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12 **UNITED STATES DISTRICT COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,
 Plaintiff,
 15

Case No.: 2:11-cv-01187 JAM (JFM)
 Hon. John A. Mendez
 Ctrm. 6

16 vs.

17 KENNETH J. MALINOWSKI; PATRICIA I.
 MALINOWSKI; KENNETH J.
 18 MALINOWSKI and PATRICIA I.
 MALINOWSKI as trustees of the BOAZ
 19 FOUNDATION; THE POPULAR SOCIETY
 OF SOVERIGN ECCLESIA aka THE
 20 POPULAR SOCIETY OF THE SOVEREIGN
 ECCLESIA, KENNETH J. MALINOWSKI as
 21 Patriarch; STAN HOKENSON as trustee of
 TIERRA LAND TRUST, aka TIERRA
 22 TRUST; GMAC MORTGAGE
 CORPORATION; STATE OF CALIFORNIA
 23 FRANCHISE TAX BOARD; CITIBANK
 24 SOUTH DAKOTA, N.A.; SACRAMENTO
 COUNTY,
 25
 26 Defendants.

**STIPULATION FOR LIEN PRIORITY
 AND ORDER**

27 Plaintiff, United States of America and Defendant State of California Franchise Tax Board

28 stipulate as follows:

1 1. Plaintiff’s lawsuit is an action to reduce tax assessments to judgment and to
2 foreclose tax liens that are recorded against real property. *See* 26 U.S.C. §§ 6502 and 7403.

3 2. It is agreed that the United States claims that federal tax liens, which are
4 referenced in paragraphs 54 and 55 of the Complaint in the above-captioned matter and arose on
5 the corresponding dates set forth in paragraph 6 below, encumber certain real property located at
6 6037 White Cloud Court, Citrus Heights, CA 95261 (“the Property”). Notices of Federal Tax
7 Lien were filed with the Sacramento County Recorder on the corresponding dates set forth in
8 paragraph 6 below.

9 3. It is agreed that Defendant State of California Franchise Tax Board is the holder
10 of tax liens that arose on the corresponding dates identified in paragraph 6 below, and were
11 recorded with the Sacramento County Recorder against the Property on the corresponding dates
12 set forth in paragraph 6 below.

13 4. It is agreed that Defendant GMAC Mortgage, LLC is servicing a deed of trust
14 recorded on December 6, 1995 in the Sacramento County Recorder’s Office as instrument
15 number 199511091009, which encumbers the Property.

16 5. It is agreed that Defendant Sacramento County claims an interest in the Property
17 by virtue of statutory liens for delinquent real property taxes assessed against the Property.

18 6. The United States and State of California Franchise Tax Board agree to the
19 following schedule of priority of the liens at issue on the subject Property:¹

20

Rank	Lien Holder	Type	Lien Date/Date of Recording	
21	1	Sacramento County	Property Tax Lien	N/A
22	2	GMAC Mortgage	Deed of Trust	12/6/1995
23	3	FTB (1998 TY)	NSTL	9/12/2001 (3/27/2002)

24

25 _____
26 ¹ Defendant GMAC Mortgage, LLC and Sacramento County have already stipulated to
27 the relative priority of their liens vis-à-vis the United States and each other. (Dkt. 50). Moreover
28 as the State of California Franchise Tax Board’s liens are junior to those liens as well, the
agreement of GMAC Mortgage and Sacramento County is not necessary for this stipulation as
they will be paid prior to either the United States or the State of California Franchise Tax Board.

1	4	FTB (1999 TY)	NSTL	1/04/2002 (3/27/2002)
2	5	FTB (2000 TY)	NSTL	10/27/2002 (3/7/2012)
3	6	FTB (2001 TY)	NSTL	7/24/2004 (5/27/2010)
4	7	FTB (1998 TY)	NSTL	2/19/2006 (5/27/2010)
5	8	FTB (1999 TY)	NSTL	2/19/2006 (5/27/2010)
6	9	FTB (2000 TY)	NSTL	2/19/2006 (5/27/2010)
7	10	FTB (2001 TY)	NSTL	2/19/2006 (5/27/2010)
8	11	IRS (1998 TY)	NFTL	4/10/2006 (6/20/2007)
9	12	FTB (2004 TY)	NSTL	3/24/2007 (3/7/2012)
10	13	FTB (2003 TY)	NSTL	3/24/2007 (3/7/2012)
11	14	IRS (1998 TY)	NFTL	4/02/2007 (2/5/2009)
12	15	IRS (1999 TY)	NFTL	4/02/2007 (10/20/2008)
13	16	IRS (2000 TY)	NFTL	4/02/2007 (10/20/2008)
14	17	IRS (2001 TY)	NFTL	4/02/2007 (2/5/2009)
15	18	IRS (2002 TY)	NFTL	4/02/2007 (2/5/2009)
16	19	IRS (2003 TY)	NFTL	4/02/2007 (2/5/2009)
17	20	IRS (1999 TY)	NFTL	6/4/2007 (6/20/2007)
18	21	IRS (2000 TY)	NFTL	6/4/2007 (6/20/2007)
19	22	IRS (2001 TY)	NFTL	6/4/2007 (6/20/2007)
20	23	IRS (2002 TY)	NFTL	6/4/2007 (6/20/2007)
21	24	IRS (2004 TY)	NFTL	8/11/2008 (2/5/2009)
22	25	IRS (2003 TY)	NFTL	2/23/2009 (4/13/2009)
23	26	FTB (2003 TY)	NSTL	6/8/2009 (5/27/2010)
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1	27	FTB (1998 TY)	NSTL	6/8/2009 (5/27/2010)
2	28	FTB (1999 TY)	NSTL	6/8/2009 (5/27/2010)
3	29	FTB (2000 TY)	NSTL	6/8/2009 (5/27/2010)
4	30	FTB (2001 TY)	NSTL	6/8/2009 (5/27/2010)
5	31	FTB (2002 TY)	NSTL	6/8/2009 (3/7/2012)
6	32	FTB (2007 TY)	NSTL	7/3/2009 (3/7/2012)
7	33	FTB (2000 TY)	NSTL	7/6/2009 (5/27/2010)
8	34	FTB (1998 TY)	NSTL	7/6/2009 (5/27/2010)
9	35	FTB (1999 TY)	NSTL	7/6/2009 (5/27/2010)
10	36	FTB (2001 TY)	NSTL	7/6/2009 (5/27/2010)
11	37	FTB (2002 TY)	NSTL	7/6/2009 (3/7/2012)
12	38	FTB (2008 TY)	NSTL	8/20/2010 (3/7/2012)
13	39	FTB (2009 TY)	NSTL	12/9/2011 (3/7/2012)

17 7. The California Franchise Tax Board does not oppose judicial foreclosure of the
18 Property by Plaintiff should it prevail in this action. However, because the Plaintiff's interest in
19 the Property is subordinate to the interests of Sacramento County and GMAC Mortgage, LLC,
20 and certain of the interests of the California Franchise Tax Board as identified above, any
21 proceeds from the sale of the Property, as among these four parties, will be used to pay off the
22 interests of the four parties as outlined in the chart above in paragraph 6. Prior to filing an
23 application for final order of the Court, Plaintiff agrees to provide an accounting to GMAC
24 Mortgage, LLC, Sacramento County, and the California Franchise Tax Board setting forth the full
25 disposition of the proceeds from the sale of the Property.

26 8. The California Franchise Tax Board agrees to provide Plaintiff with an updated
27 balance for the tax liabilities identified in the chart in paragraph 6 above upon Plaintiff's request
28 prior to the sale of the Property

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9. The parties to this stipulation agree to bear their own costs and attorney fees, excepting the costs incurred in selling the Subject Property, which are to be reimbursed from the proceeds of the sale of the Subject Property prior to satisfying the outstanding liens on the Subject Property.

10. The parties to this stipulation agree that its contents will bind all their assigns and successors in interest.

11. Upon the execution of this stipulation by both parties and entry of the proposed order by the Court, the California Franchise Tax Board shall not be required to appear at any future hearings in this litigation and shall be treated as non-parties for all purposes including discovery purposes, unless ordered by the Court.

IT IS SO STIPULATED.

DATED: August 3, 2012

KATHRYN KENEALLY
Assistant Attorney General

By: /s/ Adam R Smart
ADAM R. SMART
Trial Attorney, Tax Division
U.S. Department of Justice

Of Counsel:
BENJAMIN B. WAGNER
United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

DATED: August 3, 2012

KAMALA D. HARRIS
Attorney General of California
WILLIAM L. CARTER
Supervising Deputy Attorney General

By: /s/ Jill Bowers
JILL BOWERS
Deputy Attorney General
Attorneys for Defendant State of
California Franchise Tax Board

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IT IS SO ORDERED.

DATED: August 6, 2012

/s/ John A. Mendez
Hon. John A. Mendez
JUDGE OF THE U.S. DISTRICT COURT

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on August 3, 2012, I electronically filed the foregoing with the
3 Clerk of Court using the CM/ECF system, which will send notification of such filing to the
4 following:

4 Diane McElhern
5 Scott Fera
6 County of Sacramento
7 700 H Street, Suite 2650
8 Sacramento, CA 95814
9 *Attorney for Sacramento County*

8 Jill Bowers
9 Attorney General Of California
10 1300 I Street, Suite 125
11 PO Box 944255
12 Sacramento, CA 94244
13 *Attorney for State of California Franchise Tax Board*

12 Kerry William Franich
13 Severson & Werson
14 19100 Von Karman Avenue
15 Suite 700
16 Irvine, CA 92612
17 *Attorney for GMAC Mortgage LLC*

16 and that service was made on this date by causing a copy of the foregoing to be sent via postage
17 paid United States first class mail to the following:

17 Kenneth John Malinowski
18 General Post Office 6630 Fountain Square Lane
19 Citrus Heights, CA 95621
20 *Pro Se*

20 Kenneth John Malinowski
21 Post Office Box 483
22 Citrus Heights, CA 95611
23 *Pro Se*

23 Patricia I. Malinowski
24 General Post Office 6630 Fountain Square Lane
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26 Post Office Box 483
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Tierra Land Trust, aka Tierra Trust
c/o Stan Hokenson
5431 Auburn Blvd #135
Sacramento CA 95842

Boaz Foundation
c/o Kenneth John Malinowski
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/s/ Adam R Smart
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