

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
8

9 UNITED STATES OF AMERICA,

CASE NO. 1:11-cv-01038-AWI-SMS

10 Plaintiff,

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THE GRANT OF  
THE GOVERNMENT’S MOTION FOR  
DEFAULT JUDGMENT AGAINST  
DEFENDANT WILMA SHORE**

11 v.

12 WILMA SHORE, et al.,

13 Defendants.

(Doc. 40)

14 \_\_\_\_\_ /  
15 Plaintiff United States of America (“Government”) moves for Entry of Default Judgment  
16 against Defendant Wilma Shore. This Court has reviewed the papers and has determined that  
17 this matter is suitable for decision without oral argument pursuant to Local Rule 78-230(h).  
18 Having considered all written materials submitted, the undersigned recommends that the  
19 Government’s motion be granted.

20 **I. Procedural and Factual Background**

21 **A. Judgment Against Shore**

22 On August 7, 2007, Wilma Shore filed a “Complaint for Monies Erroneously Withheld  
23 under the Internal Revenue Laws” against the United States. The United States answered and  
24 counterclaimed to reduce to judgment certain outstanding tax assessments made against Wilma  
25 Shore pursuant to 26 U.S.C. § 6672 for willful failure to collect, truthfully account for, or pay  
26 over the withheld income and FICA taxes of Dean R. Shore, Inc., and Dean’s Materials, Inc., for  
27 the tax periods 1997-1999 in *Wilma Shore v. Kevin M. Brown, et al.*, No. 1:07-cv-01160-OWW-  
28 SMS (E.D. Cal.).

1 On November 10, 2009, Shore stipulated to an entry of judgment that resolved all claims  
2 at issue in the case. The United States agreed not to execute on the judgment provided that Shore  
3 timely complied and performed all terms of the settlement agreement, including making a  
4 payment to the United States by December 31, 2010. On November 13, 2009, the Court issued a  
5 final judgment against Shore in the amount of \$2,983,797.66, less payments or credits, plus  
6 interest accruing after July 17, 2009. Shore has not satisfied the judgment: in fact, she has made  
7 no payment of any amount to the United States in accordance with the judgment.

8 On February 16, 2011, the government filed an abstract of judgment with the Shasta  
9 County Recorder as instrument number 2011-0004872. Upon the filing of the Abstract of  
10 Judgment, a lien arose against Shore's real property, including the subject property, pursuant to  
11 28 U.S.C. § 3201.

12 The subject property is located at 3705-3777 Meadow View Drive, Redding, Shasta  
13 County, California 96002 ("the subject property"), more fully described as:

14 Parcel One:

15 All that portion of the Northerly 675.00 feet of the West one-half of the Northeast  
16 quarter of the Southeast quarter of Section 34, Township 31 North, Range 4 West,  
17 M.D.M., lying Northeasterly of the Northeasterly right of way line of the County  
18 Road as described in the Deed from Thaddeus I. Stevenson to County of Shasta,  
dated May 27, 1958 and recorded June 18, 1958 in Book 569, of the Official  
Records at page 37.

19 Together with an easement for road purposes to be used in common with the  
20 Grantors, their heirs and assigns over the Westerly 40.00 feet of the West one-half  
21 of the Northeast one-quarter of the Southeast one-quarter of Section 34, Township  
22 32 North, Range 4 West, M.D.M., lying Northerly of the County Road described  
23 in the deed to the County of Shasta recorded June 18, 1958 in Book 569 of the  
24 Official Records at page 37, Shasta County Records, and Southerly of the South  
25 line of the North 675.00 feet of said West one-half.

26 Assessor's Parcel Number 056-590-010.

27 Parcel Two:

28 The East one-half of the Northwest one-quarter of the Southeast one-quarter of  
Section 34, Township 31 North, Range 4 West, Mount Diablo Base and Meridian.

Excepting therefrom, Parcel 1 as described in the Deed to the County of Shasta,  
recorded July 28, 1958 in Book 572, Page 547, Official Records.

Assessor's Parcel Number 056-590-08.

1 Shore is the sole owner of the property, which is rented to various tenants. The interests  
2 of the various tenants have previously been addressed in this action.

3 **B. The Present Action**

4 On June 22, 2011, the United States filed a complaint seeking to foreclose the federal tax  
5 liens and federal judgment lien on the subject property. On August 24, 2011, Shore's counsel  
6 executed a waiver of service form. Nonetheless, Shore failed to answer or otherwise respond.  
7 On November 9, 2011, the Clerk of Court entered the default of Wilma Shore. On November 2,  
8 and December 8, 2011, the United States served copies of the request for entry of default and the  
9 Clerk's entry of default on Shore's counsel.

10 **II. Valid Tax Liens**

11 Even if Shore had not defaulted, the United States is entitled to foreclose on the subject  
12 property because it has valid and subsisting federal tax liens and a judgment lien against the  
13 subject property. Pursuant to 26 U.S.C. § 6321, the amount of the delinquent taxpayer's liability  
14 shall be a lien in favor of the United States upon all property and rights to property, whether real  
15 or personal, belonging to the taxpayer. A lien imposed under § 6321 arises at the time the  
16 assessment is made and continues until the liability is satisfied, or the lien is removed in  
17 accordance with federal law. 26 U.S.C. § 6322. A federal tax lien is perfected upon assessment  
18 and no further action is necessary. *United States v. McDermott*, 507 U.S. 447, 452-55 (1993);  
19 *Glass City Bank of Jeanette, Pa. v. United States*, 326 U.S. 265, 267 (1945). As of December 19,  
20 2011, the balance of the judgment lien against Shore was \$3,262,370.98.

21 **III. Legal Standard for Default Judgment**

22 The Government moves for entry of default judgment pursuant to F.R.Civ.P.55(b)(2),  
23 which provides that judgment may be entered:

24 (2) By the Court. In all other cases the party entitled to judgment by default shall  
25 apply to the Court therefor; but no judgment shall be entered against an infant or  
26 incompetent person unless represented in the action by a general guardian,  
27 committee, conservator, or other such representative who has appeared therein. If  
28 the party against whom judgment by default is sought has appeared in the action,  
the party (or, if appearing by representative, the party's representative) shall be  
served with written notice of the application for judgment at least 3 days prior to  
the hearing on such application. If, in order to enable the Court to enter judgment  
or to carry it into effect, it is necessary to take an account or to determine the  
amount of damages or to establish the truth of any averment by evidence or to

1 make an investigation of any other matter, the Court may conduct such hearings or  
2 order such references as it deems necessary and proper and shall accord a right of  
trial by jury to the parties when and as required by any statute of the United States.

3 Shore is not an infant or incompetent person, or in the military service or otherwise  
4 exempted under the Soldiers' and Sailors' Civil Relief Act of 1940. Further, "upon default, the  
5 well pleaded allegations of the complaint relating to liability are taken as true." *Dundee Cement*  
6 *Co. v. Highway Pipe and Concrete Products*, 722 F.2d 1319, 1323 (7<sup>th</sup> Cir. 1983). *See also*  
7 *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9<sup>th</sup> Cir. 1987). Thus, "[a]t the time of  
8 entry of default, the facts alleged by the plaintiff in the complaint are deemed admitted." 10 J.  
9 Moore, *Moore's Federal Practice* § 55.11 (3d ed. 2000).

10 When exercising discretion as to the entry of a default judgment, courts may consider  
11 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3)  
12 the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of  
13 a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7)  
14 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
15 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9<sup>th</sup> Cir. 1986).

16 This Court has evaluated the factors listed above and finds that the facts of this case favor  
17 its granting default judgment. First, the Government would suffer prejudice if the Court does not  
18 enter default judgment since Shore has not participated in this litigation and the Government has  
19 no other means of collecting the amounts due to it under the prior judgment, which has attached  
20 as a lien on the subject property. Second, the substance of the Government's claim was  
21 addressed and reduced to judgment in a prior action in which Shore stipulated to the amount due  
22 and agreed to pay it. Because the United States seeks only to collect the significant amount of  
23 money due from Shore pursuant to the judgment by foreclosing and selling the subject property,  
24 the fourth factor has also been satisfied. Similarly, the nature of a foreclosure action to satisfy an  
25 existing judgment and lien indicates little possibility of a material factual dispute. In any event,  
26 although Shore was served with the pleadings in this action and her attorney executed a waiver of  
27 service form, Shore has failed to respond to this action in any way, even after her attorney was  
28 served with copies of the request for default and entry of default.

1           Although cases should be decided on the merits when reasonably possible, that preference  
2 alone does not preclude the entry of default judgment. *PepsiCo, Inc. v. California Security Cans*,  
3 238 F.Supp.2d 1172, 1177 (C.D.Cal. 2002). Shore’s liability for the unpaid taxes was previously  
4 litigated and reduced to judgment. Shore failed to make any payments toward the judgment  
5 amount and has declined to participate in this action. Default judgment is now the only course of  
6 action open to the United States and to this Court.

7 **IV.    Foreclosure and Sale of Property**

8           When there has been a refusal or neglect to pay any tax, or to discharge any liability in  
9 respect thereof, the Attorney General may bring an action in federal district court to enforce the  
10 lien created by 26 U.S.C. § 6321 or to subject any property held by the taxpayer to the payment  
11 of tax. 26 U.S.C. § 7403(a). After adjudicating the merits of the United States’ claims to the  
12 subject property, the District Court may decree a sale of the property and order distribution of the  
13 proceeds from that sale. 26 U.S.C. § 7403(c).

14           Here, Shore has refused to pay the tax deficiencies, interest and penalties assessed against  
15 her. Accordingly, this Court recommends that the District Court enter judgment in favor of the  
16 United States’ tax and judgment liens upon the subject property to satisfy the unpaid judgment.

17 **V.     Recommendation**

18           Accordingly, the undersigned **HEREBY RECOMMENDS** that:

- 19 1.    The United States’ motion for the entry of default judgment against Defendant Wilma  
20       Shore be granted.
- 21 2.    The United States be declared to have valid and subsisting tax and judgment liens on the  
22       property located at 3705-3777 Meadow View Drive, Redding, Shasta County, California  
23       96002, and more specifically described in the body of this order.
- 24 3.    The United States’ tax and judgment liens against the subject property be foreclosed and  
25       the subject property sold as detailed in the Recommended Order for Default Judgment,  
26       Foreclosure and Judicial Sale attached to these Findings and Recommendations;
- 27 4.    The interests of Defendant Wilma Shore in the subject property be extinguished in favor  
28       of the United States.

1 **OBJECTIONS**

2 These Findings and Recommendations are submitted to the Honorable Anthony W. Ishii,  
3 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and  
4 Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District  
5 of California. Within thirty (30) days after being served with a copy, any party may file written  
6 objections with the Court, serving a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” The Court will then review  
8 the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that  
9 failure to file objections within the specified time may waive the right to appeal the District  
10 Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

11  
12 IT IS SO ORDERED.

13  
14 Dated: February 29, 2012

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

1           **APPENDIX TO FINDINGS AND RECOMMENDATIONS RECOMMENDING THE**  
2           **GRANT OF THE GOVERNMENT’S MOTION FOR DEFAULT JUDGMENT**

3           **RECOMMENDED ORDER FOR DEFAULT, FORECLOSURE, AND JUDICIAL SALE**  
4

5           Upon motion of Plaintiff the United States of America (“United States”), and for good  
6 cause shown, it is hereby **ORDERED**, pursuant to F.R.Civ. P. 55(b), that the United States  
7 Motion for Default Judgment be **GRANTED**. It is further **ORDERED**, pursuant to the  
8 provisions of 28 U.S.C. §§ 2001 and 2002, and 26 U.S.C. §§ 7402 and 7403, that the following  
9 Order of Foreclosure and Judicial Sale be entered:

10 1. Defendant Wilma Shore is indebted to the United States for unpaid assessment balances of  
11 federal taxes for tax years 1997 through 1999. These amounts were reduced to judgment in  
12 *Wilma Shore v. Kevin M. Brown, et al.*, No. 1:07-cv-01160-OWW-SMS (E.D. Cal.). On  
13 November 13, 2009, in that case, the Court issued a final judgment against Shore in the amount  
14 of \$2,983,797.66, less payments or credits, plus interest accruing after July 17, 2009.

15 2. The subject property of which the United States seeks foreclosure is located at 3705-3777  
16 Meadow View Drive, Redding, Shasta County, California 96002 (“the subject property”), more  
17 fully described as:

18           Parcel One:

19           All that portion of the Northerly 675.00 feet of the West one-half of the Northeast  
20 quarter of the Southeast quarter of Section 34, Township 31 North, Range 4 West,  
21 M.D.M., lying Northeasterly of the Northeasterly right of way line of the County  
22 Road as described in the Deed from Thaddeus I. Stevenson to County of Shasta,  
dated May 27, 1958 and recorded June 18, 1958 in Book 569, of the Official  
Records at page 37.

23           Together with an easement for road purposes to be used in common with the  
24 Grantors, their heirs and assigns over the Westerly 40.00 feet of the West one-half  
25 of the Northeast one-quarter of the Southeast one-quarter of Section 34, Township  
26 32 North, Range 4 West, M.D.M., lying Northerly of the County Road described  
27 in the deed to the County of Shasta recorded June 18, 1958 in Book 569 of the  
28 Official Records at page 37, Shasta County Records, and Southerly of the South  
line of the North 675.00 feet of said West one-half.

Assessor’s Parcel Number 056-590-010.

///  
///

1           Parcel Two:

2           The East one-half of the Northwest one-quarter of the Southeast one-quarter of  
3           Section 34, Township 31 North, Range 4 West, Mount Diablo Base and Meridian.

4           Excepting therefrom, Parcel 1 as described in the Deed to the County of Shasta,  
5           recorded July 28, 1958 in Book 572, Page 547, Official Records.

6           Assessor's Parcel Number 056-590-08.

7           3. The provisions of 26 U.S.C. § 7403 entitle the United States to enforce its liens against the  
8           subject property in order to apply the proceeds towards the tax liabilities of Defendant Wilma  
9           Shore.

10          4. The United States' tax and judgment liens against the subject property are hereby foreclosed,  
11          and the subject property is ordered sold under 28 U.S.C. §§ 2001 and 2002 to satisfy those liens.

12          5. The Internal Revenue Service Property Appraisal and Liquidation Specialist ("PALS") is  
13          authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the  
14          subject property.

15          6. The terms and conditions of the sale shall be as follows:

16                a. The sale of the subject property shall be free and clear of the interests of Wilma Shore  
17                and all parties in the lawsuit, except for the rights of present tenants to continue their leases  
18                pursuant to the terms of their lease contracts (*see* Docs. 35 AND 44).

19                b. The sale shall be subject to building lines, if established; all laws, ordinances, and  
20                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 either at the courthouse of Shasta County or of the municipality  
23                in which the property is located, or on the premises of the property.

24                d. The PALS shall announce the date and time of the sale.

25                e. Notice of the sale shall be published at least once a week for at least four consecutive  
26                weeks before the sale in at least one newspaper regularly issued and of general circulation in  
27                Shasta County, California, and at the discretion of the PALS, by any other notice that the PALS  
28                deems appropriate. The notice shall include a description of the property and the terms and  
              conditions of the sale.



1 f. The PALS shall set a minimum bid. If the minimum bid is not met or exceeded, the  
2 PALS may, without further permission of this Court, and under the terms and conditions in this  
3 order of sale, hold a new public sale, if necessary, and reduce the minimum bid.

4 g. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money  
5 order or by certified or cashier's check payable to the Clerk of the United States District Court  
6 for the Eastern District of California, a deposit in an amount between five (5) and twenty (20)  
7 percent of the minimum bid as specified by the PALS in the published Notice of Sale. Before  
8 being permitted to bid at the sale, potential bidders shall display to the PALS proof that they are  
9 able to comply with this requirement. No bid(s) will be accepted from any person(s) who have  
10 not presented proof that, if he or she is the successful bidder(s), he or she can make the deposit  
11 required by the Notice of Sale.

12 h. The successful bidder(s) shall pay the balance of the purchase price for the property  
13 within sixty (60) days following the date of sale. A certified or cashier's check payable to the  
14 Clerk of the United States District Court for the Eastern District of California shall be given to  
15 the PALS, who will deposit the funds with the Clerk of Court. If the bidder fails to fulfill this  
16 requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale,  
17 with any amount remaining to be applied to the liabilities of Wilma Shore under the tax and  
18 judgment liens. The Clerk shall distribute the deposit as directed by the PALS by check made to  
19 the "United States Treasury." The property shall again be offered for sale under the terms and  
20 conditions of the order of sale, or, in the alternative, be sold to the second highest bidder.

21 i. The Clerk of the Court is directed to accept the proceeds of the sale and deposit them  
22 into the Court's registry in an interest-bearing account and to hold it until distribution is directed  
23 by further order of this Court.

24 j. The sale of the property shall be subject to confirmation by this Court. On  
25 confirmation of the sale, the PALS shall execute and deliver its deed conveying the property to  
26 the purchaser. Upon confirmation of the sale, all interests in, liens against, or claims to the  
27 property that are held or asserted by all parties to the action shall be discharged and extinguished  
28 (*see* Docs. 35 and 44).

1 k. Following the Court's confirmation of the sale, the Recorder of Shasta County,  
2 California, shall cause the property transfer to be recorded on the county's register of title. The  
3 successful bidder at the sale shall pay, in addition to the amount of the bid, any documentary  
4 stamps and Clerk's registry fees as provided by law.

5 l. The sale of the property is ordered pursuant to 28 U.S.C. § 2001, and is made  
6 without right of redemption.

7 7. Until confirmation of sale, Wilma Shore shall take all reasonable steps necessary to preserve  
8 in its current condition the property, including all buildings, improvements, fixtures and  
9 appurtenances, and shall maintain fire and casualty insurance on the property. She shall commit  
10 no waste against the property and shall not cause or permit any other person to do so. She shall  
11 do nothing that tends to reduce the value or marketability of the property and shall not cause or  
12 permit any other person to do so. She shall not record any instruments, publish any notice, or  
13 take any other action (such as running newspaper advertisements, posting signs, or making  
14 internet postings) that may directly or indirectly tend to adversely affect the value of the property  
15 or that may tend to deter or discourage potential bidders from participating in the public auction,  
16 and shall not cause or permit any other person to do so.

17 8. Pending the sale of the property and until the deed to the property is delivered to the  
18 successful bidder, the PALS is authorized to have free access to the premises in order to take any  
19 and all actions necessary to preserve the property, including but not limited to retaining a  
20 locksmith or other person to change or install locks or other security devices on any part of the  
21 property.

22 9. After the Court confirms the sale, the sale proceeds deposited with the Clerk of Court shall be  
23 applied pursuant to the stipulation of priority (Doc. 24) filed by the United States, in the order  
24 specified:

25 a. First, to the United States Treasury for the expenses of the sale, including any  
26 expenses incurred to secure or maintain the property pending sale and confirmation by the Court;

27 b. Second, to defendant Mid-Valley Services, Inc., for payment of its mortgage on the  
28 property;

1 c. Third, to plaintiff United States of America for application to unpaid tax liabilities and  
2 the judgment entered against Wilma Shore in *Wilma Shore v. Kevin M. Brown, et al.*, No. 1:07-  
3 cv-01160-OWW-SMS (E.D. Cal.).  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28