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11 *Attorneys for the United States of America*

12 JOHN S. LEONARDO  
13 United States Attorney  
14 District of Arizona  
15 *Of Counsel*

16 IN THE UNITED STATES DISTRICT COURT  
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,  
19  
20 Plaintiffs,  
21  
22 v.  
23 JAMES LESLIE READING, CLARE L.  
24 READING, FOX GROUP TRUST,  
25 MIDFIRST BANK, STATE OF ARIZONA  
26  
27 Defendants.

Civ. No. 11-0698-PHX-FJM

**UNITED STATES' MOTION TO ENTER  
A JUDGMENT**

28 Pursuant to the Court's September 19, 2012 order, the United States hereby moves the Court to enter a judgment on the tax and other liabilities and foreclose the tax liens at issue herein. Support for this motion is set forth in the memorandum in support and the Second Declaration of Elizabeth Marriaga, both of which are filed herewith. A proposed Judgment is attached as Exhibit A to the

1 memorandum in support.

2 DATED this 28th day of September, 2012.

3 KATHRYN KENEALLY  
4 Assistant Attorney General, Tax Division  
5 U.S. Department of Justice

6 By: /s/ Charles M. Duffy  
7 CHARLES M. DUFFY  
8 Trial Attorney, Tax Division

9 Of Counsel:  
10 JOHN S. LEONARDO  
11 United States Attorney

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of September, 2012, I served the foregoing through the Court’s electronic filing system:

ROBERT P. VENTRELLA  
Assistant Attorney General  
1275 West Washington Street  
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE  
LAKSHMI JAGANNATH, ESQUIRE  
McCarthy, Holthus, Levine Law Firm  
8502 E. Via de Ventura, Suite 200  
Scottsdale, Arizona 85258

TOMMY K. CRYER  
Attorney at Law  
7330 Fern Avenue  
Shreveport, Louisiana 71105

I also certify that on this 28th day of September, 2012, I served the foregoing on the undersigned by first class mail:

James Leslie Reading  
Clare Louise Reading  
2425 East Fox Street  
Mesa, Arizona 85213

/s/ Charles M. Duffy  
Charles M. Duffy  
Trial Attorney, Tax Division  
U.S. Department of Justice

1 KATHRYN KENEALLY  
Assistant Attorney General

2 CHARLES M. DUFFY  
3 Trial Attorney, Tax Division  
4 U.S. Department of Justice  
5 P.O. Box 683  
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7 Washington, D.C. 20044-0683  
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10 [Western.taxcivil@usdoj.gov](mailto:Western.taxcivil@usdoj.gov)  
11 *Attorneys for the United States of America*

12 JOHN S. LEONARDO  
13 United States Attorney  
14 District of Arizona  
15 *Of Counsel*

16 IN THE UNITED STATES DISTRICT COURT  
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiffs,

20 v.

21 JAMES LESLIE READING, CLARE L.  
22 READING, FOX GROUP TRUST,  
23 MIDFIRST BANK, STATE OF ARIZONA

24 Defendants.

Civ. No. 11-0698-PHX-FJM

**MEMORANDUM IN SUPPORT OF THE  
UNITED STATES' MOTION TO ENTER  
JUDGMENT**

**I.**

**BACKGROUND**

25 On September 19, 2012, the Court entered summary judgment in favor of the United States  
26 on all claims in the complaint except for the Third Claim, which the Court dismissed with prejudice  
27 based on a concession by the Government. In its September 19, 2012 order, the Court directed the  
28 United States to submit a proposed judgment regarding the tax and other claims that are at issue in  
the First, Second, Fourth and Fifth Claims of the complaint. The amounts owed on those claims are  
set forth in Section II, below and a proposed judgment is attached hereto as Exhibit A.

In its September 19, 2012 order, the Court also granted summary judgment in favor of the

1 United States on the Sixth, Seventh and Eighth Claims of the complaint through which the  
2 Government sought to foreclose its federal tax liens on the residence of defendants James and Clare  
3 Reading (“the residence”). In the order, the Court directed that the proposed judgment should  
4 address the foreclosure and sale of the residence. Pertinent facts regarding the foreclosure and sale  
5 are set forth in Section III, below.

6 **II.**

7 **AMOUNTS OWED REGARDING THE FIRST,**  
8 **SECOND, FOURTH AND FIFTH CLAIMS**

9 **A. Balance Owed on the First Claim For the Tax and Related Assessments Made Against**  
10 **James L. Reading for his 1993, 1994, 1995 and 2008 Income Tax Years.**

11 The First Claim includes income tax and other assessments relating to James Reading’s 1993,  
12 1994, 1995 and 2008 income tax years. In its September 19, 2012 order, the Court directed the  
13 United States to submit a proposed judgment which includes “updated calculations for [defendant  
14 James] Reading’s liabilities for his 1994 and 1995 tax years,” that are at issue in the First Claim of  
15 the complaint. The updated calculations relate to the fact that, in its August 24, 2012 reply brief, the  
16 United States conceded that only fifty (50) percent of compensation received by James Reading in  
17 1994 and 1995 should be considered in calculating his correct federal income tax liabilities for those  
18 years. The updated calculations for Mr. Reading’s 1994 and 1995 tax years are set forth in Exhibit  
19 A attached to the Second Declaration of IRS Revenue Agent Elizabeth Marriaga, which is filed  
20 herewith.

1 The amounts due for each of the liabilities at issue in the First Claim, as of May 1, 2012, are  
 2 as follows:

3	1993	\$118,162.63 <sup>1</sup>
4	1994	138,605.77 <sup>2</sup>
5	1995	84,798.81 <sup>3</sup>
6	2008	<u>8,426.73<sup>4</sup></u>
7	Aggregate balance	\$349,993.94

8 **B. Balance Owed on the Second Claim For the Tax and Related Assessments Made Against**  
 9 **Clare Reading for her 1994 and 1995 Income Tax Years.**

10 The aggregate balance of the amounts due in the Second Claim, as of May 1, 2012, is  
 11 \$116,632.96.<sup>5</sup>

12 **C. Balance Owed on the Fourth Claim For the Frivolous Tax Return Penalty Assessments**  
 13 **Made Under 26 U.S.C. § 6702 Against James Reading for his 1997-2000, 2002-2006 and**  
 14 **2008 Tax Years.**

15 The aggregate balance of the amounts due in the Fourth Claim, as of May 1, 2012, is  
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19 <sup>1</sup> See United States’ Statement of Material Facts filed as court docket number  
 20 52-2 on May 11, 2012 (hereafter “U.S. Facts”), at ¶ 43; *see also* the Declaration of  
 21 Debbie Vahe filed on May 11, 2012, at ¶ 15 and Exhibit J-1 thereto.

22 <sup>2</sup> See the Second Declaration of Elizabeth Marriaga, which is filed herewith,  
 23 and Exhibit A attached thereto (in the 1994 column).

24 <sup>3</sup> See the Second Declaration of Elizabeth Marriaga filed herewith and  
 25 Exhibit A attached thereto (in the 1995 column).

26 <sup>4</sup> See U.S. Facts, at ¶ 43, the Declaration of Debbie Vahe filed on May 11,  
 27 2012, at ¶ 15 and Exhibit J-4 thereto.

28 <sup>5</sup> See U.S. Facts, at ¶ 45, the Declaration of Debbie Vahe filed on May 11,  
 2012, at ¶ 16 and Exhibits K-1 and K-2 thereto.

1 16,739.18.<sup>6</sup>

2 **D. Balance Owed on the Fifth Claim For the Frivolous Penalty Assessments Made Under**  
 3 **26 U.S.C. § 6702 Against Clare Reading for her 1997-2006 and 2008 Tax Years.**

4 The aggregate balance of the amounts due in the Fifth Claim, as of May 1, 2012, is  
 5 \$16,793.78.<sup>7</sup>

6 **E. Total Amount Owed on the First, Second, Fourth and Fifth Claims.**

7 The total owed to the United States based on the taxes and other amounts owed for the First,  
 8 Second, Fourth and Fifth Claims, as of May 1, 2012, is \$500,159.86. This amount was calculated  
 9 by adding the aggregate balances set forth in paragraphs A through D. The United States is entitled  
 10 to interest on the amounts owed, subsequent to May 1, 2012, pursuant to 26 U.S.C. §§ 6601, 6621  
 11 and 6622, and 28 U.S.C. § 1961(c).

12 **III.**

13 **FORECLOSURE AND SALE OF THE RESIDENCE**

14 As set forth above, in its September 19, 2012 order, the Court granted summary judgment to  
 15 the United States on the Sixth, Seventh and Eighth Claims of the complaint which allows the  
 16 Government to foreclose its federal tax liens on the residence of James and Clare Reading. The  
 17 address of the residence is 2425 East Fox Street, Mesa, Arizona.

18 Based on stipulations previously filed with the Court, two defendants in this case have priority  
 19 over the United States' federal tax liens *vis a vis* the residence. *See* the stipulations filed as court  
 20 docket numbers 35 and 36. The MidFirst Bank has first priority and, based on information that it  
 21 recently provided to the undersigned Government counsel, it is owed a total of \$13,152.12 as of  
 22 January 1, 2013. This amount *includes* all fees due MidFirst including its attorney's fees.

23 The State of Arizona has second priority and, based on information that it recently provided,  
 24

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25 <sup>6</sup> *See* U.S. Facts, at ¶ 50, the Declaration of Debbie Vahe filed on May 11,  
 26 2012, at ¶¶ 19 and 20 and Exhibits M-1 to M-7 attached thereto.

27 <sup>7</sup> *See* U.S. Facts, at ¶ 54, the Declaration of Debbie Vahe filed on May 11,  
 28 2012, at ¶¶ 21 and 22 and Exhibits N-1 to N-7 attached thereto.

1 it is owed \$15,497.77, as of November 1, 2012, with \$1.14 in interest accruing per day thereafter.

2 DATED this 28th day of September, 2012.

3 KATHRYN KENEALLY  
4 Assistant Attorney General, Tax Division  
5 U.S. Department of Justice

6 By: /s/ Charles M. Duffy  
7 CHARLES M. DUFFY  
8 Trial Attorney, Tax Division

9 Of Counsel:

10 JOHN S. LEONARDO  
11 United States Attorney  
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1275 West Washington Street  
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8502 E. Via de Ventura, Suite 200  
Scottsdale, Arizona 85258

TOMMY K. CRYER  
Attorney at Law  
7330 Fern Avenue  
Shreveport, Louisiana 71105

I also certify that on this 28th day of September, 2012, I served the foregoing on the undersigned by first class mail:

James Leslie Reading  
Clare Louise Reading  
2425 East Fox Street  
Mesa, Arizona 85213

/s/ Charles M. Duffy  
Charles M. Duffy  
Trial Attorney, Tax Division  
U.S. Department of Justice

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11 *Attorneys for the United States of America*



8 JOHN S. LEONARDO  
9 United States Attorney  
10 District of Arizona  
11 *Of Counsel*

11 IN THE UNITED STATES DISTRICT COURT  
12 DISTRICT OF ARIZONA

13 UNITED STATES OF AMERICA,

14 Plaintiffs,

15 v.

16 JAMES LESLIE READING, CLARE L.  
17 READING, FOX GROUP TRUST,  
18 MIDFIRST BANK, CHASE, FINANCIAL  
19 LEGAL SERVICES, STATE OF ARIZONA

20 Defendants.

Civ. No. 11-698-PHX-FJM

**(PROPOSED) ENTRY OF JUDGMENT  
AND ORDER OF FORECLOSURE AND  
DECREE OF SALE**

21 Pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. § §§ 7402 and 7403, and the Court's  
22 September 19, 2012 Order, IT IS HEREBY ORDERED THAT:

23 1. JUDGMENT is hereby entered in favor of the United States of America and against  
24 defendant James Reading on the First Claim in the complaint, for the tax and related assessments  
25 made against him for his 1993, 1994, 1995 and 2008 Income Tax Years in the amount of  
26 \$349,993.94, as of May 1, 2012, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§  
27 6601, 6621 and 6622 and 28 U.S.C. § 1961(c) and other statutory additions, less any payments and  
28

1 credits.

2 2. JUDGMENT is hereby entered in favor of the United States of America and against  
3 defendant Clare Reading on the Second Claim, for the tax and related assessments made against her  
4 for her 1994 and 1995 in the amount of \$116,632.96, as of May 1, 2012, plus statutory interest  
5 accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621 and 6622 and 28 U.S.C. § 1961(c) and other  
6 statutory additions, less any payments and credits.

7 3. JUDGMENT is hereby entered in favor of the United States of America and against  
8 defendant James Reading on the Fourth Claim in the complaint, for the frivolous tax return penalty  
9 assessments made under 26 U.S.C. § 6702 against him for his 1997, 1998, 1999, 2000, 2002, 2003,  
10 2004, 2005, 2006 and 2008 Tax Years in the amount of \$16,739.18, as of May 1, 2012, plus  
11 statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621 and 6622 and 28 U.S.C.  
12 § 1961(c) and other statutory additions, less any payments and credits.

13 4. JUDGMENT is hereby entered in favor of the United States of America and against  
14 defendant Clare Reading on the Fifth Claim in the complaint, for the frivolous tax return penalty  
15 assessments made under 26 U.S.C. § 6702 against her for her 1997, 1998, 1999, 2000, 2001, 2002,  
16 2003, 2004, 2005, 2006 and 2008 Tax Years in the amount of \$16,793.78, as of May 1, 2012, plus  
17 statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601, 6621 and 6622 and 28 U.S.C.  
18 § 1961(c) and other statutory additions, less any payments and credits.

19 5. The parcel of real property upon which foreclosure is sought in this case is residential  
20 real property located at is 2425 East Fox Street, Mesa, Arizona (hereafter “the real property”). The  
21 real property also has the following legal description:

22 Lot forty-nine (49), BROWNMORE ESTATES, according to the plat of record in the office  
23 of the Maricopa County Recorder in Book 133 of Maps, page 41.

24 6. The United States has valid and subsisting tax liens on all property and rights to  
25 property of James Reading and Clare Reading - including the real property - arising from the  
26 assessments described above, which tax liens are effective as of the dates of those assessments.

27 7. The United States’ federal tax liens against the real property are hereby foreclosed.  
28

1 The United States Marshal for the District of Arizona or his/her representative (“the Marshal”) or  
2 an Internal Revenue Service Property Appraisal and Liquidation Specialist (“PALS”) representative  
3 is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the  
4 real property under this Order of Foreclosure and Decree of Sale and shall make the arrangements  
5 for any sale as set forth in this Order.

6 8. The United States may choose either the Marshal or a PALS representative to carry  
7 out the sale under this Order. The Marshal, his representative, or a PALS representative, is  
8 authorized to have free access to the real property and to take all actions necessary to preserve the  
9 real property, including, but not limited to, retaining a locksmith or other person to change or install  
10 locks or other security devices on any part of the property, until the deed to the real property is  
11 delivered to the ultimate purchaser(s).

12 9. The terms and conditions of the sale are as follows:

13 a. Except as otherwise stated herein, the sale of the real property shall be by public  
14 auction to the highest bidder, free and clear of all liens and interests;

15 b. The sale shall be subject to building lines, if established, all laws, ordinances,  
16 and governmental regulations (including building and zoning ordinances) affecting the real  
17 property, and easements and restrictions of record, if any;

18 c. The sale shall be held at the courthouse of the county or city in which the real  
19 property is located, on the premises of the parcel of real property being sold, or at any other  
20 place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time  
21 announced by the Marshal, his/her representative, or a PALS representative;

22 d. Notice of the sale shall be published once a week for at least four consecutive  
23 weeks before the sale in at least one newspaper regularly issued and of general circulation in  
24 Maricopa County, Arizona, and, at the discretion of the Marshal, his representative, or a  
25 PALS representative, by any other notice deemed appropriate. **State law notice  
26 requirements for foreclosures or execution sales do not apply to this sale under federal  
27 law.** The notice shall contain a description of the real property and shall contain the material  
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1 terms and conditions of sale in this order of sale;

2 e. The minimum bid will be set by the Internal Revenue Service. If the minimum  
3 bid is not met or exceeded, the Marshal, his or her representative, or a PALS representative  
4 may, without further permission of this Court, and under the terms and conditions in this order  
5 of sale, hold a new public sale, if necessary, and reduce the minimum bid or sell to the  
6 highest bidder;

7 f. Bidders shall be required to DEPOSIT at the time of sale with the Marshal or  
8 a PALS representative a minimum of ten percent of the bid with the deposit to be made by  
9 a certified or cashier's check payable to the United States District Court for the District of  
10 Arizona. Before being permitted to bid at the sale, bidders shall display to the Marshal or a  
11 PALS representative satisfactory proof of compliance with this requirement;

12 g. The balance of the purchase price of the real property at issue in excess of the  
13 deposit tendered shall be paid to the Marshal or a PALS representative within thirty (30) days  
14 after the date the bid is accepted by a certified or cashier's check payable to the United States  
15 District Court for the District of Arizona. If the successful bidder fails to fulfill this  
16 requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the  
17 sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to  
18 be applied to the federal tax liabilities owed by James Reading and/or Clare Reading that are  
19 at issue herein. The real property at issue shall be again offered for sale under the terms and  
20 conditions of this Order of Foreclosure and Judicial Sale. The United States may bid as a  
21 credit against its judgment without tender of cash;

22 h. The sale of the real property at issue shall not be final until confirmed by this  
23 Court. The Marshal or PALS representative shall file a report of sale with the Court, together  
24 with a proposed order of confirmation of sale and proposed deed, within 35 days from the  
25 date of receipt of the balance of the purchase price;

26 i. Upon confirmation of the sale, the Marshal or a PALS representative shall  
27 promptly execute and deliver a deed of judicial sale conveying the real property to the  
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1 purchaser;

2 j. Upon confirmation of the sale, the interests of, liens against, or claims to the  
3 real property at issue held or asserted by the United States in the Complaint and any other  
4 parties to this action or any successors in interest or transferees of those parties shall be  
5 discharged and extinguished. The sale is ordered pursuant to 28 U.S.C. § 2001. **Redemption**  
6 **rights under state law shall not apply to this sale under federal law;** and

7 k. Upon confirmation of the sale, the purchaser shall have the recorder of deeds  
8 or Office of the County Clerk, Maricopa County, Arizona cause transfer of the real property  
9 so it is reflected upon that county's register of title.

10 10. Until the real property at issue is sold, James Reading and Clare Reading shall take all  
11 reasonable steps necessary to preserve the real property at issue (including all buildings,  
12 improvements, fixtures and appurtenances thereon) including, without limitation, maintaining fire  
13 and casualty insurance policies on the real property. They shall not commit waste against the real  
14 property at issue, nor shall they cause or permit anyone else to do so. They shall not do anything that  
15 tends to reduce the value or marketability of the real property at issue, nor shall they cause or permit  
16 anyone else to do so. They shall not record any instruments, publish any notice, or take any other  
17 action that may directly or indirectly tend to adversely affect the value of the real property at issue  
18 or that may tend to deter or discourage potential bidders from participating in the public sale, nor  
19 shall she cause or permit anyone else to do so. **Violation of this paragraph shall be deemed a**  
20 **contempt of court and punishable as such.**

21 11. James Reading and Clare Reading and all other persons occupying the real property  
22 at issue shall leave and vacate permanently such property no later than thirty (30) days after this  
23 Order is signed each taking with them his or her personal property (but leaving all improvements,  
24 buildings, fixtures, and appurtenances) when leaving and vacating. If any person fails or refuses to  
25 leave and vacate the property by the time specified in this Order, the United States Marshal's Office  
26 or the Sheriff of Maricopa County is authorized to take whatever action they deem appropriate to  
27 remove such person or persons from the premises. If any person fails or refuses to remove his or her  
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1 personal property from the real property at issue by the time specified herein, the personal property  
2 remaining on the real property at issue thereafter is deemed forfeited and abandoned, and the Marshal  
3 or a PALS representative is authorized and directed to remove and dispose of it in any manner he/she  
4 sees fit, including sale, in which case the proceeds of sale are to be applied first to the expenses of  
5 sale, and then to the tax liabilities at issue herein.

6 12. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale  
7 of the real property at issue is confirmed by this Court, the real property at issue remains occupied,  
8 a writ of assistance may, without further notice, be issued by the Clerk of Court pursuant to Rule 70  
9 of the Federal Rules of Civil Procedure to compel delivery of possession of the real property at issue  
10 to the purchasers thereof.

11 13. If James Reading or Clare Reading and any other persons occupying the real property  
12 at issue, vacates the property prior to the deadline set forth in paragraph 11, above, such person shall  
13 notify counsel for the United States no later than 2 business days prior to vacating the property of  
14 the date on which he or she is vacating the property. Notification shall be made by leaving a  
15 message for said counsel, Charles Duffy, at (202) 307-6406.

16 14. The Marshal or a PALS representative shall deposit the amount paid by the purchaser  
17 into the registry of the court. Upon appropriate motion for disbursement or stipulation, the court will  
18 disburse the funds in the following partial order of preference until these expenses and liens are  
19 satisfied:

20 a. To the Marshal or IRS, for allowed costs and expenses of sale, including any  
21 commissions due under 28 U.S.C. § 1921(c) and including an amount sufficient to cover the  
22 costs of any steps taken to secure or maintain the real property at issue pending sale and  
23 confirmation by the Court;

24 b. To all taxes unpaid and matured that are owed (to county, city or school district)  
25 for real property taxes on the property. To the extent that defendant MidFirst Bank (or its  
26 assigns or a related entity) has or is holding an escrow for real property taxes on the real  
27 property and does not pay such escrow amounts to the appropriate local taxing authority for  
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1 property taxes owed, it should pay such amounts into the registry of the court;

2 c. To MidFirst Bank, which is owed a total of \$13,152.12 as of January 1, 2013  
3 (this amount *includes* all fees due MidFirst including its attorney’s fees);

4 d. To the State of Arizona, which is owed \$15,497.77, as of November 1, 2012,  
5 with \$1.14 in interest accruing per day thereafter;

6 e. To the United States, without reduction for registry fees,<sup>1</sup> in the amount of the  
7 outstanding federal tax, penalty and related liabilities of James Reading and Clare Reading  
8 for the periods at issue in this action. The amount of aggregate amount of such liabilities, as  
9 of May 1, 2012, is \$500,159.86 and interest should accrue subsequent to May 1, 2012  
10 pursuant to 26 U.S.C. §§ 6601, 6621 and 6622, and 28 U.S.C. § 1961(c); and

11 f. Any balance remaining after the above payments shall be held by the Clerk until  
12 further order of the Court.

13  
14 IT IS SO ORDERED,

15  
16  
17 \_\_\_\_\_  
18 DATE

17 \_\_\_\_\_  
18 FREDERICK J. MARTONE  
19 United States District Judge

20  
21 \_\_\_\_\_  
22 <sup>1</sup> “In cases where the United States Government is a party to the action underlying  
23 the registry investment, the funds initially withheld in payment of the [registry] fee may be  
24 restored to the United States upon application filed with the court by...government counsel.” 56  
25 FR 56356-01; *see also Housekey Fin. Corp. v. Hofer*, 2001 WL 429821 at \*1 (E.D. Cal. March  
26 23, 2001)(ordering the Clerk to disburse all registry funds to the United States “undiminished by  
27 any registry fees assessed”).

28 The United States hereby requests the return of any registry fees charged against the  
registry funds and requests that this amount be included in the funds disbursed to the United  
States.