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FILED

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,
11 Plaintiff,

Civil No. 1:07-CV-1741 OWW DLB

ORDER OF JUDICIAL SALE

12 v.

13 JOHN L. CABRAL, JANET M. CABRAL,
14 STATE OF CALIFORNIA
FRANCHISE TAX BOARD, STATE OF
15 CALIFORNIA EMPLOYMENT
DEVELOPMENT DEPARTMENT,
16 SAN JOAQUIN VALLEY HAY
GROWERS ASSOCIATION, C. L.
17 BRYANT, INC., DISCOVER BANK,
18 NATIONAL CREDIT ACCEPTANCE,
INC., COUNTY OF MERCED, DCSS

19 Defendants.

20
21 A final judgment was entered by this Court in the above-entitled action, on July 1,
22 2009, (docket no. 102), ordering that the United States' federal tax liens be foreclosed
23 and that the subject property, described below, be sold pursuant to 28 U.S.C. § 2001.

24 The subject property is located at 3500 South Walnut Road and 3509 Soderquist
25 Road, Turlock, California (Merced County), and is more particularly described as
26 follows:
27
28

USA v. Cabral et al

Doc. 105

1
2 The north 660 feet of the south 1230 feet of the following two parcels:

3 PARCEL NO. 1.

4 BEGINNING AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 5
5 SOUTH, RANGE 10 EAST MOUNT DIABLO BASE AND MERIDIAN; THENCE
6 SOUTH 1° 30' EAST 16.5 FEET; THENCE NORTH 89° EAST 16.5 EAST TO
7 POINT OF BEGINNING; THENCE NORTH 89° EAST 814.5 FEET ALONG
8 RIGHT OF WAY OF LATERAL CANAL NO. 5 OF TURLOCK IRRIGATION
9 DISTRICT; THENCE SOUTH 86° EAST 100 FEET ALONG SAID RIGHT OF
10 WAY; THENCE SOUTH 78° 30' EAST 200 FEET ALONG SAID RIGHT OF
11 WAY, THENCE SOUTH 82° 30' EAST 200 FEET ALONG SAID RIGHT OF
12 WAY; THENCE SOUTH 1° 15' EAST 598.5 FEET; THENCE SOUTH 88° 30'
13 WEST 1305 FEET TO A POINT 16-1/2 FEET EAST OF THE SECTION LINE
14 BETWEEN SAID SECTIONS 33 AND 34; THENCE NORTH 1° 30' WEST 688.5
15 FEET TO POINT OF BEGINNING.

16 PARCEL NO. 2.

17 BEGINNING AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 5
18 SOUTH, RANGE 10 EAST MOUNT DIABLO BASE AND MERIDIAN; THENCE
19 SOUTH 1° 16' EAST 705 FEET; ON SECTION LINE BETWEEN SECTIONS 33
20 AND 34, TOWNSHIP 5 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE
21 AND MERIDIAN; THENCE NORTH 89° 00' EAST 16-1/2 FEET AS POINT OF
22 BEGINNING; THENCE NORTH 89° 00' EAST 1305
23 FEET; THENCE SOUTH 1° 15' EAST 1277.7 FEET; THENCE SOUTH 89° 00'
24 WEST 1304.8 FEET TO POINT 16-1/2 FEET EAST OF SECTION LINE
25 BETWEEN SAID SECTION 33 AND 34, THENCE NORTH 1° 16' WEST
26 PARALLEL WITH SAID SECTION LINE 1277.7 FEET TO POINT OF
27 BEGINNING.

28 A.P.N. 044-045-056

(Hereinafter the "Property.")

Accordingly, it is **ORDERED** as follows:

1. The United States Marshal for the Eastern District of California, his or her representative, or an Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS"), (hereinafter reference to the Marshall or PALS shall also refer to his or her agents, officers, and representatives) is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Property. The United States may choose either the United States Marshal or a PALS to carry out the sale under this Order and shall make the arrangements for any sale as set forth in this Order.

1 2. The Marshal or PALS is authorized to have free access to the Property and to
2 take all actions necessary to preserve the Property, including, but not limited to,
3 retaining a locksmith or other person to change or install locks or other security devices
4 on any part of the property, until the deed to the Property is delivered to the ultimate
5 purchaser.

6 3. The terms and conditions of the sale are as follows:

7 a. the sale of the Property shall be free and clear of the interests of:
8 defendants John L. Cabral, Janet M. Cabral, State of California Franchise Tax Board,
9 State of California Employment Development Department, San Joaquin Valley Hay
10 Growers Association, C. L. Bryant, Inc., Discover Bank, National Credit Acceptance,
11 Inc., County of Merced, DCSS,

12 b. the sale shall be subject to building lines, if established, all laws,
13 ordinances, and governmental regulations (including building and zoning ordinances)
14 affecting the Property, and easements and restrictions of record, if any;

15 c. the sale shall be held at the courthouse of the county or city in which
16 the Property is located, on the Property's premises, or at any other place in accordance
17 with the provisions of 28 U.S.C. §§ 2001 and 2002;

18 d. the date and time for sale are to be announced by the United States
19 Marshal or the PALS;

20 e. notice of the sale shall be published once a week for at least four
21 consecutive weeks before the sale in at least one newspaper regularly issued and of
22 general circulation in Merced County, and, at the discretion of the Marshal or the PALS,
23 by any other notice deemed appropriate. The notice shall contain a description of the
24 property and shall contain the terms and conditions of sale in this order of sale;

25 f. The minimum bid will be set by the Internal Revenue Service. If the
26 minimum bid is not met or exceeded, the Marshal or the PALS may, without further
27 permission of this Court, and under the terms and conditions in this order of sale, hold a
28 new public sale, if necessary, and reduce the minimum bid or sell to the second highest

1 bidder;

2 g. the successful bidder(s) shall be required to deposit at the time of the
3 same with the Marshal or the PALS a minimum of ten percent of the bid, with the
4 deposit to be made by certified or cashier's check payable to the United States District
5 Court for the Eastern District of California.

6 Before being permitted to bid at the sale, bidders shall display to the Marshal or
7 the PALS proof that they are able to comply with this requirement. No bids will be
8 received from any person(s) who have not presented proof that, if they are the
9 successful bidders(s), they can make the deposit required by this order of sale;

10 h. the balance of the purchase price for the Property is to be paid to the
11 United States Marshall or a PALS (whichever person is conducting the sale) within 20
12 days after the date the bid is accepted, by a certified or cashier's check payable to the
13 "U.S. District Court for the Eastern District of California". If the bidder fails to fulfill this
14 requirement, the deposit shall be forfeited and shall be applied to cover the expenses of
15 the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount
16 remaining to be applied to the income tax liabilities of John Cabral and Janet M. Cabral
17 at issue herein. The Property shall be again offered for sale under the terms and
18 conditions of this order of sale. The United States may bid as a credit against its
19 judgment without tender of cash;

20 i. the sale of the Property shall be subject to confirmation by this Court.
21 The Marshal or a PALS shall file a report of sale with the Court, together with a
22 proposed order of confirmation of sale and proposed deed, within 20 days from the
23 date of receipt of the balance of the purchase price;

24 j. on confirmation of the sale, the Marshal or PALS shall execute and
25 deliver a deed of judicial sale conveying the property to the purchaser;

26 k. on confirmation of the sale, all interests in, liens against, or claims to,
27 the Property that are held or asserted by all parties to this action are discharged and
28 extinguished;

1 I. on confirmation of the sale, the recorder of deeds for Merced County,
2 California, shall cause transfer of the property to be reflected upon that county's register
3 of title; and

4 m. the sale is ordered pursuant to 28 U.S.C. § 2001, and is made without
5 right of redemption.

6 4. Until the property is sold, John Cabral and Janet M. Cabral shall take all
7 reasonable steps necessary to preserve the property (including all buildings,
8 improvements, fixtures and appurtenances on the property) in its current condition
9 including, without limitation, maintaining a fire and casualty insurance policy on the
10 property. They shall neither commit waste against the property nor cause or permit
11 anyone else to do so. They shall neither do anything that tends to reduce the value or
12 marketability of the property nor cause or permit anyone else to do so. The defendants
13 shall not record any instruments, publish any notice, or take any other action (such as
14 running newspaper advertisements or posting signs) that may directly or indirectly tend
15 to adversely affect the value of the property or that may tend to deter or discourage
16 potential bidders from participating in the public auction, nor shall they cause or permit
17 anyone else to do so.

18 5. All persons occupying the property, including John Cabral, Janet M. Cabral,
19 and any relatives, shall leave and vacate the property permanently within 10 days of the
20 date of this Order, each taking with them his or her personal property (but leaving all
21 improvements, buildings, fixtures, and appurtenances to the property). If any person
22 fails or refuses to leave and vacate the property by the time specified in this Order, the
23 United States Marshal's Office, alone, is authorized to take whatever action it deems
24 appropriate to remove such person from the premises, including the use of reasonable
25 force, whether or not the sale of such property is being conducted by a PALS. If any
26 person fails or refuses to remove his or her personal property from the property by the
27 time specified herein, the personal property remaining on the property thereafter is
28 deemed forfeited and abandoned, and the United States Marshal's Office is authorized

1 to remove it and to dispose of it in any manner it deems appropriate, including sale, in
2 which case the proceeds of the sale are to be applied first to the expenses of sale and
3 the balance to be paid into the Court for further distribution.

4 The proceeds arising from sale are to be paid to the Clerk of this Court and
5 applied as far as they shall be sufficient to the following items, in the order specified:

6 1. To the United States Marshal or the PALS (whichever person conducted the
7 sale as arranged by the United States) for the costs of the sale, including any expense
8 of maintaining the Property prior to sale;


9 2. To all taxes unpaid and matured that are owed to Merced County for real
10 property taxes on the property;

11 3. To the United States, the California Franchise Tax Board, C.L. Bryant, Inc.,
12 San Joaquin Valley Hay Growers Association, and the California Employment
13 Development Department ("the settling parties") according to their stipulation as to the
14 priority of their claims. The settling parties will submit a proposed order of distribution
15 after the sale of the Cabral Ranch, in accord with paragraph 7 of the Judgment;

16 4. Any balance remaining after the above payments shall be held by the Clerk
17 until further order of the Court.

18 **IT IS SO ORDERED.**

19 Dated this 5th day of October, 2009

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21 
22 OLIVER W. WANGER
23 United States District Judge
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NOTICE OF JUDICIAL SALE

Pursuant to the Order of Judicial Sale filed _____, in the case of United States v. John Cabral, et al., Civil No. 1:07-CV-1741 OWW DLB (E.D. Cal.), the undersigned representative of the Internal Revenue Service will sell at public sale at 3500 South Walnut Road, Turlock, California, on the steps of the Courthouse or in a secure location in the Courthouse of the Superior Court for Merced County, on _____, 2009, the following property:

The north 660 feet of the south 1230 feet of the following two parcels:

PARCEL NO. 1.

BEGINNING AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 10 EAST MOUNT DIABLO BASE AND MERIDIAN; THENCE SOUTH 1° 30' EAST 16.5 FEET; THENCE NORTH 89° EAST 16.5 FEET TO POINT OF BEGINNING; THENCE NORTH 89° EAST 814.5 FEET ALONG RIGHT OF WAY OF LATERAL CANAL NO. 5 OF TURLOCK IRRIGATION DISTRICT; THENCE SOUTH 86° EAST 100 FEET ALONG SAID RIGHT OF WAY; THENCE SOUTH 78° 30' EAST 200 FEET ALONG SAID RIGHT OF WAY; THENCE SOUTH 82° 30' EAST 200 FEET ALONG SAID RIGHT OF WAY; THENCE SOUTH 1° 15' EAST 598.5 FEET; THENCE SOUTH 88° 30' WEST 1305 FEET TO A POINT 16-1/2 FEET EAST OF THE SECTION LINE BETWEEN SAID SECTIONS 33 AND 34; THENCE NORTH 1° 30' WEST 688.5 FEET TO POINT OF BEGINNING.

PARCEL NO. 2.

BEGINNING AT THE NORTHWEST CORNER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 10 EAST MOUNT DIABLO BASE AND MERIDIAN; THENCE SOUTH 1° 16' EAST 705 FEET; ON SECTION LINE BETWEEN SECTIONS 33 AND 34, TOWNSHIP 5 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN; THENCE NORTH 89° 00' EAST 16-1/2 FEET AS POINT OF BEGINNING; THENCE NORTH 89° 00' EAST 1305 FEET; THENCE SOUTH 1° 15' EAST 1277.7 FEET; THENCE SOUTH 89° 00' WEST 1304.8 FEET TO POINT 16-1/2 FEET EAST OF SECTION LINE BETWEEN SAID SECTION 33 AND 34, THENCE NORTH 1° 16' WEST PARALLEL WITH SAID SECTION LINE 1277.7 FEET TO POINT OF BEGINNING.

A.P.N. 044-045-056
(Hereinafter the "Property.")

Commonly known as 3500 South Walnut Road and 3509 Soderquist Road, Turlock, California (Merced County), and said property to be sold on the following terms and conditions:

The minimum bid shall be \$ _____. The successful bidder shall be

required to deposit at the time of sale a minimum of ten percent of his or her bid, with the deposit to be made by certified check or cash made payable to the "US District Court". Before being permitted to bid at the sale, bidders shall display to the Internal Revenue Service, proof that they are able to comply with this requirement. No bids will be received from any person who has not presented proof that, if they are the successful bidder, they can make the deposit required by this judgment.

The balance of the sale price is to be paid to the United States within twenty days after the date the bid is accepted by cashiers or certified check made payable to the "US District Court". If the successful bidder fails to fulfill this requirement, the deposit shall be forfeited in its entirety, and the realty shall again be offered for sale under the terms and conditions of the Order.

The sale of the realty shall be subject to confirmation by the United States District Court for the Eastern District of California. Absent an objection within three days of the sale, with bond posted, the sale shall stand confirmed unless otherwise ordered by the Court.

On confirmation of the sale and receipt of payment in full, the Internal Revenue Service shall execute and deliver a Certificate of Sale and Deed conveying the realty to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the realty that are held or asserted by the plaintiff or any of the defendants in this action are discharged and extinguished.