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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ROBERT E. AND KAREN M.  
O'CONNOR,  
  
Defendants.

No. 2:14-cv-02392-GEB-CMK

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

The United States moves for Summary Judgment under Federal Rule of Civil Procedure ("Rule") 56, in which it seeks an order that "reduce[s] to judgment" "the Internal Revenue Service['s] ("IRS") ... assessments of tax[es], penalties and interest against [Defendants]" "for tax years 2003, 2004, and 2007]..." (Memo. Of P & A in Supp. of Mot. for Summ. J. ("Mot.") 2:2-9, ECF No. 12-1.) The United States requests in its motion that the Court:

determine and adjudge that Defendants Robert E. and Karen M. O'Connor [("Defendants")] are indebted to the United States in the amount of [\$]960,116.01, for unpaid federal income tax for tax years 2003, 2004, and 2007, less any additional credits according to proof, plus interest and other statutory additions as provided by 28 U.S.C. §1961(c) and 26 U.S.C. §§ 6601, 6621 from October 31, 2015 and that judgment in that amount should be entered against [Defendants] and in favor of the United States of America.

(Id. 6:22-7:7.)

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## I. LEGAL STANDARD

A party seeking summary judgment under Rule 56 bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case." Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2003) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). An issue of material fact is "genuine" when "'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Id. (quoting Anderson, 477 U.S. at 248).

If the movant satisfies its "initial burden," "the nonmoving party must set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is a genuine issue for trial.'" T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (quoting former Fed. R. Civ. P. 56(e)). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by citing to particular parts of material in the record . . . or showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Summary judgment "evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences must be drawn in favor of that party." Sec. & Exch. Comm'n v. Todd, 642 F.3d 1207, 1215 (9th Cir. 2011) (citing Johnson v. Paradise Valley Unified Sch. Dist., 251 F.3d 1222,

1 1227 (9th Cir. 2001)).

2 Further, Local Rule 260(b) prescribes:

3 Any party opposing a motion for summary  
4 judgment or summary adjudication [must]  
5 reproduce the itemized facts in the [moving  
6 party's] Statement of Undisputed Facts and  
7 admit those facts that are undisputed and  
8 deny those that are disputed, including with  
9 each denial a citation to the particular  
10 portions of any pleading, affidavit,  
11 deposition, interrogatory answer, admission,  
12 or other document relied upon in support of  
13 that denial.

14 If the nonmovant does not "specifically . . .  
15 [controvert duly supported] facts identified in the [movant's]  
16 statement of undisputed facts," the nonmovant "is deemed to have  
17 admitted the validity of the facts contained in the [movant's]  
18 statement." Beard v. Banks, 548 U.S. 521, 527 (2006).

19 Because a district court has no independent  
20 duty "to scour the record in search of a  
21 genuine issue of triable fact," and may "rely  
22 on the nonmoving party to identify with  
23 reasonable particularity the evidence that  
24 precludes summary judgment," . . . the  
25 district court . . . [is] under no obligation  
26 to undertake a cumbersome review of the  
27 record on the [nonmoving party's] behalf.

28 Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017  
(9th Cir. 2010) (quoting Keenan v. Allan, 91 F.3d 1275, 1279 (9th  
Cir. 1996)); see also Fed. R. Civ. P. 56(c)(3) ("The court need  
consider only the cited materials, but it may consider other  
materials in the record.").

## 24 **II. UNCONTROVERTED FACTS**

25 The following facts have been deemed admitted or are  
26 uncontroverted in light of the documents submitted under Local  
27 Rule 260(b).<sup>1</sup> "[Defendants] timely filed their 2003[, 2004, and

28 <sup>1</sup> Defendants contend that several of Plaintiff's statements of undisputed

1 2007] federal income tax return[s] with the [IRS]." (Defs.' Resp.  
2 to Pl.'s Statement of Undisputed Facts ("UMF") No. 1, No. 3, No.  
3 5, ECF No. 20.) "Despite th[ese] filing[s], Defendants failed to  
4 pay their 2003[, 2004, and 2007] tax liabilit[ies]." (Id.) "[A]  
5 duly authorized delegate of the Secretary of the Treasury made  
6 assessments against Defendants for United States' individual  
7 income tax, penalties, and interest for the tax period[s] ending  
8 December 31, 2003[, December 31, 2004, and December 31, 2007]"  
9 (Id. No. 2, No. 4, No. 6.)

10 "Despite notice and demand for payment, Defendants have  
11 failed to pay the entirety of their tax liabilities for tax years  
12 2003, 2004, and 2007." (Id. No. 7.)

13 The balance of the federal income tax  
14 liability, including penalties and  
15 interest and minus any credits for payment  
16 received, due from Defendants for the tax  
17 year 2003, through October 31, 2015, is  
18 \$135,488.54. This amount reflects  
19 \$2,823.13 in assessed tax, \$33,784.74 in  
20 failure to pay penalty, and \$98,880.67  
21 which represents accrued and unassessed  
22 interest.  
23 (Id. No. 8.)

19 The balance of the federal income tax  
20 liability including penalties and interest  
21 and minus any credits for payments  
22 received, due from Defendants for the tax  
23 year 2004, through October 31, 2015 is  
24 \$477,893.68. This amount reflects  
25 \$247,962.00 in assessed tax, \$60,796.00 in  
26 failure to pay penalty, and \$169,135.68  
27 which represents accrued and unassessed  
28 interest.  
(Id. No. 9.)

25 The balance of the federal income tax  
26 liability, including penalties and  
27 interest and minus any credits for  
28 payments received, due from Defendants for

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28 facts are "disputed." However, Defendants' evidentiary support does not  
controvert the evidence submitted by Plaintiff.

1 the tax year 2007, through October 31,  
2 2015, is \$346,733.39. This amount reflects  
3 \$216,675.00 in assessed tax, \$54,102.24 in  
4 failure to pay penalty, and \$75,956.55  
5 which represents accrued and unassessed  
6 interest.

7 (Id. No. 10.)

8 "As of October 31, 2015, Defendants are indebted to the  
9 United States in the amount of \$960,116.01 for the tax years  
10 2003, 2004, and 2007." (Id. No. 11.) "This amount reflects  
11 \$467,460.13 in assessed tax, \$148,682.98 in failure to pay  
12 penalty, and \$343,972.90 in accrued and unassessed interest."

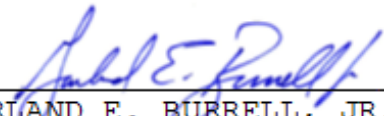
13 (Id.)

### 14 **III. DISCUSSION**

15 The IRS tax assessments in the motion sub judice  
16 "establish that ... [the] assessments were properly made" for the  
17 years 2003, 2004, and 2007. Koff v. United States, 3 F.3d 1297,  
18 1298 (9th Cir. 1993) (quoting Hughes v. United States, 953 F.2d  
19 531, 540 (9th Cir. 1992)). Since the assessments of taxes,  
20 penalties and interest against Defendants for these years have  
21 not been satisfied, Plaintiff's motion for summary judgment is  
22 granted.

23 The Clerk of Court shall enter judgment in favor of the  
24 United States for tax years 2003, 2004, and 2007.

25 Dated: November 19, 2015

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28 GARLAND E. BURRELL, JR.  
Senior United States District Judge