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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
PATRICIA A. MORRIS,  
  
Defendant.

Civ. No. 2:10-CV-00614-FCD-KJM PS  
  
FINDINGS & RECOMMENDATIONS

Plaintiff United States of America has brought this action against defendant Patricia A. Morris, alleging that defendant has filed a sham UCC Financing Statement with the State of California purporting to impose liens on the personal property of a federal employee. Plaintiff seeks an order nullifying the filing and enjoining defendant from further such filings. Plaintiff's motion for summary judgment is pending before this court and was submitted for decision following a hearing on November 17, 2010, for which defendant did not appear.

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1 I. Factual and Procedural Background

2 Plaintiff offers this factual background, which defendant has not opposed:<sup>1</sup>

3 In the course of his official Internal Revenue Service  
4 (“IRS”) duties, Revenue Officer Stephen Bugos was involved in  
5 the collection of unpaid taxes from Defendant Patricia Morris.  
6 Revenue Officer Bugos sent letters to Morris requesting that she  
7 pay her delinquent income taxes. On December 4, 2008, Revenue  
8 Officer Bugos caused a Notice of Federal Tax Lien to be filed  
9 against Patricia Morris for unpaid federal tax liabilities.

10 On November 7, 2009, Patricia Morris filed with the  
11 Secretary of State for the State of California a UCC Financing  
12 Statement, Filing Number 09-7213707743, falsely describing  
13 Stephen Bugos as a debtor. Revenue Officer Bugos is not  
14 personally acquainted with Patricia Morris and he has not had any  
15 contact or relationship with her other than in his official capacity  
16 as a Revenue Officer. Revenue Officer Bugos has not engaged in  
17 any contract, security agreement, or personal transaction with  
18 Patricia Morris and does not owe money to her. There is no  
19 legitimate reason for Patricia Morris to impose a lien on Revenue  
20 Officer Bugos’ personal property.

21 Revenue Officer Bugos is aware of the false UCC  
22 Financing Statement that Patricia Morris filed against him with the  
23 California Secretary of State in the amount of \$522,220.59. The  
24 Financing Statement has caused him to experience distress and  
25 anxiety, including concerns that the Financing Statement may have  
26 a negative impact on his permanent credit record.

27 Pl.’s Mem. Supp. Mot. Summ. J. at 1-2 (Docket No. 14-1); see also Pl.’s Stmt. Undisputed Facts  
28 (Docket No. 15).

19 Plaintiff filed a complaint seeking to have the UCC Financing Statement declared null,  
20 void, and of no legal effect; that the court expunge and remove any record of the UCC Financing  
21 Statement from the official records of the Secretary of State for the State of California; that the  
22 court grant leave to file any order or judgment obtained in the present case with the Secretary of  
23 State for the State of California, and in the public records of any other jurisdiction where  
24 documents identical or similar to the UCC Financing Statement may have been filed by the  
25 defendant; and that the court permanently enjoin defendant Patricia A. Morris, her agents,  
26 employees, and all others in active concert or participation with the defendant from filing, or

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28 <sup>1</sup> Defendant has not meaningfully participated in these proceedings, other than by filing  
“Notices of Conditional Acceptance” of plaintiff’s filings and orders from the court. These  
Notices do not conform to the Federal Rules of Civil Procedure.

1 attempting to file, any document or instrument that purports to create any nonconsensual lien or  
2 encumbrance against the person or property of any employee of the United States. On  
3 September 29, 2010, Plaintiff filed a motion for summary judgment, which defendant did not  
4 oppose. The court held a hearing on the motion for summary judgment on November 17, 2010,  
5 at which defendant did not appear. For the following reasons, this court recommends granting  
6 the relief requested by plaintiff.

## 7 II. Analysis

8 Defendant's filings appear to raise lack of subject matter jurisdiction, lack of personal  
9 jurisdiction, and lack of venue as defenses. None of the defenses have merit. Furthermore,  
10 evidence submitted with Plaintiff's Amended Complaint and summary judgment motion  
11 demonstrates that Plaintiff is entitled to the relief it seeks. See Docket Nos. 4 & 14.

### 12 A. Jurisdiction and Venue

13 The court has jurisdiction over this action based on 28 U.S.C. § 1345 and  
14 26 U.S.C. § 7402.

#### 15 1. Subject Matter Jurisdiction

16 As provided by 28 U.S.C. § 1345, "the district courts shall have original jurisdiction of  
17 all civil actions, suits or proceedings commenced by the United States . . . ." Additionally,  
18 pursuant to 26 U.S.C. § 7402(a), "[t]he district courts of the United States at the instance of the  
19 United States shall have such jurisdiction to make and issue in civil actions, writs and orders of  
20 injunction, and of ne exeat republica,<sup>2</sup> orders appointing receivers, and such other orders and  
21 processes, and to render such judgments and decrees as may be necessary or appropriate for the  
22 enforcement of the internal revenue laws." Under these statutes, and the authority conferred  
23 upon a magistrate judge under 28 U.S.C. § 636, this court has subject matter jurisdiction over  
24 this proceeding.

#### 25 2. Personal Jurisdiction

26 Plaintiff served defendant with the summons and amended complaint at an address in  
27 Ashland, Oregon. Docket No. 5. Plaintiff argues this court has personal jurisdiction over the  
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<sup>2</sup> A writ in equity.

1 defendant because the defendant purposefully availed herself of the Eastern District of California  
2 forum by filing a UCC Financing Statement against Revenue Officer Bugos in Sacramento,  
3 California, with the Secretary of State for the State of California.

4 Plaintiff bears the burden of demonstrating that jurisdiction is appropriate.  
5 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Where, as here,  
6 the proceeding is based on written materials rather than an evidentiary hearing, the plaintiff need  
7 only make a prima facie showing of jurisdictional facts. Id. Uncontroverted allegations in the  
8 complaint must be taken as true. Id.

9 Where there is no applicable federal statute governing personal jurisdiction, the district  
10 court applies the law of the state in which it sits. Yahoo! v. La Ligue Contre Le Racisme,  
11 433 F.3d 1199, 1205 (9th Cir. 2006) (en banc). California’s long-arm jurisdictional statute is  
12 coextensive with federal due process requirements. Id.; Cal. Code Civ. Proc. § 410.10. Thus, a  
13 district court is permitted to exercise personal jurisdiction over a defendant only if that defendant  
14 had “certain minimum contacts” with California “such that the maintenance of the suit d[id] not  
15 offend the traditional notions of fair play and substantial justice.” Yahoo!, 433 F.3d at 1205  
16 (internal quotation marks omitted).

17 In California, the “purposeful direction” or “effects” test is used to determine whether a  
18 defendant purposefully availed herself of the forum. Love v. Associated Newspapers, Ltd.,  
19 611 F.3d 601, 609 (9th Cir. 2010). “The effects test is satisfied if (1) the defendant committed  
20 an intentional act; (2) the act was expressly aimed at the forum state; and (3) the act caused harm  
21 that the defendant knew was likely to be suffered in the forum state.” Id.

22 Here, those requirements are satisfied. Defendant (1) committed an intentional act by  
23 filing a UCC Financing Statement; (2) with the Secretary of State for the State of California, thus  
24 expressly aimed at the forum state; and (3) against a federal employee with a California address,  
25 causing harm likely to be suffered in California. In addition, Defendant also listed a Novato,  
26 California, address for herself upon the UCC Financing Statement filed with the California  
27 Secretary of State.

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1 As a result, the requirements of the “purposeful direction” or “effects” test have been  
2 satisfied. Defendant purposefully availed herself of the forum, so this court has personal  
3 jurisdiction.

4 3. Venue

5 Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)  
6 because a substantial part of the events giving rise to the claims of the United States — namely,  
7 defendant’s filing of the UCC lien with the Secretary of State of California — occurred in  
8 Sacramento, which is in this judicial district.

9 B. Plaintiff’s Entitlement to the Relief It Seeks

10 Federal Rule of Civil Procedure 56 authorizes summary judgment if no genuine issue  
11 exists regarding any material fact and the moving party is entitled to judgment as a matter of law.  
12 The moving party bears the initial burden of showing an absence of an issue of material fact.  
13 Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The moving party may satisfy this burden  
14 by showing an absence of evidence supporting the nonmoving party’s case. Id. If the movant  
15 initially shows there are no genuine issues for trial, the nonmoving party cannot rest on the  
16 pleadings, but must respond with evidence setting “forth specific facts showing that there is a  
17 genuine issue for trial.” Fed. R. Civ. P. 56(e). When “the record taken as a whole could not lead  
18 a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’”  
19 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting First Nat.  
20 Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 289 (1968)). Summary judgment is appropriate  
21 here because the undisputed facts demonstrate that plaintiff is entitled to judgment as a matter of  
22 law.

23 As an exhibit to its amended complaint, plaintiff provided a copy of the UCC lien  
24 defendant filed against Revenue Officer Bugos. Am. Compl., Ex. 1 (Docket No. 4). The lien is  
25 frivolous on its face, because it purports to “[a]ccept [f]or [v]alue” the Notice of Federal Tax  
26 Lien the IRS filed against defendant and use the Notice as the basis for the lien against Revenue  
27 Officer Bugos’s personal property. Furthermore, plaintiff has provided evidence that the lien is  
28 not based on a business relationship or any other legitimate ground. See Decl. of Stephen Bugos

1 ¶ 5 (Docket No. 14-2). Defendant has not contended that the lien has any legitimate basis or  
2 provided any evidence to suggest it does. 26 U.S.C. § 7402(a) permits the court to enter an order  
3 expunging baseless liens filed against federal IRS personnel. See Ryan v. Bilby, 764 F.2d 1325,  
4 1327 (9th Cir. 1985). Consequently, plaintiff is entitled to an order expunging the meritless lien.

5 Plaintiff also seeks an order permanently enjoining defendant from filing false liens  
6 against federal officers. Under 26 U.S.C. § 7402(a), the United States may obtain an injunction  
7 where it is “necessary or appropriate for the enforcement of the internal revenue laws.”

8 Permanent injunctive relief is appropriate where (1) the plaintiff succeeds on the merits; (2) the  
9 plaintiff is likely to suffer irreparable harm in the absence of injunctive relief; (3) the balance of  
10 equities tips in the plaintiff’s favor; and (4) the injunction is in the public interest. See Winter v.  
11 Nat. Res. Def. Council, Inc., \_\_\_ U.S. \_\_\_, 129 S.Ct. 365, 374, 381-82 (2008) (listing factors;  
12 explaining that same analysis pertains to permanent injunctive relief). Each factor is satisfied in  
13 this case.

14 First, plaintiff has succeeded on the merits: in light of the evidence it submitted and  
15 defendant’s failure to oppose its motion for summary judgment, plaintiff has conclusively  
16 demonstrated that the lien against Revenue Officer Bugos is without merit.

17 Second, plaintiff is likely to suffer irreparable harm in the absence of injunctive relief.  
18 Here, where the United States has demonstrated a statutory entitlement to injunctive relief, it is  
19 unnecessary to reach the issue of irreparable harm. See United States v. Odessa Union  
20 Warehouse Co-op, 833 F.2d 172 (9th Cir. 1987); United States v. Cohen, 222 F.R.D. 652 (W.D.  
21 Wash. 2004). Plaintiff has shown such an entitlement here because it has demonstrated that  
22 defendant intentionally interfered with the administration and enforcement of the internal  
23 revenue laws. See 26 U.S.C. § 7402(a). In the alternative, plaintiff has demonstrated it will  
24 suffer irreparable harm in the absence of an injunction. As numerous courts have recognized, the  
25 filing of frivolous liens results in irreparable harm to the government because it prevents  
26 employees from undertaking the vigorous and evenhanded enforcement of the internal revenue  
27 laws. See, e.g., United States v. MacElvain, 858 F. Supp. 1096, 1100-01 (M.D. Ala. 1994); see  
28 also United States v. Barker, 19 F. Supp. 2d 1380, 1384 (S.D. Ga. 1998) (“Public officials

1 subject to harassing and malicious filings such as the liens at issue in this case cannot effectively  
2 perform their duties. Indeed, they may be coerced by such filings into making decisions that are  
3 not in the public interest just to avoid the filing of further liens. Consequently, the American  
4 citizens at large suffer when our public officials are not able to perform their duties free of  
5 harassment and attempts at extortion.”). Defendant’s actions in this case demonstrate that,  
6 absent an injunction, she is likely to file other frivolous liens in the future. For example,  
7 defendant filed in the court a purported “Notice of Default and Consent to Judgment” in which  
8 she claimed that Plaintiff’s counsel owed her \$250,000.00. See Notice of Default & Consent to  
9 J. 3 (Docket No. 7).

10 Finally, the balance of equities and the public interest weigh in favor of issuing an  
11 injunction. Defendant’s lien against Revenue Officer Bugos is wholly without merit, as are  
12 defendant’s claims to have a contract with plaintiff’s counsel. No public interest is served by  
13 permitting defendant to continue to file meritless liens against federal officers. See Barker,  
14 19 F.Supp. 2d at 1384. By contrast, plaintiff seeks to remove an impediment to the good-faith  
15 enforcement of the internal revenue laws.

16 III. Conclusion

17 Based on the foregoing, the undersigned HEREBY RECOMMENDS that:

- 18 1. Plaintiff’s motion for summary judgment (Docket No. 14) be granted;
- 19 2. Plaintiff’s lodged [Proposed] Order Granting Motion for Summary Judgment  
20 (Docket No. 24-1) and lodged [Proposed] Order of Expungement and Permanent  
21 Injunction (Docket No. 24-2) be entered;
- 22 3. The UCC Financing Statement filed by defendant against Revenue Officer Bugos  
23 be declared null, void, and without legal effect;
- 24 4. The court expunge and remove any record of the UCC Financing Statement from  
25 the official records of the Secretary of State for the State of California;
- 26 5. The court grant leave to file any order or judgment obtained in the present case  
27 with the Secretary of State for the State of California, and in the public records of

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1 any other jurisdiction where documents identical or similar to the UCC Financing  
2 Statement may have been filed by the defendant; and

- 3 6. The court permanently enjoin defendant Patricia A. Morris, her agents,  
4 employees, and all others in active concert or participation with the defendant  
5 from filing, or attempting to file, any document or instrument which purports to  
6 create any nonconsensual lien or encumbrance against the person or property of  
7 any employee of the United States.

8 These findings and recommendations are submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
10 days after being served with these findings and recommendations, any party may file written  
11 objections with the court. Responses to objections shall be filed within fourteen days after  
12 service of objections. Failure to file objections within the specified time may waive the right to  
13 appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: December 10, 2010.

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17 U.S. MAGISTRATE JUDGE  
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