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10
11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JOSEPH J. LIPARI, EILEEN H. LIPARI and
EXETER TRINITY PROPERTIES, L.L.C.,

17 Defendants.
18

Civ. No. 10-CV-08142-JWS

**UNITED STATES' MOTION FOR
SUMMARY JUDGMENT**

19
20 The United States, through undersigned counsel, hereby moves for summary judgment under
21 Rule 56 of the Federal Rules of Civil Procedure on all of the claims set forth in the complaint filed
22 herein. In support of this motion, the United States relies on its Memorandum in Support, its
23 Statement of Material Facts, the Declaration of Charles M. Duffy, the Declaration of Debbie Vahe
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1 and the Declaration of Cheryl Bradley, all of which are filed herewith.

2 DATED this 1st day of December, 2011.

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JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
U.S. Department of Justice

By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

Of Counsel:
ANN SCHEEL
Acting United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2011, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

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12 UNITED STATES OF AMERICA,
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15 JOSEPH J. LIPARI, EILEEN H. LIPARI and
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Civ. No. 10-CV-08142-JWS

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES' MOTION FOR
SUMMARY JUDGMENT**

18 **A.**

19 **INTRODUCTION**

20 In its complaint filed herein (“the complaint”), the United States seeks to reduce certain tax
21 and other assessments made against Joseph and Eileen Lipari (“the Liparis”) to judgment and also
22 foreclose its federal tax liens on the residence that they purchased and lived in from 1989 until at
23 least November, 2007. The subject residence (“the residence”) is located at 1001 South Sixth Street
24 in Cottonwood, Arizona. See United States’ Statement of Material Facts filed herewith (“U.S.
25 fact”), at paragraph 1. The Liparis transferred the residence based on the advice of Jimmy Chisum,
26 who is a “known promoter of tax avoidance schemes” and who has been convicted of federal tax
27 evasion. In its motion, the United States is seeking summary judgment on the tax *and* the foreclosure
28 claims.

1 Before commencing, it should be noted that based on information and belief it appears that
2 Eileen Lipari has passed away. If that is the case, any judgment for the tax and other assessments
3 that were made against her should be entered against the personal representative of her estate.

4 **B.**

5 **STATEMENT**

6 **1. Background on the Liparis and Jimmy Chisum.**

7 Jimmy Chisum was an advisor to the Liparis and, in turn, they paid him thousands of dollars
8 of fees. (U.S. fact 17). In May, 1992, Eileen Lipari and Jimmy Chisum set up the DD Trust to
9 operate Joseph Lipari's Chiropractic practice. (U.S. facts 15 and 16). Mr. Chisum has been
10 adjudged to be "a known promoter of tax avoidance schemes." (U.S. fact 31). He also gave
11 seminars on "business structure, limited liability companies and trusts" and espoused that the IRS
12 was "evil" and that he wanted to "take it down." (U.S. fact 28). Mrs. Lipari, was a student of his,
13 taught at his seminars and did "whatever [Chisum] told [her] to do." (U.S. fact 18). She has been
14 involved in other cases where taxpayers tried to shield their assets from the IRS. (U.S. facts 20 and
15 21). In one case, third parties transferred their residence to her and another individual for minimal
16 consideration. (U.S. fact 20).

17 The Liparis did not file their tax returns for their 1994 through 2004 tax years until 2007,
18 which was long after they were due. (U.S. fact 25). When the returns were finally filed, they set
19 forth unpaid tax amounts due and owing. (U.S. fact 26).

20 In the past, the Liparis have espoused common tax defier-type arguments. For example, they
21 sent a letter to the IRS that set forth that they were a "Sovereign of the Arizona Republic" and not
22 "citizen[s] of the United States subject to its jurisdiction." (U.S. fact 22). Also, in a complaint that
23 they filed with the Bankruptcy Court, they alleged that the United States was "a Municipal
24 Corporation, chartered in the District of Columbia and doing business in the State of Arizona as a
25 foreign Corporation." (U.S. fact 23).

26 Mr. Chisum was convicted of federal tax evasion in the United States District Court for the
27 Eastern District of Oklahoma. (U.S. fact 34). The criminal charges related to his involvement in a

1 trust to conceal the taxable income of third parties. (U.S. fact 35). At his deposition taken herein,
 2 Chisum recounted how he called the presiding Judge in his criminal case a liar. (U.S. fact 36). Mr.
 3 Chisum has also sued various judges. (U.S. fact 30).

4 In another similar civil case litigated in this District, a transfer of real property purchased by
 5 taxpayers not at issue herein was transferred to entities controlled by Jimmy Chisum. (U.S. fact 32).
 6 The Court permitted the Government to foreclose its tax liens on the property. (U.S. fact 33).

7 **2. The Tax and Other Assessments at Issue in the Complaint.**

8 The assessments at issue in the complaint were made against the Liparis for their 1993 and
 9 1998 through 2004 joint tax years and against each of them for their 1994 through 1997 separate tax
 10 years. The current balances owed on the assessments for each of the years in question, as of
 11 November 1, 2011, are set forth in U.S. fact 85. The specific balances, as of that date, are as follows:

<u>Tax Year</u>	<u>Aggregate Balances as of November 1, 2011</u>
1994 (Joseph Lipari)	\$ 136,392.77
1995 (Joseph Lipari)	153,094.80
1996 (Joseph Lipari)	112,182.87
1997 (Joseph Lipari)	80,190.29
1994 (Eileen Lipari)	55,355.79
1995 (Eileen Lipari)	49,591.10
1996 (Eileen Lipari)	37,428.99
1997 (Eileen Lipari)	36,458.21
1993 (Joseph and Eileen Lipari)	173,079.83
1998 (Joseph and Eileen Lipari)	28,229.18
1999 (Joseph and Eileen Lipari)	32,104.08
2000 (Joseph and Eileen Lipari)	22,550.23
2001 (Joseph and Eileen Lipari)	25,910.49
2002 (Joseph and Eileen Lipari)	10,452.09
2003 (Joseph and Eileen Lipari)	5,208.07

1 2004 (Joseph and Eileen Lipari) 2,920.66¹

2 As of November 1, 2011, the aggregate amount owed by Joseph Lipari for his 1994 through
3 1997 separate years is \$481,860.73, the aggregate amount owed by Eileen Lipari for her 1994
4 through 1997 separate years is \$178,834.09 and the aggregate amount owed by Joseph and Eileen
5 Lipari for their 1993 and 1998 through 2004 joint years is \$300,454.63.

6 **a. The Assessments against the Liparis for their 1993 and 1998 through 2004 Years.**

7 An IRS determination that the DD Trust (referenced above) was a sham and that it should be
8 disregarded for tax purposes was litigated in the United States Tax Court. (U.S. fact 19). The Liparis
9 failed to appear at the trial and the Tax Court imposed a penalty against them under 26 U.S.C. § 6673
10 in the amount of \$12,500 for maintaining the proceeding primarily for delay and it otherwise ruled
11 for the IRS. (*Id.*) The tax amounts assessed against the Liparis for their 1998 through 2004 tax
12 years were taken from the delinquent tax returns that they filed. (U.S. fact 81).

13 The following tax, interest and penalty assessments were made against the Liparis for
14 their 1993 and 1998 through 2004 joint tax years (U.S. fact 79)²:

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1993	Income	2/12/2001	\$44,011.00 (T) 8,802.00 (AP) 12,500.00 (MP) 41,427.74 (I)
		10/5/2009	10,993.87 (FPP)

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25 ¹See U.S. fact 85.

26 ²T = Tax; LFP = Late Filing Penalty; FPP=Failure to Pay Tax Penalty; ETP =
27 Estimated Tax Penalty; AP = Accuracy Penalty under IRC § 6662; MP = Miscellaneous
28 Penalty under IRC § 6673; I = Interest.

12/31/1998	Income	10/15/2007	\$ 9,465.00 (T) 429.61 (ETP) 2,129.62 (LFP) 2,366.25 (FPP) 8,960.48 (I)
12/31/1999	Income	10/22/2007	\$ 11,566.00 (T) 505.08 (ETP) 2,602.35 (LFP) 2,891.50 (FPP) 9,041.01 (I)
12/31/2000	Income	8/11/2008	\$ 8,986.00 (T) 2,246.50 (LFP) 6,516.89 (I)
12/31/2001	Income	10/22/2007	\$ 10,726.00 (T) 424.49 (ETP) 2,413.35 (LFP) 2,681.50 (FPP) 5,227.64 (I)
12/31/2002	Income	7/28/2008	\$ 153.00 (ETP) 4,581.00 (T) 1,145.25 (LFP) 2,233.29 (I)
12/31/2003	Income	12/3/2007	\$ 2,379.00 (T) 61.00 (ETP) 535.27 (LFP) 523.38 (FPP) 797.69 (I)
12/31/2004	Income	12/10/2007	\$ 1,564.00 (T) 40.00 (ETP) 313.87 (LFP) 223.20 (FPP) 369.36 (I)

b. The Assessments Made for the 1994 through 1997 Tax Years.

The IRS carried out an audit regarding the Liparis' 1994 through 1997 tax years (U.S. fact 87). The following tax, interest and penalty assessments were made against Joseph Lipari for his 1994 through 1997 income tax years (U.S. fact 83):

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	3/27/2000	\$ 12,079.00 (LFP) 48,317.00 (T) 31,770.34 (I) 11,837.66 (FPP)
		10/5/2009	241.58 (FPP)
		3/22/2010	2,489.37 (ETP) 5,284.35 (LFP)
12/31/1995	Income	3/27/2000	\$ 21,143.00 (LFP) 84,572.00 (T) 41,454.21 (I)
		10/5/2009	21,143.00 (FPP)
		3/22/2010	4,616.87 (ETP) 5,196.15 (LFP)
12/31/1996	Income	10/30/2000	\$ 16,463.00 (LFP) 73,169.00 (T) 30,916.92 (I)
		10/5/2009	18,292.24 (FPP)
		3/22/2010	3,894.41 (ETP) 4,152.38 (LFP)
12/31/1997	Income	3/7/2003	\$ 13,312.00 (T) 5,938.52 (I)
		8/4/2003	2,662.40 (AP) 2,995.20 (LFP) 712.21 (ETP) 3,328.00 (FPP) 3,081.83 (I)
		6/7/2010	4,835.00 (FPP) 717.13 (ETP) 4,351.50 (LFP) 6,028.00 (T)

The following tax, interest and penalty assessments were made against Eileen Lipari for her 1994 through 1997 income tax years (U.S. fact 84):

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	3/27/2000	\$ 3,101.40 (LFP) 15,055.00 (T) 9,899.41 (I)
		11/5/2007	3,763.75 (FPP)
12/31/1995	Income	3/27/2000	\$ 3,026.25 (LFP) 30,382.00 (T) 14,891.99 (I)
		11/5/2007	7,595.50 (FPP)
12/31/1996	Income	10/30/2000	\$ 2,475.00 (LFP) 91,946.00 (T) 38,850.68 (I)
		11/5/2007	22,986.50 (FPP)
12/31/1997	Income	11/11/2002	\$193,864.00 (T) 81,573.03 (I)
		5/19/2003	2,613.38 (LFP) 29,907.26 (I)
		11/5/2007	48,466.00 (FPP)

3. Facts Relating to the Foreclosure of Federal Tax Liens on the Lipari Residence.

a. The Liparis' Purchase of the Residence and the Transfer to the Ponderosa Trust.

On or about April 17, 1989, the Liparis purchased the residence for \$105,000. (U.S. facts 2 and 3). The Liparis made a \$35,000 down payment on the residence and obtained a mortgage for the remaining \$70,000. (U.S. fact 3). The Liparis paid off the mortgage and owned the residence free and clear as of March 22, 1993. (U.S. fact 4).

On March 24, 1993, which was just after the mortgage was fully paid, a warranty deed that purported to transfer the residence to the Ponderosa Trust with Donna Chisum as Trustee (hereafter "the Ponderosa Trust") was filed with the County Recorder. (U.S. facts 5 and 6). Donna Chisum was Jimmy Chisum's wife and she held his same views concerning the IRS. (U.S. facts 9 and 29).

In return for the transfer of the residence, the Liparis received ten dollars and certain "certificates" that Jimmy Chisum "made up." (U.S. fact 7). The ten dollars was the only thing of

1 value that the Liparis ever received in the exchange with the Ponderosa Trust. (U.S. fact 8).

2 **b. The 1999 Transfer of the Residence to Exeter Trinity Properties, LLC.**

3 On September 1, 1999, a Warranty Deed was recorded which purported to transfer the Lipari
4 residence from the Ponderosa Trust to Exeter Trinity Properties, LLC (“Exeter”). (U.S. fact 40).
5 Jimmy Chisum made the decision to transfer the Lipari residence to Exeter and nothing of value was
6 given by Exeter in return for the transfer. (U.S. fact 41). Exeter was incorporated in 1999 and
7 Jimmy Chisum was its statutory agent. (U.S. fact 42). One of the “members” of Exeter was Hunter
8 King LLC, which was owned by Eileen Lipari. (*Id.*)

9 **c. From 1993 through 2007, the Liparis Lived in the Residence Rent Free and Took**
10 **Deductions Relating to the Residence on Their Personal Income Tax Returns.**

11 Joseph Lipari’s chiropractic business was located in the residence and the Liparis took
12 business deductions on their 1994 through 2004 individual tax returns tax returns that related to the
13 business. (U.S. facts 10 and 11). The deductions related to the following expenditures that the
14 Liparis paid from revenues generated by Mr. Lipari’s chiropractic business: real estate taxes,
15 insurance, repairs and maintenance and utilities paid on the residence. (U.S. fact 11). The Liparis
16 also depreciated the residence on their 1999 through 2002 individual income tax returns. (U.S. fact
17 12). The deductions and depreciation were taken by the Liparis on their individual returns during
18 years in which the residence was supposedly “owned” by the Ponderosa Trust and Exeter. (U.S. fact
19 13). Also, the Liparis never paid rent to live in the residence from 1993 through 2007. (U.S. fact
20 14).

21 Eileen Lipari testified that she “would like” the proceeds of any sale of the residence “to go
22 to [her] taxes.” (U.S. fact 27).

23 **d. In 2006, Elmer Vild Took Over Chisum’s Duties.**

24 In early 2006, because Jimmy Chisum was going to jail as a result of his criminal conviction,
25 the Liparis asked that he transfer control “of all structures associated with” them to Phillip O’Neil.
26 (U.S. fact 46). Mr. O’Neil’s real name is Elmer Vild and he uses Phillip O’Neil as a pseudonym
27 (hereafter he will be referred to as “Vild/O’Neil”). (U.S. fact 48). Eileen Lipari met Vild/O’Neil
28

1 at Chisum's seminars. (U.S. fact 49). Vild/O'Neil was a friend of Chisum's and an active
2 participant in the seminars. (*Id.*) He also acted on Chisum's behalf. (U.S. fact 50). Vild/O'Neil,
3 with the assistance of others, took over some or all of Chisum's clients when Chisum went to jail.
4 (U.S. fact 73). Vild/O'Neil has formed many trusts and limited liability entities and is currently
5 teaching others to do the same. (U.S. fact 72).

6 Eileen Lipari thought when the switch to Vild/O'Neil occurred that maybe she could get the
7 residence back. (U.S. fact 47). But Vild/O'Neil told her that "[she] had to pay rent for the property
8 now, because [her husband Joseph Lipari] was getting sicker and [the Liparis] couldn't really take
9 care of it anymore." (U.S. fact 52). In November, 2007, Vild/O'Neil gave documents to the Liparis
10 which indicated that he was "evicting" them from the residence. (U.S. fact 51). Vild/O'Neil's
11 "eviction" papers stated that the Liparis were in violation of their "original contract and rental
12 agreement." (U.S. fact 53). However, Vild/O'Neil has never seen those agreements and he does not
13 know if the agreements were written or verbal. (U.S. fact 54). Eileen Lipari did not know what
14 "original contract and rental agreement" Vild/O'Neil was referring to. (U.S. fact 55).

15 Terry Major, who now resides in the residence, assisted Vild/O'Neil with the "eviction." (U.S.
16 fact 62). In November, 2007, Major and Vild/O'Neil moved boxes into the residence and the Liparis
17 left. (U.S. fact 63). In the past, Major made videotapes of Chisum's seminars to sell to others. (U.S.
18 fact 76). Major also filed a Tax Court case in which his assertions were described by that court as
19 "tax protester arguments." (U.S. fact 75).

20 At the time of the "eviction," the Liparis had \$165,000 invested in the residence, based on its
21 purchase price and the improvements that they had made over the years. (U.S. facts 59 and 60).
22 Pursuant to Eileen Lipari, up until November, 2007, Exeter, Chisum nor Vild/O'Neil "paid any of
23 the real estate taxes, upkeep, insurance [or] maintenance" on the residence. (U.S. fact 61).

24 In February, 2008, which was about three months after he "evicted" the Liparis from their
25 residence, Vild/O'Neil amended Exeter's Articles of Corporation. (U.S. fact 56). The Golden Kiwi
26 Trust, of which Vild/O'Neil was the trustee, became a new member of Exeter, replacing Hunter
27 King, which was owned by Eileen Lipari. (U.S. fact 57). Thus, when Vild/O'Neil signed the
28

1 eviction documents in 2007 on behalf of the Golden Kiwi Trust, that trust was not a member of
2 Exeter based on State records. (U.S. fact 58).

3 Vild/O'Neil has filed many federal tax cases in this District. (U.S. fact 66). In one case, he
4 stated that he would "sue, and sue, and sue, and sue; until he learns how to get this matter before a
5 jury." (U.S. fact 67). The Court has described Vild/O'Neil as a "tax protester." (U.S. fact 68).
6 Vild/O'Neil has also sued various Arizona State Court judges. (U.S. fact 69). Vild/O'Neil was also
7 convicted of a state drug charge and it was reported that at his sentencing, State Court Judge Roger
8 Hertzberg stated that Vild/O'Neil's testimony at trial was "patently false" (U.S. fact 70).
9 Vild/O'Neil does not remember Judge Hertzberg's statement but "[does not] doubt" that it was made.
10 (U.S. fact 71).

11 C.

12 **THE UNITED STATES IS ENTITLED TO SUMMARY JUDGMENT**

13 Summary judgment is appropriate when the movant demonstrates that "there is no genuine
14 dispute as to any material fact." FED. R. CIV. P. 56(a). The party moving for summary judgment
15 "bears the initial responsibility of informing the district court of the basis for its motion, and
16 identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions
17 on file, together with the affidavits, if any,' which it believes demonstrate an absence of a genuine
18 issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

19 If the moving party meets its initial responsibility, then the burden shifts to the opposing party
20 to establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec. Indus.*
21 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If the nonmoving party cannot produce
22 sufficient evidence to demonstrate that a triable issue of fact exists, the moving party is entitled to
23 summary judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

24 **1. The United States is Entitled to Summary Judgment on the IRS's Assessments.**

25 Except for the assessments made for Joseph Lipari's 1997 tax year, the tax and other
26 assessments at issue in the Government's motion are all supported by Forms 4340, Certificate of
27
28

1 Assessments, Payments that are submitted, herewith.³ The Forms 4340 also set forth amounts that
2 were credited to the assessments in question.

3 The Forms 4340 show that the Liparis are indebted to the United States for unpaid assessed
4 balances of tax, penalties, and interest in the amounts set forth thereon.⁴ Generated under seal and
5 signed by an authorized delegate of the Secretary of the Treasury, Forms 4340 are self-authenticating
6 under Federal Rule of Evidence 902(1) and admissible as a public record under Federal Rule of
7 Evidence 803(8). *Hughes v. United States*, 953 F.2d 531, 539-540 (9th Cir. 1992); *Rossi v. United*
8 *States*, 755 F. Supp. 314, 318 (D. Or. 1990). These Forms 4340 carry a presumption of correctness
9 and the “23C” entries on the Forms show that the taxes, penalties and interest at issue were duly
10 assessed and recorded. *United States v. Chila*, 871 F.2d 1015, 1017 (11th Cir. 1989).

11 Other supporting documents provide further evidence of the factual basis for the assessments
12 shown on the Forms 4340. For example, as explained above, the tax amounts assessed for the 1998
13 through 2004 tax years were taken from tax returns that the Liparis filed for those years. Also, the
14 United States filed other IRS audit documents that also support liabilities at issue in the complaint.⁵

15 Further, the assessments made for the Liparis’ 1993 tax year, which is also at issue in the complaint,
16 are based on a decision by the United States Tax Court.⁶ This supporting evidence provides more
17 than the minimal evidentiary foundation required for the presumption of correctness to attach to the
18 Forms 4340. *See e.g., Hardy v. Commissioner*, 181 F.3d 1002, 1005 (9th Cir. 1999).

19
20 ³Copies of the Forms 4340 are attached as Exhibits 1 through 3 and 5 through 8
21 attached to the Declaration of Cheryl Bradley (“Bradley Ex.”) and Exhibit 5 to the
22 Declaration of Charles Duffy (“Duffy Ex”). At this point, the United States is relying on
23 paragraph 21 of the complaint to support the assessments made for Mr. Lipari’s 1997 tax
year but it anticipates filing a Form 4340 for that year.

24 ⁴The Forms 4340 do not reflect accrued but unassessed statutory interest and
25 penalties that continue to accrue on the tax liabilities.

26 ⁵*See* Bradley Ex’s 9 and 10 and Duffy Ex. 7.

27 ⁶*Lipari v. Commissioner*, 2000 WL 1227130 (Tax Ct. 2000).

1 The IRS also assessed various penalties against the Liparis, such as the late filing, failure to
2 pay and estimated tax penalties that are set forth on the Forms 4340. When a taxpayer fails to file
3 a federal tax return on time, the taxpayer may be assessed a penalty for failing to file or late-filing
4 the return. *See* 26 U.S.C. § 6651(a). As set forth above, the Liparis did not file their 1994 through
5 2004 returns until long after they were due.

6 When a taxpayer fails to pay his federal tax liabilities at the time that they are due, the
7 taxpayer may be assessed a penalty for failure to timely pay the tax owed. *Id.* As it appears
8 undisputed that the Liparis did not timely (or otherwise) pay the amounts that they owed for the
9 referenced years the United States is entitled to judgment as a matter of law.

10 If a taxpayer fails to make estimated income tax payments, the taxpayer is subject to a penalty
11 under 26 U.S.C. § 6654. As set forth above, the referenced tax returns set forth that taxes are due
12 but that insufficient or zero tax payments were made.

13 Unless the Liparis come forward with contrary evidence in admissible form sufficient to rebut
14 the presumption of correctness in favor of the information contained in the above-described Forms
15 4340, the United States is entitled to judgment as a matter of law for the unpaid assessed balances
16 shown thereon, together with statutory interest and penalties accruing to the date of payment.

17 **2. The United States Is Entitled to Summary Judgment on the Foreclosure Claim.**

18 Pursuant to 26 U.S.C. § 6321, the United States obtains a lien “upon all property and rights
19 to property, whether real or personal, belonging to” any taxpayer who neglects or refuses to pay taxes
20 after notice and demand. This lien arises as of the date of assessment and continues until the tax
21 liability is extinguished. 26 U.S.C. § 6322. It is effective as against the taxpayer without the filing
22 of a notice of lien. *See* 26 U.S.C. § 6323(a).⁷

23 As shown by the Forms 4340 filed herewith, numerous federal tax and other assessments have
24 been made against the Liparis and they have neglected to pay them after notice and demand.

25
26 ⁷In 2001, the IRS began filing notices of federal tax liens against the Liparis to
27 protect its interest against bonafide third parties. (U.S. fact 78). In 2003, the IRS filed
28 nominee tax liens against Exeter as the nominee of the Liparis. (U.S. facts 43 and 44).

1 Statutory tax liens therefore arose as of the dates of the assessments and attached to all of their
2 property and rights to property, including the subject residence. Those liens remain in full force and
3 effect as of the date hereof, since the Liparis have outstanding tax liabilities.

4 In support of its foreclosure claim, the United States alleged in the complaint that the two
5 purported transfers of the Lipari residence (from the Liparis to the Ponderosa Trust and from the
6 Ponderosa Trust to Exeter) were fraudulent conveyances which have no effect as to the United States
7 and should be set aside. The United States alleged, in the alternative, that Exeter is the nominee/alter
8 ego of the Liparis. The Court could rely on either theory (or both) to order the residence to be sold
9 to pay the Liparis' tax liabilities under 26 U.S.C. § 7403.

10 **a. The Transfers of the Residence were Fraudulent Conveyances.**

11 When a taxpayer has fraudulently disposes of his property prior to the filing of a federal tax
12 lien, the United States is entitled to rely upon the applicable fraudulent conveyance laws of the
13 particular state in which the property is located to determine whether the conveyance should be set
14 aside. *See generally United States v. Ranch Located in Young, Arizona*, 50 F.3d 630, 632 (9th Cir.
15 1995). The determination of whether the Lipari residence here was fraudulently transferred is
16 governed by the Arizona Uniform Fraudulent Transfer Act ("UFTA") Ariz. Rev. Stat. §§ 44-1001,
17 *et. seq.* which provides for claims of constructive and actual fraud.

18 The transfers of the Liparis' residence involved both actual and constructive fraud. Regarding
19 actual fraud, a transfer involves actual fraud if the debtor made the transfer "with actual intent to
20 hinder, delay, or defraud any creditor of the debtor." A.R.S. § 44-1004(A)(1). In determining
21 whether there is actual fraud, the Court should consider, among other things, the badges of fraud set
22 out in A.R.S. § 44-1004(B). *See Warfield v. Alaniz*, 453 F.Supp. 2d 1118, 1136 (D. Ariz. 2006). The
23 badges include factors such as whether the transfer was to an insider; whether the debtor retained
24 possession or control of the property transferred after the transfer; whether before the transfer was
25 made, the debtor had been sued or threatened with suit; whether the transfer was of substantially all
26 of the debtor's assets; and whether the value of the consideration received by the debtor was
27 reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

1 The actual intent required need not be proven by direct evidence but may be inferred from the
2 circumstances of the transaction. *In re Marriage of Benge*, 151 Ariz. 219, 223 (App. 1986). These
3 circumstances include such matters as whether the transferor and transferee have a close relationship,
4 whether there was consideration for the conveyance and whether the transferor retained possession
5 of the property. *Cashion Gin Co. v. Kulikov*, 1 Ariz. App. 90, 97 (1965). Often a single
6 circumstance or badge “may establish and stamp a transaction as fraudulent” and when “several are
7 found in the same transaction, strong, clear evidence will be required to repel the conclusion of
8 fraudulent intent.” *Torosian v. Paulos*, 82 Ariz. 304, 312 (1957).

9 In 1992, the Liparis, with Chisum as their advisor, embarked on a path to thwart the IRS and
10 avoid paying their federal taxes. They began in May, 1992, when they set up the DD Trust to operate
11 Mr. Lipari’s Chiropractic business. Thereafter, in 1993, the Liparis transferred the residence to the
12 Ponderosa Trust and stopped filing their federal income tax returns. There is no doubt that when the
13 Liparis transferred the residence to the Ponderosa Trust they did so intending that the tax liens that
14 would surely arise as a result of their non-filing activities would not reach the residence.

15 The purported transfers of the Lipari residence were surrounded with badges of fraud
16 sufficient to infer an actual intent to defraud as a matter of law. First and foremost, little or nothing
17 of value was given to the Liparis as consideration for the residence when it was transferred. This is
18 important since the purchase price of the residence (\$105,000) was fully paid by the Liparis before
19 they “transferred” it to the Ponderosa Trust. In light of the approximately \$60,000 of improvements
20 that the Liparis made over the years, they received little or nothing for the \$165,000 that they
21 invested in the residence.

22 Eileen Lipari also had a close relationship with Jimmy Chisum, who oversaw Ponderosa
23 Trust and Exeter. Chisum was “a known promoter of tax avoidance schemes” and was convicted of
24 federal tax evasion based on his involvement in another trust case. Ms. Lipari attended and taught
25 at Chisum’s seminars and Chisum advised the Liparis in tax matters and regarding the transfers of
26 the residence. Ms. Lipari also knew Vild/O’Neil from Chisum’s seminars.

27 The Liparis’ fraudulent intent is also evidenced by the tax defier views that they have
28

1 expressed in the past. The views are consistent with a willingness to improperly shield their assets
2 from their federal tax obligations. Eileen Lipari has also been involved in other cases where third
3 parties tried to shield their assets from the IRS under similar circumstances.

4 Another factor evidencing a fraudulent intent is that the Liparis exercised possession and
5 control of the residence during years in which the Ponderosa Trust and Exeter supposedly “owned”
6 the residence. For example, they took deductions relating to the residence on their personal income
7 tax returns and also depreciated the residence on the returns. They also lived in the residence rent
8 free and paid the upkeep and expenses on the residence until at least 2007.

9 In addition to actual fraud, the transfers in question also constitute constructive fraud. Under
10 UFTA, a transfer involves constructive fraud if the debtor made the transfer “[w]ithout receiving a
11 reasonably equivalent value in exchange,” and either (1) was engaged or about to engage in a
12 business or transaction for which the remaining assets of the debtor were unreasonably small in
13 relation to the business or transaction; or (2) intended to incur, or believed or reasonably should have
14 believed that he would incur, debts beyond his ability to pay as they became due. A.R.S. § 44-
15 1004(A)(2). As discussed previously, neither the Liparis nor Ponderosa Trust received reasonably
16 equivalent value for the transfers of the residence. Also, the Liparis knew, based on their non-filing
17 and other activities regarding their federal taxes, that they were going to incur debts that were going
18 to be beyond their ability to pay them.

19 **b. Exeter is a Nominee/Alter Ego of the Liparis.**

20 Consistent with the broad scope of 26 U.S.C. § 6321, the Supreme Court has held that Section
21 6321 permits the United States to impose a lien on property in the hands of a nominee. *G.M. Leasing*
22 *Corp. v. United States*, 429 U.S. 338, 350-351 (1977). As such, federal tax liens against a taxpayer
23 may be foreclosed against property, even though the taxpayer is not the nominal holder of title to the
24 property, *i.e.*, title being in a nominee, strawman, or alter ego, so long as the taxpayer is the equitable
25 owner of the property. In such instances, courts have ignored the fact that the property is in a third
26 party’s name, such as a trust, and upheld the United States’ right to exercise its tax lien against such
27 property. *See e.g., G.M. Leasing Corp.; Wolfe v. United States*, 798 F.2d 1241, 1245 (9th Cir.

1 1986); *F.P.P. Enterprises v. United States*, 830 F.2d 114, 117-118 (8th Cir. 1987); *Al Kim, Inc. v.*
2 *United States*, 650 F.2d 944, 946-947 (9th Cir. 1979); *Flores v. United States*, 551 F.2d 1169, 1174-
3 1175 fn. 5 & 6 (9th Cir. 1977); and *Gastineau Equity Trust v. United States*, 687 F. Supp. 1422,
4 1426-1427 (C.D. Cal. 1987).

5 Factors to consider in deciding whether a transfer of a taxpayer's residence to a trust is a sham
6 transaction not to be recognized for federal tax purposes include whether the taxpayers remained in
7 the residences and continued to essentially treat the residence as their own even after the purported
8 transfers. See e.g., *F.P.P. Enterprises*, supra., and *Gastineau Equity Trust*, supra. In the instant
9 case, the Liparis lived rent free in the residence after the transfer to the Ponderosa Trust and
10 continued to pay the upkeep and maintenance expenses for many years. Also, they treated the
11 residence as their own by, for example, deducting expenses and taking depreciation regarding the
12 residence on their personal tax returns during the years in which the Ponderosa Trust and Exeter
13 owned the property.

14 The Government's nominee/alter ego theory is muddled somewhat by the fact that Chisum
15 and/or Vild/O'Neil may have been scheming to take the residence away from the Liparis through the
16 "eviction" discussed above or through other means. (e.g., U.S. facts 38-39 and 51- 65). However,
17 regarding the purported "eviction," it appears that the Liparis could assert their rights to the residence
18 at any time since, among other things, they purchased and paid for it and treated it as their own.
19 Also, the "eviction" appears to have little or no legal effect since, *inter alia*, Vild/O'Neil evicted the
20 Liparis because the Liparis were purportedly in violation of an "original contract and rental
21 agreement" even though he has never seen those documents and it appears that they do not exist.
22 (U.S. facts 53-55). Also, Vild/O'Neil likely had no authority to "evict" the Liparis on behalf of
23 Exeter in any event since, among other things, he signed eviction papers in August, 2007 as a trustee
24 of Golden Kiwi Trust (purportedly a new member of Exeter), even though that trust did not *actually*
25 become a member of Exeter based on State of Arizona filings until months later. (U.S. facts 56-58).

D.

CONCLUSION

The Court should grant judgment on the tax and other assessments at issue in the complaint and order that the United States can foreclose its tax liens and sell the residence to satisfy the Liparis' unpaid assessments.

DATED this 1st day of December, 2011.

JOHN A. DICICCO
Principal Deputy Assistant Attorney
General, Tax Division
U.S. Department of Justice

By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

Of Counsel:

ANN SCHEEL
Acting United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2011, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
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16 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 JOSEPH J. LIPARI, EILEEN H. LIPARI and
22 EXETER TRINITY PROPERTIES, L.L.C.,

23 Defendants.

Civ. No. 10-CV-08142-JWS

**UNITED STATES' STATEMENT OF
MATERIAL FACTS**

24 The United States hereby submits the following material facts in support of its motion for
25 summary judgment that is filed herewith.

26 1. The real property at issue in this matter (hereafter "the Lipari residence") is located
27 at 1001 South Sixth Street, Cottonwood, Arizona and has the following legal description:

28 The West one-half of the West one-half of Lot 9, VERDE PALISADES, PLAT 2, according
to the plat of record on file in the office of the County Recorder of Yavapai County, Arizona,
in Book 7 of Maps, page 31.

Except all oil, minerals, ores and metals of every kind, as reserved in Deed recorded in Book
187, page 331, records of Yavapai County, Arizona. *See* the complaint, at ¶ 8.

1 2. On or about April 17, 1989, the Liparis purchased the subject residence.¹

2 3. The cost of the residence was \$105,000 and the Liparis made a \$35,000 down payment
3 and took a mortgage for the remaining \$70,000.²

4 4. The Liparis fully paid off the mortgage and owned the residence free and clear as of
5 March 22, 1993.³

6 5. On March 24, 1993, which was just after the mortgage was fully paid, the warranty
7 deed that purported to transfer the residence to the Ponderosa Trust with Donna Chisum as Trustee
8 (hereafter “the Ponderosa Trust”) was filed by the Jimmy and or Donna Chisum (“the Chisums”).⁴

9 6. The warranty deed had been executed by the Liparis on May 14, 1992 but the Chisums
10 waited to file it until after they learned that the Liparis had fully paid the mortgage.⁵

11 7. In return for the transfer of the residence, the Liparis received ten dollars and certain
12 “certificates” that Jimmy Chisum “made up.”⁶

13 8. The ten dollars was the only thing of value that the Liparis ever received in the
14 exchange with the Ponderosa Trust.⁷

15
16
17 ¹ See Exhibit (“Ex.”) 12 marked at the deposition of Eileen Lipari (“E.Lip. dep.”)
18 and E.Lip. dep., at 47:25-48:13. A partial copy of the Eileen Lipari deposition is filed as
19 Exhibit 8 to the Declaration of Charles Duffy (“Duffy Decl.”). Copies of exhibits 1
20 through 11 that were introduced at the Eileen Lipari deposition are also included in
21 Exhibit 8 to the Duffy Decl. Copies of Eileen Lipari depositions exhibits 12, 13, 15, 16,
22 17, 19, 21, 24, 25 and 28 are included in Exhibit 9 to the Duffy Decl.

23 ²See E.Lip. dep., at 48:17-24.

24 ³See E.Lip. dep. ex. 15 and E.Lip. dep., at 48:25-49:25 and 62:5-25.

25 ⁴E.Lip. dep. ex. 13 and E.Lip. dep., at 62:5-25.

26 ⁵E.Lip. dep. ex. 13 and E.Lip. dep., at 50:13-24 and 62:7-25.

27 ⁶E.Lip. dep., at 51:11-52:1.

28 ⁷*Id.*

1 9. Donna Chisum, who is deceased, was Jimmy Chisum's wife.⁸

2 10. Joseph Lipari's chiropractic business was located in the residence and the Liparis took
3 business deductions on their tax returns that related to the business.⁹

4 11. The Liparis took deductions on their 1994 through 2004 individual tax returns for the
5 business portion of the following expenditures that they paid from revenues generated by Joseph
6 Lipari's chiropractic business: real estate taxes, insurance, repairs and maintenance and utilities paid
7 on the residence.¹⁰

8 12. The Liparis also depreciated the residence on their 1999 through 2002 individual
9 income tax returns.¹¹

10 13. The deductions and depreciation were taken by the Liparis on their individual returns
11 during years in which the residence was supposedly "owned" by the Ponderosa Trust and Exeter.

12 14. The Liparis never paid rent to live in the residence from 1993 through 2007.¹²

13 15. On May 14, 1992, Eileen Lipari and Jimmy Chisum set up the DD Trust.¹³

15 ⁸*Id.*, at 29:17-22.

16 ⁹*Id.*, at 10:3-18.

17
18 ¹⁰E.Lip. dep., at 9:21-12:3 (E.Lip. dep. ex. 1, bates 1042); E.Lip. dep., at 16:18-
19 18:12 (E.Lip. dep. ex. 2, bates 1057); E.Lip. dep., at 19:6-20:3 and 22:17-23:22 (E.Lip.
20 dep. ex. 3, bates 2183); E.Lip. dep., at 25:12-28:7 (E.Lip. dep. ex. 4, bates 2612); E.Lip.
21 dep., at 29:7-13 and 30:8-31:2 (E.Lip. dep. ex. 5, bates 2829); E.Lip. dep., at 32:1-11
22 (E.Lip. dep. ex. 6, bates 2842); E.Lip. dep., at 34:22-36:6 (E.Lip. dep. ex. 7, bates 552);
E.Lip. dep., at 37:7-17 (E.Lip. dep. ex. 8, bates 564); E.Lip. dep., at 41:17-42:2 (E.Lip.
23 dep. ex. 9, bates 576); E.Lip. dep., at 43:8-18 (E.Lip. dep. ex. 10, bates 592); and E.Lip.
24 dep., at 45:19-47:22 (E.Lip. dep. ex. 11, bates 609-610).

25 ¹¹E.Lip. dep., at 32:12-33:5 (E.Lip. dep. ex. 6, bates 2842-Part III); E.Lip. dep., at
26 35:5-8 (E.Lip. dep. ex. 7, bates 552-Part III); E.Lip. dep., at 37:7-17 (dep. ex. 8, bates
27 564-Part III); and E.Lip. dep., at 42:3-4 (E.Lip. dep. ex. 9, bates 576-Part III).

28 ¹²E.Lip. dep., at 87:13-25.

¹³E.Lip. dep. ex. 19 and E.Lip. dep., at 74:11-75:4.

1 16. Jimmy Chisum created the DD Trust to operate Joseph Lipari's Chiropractic practice.¹⁴

2 17. Chisum was an advisor to the Liparis and, in turn, they paid him thousands of dollars
3 in fees.¹⁵

4 18. Eileen Lipari, who was a student of Jimmy Chisum's, taught at Chisum's seminars and
5 did "whatever [Chisum] told [her] to do."¹⁶

6 19. An IRS determination that the DD Trust was a sham and that it should be disregarded
7 for tax purposes was litigated in the United States Tax Court.¹⁷ One issue in the Tax Court case,
8 which was filed by the Liparis, was whether they failed to report a large percentage of their income
9 from Joseph Lipari's chiropractor business on their 1993 federal income tax return.¹⁸ The Liparis
10 failed to appear at the trial and the Tax Court imposed a penalty against them under 26 U.S.C. § 6673
11 in the amount of \$12,500 for maintaining the proceeding primarily for delay.¹⁹ The Tax Court also
12 otherwise ruled for the IRS.²⁰

13 20. In November 1995, third parties not at issue herein transferred their residence to Eileen
14 Lipari (and another person) for "ten dollars and other valuable considerations."²¹

15 21. Eileen Lipari was also a trustee for a trust in another case where other third parties
16
17

18 ¹⁴E.Lip. dep., at 8:17-23 and 18:5-9.

19 ¹⁵*Id.*, at 13:13-15:11; 21:18-22:7; 24:24-25:9; and 25:22-26:10.

20 ¹⁶*Id.*, at 13:11-12 and 20:21-25; *see also* Jimmy Chisum deposition (partial copy
21 filed as Duffy Decl. ex. 10), at 10:3-5 and 11:2-16.

22 ¹⁷*Lipari v. Commissioner*, 2000 WL 1227130 *1 (Tax Ct. 2000).

23 ¹⁸*Id.*, at *1.

24 ¹⁹*Id.*, at *3.

25 ²⁰*Id.*

26 ²¹*United States v. Landsberger*, 1997 WL 792506 *3 (D. Ariz. 1997).

1 engaged in similar transfers of real estate.²²

2 22. In 2000, the Liparis sent a letter to the IRS that set forth frivolous anti-tax arguments
3 such as that:

- 4 - they were a “Sovereign of the Arizona Republic;”
- 5 - they were not “citizen[s] of the United States subject to its jurisdiction;” and
- 6 - the IRS does not have jurisdiction over them.²³

7 23. In an adversary complaint that the Liparis filed in 1999 against the United States in
8 their Bankruptcy Case (Bankruptcy Case Number 98-13293), the Liparis alleged that the United
9 States “is a Municipal Corporation, chartered in the District of Columbia and doing business in the
10 State of Arizona as a foreign Corporation.”²⁴

11 24. The Liparis’ Bankruptcy case was dismissed on bad faith grounds.²⁵

12 25. The Liparis also did not file their tax returns for their 1994 through 2004 tax years until
13 2007, which was long after they were due.²⁶

14 26. When the returns were finally filed, they set forth unpaid tax amounts due and owing.²⁷

16
17 ²²*United States v. Int’l Tax Strategies*, 1999 WL 644173 *1, n.3 (9th Cir. 1999).

18 ²³*See* E.Lip. dep. ex. 28 and E.Lip. dep., at 107:1-23.

19 ²⁴*See* Duffy Decl. ex. 6, at ¶ 5.

20 ²⁵*See* Duffy Decl. ex. 1.

21 ²⁶E.Lip. dep., at 7:21-8:5 (E.Lip. dep. ex 1, bates 1037); E.Lip. dep., at 12:4-18
22 (E.Lip. dep. ex 2, bates 1049); E.Lip. dep., at 18:13-19:3 (E.Lip. dep. ex. 3, bates 2174);
23 E.Lip. dep., at 23:23-24:16 (E.Lip. dep. ex. 4, bates 2602); E.Lip. dep., at 28:11-29:6
24 (E.Lip. dep. ex. 5, bates 2821); E.Lip. dep., at 31:7-25 (E.Lip. dep. ex. 6, bates 2832);
25 E.Lip. dep., at 34:1-21 (E.Lip. dep. ex. 7, bates 543); E.Lip. dep., at 36:7-37:6 (E.Lip.
26 dep. ex. 8, bates 556); E.Lip. dep., at 40:23-41:16 (E.Lip. dep. ex. 9, bates 568); E.Lip.
dep., at 42:19-43:7 (E.Lip. dep. ex. 10, bates 580); and E.Lip. dep., at 44:14-45:7 (E.Lip.
dep. ex. 11, bates 597).

27 ²⁷*Id.*

1 The Liparis did not timely file the returns based on Jimmy Chisum's advice.²⁸

2 27. Eileen Lipari "would like" the proceeds of any sale of the Lipari residence "to go to
3 [her] taxes."²⁹

4 28. Jimmy Chisum gave seminars on "business structure, limited liability companies and
5 trusts"³⁰ and espoused that the IRS was "evil" and that he wanted to "take it down."³¹

6 29. Donna Chisum held the same views about the IRS as Mr. Chisum did.³²

7 30. Jimmy Chisum sued the United States Tax Court Judge who made the ruling in the
8 Liparis' Tax Court case and he has also sued other Tax Court judges.³³

9 31. The Tax Court described Chisum as a "a known promoter of tax avoidance schemes."³⁴

10 32. In a case litigated in the Federal District Court for District of Arizona, real property
11 purchased by taxpayers not at issue herein was transferred to entities controlled by Chisum.³⁵

12 33. The Court permitted the Government to foreclose its tax liens on the property in the
13 referenced case.³⁶

14 34. Jimmy Chisum was convicted of four counts of federal tax evasion in the United States
15
16

17 ²⁸E.Lip. dep., at 24:24-25:11.

18 ²⁹*Id.*, at 91:12-19.

19 ³⁰*United States v. Chisum*, 502 F.3d 1237, 1239 (10th Cir. 2007).

20 ³¹E.Lip. dep., at 15:20-16:8.

21 ³²*Id.*, at 30:3-7.

22 ³³*Chisum v. Vasquez*, 2003 WL 1950234 (D.D.C. 2003); *Chisum v. Beghe*, 2003
23 WL 21791023 *1, n.1 (D.D.C. 2003).

24 ³⁴*Lundgren v. Commissioner*, 2006 WL 2436894, n.3 (Tax Ct. 2006).

25 ³⁵*United States v. Shepard, et al.*, 1995 WL 422507 *2 (D.Ariz).

26 ³⁶*United States v. Shepard, et al.*, 1997 WL 870760 (D.Ariz).

1 District Court for the Eastern District of Oklahoma.³⁷

2 35. The criminal charges related to Chisum's creation of a sham trust in an attempt to
3 conceal the taxable income of taxpayers not at issue herein.³⁸

4 36. At his deposition taken in the instant case, Chisum recounted how he called the
5 presiding Judge in the criminal case a liar:

6 Question: So you're calling that federal District Court judge in Eastern District of
7 Oklahoma a liar?

8 Answer: I told him his black robe was his very own private synagogue of Satan to his
9 face. I told him he was a liar to his face. It's on the record. You can read the
10 transcripts.³⁹

11 37. Eileen Lipari ultimately concluded that Jimmy Chisum "aimed to take [her] house from
12 [her]."⁴⁰

13 38. Her conclusion about what Chisum intended to do regarding the Lipari residence was
14 based, in part, on Eileen Lipari's observation about what Chisum apparently did in another case:

15 When I really panicked was when I saw a gentleman who passed away, who had died from
16 AIDS. And he had a property [in Phoenix] and Mr. Chisum took over that trust. And when
17 the gentleman passed away he wanted that property sold and the money donated to charity.
18 I saw [Chisum] and he said out of his own mouth, he said, "He has no rights, he's a
19 sodomite."⁴¹

20 39. Also, after the transfer of the Lipari residence to the Ponderosa Trust, Jimmy Chisum
21

22 ³⁷*United States v. Chisum*, 502 F.3d 1237 (10th Cir. 2007).

23 ³⁸*Id.*, at 1239-1240.

24 ³⁹Jimmy Chisum dep. (partial copy filed as Duffy decl. ex 10), at 58:23-59:17.

25 ⁴⁰E.Lip. dep., at 66:12-16.

26 ⁴¹*Id.*, at 66:15-25.

1 repeatedly asked Eileen Lipari: “how are you taking care of my property?”⁴²

2 40. On September 1, 1999, a Warranty Deed was recorded which purported to transfer the
3 Lipari residence from the Ponderosa Trust to Exeter Trinity Properties, LLC (hereafter “Exeter”).⁴³

4 41. Jimmy Chisum made the decision to transfer the Lipari residence to Exeter.⁴⁴ Nothing
5 of value was given by Exeter in return for the transfer of the residence.⁴⁵

6 42. Exeter was incorporated on June 4, 1999 and Jimmy Chisum was its statutory agent.⁴⁶
7 One of the “members” of Exeter, pursuant to its articles of incorporation, was Hunter King LLC,
8 which was owned by Eileen Lipari.⁴⁷

9 43. On August 5, 2003, the IRS filed with the County Recorder a Nominee Tax Lien
10 against Exeter as the Nominee, Transferee, and/or Alter-Ego of Joseph Lipari relating to his 1993
11 through 1996 tax liabilities.⁴⁸

12 44. On August 5, 2003, the IRS also filed a Nominee Tax Lien against Exeter as the
13 Nominee, Transferee, And/Or Alter-Ego of Eileen Lipari relating to her 1994 through 1996 tax
14 liabilities.⁴⁹

15 45. The IRS filed other similar nominee liens in January, 2009.⁵⁰

16 46. In early 2006, because Jimmy Chisum was “going to jail,” the Liparis asked that he

17
18 ⁴²*Id.*, at 87:24-25.

19 ⁴³E.Lip. dep. ex. 16; E.Lip. dep., at 68:25-69:16.

20 ⁴⁴E.Lip. dep., at 70:16-71:1.

21 ⁴⁵*Id.*, at 71:4-8.

22 ⁴⁶E.Lip. dep. ex. 17.

23 ⁴⁷*Id.*; E.Lip. dep., at 19:23-20:3, 71:9-25 and 73:8-15.

24 ⁴⁸*See* Duffy decl. ex. 2.

25 ⁴⁹*Id.*

26 ⁵⁰*See* Duffy decl. ex. 3.

1 transfer control “of all structures associated with” them to Phillip O’Neil.⁵¹

2 47. Eileen Lipari thought then that maybe she could get the residence back.⁵²

3 48. Phillip O’Neil’s real name is Elmer Phillip Vild and he uses Phillip O’Neil as a
4 pseudonym (hereafter he will be referred to as “Vild/O’Neil”).⁵³

5 49. Eileen Lipari met Vild/O’Neil at Chisum’s seminars.⁵⁴ Vild/O’Neil was a friend of
6 Chisum’s and was an active participant in the seminars.⁵⁵

7 50. Vild/O’Neil has also acted on Chisum’s behalf.⁵⁶

8 51. In November, 2007, Vild/O’Neil gave documents to the Liparis which indicated that
9 he was “evicting” them from their residence.⁵⁷

10 52. Vild/O’Neil told Eileen Lipari that “[she] had to pay rent for the property now, because
11 [her husband Joseph Lipari] was getting sicker and [the Liparis] couldn’t really take care of it
12 anymore.”⁵⁸

13 53. Vild/O’Neil’s “eviction” papers stated that the Liparis were in violation of their
14 “original contract and rental agreement.”⁵⁹

15 54. Vild/O’Neil has never seen those agreements and he also does not know if the
16

17 ⁵¹E.Lip. dep., at 81:8-82:6; E.Lip. dep. ex. 21.

18 ⁵²E.Lip. dep., at 82:13-83:2.

19 ⁵³Elmer Vild dep. (partial copy filed herewith as Duffy decl. ex. 12), at 6:8-8:9.

20 ⁵⁴E.Lip. dep., at 76:17-77:20.

21 ⁵⁵*Id.*; *see also* Elmer Vild dep., at 18:12-18 and 19:19-20:8 and Jimmy Chisum
22 dep., at 14:5-20.

23 ⁵⁶Jimmy Chisum dep. ex. 4 (Duffy decl. ex. 10); Jimmy Chisum dep., at 39:1-17.

24 ⁵⁷*See* E.Lip. dep. ex’s 24 and 25; E.Lip. dep., at 98:13-101:9.

25 ⁵⁸E.Lip. dep., at 98:13-99:16.

26 ⁵⁹Elmer Vild dep. ex. 15 (1st ¶).

1 agreements were written or verbal.⁶⁰

2 55. Regarding the reference to the “original contract and rental agreement” in the eviction
3 papers Eileen Lipari did not know what Vild/O’Neil was referring to.⁶¹

4 56. In February, 2008, which was about three months *after* he “evicted” the Liparis from
5 their residence, Vild/O’Neil amended Exeter’s Articles of Corporation.⁶²

6 57. Based on the Articles of Amendment, the Golden Kiwi Trust, of which Vild/O’Neil
7 was the trustee, became one of the new members of Exeter and previous member Hunter King, which
8 was owned by Eileen Lipari, was replaced.⁶³

9 58. When Vild/O’Neil signed some of the eviction documents on August 11, 2007 as the
10 trustee and authorized agent of the Golden Kiwi Trust, that trust was not a member of Exeter
11 pursuant to State of Arizona records.⁶⁴

12 59. At the time of the “eviction,” the Liparis had about \$165,000 invested in the house.

13 60. The \$165,000 includes the \$105,000 purchase price that the Liparis fully paid plus the
14 improvements that they made to the residence.⁶⁵

15 61. Pursuant to Eileen Lipari, up until November, 2007 Exeter, Chisum nor Vild/O’Neil
16 “paid any of the real estate taxes, upkeep, insurance [or] maintenance” on the residence.⁶⁶

17 62. Terry Major, who now lives in the Lipari residence, assisted Vild/O’Neil by serving
18

19 ⁶⁰Elmer Vild dep., at 64:20-66:22.

20 ⁶¹E.Lip. dep., at 100:12-17.

21 ⁶²Elmer Vild dep. ex 14 (Duffy decl. ex. 12) and Elmer Vild dep., at 27:14-24.

22 ⁶³Elmer Vild dep. ex 14 (at Exhibit A).

23 ⁶⁴Elmer Vild dep., at 67:22-69:22.

24 ⁶⁵Elmer Vild dep., at 78:15-79:7; Terry Major dep. (partial copy filed as Duffy
25 decl. 11), at 61:4-9; Terry Major dep. ex. 27 (*see* Duffy decl. ex. 11).

26 ⁶⁶E. Lip. dep., at 104:6-23.

1 some of the “eviction documents” on the Liparis.⁶⁷

2 63. In November, 2007, Major and/or Vild/O’Neil moved boxes into the house and the
3 Liparis left the residence.⁶⁸

4 64. At some point after the “eviction” of the Liparis, Terry Major became the statutory
5 agent of Exeter and also the trustee for the Iron Insulator Trust, which along with the Golden Kiwi
6 Trust, became the new members of Exeter.⁶⁹

7 65. Major served as trustee of the Iron Insulator Trust to help Vild/O’Neil try to get the
8 subject federal tax liens removed.⁷⁰

9 66. Vild/O’Neil has filed numerous federal tax cases against the United States in the
10 Federal District of Arizona.⁷¹

11 67. In one of the cases, he stated that he would “sue, and sue, and sue, and sue; until he
12 learns how to get this matter before a jury.”⁷²

13 68. In another case, the Court described Vild/O’Neil as a “tax protester.”⁷³

14 69. Vild/O’Neil has also sued various Arizona State Court judges.⁷⁴

15 70. Vild/O’Neil was convicted of a state drug charge and it was reported in the Arizona
16 Republic that at his sentencing, State Court Judge Roger Hertzberg stated that Vild/O’Neil’s

17 ⁶⁷*Id.*, at 102:7-16; E.Lip. dep. ex. 24; Terry Major dep., at 5:9-10 and 31:10-13.

18 ⁶⁸E.Lip. dep., at 102:17-104:19.

19 ⁶⁹Terry Major dep. ex’s 28 and 29 (Duffy decl. ex. 11).

20 ⁷⁰Terry Major dep., at 50:7-52:21.

21 ⁷¹Duffy decl. ex. 4 (includes documents from Arizona Federal District Court case
22 numbers 83-577, 85-655, 86-2087, 88-703 and 94-2546).

23 ⁷²Duffy decl. ex. 4, at bates 11.

24 ⁷³Duffy decl. ex. 4, at bates 20.

25 ⁷⁴*See Vild v. Judge de Leon*, 1996 WL 33486080 (9th Cir. 1996); *Vild v. Judges*
26 *Rose and Kamin*, 1997 WL 345154 (9th Cir. 1997).

1 testimony at trial was “patently false”⁷⁵

2 71. Vild/O’Neil does not remember Judge Hertzberg’s statement but “[does not] doubt”
3 that it was made.⁷⁶

4 72. Vild/O’Neil has formed over 500 trusts and 50 limited liability companies and he is
5 currently training six people (including Terry Major) in that line of work.⁷⁷

6 73. Vild/O’Neil, with the assistance of Terry Major, took over some or all of Jimmy
7 Chisum’s clients/cases.⁷⁸

8 74. Terry Major still communicates with Chisum and will take over Vild/O’Neil’s trust
9 work in the near future.⁷⁹

10 75. In 2003, Major filed a Tax Court case in which he raised arguments which the Court
11 described as “tax protester arguments.”⁸⁰

12 76. Major also attended Chisum’s seminars and videotaped them for sale to others.⁸¹

13 77. If the Court does not allow the IRS’s liens to be foreclosed on the Lipari residence,
14 Vild/O’Neil testified that, after expenses are paid (which include his fees and Exeter’s attorney fees),
15 he supposedly will give the Lipari residence or the proceeds from the sale thereof to charity.⁸²

16 78. The IRS began filing Notices of Federal Tax Liens against the Liparis for taxes that
17

18 ⁷⁵See *Arizona v. Vild*, 155 Ariz. 374 (Ariz. Ct. Appeals 1987); Duffy decl. ex. 4,
19 bates 45.

20 ⁷⁶Elmer Vild dep., at 137:20-138:11.

21 ⁷⁷*Id.*, at 17:14-18:8 and 21:17-23:15; Terry Major dep., at 7:9-8:15.

22 ⁷⁸Elmer Vild dep., at 15:10-16:17; Jimmy Chisum dep., at 50:6-25.

23 ⁷⁹Terry Major dep., at 51:22-52:20; Jimmy Chisum dep., at 16:24-17:1.

24 ⁸⁰*Major v. Commissioner*, 2005 WL 1405978 **2-3 (Tax Ct. 2005).

25 ⁸¹Jimmy Chisum dep., at 17:9-18:8.

26 ⁸²Elmer Vild dep., at 42:5-43:7.

1 they owed beginning in 2001.⁸³

2 79. The following tax, interest and penalty assessments were made against the Liparis for
3 their 1993 and 1998 through 2004 joint tax years⁸⁴:

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Tax Period Ending	Tax Type	Assessment Date	Assessed Amount																	
12/31/1993	Income	2/12/2001	\$44,011.00 (T) 8,802.00 (AP) 12,500.00 (MP) 41,427.74 (I)																	
		10/5/2009	10,993.87 (FPP)																	
12/31/1998	Income	10/15/2007	\$ 9,465.00 (T) 429.61 (ETP) 2,129.62 (LFP) 2,366.25 (FPP) 8,960.48 (I)																	
12/31/1999	Income	10/22/2007	\$ 11,566.00 (T) 505.08 (ETP) 2,602.35 (LFP) 2,891.50 (FPP) 9,041.01 (I)																	
12/31/2000	Income	8/11/2008	\$ 8,986.00 (T) 2,246.50 (LFP) 6,516.89 (I)																	
12/31/2001	Income	10/22/2007	\$ 10,726.00 (T) 424.49 (ETP) 2,413.35 (LFP) 2,681.50 (FPP) 5,227.64 (I)																	

25 ⁸³See the complaint, at ¶¶ 48-49.

26 ⁸⁴See Duffy decl. ex. 5 (the assessments are set forth on the Certificates of
27 Assessments and Payments - IRS Form 4340 - for the Liparis' 1993 and 1998 through
28 2004 joint tax years).

12/31/2002	Income	7/28/2008	\$ 153.00 (ETP) 4,581.00 (T) 1,145.25 (LFP) 2,233.29 (I)
12/31/2003	Income	12/3/2007	\$ 2,379.00 (T) 61.00 (ETP) 535.27 (LFP) 523.38 (FPP) 797.69 (I)
12/31/2004	Income	12/10/2007	\$ 1,564.00 (T) 40.00 (ETP) 313.87 (LFP) 223.20 (FPP) 369.36 (I)

T=Tax
 LFP=Late Filing Penalty
 FPP=Failure to Pay Tax Penalty
 ETP=Estimated Tax Penalty
 AP=Accuracy Penalty under IRC § 6662
 MP=Miscellaneous Penalty under IRC § 6673
 I=Interest

80. The Liparis' 1993 tax year was litigated in the United States Tax Court.⁸⁵

81. The tax amounts assessed against the Liparis for their 1998 through 2004 tax years were taken from the tax returns that they prepared and filed for those years.⁸⁶

82. The 1998 through 2004 returns were all filed after they were due.⁸⁷

83. The following tax, interest and penalty assessments were made against Joseph Lipari for his 1994 through 1997 income tax years:

⁸⁵*Lipari v. Commissioner*, 2000 WL 1227130 (Tax Ct. 2000).

⁸⁶E.Lip. dep. ex 5 (bates 2821, line 56); E.Lip. dep. ex. 6 (bates 2832, line 56); E.Lip. dep. ex. 7 (bates 543, line 57); E.Lip. dep. ex. 8 (bates 556, line 58); E.Lip. dep. ex. 9 (bates 568, line 61), E.Lip. dep. ex. 10 (bates 580, line 60); E.Lip. dep. ex. 11 (bates 597, line 62).

⁸⁷*See e.g.*, the signature pages of E.Lip. dep. ex's 5-11 (all the returns were signed in 2007 except for the 2004 return which was signed in 2006).

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	3/27/2000 10/5/2009 3/22/2010	\$ 12,079.00 (LFP) 48,317.00 (T) 31,770.34 (I) 11,837.66 (FPP) 241.58 (FPP) 2,489.37 (ETP) 5,284.35 (LFP) ⁸⁸
12/31/1995	Income	3/27/2000 10/5/2009 3/22/2010	\$ 21,143.00 (LFP) 84,572.00 (T) 41,454.21 (I) 21,143.00 (FPP) 4,616.87 (ETP) 5,196.15 (LFP) ⁸⁹
12/31/1996	Income	10/30/2000 10/5/2009 3/22/2010	\$ 16,463.00 (LFP) 73,169.00 (T) 30,916.92 (I) 18,292.24 (FPP) 3,894.41 (ETP) 4,152.38 (LFP) ⁹⁰

⁸⁸See Cheryl Bradley decl. ex. 1 (Copy of IRS Form 4340 for the referenced year).

⁸⁹See Cheryl Bradley decl. ex. 2 (Copy of IRS Form 4340 for the referenced year).

⁹⁰See Cheryl Bradley decl. ex. 3 (Copy of IRS Form 4340 for the referenced year).

12/31/1997	Income	3/7/2003	\$ 13,312.00 (T) 5,938.52 (I)
		8/4/2003	2,662.40 (AP) 2,995.20 (LFP) 712.21 (ETP) 3,328.00 (FPP) 3,081.83 (I)
		6/7/2010	4,835.00 (FPP) 717.13 (ETP) 4,351.50 (LFP) 6,028.00 (T) ⁹¹

T=Tax
 LFP=Late Filing Penalty
 FPP=Failure to Pay Tax Penalty
 ETP=Estimated Tax Penalty
 AP=Accuracy Penalty under IRC § 6662
 I=Interest

84. The following tax, interest and penalty assessments were made against Eileen Lipari for her 1994 through 1997 income tax years:

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	3/27/2000	\$ 3,101.40 (LFP) 15,055.00 (T) 9,899.41 (I)
		11/5/2007	3,763.75 (FPP) ⁹²
12/31/1995	Income	3/27/2000	\$ 3,026.25 (LFP) 30,382.00 (T) 14,891.99 (I)
		11/5/2007	7,595.50 (FPP) ⁹³

⁹¹See the complaint filed herein, at ¶ 21 (a Form 4340 for the assessments made regarding Joseph Lipari's 1997 tax year should be forthcoming).

⁹²See Cheryl Bradley decl. ex. 5 (Copy of IRS Form 4340 for the referenced year).

⁹³See Cheryl Bradley decl. ex. 6 (Copy of IRS Form 4340 for the referenced year).

12/31/1996	Income	10/30/2000	\$ 2,475.00 (LFP) 91,946.00 (T) 38,850.68 (I)
		11/5/2007	22,986.50 (FPP) ⁹⁴
12/31/1997	Income	11/11/2002	\$193,864.00 (T) 81,573.03 (I)
		5/19/2003	2,613.38 (LFP) 29,907.26 (I)
		11/5/2007	48,466.00 (FPP) ⁹⁵

T=Tax
LFP=Late Filing Penalty
FPP=Failure to Pay Tax Penalty
I=Interest

85. The aggregate balances due for the liabilities at issue in the complaint, as of November 1, 2011, are as follows:

<u>Tax Year</u>	<u>Aggregate Balances as of November 1, 2011</u>
1994 (Joseph Lipari)	\$ 136,392.77
1995 (Joseph Lipari)	153,094.80
1996 (Joseph Lipari)	112,182.87
1997 (Joseph Lipari)	80,190.29
1994 (Eileen Lipari)	55,355.79
1995 (Eileen Lipari)	49,591.10
1996 (Eileen Lipari)	37,428.99
1997 (Eileen Lipari)	36,458.21
1993 (Joseph and Eileen Lipari)	173,079.83
1998 (Joseph and Eileen Lipari)	28,229.18

⁹⁴See Cheryl Bradley decl. ex. 7 (Copy of IRS Form 4340 for the referenced year).

⁹⁵See Cheryl Bradley decl. ex. 8 (Copy of IRS Form 4340 for the referenced year).

1	1999 (Joseph and Eileen Lipari)	32,104.08
2	2000 (Joseph and Eileen Lipari)	22,550.23
3	2001 (Joseph and Eileen Lipari)	25,910.49
4	2002 (Joseph and Eileen Lipari)	10,452.09
5	2003 (Joseph and Eileen Lipari)	5,208.07
6	2004 (Joseph and Eileen Lipari)	2,920.66 ⁹⁶

7 86. The balances set forth in the previous paragraph take into consideration the various
8 abatements of assessments described in the Cheryl Bradley declaration and any applicable credits.⁹⁷

9 87. The IRS carried out an audit regarding the Liparis' 1994 through 1997 tax years.⁹⁸

10 DATED this 1st day of December, 2011.

11 JOHN A. DICICCO
12 Principal Deputy Assistant Attorney
13 General, Tax Division
U.S. Department of Justice

14 By: /s/ Charles M. Duffy
15 CHARLES M. DUFFY
16 Trial Attorney, Tax Division

17 Of Counsel:

18 ANN SCHEEL
19 Acting United States Attorney

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21
22
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⁹⁶See the Bradley Decl., at ¶¶ 6-9, 11-14 and 17; *see also* the Declaration of
24 Debbie Vahe filed herewith, at ¶¶ 3-7 and the "BALANCE[S] DUE" on Exhibits 1-3
25 (Form INTST calculations) attached thereto.

26 ⁹⁷See the Bradley Decl., at ¶¶ 6-9, 11-14 and 17.

27 ⁹⁸*Id.*, at ¶¶ 4, 6-9 and 11-14.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2011, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

John Friedeman, P.C.
5103 E. Thomas Road
Phoenix, Arizona 85018

I further certify that on the same day, I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel:

Joseph J. Lipari
156 Johnson Hill Drive
Waynesville, NC 28786

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice

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