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ELECTRONICALLY FILED
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Honorable John Gleeson
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. John Surgent,
Civil Action No. CR-04-364 (Gleeson, J.)

Dear Judge Gleeson:

Enclosed please find a proposed Order amending the Stipulation and Order Amending Ex Parte Post-Indictment Post-Conviction Restraining Orders that was "so ordered" by this Court on July 28, 2006 (the "Stipulation and Order"). This amendment is requested for the reasons set forth below.

On May 3, 2006, this Court entered a Preliminary Order of Forfeiture forfeiting John Surgent's interest in a number of assets, including real property located in Franklin Lakes, New Jersey (the "Franklin Lakes property") and shares of stock in a company named Safeguard Security Holdings. Shortly thereafter, Regina Surgent (the "Claimant" or "Ms. Surgent") filed a claim to these assets and asked that her interest in them be adjudicated in accordance with Fed. R. Crim. P. 32.2(c) and 21 U.S.C. § 853(n). Because Ms. Surgent claimed to have no monies to support herself or her children and because the two mortgages secured by the Franklin Lakes property were in default (and accruing interest at a penalty rate), the parties negotiated the terms of the Stipulation and Order which was submitted to the Court and "so ordered" at the parties' request. According to its terms, the Stipulation and Order was designed to provide the Claimant with funds to support her two minor children, pay the past-due amounts on the mortgages, and permit the interlocutory sale of the Franklin Lakes property. Specifically, the Stipulation and Order amended a previously entered restraining order to permit the sale of the shares of stock, the proceeds of which would be used to bring both mortgages current and to provide the Claimant with $20,000 to support her and her children pending resolution of this ancillary proceeding. Additionally, so as to facilitate the sale of the Franklin Lakes property, the government released the lis pendens that it had previously filed. A copy of the Stipulation and Order is annexed hereto as Exhibit 1.

On or about August 7, 2006, the government sent Garden State Securities/RBC Dain Rauscher ("Garden State"), the brokerage firm holding the affected shares of stock, a copy of the Stipulation and Order. In the cover letter, the government asked Garden State to coordinate the liquidation of the stock and the disbursement of the proceeds with Ms. Surgent or her attorney. A copy of the cover letter, which was also sent to the Claimant's counsel, is annexed hereto as Exhibit 2. This request comports with the terms of the Stipulation and Order, which released the shares to the Claimant to dispose of in accordance with the parties' agreement. Further, and as a practical matter, as the purported owner of the Franklin Lakes property, Ms. Surgent had the payment addresses and account numbers to ensure that the mortgage payments were properly applied.

Unfortunately, the shares of stock were liquidated at prices considerably less than the parties had anticipated, and the government understands that the proceeds were not sufficient to bring either one of the mortgages current. Nevertheless, sometime thereafter, Ms. Surgent received her $20,000. Garden State, however, has yet to receive instructions as to the disbursement of the balance (over $63,000).

On November 7, 2006, the government wrote a letter to Garden State again requesting that it coordinate disbursement of the balance of the monies held with Ms. Surgent or her attorney. The Claimant's counsel was copied on that letter, a copy of which is annexed hereto as Exhibit 3. That same day, an email was sent to the Claimant's counsel reiterating the government's request that the Claimant instruct Garden State as to the disbursement of the monies. A copy of the email is annexed hereto as Exhibit 4. On December 11, 2006, Garden State contacted this office to complain that counsel still had not provided it with instructions as to where to send the monies. A copy of Garden State's letter is annexed hereto as Exhibit 5.

The matter was briefly raised with counsel at a court conference in November. The government raised this issue yet again after a January 4, 2007 conference with counsel. At that time, counsel suggested that, because the monies were not sufficient to cover either of the outstanding mortgages, there might be other uses for the funds that would better preserve the value of the Franklin Lakes property. The government contacted counsel by telephone on January 5 and by letter dated January 18, 2007 to discuss this proposal, expressing a willingness to consent to an amendment of the Stipulation and Order but pressing for further details. No details have been forthcoming. In the January 18th letter, a copy of which is annexed hereto as Exhibit 6, the government advised that it would seek the Court's intervention to resolve this matter.

On January 29, 2007, counsel emailed the government expressing his agreement that disbursement of the monies held at Garden State was a concern requiring "prompt attention." Over one week later, on February 6, 2007, not having heard anything further from counsel, the government sent another letter. Counsel responded via email, promising to respond "within a day or two." Copies of this correspondence are annexed hereto as Exhibits 7, 8, and 9, respectively. The government has not received any further response.

Nearly six and one half months have passed since issuance of the Stipulation and Order and no payments have been made towards either of the outstanding mortgages on the Franklin Lakes property. As such, the equity in the property continues to erode. Ms. Surgent's failure to arrange for payment of any monies to the mortgage companies stands in stark contrast to the government's good faith efforts to negotiate the terms of the Stipulation and Order, which provided for the release of $20,000 of forfeitable money to Ms. Surgent as well as the release of the government's lis pendens. Ms. Surgent continues to live, essentially "rent free," in a multi-million dollar home, all the while allowing the home's value to waste and thereby depriving her husband's victims of any hope for meaningful restitution. This situation, which has malingered for far too long, violates both the letter and the spirit of the Stipulation and Order.

Because the monies held by Garden State are simply not sufficient to bring the mortgages current, the government suggests that a portion of the monies be applied towards back taxes on the property and that the balance be held by the U.S. Marshals Service to pay taxes as they come due. Prompt payment of taxes as they accrue will avoid the 18% penalty rate of interest imposed upon such delinquencies. According to the Borough of Franklin Lakes, Tax Collection Office, as of today, the following taxes, penalties, and interest are owed:

Principal, 2006	$23,074.36
Principal, First Quarter 2007	$10,570.00
Interest	$1,848.11
Penalties	$1,459.37
TOTAL	$36,951.84.

Therefore, a proposed order is enclosed pursuant to which Garden State is directed to disburse $36,951.84 to the Borough of Franklin Lakes for the payment of taxes and to disburse the balance to the U.S. Marshals Service.

Thank you for your consideration of this application.

Respectfully submitted,

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United States Attorney

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