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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION
 13

14 UNITED STATES OF AMERICA,)
 15)
 16 Plaintiff,)
 17 v.)
 18 REAL PROPERTY LOCATED AT)
 19 1920 APPLE DRIVE, CONCORD,)
 CALIFORNIA (APN 147-094-009),)
 20)
 21 Defendant.)

No. 12-CV-00159 PJH
 CASE MANAGEMENT STATEMENT
 OF THE UNITED STATES AND
 [PROPOSED] ORDER TAKING THE
 MAY 10, 2012 CMC OFF CALENDAR
 Date: May 10, 2012
 Time: 2:00 p.m.
 Place: Courtroom 3, 3rd Floor
 1301 Clay Street
 Oakland, California

24 **1. Jurisdiction and Service**

25 This is a judicial forfeiture action. The complaint sets forth probable cause to conclude that
 26 defendant 1920 Apple Drive, Concord, California is subject to forfeiture as proceeds of a conspiracy
 27 to commit bank fraud and of bank fraud. 18 U.S.C. § 981(a)(1)(C); *see also* Complaint for
 28 Forfeiture, filed January 10, 2012.

1 No service of process to acquire jurisdiction over an *in rem* defendant in a civil forfeiture
2 action. In an *in rem* action, the United States is only required to provide notice in accordance with
3 Supplemental Rule G(4). Supp. Rule for Admir. Or Maritime Claims and Asset Forfeiture Actions
4 (“Supp. Rule”) G(4). The United States gives direct notice to any person who appears to be a
5 potential claimant and general notice by publication so that a party can decide to come into the
6 action to defend the defendant asset by filing a verified claim of interest in defendant and an answer.
7 *Id.* The United States provided direct notice and notice by publication. *See* Certificate of
8 Service, filed January 19, 2012; Proof of Publication, filed May 3, 2012 (publication began January
9 25, 2012 and was completed on February 23, 2012). Despite having attempted to give direct notice
10 to Hueler Moura at his last known addresses, the United States has no indication that Hueler Moura
11 received notice because all of the envelopes sent to him were returned. No party has come forward
12 to file a claim or an answer. *See* Docket Sheet

13 2. Facts

14 This action is to forfeit the proceeds from a “short sale” involving a conspiracy to defraud
15 a financial institution insured by the Federal Deposit Insurance Corporation (“FDIC”) under 18
16 U.S.C. § 20. A “short sale” is a sale of real property at a price less than the balance owed on the
17 mortgage loan which is secured by that property. A short sale often occurs when the property owner
18 cannot pay the mortgage loan and the actual value of the property is less than the balance owed on
19 the mortgage, but the borrower and the mortgage holder decide that selling the property at a loss is
20 better than foreclosure. A short sale must be approved by the mortgage holder. The mortgage
21 holder generally requires that the short sale be an “arm’s length” transaction which means that no
22 party to the short sale contract can be a family member, business associate, or a person who shares
23 a business interest with the seller.

24 On or about June 24, 2002, Alexandre Machado Pinheiro a/k/a Alexandre Machado
25 (“Pinheiro”) purchased defendant 1920 Apple Drive for approximately \$278,000. In order to
26 purchase defendant, Pinheiro obtained a mortgage loan from World Savings Bank in the amount of
27 \$194,670 and Pinheiro also obtained a line of credit secured by defendant 1920 Apple Drive in the
28 amount of \$55,620. On or about October 2, 2007, Pinheiro refinanced, paying off the mortgage and

1 line of credit, in order to obtain a new mortgage loan in the amount of \$408,000 from Wachovia in
2 the name of “Alexandre Pinheiro” which was secured by defendant 1920 Apple Drive. At the time
3 Pinheiro refinanced, Wachovia was a financial institution insured by the FDIC under 18 U.S.C. § 20.

4 Subsequently, Pinheiro stopped making payments on the Wachovia mortgage. On or about
5 June 19, 2009, Wachovia initiated foreclosure proceedings by recording a “Notice of Default” in
6 connection with the 2007 mortgage it had secured by defendant 1920 Apple Drive and stating that
7 as of June 19, 2009 Pinheiro was behind in mortgage payments in the amount of \$21,643.54. To
8 avoid foreclosure, Pinheiro conspired with others to maintain control and ownership of defendant
9 1920 Apple Drive while defrauding Wachovia by shedding substantial debt owed to it. Although
10 Pinheiro knew that Wachovia would not agree to a short sale unless it was an arm’s length
11 transaction, Pinheiro obtained Wachovia’s agreement to sell defendant 1920 Apple Drive to Heuler
12 Moura, without disclosing that Heuler Moura was a business associate of Pinheiro or that Moura
13 would transfer defendant 1920 Apple Drive back to Pinheiro.

14 Specifically, on or about October 21, 2009, Heuler Moura made an offer to purchase
15 defendant 1920 Apple Drive for \$160,000. In a letter dated October 27, 2009, Wachovia agreed to
16 a short sale of defendant 1920 Apple for “no less than \$139,829.00 in cash or certified funds” but
17 stated that “[a]ny residual proceeds that exceed the amount stated shall also be forwarded to
18 Wachovia.” In agreeing to the short sale, Wachovia also stated that “[a]ny relationships between
19 Seller, Buyer, Agents, and/or Escrow/Title Companies must be disclosed in writing”

20 On October 26, 2009, First American Title Company (“First American”), acting as escrow
21 agent for the sale of defendant 1920 Apple Drive, deposited three cashier’s checks, totaling
22 \$190,000, into the escrow account, ending in 6234, which First American had established for the
23 purchase of defendant 1920 Apple Drive. Specifically, the first cashier’s check, dated October 21,
24 2009, for \$102,000, which First American deposited had been purchased by Homevestor, LLC, and
25 was issued at the Pleasant Hill branch of Bank of America (“BofA”) in California. The second
26 cashier’s check, dated October 21, 2009, for \$38,000, had been purchased by Homevestor, LLC, and
27 issued at the Sun Valley Center branch of BofA in California. The third cashier’s check, dated

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1 October 20, 2009, for \$50,000, had been purchased by Elveicio Machado, who is the brother of
2 Pinheiro, and issued at the Fruitvale branch of BofA in California.

3 On or about October 28, 2009, Heuler Moura purchased defendant 1920 Apple Drive from
4 Pinheiro for \$160,000. Seven weeks later, on December 18, 2009, Heuler Moura quit claimed
5 defendant 1920 Apple Drive to Alexandre Machado as Trustee for Brusa Land Trust, located at 1920
6 Apple Drive.

7 As described below, the three bank checks which Heuler Moura used to purchase defendant
8 1920 Apple Drive are connected to Pinheiro who was a member of Homevestor, LLC, an LLC
9 organized under Georgia law. Pinheiro was authorized to withdraw Homevestor funds from
10 Homevestor's Bank of America account, ending in 5194, in Marietta, Georgia.

11 On or about May 13, 2008, the Secretary of State of Georgia registered Homevestor, LLC,
12 as a Domestic Limited Liability Company in Georgia, with a mailing address of P.O. Box 670254
13 in Marietta, Georgia 30066. The registration lists Valdivino Moura, Jr., as the organizer and the
14 registered agent of Homevestors, LLC, located at 1163 Garibaldi Street, Atlanta, Georgia and states
15 that Homevestor's email address is homevestor@hotmail.com. On annual registrations for 2009 and
16 2010, the Secretary of State of Georgia also listed Valdivino Moura, Jr., as registered agent for
17 Homevestor, LLC.

18 During the course of the investigation, FBI Special Agents obtained a Homevestor LLC,
19 business card. The card is two-sided. On one side of the card, "Alexandre Pinheiro" is listed as a
20 "Member" of Homevestor, LLC, with an email address at homevestor@hotmail.com and a
21 telephone number in the 925 area code. On the other side of the card, "Heuler Moura" is listed as
22 a "Member" of Homevestor, LLC, with the same email address as Pinheiro's at
23 homevestor@hotmail.com, and a telephone number in the 404 area code.

24 According to BofA's records, Homevestor, LLC, at P.O. Box 670254 in Marietta, Georgia,
25 opened an account in August 2008 ending in 5194. On March 16, 2010, Heuler Moura became a
26 signatory. The account ending in 5194 was closed in November 2010. During October 2009 when
27 Homevestor funds were deposited in the escrow account for the purchase of defendant 1920 Apple
28 Drive, Pinheiro was authorized to withdraw funds from the Homevestor account ending in 5194, and

1 did withdraw at least \$176,000 from that account during October 2009 just before the October 28,
2 2009 sale of defendant 1920 Apple Drive to Moura. Specifically, on October 6, 2009, “Alexandre
3 Pinheiro” listing his address as “1163 Garibaldi Street, S.W., Atlanta, GA 30310” made an out-of-
4 state withdrawal of \$35,000 from Homevestor’s account ending in 5194. On October 15, 2009,
5 “Homevestor, LLC” listing its address as “1163 Garibaldi Street, S.W., Atlanta, GA 30310” made
6 an out-of-state withdrawal of \$39,000 from Homevestor’s account ending in 5194. The signature
7 of on the October 6 and the October 15 withdrawal slips appear similar. On October 21, 2009,
8 “Alexandre Machado” listing his address as “1920 Apple Drive, Concord, CA” made an out-of-state
9 withdrawal of \$102,000 from Homevestor’s account ending in 5194, again with a signature that
10 appears similar.

11 As stated in paragraph 12, on December 18, 2009, Heuler Moura quit claimed his interest
12 in defendant 1920 Apple Drive to Brusa Land Trust, Alexandre Machado, Trustee. The day before,
13 on December 17, 2009, the “Land Trust Agreement for Bursa Land Trust 1920 Apple Drive,
14 Concord, CA 94518” was established in a notarized 15-page document signed by “Alexandre
15 Machado” both as the only Beneficiary with “100% of the total beneficial interest” and as the
16 Trustee. The notary for 15-page Land Trust Agreement which “Alexandre Machado” signed was
17 Fahim Choudhary.

18 On January 19, 2011, “Alexandre Pinheiro a.k.a. Alexandre Machado” (“Pinheiro”) pled
19 guilty to conspiring to defraud a FDIC- insured institution based on a short sale of property owned
20 by his brother’s property at 1268 Alcatraz Avenue, Berkeley, California. Pinheiro admitted posing
21 as an individual, “Joao J.,” who purchased 1268 Alcatraz and that his co-defendant, Fahim
22 Choudhary, knowingly assisted Pinheiro in notarizing documents as a part of that transaction, as
23 well as preparing tax returns in “Joao J.’s” name which showed sufficient income for him to qualify
24 for the mortgage. Pinheiro was subsequently convicted and sentenced to 12 months’ imprisonment
25 on July 18, 2011.

26 On January 19, 2011, Fahim Choudhary also plead guilty to conspiring to defraud a FDIC-
27 insured institution based on a short sale of property owned by Pinheiro’s brother at 1268 Alcatraz
28 Avenue, Berkeley, California, by assisting Pinheiro in notarizing a number of documents which

1 purported to be signed by “Joao J.” when he knew that Pinheiro had signed them, and prepared tax
2 returns in “Joao J.’s” name which Pinheiro signed to show sufficient income for “Joao J.” to qualify
3 for the mortgage. Choudhary was subsequently convicted and sentenced to 100 days’ imprisonment
4 on July 18, 2011.

5 After pleading guilty to conspiracy to commit bank fraud and before being convicted of that
6 conspiracy, “Alexandre Machado” as Trustee of Brusa Land Trust on May 20, 2011 quit claimed
7 defendant 1920 Apple Drive to “Heuler Moura, unmarried person.”

8 The United States has no reason to believe that Alexandre Pinheiro a.k.a. Alexandre
9 Machado received consideration from Heuler Moura for defendant 1920 Apple Drive. That transfer
10 of title may have been a sham transaction to a straw person so that Pinheiro could avoid having to
11 sell it and pay restitution based on the facts which follow.

12 On January 19, 2011, Pinheiro plead guilty to conspiracy to commit bank fraud. *United*
13 *States v. Pinheiro, et al.*, No. 3:10-CR-00611 WHA (N.D. Cal.), Plea Agreement, filed January 19,
14 2011. In that plea agreement, Pinheiro expressly agreed as follows:

15 I agree that the Court may order and I will pay restitution in an amount to be
16 determined by the Court. I agree that I will make a good-faith effort to pay any fine,
17 forfeiture, or restitution I am ordered to pay, including selling real estate that I
currently own in order to pay any resitution or fine imposed by the Court.

18 *Id.*, Plea Agreement, ¶ 8. At the time, the United States was aware that Pinheiro was the owner of
19 record of defendant 1920 Apple Drive and that there was no mortgage on the property. The United
20 States anticipated that the property would be available for sale and could be sold for restitution.

21 As stated above, a little less than two months before Pinheiro was sentenced on July 13,
22 2011, Pinheiro (a/k/a Alexandre Machado as Trustee of the Brusa Land Trust) quit claimed
23 defendant 1920 Apple Drive to his partner “Heuler Moura, unmarried person” on May 20, 2011.
24 Thus, Pinheiro no longer “owned” defendant 1920 Apple Drive when he was sentenced on July 13,
25 2011. *See* Minutes [re: Sentencing of Pinheiro], filed July 13, 2011; Judgment [re: Pinheiro},
26 entered July 18, 2011.

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3. Legal Issues

The issue which will be before the Court is whether to grant a default judgment and forfeit defendant 1920 Apple Drive to the United States.

4. Motions

There are no pending motions. The United States intends to file a motion for a default judgment.

5. Amendment of Pleadings

Not applicable.

6. Evidence Preservation

Not applicable.

7. Disclosures

No initial disclosures are required in civil forfeiture actions. Fed. R. Civ. P. 26(a)(1)(B)(ii). Also, in this case, issue has not been joined.

8. Discovery

Because issue has not been joined, there has been no discovery.

9. Class Actions

Not Applicable.

10. Related Cases

As mentioned, this case is related to *United States v. Pinheiro, et al.*, No. 3:10-CR-00611 WHA (N.D. Cal.), in the sense that the same type of criminal conspiracy underlying that case underlies the instant case.

11. Relief

The United States seeks to forfeit defendant 1920 Apple Drive.

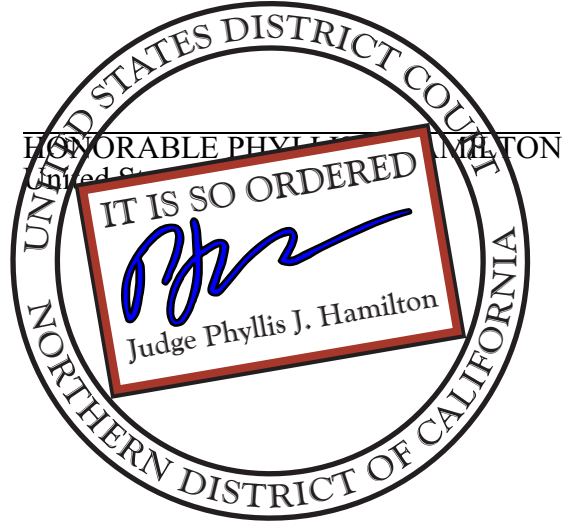
12. Settlement and ADR

Inapplicable.

13. Consent to Magistrate Judge for all Purposes

This action was originally assigned to a Magistrate Judge but, on request, was reassigned to a District Court Judge.

1 ORDERED that the Case Management Conference currently scheduled for Friday, May 10,
2 2012, be, and hereby is, taken off calendar.



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