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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 )  
 )  
 ELWYN S. DUBEY, JEANNINE M. )  
 DUBEY, DUANE A. WOODMAN as )  
 Trustee for Garden Valley )  
 Investments, EL DORADO SAVINGS )  
 BANK, EL DORADO COUNTY TAX )  
 COLLECTOR, CALIFORNIA FRANCHISE )  
 TAX BOARD, )  
 )  
 Defendants. )  
 \_\_\_\_\_/ )

2:07-CV-02372-JAM-KJM  
ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS

The matter before the Court is Elwyn S. Dubey and Jeannine M. Dubey's (collectively "Defendants'") Motion to Dismiss for Failure to Serve Necessary Parties. The United States ("Plaintiff") commenced this action on November 2, 2007, seeking to foreclose federal tax liens and a judgment lien

1 against four pieces of property ("Subject Properties") in order  
2 to satisfy a federal tax judgment against Defendants from a  
3 previous case, United States v. Dubey, No. S-94-0417-GEB-PAN  
4 (E.D. Cal. 1994). The Subject Properties had been transferred  
5 by Defendants to Garden Valley Investments, but this Court  
6 previously ruled those transfers void. Defendant Duane Woodman  
7 is a trustee of Garden Valley Investments. On March 26, 2009,  
8 the United States filed a motion for default judgment against  
9 Duane Woodman, since he had failed to respond to the summons and  
10 complaint. That motion was granted on July 27, 2009 (Docket  
11 #112) and a default judgment was entered against Duane Woodman  
12 on the same date (Docket #114). In this motion, Defendants  
13 seek to dismiss, alleging improper service on Duane Woodman as  
14 well as failure to name the beneficiaries of Garden Valley  
15 Investments ("Beneficiaries"), Defendants' children, as  
16 "indispensable parties" to the action.  
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20 For the following reasons, Defendants' Motion to  
21 Dismiss is DENIED.

#### 22 FACTUAL AND PROCEDURAL BACKGROUND

23 Plaintiff commenced the present action on November 2,  
24 2007 against Defendants, Duane Woodman as trustee for Garden  
25 Valley Investments, El Dorado Savings Bank, El Dorado County Tax  
26 Collector, and three other now excused defendants. Plaintiff  
27 provides, as evidence of service to Duane Woodman, a certificate  
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1 of service filled out by IRS Revenue Officer Marilyn Collins.  
2 The certificate says that the summons and complaint were left at  
3 Duane Woodman's home, 1196 6th Street, Los Osos, CA, with Duane  
4 Woodman's son John and an unnamed male on January 17, 2008.  
5 Docket at 27. Furthermore, a declaration of Ms. Collins states  
6 that although Duane Woodman was not home, the unnamed male went  
7 to get Duane Woodman's son John Woodman, the unnamed male  
8 returned with another man she presumed to be John Woodman, and  
9 that she left the summons and complaint at the foot of the  
10 stairs of the home near who she identified as John Woodman and  
11 explained that these documents required a response from Duane  
12 Woodman. Docket at 96, Attch. 1.

15 Defendants assert different facts. Defendants counter  
16 that Duane Woodman has no son named John, that Duane Woodman's  
17 only son Curtis was at a hospital at the time of Ms. Collins'  
18 visit and therefore could not have been at the home to accept  
19 service as claimed, that Curtis Woodman does not reside at Duane  
20 Woodman's home, and that Ms. Collins improperly left the summons  
21 and complaint with Aldo Castanado, a maintenance worker and non-  
22 resident at Duane Woodman's home. Docket at 91, Attchs. 1-2;  
23 Docket # 103, ¶¶ 5-10, Attchs. 1-2.

26 Defendants also allege that Plaintiff has failed to  
27 serve the Beneficiaries, the Defendants' children, as  
28 "indispensable parties" to this action. Defendants claim to

1 have established Garden Valley Investments Trust for the benefit  
2 of their children in 1985. Docket at 103, Attch. 3.

3 Thus, in the Motion to Dismiss, Defendants argue that  
4 because neither Duane Woodman nor Beneficiaries were properly  
5 served, the action must be dismissed pursuant to Federal Rule of  
6 Civil Procedure 4(m), which gives a time limit for service of  
7 120 days after the complaint has been filed.  
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9 OPINION

10 A. Service on Duane Woodman

11 In a Motion to Dismiss for insufficient service of  
12 process pursuant to Federal Rule of Civil Procedure 12(b)(5),  
13 the plaintiff generally has the burden of establishing proper  
14 service. S.E.C. v. Internet Solutions for Business Inc., 509  
15 F.3d 1161, 1165 (9th Cir. 2007). According to federal law,  
16 proper service by delivering a summons and complaint to a  
17 defendant's residence requires "leaving a copy of [the summons  
18 and of the complaint] at the [defendant's] dwelling or usual  
19 place of abode with someone of suitable age and discretion who  
20 resides there."<sup>1</sup> Fed. R. Civ. P. 4(e)(2)(B).  
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26 <sup>1</sup> California law is similar, but also requires mailing an  
27 additional copy of the summons and of the complaint to the  
28 defendant at the place where the first copies were left. Cal.  
Code Civ. P. 415.20(b).

1 Defendants do not dispute that Plaintiff had the  
2 summons and complaint delivered to Duane Woodman's appropriate  
3 dwelling. Rather, Defendants seem to argue that the summons and  
4 complaint were left with a non-resident of the abode. See  
5 Docket at 103, ¶¶ 5-10; Docket # 91, Attch. 2. Defendants  
6 assert that IRS Officer Collins, who swears that she properly  
7 delivered service to Duane Woodman's son on January 17, 2008, is  
8 misleading the court, that Duane Woodman's son could not have  
9 accepted service as Ms. Collins claims because he was at a  
10 hospital all day on January 17, 2008, and that Ms. Collins  
11 inappropriately left the summons and complaint with Aldo  
12 Castanado, a non-resident maintenance worker for Duane Woodman.  
13 Docket at 91, Attch. 2; Docket at 103, ¶¶ 7-8, 14.

16 As Plaintiff notes, Defendants do not have standing to  
17 complain of lack of service of process against Duane Woodman.  
18 Docket at 96, 3:21-4:8. The person actually served with  
19 defective process is the proper party to allege an error. U.S.  
20 v. Viltrakis, 108 F.3d 1159, 1160-61 (9th Cir. 1997) (citing  
21 California Bankers Ass'n v. Shultz, 416 U.S. 21, 53 (1974)).  
22 Duane Woodman, as trustee of Garden Valley Investments and the  
23 target of service, is the appropriate party to bring this  
24 motion. Furthermore, as noted above, a default judgment has  
25 been entered against Duane Woodman. Accordingly, absent a motion  
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1 by Duane Woodman to set aside this entry of default, Defendants  
2 motion to dismiss as it pertains to Duane Woodman is moot.

3 B. Service on Beneficiaries

4 A motion under Federal Rule of Procedure 19 to compel  
5 joinder of a required party must show one of two things: (1)  
6 that the court "cannot accord complete relief" absent that  
7 party, or (2) that the party in question claims an interest  
8 relating to the action that would otherwise be impaired or that  
9 would leave an existing party "subject to a substantial risk" of  
10 incurring inconsistent obligations. Fed. R. Civ. P. 19(a)(1).  
11

12 Defendants argue that the Beneficiaries, as parties  
13 with an alleged interest in Garden Valley Investments and who  
14 have not been served by Plaintiff, are "indispensable parties"  
15 to the action. Docket at 91, ¶¶ 2, 18-30. As such, Defendants  
16 argue, the action must be dismissed pursuant to Rule 4(m) since  
17 over 120 days have passed since the filing of the complaint.  
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19 Id. at ¶ 3.

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21 In an action to enforce lien, as is the case here,  
22 "[a]ll persons having liens upon or claiming any interest in the  
23 property involved . . . shall be made parties thereto." 26  
24 U.S.C. § 7403(b). Here, the Beneficiaries cannot claim any  
25 interest in the Subject Properties as members of the Garden  
26 Valley Investments Trust because the court has voided the  
27 transfer of those properties to Garden Valley Investments.  
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1 Docket at 88. The Beneficiaries, therefore, have no legitimate  
2 claim to the properties involved in this action. See Markham v.  
3 Fay, 74 F.3d 1347, 1355 (1st Cir. 1996) (noting that there is no  
4 due process issue where, among other factors, the beneficiaries  
5 are not deprived of their own property). Moreover, Defendants  
6 have not indicated any specific interest in the Subject  
7 Properties other than naming their children as beneficiaries of  
8 the Garden Valley Trust in general, and have made no suggestions  
9 that the Beneficiaries could raise any arguments as interest-  
10 holders that would alter the outcome of the action.  
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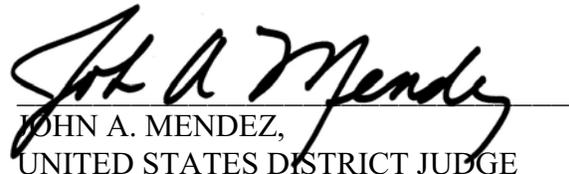
12 As such, Defendants' Motion to Dismiss with regard to  
13 Plaintiff's alleged failure to join Beneficiaries as defendants  
14 is DENIED.  
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16 ORDER

17 For the reasons set forth above, Defendants' Motion to  
18 Dismiss is DENIED.  
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20 IT IS SO ORDERED.

21 DATED: August 6, 2009

22   
23 JOHN A. MENDEZ,  
24 UNITED STATES DISTRICT JUDGE  
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