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5 Attorneys for the Internal
6 Revenue Service and the United States

7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9
10 RAYMOND BROMAN,

11 Plaintiff,

12 v.

13 JENNY L. MARTIN, also known as JENNY
14 MARTIN; RICHARD MARTIN; INTERNAL
15 REVENUE SERVICE; STATE OF
16 CALIFORNIA, EMPLOYMENT
DEVELOPMENT DEPARTMENT LIEN
GROUP; and DOES 1-50, inclusive,

17 Defendants.

CASE NO. 2:23-CV-01936-MCE-AC

**ORDER RE DEFENDANTS' MOTION TO
DISMISS**

18
19 The Court having considered Defendants Internal Revenue Service (“IRS”) and California
20 Employment Development Department’s (“EDD”) (collectively “Defendants”) Motion to Dismiss (ECF
21 No. 12), and Plaintiff Raymond Broman’s (“Plaintiff”) Opposition thereto, the Court hereby Orders the
22 following:

23 1. Defendants’ Motion to Dismiss Plaintiff’s Sixth Cause of Action for Declaratory Relief is
24 granted. Plaintiff’s claim for declaratory relief is not based on any recognized legal theory. Although
25 not artfully pled, Plaintiff’s claim for declaratory relief seeks to reduce the “scope and amounts” of the
26 EDD and IRS’ tax liens to a value before the subject property was sold by the Martins to Plaintiff. The
27 Ninth Circuit in *Han v. United States*, 944 F.2d 526 (9th Cir. 1991) expressly rejected this argument,
28 holding that a tax lien is unabated regardless of a sale or non-disclosure of the tax lien by the taxpayer


1 during the sale process. *Id.* at 528-29. Plaintiff's Sixth Cause of Action for Declaratory Relief is thus
2 dismissed with leave to amend.

3 2. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action for Marshalling is
4 also granted. The Ninth Circuit prohibits a marshalling claim against the government because
5 marshalling cannot be invoked to prevent the government from enforcing valid tax liens against any
6 property. *See In re Ackerman*, 424 F.2d 1148, 1150 (9th Cir. 1970). Therefore, Plaintiff's marshalling
7 claim fails as a matter of law. Plaintiff's marshalling claim is also deficient because he has not alleged
8 that he is a junior lienholder or that there are "two funds" belonging to the same debtor (i.e., the
9 Martins), as required by law. *Myer v. United States*, 375 U.S. 233, 236-37 (1963). Plaintiff's Seventh
10 Cause of Action for Marshalling is dismissed with leave to amend.

11 3. Plaintiff's request to file two new causes of action is denied. Plaintiff has failed to
12 comply with Federal Rule of Civil Procedure 16 and this Court's Pretrial Scheduling Order (ECF 2) in
13 seeking leave to amend. Absent the Court granting a properly noticed motion for leave to amend,
14 Plaintiff is permitted only to amend the facts pertinent to the dismissed Sixth and Seventh Causes of
15 Action that are dismissed by virtue of this Order. Should Plaintiff attempt to amend the declaratory
16 relief and marshalling causes of action, any amended complaint must be filed not later than twenty (20)
17 days following the date this Order is electronically filed. If no amended complaint is timely filed, these
18 causes of action will be deemed DISMISSED with prejudice upon no further notice to the parties.

19 IT IS SO ORDERED.

20 Dated: May 13, 2024

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23 MORRISON C. ENGLAND, JR.
24 SENIOR UNITED STATES DISTRICT JUDGE
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