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6 Attorneys for the United States of America

8 IN THE UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,
 10
 Plaintiff,

Civil No. 1:08-cv-01643-LJO-SMS

11 v.

12 LOWELL D. WELDON, BESSIE L. WELDON,
 13 MIDLAND MORTGAGE COMPANY aka
 MIDFIRST BANK, STATE OF CALIFORNIA
 14 FRANCHISE TAX BOARD, COUNTY OF FRESNO,
 15
 Defendants.

**STIPULATION AND PROPOSED
 ORDER REGARDING LIEN PRIORITY
 BETWEEN THE UNITED STATES, THE
 STATE OF CALIFORNIA FRANCHISE
 TAX BOARD AND THE COUNTY OF
 FRESNO**

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17 The United States of America, the California Franchise Tax Board ("FTB"), and County of
 18 Fresno, through their respective attorneys, hereby stipulate and agree as follows:

19 1. The parcel of real property located at located at 5915 West Clinton Avenue, Fresno,
 20 California 93722 (referred to in the Complaint and herein as the "Clinton Property"), is situated in the
 21 County of Fresno, State of California, and is more particularly described as follows:

22 The east half of the north half of the west 303.50 feet of Lot 4, Vista Bonita Tract,
 23 according to the map thereof, recorded November 17, 1914, in Book 7, Page 52
 of Plats, in the Office of the County Recorder of Fresno County.

24 2. The parcel of real property located at 210 Oxford Avenue, Clovis, California 93612
 25 (referred to in the Complaint and herein as the "Oxford Property"), is situated in the County of Fresno,
 26 State of California, and is more particularly described as follows:

27 Lot 1 of Forest Park, in the City of Clovis, County of Fresno, State of California,
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1 according to the map thereof recorded in Book 13, page 61 of Plats, in the office
2 of the County Recorder of said County.

3 3. The parcel of real property located at 2490 South Holloway Avenue, Fresno, California
4 93725 (referred to in the Complaint and herein as the "Holloway Property"), is situated in the County of
5 Fresno, State of California, and is more particularly described as follows:

6 Lot 83 of Sequoia Village, Tract #1133, recorded in Plat book 14 page 91.

7 4. The County of Fresno has real property tax liens on the Clinton Property, Oxford Property,
8 and Holloway Property.

9 5. The County of Fresno also filed a lien against Bessie Weldon on September 22, 2005, for
10 delinquent personal property taxes.

11 6. On the following dates, the FTB made tax assessments against Lowell Weldon, for the tax
12 years listed below, creating state tax liens:

Tax Year	Assessment Date
2000	November 19, 2002
2001	June 23, 2003
2002	July 12, 2004
2003	July 11, 2005

17 7. On the following dates, the FTB made tax assessments against Bessie Weldon, for the tax
18 years listed below, creating state tax liens:

Tax Year	Assessment Date
2004	July 29, 2006
2005	June 16, 2007
2006	May 31, 2008

23 8. On the following dates, a duly authorized delegate of the Secretary of the Treasury made
24 assessments against Lowell D. Weldon for federal income taxes, penalties, interest, and other statutory
25 additions for the tax years listed below, creating federal tax liens:
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27
28

Tax Year	Assessment Date
1997	March 22, 2004
1998	March 22, 2004
1999	March 22, 2004
2000	March 22, 2004
2001	March 22, 2004
2002	December 20, 2004
2003	January 9, 2006

9. On January 31, 2007, and again on March 7, 2007, the Internal Revenue Service (“IRS”) recorded Notices of Federal Tax Lien against Lowell D. Weldon with respect to his unpaid tax liabilities for tax years 1997 through 2002 with the County Recorder, Fresno County.

10. On July 23, 2007, the IRS recorded a Notice of Federal Tax Lien against Lowell D. Weldon with respect to his unpaid federal tax liabilities for tax year 2003 with the County Recorder, Fresno County.

11. On April 19, 2005, the FTB recorded Notices of State Tax Lien against Lowell D. Weldon with respect to his unpaid state tax liabilities for tax years 2001 and 2002 with the County Recorder, Fresno County.

12. On May 23, 2006, the FTB recorded Notices of State Tax Lien against Lowell D. Weldon with respect to his unpaid state tax liabilities for tax years 2000 and 2003 with the County Recorder, Fresno County.

13. On November 28, 2006, the FTB recorded a Notice of State Tax Lien against Bessie L. Weldon with respect to her unpaid state tax liabilities for tax year 2004 with the County Recorder, Fresno County.

14. The United States, the FTB and Fresno County agree as follows:

a. Fresno County’s real property tax liens are senior to and have priority over the United States’ federal tax liens, the FTB’s state tax liens, and Fresno County’s personal property tax lien;

1 b. The FTB's state tax liens against Lowell Weldon for tax years 2000 and 2001 are senior to and
2 have priority over the United States' federal tax liens, Fresno County's personal property tax lien,
3 and the remainder of the FTB's state tax liens;

4 c. Fresno County's personal property tax lien is senior to and has priority over the United States'
5 federal tax liens and the remainder of the FTB's state tax liens;

6 d. The United States federal tax liens against Lowell Weldon for tax years 1997-2001 are senior
7 to and have priority over the FTB's remaining state tax liens and the United States' remaining
8 federal tax liens;

9 e. The FTB's state tax lien against Lowell Weldon for tax year 2002 is senior to and has priority
10 over the FTB's remaining state tax liens and the United States' remaining federal tax liens;

11 f. The United States federal tax lien against Lowell Weldon for tax year 2002 is senior to and has
12 priority over the FTB's remaining state tax liens and the United States' remaining federal tax
13 liens;

14 g. The FTB's state tax lien against Lowell Weldon for tax year 2003 is senior to and has priority
15 over the FTB's remaining state tax liens and the United States' remaining federal tax liens;

16 h. The United States federal tax lien against Lowell Weldon for tax year 2003 is senior to and has
17 priority over the FTB's remaining state tax liens.

18 15. In the event that the Court permits the sale of Clinton Property, the property will be sold
19 free and clear of all liens of record, with the liens to follow the proceeds of the sale in the same amount
20 and with the same priority that they had against the Clinton Property. The Order of Judicial Sale shall
21 provide that the sale proceeds shall be distributed first to the United States to the extent of its costs and
22 expenses of the sale and then following the priority interests of the United States, the FTB and Fresno
23 County established in the preceding paragraph (including principal and interest to the date of distribution,
24 in an amount according to proof at that time). If the affected parties cannot stipulate to the amounts of
25 lien, the Court may hold an evidentiary hearing to determine the amounts.

26 16. In the event that the Court permits the sale of Oxford Property, the property will be sold

1 free and clear of all liens of record, with the liens to follow the proceeds of the sale in the same amount
2 and with the same priority that they had against the Oxford Property. The Order of Judicial Sale shall
3 provide that the sale proceeds shall be distributed first to the United States to the extent of its costs and
4 expenses of the sale and then following the priority interests of the United States, the FTB and Fresno
5 County established in Paragraph 14 (including principal and interest to the date of distribution, in an
6 amount according to proof at that time). If the affected parties cannot stipulate to the amounts of lien, the
7 Court may hold an evidentiary hearing to determine the amounts.

8 17. In the event that the Court permits the sale of Holloway Property, the property will be sold
9 free and clear of all liens of record, with the liens to follow the proceeds of the sale in the same amount
10 and with the same priority that they had against the Holloway Property. The Order of Judicial Sale shall
11 provide that the sale proceeds shall be distributed first to the United States to the extent of its costs and
12 expenses of the sale and then following the priority interests of the United States, the FTB and Fresno
13 County established in Paragraph 14 (including principal and interest to the date of distribution, in an
14 amount according to proof at that time). If the affected parties cannot stipulate to the amounts of lien, the
15 Court may hold an evidentiary hearing to determine the amounts.

16 18. The United States, the FTB and Fresno County agree to bear their respective costs related
17 to this litigation, including any possible attorney's fees.

18 19. The FTB and Fresno County have been named as defendants under 26 U.S.C. § 7403(b).
19 The United States claims no monetary relief against the FTB or Fresno County in this action. Unless
20 otherwise ordered by the Court, the FTB and Fresno County are excused from further participation in this
21 action, appearing in Court, or otherwise asserting its claim in this case. The FTB and Fresno County
22 agree to be bound by the judgment in this case, which shall incorporate the terms of this stipulation and
23 order.

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1 The parties so agree and request an order confirming the foregoing.

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3 Dated: April 10, 2009

4 By: /s/ Adair Boroughs
5 ADAIR BOROUGHS
6 Trial Attorney, Tax Division
7 U.S. Department of Justice
8 Attorney for the United States

9 Dated: April 3, 2009

10 By: /s/ William F. Mar, Jr. (as authorized on 4/3/09)
11 WILLIAM F. MAR, JR.
12 Senior Deputy County Counsel
13 County of Fresno
14 Attorney for Fresno County

15 Dated: April 7, 2009

16 By: /s/ Jeffrey A. Rich (as authorized on 4/7/09)
17 JEFFREY A. RICH
18 Deputy Attorney General
19 California Department of Justice
20 Attorney for the California Franchise Tax Board

21 IT IS SO ORDERED.

22 Dated: April 10, 2009

23 /s/ Lawrence J. O'Neill
24 UNITED STATES DISTRICT JUDGE