

1 BENJAMIN B. WAGNER
 United States Attorney

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3 G. PATRICK JENNINGS
 Trial Attorney, Tax Division
 U.S. Department of Justice
 4 P.O. Box 683, Ben Franklin Station
 Washington, D.C. 20044-0683
 5 Telephone: (202) 307-6648
 E-mail: guy.p.jennings@usdoj.gov

6 Attorneys for the United States of America

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

10 UNITED STATES OF AMERICA,
 11 Plaintiff,

12 v.

13 RAY CLINGENPEEL; SHIRLEY A.
 CLINGENPEEL; TUFFY RUFFY TRUST by
 14 DAVID K. JACOBS, TRUSTEE and/or by
 ANITA MORRISON, TRUSTEE;
 15 SUSAN BELL TRUST by DAVID K. JACOBS,
 TRUSTEE; and/or by ANITA MORRISON,
 16 TRUSTEE; ATEL CAPITAL GROUP;
 STATE OF CALIFORNIA FRANCHISE TAX
 17 BOARD; RESIDENTIAL CREDIT
 SOLUTIONS; CITIBANK (South Dakota) NA;
 18 TASHIMA FAMILY TRUST by MIKIYE
 TASHIMA, TRUSTEE;
 19 Defendants.

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Civil No. 1:09-CV-00797 OWW DLB

**ORDER ON STIPULATION OF LIEN
 PRIORITY**

21 Plaintiff United States of America ("United States"), defendant Atel Capital Group
 22 ("Atel"), and defendant Residential Credit Solutions ("Residential Credit") (collectively, "the
 23 Lienholders"), have submitted a **STIPULATION OF LIEN PRIORITY AND REQUEST FOR**
 24 **ORDER** that establishes certain lien priorities and seeks an order to excuse the Lienholders
 25 from further participation in this case. The parties to the stipulation recite that:

- 26 1. The United States filed this action to reduce to judgment federal tax assessments
 27 against Ray Clingenpeel and Shirley A. Clingenpeel ("taxpayers") and to foreclose federal tax
- 28

1 liens against real property identified in the stipulation, i.e. 5585 North Indianola Drive and 1201
2 North Blackstone Avenue, which will be referred to herein, collectively, as the "Subject
3 Property."

4 2. On or about June 28, 1998, the Clingenpeels borrowed \$133,000 dollars and secured
5 the repayment of the obligation with a Deed of Trust recorded against 5585 North Indianola
6 Drive (the "Deed of Trust"). The Deed of Trust was recorded with the Fresno County Recorder
7 on June 29, 1998. The current lien holder for the Deed of Trust is defendant Residential Credit
8 Solutions.

9 3. On or about November 14, 2000, an Abstract of Judgment was recorded with the Fresno
10 County Recorder in favor of Atel Business Credit, Inc. and against Ray Clingenpeel and Shirley
11 Clingenpeel in the nominal amount of \$19,833.34 (the "Judgment Lien"). The Judgment Lien
12 attached to both the 5585 North Indianola Drive property and the 1201 North Blackstone
13 Avenue property. Atel Business Credit, Inc. is now defendant Atel Capital Group.

14 4. On or about April 19, 2001, the United States filed its earliest notice of federal tax lien
15 with the Fresno County Recorder for the tax liabilities at issue.

16 5. The United States and the Lienholders agree that the Deed of Trust has priority over the
17 federal tax liens and Judgment Lien at issue in the above-captioned action only with respect to
18 the 5585 North Indianola Drive property.

19 6. The United States and the Lienholders agree that the Judgment Lien has priority over
20 the federal tax liens at issue in the above-captioned action with respect to both parcels of the
21 Subject Property.

22 7. The United States claims no monetary relief against the Lienholders in this action. In the
23 event that the Court permits the sale of the Subject Property, the Subject Property will be sold
24 free and clear of the Lienholders' liens, with the liens to follow the sale proceeds.

25 8. After the sale, the parties will agree to an order of distribution, with each lien payment to
26 include principal, interest to the date of distribution, and reasonable attorney's fees pursuant to
27 26 U.S.C. § 6323(e), in an amount according to proof at that time.

1 In accordance with the stipulation, and for good cause shown,

2 **IT IS ORDERED THAT**

3 1. If the Court orders the sale of 5585 North Indianola Drive, the sale proceeds are to be
4 paid to the Clerk of the Court and applied, as far as they shall be sufficient, to the following
5 items, in the order specified:

6 A. to Residential Credit for the Deed of Trust;

7 B. to Atel for the Judgment Lien; then

8 C. to the United States for the federal tax liens at issue.

9 2. If the Court orders the sale of 1201 North Blackstone Avenue, the sale proceeds are to
10 be paid to the Clerk of the Court and applied, as far as they shall be sufficient, to the following
11 items, in the order specified:

12 A. to Atel for the Judgment Lien; then

13 B. to the United States for the federal tax liens at issue.

14 3. Unless otherwise ordered by the Court, Residential Credit and Atel are excused from
15 appearing in Court, or otherwise asserting their claims in this case. The Lienholders will be
16 bound by the judgment in this case. The Lienholders will respond to reasonable discovery
17 requests.

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20 IT IS SO ORDERED.

21 **Dated:** January 5, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE