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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

AMERICANWEST BANK, a Washington State chartered bank,

Plaintiff,

v.

P/V BRIGHT AND MORNING STAR, Official No. 635149, AND ALL OF HER ENGINES, TACKLE, ACCESSORIES, EQUIPMENT, FURNISHINGS AND APPURTENANCES, *in rem*, and MORNING STAR CHARTERS, INC., a California corporation, *in personam*, BENJAMIN D. GRIFFITH, *in personam*, SUSAN L. GRIFFITH, *in personam*, and THE GRIFFITH REVOCABLE LIVING TRUST DATED JANUARY 12, 1990, *in personam*,

Defendants.

Case No. 12-CV-1399 JLS (WVG)

IN ADMIRALTY

ORDER APPOINTING  
SUBSTITUTE CUSTODIAN  
AND AUTHORIZING  
MOVEMENT OF DEFENDANT  
VESSEL

F.R.C.P. Supplemental Admiralty  
Rules C and E.

46 U.S.C. Sections 30101-31343

Plaintiff, AMERICANWEST BANK, by and through its attorneys, Brodsky, Micklow, Bull & Weiss, having appeared and made the following recitals:

1. PLAINTIFF filed its Verified Complaint herein praying the DEFENDANT VESSEL be condemned and sold to pay PLAINTIFFS' demands and for other proper relief.
2. PLAINTIFF anticipates that after the Court considers PLAINTIFF's Application for Appointment of Substitute Custodian and Authorizing Movement of Vessel, an Order will issue requiring that the Clerk of this Court issue a Warrant for Arrest of the DEFENDANT

1 VESSEL, and commanding the United States Marshal for this District to arrest and take into  
2 custody the DEFENDANT VESSEL and to detain her in custody until further Order of this Court  
3 respecting same.

4 3. It is therefore contemplated that the United States Marshal will arrest the  
5 DEFENDANT VESSEL forthwith. Custody by the United States Marshal requires the services  
6 of one or more keepers, and does not include charges for wharfage and the other services usually  
7 associated with safekeeping vessels similar to the DEFENDANT VESSEL.

8 4. United Sportfishers of San Diego, Inc., dba H&M Landing, which maintains a  
9 private commercial wharf at 2803 Emerson Street, San Diego, California, has agreed to assume  
10 the responsibility for safekeeping the said DEFENDANT VESSEL, and to act as her custodian  
11 until further Order of this Honorable Court. It will provide, as necessary under the  
12 circumstances, the following services for the safekeeping of the DEFENDANT VESSEL, at a  
13 cost not to exceed prevailing rates of the Port of San Diego, and as described below and with  
14 further particularity in the Declaration of Philip Lobred:

15 a. Assume custody of the DEFENDANT VESSEL from the United States Marshal  
16 at the place of her arrest (H&M Landing) and maintain and provide wharfage and custodial  
17 services for her until further Order of the Court, with wharfage services to be charged at the rate  
18 of \$12.00 per foot of documented vessel length (i.e., 95 feet X \$12 = \$1,140.00 per month), with  
19 the custodian component to be charged at the rate of fifty cents (\$.50) per foot of documented  
20 vessel length per day (i.e., \$.50 X 95 = \$47.50/day), with labor for required miscellaneous  
21 required custodial services to be charged at \$50.00 per hour, and with electrical services to be  
22 charged at actual cost; the above rates shall not exceed those that are usual, customary and  
23 prevailing in the Port of San Diego;

24 b. As soon as possible after assuming custody of the DEFENDANT VESSEL,  
25 photograph and/or video tape the interior and exterior of the vessel, and prepare a written  
26 inventory of key equipment and property on the vessel which is not installed as part of the vessel,  
27 with labor for all services to be charged at \$50.00 per hour, and with a total cost for the above  
28 services not to exceed \$200.00;

- 1 c. Periodically inspect mooring lines/fenders to assure safe and secure mooring;
- 2 d. In addition to daily inspections of the exterior of the DEFENDANT VESSEL,  
3 periodically as deemed prudent under the existing circumstances, but no less than weekly, at the  
4 rate of \$50.00 per inspection, access the interior of the vessel and inspect for watertight integrity,  
5 excessive bilge water and fuel lubricant leaks. If it is determined that further action is necessary  
6 beyond those detailed herein H&M Landing shall notify counsel for the arresting party, so he can  
7 seek an appropriate Order from the Court.
- 8 e. Provide, at usual and customary rates prevailing in the Port of San Diego,  
9 additional services such as cleaning, minor maintenance, inspection of bottom by a diver for the  
10 purpose of cleaning and reporting findings regarding underwater hull, metal and zinc conditions,  
11 as such services are deemed reasonably prudent and necessary.
- 12 f. If PLAINTIFF so requests and agrees to pay the associated additional costs, start  
13 and operate the DEFENDANT VESSEL's engines and other machinery twice monthly, and  
14 effect requested repairs as necessary to bring machinery into operational condition.
- 15 g. Provide other such services as may be required from time-to-time, by further Order  
16 of the Court.
- 17 5. The Substitute Custodian shall not sell the DEFENDANT VESSEL or release her  
18 to anyone and/or let anyone aboard her, other than in the case of emergency or as otherwise  
19 directed by the Court.
- 20 6. PLAINTIFF, by the Declaration of Philip Lobred has averred that H&M Landing  
21 has adequate facilities and supervision at its 2803 Emerson Street, San Diego facility for the  
22 proper safekeeping of the DEFENDANT VESSEL, and that it maintains insurance policies  
23 which protect it against occurrences of negligence during its custodianship. Those policies are:  
24 a policy issued by Great American Insurance Company (Policy No. OMH5335434) providing  
25 general marine liability coverage with an aggregate limit of \$2,000,000.00 and a per occurrence  
26 limit of \$1,000,000.00, and a bumbershoot (excess) policy with an aggregate limit of  
27 \$3,000,000.00. H&M Landing also maintains worker compensation coverage with Zenith  
28 Insurance Company (No. C069384704). H&M Landing does not maintain hull, machinery or

1 protection a indemnity insurance. Further, in said Declaration the Substitute Custodian accepts,  
2 in accordance with the terms of the this Order Appointing Substitute Custodian and Authorizing  
3 Movement of the Vessel, possession of the DEFENDANT VESSEL, her engines, boilers, tackle,  
4 apparel, furnishings, appurtenances, *etc.*, and all other necessities thereunto appertaining and  
5 belonging, which is the subject of the action herein.

6 7. PLAINTIFF, in consideration of the U.S. Marshal's consent to the substitution of  
7 custodian, agrees to release the United States and the Marshal from any and all liability and  
8 responsibility arising out of the care and custody of the DEFENDANT VESSEL, her engines,  
9 boilers, tackle, apparel, furnishings, appurtenances, *etc.*, and all other necessities thereunto  
10 appertaining and belonging, from the time the United States Marshal transfers possession of the  
11 DEFENDANT VESSEL over to said Substitute Custodian, and said PLAINTIFF further agrees  
12 to hold harmless and indemnify the United States and the Marshal from any and all claims  
13 whatsoever arising out of the Substitute Custodian's possession and safekeeping.

14 **THEREFORE, IT IS HEREBY ORDERED** that the United States Marshal for the  
15 Southern District be, and is hereby, authorized and directed upon seizure of the DEFENDANT  
16 VESSEL, her engines, boilers, tackle, apparel, furnishings, appurtenances, *etc.*, and all other  
17 necessities thereunto appertaining and belonging, pursuant to Warrant for Arrest to be issued  
18 by the Clerk of this Court pursuant to Order of the Court, to surrender the possession thereof to  
19 the Substitute Custodian named herein, and that upon such surrender the U.S. Marshal shall be  
20 discharged from its duties and responsibilities for the safekeeping of the DEFENDANT  
21 VESSEL and held harmless from and against any and all claims whatever arising out of said  
22 substituted possession and safekeeping.

23 **IT IS FURTHER ORDERED** that H&M Landing be and is hereby appointed the  
24 custodian of said DEFENDANT VESSEL, to retain the same in its custody for possession and  
25 safekeeping for the aforementioned compensation and in accordance with the Declaration of  
26 Philip Lobred and the recitals herein contained until further Order of this Court.

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**IT IS FURTHER ORDERED** that PLAINTIFF's attorney will serve by mail a copy of said Order to the person(s) believed to be the owner(s) of the DEFENDANT VESSEL.

Dated: June 13<sup>th</sup> 2012

  
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William V. Gallo  
UNITED STATES MAGISTRATE JUDGE