



1           The United States filed the present action against Michael  
2 and Leone Carey ("Careys"); Douglas Carpa and Robert Talbot (both  
3 as trustees of the Ranch Holding Trust); Michael Bloomquist (as  
4 trustee of the Hidden Meadows Holding Trust); Pamela Graff; and  
5 various other defendants, seeking, *inter alia*, to foreclose  
6 federal tax liens securing the Careys' federal income tax  
7 liabilities, plus penalties and interest, against certain real  
8 property located in Redding, Palo Cedro, and in Bella Vista,  
9 California.

10           Presently before the Court is the United States' Motion for  
11 Default Judgment against Douglas Carpa and Robert Talbot (as  
12 trustees of the Ranch Holding Trust), Michael Bloomquist (as  
13 trustee of the Hidden Meadows Holding Trust), and Pamela Graff  
14 adjudicating that the Ranch Holding Trust, the Hidden Meadows  
15 Holding Trust, and Pamela Graff have no interest in the Palo  
16 Cedro, Redding, and Bella Vista Properties. In conjunction with  
17 the United States' Motion for Default Judgment, the government  
18 has filed a Motion for Summary Judgment against Michael and Leone  
19 Carey declaring that the Careys are the true and beneficial  
20 owners of the Palo Cedro, Redding, and Bella Vista properties  
21 despite any purported interests held by the foregoing trusts.  
22 For the reasons set forth below, the United States' Motions for  
23 Default Judgment and for Summary Judgment are GRANTED.<sup>1</sup>

24 ///

25 ///

---

27           <sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court orders this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

1 **BACKGROUND**

2  
3 According to the Government's Complaint, a delegate of the  
4 Secretary of the Treasury made assessments against the Careys for  
5 unpaid federal income taxes, plus penalties and interest, for the  
6 1995 through 2000 tax years. As of November 18, 2004, there  
7 allegedly remains due and owing from the Careys, jointly and  
8 severally, the sum of \$6,473,034.57 on the assessments, plus  
9 accrued interest, penalties and other statutory additions as  
10 provided by law. Interest has now accrued on the liability, such  
11 that as of February 28, 2007, the Careys owed \$7,475,470.08. The  
12 United States contends that, to date, the Careys have neglected,  
13 failed, or refused to fully pay the indebted amounts.

14 The United States alleges that the Careys are the true and  
15 beneficial owners of real property located in Palo Cedro,  
16 Redding, and Bella Vista, California. The Careys transferred the  
17 Palo Cedro and Redding properties to the Ranch Holding Trust  
18 administered by Douglas Carpa and/or Robert Talbot. The Bella  
19 Vista property is in the Hidden Meadows Holding Trust,  
20 administered by Michael Bloomquist. The United States alleges  
21 the Trusts are the nominees and/or alter ego's of the Careys.

22 None of the Defendants has properly answered the  
23 Government's Complaint. The filed Answers of Defendants Carpa  
24 and Bloomquist were struck by Order of this Court as improper.  
25 Defendant Graff's Motion to Dismiss was similarly struck down as  
26 defective and a new motion was never filed. On July 31, 2006,  
27 the Clerk entered default against Robert Talbot, Douglas Carpa,  
28 Michael Bloomquist, and Pamela Graff.

1 The Careys have been involved in significant litigation with  
2 the United States involving the tax years at issue including  
3 claims before the United States Bankruptcy Court, the United  
4 States Tax Court, and the United States District Court as  
5 follows.

6  
7 **1. United States Bankruptcy Court**

8 On July 28, 2005, the Bankruptcy Court entered judgment in  
9 favor of the United States, finding, *inter alia*, that the Careys'  
10 tax debts for the tax years at issue are excepted from discharge  
11 under 11 U.S.C. Section 523(a)(1)(C). See Undisputed Facts,  
12 ¶ 16.

13  
14 **2. United States Tax Court**

15 The United States Tax Court found a tax deficiency in the  
16 amount of \$205,911 and a penalty due in the amount of \$41,182  
17 under Section 6662(a) for the tax year 1995. See Undisputed  
18 Facts, ¶ 18. The United States Tax Court also found a tax  
19 deficiency in the amount of \$498,933 and penalties due in the  
20 amounts of \$74,874.99 and \$99,786.60 under Sections 6651(a) and  
21 6662(a), respectively for the tax year 1997. See Undisputed  
22 Facts, ¶ 19. The Tax Court also concluded that the Residential  
23 Management Services Trust, Rancho Residential Services Trust,  
24 Sunshine Residential Trust, and the Home Services Trust were  
25 invalid and sham trusts; that the Careys controlled and dealt  
26 with trust property as if it were their own; that income reported  
27 by these trusts should be imputed as being income earned by the  
28 Careys and not by these trusts;

1 that bank accounts controlled by the Careys paid for the property  
2 taxes on the Palo Cedro and Bella Vista properties; and that the  
3 Careys resided at the Palo Cedro and Bella Vista Properties as  
4 their personal residences. See Undisputed Facts, ¶ 20.

5  
6 **3. United States District Court**

7 The United States has litigated numerous enforcement actions  
8 against the Careys in this Court involving their fraudulent use  
9 of trusts. See *United States v. Carey*, Case Nos. 2:05-cv-02176;  
10 2:98-cv-01540; 2:98-mc-00289; 2:98-mc-00294; 2:98-mc-00295;  
11 2:98-mc-00296; and 2:98-mc-00297. Those cases have concluded  
12 that enforcement against the Careys of various tax obligations  
13 was proper.

14  
15 **4. The United States' Requests For Admissions**

16 The United States served the Careys with various discovery  
17 requests on July 28, 2006, including its First Request for  
18 Admissions. See Undisputed Facts, ¶ 21. The Careys failed to  
19 respond to any of the United States' discovery requests,  
20 including its First Request for Admissions. See Undisputed  
21 Facts, ¶ 22. The United States' Request for Admissions included  
22 requests that the Careys admit they: (1) are liable for the  
23 assessments made against them for the tax years at issue,  
24 totaling \$6,473,034.57, plus accrued interest, penalties and  
25 other statutory additions as provided by law from the dates of  
26 assessment; (2) are the true and beneficial owners of the Palo  
27 Cedro and Redding Properties despite any purported transfers to  
28 the Ranch Holding Trust;

1 (3) transferred the Palo Cedro and Redding Properties to the  
2 Ranch Holding Trust with the intent of hindering, delaying, or  
3 defrauding their present and future creditors, including the  
4 United States; (4) are the true and beneficial owners of the  
5 Bella Vista Property despite any purported interest held by the  
6 Hidden Meadows Holding Trust; (5) use the Ranch Holding Trust and  
7 the Hidden Meadows Holding Trust as sham entities which lack any  
8 purpose beyond shielding assets, including the Palo Cedro,  
9 Redding, and Bella Vista properties, from the reach of their  
10 creditors and, consequently, that these trusts are the Careys'  
11 nominees and/or alter egos. See Undisputed Facts, ¶ 23.

12  
13 **STANDARD**

14  
15 **1. Default Judgment**

16 The starting point for considering whether to grant a motion  
17 for entry of default judgment is the general rule that default  
18 judgments are ordinarily disfavored. *Eitel v. McCool*, 782 F.2d  
19 1470, 1472 (9th Cir. 1986). Cases should be decided upon their  
20 merits whenever reasonably possible. *Pena v. Seguros La*  
21 *Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985). Whether to  
22 grant a motion for default judgment is within the Court's  
23 discretion. *Eitel*, 782 F.2d at 1472. The Ninth Circuit has set  
24 forth factors which may be considered in exercising this  
25 discretion: (1) the possibility of prejudice to the plaintiff,  
26 (2) the merits of plaintiff's substantive claim, (3) the  
27 sufficiency of the complaint, (4) the sum of money at stake,  
28 (5) the possibility of a dispute concerning material facts,

1 (6) whether the default was due to excusable neglect, and (7) the  
2 policy favoring decisions on the merits. *Id.*

## 3 4 **2. Summary Judgment**

5 The Federal Rules of Civil Procedure provide for summary  
6 judgment when "the pleadings, depositions, answers to  
7 interrogatories, and admissions on file, together with  
8 affidavits, if any, show that there is no genuine issue as to any  
9 material fact and that the moving party is entitled to a judgment  
10 as a matter of law." Fed. R. Civ. P. 56(c). One of the  
11 principal purposes of Rule 56 is to dispose of factually  
12 unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477  
13 U.S. 317, 325 (1986).

14 Rule 56 also allows a court to grant summary adjudication on  
15 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party  
16 seeking to recover upon a claim ... may ... move ... for a  
17 summary judgment in the party's favor upon all or any part  
18 thereof."); see also *Allstate Ins. Co. v. Madan*, 889 F. Supp.  
19 374, 378-79 (C.D. Cal. 1995); *France Stone Co., Inc. v. Charter*  
20 *Twp. of Monroe*, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

21 The standard that applies to a motion for summary  
22 adjudication is the same as that which applies to a motion for  
23 summary judgment. See Fed. R. Civ. P. 56(a), 56(c); *Mora v.*  
24 *ChemTronics*, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998).

25 ///

26 ///

27 ///

28 ///

1 Under summary judgment practice, the moving party  
2 always bears the initial responsibility of informing  
3 the district court of the basis for its motion, and  
4 identifying those portions of 'the pleadings,  
5 depositions, answers to interrogatories, and admissions  
6 on file together with the affidavits, if any,' which it  
7 believes demonstrate the absence of a genuine issue of  
8 material fact.

9  
10 *Celotex Corp. v. Catrett*, 477 U.S. at 323 (quoting Rule 56(c)).

11 If the moving party meets its initial responsibility, the  
12 burden then shifts to the opposing party to establish that a  
13 genuine issue as to any material fact actually does exist.

14 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
15 585-87 (1986); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S.  
16 253, 288-89 (1968).

17 In attempting to establish the existence of this factual  
18 dispute, the opposing party must tender evidence of specific  
19 facts in the form of affidavits, and/or admissible discovery  
20 material, in support of its contention that the dispute exists.  
21 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that  
22 the fact in contention is material, i.e., a fact that might  
23 affect the outcome of the suit under the governing law, and that  
24 the dispute is genuine, i.e., the evidence is such that a  
25 reasonable jury could return a verdict for the nonmoving party.

26 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251-52  
27 (1986); *Owens v. Local No. 169, Assoc. of W. Pulp and Paper*  
28 *Workers*, 971 F.2d 347, 355 (9th Cir. 1987).

///

///

///

///

1 Stated another way, "before the evidence is left to the jury,  
2 there is a preliminary question for the judge, not whether there  
3 is literally no evidence, but whether there is any upon which a  
4 jury could properly proceed to find a verdict for the party  
5 producing it, upon whom the onus of proof is imposed." *Anderson*,  
6 477 U.S. at 251 (quoting *Improvement Co. v. Munson*, 14 Wall. 442,  
7 448, 20 L.Ed. 867 (1872)). As the Supreme Court explained,  
8 "[w]hen the moving party has carried its burden under Rule 56(c),  
9 its opponent must do more than simply show that there is some  
10 metaphysical doubt as to the material facts .... Where the record  
11 taken as a whole could not lead a rational trier of fact to find  
12 for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita*,  
13 475 U.S. at 586-87.

14 In resolving a summary judgment motion, the evidence of the  
15 opposing party is to be believed, and all reasonable inferences  
16 that may be drawn from the facts placed before the court must be  
17 drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255.  
18 Nevertheless, inferences are not drawn out of the air, and it is  
19 the opposing party's obligation to produce a factual predicate  
20 from which the inference may be drawn. *Richards v. Nielsen*  
21 *Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),  
22 *aff'd*, 810 F.2d 898 (9th Cir. 1987).

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 That allegation, as well as the remainder of the Complaint,  
2 remains unanswered. In addition, the United States sought  
3 admissions that, likewise, have gone unanswered by Defendants.  
4 Pursuant to Federal Rule of Civil Procedure 36(a) “[e]ach matter  
5 of which an admission is requested...is admitted unless, within  
6 30 days after service of the request, or within such shorter or  
7 longer time as the court may allow or as the parties may agree to  
8 in writing...” No extension of time has been granted for  
9 Defendants to respond to the admissions. Accordingly, pursuant  
10 to Rule 36, they are deemed admitted. Given those admissions,  
11 the Court finds the Careys are the true and beneficial owners of  
12 the Bella Vista Property despite any purported interest held by  
13 the Hidden Meadows Holding Trust. In addition, the Court finds  
14 the Careys use the Ranch Holding Trust and the Hidden Meadows  
15 Holding Trust as sham entities, including the Palo Cedro,  
16 Redding, and Bella Vista properties, in an attempt to shield  
17 those properties from the reach of their creditors. Accordingly,  
18 the United States’ Motion for Default Judgment is GRANTED.

19  
20 **2. Summary Judgment**

21 The Careys’ tax liability has been previously adjudicated in  
22 both the United States Tax Court and United States Bankruptcy  
23 Court. In *Residential Management Services Trust v. Commissioner*,  
24 the Tax Court found that the Careys had under-reported their tax  
25 income for 1995, including income which should have been  
26 attributed to the Careys but was instead attributed to a trust.  
27 82 T.C.M (CCH) 874, 2001 WL 1360439 (U.S. Tax Ct. 2001).

28 ///

1 Pursuant to this decision, the Tax Court entered an Order in the  
2 amount of \$247,093 for tax deficiency and penalties for the 1995  
3 tax year. In *Carey v. Commissioner*, the Tax Court upheld the  
4 IRS's proposed levy against the Careys for their 1996 tax  
5 assessment. 84 T.C.M. (CCH) 214, 2002 WL 1906445 (U.S. Tax Ct.  
6 2002). In a second case entitled *Carey v. Commissioner*, the Tax  
7 Court found that the Careys had under-reported their income for  
8 1997, and held that several of the Careys Trusts were shams for  
9 federal tax purposes. 86 T.C.M. (CCH) 420, 2003 WL 22233822  
10 (U.S. Tax Ct. 2003). This led to an Order in the amount of  
11 \$678,594.59 in tax deficiency and penalties for the 1997 tax  
12 year.

13 The Careys filed for Chapter 7 bankruptcy on September 7,  
14 2004. On November 18, 2004, the IRS filed Form 4340 Certificates  
15 which show tax assessments against the Careys totaling  
16 \$6,473,034.57 for the years 1995-2000. The United States also  
17 filed Notices of Federal Tax Liens securing the Careys unpaid tax  
18 debts for the years 1995, 1996, 1998, 1999, and 2000. The  
19 Bankruptcy Court entered judgment that the Careys' tax  
20 liabilities for the years 1995 through 2000 were not subject to  
21 discharge under the bankruptcy proceedings. The only items  
22 discharged by the Bankruptcy Court were the penalties and the  
23 interest on the penalties for those years. However, all but the  
24 1997 penalties were previously secured by federal tax liens and,  
25 therefore, were not discharged.

26 ///

27 ///

28 ///

1           In the present matter, the United States has submitted the  
2 IRS Form 4340 Certificates showing the Careys' tax assessments.  
3 Such tax assessments are presumed to be correct as long as they  
4 have a minimum of factual support. *U.S. v. Stonehill*, 702 F.2d  
5 1288, 1293 (9th Cir. 1983). The burden then shifts to the  
6 taxpayer to rebut the presumption of correctness. *Id.* At 1294.  
7 The taxpayer can do this by proving that the assessments are  
8 "arbitrary or erroneous." *Id.*

9           Here, the Careys have not put forth any evidence to indicate  
10 that the assessments are incorrect or invalid in any way. In  
11 fact, the Careys did not submit an Opposition to the United  
12 States' Motion for Summary Judgment. Additionally, the Careys  
13 failed to respond to any of the United States' requests for  
14 admissions. As noted above, when a party fails to respond to  
15 admission requests within thirty days, the requests are deemed  
16 admitted. Fed. R. Civ. Pro. 36(a). The requests here included  
17 admissions that: 1) the Careys are liable to the United States in  
18 the amount of \$6,473,034.57; 2) that the Careys are the true  
19 beneficial owners of the Palo Cedro, Redding, and Bella Vista  
20 properties; 3) that the Careys transferred the Palo Cedro and  
21 Redding properties to the Ranch Holding Trust in order to hinder  
22 or delay payment of federal income taxes; and 4) that the Ranch  
23 Holding Trust and Hidden Meadows Holding Trust are sham trusts  
24 and are the nominee/alter egos of the Careys.

25           In light of the previous judgments against the Careys and  
26 the Careys' failure to put forth any evidence disputing the  
27 United States' allegations, the Motion for Summary Judgment is  
28 proper and, hereby, GRANTED.

1 **CONCLUSION**

2

3 For the reasons set forth above, the Court finds that the

4 Ranch Holding Trust, the Hidden Meadows Holding Trust, and Pamela

5 Graff have no interest in the Palo Cedro, Redding, and Bella

6 Vista properties. Default judgment against Douglas Carpa and

7 Robert Talbot (as trustees of the Ranch Holding Trust), Michael

8 Bloomquist (as trustee of the Hidden Meadows Holding Trust), and

9 Pamela Graff is hereby GRANTED. In addition, the Court finds

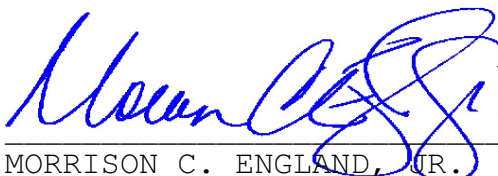
10 Michael and Leona Carey are the true owners of the Palo Cedro,

11 Redding, and Bella Vista properties making Defendant United

12 States' Motion for Summary Judgment proper and, hereby, GRANTED.

13 IT IS SO ORDERED.

14 Dated: July 5, 2007

15 

16 

---

17 MORRISON C. ENGLAND, JR.  
18 UNITED STATES DISTRICT JUDGE

19

20

21

22

23

24

25

26

27

28