

1

2

3

4

5

6

7

UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

9

10 SAND CANYON CORPORATION, FKA
11 PREMIER TRUST DEED SERVICES,
INC.,

12 Plaintiff
13 (Petitioner),

14 v.

15 ALAN S. COLEMAN, STACI E.
16 COLEMAN, CALIFORNIA SERVICE
17 BUREAU, CALIFORNIA FRANCHISE
18 TAX BOARD, FRIEDMAN
19 FINANCIAL, and UNITED STATES
OF AMERICA,

20 Defendants.

No. 2:12-cv-02107 JAM-KJN

**ORDER GRANTING UNITED STATES'
UNOPPOSED MOTION FOR SUMMARY
JUDGMENT**

20 This matter is before the Court on Defendant United States
21 of America's ("the United States") Motion for Summary Judgment
22 (Doc. #20). Pursuant to the state court's order excusing
23 Petitioner Sand Canyon Corporation ("Petitioner") from making
24 further appearances, Petitioner did not file an opposition or
25 statement of non-opposition.¹ For the following reasons, the

26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for April 3, 2013.

1 United States' motion is granted.

2
3 I. BACKGROUND

4 A. Procedural and Undisputed Factual Background

5 In 2007, Petitioner, trustee to a mortgage on the real
6 property of Alan S. and Staci E. Coleman (collectively "the
7 Colemans"), foreclosed its mortgage and sold the real property.
8 United States' Statement of Undisputed Facts (Doc. #20), ("SUF")
9 at ¶¶ 2-6. Following the foreclosure and sale of the real
10 property, Petitioner deposited the surplus funds from the sale,
11 \$306,853.49, with the Solano County Superior Court and filed this
12 interpleader action against the Colemans, California Service
13 Bureau ("CSB"), California Franchise Tax Board ("FTB"), Friedman
14 Financial, and the United States to determine the correct
15 priority of the parties' claims. Id. ¶¶ 7, 11. On August 13,
16 2012, the United States filed a notice of removal (Doc. #1). On
17 September 24, 2012, this Court issued an order transferring the
18 surplus funds from the Solano County Superior Court to the United
19 States District Court, Eastern District of California (Doc. #9).
20 FTB filed a claim to the surplus funds on September 26, 2012
21 (Doc. #10), the United States filed a claim on September 28, 2012
22 (Doc. #13), and CSB filed a claim on October 10, 2012 (Doc. #14).
23 On December 21, 2012, pursuant to the United States' request, the
24 Clerk of Court entered default as to the Colemans and Friedman
25 Financial (Doc. #19).

26 B. The United States' Claim

27 The United States' claim arises from federal tax liens
28 resulting from unpaid 1999 federal income tax liabilities

1 assessed against the Colemans jointly. A duly authorized
2 delegate of the Secretary of Treasury made federal income tax
3 (Form 1040), penalty, interest, and other statutory addition
4 assessments against the Colemans for the tax period ending on
5 December 31, 1999. SUF ¶¶ 26. The Internal Revenue Service made
6 the assessments on December 23, 2002, and provided timely notice
7 and demand for payment. Id. ¶¶ 27. An authorized delegate of
8 the Secretary of the Treasury refiled a Notice of Federal Tax
9 Lien against the Colemans in Solano County Recorder's Office on
10 May 8, 2003, in the amount of \$20,090.82. Notices of Federal Tax
11 Lien, Exhibit 2 and 3 to the Declaration of Lee Perla, Doc. #20,
12 ("Perla Dec."), at 1. Thereafter, the Colemans failed to pay the
13 assessed amounts. Id.

14 C. FTB's Claims

15 FTB's claims arise from recorded interest in the subject
16 real property resulting from perfected tax liens for the 2000,
17 2001, 2002, 2003, and 2004 tax years. SUF ¶ 36. FTB duly
18 perfected its state tax liens against the real property of Alan
19 S. Coleman when it recorded Notices of State Tax Lien in the
20 Solano County Recorder's office for the 2000 tax year in the
21 amount of \$17,199.48 on May 21, 2003, and \$18,456.56 on November
22 8, 2004; for the 2001 tax year in the amount of \$14,352.69 on
23 November 8, 2004; for the 2002 tax year in the amount of
24 \$16,380.04 on November 8, 2004; for the 2003 tax year in the
25 amount of \$2,568.12 on May 24, 2006; and for the 2004 tax year in
26 the amount of \$4,672.08 on February 9, 2007. See Certificate of
27 Tax Due and Delinquency, Exhibit 9 to the Perla Dec., Doc. #20,
28 at 3. The Colemans did not pay the assessed amounts. Id.

1 D. CSB's Claim

2 CSB's claims rest on recorded interests in the subject real
3 property arising from three judgment liens obtained following
4 proceedings in Solano County Superior Court. SUF ¶ 31.
5 Abstracts of Judgment in favor of CSB and against the Colemans
6 were duly recorded with the Solano County Recorder's Office on
7 August 17, 2001, for \$3,933.14; on September 2, 2003, for
8 \$9,692.24; and on June 10, 2005, for \$167,087.67. These
9 judgments remain unsatisfied and have been accruing interest.

10 Therefore, the timely filed claims are as follows:

11 Party	Amount	Recorded	Record No.
12 CSB	\$3,933.14	Aug. 17, 2001	2001-94472
13 U.S.	\$20,090.82	May 8, 2003	2003-74436
14 FTB	\$17,199.48	May 21, 2003	2003-82290
15 CSB	\$9,692.24	Sep. 2, 2003	2003-147957
16 FTB	\$18,456.56	Nov. 8, 2004	2004-160297
17 FTB	\$14,352.69	Nov. 8, 2004	2004-160297
18 FTB	\$16,380.04	Nov. 8, 2004	2004-160297
19 CSB	\$167,087.67	Jun. 10, 2005	2005-85757
20 FTB	\$2,568.12	May 24, 2006	2006-65786
21 FTB	\$4,672.08	Feb. 9, 2007	2007-16772

22
23 II. OPINION

24 A. Legal Standard

25 Summary judgment is proper "if the pleadings, depositions,
26 answers to interrogatories, and admissions on file, together with
27 affidavits, if any, show that there is no genuine issue of
28 material fact and that the moving party is entitled to judgment

1 as a matter of law." Fed. R. Civ. P. 56(a). The purpose of
2 summary judgment "is to isolate and dispose of factually
3 unsupported claims or defenses." Celotex v. Catrett, 477 U.S.
4 317, 323-324 (1986).

5 The moving party bears the initial burden of demonstrating
6 the absence of a genuine issue of material fact for trial.
7 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). If
8 the moving party meets its burden, the burden of production then
9 shifts so that "the non-moving party must set forth, by affidavit
10 or as otherwise provided in Rule 56, 'specific facts showing that
11 there is a genuine issue for trial.'" T.W. Electrical Services,
12 Inc. v. Pacific Electric Contractors Ass'n, 809 F.2d 626, 630
13 (9th Cir. 1987) (quoting Fed. R. Civ. P. 56(e)). The Court must
14 view the facts and draw inferences in the manner most favorable
15 to the non-moving party. United States v. Diebold, Inc., 369
16 U.S. 654, 655 (1962). "[M]ere disagreement or bald assertion
17 that a genuine issue of material fact exists will not preclude
18 the grant of summary judgment". Harper v. Wallingford, 877 F. 2d
19 728, 731 (9th Cir. 1987).

20 The mere existence of a scintilla of evidence in support of
21 the non-moving party's position is insufficient: "There must be
22 evidence on which the jury could reasonably find for [the non-
23 moving party]." Anderson, 477 U.S. at 252. This Court thus
24 applies to either a defendant's or plaintiff's motion for summary
25 judgment the same standard as for a motion for directed verdict,
26 which is "whether the evidence presents a sufficient disagreement
27 to require submission to a jury or whether it is so one-sided
28 that one party must prevail as a matter of law." Id.

1 B. Discussion

2 The parties ask the Court to determine the correct priority
3 of the parties' claims to the \$306,853.49 surplus funds. Federal
4 Rule of Civil Procedure ("FRCP") 22 "provides a process by which
5 a party may join all other claimants as adverse parties when
6 their claims are such that the stakeholder may be exposed to
7 multiple liability." Aetna Life Insurance Co. v. Bayona, 223
8 F.3d 1030, 1033 (9th Cir. 2000) (internal quotations omitted).
9 The purpose of an interpleader action is "to decide the validity
10 and priority of existing claims to a res." Texaco, Inc. v.
11 Ponsoldt, 118 F.3d 1367, 1369 (9th Cir. 1997). "[F]ederal law
12 governs the relative priority of federal tax liens and state
13 created liens." Aquilino v. United States, 363 U.S. 509, 514 n.5
14 (1960). "Absent provision to the contrary, priority for purposes
15 of federal law is governed by the common-law principle that 'the
16 first in time is the first in right.'" United States v.
17 McDermott, 507 U.S. 447, 449 (1993) (quoting United States v. New
18 Britain, 347 U.S. 81, 85 (1954)).

19 1. Defendants Alan S. Coleman, Staci E. Coleman, and
20 Friedman Financial

21 On December 21, 2012, default was entered against the
22 Colemans and Friedman Financial. Clerk's Entry of Default, Doc.
23 #19, at 1. Pursuant to FRCP 55, default was entered for failure
24 to timely answer, plead, or otherwise defend. Accordingly, the
25 Colemans and Friedman Financial have forfeited any claim to the
26 surplus funds.

27 2. The United States

28 The United States argues that under the "first in time"

1 rule, its tax lien falls between CSB's judgment lien recorded on
2 September 17, 2001, and CSB's judgment lien recorded on September
3 2, 2003, and before all of FTB's claims. The total outstanding
4 balance due as of January 18, 2013, including statutory accruals,
5 additions, and interest through that date, is \$33,237.55. SUF ¶
6 26. Further, the United States submitted the Internal Revenue
7 Service Form 4340, Certificate of Assessments and Payments, which
8 is "highly probative" and "sufficient, in the absence of contrary
9 evidence, to establish that notices and assessments were properly
10 made." United States v. Zolla, 724 F.2d 808, 810 (9th Cir.
11 1984).

12 3. CSB

13 CSB has three claims with different priorities. Interest on
14 CSB's judgment liens accrues at the statutory rate of 10% per
15 annum. Cal. Code Civ. Pro. § 685.010 (a) ("Interest accrues at
16 the rate of 10 percent per annum on the principal amount of a
17 money judgment remaining unsatisfied."). Because the daily rate
18 is the principal times the interest rate divided by 365, interest
19 accrues daily on CSB's three claims at the rate of \$1.07 for the
20 lien recorded on August 1, 2010; \$2.65 for the lien recorded on
21 September 2, 2003; and \$45.77 on the lien recorded on June 10,
22 2005. Therefore, CSB's claims plus interest equal \$8,513.14,
23 \$18,892.68, and \$296,774.42 respectively.

24 4. FTB

25 FTB has six claims with different priorities. Interest
26 accrues on FTB's claims at a statutory rate. Certificate of Tax
27 Due and Delinquency, Exhibit 9 to the Perla Dec., Doc. #20, at 3.
28 The projected total balance due as of January 18, 2013, for FTB's

1 recorded claims for the 2000, 2001, 2002, 2003, and 2004 tax
 2 years equals \$85,533.84. Id. Of this amount, \$28,369.40
 3 represents the outstanding balance of the tax lien recorded on
 4 May 21, 2003; \$47,223 represents the outstanding balance of the
 5 tax liens recorded on November 8, 2004; and \$6,671.44 represents
 6 the outstanding balance of the tax lien recorded on May 24, 2006
 7 and February 9, 2007.² Id.

8 Therefore, the timely filed claims projected to January 18,
 9 2013, are as follows:

Party	Amount	Recorded	Record No.	Balance
CSB	\$3,933.14	Aug. 17, 2001	2001-94472	\$8,513.14
U.S.	\$20,090.82	May 8, 2003	2003-74436	\$33,237.55
FTB	\$17,199.48	May 21, 2003	2003-82290	\$28,369.40
CSB	\$9,692.24	Sep. 2, 2003	2003-147957	\$18,892.68
FTB	\$18,456.56	Nov. 8, 2004	2004-160297	\$47,223
FTB	\$14,352.69	Nov. 8, 2004	2004-160297	
FTB	\$16,380.04	Nov. 8, 2004	2004-160297	
CSB	\$167,087.67	Jun. 10, 2005	2005-85757	\$296,774.42
FTB	\$2,568.12	May 24, 2006	2006-65786	\$6,671.44
FTB	\$4,672.08	Feb. 9, 2007	2007-16772	
Total				\$439,681.63

23 The total balance owed, \$439,681.63, is greater than the
 24 surplus funds, \$306,853.49; therefore, the funds will be depleted
 25 before all claims are satisfied.

26 _____
 27 ² Based on the Certificate of Tax Due and Delinquency, the
 28 numbers provided by the United States for each lien were
 incorrect, but were corrected by the Court to reflect the total
 liability for each year.

