

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

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

UNITED STATES OF AMERICA,

Plaintiff,

No. CIV S-10-0613 GEB EFB PS

vs.

JAMES C. CASTLE,
a.k.a. J. CHRIS CASTLE; and
LARA KARAKASEVIC,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). Presently pending for decision is plaintiff’s motion for summary judgment, which is noticed for hearing on April 27, 2011. Dckt. Nos. 45, 47. The court has determined that oral argument will not materially assist in resolving the motion and, accordingly, the April 27 hearing on the motion is vacated pursuant to Local Rule 230(g). The court has carefully reviewed the pleadings and evidence on file and finds that for the reasons stated below, plaintiff’s motion for summary judgment must be granted.

I. BACKGROUND

Defendants Castle and Karakasevic have filed Uniform Commercial Code (“UCC”) financial statements against federal employees. Plaintiff, the United States brings this action “to

1 obtain a judicial declaration that certain documents filed by defendants James C. Castle and Lara
2 Karakasevic with the Secretary of State for the State of California against certain employees of
3 the United States are null, void, and without legal effect; and to enjoin the defendants from all
4 future filings of similar documents.” Second Am. Compl., Dckt. No. 29, at 1.

5 On February 17, 2011, plaintiff filed a motion for summary judgment and noticed the
6 motion for hearing before the undersigned on March 23, 2011. Dckt. No. 45. Defendants did
7 not file an opposition or a statement of non-opposition to plaintiff’s motion for summary
8 judgment and a response to plaintiff’s statement of undisputed facts, in violation of Local Rules
9 230(c) and 260(b).¹ Therefore, on March 17, 2011, the court issued an order explaining the
10 requirements set forth in Local Rules 230(c) and 260(b); continuing the hearing on plaintiff’s
11 motion for summary judgment to April 27, 2011; ordering defendants to show cause why
12 sanctions should not be imposed for their failure to timely file an opposition or a statement of
13 non-opposition to the pending motion and for their failure to timely file a response to plaintiff’s
14 statement of undisputed facts; and directing defendants to file an opposition to the motion, or a
15 statement of non-opposition thereto, and a response to plaintiff’s statement of undisputed facts,
16 no later than April 13, 2011. Dckt. No. 47. The order further provided that “[a] failure to
17 comply with this order may result in a recommendation that plaintiff’s motion for summary
18 judgment be granted.” *Id.*

19 On April 6, 2011, defendants filed a “Notice of Conditional Acceptance” of the March 17
20 order to show cause. Dckt. No. 48. However, defendants still have not filed an opposition or a
21 statement of non-opposition to the pending motion, a response to plaintiff’s statement of
22 undisputed facts, or a substantive response to the March 17 order to show cause.

23 ////

24
25 ¹ Instead, on March 1, 2011, defendants filed a “Notice of Conditional Acceptance” of
26 the summary judgment motion. Dckt. No. 46. Defendants have filed similar notices of
conditional acceptance of other documents filed in this action, and on August 13, 2010, the
undersigned rejected many of the arguments made therein. Dckt. No. 24.

1 II. MOTION FOR SUMMARY JUDGMENT

2 Plaintiff moves for summary judgment against defendants “declaring that the UCC
3 Financing Statements and UCC Financing Statement Amendments filed by defendants James C.
4 Castle and Lara Karakasevic against federal government employees are null, void, and of no
5 legal effect, and enjoining Defendants from filing similar sham UCC Financing Statements in the
6 future.” Dckt. No. 45 at 1. Plaintiff requests the entry of a permanent injunction pursuant to 26
7 U.S.C. § 7402(a). Dckt. No. 45-1 at 1.

8 A. Summary Judgment Standard

9 Summary judgment is appropriate when it is demonstrated that there exists “no genuine
10 issue as to any material fact and that the moving party is entitled to a judgment as a matter of
11 law.” Fed. R. Civ. P. 56(c). Under summary judgment practice, the moving party

12 always bears the initial responsibility of informing the district
13 court of the basis for its motion, and identifying those portions of
14 “the pleadings, depositions, answers to interrogatories, and
15 admissions on file, together with the affidavits, if any,” which it
16 believes demonstrate the absence of a genuine issue of material
17 fact.

18 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)).

19 Summary judgment avoids unnecessary trials in cases with no genuinely disputed
20 material facts. *See N.W. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir.
21 1994). At issue is “whether the evidence presents a sufficient disagreement to require
22 submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.”
23 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). Thus, Rule 56 serves to screen
24 the latter cases from those which actually require resolution of genuine disputes over material
25 facts; e.g., issues that can only be determined through presentation of testimony at trial such as
26 the credibility of conflicting testimony over facts that make a difference in the outcome.

27 *Celotex*, 477 U.S. at 323.

28 ///

1 If the moving party meets its initial responsibility, the opposing party must establish that
2 a genuine issue as to any material fact actually does exist. *See Matsushita Elec. Indus. Co. v.*
3 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To overcome summary judgment, the opposing
4 party must demonstrate a factual dispute that is both material, i.e. it affects the outcome of the
5 claim under the governing law, *see Anderson*, 477 U.S. at 248; *T.W. Elec. Serv., Inc. v. Pac.*
6 *Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987), and genuine, i.e., the evidence is
7 such that a reasonable jury could return a verdict for the nonmoving party. *See Wool v. Tandem*
8 *Computers, Inc.*, 818 F.2d 1433, 1436 (9th Cir. 1987). In attempting to establish the existence of
9 a factual dispute that is genuine, the opposing party may not rely upon the allegations or denials
10 of its pleadings but is required to tender evidence of specific facts in the form of affidavits,
11 and/or admissible discovery material, in support of its contention that the dispute exists. *See*
12 *Fed. R. Civ. P. 56(e); Matsushita*, 475 U.S. at 586 n.11.

13 In resolving a summary judgment motion, the court examines the pleadings, depositions,
14 answers to interrogatories, and admissions on file, together with the affidavits, if any. Fed. R.
15 Civ. P. 56(c). The evidence of the opposing party is to be believed. *See Anderson*, 477 U.S. at
16 255. All reasonable inferences that may be drawn from the facts placed before the court must be
17 drawn in favor of the opposing party. *See Matsushita*, 475 U.S. at 587. Nevertheless, inferences
18 are not drawn out of the air, and it is the opposing party’s obligation to produce a factual
19 predicate from which the inference may be drawn. *See Richards v. Nielsen Freight Lines*, 602 F.
20 Supp. 1224, 1244-45 (E.D. Cal. 1985), *aff’d*, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to
21 demonstrate a genuine issue, the opposing party “must do more than simply show that there is
22 some metaphysical doubt as to the material facts Where the record taken as a whole could
23 not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for
24 trial.’” *Matsushita*, 475 U.S. at 587 (citation omitted).

25 ////

26 ////

1 Due Process Rights under Internal Revenue Code Section 6320. SUF ¶ 5.

2 On or about October 22, 2009, Enjalran received correspondence from Castle which
3 included another “Money Order, Private Issue” in the amount of \$74,329.60, which is the
4 balance that appears on the Notice of Federal Tax Lien. Because this “money order” also
5 appeared to be a fictitious financing instrument, it was not posted to Castle’s account. SUF ¶ 6.

6 On or about October 23, 2009, Castle filed with the Secretary of State for the State of
7 California a UCC Financing Statement, Filing Number 09-7212189867, falsely describing
8 Enjalran as a debtor in the amount of \$74,329.60. This filing was made in retaliation for the acts
9 performed by Enjalran as part of his official duties, under his authority as an officer, or under the
10 direction of officers, of the United States of America. SUF ¶ 7.

11 On or about November 13, 2009, Enjalran received correspondence from Castle
12 informing him that a UCC Financing Statement has been filed against him and that it will not be
13 released until the Notice of Federal Tax Lien issued against Castle is released. SUF ¶ 8.

14 Revenue Officer Enjalran is not personally acquainted with Castle and has not had any
15 contact or relationship with him or Karakasevic other than in his official capacity as a Revenue
16 Officer. Enjalran has not engaged in any contract, security agreement, or personal transaction
17 with Castle or Karakasevic and does not owe money to them. There is no legitimate reason for
18 Castle or Karakasevic to impose a lien on Enjalran’s personal property. SUF ¶ 9. Enjalran is
19 aware of the false UCC Financing Statement that Castle filed against him with the California
20 Secretary of State. The Financing Statement has caused him to experience distress and anxiety.
21 Enjalran is concerned that the Financing Statement may have a negative impact on her
22 permanent credit record. SUF ¶ 10.

23 At all times relevant to this proceeding, Director Renee A. Mitchell was employed by the
24 IRS and was involved in the collection of unpaid federal tax liability from Castle and
25 Karakasevic. SUF ¶ 11. A facsimile of Mitchell’s name appeared on the Notice of Federal Tax
26 Lien issued by the Automated Lien System that was filed by Enjalran and recorded against

1 Castle. Other than in this capacity, Mitchell has no involvement in individual taxpayer cases.
2 SUF ¶ 12.

3 On or about November 9, 2009, Castle filed with the Secretary of State for the State of
4 California a UCC Financing Statement, Filing Number 09-7213771724, falsely describing R.A.
5 Mitchell as a debtor. SUF ¶ 13. On or about December 1, 2009, Mitchell learned that Castle
6 had recorded a lien against her with the Secretary of State for the State of California. SUF ¶ 14.

7 Director Mitchell is not personally acquainted with Castle and has not had any contact or
8 relationship with him or Karakasevic. Mitchell has not engaged in any contract, security
9 agreement, or personal transaction with Castle or Karakasevic and does not owe money to them.
10 There is no legitimate reason for Castle or Karakasevic to impose a lien on Mitchell's personal
11 property. SUF ¶ 15. Mitchell is aware of the false UCC Financing Statement that Castle filed
12 against her with the California Secretary of State, and the Financing Statement has caused her to
13 experience distress and anxiety because she is concerned that the Financing Statement may have
14 a negative impact on her permanent credit record. SUF ¶ 16.

15 In the course of her official IRS duties, Revenue Agent Cheerlen Chang was involved in
16 the collection of unpaid federal tax liability from Castle and Karakasevic. At all times pertinent
17 to this action, Chang was an officer or employee of the Internal Revenue Service involved in the
18 tax promoter investigation of Karakasevic. SUF ¶ 17.

19 On or about July 2, 2009, Chang was assigned by her Group Manager, Christopher
20 Phillips, to the Internal Revenue Code Section 6700/6701 tax promoter investigation of
21 Karakasevic. SUF ¶ 18. On or about July 16, 2009, Chang mailed an initial appointment letter
22 and information document request form to Karakasevic. The letter stated that an agent would
23 conduct an investigation on Karakasevic and TTF Consulting LLC for penalties and injunctions
24 per Internal Revenue Code Section 6694, 6695, 6700, 6701, 7402, 7407 and 7408. SUF ¶ 19.

25 On or about August 18, 2009, August 28, 2009, September 3, 2009, and September 16,
26 2009, Chang received letters via registered mail from Karakasevic. The letters were "Notice of

1 Conditional Acceptance” documents similar to the filings in this case, which contained frivolous
2 and irrelevant statements including that by contacting her, the IRS agent had entered into an
3 implied contract for waiver of tort to all who trespass. SUF ¶ 20.

4 On or about September 18, 2009, General Manager Christopher Phillips delivered
5 summonses to Karakasevic and Castle. Castle got a notice copy of the summons since he could
6 be a partner in the entity under investigation, TTF Consulting LLC. SUF ¶ 21. On or about
7 September 23, 2009, Karakasevic sent a bill \$704,000 to Chang for trespassing Karakasevic’s
8 rights under waiver of tort. SUF ¶ 22.

9 On or about September 23, 2009, September 28, 2009, October 8, 2009, and October 29,
10 2009, Chang received letters from Castle containing similar “Notice of Conditional Acceptance”
11 language. SUF ¶ 23. On or about September 28, 2009, Chang received a bill from
12 Karakasevic for \$1,106,000. SUF ¶ 24. On or about October 29, 2009, Chang received a “30
13 days past due” notice from Karakasevic in the amount of \$1,110,608.33. SUF ¶ 25. On or about
14 February 12 ,2010, Chang received a bill from Castle for \$101,000. SUF ¶ 26. On or about
15 February 12, 2010, Chang received a bill from Karakasevic for \$1,308,000. SUF ¶ 27.

16 On or about March 12, 2010, Castle and Karakasevic filed with the Secretary of State for
17 the State of California a UCC Financing Statement, Filing Number 10-7225380533, falsely
18 describing Cheerlen Chang as a debtor. This filing was made in retaliation for the acts
19 performed by Chang as part of her official duties, under her authority as an officer, or under the
20 direction of officers, of the United States of America. SUF ¶ 28.

21 On or about March 12, 2010, Castle and Karakasevic filed with the Secretary of State for
22 the State of California a UCC Financing Statement, Filing Number 10-7225386094, falsely
23 describing Cheerlen Chang and Christopher Phillips as debtors. This filing was made in
24 retaliation for the acts performed by Chang as part of her official duties, under her authority as
25 an officer, or under the direction of officers, of the United States of America. SUF ¶ 29. On or
26 about June 28, 2010, Chang received a bill from Karakasevic for \$1,610,500. SUF ¶ 30.

1 On or about June 30, 2010, Castle and Karakasevic filed with the Secretary of State for
2 the State of California a UCC-3 Financing Statement Amendment, Filing Number 10-72367455,
3 which amended their March 12, 2010 UCC Financing Statement, Filing Number 10-7225386094
4 against Cheerlen Chang and Christopher Phillips. This filing was made in retaliation for the acts
5 performed by Chang as part of her official duties, under her authority as an officer, or under
6 the direction of officers, of the United States of America. SUF ¶ 31. On or about July 7, 2010,
7 Chang received a bill from Karakasevic for \$2,012,500. SUF ¶ 32.

8 Revenue Agent Chang is not personally acquainted with Karakasevic or Castle and has
9 not had any contact or relationship with them other than in her official capacity as a Revenue
10 Agent. Chang has not engaged in any contract, security agreement, or personal transaction with
11 Castle or Karakasevic and does not owe money to them. There is no legitimate reason for Castle
12 or Karakasevic to impose a lien on Chang's personal property. SUF ¶ 33. Chang is aware of the
13 false UCC Financing Statements that Castle and Karakasevic filed against her with the
14 California Secretary of State. These Financing Statements have caused her to experience
15 distress, anxiety and concern that the Financing Statements may have a negative impact on her
16 permanent credit record. SUF ¶ 34.

17 Christopher Phillips is a duly appointed Revenue Agent Group Manager, employed by
18 the IRS. At all times pertinent to this action, Phillips was an officer or employee of the IRS
19 involved investigating abusive tax avoidance transactions, including the tax promoter
20 investigation of Karakasevic. SUF ¶ 35. On or about July 2, 2009, Phillips assigned Chang to
21 the Internal Revenue Code Section 6700/6701 tax promoter investigation of Karakasevic. SUF
22 ¶ 36. On or about September 18, 2009, Phillips delivered summonses to Karakasevic and Castle.
23 Castle got a notice copy of the summons since he could be a partner in the entity under
24 investigation, TTF Consulting LLC. SUF ¶ 37.

25 On March 12, 2010, Castle and Karakasevic filed with the Secretary of State for the State
26 of California a UCC Financing Statement, Filing Number 10-7225386094, falsely describing

1 Christopher Phillips and Cheerlen Chang as debtors. This filing was made in retaliation for the
2 acts performed by Phillips as part of his official duties, under his authority as an officer, or
3 under the direction of officers, of the United States of America. SUF ¶ 38.

4 On June 30, 2010, Castle and Karakasevic filed with the Secretary of State for the State
5 of California a UCC-3 Financing Statement Amendment, Filing Number 10-72367455, which
6 amended their March 12, 2010 UCC Financing Statement, Filing Number 10-7225386094
7 against Christopher Phillips and Cheerlen Chang. This filing was made in retaliation for the acts
8 performed by Phillips as part of his official duties, under his authority as an officer, or under the
9 direction of officers, of the United States of America. SUF ¶ 39.

10 Phillips is not personally acquainted with Karakasevic or Castle and has not had any
11 contact or relationship with them other than in his official capacity as a Revenue Agent Group
12 Manager. Phillips has not engaged in any contract, security agreement, or personal transaction
13 with Castle or Karakasevic and does not owe money to them. There is no legitimate reason for
14 Castle or Karakasevic to impose a lien on Phillips' personal property. SUF ¶ 40. Phillips is
15 aware of the false UCC Financing Statements that Castle and Karakasevic filed against him with
16 the California Secretary of State. These Financing Statements have caused Phillips to experience
17 distress and anxiety because he is concerned that the Financing Statements may have a negative
18 impact on his permanent credit record. SUF ¶ 41.

19 C. Analysis

20 For the reasons discussed below, plaintiff has met its summary judgment burden by
21 establishing that there is no genuine issue of material fact regarding whether defendants have
22 interfered with the administration and enforcement of the internal revenue laws by filing invalid
23 UCC Financing Statements in retaliation for Revenue Officer Enjalran, Director Mitchell,
24 Revenue Agent Chang, and Revenue Agent Phillips' performance of their official duties, and
25 that the invalid UCC Financing Statements and Amendments should be declared null and void.

26 ///

1 Plaintiff has also established that defendants should be permanently enjoined from filing
2 non-consensual liens against employees of the United States.

3 1. Void Financing Statement

4 Plaintiff seeks summary judgment on its claim under 26 U.S.C. § 7402. Section 7402(a)
5 provides that “[t]he district courts of the United States at the instance of the United States shall
6 have such jurisdiction to make and issue in civil actions, writs and orders of injunction, . . . and
7 such other orders and processes, and to render such judgments and decrees as may be necessary
8 or appropriate for the enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a). Section
9 7402 demonstrates “congressional intention to provide the district courts with a full arsenal of
10 powers to compel compliance with the internal revenue laws.” *Brody v. United States*, 243 F.2d
11 378, 384 (1st Cir.), *cert. denied*, 354 U.S. 923 (1957). “[T]here need not be a showing that a
12 party has violated a particular Internal Revenue Code section in order for an injunction to issue
13 [under § 7402(a)]. The language of § 7402(a) encompasses a broad range of powers necessary to
14 compel compliance with the tax laws.” *United States v. Edwards*, 2008 WL 1925243, at *3-5
15 (E.D. Cal. Apr. 30, 2008) (quoting *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th
16 Cir. 1984)).

17 “The United States has standing to seek relief from actual or threatened interference with
18 the performance of its proper governmental functions.” *United States v. Ekblad*, 732 F.2d 562,
19 563 (7th Cir. 1984). Section 7402(a) empowers a district court “to void common-law liens
20 imposed by taxpayers on the property of government officials assigned to collect delinquent
21 taxes.” *Ryan v. Bilby*, 764 F.2d 1325, 1327 (9th Cir. 1985). Bogus liens have been asserted “to
22 harass IRS employees and deter them from enforcing the tax laws. The tax protestors, while
23 claiming to act in the interests of freedom and personal liberty, use this weapon to harass private
24 individuals in their private lives, as part of the tax protestors’ campaign.” *United States v. Van*
25 *Dyke*, 568 F. Supp. 820, 821 (D. Or. 1983). Such liens “threaten substantial interference with
26 the administration and enforcement of the internal revenue laws and are calculated to molest,

1 interrupt, hinder and impede officials of the Internal Revenue Service in the good faith
2 performance of their official duties as employees of the government of the United States.”
3 *United States v. Hart*, 545 F. Supp. 470, 473 (D.N.D. 1982), *aff'd*, 701 F.2d 749 (8th Cir. 1983).

4 Under applicable California law, a lien is created by a contract between the parties or by
5 operation of law. Cal. Civ. Code § 2881. Under California Commercial Code section
6 9203(b)(3)(A), a security interest in personal property is created by a security agreement
7 between a debtor and secured party. “In the absence of a valid security agreement, a financing
8 statement does not create an enforceable security interest.” *In re Wes Dor, Inc.*, 996 F.2d 237,
9 239 n.2 (10th Cir. 1993).

10 Here, there is no genuine issue of material fact regarding whether defendants have
11 interfered with the administration and enforcement of the internal revenue laws by filing invalid
12 UCC Financing Statements and Amendments in retaliation for Revenue Officer Enjalran,
13 Director Mitchell, Revenue Agent Chang, and Revenue Agent Phillips’ performance of their
14 official duties. Enjalran, Mitchell, Chang, and Phillips were assigned to collect the outstanding
15 tax liabilities and investigate the tax promoter activities of the defendants and had no contact
16 with the defendants outside the scope of their official duties, which consisted of requesting that
17 they pay their outstanding federal tax liability, filing a Notice of Federal Tax Lien against the
18 defendants when they failed to comply, and investigating the defendants’ tax avoidance
19 activities. *See* 26 U.S.C. §§ 6321, 6322 and 6331(a) (establishing that the Internal Revenue
20 Service has been specifically authorized by Congress to collect outstanding federal tax
21 liabilities). Defendants then retaliated against Enjalran, Mitchell, Chang, and Phillips personally
22 for their actions on behalf of the United States by attempting to file UCC Financing Statements
23 and Amendments and attempting to impose liens on them. Plaintiff has submitted the
24 declarations of Enjalran, Mitchell, Chang, and Phillips as evidence that no security agreement or
25 debtor relationship exists or existed between any of them and defendants, and defendants have
26 failed to rebut that evidence.

1 Therefore, § 7402 authorizes this Court to declare the UCC Financing Statements and
2 Amendments null and void, which they are. *See, e.g., Ryan v. Bilby*, 764 F.2d at 1327 (holding
3 that (1) § 7402(a) empowers the district court to “void common-law liens imposed by taxpayers
4 on the property of government officials assigned to collect delinquent taxes,” and (2) the district
5 court thus had jurisdiction to release “baseless” “common-law liens” against judge, magistrate
6 judges, and attorneys involved in taxpayer’s prosecution for failure to file tax returns); *Cook v.*
7 *Peter Kiewit Sons Co.*, 775 F.2d 1030, 1034-37 (9th Cir. 1985); *United States v. Edwards*, 2008
8 WL 1925243, at *3-5 (voiding sham UCC financing statements filed by taxpayer, and
9 permanently enjoining taxpayer from filing any document or instrument purporting to create
10 non-consensual liens or encumbrances against employees of the United States); *United States v.*
11 *Tarantino*, 2007 WL 2062930, at *1 (E.D. Cal. July 16, 2007) (adopting magistrate judge’s
12 recommendation to (1) void UCC financing statements filed by taxpayer against IRS employees,
13 and (2) permanently enjoin taxpayer from filing any documents or instruments of that kind
14 against any employee of the federal government); *United States v. Dutson*, 2007 WL 934726, at
15 *1 (E.D. Cal. Mar. 27, 2007) (same); *United States v. Roy*, 2007 WL 614002, at *1 (E.D. Cal.
16 Feb. 27, 2007) (same); *United States v. Molen*, 2007 WL 587198, at *1 (E.D. Cal. Feb. 26, 2007)
17 (same).

18 2. Injunctive Relief

19 Plaintiff also seeks a permanent injunction prohibiting defendants from filing any
20 document or instrument which purports to create a non-consensual lien or encumbrance against
21 the person or property of an employee or officer of the United States of America. Under § 7402,
22 district courts have jurisdiction to issue injunctions “as may be necessary or appropriate for the
23 enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a). “The requirements for the
24 issuance of a permanent injunction are (1) the likelihood of substantial and immediate
25 irreparable injury, and (2) the inadequacy of remedies at law.” *Montana v. BNSF Ry. Co.*, 623
26 F.3d 1312, 1317, n.3 (9th Cir. 2010) (quoting *G.C. and K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096,

1 1107 (9th Cir. 2003)).³ Additionally, “[i]n cases where the public interest is involved, the district
2 court must also examine whether the public interest favors the plaintiff.” *Fund for Animals v.*
3 *Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992).

4 Here, the undersigned finds that defendants engaged in conduct subject to injunction
5 under § 7402 and that the United States will likely suffer irreparable harm in the absence of an
6 injunction prohibiting defendants from filing non-consensual liens or encumbrances against
7 United States employees. Absent an injunction, defendants will likely continue to violate § 7402
8 and interfere with the enforcement and administration of the internal revenue laws, especially
9 since defendants have not acknowledged that the UCC Financing Statements and Amendments
10 they filed were frivolous. Without the permanent injunction plaintiff seeks, IRS employees like
11 Enjalran, Mitchell, Chang, and Phillips are likely to face substantial and immediate irreparable
12 injury (personal distress, clouding of title to property they own, and/or damaging their credit
13 ratings), and their ability to discharge their official duties to collect federal taxes will be
14 interrupted and/or hindered. *See United States v. Edwards*, 2008 WL 1925243, at *4 (finding
15 that the defendant’s filing of frivolous UCC Financing Statements caused irreparable harm, and
16 stating that “Government employees deserve protection from [these] reckless, frivolous
17 filings.”); *United States v. Van Dyke*, 568 F. Supp. 820, 822 (D. Or. 1983) (defendant’s actions
18 “in filing these lawsuits and documents, impose irreparable harm upon the employees of the
19 federal government with whom these tax protestors quarrel”).

20 Apart from an injunction, the United States has no means, civilly, of stopping defendants
21 from filing frivolous liens against Enjalran, Mitchell, Chang, Phillips, or other government
22

23 ³ Although it is unclear in the Ninth Circuit whether plaintiff must only meet the criteria
24 set forth in § 7402(a) to merit injunctive relief or whether plaintiff must also establish the
25 traditional equitable factors for an injunction, because the equitable requirements for the
26 issuance of a permanent injunction are met here, that issue need not be reached. *See, e.g., United*
States v. Estate Pres. Servs., 202 F.3d 1093, 1098 (9th Cir. 2000) (finding, with regard to I.R.C.
§ 7408, that the “traditional requirements for equitable relief need not be satisfied since [the
statute] expressly authorizes the issuance of an injunction”).

1 employees. Further, because the UCC Financing Statements and Amendments are without
2 factual or legal basis, and thus have no force or legal effect, defendants will not be injured by an
3 injunction which provides that they cannot record similar non-consensual liens or encumbrances
4 in the future. Additionally, the public's interests in fair administration of federal tax laws and
5 prevention of abuse and harassment of government employees supports the imposition of the
6 permanent injunction plaintiff seeks. Accordingly, the Court finds that the permanent injunction
7 that plaintiff seeks under § 7402 is necessary and appropriate for the enforcement of the internal
8 revenue laws, and will recommend that it be granted.

9 **III. CONCLUSION**

10 Based on the foregoing findings of fact, and the authority of this court pursuant to 26
11 U.S.C. § 7402, IT IS HEREBY ORDERED that the April 27, 2011 hearing on plaintiff's motion
12 for summary judgment, Dckt. No. 45, is vacated.

13 IT IS FURTHER RECOMMENDED that:

- 14 1. Plaintiff's motion for summary judgment, Dckt. No. 45, be granted;
- 15 2. The UCC Financing Statements and Amendments at issue (numbers 09-7212189867,
16 09-7213771724, 10-7225380533, 10-7225386094, 10-72367455) be declared null, void, and
17 without legal effect;
- 18 3. Plaintiff's request for permission to submit a proposed order of nullification suitable
19 for filing with the Secretary of State of California be granted;
- 20 4. Defendants be immediately and permanently enjoined from filing any document or
21 instrument which purports to create a non-consensual lien or encumbrance against the person or
22 property of an employee or officer of the United States of America; and
- 23 5. The Clerk be directed to enter judgment for plaintiff and close this case.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: April 21, 2011.

6 
7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26