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4 IN THE UNITED STATES DISTRICT COURT
5 DISTRICT OF ARIZONA

6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 v.

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

11 Defendants.

Civ. No. 10-CV-08142-JWS

**ENTRY OF JUDGMENT AND ORDER
OF FORECLOSURE AND DECREE OF
SALE**

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13 Pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. § §§ 7402 and 7403, IT IS
14 HEREBY ORDERED THAT:

15 1. JUDGMENT is hereby entered in favor of the United States of America and against
16 defendant Joseph Lipari and Eileen Lipari on the First Claim in the complaint, for the tax and
17 related assessments made against them for their 1993 and 1998 through 2004 income tax years in
18 the amount of \$300,454.63, as of November 1, 2011, plus statutory interest accruing thereafter
19 pursuant to 26 U.S.C. §§ 6601, 6621 and 6622 and 28 U.S.C. § 1961© and other statutory
20 additions, less any payments and credits.

21 2. JUDGMENT is hereby entered in favor of the United States of America and against
22 defendant Joseph Lipari on the Second Claim in the complaint, for the tax and related
23 assessments made against him for his 1994 through 1996 income tax years in the amount of
24 \$401,670.44, as of
25 November 1, 2011, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601,
26 6621 and 6622 and 28 U.S.C. § 1961© and other statutory additions, less any payments and
27 credits.
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1 3. JUDGMENT is hereby entered in favor of the United States of America and against
2 defendant Eileen Lipari on the Third Claim in the complaint, for the tax and related assessments
3 made against her for her 1994 through 1996 income tax years in the amount of \$142,384.88, as of
4 November 1, 2011, plus statutory interest accruing thereafter pursuant to 26 U.S.C. §§ 6601,
5 6621 and 6622 and 28 U.S.C. § 1961© and other statutory additions, less any payments and
6 credits.

7 4. DEFAULT JUDGMENT is also entered against Exeter Trinity Properties, L.L.C.
8 (“Exeter”), a corporation, since it must have counsel to participate in this matter. *See Rowland v.*
9 *California Men’s Colony*, 506 U.S. 194, 201-02 (1993); *see also Carlone v. Lion & Bull Films,*
10 *Inc.*, 861 F.Supp.2d 312, 318-319 (S.D.N.Y. 2012) and *Eagle Associates v. Bank of Montreal*,
11 926 F.2d 1305, 1310 (2d Cir. 1991). Thus, it is adjudged that Exeter, anyone associated with
12 Exeter and/or Exeter’s assignees or transferees has/have no interest in the real property described
13 below and at issue in paragraph 8 of the complaint filed herein.

14 5. The parcel of real property upon which foreclosure is sought in this case is
15 residential real property located at is 1001 S. 6th Street, Cottonwood, Arizona (hereafter “the real
16 property”) and bears the following legal description:

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

20 Except all oil, minerals, ores and metals of every kind, as reserved in Deed
21 recorded in Book 187, page 331, records of Yavapai County, Arizona.

22 6. The United States has valid and subsisting tax liens on all property and rights to
23 property of Joseph and Eileen Lipari - including the real property - arising from the assessments
24 described above, which tax liens are effective as of the dates of those assessments.

25 7. The United States’ federal tax liens against the real property are hereby foreclosed.
26 The United States Marshal for the District of Arizona or his/her representative (“the Marshal”) or
27 an Internal Revenue Service Property Appraisal and Liquidation Specialist (“PALS”)
28 representative is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public

1 sale and to sell the real property under this Order of Foreclosure and Decree of Sale and shall
2 make the arrangements for any sale as set forth in this Order.

3 8. The United States may choose either the Marshal or a PALS representative to carry
4 out the sale under this Order. The Marshal, his representative, or a PALS representative, is
5 authorized to have free access to the real property and to take all actions necessary to preserve the
6 real property, including, but not limited to, retaining a locksmith or other person to change or
7 install locks or other security devices on any part of the property, until the deed to the real
8 property is delivered to the ultimate purchaser(s).

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

10 a. Except as otherwise stated herein, the sale of the real property shall be by
11 public auction to the highest bidder, free and clear of all liens and interests;

12 b. The sale shall be subject to building lines, if established, all laws,
13 ordinances, and governmental regulations (including building and zoning ordinances)
14 affecting the real property, and easements and restrictions of record, if any;

15 c. The sale shall be held at the courthouse of the county or city in which the
16 real property is located, on the premises of the parcel of real property being sold, or at any
17 other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and
18 time announced by the Marshal, his/her representative, or a PALS representative;

19 d. Notice of the sale shall be published once a week for at least four
20 consecutive weeks before the sale in at least one newspaper regularly issued and of
21 general circulation in Yavapai County, Arizona, and, at the discretion of the Marshal, his
22 representative, or a PALS representative, by any other notice deemed appropriate. **State**
23 **law notice requirements for foreclosures or execution sales do not apply to this sale**
24 **under federal law.** The notice shall contain a description of the real property and shall
25 contain the material terms and conditions of sale in this order of sale;

26 e. The minimum bid will be set by the Internal Revenue Service. If the
27 minimum bid is not met or exceeded, the Marshal, his or her representative, or a PALS
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1 representative may, without further permission of this Court, and under the terms and
2 conditions in this order of sale, hold a new public sale, if necessary, and reduce the
3 minimum bid or sell to the highest bidder;

4 f. Bidders shall be required to DEPOSIT at the time of sale with the Marshal
5 or a PALS representative a minimum of ten percent of the bid with the deposit to be made
6 by a certified or cashier's check payable to the United States District Court for the District
7 of Arizona. Before being permitted to bid at the sale, bidders shall display to the Marshal
8 or a PALS representative satisfactory proof of compliance with this requirement;

9 g. The balance of the purchase price of the real property in excess of the
10 deposit tendered shall be paid to the Marshal or a PALS representative within thirty (30)
11 days after the date the bid is accepted by a certified or cashier's check payable to the
12 United States District Court for the District of Arizona. If the successful bidder fails to
13 fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the
14 expenses of the sale, including commissions due under 28 U.S.C. § 1921©, with any
15 amount remaining to be applied to the federal tax liabilities owed by Joseph Lipari and/or
16 Eileen Lipari that are at issue herein. The real property shall be again offered for sale
17 under the terms and conditions of this Order of Foreclosure and Judicial Sale. The United
18 States may bid as a credit against its judgment without tender of cash;

19 h. The sale of the real property shall not be final until confirmed by this Court.
20 The Marshal or PALS representative shall file a report of sale with the Court, together
21 with a proposed order of confirmation of sale and proposed deed, within 30 days from the
22 date of receipt of the balance of the purchase price;

23 i. Upon confirmation of the sale, the Marshal or a PALS representative shall
24 promptly execute and deliver a deed of judicial sale conveying the real property to the
25 purchaser;

26 j. Upon confirmation of the sale, the interests of, liens against, or claims to the
27 real property held or asserted by the United States in the Complaint and any other parties
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1 to this action or any successors in interest or transferees of those parties shall be
2 discharged and extinguished. The sale is ordered pursuant to 28 U.S.C. § 2001.

3 **Redemption rights under state law shall not apply to this sale under federal law;** and

4 k. Upon confirmation of the sale, the purchaser shall have the recorder of deeds
5 or Office of the County Clerk, Yavapai County, Arizona cause transfer of the real property
6 so it is reflected upon that county's register of title.

7 10. Until the real property is sold, the defendants in this matter, anyone associated with
8 the defendants and/or all other persons occupying the real property shall take all reasonable steps
9 necessary to preserve the real property (including all buildings, improvements, fixtures and
10 appurtenances thereon) including, without limitation, maintaining fire and casualty insurance
11 policies on the real property. They shall not commit waste against the real property, nor shall
12 they cause or permit anyone else to do so. They shall not do anything that tends to reduce the
13 value or marketability of the real property, nor shall they cause or permit anyone else to do so.
14 They shall not record any instruments, publish any notice, or take any other action that may
15 directly or indirectly tend to adversely affect the value of the real property or that may tend to
16 deter or discourage potential bidders from participating in the public sale, nor shall she cause or
17 permit anyone else to do so. **Violation of this paragraph shall be deemed a contempt of court
18 and punishable as such.**

19 11. The defendants in this matter, anyone associated with the defendants and/or all
20 other persons occupying the real property shall leave and vacate permanently such property no
21 later than thirty (30) days after this Order is signed each taking with them his or her personal
22 property (but leaving all improvements, buildings, fixtures, and appurtenances) when leaving and
23 vacating. If any person fails or refuses to leave and vacate the property by the time specified in
24 this Order, the United States Marshal's Office or the Sheriff of Yavapai County is authorized to
25 take whatever action they deem appropriate to remove such person or persons from the premises.
26 If any person fails or refuses to remove his or her personal property from the real property by the
27 time specified herein, the personal property remaining on the real property thereafter is deemed
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1 forfeited and abandoned, and the Marshal or a PALS representative is authorized and directed to
2 remove and dispose of it in any manner he/she sees fit, including sale, in which case the proceeds
3 of sale are to be applied first to the expenses of sale, and then to the tax liabilities at issue herein.

4 12. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale
5 of the real property is confirmed by this Court, the real property remains occupied, a writ of
6 assistance may, without further notice, be issued by the Clerk of Court pursuant to Rule 70 of the
7 Federal Rules of Civil Procedure to compel delivery of possession of the real property to the
8 purchasers thereof.

9 13. If the defendants in this matter, anyone associated with the defendants and/or all
10 other persons occupying the real property vacates the property prior to the deadline set forth in
11 paragraph 11, above, such person shall notify counsel for the United States no later than 2
12 business days prior to vacating the property of the date on which he or she is vacating the
13 property. Notification shall be made by leaving a message for said counsel, Charles Duffy, at
14 (202) 307-6406.

15 14. The Marshal or a PALS representative shall deposit the amount paid by the
16 purchaser into the registry of the court. Upon appropriate motion for disbursement or stipulation,
17 the court will disburse the funds in the following partial order of preference until these expenses
18 and liens are satisfied:

19 a. To the Marshal or IRS, for allowed costs and expenses of sale, including any
20 commissions due under 28 U.S.C. § 1921© and including an amount sufficient to cover
21 the costs of any steps taken to secure or maintain the real property pending sale and
22 confirmation by the Court;

23 b. To all taxes unpaid and matured that are owed (to county, city or school
24 district) for real property taxes on the real property;

1 c. To the United States, without reduction for registry fees,¹ in the amount of
2 the outstanding federal tax, penalty and related liabilities of Joseph Lipari and Eileen
3 Lipari for the periods at issue in this action. The amount of aggregate amount of such
4 liabilities, as of November 1, 2011, is \$844,509.95 and interest should accrue subsequent
5 to November 1, 2011 pursuant to 26 U.S.C. §§ 6601, 6621 and 6622, and 28 U.S.C. §
6 1961©; and

7 d. Any balance remaining after the above payments shall be held by the Clerk
8 until further order of the Court.

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10 IT IS SO ORDERED,

11 DATED this 25th day of April 2013.

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13 /s/ JOHN W. SEDWICK
14 UNITED STATES DISTRICT JUDGE

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22 ¹ “In cases where the United States Government is a party to the action underlying
23 the registry investment, the funds initially withheld in payment of the [registry] fee may
24 be restored to the United States upon application filed with the court by...government
25 counsel.” 56 FR 56356-01; *see also Housekey Fin. Corp. v. Hofer*, 2001 WL 429821 at
26 *1 (E.D. Cal. March 23, 2001)(ordering the Clerk to disburse all registry funds to the
27 United States “undiminished by any registry fees assessed”). The United States requests
28 the return of any registry fees charged against the registry funds and requests that this
amount be included in the funds disbursed to it.