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11 Attorneys for the Estate of Michael Heiser, *et al.*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 MICHAEL BENNETT, *et al.*,
16 Plaintiffs,
17 v.
18 ISLAMIC REPUBLIC OF IRAN, *et al.*,
19 Defendants.

CASE NO. CV-11-5807-(CRB) (NJV)

**STIPULATION AND [PROPOSED]
CONSENT ORDER RESOLVING PENDING
MOTIONS AND RELATED MATTERS AND
AUTHORIZING DEPOSIT OF BLOCKED
ASSETS INTO REGISTRY OF COURT
PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 67**

[CIVIL L.R. 7-12]

Date Action Filed: December 2, 2011

The Honorable Charles R. Breyer

<p>VISA, INC. and FRANKLIN RESOURCES, INC.,</p> <p style="text-align: center;">Third-Party Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BANK MELLI, <i>et al.</i>,</p> <p style="text-align: center;">Third-Party Defendant.</p>
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STIPULATION AND [PROPOSED] CONSENT ORDER

Pursuant to Local Rule 7-12, Plaintiffs Michael Bennett, *et al.* (collectively, the “Bennetts”), Defendants and Third-Party Plaintiffs Franklin Resources, Inc. (“Franklin”) and Visa Inc. (“Visa”), Third-Party Defendants Steven M. Greenbaum, *et al.* (collectively, the “Greenbaums”), Third-Party Defendants Carlos Acosta, *et al.* (collectively, the “Acostas”) and Third-Party Defendants the Estate of Michael Heiser, *et al.* (collectively, the “Heisers,” and together with the Bennetts, Visa, Franklin, the Greenbaums and the Acostas, the “Parties”), by and through their respective counsel, HEREBY STIPULATE AND AGREE as follows:

WHEREAS, on December 2, 2011, the Bennetts filed their Complaint against Visa and Franklin (the “Complaint”) (ECF Dkt. No. 1), seeking a turnover of certain blocked assets (the “Blocked Assets”) held by Visa and blocked in accordance with sanctions regulations administered by the United States Department of Treasury’s Office of Foreign Assets Control (“OFAC”);

WHEREAS, on November 18, 2011, the Heisers filed a post-judgment turnover action against Franklin in United States District Court for the Southern District of New York, styled *Heiser v. Franklin Resources, Inc.*, case no. 11-cv-08446 (GBD) (MHD) (S.D.N.Y.) (the “Heiser New York Proceeding”), in which the Heisers also sought a turnover of the Blocked Assets;

WHEREAS, on November 29, 2011 the Greenbaums and Acostas obtained writs of

-2-

STIPULATION AND [PROPOSED] CONSENT ORDER RESOLVING PENDING MOTIONS AND RELATED MATTERS AND AUTHORIZING DEPOSIT OF BLOCKED ASSETS INTO REGISTRY OF COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 67 CV-11-5807-CRB (NJV)

1 execution from the Clerk of the Court pursuant to the Court's November 29, 2011 Order pursuant
2 to 28 U.S.C. § 1610(c), which writs, along with notices of levy and memorandum of garnishee,
3 were delivered to the United States Marshal Service for the Northern District of California for
4 service upon Visa and Franklin and levy upon the Blocked Assets;

5
6 WHEREAS, on February 3, 2012, Visa and Franklin filed their Third-Party Complaint in
7 the nature of interpleader against, *inter alia*, the Greenbaums, the Acostas, and the Heisers (the
8 "Third-Party Complaint") (ECF Dkt. No. 16);

9
10 WHEREAS, on March 19, 2012, the Greenbaums and Acostas filed answers to the Third-
11 Party Complaint and asserted counterclaims against Visa and Franklin (ECF Dkt. Nos. 40 and
12 41);

13
14 WHEREAS, on March 20, 2012, Visa and Franklin filed with the Court their *Ex Parte*
15 Application for Injunction Pursuant to 28 U.S.C. Section 2361 ("*Ex Parte* Application") seeking
16 to enjoin prosecution of the Heiser New York Proceeding and to require resolution of claims to
17 the Blocked Assets in this Court (ECF Dkt. No. 42);

18
19 WHEREAS, on March 30, 2012, the Heisers filed with the Court a Consolidated (I)
20 Motion to Dismiss (1) Third-Party Complaint Filed by Franklin Resources, Inc. and Visa, Inc.
21 and (2) Complaint filed by the Bennetts Plaintiffs, and (II) Opposition to *Ex Parte* Application
22 and Memorandum of Points and Authorities in Support of Application for Injunction Pursuant to
23 28 U.S.C. § 2361 (the "Consolidated Motion to Dismiss") (ECF Dkt. No. 59);

24
25 WHEREAS, on April 18, 2012, the Bennett Plaintiffs and Visa and Franklin filed
26 oppositions to the Consolidated Motion to Dismiss (ECF Dkt. Nos. 70 and 71);

27
28 WHEREAS, on April 24, 2012, Visa and Franklin filed a Supplemental Memorandum and
Request for Leave to Make Deposit in Court (the "Supplemental Memorandum"), in which Visa
and Franklin attached a letter from the United States Department of Justice stating that Visa and
STIPULATION AND [PROPOSED] CONSENT ORDER RESOLVING PENDING MOTIONS AND
RELATED MATTERS AND AUTHORIZING DEPOSIT OF BLOCKED ASSETS INTO REGISTRY OF
COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 67 CV-11-5807-CRB (NJV)

1 Franklin do not need an OFAC license in order to deposit the Blocked Assets into the Court's
2 registry;

3 WHEREAS, in the Supplemental Memorandum Visa and Franklin requested leave to
4 deposit the Blocked Assets into the registry of the Court pursuant to Federal Rule of Civil
5 Procedure 67;

6 WHEREAS, on April 26, 2012, Visa and Franklin filed answers to the Greenbaum and
7 Acosta counterclaims (ECF Dkt. Nos. 80, 81, 82 and 83);

8 WHEREAS, the Court has scheduled a hearing on the *Ex Parte* Application and
9 Consolidated Motion to Dismiss for May 4, 2012 at 10:00 a.m.

10 WHEREAS, the Parties have reached a resolution of the claims and issues in the *Ex Parte*
11 Application, the Consolidated Motion to Dismiss, and the Supplemental Memorandum pursuant
12 to which (1) Visa and Franklin shall be authorized to deposit the Blocked Assets into the registry
13 of the Court pursuant to the proposed order attached hereto as Exhibit A, (2) Visa and Franklin
14 shall withdraw the *Ex Parte* Application, (3) the Heisers shall withdraw the Consolidated Motion
15 to Dismiss, and (4) the Heisers agree to prosecute their claims to the Blocked Assets in this Court
16 and the Heisers and Franklin shall request a stay of the Heiser New York Proceeding;

17 WHEREAS, upon the Motion for Entry of Default of Third-Party Defendant Bank Melli
18 filed by Visa and Franklin on April 19, 2012, default was entered by the Clerk of Court as to
19 third-party defendant Bank Melli on April 26, 2012 (ECF Dkt. Nos. 74 and 79);

20 WHEREAS, on April 30, 2012, Visa and Franklin filed a Notice of Voluntary Dismissal
21 of Third-Party Defendant the United States of America, by which Visa and Franklin voluntarily
22 dismissed, without prejudice, all claims against the United States of America (ECF Dkt. No. 84);

23 WHEREAS, the Bennetts, the Greenbaums, the Acostas, and the Heisers have reached a
24 resolution among themselves regarding their respective claims of priority to the Blocked Assets,
25 STIPULATION AND [PROPOSED] CONSENT ORDER RESOLVING PENDING MOTIONS AND
26 RELATED MATTERS AND AUTHORIZING DEPOSIT OF BLOCKED ASSETS INTO REGISTRY OF
27 COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 67 CV-11-5807-CRB (NJV)
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1 and in connection with such resolution the Parties anticipate submitting a joint filing with the
2 Court in the near future in order to resolve all of their outstanding claims in this action.

3 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** between the
4 Parties as follows:

5 1. Visa and Franklin's request for leave to deposit the Blocked Assets totaling
6 \$17,648,962.76 into the registry of the Court is **GRANTED**.

7 2. Visa and Franklin shall deposit the Blocked Assets into the Court's registry within
8 ten (10) days of the date of the approval and entry of this Order.

9 3. Visa and Franklin's *Ex Parte* Application is **WITHDRAWN**.

10 4. The Heisers' Consolidated Motion to Dismiss is **WITHDRAWN**.

11 5. The Heisers agree to prosecute their claims to the Blocked Assets in this Court and
12 shall file a Stipulation and Proposed Order in the United States District Court for the Southern
13 District of New York in a form as shall be mutually agreed upon by counsel for the Heisers and
14 counsel for Visa and Franklin, which shall provide for a stay of the Heiser New York Proceeding
15 pending resolution of this proceeding.

16 6. Within fourteen (14) days of the date of the approval and entry of this Order, the
17 Heisers shall file a response to the Third-Party Complaint.

18 7. In accordance with Federal Rule of Civil Procedure 67 and General Order No. 31,
19 by separate Order of this same date the Court authorizes deposit of the Blocked Assets totaling
20 \$17,648,962.76 into the Court's registry and Visa and Franklin shall deliver that Order to the
21 Clerk of the Court.

22 8. The hearing scheduled for May 4, 2012 is **CANCELLED**.

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Stipulated and Agreed to:

Dated: May 2, 2012

FRANK T. PEPLER
DLA PIPER LLP (US)

DALE K. CATHELL
DAVID B. MISLER
DLA PIPER LLP (US)

By /s/ Frank T. Pepler
Frank T. Pepler
Attorneys for Third-Party Defendants
THE ESTATE OF MICHAEL HEISER, *ET AL.*

Dated: May 2, 2012

BAKER & MCKENZIE LLP
BRUCE H. JACKSON
IRENE V. GUTIERREZ

By: /s/ Bruce H. Jackson
Bruce H. Jackson
Attorneys for Defendants
VISA INC. and
FRANKLIN RESOURCES, INC.

Dated: May 2, 2012

STROOCK & STROOCK & LAVAN LLP

By /s/ Curtis C. Mechling
Curtis C. Mechling
Attorneys for Third-Party Defendants the
GREENBAUMS AND ACOSTAS

Dated: May 2, 2012

BOND & NORMAN

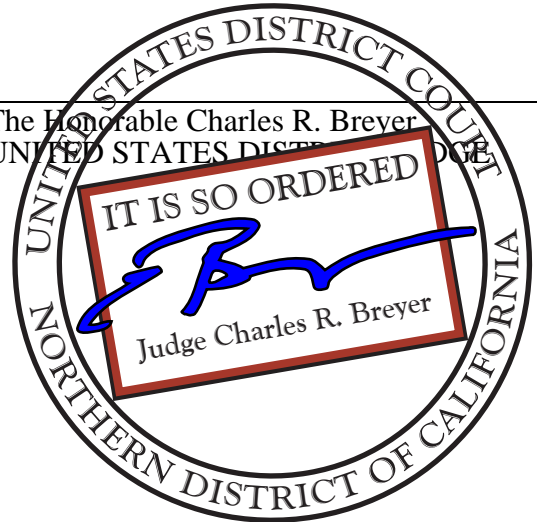
By /s/ Jane Norman
Jane Norman
Attorneys for Plaintiffs the BENNETTS

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**PURSUANT TO STIPULATION,
IT IS SO ORDERED.**

Dated: May 3, 2012

The Honorable Charles R. Breyer
UNITED STATES DISTRICT COURT



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ATTESTATION OF CONCURRENCE

I, Frank Pepler, attest that I am one of the attorneys for third-party defendants the ESTATE OF MICHAEL HEISER, *et al.* as the ECF user and filer of this document I attest that concurrence in the filing of this document has been obtained from its signatories.

Dated: May 2, 2012

/s/ Frank T. Pepler
Frank T. Pepler

EXHIBIT A

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Telephone: +1 415 576 3000
5 Facsimile: +1 415 576 3099

6 Attorneys for Defendants and Third-Party Plaintiffs
VISA INC. and FRANKLIN RESOURCES, INC.

7
8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN FRANCISCO DIVISION

11 MICHAEL BENNETT, LINDA BENNETT,
12 Individually and as Co-Administrators of the
Estate of MARLA ANN BENNETT, deceased
13 c/o THOMAS FORTUNE FAY, ESQ.
601 Pennsylvania Ave., NW
14 Suite 900 – South Building
Washington, DC 20004

15 Plaintiffs,

16 v.

17 THE ISLAMIC REPUBLIC OF IRAN
18 Ministry of Foreign Affairs
Khomeini Avenue
19 United Nations Street
Tehran, Iran and

20 THE IRANIAN MINISTRY OF
21 INFORMATION AND SECURITY
Pasdaran Avenue
22 Golestan Yekom
Tehran, Iran,

23 and

24 FRANKLIN RESOURCES INC.
25 dba FRANKLIN TEMPLETON FIDUCIARY
TRUST
26 Serve: CT Corporation Services
818 W. 7th Street
27 Suite 200
Los Angeles, CA 90017
28

Case No. CV-11-5807-CRB (NJV)

~~PROPOSED~~ ORDER

**GRANTING THIRD-PARTY
PLAINTIFFS' REQUEST FOR LEAVE
TO DEPOSIT ASSETS INTO
REGISTRY OF COURT AND
AUTHORIZING THE DEPOSIT OF
ASSETS**

Fed.R.Civ.Proc. Rule 67

**Courtroom: Courtroom 6, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102**

The Honorable Charles R. Breyer

Date Action Filed: December 2, 2011

1 and

2 VISA INC
3 dba VISA INTERNATIONAL SERVICE
4 ASSOCIATION
5 Serve: CT Corporation Services
6 818 W. 7th Street
7 Suite 200
8 Los Angeles, CA 90017

9 Defendants.

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13 VISA INC., a Delaware corporation, and
14 FRANKLIN RESOURCES, INC. a Delaware
15 corporation,

16 Third-Party Plaintiffs,

17 v.

18 BANK MELLI, CARLOS ACOSTA, MARIA
19 ACOSTA, IRVING FRANKLIN, ESTATE OF
20 IRMA FRANKLIN, LIBBY KAHANE,
21 ESTATE OF SONYA KAHANE, CIPPORAH
22 KAPLAN, TOVA ETTINGER, BARUCH
23 KAHANE, ETHEL GRIFFIN AS
24 ADMINISTRATOR OF BINYAMIN
25 KAHANE'S ESTATE, RABBI NORMAN
26 KAHANE, STEVEN GREENBAUM, ALAN
27 HAYMAN, SHIRLEE HAYMAN, THE
28 ESTATE OF MICHAEL HEISER, deceased,
GARY HEISER, FRANCIS HEISER, THE
ESTATE OF LELAND TIMOTHY HAUN,
deceased, IBIS S. HAUN, MILAGRITOS
PEREZ-DALIS, SENATOR HAUN, THE
ESTATE OF JUSTIN R. WOOD, deceased,
RICHARD W. WOOD, KATHLEEN M.
WOOD, SHAWN M. WOOD, THE ESTATE
OF EARL F. CARTRETTE, JR., deceased,
DENISE M. EICHSTAEDT, ANTHONY W.
CARTRETTE, LEWIS W. CARTRETTE, THE
ESTATE OF BRIAN MCVEIGH, deceased,
SANDRA M. WETMORE, JAMES V.
WETMORE, THE ESTATE OF MILLARD D.
CAMPBELL, deceased, MARIE R.
CAMPBELL, BESSIE A. CAMPBELL, THE
ESTATE OF KEVIN J. JOHNSON, deceased,
SHYRL L. JOHNSON, CHE G. COLSON,
KEVIN JOHNSON, a minor, by his legal
guardian Shyrl L. Johnson, NICHOLAS A.
JOHNSON, a minor, by his legal guardian Shyrl
L. Johnson, LAURA E. JOHNSON, BRUCE

1 JOHNSON, THE ESTATE OF JOSEPH E.
 2 RIMKUS, deceased, BRIDGET BROOKS,
 3 JAMES R. RIMKUS, ANNE M. RIMKUS,
 4 THE ESTATE OF BRENT E. MARTHALER,
 5 deceased, KATIE L. MARTHALER, SHARON
 6 MARTHALER, HERMAN C. MARTHALER,
 7 III, MATTHEW MARTHALER, KIRK
 8 MARTHALER, THE ESTATE OF THANH
 9 VAN NGUYEN, deceased, CHRISTOPHER R.
 10 NGUYEN, THE ESTATE OF JOSHUA E.
 11 WOODY, deceased, DAWN WOODY,
 12 BERNADINE R. BEEKMAN, GEORGE M.
 13 BEEKMAN, TRACY M. SMITH, JONICA L.
 14 WOODY, TIMOTHY WOODY, THE ESTATE
 15 OF PETER J. MORGERA, deceased,
 16 MICHAEL MORGERA, THOMAS
 17 MORGERA, THE ESTATE OF KENDALL
 18 KITSON, JR., deceased, NANCY R. KITSON,
 19 KENDALL K. KITSON, STEVE K. KITSON,
 20 NANCY A. KITSON, THE ESTATE OF
 21 CHRISTOPHER ADAMS, deceased,
 22 CATHERINE ADAMS, JOHN E. ADAMS,
 23 PATRICK D. ADAMS, MICHAEL T.
 24 ADAMS, DANIEL ADAMS, MARY YOUNG,
 25 ELIZABETH WOLF, WILLIAM ADAMS,
 26 THE ESTATE OF CHRISTOPHER LESTER,
 27 deceased, CECIL H. LESTER, JUDY LESTER,
 28 CECIL H. LESTER, JR., JESSICA F. LESTER,
 THE ESTATE OF JEREMY A. TAYLOR,
 deceased, LAWRENCE E. TAYLOR, VICKIE
 L. TAYLOR, STARLINA D. TAYLOR, THE
 ESTATE OF PATRICK P. FENNIG, deceased,
 THADDEUS C. FENNIG, CATHERINE
 FENNIG, PAUL D. FENNIG, MARK
 FENNIG, THE UNITED STATES OF
 AMERICA, AND DOES 1-20.

Third-Party Defendants.

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PROPOSED ORDER

In accordance with the accompanying Stipulation and Proposed Consent Order submitted to the Court, the Court **ORDERS AS FOLLOWS:**

1. **IT IS ORDERED** that the Request of Third-Party Plaintiffs Visa Inc. and Franklin Resources, Inc. (collectively “Third-Party Plaintiffs”) for Leave to Make Deposit into Registry of the Court of the Blocked Assets in this interpleader action, pursuant to Federal Rule of Civil Procedure 67(a), is hereby **GRANTED**, and the Clerk of the Court is hereby authorized to accept such deposit in the amount of \$17,648,962.76;

2. **IT IS FURTHER ORDERED** that Third-Party Plaintiffs’ deposit into the Registry of the Court take place within ten (10) days from the date of entry of this Order.

IT IS SO ORDERED.

Dated: May 3, 2012

