 2009, takes effect this date."). This Court thus has
17 only the ministerial task of entering the Order of Forfeiture.

18 Therefore it is ORDERED, ADJUDGED AND DECREED that the
19 remaining \$358,916.58 in net proceeds plus accrued interest from
20 the sale of the Market Street property be and hereby is forfeited
21 to the United States pursuant to 21 U.S.C. §§ 853(a)(2) and
22 881(a)(7) ; and it is further ORDERED that all right, title and
23 interest in that \$358,916.58 plus accrued interest be, and
24 hereby is, vested in the United States as of the date of the
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1 criminal activities giving rise to the forfeiture pursuant to 21
2 U.S.C. §§ 853(c) and 881(h); and it is further ORDERED that the
3 United States Marshals Service shall, in accordance with law,
4 dispose of the forfeited \$358,916.58 plus accrued interest.
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7 IT IS SO ORDERED

8 Dated: December 2, 2010



D. Lowell Jensen
United States District Judge

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