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 6 Robert J. Sehr, Jr., as successor trustee of the  
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 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10		)	Case No. CV 14-02100 VC
11	ROBERT J. SEHR, JR. as successor trustee	)	
12	of the WELLER TRUST,	)	<b><u>STIPULATION AND <del>PROPOSED</del></u></b>
		)	<b><u>ORDER STAYING CASE</u></b>
13	Plaintiff,	)	AS MODIFIED
		)	
14	vs.	)	
		)	
15	BRYAN WELLER, an individual; UNITED	)	
16	STATES OF AMERICA; STATE OF	)	
17	CALIFORNIA EMPLOYMENT	)	
18	DEVELOPMENT DEPARTMENT; ALL	)	
19	PERSONS UNKNOWN CLAIMING ANY	)	
	INTEREST IN THE PROPERTY, and	)	
	DOES 1 through 50, inclusive,	)	
		)	
	Defendants.	)	
		)	

20  
 21 WHEREAS, on April 1, 2014, this partition case was filed in the probate department<sup>1</sup>  
 22 (Judge Sugiyama) of the Superior Court for the County of Contra Costa to partition a commercial  
 23 property located at 254 Rose St., Danville, California that is owned by Plaintiff and Defendant  
 24 Bryan Weller with federal tax liens on the property held by Defendant United State of America;  
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27 <sup>1</sup> Plaintiff received special permission from Judge Sugiyama to file in the probate department  
 28 instead of the civil department as there were related and consolidated cases already pending  
 before Judge Sugiyama.

1           WHEREAS, on May 7, 2014, this case was removed to this Court by Defendant United  
2 State of America;

3           WHEREAS, before removal, this case was consolidated with six additional cases in the  
4 probate department also pending before Judge Sugiyama, including a wills/estate action (*In the*  
5 *Matter of the Estate of Beverly J. Weller*, Case No. MSP11-00814), a trust action (*In the Matter*  
6 *of the Weller Trust*, Case No. MSP11-00406), a fraud/fiduciary duties action (*Weller v. Sehr*,  
7 Case No. C12-01649), a quiet title action (related to the commercial property at issue here)  
8 (*Weller v. Sehr*, Case No. MSC12-02106), a nuisance action (*Sehr v. Weller*, Case No. MSL13-  
9 01120) and a partition action (related to a residential property owned by Plaintiff and Defendant  
10 Bryan Weller) (*Sehr v. Weller*, Case No. MSC12-02336) (collectively the “Actions”);<sup>2</sup>

11           WHEREAS, Defendant Bryan Weller is or was a party to all of the Actions and  
12 Defendant United States of America is a party to the partition action related to the residential  
13 property;<sup>3</sup>

14           WHEREAS, the federal tax liens at issue in this case are also at issue in the partition  
15 action related to the residential property;

16           WHEREAS, an interlocutory judgment has been issued in the partition action related to  
17 the residential property, which has a provision relating to the payment of the federal tax liens, a  
18 referee has been appointed to sell the residential property and offers to purchase the residential  
19 property have been received;

20           WHEREAS, it is anticipated that the residential property will be sold in the next few  
21 months, and the proceeds of the sale will be used to pay off debts on the house, including the  
22 federal tax liens at issue in this case;

23           WHEREAS, Plaintiff disputes that this Court has subject matter jurisdiction over this  
24 case as Plaintiff contends that the property at issue is also at issue in previously filed state court

25 \_\_\_\_\_  
26 <sup>2</sup> The property at issue in this action (254 Rose St., Danville, California) is at issue in the  
27 wills/estate action, the trust action, the fraud/fiduciary duties action, the quiet title action and the  
28 nuisance action.

<sup>3</sup> Defendant State of California Employment Development Department disclaimed in the state  
court all rights in the property and is no longer a party to this action



1 actions, including multiple probate actions and a quiet title action, that the United States of  
2 America has waived the right to remove due to its litigating its federal tax liens in state court and  
3 that abstention principles require that the case be remanded to state court;

4 WHEREAS, the parties believe that rather than engaging in motion practice to determine  
5 whether this case should be remanded to the state court and engaging in preliminary case matters  
6 (e.g., initial disclosures, initial case management conferences), the case should be stayed so that  
7 the federal tax liens can be resolved in the state court partition action, following which Defendant  
8 United States of America will likely be dismissed from both the state court case as well as the  
9 above-captioned case so that this case can be remanded back to state court;

10 THEREFORE, subject to the Court's order so providing, the parties stipulate that this  
11 case shall be stayed for 90 days from the date of the Court's Order. If a dismissal of the United  
12 States of America is not filed within 75 days following entry of the Court's Order, Plaintiff shall  
13 notify the Court of the status of the underlying partition case so that the Court may determine  
14 how best to proceed.

15 Dated: June \_\_, 2014

GLYNN & FINLEY, LLP

16  
17 By \_\_\_\_\_  
18 Attorneys for Plaintiff  
19 Robert J. Sehr, Jr., as successor trustee  
of the Weller Trust

20 Dated: June 9, 2014

21 BUCHMAN PROVINE BROTHERS  
SMITH LLP

22  
23 By  \_\_\_\_\_  
24 Attorneys for Defendant Bryan Weller

25 Dated: June \_\_, 2014

26 By \_\_\_\_\_  
27 CYNTHIA STIER  
28 Assistant United States Attorney  
Tax Division  
Attorney for Defendant United States of

ORDER AS MODIFIED

The Court ORDERS that this case shall be stayed for 90 days from the date of the Court's Order. If a dismissal of the United States of America is not filed within 75 days following entry of the Court's Order, Plaintiff shall notify the Court of the status of the underlying partition case so that the Court may determine how best to proceed. A Status Conference is set for September 16, 2014, at 10:00 a.m. A Status Conference statement shall be due no later than September 9, 2014.

IT IS SO ORDERED.

Dated: June 11, 2014



