

1
2
3
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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID J. EDWARDS, et al.,

Defendants.

Case No. 1:17-CV-01105-AWI-SKO
**ORDER DIRECTING THE CLERK TO
TERMINATE DEFENDANT STATE OF
CALIFORNIA, FRANCHISE TAX
BOARD**

(Doc. 40)

Plaintiff United States of America (“Plaintiff”) initiated this civil action by filing a complaint in this Court on August 16, 2017. (Doc. 1 (the “Complaint”).) The Complaint seeks to reduce certain federal tax assessments against Defendant David J. Edwards to judgment and to foreclose related federal tax liens on real property located at 330-364 South Clovis Avenue, Fresno, California and 451 Burl Avenue, Clovis, California (the “Subject Property”). (*See id.*) The Complaint also named the State of California, Franchise Tax Board; Central Cinema, LP; and Marcia Doerr (Trustee) as defendants in this action as parties with a potential claim or interest in the Subject Property pursuant to 26 U.S.C. § 7403(b). (*See id.*)

1 On April 4, 2018, Plaintiff filed a motion for default judgment against all defendants with
2 the exception of the State of California, Franchise Tax Board. (Doc. 22.) On May 4, 2018, the
3 undersigned entered findings and recommendations recommending the Court grant the motion for
4 default judgment and enter judgment in favor of Plaintiff and against Defendant David J. Edwards,
5 which the assigned district judge subsequently adopted. (Docs. 28 and 29.)

6 On August 14, 2018, Plaintiff filed a “Stipulation of Dismissal with Prejudice with Regard
7 to Defendant State of California, Franchise Tax Board” pursuant to Federal Rule of Civil Procedure
8 41(a)(1)(A). (Doc. 40.) In relevant part, Rule 41(a)(1)(A) provides as follows:

9 [A] plaintiff may dismiss an action without a court order by filing: (i) a notice of
10 dismissal before the opposing party serves either an answer or a motion for
11 summary judgment; or (ii) a stipulation of dismissal signed by all parties who have
appeared.

12 Fed. R. Civ. P. 41(a)(1)(A). “The plaintiff may dismiss some or all of the defendants, or some or
13 all of his claims, through a Rule 41(a)(1) notice,” and the dismissal “automatically terminates the
14 action as to the defendants who are the subjects of the notice.” *Wilson v. City of San Jose*, 111
15 F.3d 688, 692 (9th Cir. 1997).

16 Because Plaintiff filed a stipulation of dismissal with prejudice under Rule 41(a)(1)(A)(i),
17 this case has automatically terminated as to Defendant State of California, Franchise Tax Board.
18 Fed. R. Civ. P. 41(a)(1)(A). Accordingly, the Clerk of the Court is directed to TERMINATE
19 Defendant State of California, Franchise Tax Board.

20 This case shall remain OPEN pending resolution of Plaintiff’s case against the remaining
21 defendants against whom judgment has not yet been entered.

22
23 IT IS SO ORDERED.

24 Dated: August 15, 2018

/s/ Sheila K. Oberto
25 UNITED STATES MAGISTRATE JUDGE