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10
11 IN THE UNITED STATES DISTRICT COURT FOR THE
12 EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

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

24 Defendants.

Civil No. 2:11-cv-01187-JAM-JFM

ORDER OF SALE

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26 This Court entered an Order on September 20, 2012 and final judgment in this action on that same
27 date, finding that the United States has valid federal tax liens for unpaid tax assessments against all
28 property and rights to property belonging to Kenneth and Patricia Malinowski. The Court hereby

1 ORDERS that the United States' tax liens against Kenneth J. Malinowski and Patricia I. Malinowski for
2 federal income taxes for tax years 1998, 1999, 2000, 2001, 2002 and 2003 attached to the parcel of real
3 property located at 6037 White Cloud Ct., Citrus Heights, CA 95621, which is legally described as
4 follows:

5 Lot 176 as shown on that certain map entitled "Plat of Greenback Wood Unit 2" filed in the
6 office of the County Recorder of Sacramento County California, on October 3, 1980 in Book
1142 of Maps, at Page 1.

7 (the "Property") and that the tax liens are foreclosed. The Court further ORDERS that the Property be
8 sold under title 28, United States Code, §§ 2001 and 2002, to satisfy those liens, as follows:

9 1. The United States Marshal, his/her representative, or an Internal Revenue Service Property
10 Appraisal and Liquidation Specialist ("PALS"), is authorized and directed under 28 U.S.C. §§ 2001 and
11 2002 to offer for public sale and to sell the Property. The United States may choose either the United
12 States Marshal or a PALS to carry out the sale under this order and shall make the arrangements for any
13 sale as set forth in this Order:

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

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

19 a. the sale of the Property shall be by public auction to the highest bidder, free and
20 clear of all liens and interests of the United States, Kenneth J. Malinowski; Patricia I. Malinowski;
21 Kenneth J. Malinowski and Patricia I. Malinowski as Trustees of the Boaz Foundation; the Popular
22 Society of Sovereign Ecclesia aka the Popular Society of the Sovereign Ecclesia, Kenneth J. Malinowski
23 as Patriarch; Stan Hokenson as Trustee of Tierra Land Trust, Aka Tierra Trust; GMAC Mortgage LLC;
24 State of California Franchise Tax Board; Citibank South Dakota, N.A.; and Sacramento County;

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

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

7 d. the date and time for sale are to be announced by the United States Marshal,
8 his/her representative, or a PALS;

9 e. notice of the sale shall be published once a week for at least four consecutive
10 weeks before the sale in at least one newspaper regularly issued and of general circulation in Sacramento
11 County, and, at the discretion of the Marshal, his/her representative, or a PALS, by any other notice
12 deemed appropriate. The notice shall contain a description of the Property and shall contain the terms
13 and conditions of sale in this order of sale;

14 f. the minimum bid will be set by the Internal Revenue Service for the Property. If
15 the minimum bid is not met or exceeded, the Marshal, his or her representative, or a PALS may, without
16 further permission of this Court, and under the terms and conditions in this order of sale, hold a new
17 public sale, if necessary, and reduce the minimum bid or sell to the highest bidder;

18 g. the successful bidder(s) for the Property shall be required to deposit at the time of
19 the same with the Marshal, his/her representative, or a PALS a minimum of twenty (20) percent of the
20 bid, with the deposit to be made by certified or cashier's check or cash payable to the United States
21 District Court for the Eastern District of California. Before being permitted to bid at the sale, bidders
22 shall display to the Marshal, his/her representative, or a PALS proof that they are able to comply with this
23 requirement. No bids will be received from any person(s) who have not presented proof that, if they are
24 the successful bidders(s), they can make the deposit required by this order of sale;

25 h. the successful bidder(s) for the Property shall pay the balance of the purchase price
26 for the Property to the Clerk of this Court within thirty (30) days after the date the bid is accepted, by a
27 certified or cashier's check payable to the United States District Court for the Eastern District of
28 California. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied

1 to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any
2 amount remaining to be applied to the tax liabilities of Kenneth and Patricia Malinowski at issue herein.
3 The Property shall be again offered for sale under the terms and conditions of this order of sale. The
4 United States may bid as a credit against its lien without tender of cash;

5 i. the sale of the Property shall be subject to confirmation by this Court. The
6 Marshal or a PALS shall file a report of sale with the Court, together with a proposed order of
7 confirmation of sale, within forty-five (45) days from the date of receipt of the balance of the purchase
8 price;

9 j. on confirmation of the sale, the Marshal or PALS shall execute and deliver a deed
10 of judicial sale conveying the Property to the purchaser;

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

13 l. on confirmation of the sale, the recorder of deeds, Sacramento County, California,
14 shall cause transfer of the Property to be reflected upon that county's register of title. The successful
15 bidder at the sale shall pay, in addition to the amount of the bid, any documentary stamps and Clerk's
16 registry fees as provided by law; and

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

19 4. Until the Property is sold, Kenneth and Patricia Malinowski shall take all reasonable steps
20 necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on
21 the property) in its current condition including, without limitation, maintaining a fire and casualty
22 insurance policy. They shall neither commit waste against the Property nor cause or permit anyone else
23 to do so. They shall neither do anything that tends to reduce the value or marketability of the Property nor
24 cause or permit anyone else to do so. They shall not record any instruments, publish any notice, or take
25 any other action (such as running newspaper advertisements or posting signs) that may directly or
26 indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage
27 potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do
28 so.

1 5. All persons occupying the Property shall leave and vacate the Property permanently within
2 thirty (30) days of the date of this Order, each taking with them his or her personal property (but leaving
3 all improvements, buildings, fixtures, and appurtenances to the Property). If any person fails or refuses to
4 leave and vacate the Property by the time specified in this Order, the United States Marshal's Office,
5 alone, is authorized to take whatever action it deems appropriate to remove such person from the
6 premises, including the use of reasonable force, whether or not the sale of such Property is being
7 conducted by a PALS. Unauthorized persons who re-enter the Property during the time this Order is in
8 effect may be ejected by the United States Marshal or local law enforcement without further order of the
9 Court.

10 6. If any person fails or refuses to remove his or her personal property from the Property by
11 the time specified herein, the personal property remaining on the Property thereafter is deemed forfeited
12 and abandoned, and the United States Marshal's Office and/or PALS is authorized to remove it and to
13 dispose of it in any manner it deems appropriate, including sale, in which case the proceeds of the sale are
14 to be applied first to the expenses of sale, and then to the tax liabilities at issue herein.

15 7. The proceeds arising from sale are to be paid to the Clerk of this Court and applied as far
16 as they shall be sufficient, first to the United States Marshal or the PALS (whichever person conducted
17 the sale as arranged by the United States) for the costs of the sale, then to the following items in the order
18 specified below as per the Stipulations (Dkt. 49 & 64) and the February 21, 2012 and August 6, 2012
19 Orders of this Court (Dkt. 50 & 65):

Rank	Lien Holder	Type	Lien Date/Date of Recording
1	Sacramento County	Property Tax Lien	N/A
2	GMAC Mortgage	Deed of Trust	12/6/1995
3	FTB (1998 TY)	NSTL	9/12/2001 (3/27/2002)
4	FTB (1999 TY)	NSTL	1/04/2002 (3/27/2002)
5	FTB (2000 TY)	NSTL	10/27/2002 (3/7/2012)
6	FTB (2001 TY)	NSTL	7/24/2004 (5/27/2010)
7	FTB (1998 TY)	NSTL	2/19/2006 (5/27/2010)
8	FTB (1999 TY)	NSTL	2/19/2006 (5/27/2010)

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9	FTB (2000 TY)	NSTL	2/19/2006 (5/27/2010)
10	FTB (2001 TY)	NSTL	2/19/2006 (5/27/2010)
11	IRS (1998 TY)	NFTL	4/10/2006 (6/20/2007)
12	FTB (2004 TY)	NSTL	3/24/2007 (3/7/2012)
13	FTB (2003 TY)	NSTL	3/24/2007 (3/7/2012)
14	IRS (1998 TY)	NFTL	4/02/2007 (2/5/2009)
15	IRS (1999 TY)	NFTL	4/02/2007 (10/20/2008)
16	IRS (2000 TY)	NFTL	4/02/2007 (10/20/2008)
17	IRS (2001 TY)	NFTL	4/02/2007 (2/5/2009)
18	IRS (2002 TY)	NFTL	4/02/2007 (2/5/2009)
19	IRS (2003 TY)	NFTL	4/02/2007 (2/5/2009)
20	IRS (1999 TY)	NFTL	6/4/2007 (6/20/2007)
21	IRS (2000 TY)	NFTL	6/4/2007 (6/20/2007)
22	IRS (2001 TY)	NFTL	6/4/2007 (6/20/2007)
23	IRS (2002 TY)	NFTL	6/4/2007 (6/20/2007)
24	IRS (2004 TY)	NFTL	8/11/2008 (2/5/2009)
25	IRS (2003 TY)	NFTL	2/23/2009 (4/13/2009)
26	FTB (2003 TY)	NSTL	6/8/2009 (5/27/2010)
27	FTB (1998 TY)	NSTL	6/8/2009 (5/27/2010)
28	FTB (2999 TY)	NSTL	6/8/2009 (5/27/2010)
29	FTB (2000 TY)	NSTL	6/8/2009 (5/27/2010)
30	FTB (2001 TY)	NSTL	6/8/2009 (5/27/2010)
31	FTB (2002 TY)	NSTL	6/8/2009 (3/7/2012)
32	FTB (2007 TY)	NSTL	7/3/2009 (3/7/2012)
33	FTB (2000 TY)	NSTL	7/6/2009 (5/27/2010)
34	FTB (1998 TY)	NSTL	7/6/2009 (5/27/2010)
35	FTB (1999 TY)	NSTL	7/6/2009 (5/27/2010)
36	FTB (2001 TY)	NSTL	7/6/2009 (5/27/2010)
37	FTB (2002 TY)	NSTL	7/6/2009 (3/7/2012)
38	FTB (2008 TY)	NSTL	8/20/2010 (3/7/2012)
39	FTB (2009 TY)	NSTL	12/9/2011 (3/7/2012)

1 Finally, any balance remaining after the above payments shall be held by the Clerk until further
2 order of the Court.

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4 IT IS SO ORDERED:

5 DATED: 10/19/2012 /s/ John A. Mendez
6 THE HONORABLE JOHN A. MENDEZ
7 JUDGE OF THE UNITED STATES DISTRICT COURT
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