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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
JAMES P. DEFAZIO, et al.,  
Defendants.

Case No. 2:14-cv-993-JAM-KJN

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

The United States filed a motion for summary judgment (ECF 32-37) against defendant James P. Defazio (“Mr. DeFazio”) seeking to reduce 14 years of tax liabilities to judgment and to enforce tax liens against Mr. DeFazio’s residence. Mr. DeFazio opposed the motion (ECF 40) and filed a counter motion for summary judgment (ECF 44) seeking a ruling that the first four years of tax liabilities were barred by the applicable statute of limitations. The Court continued the initial hearing so that the United States could respond to the counter-motion.

The DeFazio residence is located at 349 Wyndgate Road, Sacramento, California, 95864, in the County of Sacramento, State of California (the “Property”). The legal description of the Property is contained in the deed attached to the complaint filed in this case.

On August 23, 2016, at 1:30 p.m., the Court, the Honorable James A. Mendez presiding, heard the two motions argued. G. Patrick Jennings appeared for the United States and Spencer Malysiak appeared for Mr. DeFazio. After hearing the argument and

1 considering the papers filed, and for the reasons stated upon the record at the hearing, a  
2 copy of which is attached hereto, and for good cause shown,

3 **IT IS ORDERED THAT** the motion of the United States is granted;

4 **IT IS FURTHER ORDERED THAT** the counter-motion of James P. DeFazio is denied.

5 **IT IS FURTHER ORDERED THAT** the United States is entitled to foreclose its liens  
6 against the Property which will be sold pursuant to further order of this Court. The  
7 United States is directed to file a motion for order of sale proposing terms and  
8 conditions, and the defendants may oppose this motion, and the Court will determine the  
9 terms and conditions of the sale. The sale will be free and clear of all interests asserted  
10 by the defendants in this case, with the liens to follow the sale proceeds.

11 **IT IS FURTHER ORDERED THAT** the Clerk is directed to enter a separate final  
12 judgment against Mr. DeFazio as set forth below:

13 **JUDGMENT**

- 14 1. James P. DeFazio is indebted to the United States in the amount of \$249,123.58 for  
15 unpaid federal individual income tax (Form 1040) for the taxable years ending  
16 December 31, 1999, through and including December 31, 2012, plus interest  
17 according to 28 U.S.C. § 1961(c) and 26 U.S.C. §§ 6601, 6621(a)(2), from June 30,  
18 2016, until the judgment is paid.
- 19 2. The DeFazio residence is located at 349 Wyndgate Road, Sacramento, California,  
20 95864, in the County of Sacramento, State of California (the "Property"). In  
21 accordance with the disclaimer of interest (ECF 5) filed by defendant Kathleen Ellis,  
22 the former spouse of Mr. DeFazio, Ms. Ellis is determined to have no interest in the  
23 Property.
- 24 3. In accordance with the disclaimer of interest (ECF 6) filed by defendant William  
25 DeFazio Inc. Profit Sharing Plan and Money Purchase Pension Plan Dated  
26 9/14/1981, said plan is determined to have no interest in the Property.
- 27 4. In accordance with the stipulation and order filed at ECF 10, the sale proceeds from  
28 the sale of the Property will be distributed to the State of California and the County of

1 Sacramento, in accordance with the priority set forth therein.

2 5. In accordance with the stipulation and order filed at ECF 23, the sale proceeds from  
3 the sale of the Property will be distributed to defendants CITIBANK, N.A., and BANK  
4 OF AMERICA, N.A. in accordance with the priority set forth therein.

5 6. The United States is entitled to foreclose its liens against the Property under 26  
6 U.S.C. § 7403, which will be sold pursuant to further order of this Court and upon the  
7 terms and conditions set by the Court.

8 **END OF JUDGMENT**

9 **IT IS SO ORDERED.**

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11 Dated: 9/20/2016

/s/ John A. Mendez

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JOHN A. MENDEZ

United States District Court Judge

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*Approved as to form:*

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/s Spencer Malysiak

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Spencer Malysiak

Attorney for James DeFazio

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19

/s Stuart Smits

Stuart Smits

Attorney for James DeFazio

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21

/s G. Patrick Jennings

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G. Patrick Jennings

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Trial Attorney,

U.S. Department of Justice

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