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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

 Plaintiff,

 v.

JAMES O. MOLEN, et al.,

 Defendants.

No. 2:10-cv-2591-MCE-KJN PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Presently pending before the undersigned is plaintiff United States of America’s (“plaintiff”) motion for default judgment against the following defendants: (1) Black Hole Adventures, a Family Trust, by William Baker and John Hugh Van Auken, Trustees (“Black Hole Trust”); (2) James Orbin Molen Limited Partnership; (3) Household Bank S.B. N.A.; (4) Advanta Bank Corporation; (5) Citibank South Dakota, N.A.; (6) Asset Acceptance LLC; and (7) Wells Fargo Bank N.A. (collectively “defendants”).¹ (ECF No. 200 (Am. Mot. for Default J.)) Also pending before the undersigned are John Hugh Van Auken’s “motion for settlement” and “motion to strike” the undersigned’s February 25, 2015 minute order from the record. (ECF Nos. 213,

¹ Plaintiff seeks default judgment with respect to only these defendants. Accordingly, for purposes of this motion, when the undersigned uses the term “defendants” it does not refer to the other defendants named in this action, namely James O. Molen, Sandra L. Molen, Franchise Tax Board of California, Butte County Assessor, California Employment Development Department, and MBNA America Bank.

1 214.) Finally, the undersigned addresses defendant James O. Molen’s two motions for default
2 judgment (ECF Nos. 192, 221) and two motions to “strike venue and jurisdiction over
3 defendants.” (ECF Nos. 211, 219).

4 The undersigned has fully considered the parties’ briefs and appropriate portions of the
5 record.² For the reasons that follow, the undersigned recommends that plaintiff’s motion for
6 default judgment be granted and James O. Molen’s motions for default and to strike venue and
7 jurisdiction over defendants be denied.³ Furthermore, the undersigned denies John Hugh Van
8 Auken’s motions.⁴

9 I. RELEVANT BACKGROUND

10 Plaintiff brought this civil action on September 23, 2010, in order to reduce to judgment
11 federal tax assessments against James O. Molen, Sandra L. Molen, and the James Orbin Molen
12 Limited Partnership; adjudicate that Black Hole Trust, and the James Orbin Molen Limited
13 Partnership are the nominees, alter egos, and fraudulent transferees of James O. Molen and
14 Sandra L. Molen; and foreclose federal tax liens and a judgment lien against the Molens’
15 residence located at 189 Connors Avenue, Chico, California 95926 (“189 Connors Avenue”).⁵

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17 ² Plaintiff’s motion for default was submitted on the record and briefs without oral argument
18 pursuant to Local Rule 230(g). No hearing dates were set for John Hugh Van Auken motions. No
19 hearing dates were set for James O. Molen’s motions.

20 ³ This action proceeds before the undersigned pursuant to Eastern District of California Local
21 Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

22 ⁴ This action was referred to the undersigned pursuant to Eastern District Local Rule 302(c)(21).
23 (ECF Nos. 11, 210.)

24 ⁵ The legal description of this property is as follows:

25 A PORTION OF LOT 12, AS SHOWN ON THAT CERTAIN MAP ENTITLED,
26 “CONNORS SUBDIVISION IN RANCHO ARROYO CHICO, NEAR CHICO,
27 CALIFORNIA” WHICH MAP WAS RECORDED IN THE OFFICE OF THE
28 RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON
MAY 10, 1948, IN BOOK 16 OF MAPS, AT PAGE(S) 22, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 12; THENCE
NORTH 52 DEG. 38' EAST ALONG THE NORTHWESTERLY LINE OF SAID

.1 On June 25, 2014, the court granted partial summary judgment to plaintiff, thereby reducing to
2 judgment the federal tax assessments against James O. Molen, Sandra L. Molen, and the James
3 Orbin Molen Limited Partnership. (ECF Nos. 172, 174, 175.)

4 A. Factual Background

5 Relevant to the present motions, plaintiff alleges that Sandra L. Molen transferred the 189
6 Connors Avenue property “to James O. Molen and Sandra L. Molen, husband and wife as joint
7 tenants” by a grant deed that was recorded on or about November 12, 1976. (ECF No. 1 at ¶ 18
8 (Complaint).) The Molens have occupied the 189 Connors Avenue property as their residence
9 from at least 1976 to the present. Id.

10 “On or about November 6, 2002, a deed of trust was recorded against [the] 189 Connors
11 Avenue [property].” Id. at ¶ 45. La Jolla Cove Investors purchased the property via a trustees’
12 sale that occurred on April 23, 2004. Id. Litigation concerning this transfer ensued and James O.
13 Molen and Sandra L. Molen reacquired title to the property as a result of a settlement of the
14 action. Id. The Molens took title to the property via a quitclaim deed issued to the James Orbin
15 Molen Limited Partnership that was recorded on June 20, 2007. Id. “On or about June 27, 2007,
16 a quit claim deed was recorded transferring 189 Connors Avenue from the James Orbin Molen
17 Limited Partnership to the Black Hole Trust.” Id. at ¶ 46. Plaintiff alleges that the Molens
18 formed the Black Hole Trust to conceal their interest in the 189 Connors Avenue property and
19 named William Baker and John Van Auken as the Trust’s nominal trustees. (Id. at ¶ 36.)
20 Plaintiff further alleges that “[t]he Black Hole Trust holds nominal title to the 189 Connors
21 Avenue property solely for the benefit of James O. Molen and Sandra L. Molen” and that the
22 Molens “have remained in continuous use and possession of the 189 Connors Avenue property

23 LOT 12, DISTANCE OF 75 FEET TO A POINT; THENCE SOUTH 37 DEG. 22'
24 EAST A DISTANCE OF 170 FEET TO A POINT IN THE SOUTHEASTERLY
25 LINE OF LOT 12; THENCE SOUTH 52 DEG. 33' WEST ALONG THE
26 SOUTHEASTERLY LINE OF SAID LOT 12, A DISTANCE OF 75 FEET TO A
27 POINT AT THE MOST SOUTHERLY CORNER OF SAID LOT 12; THENCE
NORTH 37 DEG. 22' WEST ALONG THE SOUTHWESTERLY LINE OF SAID
LOT 12, A DISTANCE OF 170 FEET TO THE POINT OF BEGINNING.

28 (ECF No. 1 at ¶ 17.)

.1 and have enjoyed all burdens and benefits of ownership” despite title to the property being held
2 by the Black Hole Trust. (Id. at ¶ 49.)

3 Plaintiff alleges that both the James Orbin Limited Partnership and the Black Hole Trust
4 were nominees, alter egos, or fraudulent transferees of James O. Molen and Sandra L. Molen.
5 (Id. at ¶ 45, 49.) Plaintiff further alleges that the transfers of the 189 Connors Avenue property to
6 the James Orbin Molen Limited Partnership and to the Black Hole Trust were made without
7 payment or any other consideration and that the Molens remained in continuous and rent-free use
8 and possession of the property after both transfers. (Id. at ¶ 49, 52.) Finally, plaintiff alleges that
9 “[t]he transfers of the 189 Connors Avenue property to the James Orbin Molen Limited
10 Partnership and to the Black Hole Trust . . . were intended by [James O. Molen and Sandra L.
11 Molen] to hinder, delay or defraud the United States of America of present and future lawful
12 taxes.” (Id. at ¶ 51.)

13 Plaintiff alleges that it named Household Bank S.B. N.A.; Advanta Bank Corporation,
14 Citibank South Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank N.A. as defendants
15 because one or more of these entities may claim an interest in the 189 Connors Avenue property.
16 (Id. at ¶¶ 11-13, 15-16.)

17 B. Procedural Background

18 Affidavits of service filed by plaintiff reflect that on October 29, 2010, plaintiff, through a
19 process server, effectuated service of process on James O. Molen, Sandra L. Molen, and the
20 James Orbin Molen Limited Partnership. (ECF Nos. 28, 29, 30.) On November 17, 2010,
21 plaintiff effectuated service of process on John Hugh Van Auken in his capacity as Trustee of the
22 Black Hole Trust, William E. Baker in his capacity as Trustee of the Black Hole Trust, and the
23 Butte County Assessor. (ECF Nos. 31, 32, 33.) On February 9, 2011, plaintiff effectuated
24 service of process on Advanta Bank Corporation and Wells Fargo Bank, N.A. (ECF Nos. 39, 41.)
25 On March 4, 2011, plaintiff effectuated service of process on Citibank South Dakota N.A. (ECF
26 No. 40.) On March 8, 2011, plaintiff effectuated service of process on Asset Acceptance LLC,
27 Household Bank S.B. N.A., and MBNA America Bank. (ECF Nos. 45, 46, 47.) On April 5,
28 2011, plaintiff effectuated service of process on Vion Holdings II LLC, Advanta Bank

.1 Corporation's successor. (ECF No. 55.)

2 Defendants James O. Molen, Sandra L. Molen, Butte County Assessor, Franchise Tax
3 Board of California, and California Employment Development Department filed answers to the
4 complaint. (ECF Nos. 4, 6, 23, 56.) James O. Molen and Sandra L. Molen included defenses for
5 the Black Hole Trust and the James Orbin Molen Limited Partnership in their answer. (ECF No.
6 4). However, the court struck their answer to that extent because the Molens are not attorneys
7 who may represent the interests of a trust or a partnership. (ECF No. 26 at 8-11). Outside of this
8 stricken filing, no answer was filed on behalf of these entities. Furthermore, none of the other
9 defendants beyond those listed above answered the complaint.

10 On September 16, 2014, plaintiff requested that the Clerk of Court enter default against
11 the Black Hole Trust; the James Orbin Molen Limited Partnership; Household Bank S.B. N.A.;
12 Advanta Bank Corporation; Citibank South Dakota, N.A.; MBNA America Bank; Asset
13 Acceptance LLC; and Wells Fargo Bank N.A. (ECF No. 183.) On September 17, 2014, the
14 Clerk of Court entered default against all of these defendants. (ECF No. 186.) In entering
15 default, the Clerk of Court stated that it appeared from the record and papers on file in the action
16 that these defendants were duly served with process, but failed to appear, plead, or answer
17 plaintiff's complaint within the time allowed by law. (See id.)

18 On December 8, 2014, plaintiff filed a motion for entry of default judgment against all of
19 the defendants against which the Clerk of Court had entered default. (ECF No. 194.) On
20 December 19, 2014, plaintiff filed a stipulation between it and defendant MBNA America Bank
21 stating that the two parties agree that plaintiff's federal tax liens have priority over a judgment
22 lien held by MBNA America Bank with respect to the 189 Connors Avenue property. (ECF No.
23 196.) The stipulation further stated that the parties agree that MBNA America Bank will be
24 bound to the judgment in this case and that plaintiff's motion for default judgment against MBNA
25 America Bank has been withdrawn. (Id.) Accordingly, on January 7, 2015, plaintiff filed the
26 present amended motion for entry of default that named all of the defendants named in plaintiff's
27 original motion except for MBNA America Bank. (ECF No. 200.)

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.1 Plaintiff's amended motion for default judgment seeks a determination "[t]hat the James
2 Orbin Molen Limited Partnership and the Black Hole Trust are the nominees, alter egos, and
3 fraudulent transferees of James O. Molen and Sandra L. Molen, and as such liable for the debts,
4 including tax liabilities, of James O. Molen and Sandra L. Molen, and that the purported transfers
5 of the 189 Connors Avenue property be set aside and title returned to James O. Molen and Sandra
6 L. Molen." (ECF No. 200-1 at 8.) Plaintiff seeks a further determination "that the James Orbin
7 Molen Limited Partnership and the Black Hole Trust have no interest in the 189 Connors Avenue
8 property and so no right to any distribution of sale proceeds." (*Id.*) Plaintiff also seeks a
9 determination that defendants Household Bank S.B. N.A.; Advanta Bank Corporation; Citibank
10 South Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank N.A. have no interest in the
11 189 Connors Avenue property that is superior to that of plaintiff. (*Id.* at 8-9.) Finally, plaintiff
12 requests "[t]hat the federal tax liens and judgment lien against defendants James O. Molen and
13 Sandra L. Molen encumbering the 189 Connors Avenue property be foreclosed and the real
14 property be sold to satisfy the liens and outstanding and delinquent federal tax assessments
15 against defendants James O. Molen and Sandra L. Molen." (*Id.* at 9.)⁶

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18 ⁶ On February 18, 2015, John Hugh Van Auken filed a document on behalf of the Black Hole
19 Trust styled as an opposition to plaintiff's amended motion for default judgment. (ECF No. 209.)
20 Similarly, on March 9, 2015, James O. Molen filed a document styled as an opposition to
21 plaintiff's motion. (ECF No. 216.) However, the undersigned disregards both oppositions in
22 considering plaintiff's motion because neither James O. Molen nor John Hugh Van Auken is an
23 attorney who may represent an entity defendant before this court. As noted in a previous order,
24 an individual does not have the right to appear on behalf of anyone other than himself. C.E. Pope
25 Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). Further, pursuant to this court's
26 local rules, "[a] corporation or other entity may appear only by an attorney." Local Rule 183(a).
27 Because Hugh Van Auken is named only in his capacity as purported Trustee of the Black Hole
28 Trust, he cannot argue in opposition to plaintiff's motion on behalf of that entity. See Knoefler v.
United Bank of Bismark, 20 F.3d 347 (8th Cir. 1994) (citing C.E. Pope Equity Trust, and holding
that pro se purported trustees had no right to represent trusts). Similarly, to the extent James O.
Molen attempts to oppose plaintiff's motion on behalf of the Black Hole Trust or a defendant
other than himself, his opposition is improper. Moreover, because plaintiff does not seek default
against James O. Molen in its motion, James O. Molen cannot assert an argument in opposition to
plaintiff's motion on behalf of himself or any defendant named in the motion. Beyond these two
improper opposition filings, none of the defendants named in plaintiff's amended motion filed a
response to plaintiff's motion.

1 II. PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

2 A. Legal Standards

3 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
4 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
5 against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not
6 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,
7 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25
8 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies
9 within the district court’s sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.
10 1980). In making this determination, the court considers the following factors:

11 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
12 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
13 stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6)
14 whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

15 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Default judgments are ordinarily
16 disfavored. Id. at 1472.

17 As a general rule, once default is entered, well-pleaded factual allegations in the operative
18 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
19 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
20 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord Fair Housing of Marin v. Combs,
21 285 F.3d 899, 906 (9th Cir. 2002). In addition, although well-pleaded allegations in the
22 complaint are admitted by a defendant’s failure to respond, “necessary facts not contained in the
23 pleadings, and claims which are legally insufficient, are not established by default.” Cripps v.
24 Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d
25 1386, 1388 (9th Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir.
26 2007) (stating that a defendant does not admit facts that are not well-pled or conclusions of law);
27 Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004) (“[A] default judgment may not
28

.1 be entered on a legally insufficient claim.”). A party’s default conclusively establishes that
2 party’s liability, but it does not establish the amount of damages. Geddes, 559 F.2d at 560.

3 B. Discussion

4 1. Appropriateness of the Entry of Default Judgment Under the Eitel Factors

5 a. *Factor One: Possibility of Prejudice to Plaintiff*

6 The first Eitel factor considers whether the plaintiff would suffer prejudice if default
7 judgment is not entered, and such potential prejudice to the plaintiff militates in favor of granting
8 a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would potentially
9 face prejudice if the court did not enter a default judgment. Plaintiff has already obtained
10 judgment with respect to the federal taxes and penalties assessed against defendants James O.
11 Molen, Sandra L. Molen, and the James Orbin Molen Limited Partnership. (ECF Nos. 174, 175.)
12 Plaintiff states in its motion that “[t]he Molen residence is the sole significant asset of the Molens
13 of which [plaintiff] is aware.” (ECF No. 200-1 at 4.) Absent entry of a default judgment against
14 the defendants named in the motion, plaintiff’s ability to recover the tax judgment would be
15 hindered. With respect to James Orbin Molen Limited Partnership and Black Hole Trust, if these
16 defendants are not declared nominees, alter egos, or fraudulent transferees of the Molens, plaintiff
17 may not be able to foreclose on the 189 Connors Avenue property and obtain satisfaction of its
18 federal tax liens. With respect to Household Bank S.B. N.A.; Advanta Bank Corporation;
19 Citibank South Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank N.A., plaintiff’s
20 ability to obtain satisfaction of its judgment through a foreclosure sale of the 189 Connors
21 Avenue property could be impeded if one or more of these entities later attempts to assert that it
22 has a superior interest in the property.

23 Because the 189 Connors Avenue property is the only known significant asset of the
24 Molens, an inability to foreclose on this property may leave plaintiff without an alternative
25 recourse to satisfy its judgment. Accordingly, the first Eitel factor favors the entry of a default
26 judgment.

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.1 issue.” Id. at 1068-69. Accordingly, the Ninth Circuit Court of Appeals has addressed the issue
2 of how to determine whether a title holder is a nominee under California law and has devised a
3 six-factor test in order to determine whether an individual or entity is a nominee based on what it
4 predicts the California Supreme Court would adopt if it were to rule on the issue. Id. at 1069-70.

5 The six factors that comprise this test are:

- 6 (1) whether inadequate or no consideration was paid by the nominees;
- 7 (2) whether the properties were placed in the nominees’ names in anticipation of a
lawsuit or other liability while the transferor remains in control of the property;
- 8 (3) whether there is a close relationship between the nominees and the transferor;
- 9 (4) failure to record the conveyances;
- 10 (5) whether the transferor retained possession; and
- 11 (6) whether the transferor continues to enjoy the benefits of the transferred
property.

12 Id. at 1070. “Virtually without exception, courts focus on the totality of the circumstances, and
13 no single factor is dispositive. Rather, the overarching consideration is whether the taxpayer
14 exercised active or substantial control over the property.” Id. (citations and quotation marks
15 omitted).

16 The allegations in the complaint, which are taken as true for purposes of this motion,
17 establish that the transfers of the 189 Connors Avenue property to the James Orbin Molen
18 Limited Partnership and the Black Hole Trust were made for no consideration and were
19 conducted by James O. Molen and Sandra L. Molen in anticipation that they would incur federal
20 tax liability while they remained in control of the property. (ECF No. 1 at ¶¶ 39, 47, 52-54.) The
21 allegations also establish that while the conveyances to the James Orbin Molen Limited
22 Partnership and the Black Hole Trust were recorded, both James O. Molen and Sandra L. Molen
23 continued to reside at the 189 Connors Avenue property rent free after the transfers, were the only
24 partners comprising the James Orbin Molen Limited Partnership, and “controlled the activities of
25 the trustees of . . . Black Hole [Trust] with respect to the . . . property.” (Id. at ¶¶ 7, 39-40, 45-
26 46.) The allegations further establish that James O. Molen and Sandra L. Molen “continued to
27 control and benefit from all property held by Black Hole [Adventures Trust].” (Id. at ¶ 36.)

28 When these allegations are all taken as true, five of the six factors indicate that the James Orbin

.1 Molen Limited Partnership and the Black Hole Trust were nominees of James O. Molen and
2 Sandra L. Molen with respect to their holding of bear title to the 189 Connors Avenue property.
3 In short, the totality of the circumstances surrounding the transfers to the James Orbin Molen
4 Limited Partnership and the Black Hole Trust supports a determination that these entities held the
5 property as mere nominees of James O. Molen and Sandra L. Molen. Accordingly, plaintiff has
6 established facts sufficient to show that both the James Orbin Molen Limited Partnership and the
7 Black Hole Trust are nominees of James O. Molen and Sandra L. Molen.

8 ii. Judicial Sale of the 189 Connors Avenue Property

9 Plaintiff requests further relief in the form of a judicially ordered sale of the 189 Connors
10 Avenue property in order to satisfy the tax assessments made against James O. Molen and Sandra
11 L. Molen that were previously enforced though the court's June 25, 2014 order. (ECF No. 174.)

12 Pursuant to 26 U.S.C. § 6321, the IRS may impose a federal tax lien "upon all property
13 and rights to property . . . belonging to" a taxpayer who has failed to pay taxes owed after the IRS
14 has made an assessment and demand. While state law determines the property rights and
15 interests, "state law is inoperative to prevent the attachment of liens created by statute in favor of
16 the United States." Dye v. United States, 528 U.S. 49, 52 (1999) (quoting United States v. Bess,
17 357 U.S. 51, 56-57 (1958)). The language of section 6321 is broad and on its face reveals the
18 intent of Congress to reach interest in property that a taxpayer might have. Dye, 528 U.S. at 56.
19 As a result, "[t]he Supreme Court has interpreted section 6321 to apply to all property of a
20 taxpayer, including property that is held by a third party as the taxpayer's nominee or alter ego."
21 Fourth Inv. LP, 720 F.3d at 1066 (citing G.M. Leasing Corp. v. United States, 429 U.S. 338, 350-
22 51 (1977)). A federal tax lien is perfected upon assessment and no further action need be taken.
23 United States v. McDermott, 507 U.S. 447, 452-55 (1993). After adjudicating the merits of the
24 United States' claim to the subject property, the district court may decree a sale of the property an
25 order distribution of the proceeds of that sale. 26 U.S.C. § 7403(c); United States v. Rodgers, 461
26 U.S. 677, 708 (1983) (holding that section 7403 permits district courts to order judicial sale of a
27 delinquent taxpayer's property in order to satisfy federal tax assessments).

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.1 In this case, plaintiff obtained federal tax liens on the 189 Connors Avenue property
2 pursuant to 26 U.S.C. § 6321 when it issued assessments against James O. Molen and Sandra L.
3 Molen. The court reduced these assessments to judgment through its June 25, 2014 order. (ECF
4 No. 174.) Plaintiff now seeks to satisfy this judgment through the sale of the 189 Connors
5 Avenue property.

6 As discussed above, plaintiff's allegations establish that the Black Hole Trust, the
7 purported holder of title to the 189 Connors Avenue property, is a nominee of the Molens with
8 regard to the property. Similarly, the previous alleged holder of title to the property, the James
9 Orbin Molen Limited Partnership, also held title as a nominee of the Molens. Consequently,
10 plaintiff may still attach federal tax liens against the Molens to the 189 Connors Avenue property
11 regardless of the fact that they do not currently hold bare legal title to that property. See Fourth
12 Inv. LP, 720 F.3d at 1066; United States v. Hopkins, 927 F. Supp. 2d 1120, 1184 (D.N.M. 2013)
13 (“The use of a nominee to hold property does not affect the reality that all of the rights to the
14 property held in the names of the nominees . . . belong to the [taxpayer].”) As such, plaintiff may
15 seek satisfaction of its liens on the property through a judicial sale. 26 U.S.C. § 7403(c).
16 Accordingly, plaintiff's allegations are sufficient to support its claim requesting that the 189
17 Connors Avenue property be sold to satisfy its tax liens on the property.

18 iii. Determination that Plaintiff's Tax Liens are Superior to Any
19 Interests Held by the Bank Defendants

20 With respect to the remaining defendants against which plaintiff seeks default, Household
21 Bank S.B. N.A.; Advanta Bank Corporation; Citibank South Dakota, N.A.; Asset Acceptance
22 LLC; and Wells Fargo Bank N.A., plaintiff claims that its federal tax liens on the 189 Connors
23 Avenue property take priority over any liens or other interests these defendants may have in the
24 property.

25 Absent a provision to the contrary, the priority of the federal tax liens is governed by the
26 common-law rule that “the first in time is the first in right.” United States v. McDermott, 507
27 U.S. 447, 449 (1993) (quoting United States v. New Britain, 347 U.S. 81, 85 (1954)). A lien is
28 perfected for applying the doctrine when “the identity of the lienor, the property subject to the

1 lien, and the amount of the lien are established.” McDermott, 507 U.S. at 449 (quoting New
2 Britain, 347 U.S. at 84). Any lien that is competing with a federal tax lien must be perfected. In
3 re Priest v. Progressive Savings and Loan Association, 712 F.2d 1326, 1327-28 (9th Cir. 1983).
4 “A lien is not choate unless there is nothing more to be done and the amount of the lien is
5 established.” In re Priest, 712 F.2d at 1329 (internal punctuation and citation omitted).

6 A foreclosure sale generally wipes out any liens held by junior creditors because
7 foreclosure of a senior lien “conveys the property free of all junior liens.” Bank of Am. v.
8 Graves, 51 Cal. App. 4th 607, 611-12 (1996) (citation omitted). However, United States federal
9 tax liens immediately and automatically reattach to a foreclosed upon property if the delinquent
10 taxpayer reacquires that property, and are deemed superior to competing claims later perfected.
11 United States v. McDermott, 507 U.S. 447, 453-455 (1993).

12 The allegations of the complaint establish that the federal tax liens on the 189 Connors
13 Avenue property have been perfected via the tax assessments plaintiff issued against the Molens.
14 (ECF No. 1 at ¶¶ 19, 22, 24, 26, 32.) Plaintiff further alleges that the Molens reacquired title to
15 the 189 Connors Avenue property in 2007 after the property had been foreclosed upon and
16 purchased by La Jolla Cove Investors in 2004. (Id. at ¶ 45.) These allegations establish that prior
17 junior liens were extinguished by the 2004 foreclosure and that the federal tax assessments
18 imposed against the Molens immediately reattached as liens on the property upon the Molens’
19 reacquisition in 2007. See McDermott, 507 U.S. at 453-455; Bank of Am., 51 Cal. App. 4th at
20 611-12. Because plaintiff establishes that the federal tax liens were attached to the 189 Connors
21 Avenue property and nothing in the complaint suggests that defendants had any liens or other
22 interests in that property that were perfected and attached to the property prior to plaintiff’s liens,
23 plaintiff sufficiently alleges its claim for relief against this group of defendants.

24 In sum, when the allegations of plaintiff’s complaint are taken as true, plaintiff sufficiently
25 states meritorious claims for relief against the defendants for which it seeks default. Accordingly,
26 the second and third Eitel factors support default judgment.

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.1 c. *Factor Four: The Sum of Money at Stake in the Action*

2 Under the fourth factor cited in Eitel, “the court must consider the amount of money at
3 stake in relation to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F. Supp. 2d at
4 1177; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D. Cal.
5 2003). Here, plaintiff has already obtained judgment against James O. Molen, Sandra L. Molen,
6 and the James Orbin Molen Limited Partnership regarding these parties’ tax liabilities.
7 Accordingly, there is no dispute remaining as to the amount owed by these parties at this juncture.
8 Plaintiff merely seeks default with respect to the defendants named in the present motion in order
9 to perfect its ability to satisfy its tax judgment through foreclosure and sale of the 189 Connors
10 Avenue property.

11 With respect to the James Orbin Molen Limited Partnership and the Black Hole Trust,
12 neither entity will suffer any undue monetary loss if default is granted because plaintiff’s
13 allegations, which are taken as true for purposes of the present motion, establish that both entities
14 are the nominees of the Molens and have no ownership rights to the 189 Connors Avenue
15 property.

16 With respect to Household Bank S.B. N.A.; Advanta Bank Corporation; Citibank South
17 Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank N.A., default may impact their
18 ability to collect any liens they may hold against the 189 Connors Avenue property.⁷ However,
19 the remedy requested by plaintiff will not directly extinguish any rights these defendants have
20 with respect to the property; it would only establish the priority of its own liens over those that
21 may be held by these defendants. Given the failure of these defendants to appear and defend their
22 potential interests in the property, a determination that their interests are not superior to the
23 interest held by plaintiff is necessary to allow plaintiff to seek satisfaction of its judgment without
24 potential additional litigation brought by one or more of these defendants.

25 ⁷ Plaintiff claims that the liens held by these potential creditor defendants may have been erased
26 on April 23, 2004, when a trustees’ sale of the 189 Connors Avenue property occurred.
27 Regardless, plaintiff’s allegations establish priority of its lien over those of these potential
28 creditors. Accordingly, absent evidence to the contrary, entry of default in plaintiff’s favor would
not materially impact the rights any of these defendants may have in the 189 Connors Avenue
property.

.1 Given that the money judgment has already been entered in this action and the fact that
2 plaintiff's motion will not place any additional monetary burden on the defendants named therein,
3 the court concludes that this factor favors the entry of a default judgment.

4 d. *Factor Five: The Possibility of a Dispute Concerning Material*
5 *Facts*

6 The undisputed facts in this case support the tax judgment that has already been entered
7 against James O. Molen, Sandra L. Molen, and the James Orbin Molen Limited Partnership.
8 Moreover, plaintiff has provided the court with well-pleaded allegations and documentation
9 supporting the claims for relief requested in the present motion. The court may assume the truth
10 of well-pleaded facts in the complaint (except as to damages) following the clerk's entry of
11 default and, thus, there is no likelihood that any genuine issue of material fact exists. See, e.g.,
12 Elektra Entm't Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all
13 allegations in a well-pleaded complaint are taken as true after the court clerk enters default
14 judgment, there is no likelihood that any genuine issue of material fact exists."); accord Philip
15 Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at 1177. Defendants named
16 in plaintiff's motion have failed to appear at any point in this case and have therefore admitted all
17 material facts alleged in plaintiff's complaint.⁸ Because plaintiff's factual allegations are
18 presumed true and defendants have failed to oppose the motion, no factual disputes exist that
19 would preclude the entry of default judgment. Accordingly, the court concludes that the fifth
20 factor favors a default judgment against defendants.

21 e. *Factor Six: Whether the Default Was Due to Excusable Neglect*

22 Upon review of the record before the court, the court finds that the default was not the
23 result of excusable neglect. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Defendants have had
24 ample notice of this lawsuit. The record reflects that plaintiff properly served all of the

25 _____
26 ⁸ As noted above, the filings made by James O. Molen and Hugh Van Auken at various points in
27 this action on the behalf of the James Orbin Molen Limited Partnership and/or the Black Hole
28 Trust cannot be considered by the court as filings made on behalf of these two entities because
neither individual is an attorney and therefore cannot represent any of the entity defendants
named in this action.

.1 defendants named in the motion with process and also served these same defendants by mail with
2 the present motion for default judgment. With respect to the Black Hole Trust, both William
3 Baker and John Van Auken, the Trust's nominal trustees, filed motions to dismiss the complaint
4 early on in this action, but these motions were denied on the basis that neither individual is an
5 attorney who may represent the Black Hole Trust. (ECF Nos. 12, 14, 26.) Similarly, James O.
6 Molen filed an answer asserting defenses on behalf of both the James Orbin Molen Limited
7 Partnership and the Black Hole Trust, which was stricken from the record in part for the same
8 reason. (ECF Nos. 4, 26.) Despite being clearly aware of this action, none of these individuals
9 obtained an attorney on behalf of the entity defendants they purport to represent. As for the
10 Household Bank S.B. N.A.; Advanta Bank Corporation; Citibank South Dakota, N.A.; Asset
11 Acceptance LLC; and Wells Fargo Bank N.A., plaintiff indicates these defendants have likely
12 made the calculation that they have no further interest in the property because the federal tax lien
13 exceeds any equity. In any event, these defendants have received notice of the proceedings in this
14 action since its inception and have not made any appearance at any point in this nearly 5-year old
15 action.

16 Despite ample notice of this lawsuit and plaintiff's intention to move for the entry of a
17 default judgment, defendants have not appeared in this action to date and have done nothing to
18 defend themselves. Thus, the record suggests that defendants have chosen not to defend
19 themselves in this action, and not that the default resulted from any excusable neglect.
20 Accordingly, this Eitel factor favors the entry of a default judgment.

21 f. *Factor Seven: The Strong Policy Underlying the Federal Rules of*
22 *Civil Procedure Favoring Decisions on the Merits*

23 "Cases should be decided upon their merits whenever reasonably possible." Eitel, 782
24 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
25 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.
26 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694 F.
27 Supp. 2d 1039, 1061 (N.D. Cal. 2010); ACS Recovery Servs., Inc. v. Kaplan, 2010 WL 144816,
28 at *7 (N.D. Cal. Jan. 11, 2010) (unpublished); Hartung v. J.D. Byrider, Inc., 2009 WL 1876690,

.1 at *5 (E.D. Cal. June 26, 2009) (unpublished). Accordingly, although the court is cognizant of
2 the policy in favor of decisions on the merits—and consistent with existing policy would prefer
3 that this case be resolved on the merits—that policy does not, by itself, preclude the entry of
4 default judgment.

5 Upon consideration of the Eitel factors, the court concludes that plaintiff is entitled to the
6 entry of default judgment against the defendants named in its motion, and recommends that such
7 a default judgment be entered. All that remains is the determination of the relief to which
8 plaintiff is entitled.

9 2. *Terms of the Judgment to Be Entered*

10 After determining that a party is entitled to entry of default judgment, the court must
11 determine the terms of the judgment to be entered. Considering plaintiff's briefing and the record
12 in this case, the undersigned concludes that plaintiff is entitled to the relief requested in its
13 complaint and motion for default. Therefore, the undersigned recommends that such relief be
14 granted as follows.

15 For the reasons stated above, plaintiff's allegations establish that the James Orbin Limited
16 Partnership and the Black Hole Trust were nominees of James O. Molen and Sandra L. Molen
17 with regard to the 2007 transfers of the 189 Connors Avenue property. Accordingly, the
18 undersigned recommends that plaintiff's request for a declaration that these two entity defendants
19 are the nominees of James O. Molen and Sandra L. Molen be granted. Furthermore, because
20 these entities are nominees of James O. Molen and Sandra L. Molen, plaintiff's request that it be
21 adjudged that they do not have any interest in the 189 Connors Avenue property, and therefore no
22 right to any proceeds from a sale of the property, should be granted.

23 Plaintiff also requests that the court declare that Household Bank S.B. N.A.; Advanta
24 Bank Corporation; Citibank South Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank
25 N.A. have no interest in the 189 Connors Avenue property superior to plaintiff's tax liens.
26 Plaintiff's allegations establish that plaintiff's federal tax liens attached to the 189 Connors
27 Avenue property upon the Molens' reacquisition of title in 2007 and that they take priority over
28 any liens or other interests these defendants may hold in that property. Accordingly, the

.1 undersigned recommends that plaintiff's request for relief as to these defendants be granted.

2 Finally, plaintiff requests that the court order “[t]hat the federal tax liens and judgment
3 lien against defendants James O. Molen and Sandra L. Molen encumbering the 189 Connors
4 Avenue property be foreclosed and the real property be sold to satisfy the liens and outstanding
5 and delinquent federal tax assessments against defendants James O. Molen and Sandra L.
6 Molen.” (ECF No. 200-1 at 9.) As discussed above, plaintiff's allegations establish that it holds
7 valid federal tax liens against the 189 Connors Avenue property, which the Molens have not paid.
8 Because the Molens have not paid these tax liabilities, and a judgement has already been entered
9 against them concerning these liabilities, federal tax liens continue to encumber all of their
10 property, including the 189 Connors Avenue property. Furthermore, because the James Orbin
11 Molen Limited Partnership and the Black Hole Trust should be declared nominees of the Molens
12 with regard to the transfers of the 189 Connors Avenue property to which they were involved,
13 plaintiff's liens still remain with that property and may be foreclosed upon despite its title being
14 nominally held by the Black Hole Trust. See Fourth Inv. LP, 720 F.3d at 1066; Hopkins, 927 F.
15 Supp. 2d at 1184. Plaintiff may foreclose upon this property via a judicial sale. See 26 U.S.C. §
16 7403(c); Rodgers, 461 U.S. at 708. Accordingly, the undersigned recommends that plaintiff's
17 request for a judicial sale of the 189 Connors Avenue property be granted and that plaintiff be
18 directed to submit appropriate proposed orders to effectuate the foreclose and sale of the 189
19 Connors Avenue property following entry of default judgment.

20 III. JOHN HUGH VAN AUKEN'S MOTIONS

21 Also before the court are John Hugh Van Auken's two motions filed on behalf of the
22 Black Hole Trust styled as a “motion for settlement” and a “motion to strike” the minute order
23 issued by the undersigned on February 27, 2015. (ECF Nos. 214, 215.) Aside from the fact that
24 these two filings appear patently frivolous, John Hugh Van Auken cannot file motions in this
25 action on the Black Hole Trust's behalf because he is not a licensed attorney. See C.E. Pope
26 Equity Trust, 818 F.2d at 697. Accordingly, these two motions are denied.⁹

27 ⁹ The undersigned also notes that John Hugh Van Auken has filed a request on behalf of the
28 Black Hole Trust for the court to take judicial notice of certain statutory and case law. (ECF No.

1 IV. JAMES O. MOLEN'S MOTIONS

2 Finally, defendant James O. Molen has filed two motions for default judgment (ECF Nos.
3 192, 221) and two motions to “strike venue and jurisdiction over defendants.” (ECF Nos. 211,
4 219). As an initial matter, the court notes that these motions are procedurally defective under
5 Local Rule 230(b) because defendant has not set this motion for a hearing before the undersigned.
6 Nevertheless, the undersigned will address these motions because plaintiff has had an opportunity
7 to respond to them.

8 With regard to the motions for default judgment, it appears that James O. Molen requests
9 the court to enter default judgment against plaintiff for its alleged failure to respond to certain
10 assertions he has made throughout the course of this litigation. However, these motions are not
11 sufficient to prove that the court should enter default judgment against plaintiff pursuant to
12 Federal Rule of Civil Procedure 55 because no counterclaim or other request for affirmative relief
13 has been asserted by James O. Molen against plaintiff in this action and the Clerk of Court has not
14 entered default against plaintiff. See Fed. R. Civ. P. 55(a) (providing that the Clerk of Court may
15 enter default only “[w]hen a party against whom a judgment for affirmative relief is sought has
16 failed to plead or otherwise defend”). Accordingly, the undersigned recommends they be denied.

17 James O. Molen’s motions to “strike venue and jurisdiction over defendants” assert that
18 this court does not have jurisdiction over this action and venue is not proper because none of the
19 defendants “live in or do any business with [sic] the federal government’s authority or
20 geographical location.” (ECF No. 211 at 3; ECF No. 219 at 2.) This argument is patently
21 frivolous. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1340, which allows
22 jurisdiction over any civil action arising under any Act of Congress providing for internal
23 revenue, and 28 U.S.C. § 1345, which allows for jurisdiction over suits commenced by the United
24 States. Because this action is brought by the United States and concerns a tax liability, this court
25 has jurisdiction. Furthermore, venue is proper in this court because the tax assessments at issue in
26 this action accrued within this district, the Molens reside within this district, and plaintiff seeks to

27 228.) However, this request is denied as he is not an attorney who may represent this entity
28 defendant.

.1 foreclose on property located within this district. See 28 U.S.C. § 1391(b). Therefore, the
2 undersigned recommends that these two motions be denied.

3 V. CONCLUSION

4 Based on the foregoing reasons, IT IS HEREBY ORDERED that John Hugh Van Auken’s
5 “motion for settlement” and “motion to strike” the undersigned’s February 27, 2015 minute order
6 (ECF Nos. 214, 215) are denied.

7 Furthermore, IT IS HEREBY RECOMMENDED that:

8 1. Plaintiff’s motion for default judgment (ECF No. 200) be granted.

9 2. Judgment be entered in plaintiff’s favor and against the following defendants:

10 Black Hole Adventures, a Family Trust, by William Baker and John Van Auken, Trustees; James
11 Orbin Molen Limited Partnership; Household Bank S.B. N.A.; Advanta Bank Corporation;
12 Citibank South Dakota, N.A.; Asset Acceptance LLC; and Wells Fargo Bank N.A.

13 3. It be declared that defendants James Orbin Molen Limited Partnership and Black
14 Hole Trust are nominees of defendants James O. Molen and Sandra L. Molen with regard to the
15 transfers of the 189 Connors Avenue property, and therefore have no ownership interest in the
16 property and no right to any distribution of sale proceeds.

17 4. It be declared that plaintiff’s federal tax liens on the 189 Connors Avenue property
18 are superior to any liens or other interests in the property that may be held by defendants
19 Household Bank S.B. N.A.; Advanta Bank Corporation; Citibank South Dakota, N.A.; Asset
20 Acceptance LLC; and Wells Fargo Bank N.A.

21 5. The federal tax liens of the United States upon the real property of defendants
22 James O. Molen and Sandra L. Molen, located at 189 Connors Avenue, Chico, California 95926
23 be ordered foreclosed and the property be ordered sold.

24 6. Following the entry of judgment, plaintiff be directed to submit any appropriate
25 proposed orders to effectuate the foreclosure and sale of the property located at 189 Connors
26 Avenue, Chico, California 95926.

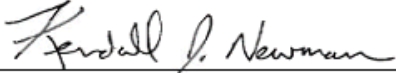
27 7. Defendant James O. Molen’s motions for default judgment (ECF Nos. 192, 221)
28 and to “strike venue and jurisdiction over defendants” (ECF Nos. 211, 219) be denied.

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These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after these findings and recommendations are filed, any party may file written objections with the court. A document containing objections should be titled “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within seven (7) days after service of the objections. The parties are advised that failure to file objections within the specified time may, under certain circumstances, waive the right to appeal the District Court’s order. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED AND RECOMMENDED.

Dated: May 22, 2015



KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE