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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CAPITOL WASTE, INC.,  
Plaintiff,  
v.

NO. 2:10-cv-866 FCD EFB  
MEMORANDUM AND ORDER

A GREENER GLOBE, aka A GREENER  
GLOBE CORPORATION, aka A  
GREENER GLOBE, INC., aka A  
GREENER GLOBE, DANIEL G.  
SHEEHAN, dba A GREENER GLOBE,  
JACKLYN C. SHEEHAN, dba A  
GREENER GLOBE; WESTERN  
HIGHLAND MORTGAGE FUND1, LLC;  
UNITED STATES DEPARTMENT OF  
THE TREASURY INTERNAL REVENUE  
SERVICE, NORTHERN CALIFORNIA  
COLLECTION SERVICE, INC. et  
al.,

Defendants.

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This matter is before the court on defendant the United States of America's (the "United States") motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. By this motion the United States seeks determinations

1 (1) that United States has an interest in all property and  
2 property rights of Capitol Waste ("plaintiff") by virtue of its  
3 federal tax liens against plaintiff, including any interest  
4 plaintiff may have in the property located at 901 North Harding  
5 Boulevard, Roseville, CA (the "Property"); and (2) that any  
6 proceeds due to plaintiff from a partition of the long-term lease  
7 at issue should be distributed to the United States for  
8 application to the unpaid federal tax liabilities of plaintiff.  
9 (Def.'s Mot. for Summ. J. ["Def.'s Mot."], filed Feb. 25, 2011  
10 [Docket # 14-2], at 2.) On March 25, 2011, plaintiff filed a  
11 statement of non-opposition to the United States' motion for  
12 summary judgment.<sup>1</sup> (Docket #17.) For the reasons set forth  
13 below,<sup>2</sup> the United States' motion for summary judgment is  
14 GRANTED.

#### 15 BACKGROUND<sup>3</sup>

16 Plaintiff brought this suit, inter alia, to partition the  
17 parties' interests by sale of a long-term lease on the property  
18 located at 901 North Harding Boulevard, Roseville, CA. (Def.'s  
19 Notice of Removal ["DNR"], filed April 13, 2010 [Docket # 1-1],  
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21  
22 <sup>1</sup> Plaintiff's certificate of service indicates that all  
23 defendants have been served. (DNR, at Ex. B.) Similarly, the  
24 United States' certificate of service indicates that all parties  
25 have been properly served with this motion. (See Docket 14-13;  
26 Def.'s Statement of Undisputed Facts ("UF") [Docket # 14-1],  
27 filed Feb. 25, 2011.) However, no other defendant has filed an  
28 opposition to the motion or otherwise responded.

<sup>2</sup> Because oral argument will not be of material  
assistance, the court orders the matter submitted on the briefs.  
E.D. Cal. L.R. 230(g).

<sup>3</sup> Unless otherwise noted, the facts herein are  
undisputed. (See UF.)

¶¶ 20, 21. 34.)

A duly authorized delegate of the Secretary of Treasury made assessments against plaintiff for federal employment tax (Form 941) liabilities for the quarters ending June 30, 2001, September 30, 2001, December 31, 2001, June 30, 2002, September 30, 2002, December 31, 2002, March 31, 2003, June 30, 2003, September 30, 2003, December 31, 2003, March 31, 2004, June 20, 2004, September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2005, June 30, 2006, September 30, 2006, December 31, 2006, March 31, 2007, June 30, 2007, and September 30, 2007. (UF ¶¶ 1-6.) The Internal Revenue Service ("IRS") gave plaintiff proper notice and demand for payment of these liabilities. (Id.)

A duly authorized delegate of the Secretary of Treasury also made assessments against plaintiff for federal unemployment tax (Form 940) liabilities for tax years 2000, 2001, 2002, 2003, 2004, 2005, and 2006. (Id. ¶¶ 7-10.) The IRS gave plaintiff proper notice and demand for payment of these liabilities. (Id.)

On May 2, 2007, the IRS properly filed a Notice of Federal Tax Lien against plaintiff with respect to its unpaid federal employment tax liabilities for quarters ending September 30, 2004, and December 31, 2004, with the Placer County Recorder. (Id. ¶ 11.) On December 23, 2008, the IRS properly filed a Notice of Federal Tax Lien against plaintiff with respect to its unpaid federal employment tax liabilities for quarters ending December 31, 2000 through June 30, 2004 and September 30, 2004 through September 30, 2007, with the Placer County Recorder. (Id. ¶¶ 12, 13.) The IRS also filed a Notice of Federal Tax Lien

1 against plaintiff with respect to its unpaid federal unemployment  
2 tax liabilities for the tax years ending December 31, 2000  
3 through December 31, 2006. (Id. ¶¶ 13, 14.)

4 Plaintiff has not fully paid its federal employment tax  
5 liabilities for the quarters ending June 30, 2001, through  
6 September 2007 or its federal unemployment tax liabilities for  
7 the tax years ending December 31, 2000 through December 31, 2006.  
8 (Id. ¶¶ 15, 16.) The United States has an interest in all  
9 property and property rights of plaintiff by virtue of its  
10 federal tax liens against plaintiff. (Id. ¶ 17.)

#### 11 STANDARD

12 The Federal Rules of Civil Procedure provide for summary  
13 judgment where "the movant shows that there is no genuine dispute  
14 as to any material fact and the movant is entitled to judgment as  
15 a matter of law." Fed. R. Civ. P. 56(a). The evidence must be  
16 viewed in the light most favorable to the nonmoving party. See  
17 Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).

18 The moving party bears the initial burden of demonstrating  
19 the absence of a genuine issue of fact. See Celotex Corp. v.  
20 Catrett, 477 U.S. 317, 325 (1986). If the moving party fails to  
21 meet this burden, "the nonmoving party has no obligation to  
22 produce anything, even if the nonmoving party would have the  
23 ultimate burden of persuasion at trial." Nissan Fire & Marine  
24 Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000).  
25 However, if the nonmoving party has the burden of proof at trial,  
26 the moving party only needs to show "that there is an absence of  
27 evidence to support the nonmoving party's case." Celotex Corp.,  
28 477 U.S. at 325.



1 lien extant for 'first in time' priority purposes . . . ." Id.  
2 at 453. Despite being having been properly noticed of this  
3 motion, none of plaintiff's other creditors have responded or  
4 otherwise submitted evidence disputing the seniority status of  
5 United States' federal tax lien. (UF ¶ 18.) As such, any  
6 proceeds due to plaintiff from a partition of the long-term lease  
7 at issue should be distributed to the United States.

8 **CONCLUSION**

9 For the foregoing reasons, the United States' motion for  
10 summary judgment is GRANTED. The United States has an interest  
11 in all property and property rights of plaintiff by virtue of its  
12 federal tax liens against plaintiff, and any proceeds due to  
13 plaintiff from a partition of the long-term lease at issue should  
14 be distributed to the United States for application to  
15 plaintiff's unpaid federal tax liabilities.

16 IT IS SO ORDERED.

17 DATED: April 14, 2011



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19 FRANK C. DAMRELL, JR.  
20 UNITED STATES DISTRICT JUDGE  
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