

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 2 THOMAS MOORE (ASBN 4305-O78T)
 Assistant United States Attorney
 3 10th Floor Federal Building
 450 Golden Gate Avenue, Box 36055
 4 San Francisco, California 94102
 Telephone: (415) 436-7017
 5 Attorneys for United States of America
 6

7
 8 IN THE UNITED STATES DISTRICT COURT FOR THE
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)	Case No. C-04-2016-WHA
12 Plaintiff,)	
13 v.)	<u>STIPULATION FOR ENTRY</u>
14 JESSIE AGULLANA, et al.,)	<u>OF ORDER OF SALE</u>
15 Defendants.)	
16)	

17 For the reason that the ninety-seven year old mother of the Agullana defendants recently moved
 18 from the subject real property, it can now be sold as previously ordered . However, because real
 19 property values have decreased, it is necessary that the ordered sale of the property be made pursuant to
 20 specified terms and conditions to reduce or eliminate buyer uncertainty so that a fair price may be
 21 obtained at the sale of the subject property.

22 For the foregoing reasons it is hereby stipulated by and between plaintiff United States of
 23 America and defendants, individually or through their respective counsel, that the sale of the subject
 24 real property be made pursuant to the following terms and conditions;

25 1. Pursuant to 28 U.S.C., §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, the Court
 26 rules and orders as follows:

27 2. Jessie and Rosalinda Agullana own the property which is the subject of this suit is real
 28 property located at 32530 Sheila Way, Union City, California, (hereinafter referred to as the

1 ("Property") and as described in the Official Records in the office of the County Recorder, Alameda
2 County, California, as follows:

3 Lot 33, Tract 3475, Filed January 3, 1974, Map book 81, Page 93, Alameda County Records.
4 A.P.N. 483-0110-011

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

10 4 The Marshal, his or her representative, or a PALS representative is authorized to have
11 free access to the Property and to take all actions necessary to preserve the Property, including, but not
12 limited to, retaining a locksmith or other person to change or install locks or other security devices on
13 any part of the property, until the deed to the Property is delivered to the ultimate purchaser(s).

14 5. The terms and conditions of the sale of the Property are as follows:

15 a. the sale of the Property shall be free and clear of the interests of Jessie and
16 Rosalinda Agullana; State of California Franchise Tax Board; County of Alameda Tax Collector;
17 Beneficial California, Inc., dba as Beneficial Finance; Aaron, Mueller & Sinclair, and Michael
18 Cosentino.

19 b. the sale shall be subject to the building lines, if established, all laws, ordinances,
20 and governmental regulations (including building and zoning ordinances) affecting the property, and
21 easements and restrictions of record, if any;

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

25 d. the date and time for sale are to be announced by the United States Marshal, his
26 representative, or a PALS;

27 e. notice of the sale shall be published once a week for at least four consecutive
28

1 weeks before the sale in at least one newspaper regularly issued and of general circulation in Alameda
2 County, and at the discretion of the Marshal, his representative, or a PALS, by any other notice deemed
3 appropriate. The notice shall contain a description of the property and shall contain the terms and
4 conditions of the sale in this order of sale;

5 f. the minimum bid will be set by the United States of America. If the minimum
6 bid is not met or exceeded, the Marshal, his or her representative, or a PALS may, without further
7 permission of this court, and under the terms and conditions in this order of sale, hold a new public
8 sale, if necessary, and reduce the minimum bid or sell to the second highest bidder;

9 g. the successful bidder(s) shall be required to deposit at the time of the sale with
10 the Marshal, his representative, or a PALS a minimum of Ten Thousand Dollars (\$10,000), with the
11 deposit to be made by a certified or cashier's check payable to the Marshal, his representative, or a
12 PALS, whoever conducted the sale.

13 Before being permitted to bid at the sale, bidders shall display to the Marshal, his/her
14 representative, or a PALS proof that they are able to comply with this requirement. No bids will be
15 received from any person(s) who have not presented proof that, if they are the successful bidder(s),
16 they can make the deposit required by this order of sale;

17 h. the balance of the purchase price for the Property is to be paid to the United
18 States Marshal or a PALS (whichever person is conducting the sale) within twenty (20) days after the
19 date the bid is accepted, by a certified or cashier's check payable to the Marshal, his representative, or a
20 PALS, whoever is conducting the sale. If the bidder fails to fulfill this requirement, the deposit shall be
21 forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28
22 U.S.C. § 1921(c), with any amount remaining to be applied to the tax liabilities of Jessie and Rosalinda
23 Agullana at issue herein. The Property shall be again offered for sale under the terms and conditions of
24 this order of sale. The United States may bid as a credit against its judgment without tender of cash;

25 i. the sale(s) of the property shall be subject to the confirmation by this Court. The
26 Marshal or a PALS shall file a report of sale with the Court, together with a proposed order of
27 confirmation of sale and proposed deed, within 20 days from the date of the balance of the purchase
28 price;

1 k. on confirmation of the sale, all interests in, liens against, or claims to, the
2 property that are held or asserted by all parties to this action (as stated in (a) above) are discharged and
3 extinguished;

4 l. on confirmation of the sale, the recorder of deeds Alameda County, California
5 shall cause transfer of the properties to be reflected on upon that county's register of title; and

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

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

18 7. All persons occupying the Property shall leave and vacate the property permanently
19 within sixty (60) days of the date of this Order, each taking with them his or her personal property (but
20 leaving all improvements, buildings, fixtures and appurtenances to the property). If any person fails or
21 refuses to leave and vacate the property by the time specified in this Order, the United States Marshal's
22 Office, alone, is authorized to take whatever action it deems appropriate to remove such person(s) from
23 the premises, whether or not the sale of such property is being conducted by a PALS. If any person
24 fails or refuses to remove his or her personal property from the property by the time specified herein,
25 the personal property remaining on the property thereafter is deemed forfeited and abandoned, and the
26 United States Marshal's Office is authorized to remove it and to dispose of it in any manner it deems
27 appropriate, including sale, in which the proceeds of the sale are to be applied first to the expenses of
28 the sale and the balance to be distributed pursuant to further Order of this Court. See, e.g., U.S. v.

Burdline, 205 F.Supp.2d 1175, 1180-81 (W.D. Wash. 2002) (ordering sale proceeds from tax foreclosure to be distributed first to allowed costs of sale); cf. 26 U.S.C. § 6342 (providing that, where the United States seizes and sells property in satisfaction of a federal tax lien, the proceeds of the sale shall be used first to pay “the expenses of levy and sale”).

The proceeds arising from sale are to be held and distributed by the United States Marshal or PALS, whoever sold the real property, pursuant to the Order confirming the sale of the Property and ordering disbursal of the sale proceeds.

JERRY BROWN
Attorney General

JOSEPH P. RUSSONIELLO
United States Attorney

/s/ Karen W. Yiu
KAREN W. YIU
Counsel for California Franchise Tax Board

/s/ Thomas Moore
THOMAS MOORE
Assistant United States Attorney

/s/ John Vaught
JON VAUGHT
VAUGHT & BOUTRIS, LLP
Counsel for Jessie & Rosalinda Agullana

/s/ Claude Kolm
CLAUDE KOLM
Counsel for County of Alameda

/s/ Michael Cosentino
MICHAEL COSENTINO

PURSUANT TO STIPULATION, IT IS SO ORDERED.

September 2, 2008

Dated: _____

UNITED STATES DISTRICT JUDGE

