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9 Attorneys for Plaintiff,
 FIRST NATIONAL MORTGAGE COMPANY

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

Winston & Strawn LLP
 101 California Street
 San Francisco, CA 94111-5802

15 FIRST NATIONAL MORTGAGE
 COMPANY, a California corporation,

16 Plaintiff,

18 v.

19 FEDERAL REALTY INVESTMENT TRUST,

20 Defendant.

Case No. C 03-02013 RMW (RS)

**STIPULATION AND []
 ORDER REGARDING BILL OF COSTS**

Judge: Hon. Ronald M. Whyte

1 Plaintiff First National Mortgage Company (“First National”) and Defendant Federal Realty
2 Investment Trust (“FRIT,” and with First National, the “Parties”), by and through their undersigned
3 attorneys, hereby agree and stipulate as follows and request the Court to enter the accompanying
4 order approving same:

5 1. On June 9, 2009, the Court entered Judgment in First National’s favor (Docket Entry
6 (“DE”) 714) and ordered that First National “recover \$15,901,274 from [FRIT] together with costs
7 of suit.”

8 2. On June 10, 2009, the Court entered an order entitled Stipulation and Order
9 Regarding Amount of Supersedeas Bond (DE 715), which stated, among other things,
10 “notwithstanding any provision to the contrary, ... First National may seek fees and/or costs,
11 including attorneys’ fees and expert fees, up to thirty (30) days after entry of Judgment.” (*Id.* ¶ 8.)

12 3. Within thirty (30) days after entry of judgment, on July 6, 2009, First National filed
13 its Bill of Costs (DE 720) and Declaration of Patrick M. Ryan in Support of Bill of Costs (DE 723),
14 seeking \$209,485.19 in costs. Within thirty (30) days after entry of judgment, on July 9, 2009, First
15 National filed its (1) Motion for Expenses Under Federal Rule of Civil Procedure 37(c)(2) (DE 724)
16 (“Motion for Expenses”), which seeks certain attorneys’ fees, expert witness fees, and some costs
17 sought in the Bill of Costs and some costs not sought in the Bill of Costs; and (2) its Motion for
18 Partial Expert Witness Fees Under California Code of Civil Procedure Section 998(c) (DE 726)
19 (“Motion for Expert Fees”), which seeks certain expert witness fees.

20 4. FRIT disputes that certain costs itemized by the Bill of Costs are recoverable and
21 intends to object to such costs.

22 5. First National disagrees and maintains its position that the Clerk should award costs
23 in the amount of \$209,485.19.

24 6. Nevertheless, the Parties agree that it would be prudent to compromise and agree on
25 an amount of costs to be awarded from the Bill of Costs to avoid the expense of litigating the dispute
26 over the Bill of Costs.

27 7. As such, the Parties hereby stipulate and compromise, reserving all rights should this
28 stipulation not be entered as an order, that the costs awarded to First National should be

1 \$134,485.19, which is \$75,000 less than what First National sought in the Bill of Costs.

2 8. The Parties also agree that, pursuant to their earlier stipulation that was entered as an
3 order by the Court (DE 715), enforcement of the cost award “shall be stayed without any bond for
4 thirty (30) days following entry of such order.” (DE 715 ¶ 2.) Also, pursuant to that earlier
5 stipulation, after the 30 days, “the amount of the supersedeas bond necessary and sufficient to stay
6 enforcement of any order awarding costs . . . is 1.50 times [\$134,485.19]”. (*Id.* ¶ 5.)

7 9. First National agrees, should this stipulation be entered as an order, that its request in
8 the Motion for Expenses for an award of “any costs, itemized in the First National Bill of Costs (DE
9 720) and associated with Phase II during the relevant time period (*i.e.*, after November 1, 2007) that
10 are deemed not recoverable by the Clerk of the Court....” (DE 724 at 14-15) is deemed withdrawn
11 and First National shall not seek recovery of such costs in the Motion for Expenses, Motion for
12 Expert Fee, or otherwise.

13 10. Except as provided in paragraph 9 above, nothing herein shall affect any other aspect
14 of First National’s Motion for Expenses or Motion for Expert Fees. The parties further agree that
15 this Stipulation and any order entered hereon is without prejudice to the pending appeal and cross-
16 appeal from the Judgment in the case. The Parties also agree, notwithstanding this stipulation or the
17 notices of appeal filed in this case, that the Court retains jurisdiction to enter order on the Motion for
18 Expenses and Motion for Expert Fees, and that pursuant to their earlier stipulation that was entered
19 as an order by the Court, enforcement of any awards by the Court on the Motion for Expenses and
20 Motion for Expert Fees also “shall be stayed without any bond for thirty (30) days following entry of
21 such order.” (DE 715 ¶ 2.) In addition, and also pursuant to that stipulation, after 30 days, “the
22 amount of the supersedeas bond necessary and sufficient to stay enforcement of any order [on those
23 motions] . . . is 1.50 times the amount of any such order[s]. (*Id.* ¶ 5.)

24 11. The effectiveness of this stipulation is expressly conditioned upon entry of this
25 stipulation as an order of the Court and an award of costs to First National in the amount of
26 \$134,485.19 on the Bill of Costs.

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