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8 JOHN S. LEONARDO
United States Attorney
9 District of Arizona
Of Counsel

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 TO STRIKE
JURY DEMAND**

19
20 The United States hereby moves the Court to order that the defendants are not entitled to a
21 jury trial on the remaining issues in this case. The basis for this motion is set forth in the
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1 Memorandum in Support, which is filed herewith.

2 DATED this 3rd day of August, 2012.

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KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

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

Of Counsel:

JOHN S. LEONARDO
United States Attorney
(Attorneys for the United States)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2012, I served the following attorney of record using the Court's 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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18 UNITED STATES OF AMERICA,

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

23 Defendants.

Civ. No. 10-CV-08142-JWS

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES' MOTION TO STRIKE
JURY DEMAND**

I.

STATEMENT

24 In an Order entered herein on June 22, 2012, the Court set this matter for a jury trial starting
25 on January 14, 2013. Apparently the jury trial was demanded by Elmer Vild, the trustee of defendant
26 Exeter Trinity Properties, L.L.C. ("Exeter"). *See* Mr. Vild's Jury Trial Demand filed on September
27 2, 2010. But the Court later ruled that Mr. Vild could not appear on behalf of Exeter since he is not
28 an attorney and it struck his jury demand. *See* the Court's Docket entries 7 and 9. It does not appear
that Exeter later demanded a jury when counsel appeared and filed an answer on its behalf. *See*
Court Docket entry 23. Also, it does not appear that any of the other defendants demanded a jury

1 in this matter.

2 The only claims that remain in this case are the Fourth, Fifth and Sixth Claims in the
3 complaint, wherein the United States is seeking to foreclose its tax liens on the real property at issue
4 herein based on alter ego, fraudulent conveyance and similar theories. The other claims in the
5 complaint, wherein the United States sought to have various federal tax and related assessments
6 made against defendants Joseph and Eileen Lipari reduced to judgment (*i.e.*, the First, Second and
7 Third Claims) have all been resolved. *See* the Court's March 12, 2012 and July 31, 2012 orders.

8 II.

9 THE DEFENDANTS ARE NOT ENTITLED TO 10 A JURY TRIAL ON THE REMAINING CLAIMS

11 As an initial matter, it appears that the Court has already struck the jury demand that was filed
12 in this case by Elmer Vild, who is the trustee for Exeter. *See* the Court's Docket entries 7 and 9.
13 Even assuming *arguendo* that the jury demand has somehow survived, it should be stricken now
14 since the defendants are not entitled to a jury trial on the foreclosure claims that remain. Foreclosure
15 of a lien on real property is an equitable action for which there was no right to trial by jury at
16 common law. *United States v. Annis*, 634 F.2d 1270, 1272 (10th Cir. 1980); *Damsky v. Zavatt*, 289
17 F.2d 46, 53 (2d Cir. 1961); *United States v. Clark*, 2007 WL 3146733 *4 (N.D. Cal. 2007). Actions
18 such as this one to enforce tax liens against real property under 26 U.S.C. § 7403 are by their nature
19 proceedings in equity. *United States v. Rodgers*, 461 U.S. 677, 708 (1983). Consequently, there is
20 no right to trial by jury on the foreclosure claims.

21 It should be noted that defendants Joseph and Eileen Lipari would have been entitled to a jury
22 trial on the claims through which the United States sought to reduce tax assessments against them
23 to judgment. *See e.g.*, *Damsky v. Zavatt*, 289 F.2d 46, 48-52 (2d Cir. 1961). However, all of the
24 assessment claims (*i.e.*, the First, Second and Third Claims) have been resolved and it appears, in any
25 event, that the Liparis did not seek a jury trial on such claims.

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III.

CONCLUSION

The Court should order that the defendants are not entitled to a jury trial on the remaining issues in this case.

DATED this 3rd day of August, 2012.

KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

By: /s/ Charles M. Duffy
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Of Counsel:

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UNITED STATES OF AMERICA,

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EXETER TRINITY PROPERTIES, L.L.C.,

Defendants.

Civ. No. 10-CV-08142-JWS

ORDER STRIKING JURY DEMAND

BASED ON THE United States' motion to strike jury demand and good cause appearing therefore, the defendants are not entitled to a jury trial on the remaining issues in this case. Thus, such issues will be tried to the Court.

DATE

JOHN W. SEDWICK
United States District Judge

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